



CITY OF STANWOOD NOTICE OF DECISION

Hamilton Landing Park and Access Shoreline Substantial Development and Shoreline Variance

The City of Stanwood has issued a Notice of Decision for a Shoreline Substantial Development and Shoreline Variance Permit as required by Stanwood Municipal Code. The following project has been **APPROVED**, with the conditions listed in the Hearing Examiners Decision.

Project Name: Hamilton Landing Park and Access

Proponent: City of Stanwood (City) and Washington Department of Fish and Wildlife (WDFW)

Project Number: Shoreline Substantial Development and Shoreline Variance 21-0071

Description of Proposal: The City of Stanwood (the City) and Washington State Department of Fish and Wildlife (WDFW) have submitted a joint application requesting a Shoreline Substantial Development and Shoreline Variance permit to construct the Hamilton Landing Park. The project is located within the High Intensity shoreline designation of the Stillaguamish River shoreline and requires the approval of this Shoreline Substantial Development and Shoreline Variance permit.

Tax Parcel Numbers: 32032400414600 and 32032400408100

Shoreline Decision: Approved, with Conditions

Notice of Decision Date: Tuesday, November 8, 2022

End of Local Appeal Period: Tuesday, November 29, 2022

Expiration Date: November 8, 2024

Reconsiderations: Any person who presented or commented at the hearing may file a written request with the hearing examiner for reconsideration within ten (10) business days of the date of the Hearing Examiner's Decision. Reconsiderations must be delivered to the City of Stanwood, at 10220 270th Street NW, Stanwood, WA 98292, by **Wednesday, November 23, 2022 at 4:30 pm.** Reconsiderations must meet the content and grounds requirements of SMC 17.80.380 (8) (a) and (b), shall specify the relief requested, and be accompanied by a \$200 non-refundable filing fee.

Appeals: An appeal of a shoreline permit shall be to the state Shoreline Hearings Board and shall be filed within twenty-one (21) calendar days from the receipt of the city's decision by the Department of Ecology as set forth in RCW 90.58.140.

Staff Contact: Tansy Schroeder, City Planner, tansy.schroeder@stanwoodwa.org
360-454-5211

**BEFORE the HEARING EXAMINER for the
CITY of STANWOOD**

DECISION

FILE NUMBER: 21-0071

APPLICANTS: City of Stanwood
ATTN: Patricia Love
10220 270th Street NW
Stanwood, WA 98292

Washington Department of Fish and Wildlife
ATTN: Anna Sample
600 Capitol Way N
Olympia, WA 98501

TYPE OF CASE: Consolidated: Shoreline Management Act Substantial
Development Permit and Shoreline Variance, both for
development of Hamilton Landing Park

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: November 8, 2022

INTRODUCTION ¹

The City of Stanwood (“City”) and the Washington Department of Fish and Wildlife (“WDFW”) jointly seek a Shoreline Management Act (“SMA”) Substantial Development Permit (“SSDP”) for development of Hamilton Landing Park. They also seek an SMA Variance (“SVAR”) for relief from wetland requirements associated with development of Hamilton Landing Park.

The applications have been consolidated for processing.

The City and WDFW filed the SSDP and SVAR applications on July 19, 2021. ² (Exhibits 4; 5 ³) The Stanwood Community Development Department (“CDD”) deemed the applications to be complete on July 30, 2021. (Exhibit 25)

¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

² Previous applications for development of Hamilton Landing Park (City file numbers 2019-0551, -0552, -0553, and -0554) had been previously withdrawn. (Testimony)

The subject property is located at 26810 98th Avenue NW. Its Assessor's Parcel Numbers are 32032400414600 ("Parcel 146") and 32032400408100 ("Parcel 81"). (Exhibit 1, PDF 1)

The Stanwood Hearing Examiner ("Examiner") viewed the subject property via Google Earth imagery: Aerial imagery dated August 15, 2020; Street View imagery not available. (See also Exhibits 1, PDF 5; 15, PDF 6 – 10; 41.)

The Examiner held an open record hearing on October 26, 2022. The hearing was conducted remotely using the "Zoom" platform. CDD gave notice of the hearing as required by the Stanwood Municipal Code ("SMC"). (Exhibit 29)

The following exhibits were entered into the hearing record during the hearing:

Exhibits 1 - 38:	Staff Report (Exhibit 1) with attached list of Exhibits 1 – 38
Exhibit 39:	Water Quality Certification Order # 21293, issued October 18, 2022
Exhibit 40:	Revised Water Quality Certification Order # 21293, issued October 20, 2022
Exhibit 41:	Aerial photograph of Parcel 81

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

FINDINGS OF FACT

1. The subject property is an approximate 2 acre, roughly triangular site bordered on the southwest by the Stillaguamish River, on the north by Irvine Slough, and on the east by 98th Avenue NW. (Exhibit 1, PDF 5) The southern tip of the triangle is owned by the Strong family. (Exhibit 16) The bulk of the subject property is Parcel 146. (Exhibit 1, PDF 5) The portion of Irvine Slough located west of 98th Avenue NW is located in Parcel 81. (Exhibit 41)
2. Exhibit 1 is an extremely detailed, comprehensive analysis of all code elements applicable to the requested SSDP and SVAR. The record contains no challenge to historical framework, site facts, with but a couple of exceptions, and CDD's analysis of SSDP and SVAR approval criteria compliance. Therefore, except as supplemented herein, PDF 1 – 63, Sections I – VIII, are incorporated herein by reference as if set forth in full. This Decision will set forth only a brief overview of that material and of the supporting factual documents submitted by the applicants, especially Exhibits 7 – 15, 20, 21, and 23. Concerns of the two citizen parties who commented on

³ Exhibit citations are provided for the reader's benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. Citations to exhibits that are available electronically in PDF use PDF page numbers, not source document page numbers. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner's Decision is based upon all documents in the record.

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the proposal will be explored in greater depth. The reader is encouraged to refer to record documents for more detailed information.

3. There is no evidence of Indian villages on the subject property, although there is evidence of villages on nearby properties. The subject property was used by small shingle mills beginning as early as the 1880s. The City was incorporated in 1903. By the early 1900s there were five mill buildings located on the western end of the subject parcel and a bridge across the mouth of Irvine Slough. By 1916 a much larger mill had been constructed whose buildings occupied most of the subject property. The mill changed hands several times over the years. A smokestack, still standing, was constructed by the then owner in or around 1927. A dock, used to transfer logs and lumber to and from boats in the river, was built along a portion of the property's frontage on the Stillaguamish River as early as 1918; a later dock was reportedly built in or around 1948. The mill was purchased by the Hamilton family in 1945; the Hamiltons operated the mill until its closure in the 1960s. (Exhibits 1, PDF 3 – 5; 7, PDF 4; 9, PDF 15 – 22; 10, PDF 8)

The site has been essentially vacant since the mill closed in the 1960s. An informal boat launch exists at the mouth of Irvine Slough used by a small clamming operation and others. The central part of the site now contains a low quality, Category III depressional wetland whose sole vegetation is mown grasses. The shorelines of the Stillaguamish River and Irvine Slough are largely covered with invasive species, especially blackberries. The subject property's Stillaguamish River frontage is part of an extensive, linear Category I estuarine wetland. Remnant piles and extremely dilapidated wharf planks remain along portions of the Stillaguamish River frontage. (Exhibits 1, PDF 21 – 25; 11; 12)

4. The City purchased the subject property in 2014 for the express purpose to develop a park providing the City's only public access to its Stillaguamish River frontage. (Exhibit 1, PDF 2)

WDFW needs a better, safer access to some 1,000 acres of reclaimed estuary located on Leque Island, a short distance to the west. An informal access point beneath the Mark Clark SR 532 bridge is unsafe. WDFW investigated three potential access points with the subject property best meeting the needs of bird watchers and water fowl hunters. (The Leque Estuary site is one of the most productive waterfowl hunting areas in the state.) (Exhibit 15)

The City and WDFW joined forces to develop a City park and a WDFW boat launch ramp for small motorized boats on the subject property. The City is responsible for planning and building the western part of the park; WDFW is responsible for planning and building the eastern part of the park which will include the state boat launch; the City will be responsible for continuing maintenance of the entire park. (Exhibit 1; and testimony)

5. The western part of Hamilton Landing Park will contain:

A non-motorized boat launch, where park visitors could launch kayaks, canoes and similar non-motorized boats. ... Asphalt parking lot with 14 parking spaces, including one handicapped parking space and a bike-rack. ... Asphalt paths would lead from the parking lot to the non-motorized boat launch as well as other areas of

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the park property, allowing access to picnic tables, playground features, labyrinth, signage/kiosks and seating areas. ... The park would include signage at the park entrance and throughout the park property, five picnic tables, a nature playground feature constructed of logs, rock and rope with bark chips beneath, a holiday light storage fenced enclosure, 12 benches constructed of either logs or trex material, fencing (wood or trex material), a paver stone labyrinth, concrete seat walls near the existing smokestack, areas of lawn and planting of conifer and deciduous trees and shrubs along the shoreline. ... Existing features on the property would be incorporated as part of the park, to provide historical and community context, including: the Hamilton Mill smokestack, a concrete bunker that was part of the Hamilton Mill, a concrete wall that was also part of the Hamilton Mill as well as the refuse burner foundation, which will be the site for the labyrinth.

(Exhibit 20, PDF 6 & 7. See also Exhibit 2.) The eastern part of the Park will contain a concrete plank boat launch ramp (for small motorized boats), a nine-stall trailer parking area, a fully plumbed restroom building, and extensive restoration of the on-site wetland. (Exhibit 3)

6. Stanwood's State Environmental Policy Act ("SEPA") Responsible Official issued a Mitigated Determination of Nonsignificance ("MDNS") on May 12, 2022. (Exhibit 22) The MDNS was not appealed. The mitigation measures within the MDNS have been carried forward by CDD as recommended conditions of approval. (Exhibit 1, PDF 64 & 65, Recommended Conditions 11 - 20)
7. Two private parties submitted written comments expressing concerns about the proposal; neither participated in the hearing. One member of the public testified in support of the Park proposal.

The written comments were from an attorney representing the Strong family (Exhibits 30 & 37) and from Mark Eikeland ("Eikeland") (Exhibit 33).

While "the Strongs are generally supportive of a park and believe the citizens of Stanwood will benefit from the addition of a new park," they are concerned about the effect of the proposed WDFW motorized boat launch ramp on their abutting property and on the river. (Quote from Exhibit 37, PDF 1) They also assert that the boat launch parking area "cannot be located within the wetland or wetland buffer as a matter of law". (Exhibit 37, PDF 1; bold type face omitted) The Strongs also expressed concern about the adverse impacts the WDFW boat launch would have on their private residence located adjacent to that proposed facility.⁴ (Exhibit 37, PDF 4 & 5) The plans and recommended conditions indicate that the Strong/Park common boundary will be fenced with screening vegetation along the fence. (Exhibits 1; 3)

⁴ There is a building on the Strongs' property near the common property line, but according to the County Assessor, that building has been used for commercial/industrial purposes. (Exhibit 1; PDF 57) The building appears to be a windowless barn (clearly no windows on the Park end of the building) with two rows of large industrial/agricultural type skylights in the roof. (Exhibits 1, PDF 36 & 57; 15, PDF 8) It is unclear from the record whether the attorney meant to say that the apparent barn is really a residence or whether he simply misunderstood something his clients said to him.

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Eikeland shares the Strongs concerns about motorized boat activity in the Stillaguamish River (due to shallow depths and tidal fluctuation) and is also concerned about the impact of Park traffic on the SR 532/98th Avenue NW intersection. (Exhibit 33)

8. Given the need to launch and recover motorized boats primarily during high tide cycles, the practical reality is that the WDFW boat launch will most likely serve only nine boats a day (one for each available trailer parking space), thus generating 18 vehicle trips (one in and one out for each parking space). The traffic consultant doubled that number to provide a very conservative estimate. (Exhibit 23, PDF 2)

The remainder of the Park is estimated to generate 160 vehicle trips (80 in and 80 out) on a Saturday and 112 (56 in and 56 out) on weekdays. (Exhibit 23, PDF 1)

Combined, the Park is anticipated to generate 148 vehicle trips on a weekday, of which 4 would be in the morning peak traffic hour and 25 would be in the evening peak traffic hour.⁵ (Exhibit 23, PDF 2)

The traffic study does not indicate any concern about impacts at SR 532/98th Avenue NW intersection. (Exhibit 23)

9. The City and WDFW prepared responses to all comments, both from the public and from agencies/Tribes. (Exhibit 1, PDF 47 – 56)
10. CDD recommends approval of the requested SSDP and SVAR subject to 32 conditions (applicable to both permits). (Exhibit 1, PDF 63 – 70) Neither the City nor WDFW object to any of the recommended conditions. (Testimony)
11. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK⁶

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

An SSDP is a Type II, administrative, application; an SVAR is a Type III, quasi-judicial, application. [SMC 17.80.230(2) & (3), Table 1] An applicant may request in writing that applications of different Types be consolidated. When consolidated, the process for the highest numbered Type is followed. [SMC 17.80.250]

⁵ There are eight boat launch sites within 12 miles of Hamilton Landing Park. The traffic consultant does not anticipate that this site would necessarily draw from a wide service area. (Exhibit 23, PDF 2 & 3)

⁶ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

The City and WDFW elected to consolidate the SSDP and SVAR applications. Therefore, Type III procedures are applicable.

Type III applications require an open record, pre-decision hearing before the Examiner who makes the final decision for the City on the applications. The Examiner's Decision is subject to the right of reconsideration. [SMC 17.80.310; SMC 17.80.380; and Hearing Examiner Rule of Procedure 504] The Examiner's Decision on an SVAR application is subject to review and approval by the Washington State Department of Ecology ("Ecology"). The Examiner's Decision on the SSDP and Ecology's decision on the SVAR may be appealed to the State Shorelines Hearings Board, a state quasi-judicial review board, whose decision is subject to the right of judicial appeal. [SMC 17.80.310, Table 3B]

Review Criteria

The review criteria for SSDPs are set forth at SMC 17.150.070:

In order to approve any development within SMP jurisdiction, the city must find that a proposal is consistent with the following criteria:

- (1) All regulations of the Shoreline Master Program appropriate to the shoreline designation and the type of use or development proposed shall be met, except those bulk and dimensional standards that have been modified by approval of a shoreline variance.
- (2) All policies of the Shoreline Master Program appropriate to the shoreline area designation and the type of use or development activity proposed shall be considered and substantial compliance demonstrated, except those bulk and dimensional standards that have been modified by approval of a shoreline variance. A reasonable proposal that cannot fully conform to these policies may be permitted, provided it is demonstrated to the reviewing official that the proposal is clearly consistent with the overall goals, objectives and intent of the Shoreline Master Program.

The review criteria for SVARs are set forth at SMC 17.150.078:

A development may be granted which is at variance with the criteria established in the SMP where, owing to special conditions pertaining to the specific piece of property, the literal interpretation and strict application of the criteria established in the SMP would cause undue and unnecessary hardship or practical difficulties. A variance may be required for a use that does not require a substantial development permit but which may not be approved because it does not comply with the provisions of the SMP.

Decision Criteria. The fact that the applicant might make a greater profit by using his property in a manner contrary to the intent of the Master Program is not, by itself, sufficient reason for a variance. The hearing examiner must find each of the following:

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- (1) Exceptional or extraordinary circumstances or conditions applying to the subject property, or to the intended use thereof, that do not apply generally to other properties on shorelines in the same vicinity.
- (2) The variance permit is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by the owners of other properties on shorelines in the same vicinity.
- (3) The variance permit will not be materially detrimental to the public welfare or injurious to property on the shorelines in the same vicinity.
- (4) The variance granted will be in harmony with the general purpose and intent of this Master Program.
- (5) The public welfare and interest will be preserved. If more harm will be done to the area by granting the variance than would be done to the applicant by denying it, the variance shall be denied, but each property owner shall be entitled to the reasonable use and development of his lands as long as such use and development is in harmony with the general purpose and intent of the Shoreline Management Act of 1971, and the provisions of this Master Program.
- (6) The proposal meets the variance criteria in WAC 173-27-170.

The SVAR criteria in WAC 173-27-170 depend upon whether the requested variance applies to activity located landward or waterward of the OHWM:

The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the applicable master program where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

- (1) Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.
- (2) Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030(2)(c), and/or landward of any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of the following:

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- (a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;
 - (b) That the hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;
 - (c) That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;
 - (d) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
 - (e) That the variance requested is the minimum necessary to afford relief; and
 - (f) That the public interest will suffer no substantial detrimental effect.
- (3) Variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030(2)(c), or within any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of the following:
- (a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property;
 - (b) That the proposal is consistent with the criteria established under subsection (2)(b) through (f) of this section; and
 - (c) That the public rights of navigation and use of the shorelines will not be adversely affected.
- (4) In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.
- (5) Variances from the use regulations of the master program are prohibited.

The Local Project Review Act [Chapter 36.70B RCW] establishes a mandatory “consistency” review for “project permits”, a term defined by the Act to include “building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan.” [RCW 36.70B.020(4)]

(1) Fundamental land use planning choices made in adopted comprehensive plans and development regulations shall serve as the foundation for project review. The review of a proposed project’s consistency with applicable development regulations or, in the absence of applicable regulations the adopted comprehensive plan, under RCW 36.70B.040 shall incorporate the determinations under this section.

(2) During project review, a local government or any subsequent reviewing body shall determine whether the items listed in this subsection are defined in the development regulations applicable to the proposed project or, in the absence of applicable regulations the adopted comprehensive plan. At a minimum, such applicable regulations or plans shall be determinative of the:

- (a) Type of land use permitted at the site, including uses that may be allowed under certain circumstances, such as planned unit developments and conditional and special uses, if the criteria for their approval have been satisfied;
- (b) Density of residential development in urban growth areas; and
- (c) Availability and adequacy of public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by [the Growth Management Act].

[RCW 36.70B.030]

Vested Rights

An application for a permit or project permit listed as a Type I – V permit, except those which seek variance from land use regulations, shall be considered under the development regulations in effect on the date of a complete application. For purposes of this section the “date of a complete application” shall mean the date on which the applicant files a permit application that contains all information, documents, plans and reports required by this chapter.

[SMC 17.80.210(1)] Therefore, this application is vested to the land use regulations in effect on July 30, 2021.

Standard of Review

The standard of review is preponderance of the evidence; the applicant has the burden of proof. [SMC 17.80.370(3)]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS OF LAW

1. The WDFW SVAR for the motorized boat launch’s intrusion into the on-site wetland and its buffer is not contrary to law as asserted by the Strongs’ counsel. Uses are permitted or prohibited under the SMP based upon the environment designation of the site on which they will be located. [SMC 17.150.029(1)] The subject property carries a High Intensity Environment designation on the City’s SMP. (Exhibit 1, PDF 29) Water-dependent parks, boat launches, and parking areas serving principal uses are all permitted uses in the High Intensity Environment designation. [SMC 17.150.029, Table entries] Therefore, they are all permitted on the subject property. The critical areas regulations regarding impacts to wetlands and their buffers are thus performance standards for which a variance is most definitely an appropriate means to seek relief.
2. The Conclusions set forth in Exhibit 1 at PDF 57 – 70 are accurate, supported by the evidence, and demonstrate compliance with the applicable criteria for approval of an SSDP and an SVAR. Rather than repeat them here, they are herewith incorporated by reference as if set forth in full.
3. The recommended conditions of approval as set forth in Exhibit 1 are reasonable, supported by the evidence, and capable of accomplishment with the following changes:
 - A. Recommended Condition 1: Since there is only one subsection in this recommended condition, the condition will be reformatted to eliminate the need for a subsection.
 - B. Multiple Recommended Conditions: References to “applicant” will be changed to “Permittee” for consistency. “Permittee” will be changed to “Permittee(s)” to indicate that there are two permittees subject to the conditions, but that some of the conditions may not apply to both the City and the WDFW phases of the project.
 - C. Recommended Condition 15. The first sentence in this condition is a finding and/or a conclusion, not a condition. Therefore, it will be eliminated. Trip generation is discussed in Finding of Fact 8, above.
4. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, the testimony and evidence submitted at the open record hearing, and the Examiner’s site view, the Examiner **GRANTS:**

- A. the requested Shoreline Substantial Development Permit for development of Hamilton Landing Park;
and
- B. City approval of the requested Shoreline Variance for relief from critical areas regulations associated with development of Hamilton Landing Park.

BOTH SUBJECT TO THE FOLLOWING CONDITIONS:

1. Exhibits 2 and 3 are the approved Shoreline Substantial Development and Shoreline Variance Plans. All improvements shall be constructed in accordance with the approved site plan and preliminary civil construction drawings or as formally amended with any associated new conditions of approval. Minor modifications to the plans may be approved by the Community Development Director or Public Works Director if the modifications do not: 1) involve more than a 10% increase in the area or scale of the development, 2) have a significantly greater impact on the environment and facilities, and 3) change the boundaries of the originally approved plan.
2. The approved Shoreline Substantial Development and Shoreline Variance Permit shall expire two years from the date of approval per SMC 17.150.079(4).
3. All applicable components of the Stanwood Municipal Code shall be followed.
4. The Permittee(s) shall follow all recommendations of the Final Redevelopment Mitigation and Monitoring Plan that is to be submitted prior to construction.
5. The Permittee(s) shall provide annual monitoring reports of the wetland mitigation plantings for a period of 5 years from the date of project completion.
6. The Permittee(s) shall contact and notify the Stillaguamish Tribe of Indians prior to any ground disturbances so that the Tribe may provide archeological monitors on site during ground disturbing activities. The Permittee(s) shall also provide their own archaeological monitor on site prior to commencement of ground disturbance. The project shall have a standard Inadvertent Discovery Plan on site, in case of accidental discovery of displaced human remains.
7. If historical, cultural, or archaeological sites or artifacts are discovered in the process of development, work on that portion of the site shall be stopped immediately, the site secured, and the find reported as soon as possible to the planning director. The property owner also shall notify the Washington State Department of Archaeology and Historic Preservation and affected tribes.
8. Park signage that includes information regarding hours of operation, information and/or warnings regarding tidal influences of launching boats and boat launch ramp operation regulations shall be installed. Final language on the signs shall be jointly reviewed by the City of Stanwood and WDFW prior to installation.

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9. The Permittee(s) shall receive permit approval from the U.S. Army Corps of Engineers, Washington Department of Fish and Wildlife, and Department of Ecology prior to construction activities on the site.
10. No permits and construction pursuant to the Shoreline Substantial Development and Shoreline Variance Permit shall begin or is authorized until 21 days from the date of decision.

MDNS Conditions:

11. The Permittee(s) shall follow the final Mitigation and Monitoring Plan to ensure the protection of wetland and wetland buffers on site.
12. Permanent Native Growth Protection Area (NGPA) signage and split rail fencing shall be installed prior to approval of the project. The City of Stanwood uses Snohomish County sign specifications. The permanent NGPA boundary shall include a split rail fence along the entire border of the wetland area, signs shall be placed no greater than 100 feet apart around the perimeter of the NGPA, the signs shall be 12" x 18" aluminum with white reflective background, signs shall be installed on 4 x 4 pressure treated wooden posts with quick set concrete a minimum depth of 1 ½ feet. This shall be completed prior to final construction approval.
13. The following signage shall be posted on site either independently or on kiosk(s):
 - Small Boats Only (26' or less, shallow draft)
 - No Wake – 5 MPH
 - Be Cautious of Changing Tides
 - Use at Own Risk
 - Fueling Boats on or Near Water is Prohibited
 - Aquatic Invasive Species
 - ESA listed Salmonids
 - River Navigation Map
 - Stillaguamish Tribe Zis-a-ba Restoration Area "No Public Access" Map
14. Permanent No Trespassing and/or Private Property signage and split rail fencing shall be installed along south easterly property line abutting private property ownership.
15. Visitors will be limited to available on-site parking. No Parking signage shall be posted along the adjacent 98th Avenue NW roadway to ensure no overflow occurs.
16. The property is part of Snohomish County's Conservation Futures Program and has a Conservation Easement over the Hamilton Park property. The conservation easement restricts the impervious surface on the property to 10% of the total land area, minus the pavement required for boat launch or

boating related vehicular parking. The City's proposed project shall comply with the recorded conservation easement (AFN 201501160233).

17. Industry best management practices shall be followed to minimize construction impacts to the greatest extent possible.
18. The Permittee(s) shall provide pre-construction notice and offer of meeting as well as opportunity for monitoring to the Stillaguamish Tribe of Indians prior to ground disturbing activities. The applicant shall also submit an Inadvertent Discovery Plan prior to on-site ground disturbing activities. If historical, cultural, or archaeological sites or artifacts are discovered in the process of development, work on that portion of the site shall be stopped immediately, the site secured, and the find reported as soon as possible to the planning director. The property owner also shall notify the Washington State Department of Archaeology and Historic Preservation and affected tribes.
19. The Permittee(s) shall follow an approved Stormwater Pollution Prevention Plan to ensure the Stillaguamish River has minimum impacts from construction activities by implementing Department of Ecology Best Management Practices.
20. The in-water work for the motorized boat launch construction shall be completed during the approved work window of August 1 - August 31 or as otherwise granted by the permitting authority. No other in-water work shall occur for the project.

Site Construction:

21. Approval of the Shoreline Substantial Development and Shoreline Variance Permit authorizes the Permittee(s) to proceed with application for necessary permits to construct the required improvements and to prepare construction drawings in accordance with the determinations made and conditions imposed. Prior to clearing or fill and grade beginning, construction plans consistent with city standards, including a stormwater plan, clearing and grading, site utility/infrastructure improvements, road improvements, landscaping and other plans and/or information required by the Community Development Department shall be submitted for review and approval. All design and construction shall comply with the Stanwood Municipal Code and the Stanwood Street and Utility Standards.
22. The Permittee(s) shall follow all recommendations and BMP's as described in the Biological Assessment, prepared by WSP USA, dated December 2019.
 - a. In-water work (work below the OHWM/MHHW) will be conducted only during the approved in-water work window for the Stillaguamish River (August 1 through August 31).
 - b. Project construction will be completed in compliance with Washington State Water Quality Standards (WAC 173-201A).

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- c. A spill prevention, control, and countermeasures (SPCC) plan will be prepared by the contractor and used during all demolition and construction operations. A copy of the plan with any updates will be maintained at the work site.
 - d. Check equipment for leaks and other problems that could result in the discharge of petroleum-based products or other material into the water.
 - e. Corrective actions will be taken in the event of any discharge of oil, fuel, or chemicals into the water, including the following; containment and cleanup efforts will begin immediately upon discovery of the spill and be completed in an expeditious manner in accordance with all local, state, and federal regulations. Spill response will take precedence over normal work. Cleanup will include proper disposal of any spilled material and used cleanup material; the cause of the spill will be ascertained and appropriate actions taken to prevent further incidents or environmental damage; and spills will be reported to the Washington State Department of Ecology's Regional Spill Response Office.
 - f. Excess or waste materials will not be disposed of or abandoned waterward of the OHWM or allowed to enter waters of the state. Waste materials will be disposed of in an appropriate manner consistent with applicable local, state, and federal regulations.
 - g. Demolition and construction materials will not be stored where upland runoff can cause materials to enter surface waters.
 - h. Oil-absorbent materials will be present on site for use in the event of a spill or if any oil product is observed in the water.
23. The Permittee(s) shall follow all recommendations and BMP's as described in the Stormwater Site Plan Drainage Report prepared by Washington Department of Fish and Wildlife, dated April 2020, and the 2005 DOE Stormwater Manual.
- a. **Mark Clearing Limits:** To protect adjacent properties and to reduce the area of soil exposed to construction, all construction equipment and materials shall be staged on existing gravel surfaces. In areas where there will be clearing (the proposed stairs) the limits of construction will be clearly defined before land-disturbing activities begin. Areas that are to be preserved, as well as all sensitive areas and their buffers, shall be clearly defined, both in the field and on the plans. The BMPs relevant to marking the clearing limits will be applied in the field as shown on the plans. The clearing limits shall be staked in the field and fenced as shown on the plans. All vegetation outside of the clearing limits shall be preserved.
 - b. **Establish Construction Access:** Construction access or activities occurring on existing gravel areas shall be maximized. Access points shall be stabilized to minimize the tracking of sediment onto public roads. Street sweeping and street cleaning shall be employed to prevent sediment from entering the right of way or waters of the state. All wash water shall be

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controlled onsite. Vehicle access will be limited to the existing gravel entrance. Primary vehicle staging will be on the existing gravel parking area. Additional staging may be used across the street.

- c. **Control Flow Rates:** Construction will not greatly increase the amount of impervious area or the volume of stormwater discharge. In order to protect the properties and waterways downstream of the project site, stormwater discharges from the site will be controlled by construction of ponds prior to parking lot grading and asphalt paving the site. Construction phasing and retention of natural vegetation will be implemented to reduce stormwater volumes.
- d. **Install Sediment Controls:** All stormwater runoff from disturbed areas shall pass through an appropriate sediment removal BMP before leaving the construction site or prior to being discharged to the downstream drainage course. For boat ramp construction, the work area shall be surrounded by a turbidity curtain. Wattles will be installed across boat ramp until stabilized.
- e. **Stabilize Soils:** Exposed and unworked soils shall be stabilized with the application of effective BMPs to prevent erosion throughout the life of the project. No soils shall remain exposed and unworked for more than 7 days during the dry season (May 1 to September 30) and 2 days during the wet season (October 1 to April 30). Regardless of the time of year, all soils shall be stabilized at the end of the shift before a holiday or weekend if needed based on weather forecasts. In general, cut and fill slopes will be stabilized as soon as possible and soil stockpiles will be temporarily covered with plastic sheeting. All stockpiled soils shall be stabilized from erosion, protected with sediment trapping measures, and where possible, be located away from storm drain inlets, waterways, and drainage channels. Stockpiled soils will be covered with wattle log surrounding or hauled off site. Phase project where possible to keep soils protected.
- f. **Protect Slopes:** All cut and fill slopes will be designed, constructed, and protected in a manner that minimizes erosion. Temporary and permanent seeding shall be used at all exposed areas pursuant to the prior mentioned schedule (seasonal restrictions). Cut slopes for boat ramp shall be covered with articulated concrete block at the base, and coir blankets and plants on the 3:1 slope per drawings.
- g. **Protect Drain Inlets:** All storm drain inlets and culverts made operable during construction shall be protected to prevent unfiltered or untreated water from entering the drainage conveyance system. However, the first priority is to keep all access roads clean of sediment and keep street wash water separate from entering storm drains until treatment can be provided. Storm Drain Inlet Protection will be implemented for all drainage inlets and culverts that could potentially be impacted by sediment-laden runoff on and near the project site.

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- h. Stabilize Channels and Outlets: Where site runoff is to be conveyed in channels, or discharged to a stream or some other natural drainage point, efforts will be taken to prevent downstream erosion.
 - i. Control Pollutants: All pollutants, including waste materials and demolition debris, that occur onsite shall be handled and disposed of in a manner that does not cause contamination of stormwater. Good housekeeping and preventative measures will be taken to ensure that the site will be kept clean, well-organized, and free of debris. If required, BMPs to be implemented to control specific sources of pollutants are discussed below. All vehicles, equipment, and petroleum product storage/dispensing areas will be inspected regularly to detect any leaks or spills, and to identify maintenance needs to prevent leaks or spills.
 - j. Control Dewatering: All dewatering from open cut excavation, tunneling or trench work shall be discharged into a controlled conveyance system prior to discharge to the downstream drainage course. Channels will be stabilized per Element #8. Clean, non-turbid dewatering water will not be routed through stormwater sediment ponds, and will be discharged to systems tributary to the receiving waters of the State in a manner that does not cause erosion, flooding, or a violation of State water quality standards in the receiving water. Highly turbid dewatering water from soils known or suspected to be contaminated, or from use of construction equipment, will require additional monitoring and treatment as required for the specific pollutants based on the receiving waters into which the discharge is occurring. Such monitoring is the responsibility of the contractor. However, the dewatering of soils known to be free of contamination will trigger BMPs to trap sediment and reduce turbidity. At a minimum, geotextile fabric/socks/bags/cells will be used to filter this material. All concrete materials placed directly into the water shall be precast and cured.
 - k. Maintain BMP's: All temporary and permanent erosion control and sediment control BMPs shall be maintained and repaired as needed to assure continued performance of their intended function. Maintenance and repair shall be conducted in accordance with each particular BMP's specifications. Visual monitoring of the BMPs will be conducted at least once every calendar week and within 24 hours of any rainfall event that causes a discharge from the site. If the site becomes inactive, and is temporarily stabilized, the inspection frequency will be reduced to once every month. All temporary erosion and sediment control BMPs shall be removed within 30 days after the final site stabilization is achieved or after the temporary BMPs are no longer needed. Trapped sediment shall be removed or stabilized onsite. Disturbed soil resulting from removal of BMPs or vegetation shall be permanently stabilized.
24. The Permittee(s) shall follow all recommendations and BMP's as described in the Stormwater Pollution Prevention Plan (SWPPP) prepared by Confluence Environmental Company dated September 2020.
- a. Mark Clearing Limits: The project will preserve natural vegetation by limiting construction equipment to the minimum area necessary to safely complete the development of the public park. Clearing limits shall be identified using a combination of 4-foot-high, orange-barrier

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- fencing and silt fencing. During the establishment of construction limits, orange-barrier fencing and silt fencing shall be installed along the boundaries adjacent to work areas. Initially, this fencing will allow the contractor to identify allowable disturbance areas, thus preserving natural vegetative. Barrier fencing will also serve to alert the public to ongoing activity and will help prevent any unauthorized personnel from entering the construction area. Clear marking of all easements, buffers, and sensitive areas shall be included
- b. Establish Construction Access: Construction access will be from an existing, primitive/gravel road off Floe Road/98th Avenue NW. Construction equipment will use this existing gravel road and primitive parking areas to stage construction equipment and materials and allow construction to occur.
 - c. Control flow rates: The project will create 14,390 square feet (0.33 acre) of impervious surface area, including 4,920 square feet (0.11 acre) of pollution generating impervious surface area for the parking area. The project also includes 9,470 square feet (0.22 acre) of non-pollution generating impervious surface area for pedestrian paths, plaza and labyrinth within the Park. Stormwater generated by the new impervious surface area will be allowed to infiltrate into the adjacent undeveloped portions of the park property.
 - d. Install Sediment Controls: To isolate the work area and protect those portions of the Old Stillaguamish River located adjacent to areas of ground disturbance, sediment fencing will be installed above the HTL. The sediment fencing will ensure sediment is contained and does not enter surface waters.
 - e. Stabilize Soils: Upland areas disturbed during construction are currently vegetated with reed canarygrass, mostly. Clearing or grading will remove approximately 8,735 square feet of reed canarygrass and other native and non-native vegetation within stream or wetland buffer. The project will mitigate for these buffer impacts by establishing 14,416 square feet of tree and shrub native tree and shrub buffer vegetation along the Stillaguamish River. Other areas of temporary disturbance will be hydro seeded with a grass seed mix to create lawn area. Revegetating areas of ground disturbance will stabilize soils.
 - f. Control Pollutants: Equipment used for the project will be maintained and fueled in a controlled location at least 150 feet from the Slough. When the project is complete, there will be no need for equipment in the area and there will be no potential sources of pollutants. Stormwater generated by both the 4,750 square feet of pollution generating impervious surface area and the 9,470 square feet of non-pollution generating impervious surface area will infiltrate into the adjacent vegetated areas of the park.
 - g. Maintain BMP's: The site will be inspected on a weekly basis by an inspector to assess conformance with BMP specifications. The perimeter of the silt fence will be walked during the weekly inspection. All other sediment- and erosion-control BMPs will also be inspected during this weekly inspection. In addition to the weekly inspection, there will be an

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- inspection within 24 hours of a significant rainfall event, which is defined as greater than 0.5 inch within 24 hours at the closest weather reporting station for Stanwood, Washington. The post-storm inspection will replace the weekly inspection for that week. The inspector will provide a field evaluation to the site supervisor after each inspection. The evaluation will identify sites and/or BMPs that are out of compliance with required performance specifications (e.g., collapsed silt fence). All such deficiencies will be corrected within 24 hours. During the next inspection event, the inspector will check that corrective measures have been taken and were effective.
25. Temporary Erosion and Sediment Control (TESC) measures shall be in place prior to construction and shall include the installation of sediment fencing along construction access routes and other disturbed areas, along with silt fencing or curtains shall be installed in the Stillaguamish River and Irvine Slough to isolate the in-water work area.
 26. Sediment Fencing shall be placed around the perimeter of the staging area, between the staging area and any surface water or wetland.
 27. The contractor(s) shall be responsible for adhering to the Spill Prevention Control and Countermeasures (SPCC) Plan.
 28. The contractor(s) shall designate at least one employee as the Erosion and Spill Control Lead (ESCL). The ESCL shall be responsible for installing and monitoring erosion control measures and maintaining spill containment and control equipment. The ESCL shall also be responsible for ensuring compliance with all local, state, and federal erosion and sediment control requirements. Moreover, the ESCL shall be responsible for inspecting all temporary erosion and sediment control measures on a regular basis, as well as maintaining and repairing such measures and ensuring their continued performance.
 29. Construction hours of operation are limited to 7:00 am to 10:00 pm on weekdays, 8:00 am to 6:00 pm on Saturdays, Sundays, and state recognized holidays.

Building:

30. The Restroom Facility building requires the submission and approval of a Building Permit.
31. A Flood Plain Development Permit shall be submitted with the Restroom Facility Building Permit.

Other:

32. Business Licenses for all contractors working on the site shall be required to obtain a Stanwood Business License endorsement on their State Business License.

EXCEPT AS PROVIDED IN RCW 90.58.140(5)(a) AND (b), CONSTRUCTION PURSUANT TO THIS PERMIT SHALL NOT BEGIN AND IS NOT AUTHORIZED UNTIL TWENTY-ONE DAYS FROM THE DATE THIS PERMIT IS FILED WITH THE WASHINGTON STATE DEPARTMENT OF ECOLOGY AND ATTORNEY GENERAL AS REQUIRED BY RCW 90.58.140(6) AND WAC 173-27-130, OR UNTIL ALL REVIEW PROCEEDINGS INITIATED WITHIN TWENTY-ONE DAYS FROM THE DATE OF SUCH FILING HAVE BEEN TERMINATED.

Decision issued November 8, 2022.

|s| John E. Galt

John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ⁷

Patricia Love
Anna Sample
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Tansy Schroeder

⁷ The official Parties of Record register is maintained by the City's Hearing Clerk.

NOTICE OF RIGHT OF RECONSIDERATION

This Decision is subject to the right of reconsideration pursuant to SMC 17.80.380(8) and Hearing Examiner Rule of Procedure 504. “Any person who presented or commented at the hearing may file a written request” for reconsideration. [*Ibid.*] Requests for reconsideration must be filed in writing with the City Clerk/receptionist within ten (10) business days of the date of this Decision. Any request for reconsideration must meet the content and grounds requirements of SMC 17.80.380(8)(a) and (b). Any request for reconsideration shall also specify the relief requested. See SMC 17.80.380(8) for additional information and requirements regarding reconsideration.

**NOTICE of RIGHT of APPEAL
SHORELINE VARIANCE**

The City’s final action on this Shoreline Variance is subject to approval or disapproval by the Washington State Department of Ecology pursuant to RCW 90.58.140(10). The ultimate decision by the Washington State Department of Ecology on a Shoreline Variance is final subject to the right of appeal to the State Shorelines Hearings Board. Please see RCW 90.58.180 and Chapter 173-27 WAC for guidance regarding Shoreline appeal procedures.

**NOTICE of RIGHT of APPEAL
SUBSTANTIAL DEVELOPMENT PERMIT**

The portion of this Decision regarding the Shoreline Management Act Substantial Development Permit is final and conclusive subject to the right of review before the State Shorelines Hearings Board in accordance with the procedures of Chapter 90.58 RCW, the Shoreline Management Act of 1971. See SMC 17.150.081, Chapter 90.58 RCW, and Washington Administrative Code regulations adopted pursuant thereto for further guidance regarding Hearings Board appeal procedures.

The following statement is provided pursuant to RCW 36.70B.130: “Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.”