SKAGIT COUNTY PLANNING AND DEVELOPMENT SERVICES
FINDINGS OF FACT

HEARING AUTHORITY: Skagit County Hearing Examiner

HEARING DATE: August 21, 2024

APPLICATION NUMBER: Shoreline Permit Application PL22-0528

APPLICANT: The RJ Group
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ZONING/COMPREHENSIVE PLAN: The property is designated Rural Village Residential as indicated on the Comprehensive Plan and Zoning maps. The site is designated Rural Residential in the Skagit County Shoreline Management Master Program.

PROJECT LOCATION: The project site is located within a County right-of-way in the 23000 block of North Westview Road on the eastern shoreline of Big Lake. The parcel is located within the northeast quarter of Section 1, Township 33 North, Range 4 East, W.M., Skagit County, WA.

GENERAL PROJECT DESCRIPTION: The proposal is to construct stormwater outfall improvements on an approximate 0.32 acre section of Skagit County right-of-way to convey stormwater from detention ponds across the Overlook Golf Course and proposed Overlook Crest development through the existing stormwater system into Big Lake. An open ditch within the right-of-way will be modified to include 141 linear feet of 42-inch storm drain that will daylight into Big Lake at an upgraded channel using a precast open cell concrete block mat. The channel will be 4 feet wide and will extend below the ordinary high water mark to protect the shoreline from erosion. The project requires a Shoreline Substantial Development Permit, Shoreline Variance for side setback reduction, and a Shoreline Conditional Use Permit for work below the ordinary high water mark.

EXHIBITS:

1. Departmental Findings 1-13
2. Shoreline permit application, narrative, and supplemental materials

3. Plat map
4. Aerial photographs of the site
5. Site photographs
6. Site Plans
7. Shoreline, Wetland, and Fish and Wildlife Habitat Assessment Report, Soundview Consultants, October 2022
8. Notice of Development Application, published March 2, 2023 and March 9, 2023
9. SEPA Environmental Checklist and Determination of Nonsignificance
10. Notice of Public Hearing, published Augustu 1, 2024
11. Public comments and Applicant responses

DEPARTMENTAL FINDINGS:

1. **Site Description:** The project site is a relatively undeveloped, unopened County right-of-way that is 80 feet wide and approximately 120 feet deep. It is well vegetated with native trees and shrubs but also includes invasive species such as Himalayan blackberry and English ivy. It contains a water main, a sanitary sewer line, a lift station for Skagit County Sewer District #2, and an open ditch that carries stormwater from nearby development. The site slopes moderately downward from the road to the shoreline of Big Lake. There is a gravel pathway between the road and the shoreline along the northern portion of the site. This path provides access the sewer lift station and is used by local residents to visit the lake shoreline.

   The artificially excavated drainage ditch begins in the central, southeast portion of the project site and flows downslope to the lake. The ditch is approximately 1-2 feet wide and is channelized with steep, cut banks about 6 inches deep. Hydrology for the ditch originates from overland sheet flow and stormwater from adjacent roads and residential properties. The linear nature of the channel and steep banks indicate it was intentionally excavated for the purpose of stormwater conveyance. This channel is considered an artificial watercourse.

2. **Detailed Project Description:** The proposed outfall is intended to provide continued conveyance of stormwater from the existing residential development as well as incorporate the stormwater from a proposed subdivision located northeast of the project site. The system will convey water from the detention ponds across the Overlook Golf Course, collect water in the State Route 9 and North West View Road rights-of-way, and discharge it at the project site. The pipe will discharge above the OHWM and avoid crossing the existing sewer main running parallel to the lake.

   It includes approximately 141 feet of underground 42-inch pipe that will replace the existing excavated channel to convey stormwater from upstream road and residential sources. The new outfall pipe will connect to the existing catch basin within the road right-of-way. Approximately 23 feet from the OHWM of Big Lake, the outfall will daylight and drain onto a precast open cell concrete block

stabilization mat (Armorflex). A grate will be placed at the opening of the pipe to prevent animals and humans from entering the pipe. The Armorflex mat will extend from the outfall and into the lake by approximately 11 feet until the mat is submerged in about 12 inches of water to prevent erosion of onsite soils. The Armorflex mat will allow vegetation to grow through the blocks obscuring it from view over time.

The location of the outfall pipe will avoid directly impacting the existing sanitary sewer line that crosses the parcel as well as the lift station located near the lake shoreline. The outfall pipe will also avoid directly impacting the existing public water main onsite.

The proposed outfall will be constructed during the dry season when water levels of the lake are lower, and all appropriate best management practices and temporary erosion and sedimentation control measures will be implemented to minimize erosion potential.

The majority of the proposed stormwater pipe will be located underground–within 2-3 feet of the ground surface. The proposed placement will be in approximately the same alignment as the existing above-ground stormwater ditch. The area of temporary impacts will be fully restored with native trees, shrubs, and groundcover and all disturbed areas will be reseeded.

Portions of the proposed stormwater infrastructure will be located within the mapped 100-year floodplain associated with Big Lake. However, the proposed Armorflex mat is not considered fill that would impact flood levels and capacities.

3. **Processing**: A Notice of Development Application was published in a newspaper of general circulation (Skagit Valley Herald) on March 2, 2023 and again on March 9, 2023 as required by section 14.26.9.04 of Skagit County Code (SCC). Notification was posted onsite and provided by mail to all property owners and occupants within 300 feet of the subject property on March 1, 2023. There was a 30-day comment period associated with the Notice of Development which ended on April 4, 2023. One comment was received during the comment period.

4. **State Environmental Policy Act:** This project was included in the Mitigated Determination of Nonsignificance (MDNS) for grading permit application BP21-0785. Since the scope of the proposed outfall was modified following that MDNS, a separate DNS was issued on April 4, 2024. The comment period ended on April 18, 2024 and the appeal period ended on May 2, 2024. One comment was received. No appeal was received.

5. **Flood Area Review:** A portion of the proposed project is located within a Zone A designated flood hazard area as indicated on FIRM map panel 0450C. A floodplain development permit is required for the work within the floodplain.

6. **Public Works Review:** The applicant has been working closely with Public Works to ensure the design meets all applicable stormwater management standards, helps address local flooding issues, and allows for ease of long-term maintenance.

7. **Stormwater Review:** The proposed stormwater design has been reviewed under BP21-0785. This grading permit application includes a review of the proposed land division site improvements upstream of the project as well as the use of the infrastructure between the land division and Big Lake. The design has been prepared by a licensed civil engineer pursuant to the requirements of the latest stormwater management manual (2019 Edition) and National Pollutant Discharge Elimination System (NPDES) requirements.

8. **Critical Areas Review:** Utilities are allowed within a fish and wildlife habitat conservation area pursuant to SCC 14.24.540(5)(a) *Allowed Uses in HCAs or Buffers. The following activities may be permitted within fish and wildlife HCAs, provided the activities comply with SCC 14.24.080, 14.24.520, and Chapter 14.34 SCC, where applicable.*

   (a) Roads, Bridges and Utilities. Road, bridge and utility construction may be permitted across an HCA and/or its buffer under the following conditions:

   (i) It is demonstrated to the Administrative Official that there are no alternative routes that can be reasonably used to achieve the proposed development; and

   (ii) The activity will have minimum adverse impact to the fish and wildlife HCA; and

   (iii) The activity will not significantly degrade surface or groundwater; and

   (iv) The intrusion into the fish and wildlife HCA and its buffers is fully mitigated.

   The applicant has provided a fish and wildlife habitat site assessment that was completed by a qualified professional. A mitigation plan has also been provided.

   The applicant is proposing to upgrade the existing outfall to accommodate current and future stormwater needs for the upstream area. There are a number of stormwater outfalls along the eastern shoreline of Big Lake that are maintained by Skagit County Public Works. The nearest outfall to the south is located within a 20-foot-wide easement on private property. Of the two outfalls in the immediate vicinity, the applicant assessed both and determined that this project location is best suited to accommodate the proposed use. There is no reasonable alternative to using this outfall location.

   The proposed improvements are designed to have the minimum adverse impact to the HCA on the site. This will be accomplished by removing the least number of mature trees. The Armorflex mat will extend from the outlet of the new culvert to

below the OHWM to prevent erosion of onsite soils and will allow vegetation to grow between the blocks.

The project is designed in compliance with the 2019 Stormwater Management Manual for Western Washington. The site is located within the NPDES permit boundary and is therefore subject to higher standards with respect to stormwater management. This will ensure the project does not degrade surface or groundwater.

The intrusion into the HCA buffer will be fully mitigated by removing non-native, invasive plant species such as English ivy, Himalayan blackberry, and yellow iris, and by restoring the buffer area with a variety of native trees and shrubs.

9. **Comprehensive Plan:** The Provisions and Procedures of Title 14 codify that the intent of the Unified Development Code is to implement the Comprehensive Plan and that provisions of the Comprehensive Plan are foundational to development permit review:

SCC 14.02.010 General provisions.

Purpose. The purpose of this Title is to implement the Revised Code of Washington (RCW) and the Skagit County Comprehensive Plan on matters concerning land and building development and other related issues.

SCC 14.06.030 Foundation of project review.

(1) Fundamental land use planning choices made in adopted Comprehensive Plans and development regulations shall serve as the foundation for development permit review. Development permit review shall not be used for comprehensive planning purposes. Development permits shall be reviewed for consistency, conformity and compliance with applicable adopted plans and development regulations.

Comprehensive Plan Land Use Section:

The Plan is based on a vision of how Skagit County can grow and develop while protecting the region's high quality of life and equitably sharing public and private costs and benefits of growth. The Plan encourages well-managed development to protect public health, safety, and welfare, and to enhance Skagit County's community character, natural beauty, and environmental quality.

Review of application PL22-0528 aligns with encouraging development while protecting natural beauty and environmental quality.

The Comprehensive Plan Designation is equivalent to Zoning Designation – Rural Village Residential

The following Countywide Planning Policies (CPPs) provide more specific guidance for the Rural Element:

Rural development shall be allowed in areas outside of the urban growth boundaries having limited resource production values (e.g. agriculture, timber, and mineral) and having access to public services. Rural development shall have access through suitable county roads, have limited impact on agricultural, timber, mineral lands, critical areas, shorelands, historic landscapes or cultural resources and must address their drainage and ground water impacts. (CPP 2.3)

Goal 3A Protect the rural landscape, character, and lifestyle by:
(a) Defining and identifying rural lands for long-term use and conservation;
(b) Providing for a variety of rural densities and housing opportunities;
(c) Maintaining the character and historic and cultural roles of existing rural communities;
(d) Allowing land uses which are compatible and in keeping with the protection of important rural landscape features, resources, and values;
(e) Encouraging economic prosperity for rural areas; and
(f) Ensuring that appropriate and adequate rural levels of service are provided.

The application materials show that this proposal meets the goals of providing housing opportunity, maintaining the character of the rural community, and compatibility with rural landscape features, values, and resources. The project is designed to continue access to public services and address drainage for surrounding development.

Environment – Comprehensive Plan Chapter 5

Growth management, natural resource land conservation, and critical areas protection are interwoven in the framework intended to eliminate or minimize sprawl and the loss of environmental resources as well as to protect persons and property from unsafe conditions and sustain the quality of life.

There is a clear, positive association between strong environmental policies and a strong economy. It is the County's intent to enforce environmental policies that will conserve the natural environment and support appropriate growth and economic development.

This project, including the proposed subdivision to the northeast, has been designed to minimize sprawl by clustering the residential development out of the floodplain, providing for protection of a significant amount of resource land, and addressing overall stormwater drainage in this area. It will ensure the water reaching Big Lake meets all applicable stormwater quality and quantity requirements while supporting appropriate residential growth.

10. **Shoreline Management Master Program – Chapter 4 – Master Program Goals**

4.02 Goal Statements
1. Shoreline use - To allow for compatible uses of the shorelines in relationship to the limitations of their physical and environmental characteristics. Such uses

should enhance rather than detract from or adversely impact, the existing shoreline environment.

The proposed stormwater outfall works to enhance the existing shoreline condition for this site. While protecting the shoreline environment from erosion, the proposal also includes mitigation plantings and maintaining a public access trail which will enhance the site above its existing condition. The shoreline will be better protected, more accessible, and environmentally enhanced as a result of this project.

2. Conservation - To preserve, protect, and restore the natural resources of Skagit County's shorelines in the public interest and for future generations. These natural resources include but are not necessarily limited to fish, wildlife, vegetation, and natural features found in shoreline regions. Only renewable resources should be extracted and in a manner that will not adversely affect the shoreline environment.

The stormwater outfall proposal meets all aspects of this goal. The project will preserve and enhance public access to the shoreline. It will protect Big Lake from harmful erosion that occurs from the existing open stormwater conveyance ditch. The proposal will restore the shoreline by removing invasive species such as Himalayan Blackberry and replace them with native plantings.

3. Public access - To provide safe, convenient, properly administered and diversified public access to publicly owned shorelines of Skagit County without infringing upon the personal or property rights of adjacent residents. Such access should not have an adverse impact upon the environment.

The proposed stormwater outfall will provide safe and convenient access to the shoreline by maintaining a pedestrian trail. Existing conditions on the site do not encourage public access due to the high quantity of invasive blackberry. By removing invasive species in favor of native plantings, and creating a safe trail to the water’s edge, the public access enhancement provided by this proposal is greatly beneficial.

4. Circulation - To permit safe, adequate, and diversified transportation systems that are compatible with the shorelines, resulting in minimum disruptions to the shoreline environment.

A walking trail is the most appropriate method to provide safe and adequate circulation that is compatible with the subject shoreline right-of-way. The trail provides access to the shoreline, directing users away from the existing and proposed public infrastructure while also intentionally avoiding existing mature trees and neighboring private property.

5. Economic development - To promote and encourage the optimum use of existing industrial and economic areas for users who are shoreline dependent and shoreline related and can harmoniously coexist with the natural and human

environments; and, subsequently, to create similar areas as need arises with minimum disruption of the shorelines.

Allowing the construction of the proposed stormwater outfall upgrade encourages economic development in Skagit County. The Reserve at Overlook Crest, a 106-lot plat, depends on safe downstream conveyance of stormwater from the residential project, surrounding properties, and public rights-of-way. Creation of the proposed stormwater outfall will allow this residential development to proceed, resulting in significant economic stimulus in the forms of impact/development fees, home construction and sale, and added spending within the local areas by residents. Further, the upgraded outfall will mitigate existing drainage issues that damage private property causing economic harm to residents of Skagit County.

6. Recreation - To encourage the provision and improvement of private and public recreation along the shorelines of Skagit County only to the extent that the environment is not impaired or degraded.

The stormwater outfall proposal includes maintaining an existing trail, which will allow for continued public enjoyment and recreation on the site. Existing conditions do not allow for easy public access to the shoreline due to high quantities of invasive plant species. By removing the invasive species, planting native plants, and maintaining the pedestrian trail, the recreation opportunity on this site is significantly enhanced.

7. Historical/Cultural/Educational - To identify, protect, and restore those shoreline areas and facilities that are of historical, cultural or educational value. Public or private organizations should be encouraged to provide public access and protection of such areas and facilities.

Public access will be enhanced as part of this stormwater outfall scope, providing opportunities for historical, cultural, or educational uses to occur.

8. Restoration and enhancement - To restore and enhance those shoreline areas and facilities that are presently unsuitable for public or private access and use.

A major component of this stormwater outfall proposal is restoration and enhancement of the shoreline. As detailed further in the mitigation planting plan provided by Soundview Consultants, invasive species will be removed in favor of native plantings that will provide shoreline enhancement.

9. Implementation Process - Provide an efficient system for shoreline permit applications which would eliminate unnecessary duplication of effort or jurisdictional conflicts, yet assure complete coordination and review. Provide a process to periodically update the inventory, goals, policies, and regulations to achieve responsiveness to changing attitudes and conditions.

While this goal is mainly applicable to Skagit County Staff, our team is making every effort to support County Staff in the implementation process.

11. **Shoreline Management Master Program Policies and Regulations:** Skagit County's SMMP, SCC 14.26, indicates that SMMP policies and regulations will be reviewed when approving or denying SMMP permits.

Utilities *include but are not necessarily limited to facilities and services that generate, transport, process, or store water, sewage, solid waste, electrical energy, communications and pipelines for fuel, oil, natural gas, and petroleum products. Also included are firefighting facilities and administrative structures associated with the operation of the utilities.*

Utilities – Policies – General - 7.18, 1A

(1) Coordination *- Utility development proposals should be consistent and coordinated with all federal, state, and/or local planning functions and efforts, including comprehensive plans.*

The proposal has been coordinated with Skagit County Planning, Skagit County Public Works, Washington State Department of Transportation, and Skagit County Sewer District #2. Further coordination is anticipated with the State Department of Ecology assuming the Skagit County Hearing Examiner approves the project. The proposal is consistent with the Comprehensive Plan and Unified Development Code.

(2) Existing use areas *- Utilities, specifically power, communications, and fuel lines and pipelines, should utilize existing rights-of-way and corridors and should avoid duplication and construction of new or parallel corridors.*

The proposed outfall would be located in an existing right-of-way.

(3) Joint use *- Utilities should coordinate with government agencies and private interests in developing or utilizing joint or common use rights-of-way and corridors in shoreline areas unless it can be shown to be infeasible.*

See list of coordinated agencies above.

(4) Multiple use *- Utility development should, through coordination with local government agencies, provide for compatible, multiple use of sites and rights-of-way. Such uses include shoreline access points, trail systems, and other forms of recreation and transportation, providing such uses will not unduly interfere with utility operations, endanger public health and safety, or impose an economic or physical liability on the owner.*

A trail to access the shoreline and avoid the existing and proposed utilities within right-of-way will be improved as part of the project.

(5) Natural resources, processes, and other uses *– Utility development, if permitted on shorelines, should not significantly damage, diminish, or adversely affect:*

a. Prime agricultural land.

b. Natural resources such as sand and gravel deposits, timber, or recreational beaches.

c. Fish, shellfish, and wildlife habitats and migratory routes.

d. Geohydraulic processes.

e. Water quality.

f. Public access to publicly owned shorelines and water bodies.

Items (a), (b), and (d) are not applicable to this proposal; there are no prime agricultural lands, significant sources of natural resources, or formal recreational beaches at this location. The proposed improvements will not negatively affect geohydraulic processes onsite. The placement of the outfall infrastructure will be in approximately the same alignment as the existing above-ground stormwater ditch. Given the existing stormwater flow path, proposed shallow placement of the infrastructure, and proposed restoration of temporary impacts, groundwater and surface water flows will not be significantly altered.

Regarding (c), (e), and (f); a number of fish species are documented along the Big Lake shoreline but the presence is likely fleeting. All appropriate best management practices and temporary erosion and sedimentation control measures will be implemented to minimize disturbance to salmonid species potentially present in this area. No other wildlife habitats were identified onsite. Water quality will not be negatively affected by this proposal; rather the infrastructure will improve water quality conditions onsite. The current ditch onsite conveys stormwater from the adjacent roadway and does not provide water quality treatment. The proposed outfall will utilize the same flow path to discharge treated stormwater to Big Lake from the preliminarily permitted residential land division above the Overlake Golf Course site to the northeast. All temporary impacts will be fully restored with native shrubs and groundcover and reseeded to minimize potential erosion and ensure continued filtration of sediments and pollutants. Public Access will be provided by maintaining and improving the existing trail to the shoreline.

Utilities -Policies - Location - 7.18, 1B

(1) *The following components of utilities, essentially shoreline dependent, should be allowed on shorelines, providing they are located to cause no adverse impacts to the shoreline environment and other users:*

a. Water system intake facilities and outfall pipes.

b. Sewage system outfall pipes and diffusers.

c. Waterborne fire fighting facilities and equipment.

d. Nonpetroleum/nonchemical pipelines and electrical cable crossings.

As listed above, stormwater outfall pipes are allowed on shorelines. The proposed outfall has been engineered to protect from adverse impacts to the shoreline and mitigation plantings are proposed to enhance the shoreline environment.

(2) *The following utilities and/or their components, not essentially shoreline dependent, should not be located on shorelines unless it can be shown that non-shoreline alternatives are infeasible:*

a. Water system treatment plants.

b. Sewage system lines, interceptors, pump stations, and treatment plants.

c. Electrical energy generating plants (except for dam sites), substations, lines and cables.

d. Petroleum and gas pipelines.

e. Accessory uses and administrative structures for utilities.

None of the above utilities are proposed as part of this project, although there is an existing sewage pump station within the right-of-way near the shoreline.

(3) Solid waste

a. Facilities for processing, storing, and disposing of solid waste on shorelines should not be permitted in conformance with WAC 173-16-060 (14) (1).

b. Indiscriminate, random disposal of solid waste on shorelines should not be permitted.

None of the above facilities are proposed as part of this project.

(4) *Utility development should be located to avoid the following unless it can be shown that non-shoreline alternatives are infeasible:*

a. Natural wetlands, tidelands, lagoons, and estuaries.

No wetlands were identified along this portion of the Big Lake shoreline.

b. Wildlife concentration and nesting areas and migratory flight corridors.

The proposed stormwater outfall will be constructed during the dry season when water levels of the lake are lower and erosion potential is significantly minimized. All appropriate best management practices and temporary erosion and sediment control measures will also be implemented to minimize disturbances to salmonid species potentially present in the area. No other wildlife habitats were identified onsite. The area is within the Pacific Flyway for migratory birds, and any migratory bird presence would be fleeting.

c. Designated parks, scenic, natural, historic, archaeological, and recreation areas.

The proposed stormwater infrastructure/outfall is not located on a site that contains designated parks, scenic, natural, historic, archaeological, or recreation areas.

d. Sensitive shoreline areas such as, but not necessarily limited to, those with steep slopes or soils subject to erosion or sliding.

The shoreline of Big Lake is not considered sensitive. While the site slopes moderately from east to west, it is not considered a geologic or landslide hazard area. Further, the mapped soils onsite are Tokul gravelly medial loam, 0 to 8 percent slopes, which are noted as having only slight potential for water erosion hazard (Klungland and McArthur, 1989).

(5) Hazardous areas - *Utilities and their associated structures should be located, designed, and maintained to avoid, or if necessary, withstand 100-year frequency flooding or storm tides and surges without becoming hazards and without the placement of massive structural defense works.*

The design of the proposed stormwater outfall minimizes risk of damage during a 100-year storm event. The proposed outfall and drainage network is designed to convey the 100-year storm and safely discharge it to the lake using an effective, but discrete, stabilization system consisting of a vegetated concrete block mat. The system is also effective against wave action.

(6) Petroleum/chemical pipelines and electrical transmission cables *- Petroleum/chemical pipelines and above ground electrical transmission lines should not be located parallel to shoreline areas and water bodies. Such utilities should be allowed to cross shoreline areas and water bodies only if it can be shown that non-shoreline alternatives are infeasible and that the proposed crossing site is consistent with this program.*

None of the above utilities are proposed as part of this project.

Utilities – Policies - Design - 7.18, 1C

(1) Installation and maintenance

a. During installation of utility components and corridors on shorelines, appropriate measures should be taken to prevent and/or control all runoff and erosion from the affected area.

The proposed stormwater outfall will be constructed during the dry season when water levels of the lake are lower, and all appropriate best management practices and temporary erosion and sedimentation control measures will be implemented to minimize erosion potential.

b. After installation, the affected shoreline area should be regraded to the natural terrain (if necessary), replanted with compatible, self-sustaining vegetation, and maintained until such vegetation is established.

Following utility installation, the temporary impact areas will be fully restored by regrading to the natural terrain and replanting with native shrubs and groundcover. All disturbed areas will be reseeded.

c. Adequate buffer areas and/or setbacks should be designed and utilized for all utility development in shoreline areas.

The 100-foot shoreline buffer will be noted on the plan set. Given that stormwater infrastructure/outfalls must be located directly adjacent to the specified waterbody, portions of the proposed outfall must be located within the Big Lake shoreline buffer. All temporary impact areas will be fully restored by regrading to natural terrain and replanting with native trees, shrubs, and groundcover. All disturbed areas will be reseeded.

d. Handling and application practices for fertilizers and pesticides should adhere to the guidelines and regulations of applicable regulatory agencies.

No fertilizers or pesticides will be used within the shoreline area.

(2) Parking areas and access roads *for utility development structures should be located inland from shoreline areas except where public access roads or paths to shorelines are provided. Such facilities should be designed and constructed to county standards and adhere to the policies and regulations of "Transportation Facilities," Section 7.17.*

The facility can be accessed from North West View Road; no new access roads are proposed. The minimal narrow pathway temporarily disturbed from the utility placement will be fully restored by regrading to the natural contours, replanting with native trees, shrubs, and ground cover.

(3) Underground utilities

a. Whenever existing overhead or above ground utility distribution facilities along shorelines require replacement or upgrading, or when new systems are planned for new or existing residential density developments, commercial areas, and other developmental shoreline uses, such utilities should be placed underground.

Installation of the proposed stormwater infrastructure is associated with a preliminarily permitted residential development on the Overlake Golf Course site to the northeast. The pipe will be located underground to the extent practicable. Only the proposed outfall for the stormwater infrastructure will be located above-ground and placed along approximately 141 linear feet of shoreline perpendicular to and primarily landward of the OHWM.

b. Electrical and communication transmission lines should be placed underground whenever technological developments make this technique feasible.

The project does not include electrical transmission lines.

Utilities – Policies - Impacts –-7.18, 1D

Utility development proposals, if allowed on shorelines, should take all feasible measures to mitigate adverse impacts to the shoreline and aquatic environment and to adjacent and nearby land and water users.

The proposed outfall has been specifically engineered to limit impacts to the shoreline by preventing erosion and allowing plants to establish. The alignment of the storm pipe has been intentionally located to preserve existing trees and limit impacts to areas that are in most need of mitigation after installation.

Utilities – Regulations – Shoreline Area - 7.18, 2A

(2) Rural Residential

a. Utility development is permitted subject to the General and Tabular Regulations EXCEPT for the below.

b. Aerial power transmission cable and pipeline crossings of the Rural Residential Shoreline Area are permitted as a conditional use. Buried or submarine facilities are permitted subject to the General and Tabular Regulations.

c. All parallel and local distribution line crossings are permitted subject to the General and Tabular Regulations.

d. Hydroelectric generating facilities, including dams, are permitted as a conditional use.

e. Water treatment plants, sewage treatment plants, and sewage pump stations are allowed as a conditional use.

The proposed storm pipe and outfall is a permitted utility development.

Utilities – Regulations – General - 7.18, 2B

(1) Existing use areas *- Utilities, specifically power, communications, pipelines, and fuel lines shall utilize existing rights-of-way, corridors, and/or bridge crossings and shall avoid duplication and construction of new or parallel corridors in all shoreline areas. Proposals for new corridors or water crossings must fully substantiate the infeasibility of existing routes.*

An existing right-of-way will be utilized.

(2) Prohibited utility developments *- The following utility developments are not permitted to locate in shoreline areas:*

a. solid waste disposal or treatment sites

b. electrical generating plants (except hydroelectric facilities)

c. power transmission and distribution substations

d. utility accessory uses and administrative structures

None of the above prohibited utility developments are proposed.

(3) Floodplains, floodways

a. Floodplain - Utility development that would measurably and adversely affect flood levels and capacities is not permitted.

b. Floodway - Utility development that would in anyway adversely affect floodway characteristics and capacities is not permitted.

The subject site is not in a floodway. Big Lake is mapped as a Zone A flood hazard area. The materials proposed are typical for outfall structures and not considered fill that would impact flood levels and capacities. A floodplain development permit will be required for this proposal.

(4) Underground utilities *- All utilities for new subdivisions, mobile home parks, public and private recreation and second home developments, and planned unit developments (PUD) shall be installed underground in shoreline areas.*

The proposed storm pipe will be underground to the extent feasible.

(5) Shore defense works *- Utility developments shall be located and designed so as to avoid the use of any structural or artificial shore defense or flood protection works.*

No shore defense or flood protection works are required for this proposal. Shore defense works generally include structures such as bulkheads, breakwaters, and protective berms. Armorflex is not considered a shore defense or protection work since it will lay under the surface of the water and allow vegetation to grow up through the precast concrete block mat.

(6) Parking areas and access roads *- Parking areas and access roads, unless stated elsewhere in this program, shall be setback landward of the primary utility facility EXCEPT for pipeline and electrical transmission cable right-of-way maintenance roads.*

No parking areas or access roads are proposed.

(7) Screening and buffer areas *- Utility development allowed on shorelines shall utilize the setback areas for screening of facilities from water bodies. Need and/or type of screening shall be judged on a case-by-case basis. Such screening or buffer areas shall consist of native, self-sustaining vegetation to be planted immediately following utility construction or, in the case of existing vegetation, such vegetation shall be effectively maintained as screening.*

The majority of the 100-foot shoreline buffer will remain intact; only the proposed outfall for the stormwater infrastructure will be located above-ground. The minimal, narrow pathway temporarily disturbed from utility placement will be fully restored by regrading to the natural contours, replanting with native trees, shrubs, and groundcover. All disturbed areas will be reseeded. Therefore, the setback will continue to properly screen the shoreline. Vegetation will also be planted along the southern property line providing a visual screen between the home to the south and the proposed project.

(8) Landfills *- Landfilling of all shoreline areas for facility or line development purposes is not permitted.*

Landfilling is not proposed.

(9) Underground utility lines *- For those utility lines allowed in or across shoreline areas and installed underground and/or underwater, the following standards shall apply:*

a. Underwater utility lines shall enter and emerge inland from fresh and salt water banks, dikes, beaches, or shorelands.

b. Banks, dikes, beaches, or shorelands where such facilities enter or leave water bodies shall be returned to their pre-construction condition, stabilized with compatible, self-sustaining vegetation, and maintained in a safe condition.

c. Underground (or water) utility lines shall be completely buried under the river bed in all river or stream crossings EXCEPT where such lines may be affixed to a bridge structure and EXCEPT for appropriate water or sewage treatment plant intake pipes or outfalls.

The proposed outfall emerges inland from the shoreline and native, self-sustaining vegetation is proposed to restore and enhance the shoreline after construction.

(10) Surface utility lines *- For those utility lines allowed in or across shoreline areas and installed on the surface, the following standards shall apply:*

a. Surface utility lines paralleling water bodies shall comply with the setback standards of the Tabular Regulations.

b. Surface utility lines shall minimize crossings of shoreline areas and will utilize the shortest, most direct route feasible.

c. Permitted water crossings requiring structural abutments or approach fills shall set back such facilities landward of the OHWM.

d. Permitted wetland crossings shall utilize pier or open pile techniques only. Landfills are not permitted.

The storm drainpipe will be buried underground and will be placed in the current location of the excavated ditch that is found onsite; only the outfall will be located above-ground. The existing ditch alignment utilizes the shortest, most direct route to the shoreline feasible. The project does not involve a water crossing. Additionally, the proposed materials are typical for outfall structures and not considered fill material. Nevertheless, the project elements will be placed landward of the OHWM to the extent practicable.

(11) Aerial utility lines *- For those utility lines allowed in or across shoreline areas and installed in an aerial manner, the following shall apply:*

a. Aerial utility lines shall minimize crossing of shoreline areas and will utilize existing crossings. See B. 1. Existing use areas, this section. All crossing shall utilize the shortest, most direct route feasible.

b. Aerial utility lines shall make maximum use of area topography to minimize visual contrasts.

No aerial utility lines are proposed.

Utilities – Regulations – Tabular Regulations 7.18, 2C

Table U establishes:

(1) Shore setbacks *(in feet) from the OHWM, wetland edge, or bluff/cliff crest for:*

a. Utility power transmission lines, buildings, parking areas, and accessory development except for buried and underwater cables, wiring, or pipelines.

b. Aerial electrical transmission cables and utility pipelines except for approved crossings. For existing roadways that parallel the shoreline, upland utility development (meaning upland of the roadway and immediate shore) shall meet the setback requirements of applicable Skagit County ordinances.

The storm drainpipe will be buried underground and will be placed in the approximate location of the excavated ditch that is found onsite, and only the outfall will be located above-ground.

(2) Sideyard setbacks *(in feet) for all utility development from side property lines except for power poles, transmission towers and other line structures.*

The width of the right-of-way is 80 feet so no proposed utility development can meet the minimum required 75-foot setback. The storm drainpipe will be buried underground to the extent feasible and will be placed in the approximate location of the excavated ditch that is found onsite, and only the outfall will be located above-ground. A variance is requested to reduce the required side setback.

(3) Height limit *(in feet) measured from the average elevation of the area occupied by the structure for:*

a. Utility buildings, storage tanks (water, nonchemical), accessory developments.

b. Electrical distribution poles (for local power needs).

Height limits are not applicable to this project.

TABLE U - TABULAR SHORELINE AREA REGULATIONS - UTILITIES

SHORELINE AREA

	Urban	Rural Residential	Rural	Conservancy	Natural	Aquatic
1. Shore setback (in feet) from OHWM, wetland edge, bluff crest for:						
a. Utility lines, building and accessory uses except buried lines.	75	100	150	200	NA	NA
b. Aerial power transmission cables and pipelines except for crossings.	100	200	200	200	NA	NA
2. Sideyard setback (in feet) for all utility development.	50	75	100	125	NA	NA
3. Height limit (in feet) for:						
a. Utility buildings, tanks, accessory uses.	35	20	20	20	NA	NA
b. Electrical distribution poles	35	35	35	35	NA	0

12. **Shoreline Variances**

A shoreline variance is required for the requested side setback reduction. The outfall pipe will be located a minimum of 14 feet from the southern property line and 64 feet from the northern property line and the Armorflex mat will be located approximately 7 feet from the southern property line at the closest point.

Section 10.01

Variances from the application of specific bulk, dimensional, or performance standards set forth in this Master Program may be permitted where there are extraordinary or unique circumstances relating to the property. The applicant must show that the strict implementation of the Master Program would impose

unnecessary hardship and that compliance with these regulations prohibits any reasonable use of the property. The fact that the applicant might make a greater profit by using the property in a manner contrary to the intent of the Master Program is not sufficient reason for granting a variance permit.

10.02 Authority

The Hearing Examiner is hereby authorized to hear, review, grant or deny shoreline variance permit applications, PROVIDED that any decisions rendered by the Examiner may be appealed to the Board of Commissioners by so notifying the Administrator in writing within five (5) days from the date of the Examiner's decision.

10.03 Criteria for Granting Variance Permits

(1) *Variance permits for development to be located landward of the OHWM, except within areas designated marshes, bogs or swamps pursuant to Chapter 173-22 WAC may be granted provided the applicant can meet all of the following criteria; the burden of proof shall be on the applicant.*

a. *The strict application of the bulk, dimensional or performance standards set forth in the Master Program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by this Master Program.*

The outfall improvements are proposed on a 0.32-acre portion of Skagit County right-of-way which currently contains other public infrastructure and utilities including a sewer pump station and manhole. The proposed improvements are essential as the existing outfall daylights near North West View Road and discharges through an open channel into Big Lake above the ordinary high water mark creating risk of erosion. The new upgraded outfall will reduce risk of erosion and alleviate localized flooding from the public drainage system. The property is approximately 80 feet in width with existing single family residences to the north and south. The SMP allows for stormwater outfalls as a permitted use and are subject to upland shoreline area regulations. The Rural Residential designation requires a 75-foot side setback. The entire property is only 80 feet wide, so a 75-foot side setback is not feasible.

b. *That the hardship described above 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 this Master Program and not for example from deed restrictions or the applicant's own actions.*

As discussed above, due to the narrow width of the right-of-way, a 75-foot side setback is not feasible. However, the right-of-way is currently used as a stormwater outfall, as well as other public utilities. Since this property already contains similar uses, and other nearby locations are

more limited in size, it is the only feasible location for this project. In an effort to balance all SMP requirements, the outfall has been located where it will minimize impact to existing mature trees and the existing infrastructure within the right-of-way.

c. *That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent property or the shoreline environment designation.*

The proposed outfall improvement is best suited for the existing right-of-way as the current use of the property includes a stormwater outfall and other public utilities. The property has an approximate 15% slope towards Big Lake. Based on the current open ditch stormwater outfall, both the shoreline and adjacent properties are at risk of erosion. This design will greatly reduce that risk of erosion. In addition, the existing outfall is non-conforming to the 75-foot side setback and no adverse impacts, outside of the erosion risk, have been identified. As such, with the construction of the proposed outfall improvements, no adverse effects to adjacent properties or the shoreline are anticipated.

d. *The variance authorized does not constitute a grant of special privilege not enjoyed by other properties in the same area and will be the minimum necessary to afford relief.*

While the upland shoreline designation is Rural Residential, the existing site is public right-of-way which is typically used for public utilities and access. Given the narrow width of this property and location of existing public utilities, it is unlikely the site could be utilized for other purposes. Skagit County currently uses the right-of-way for public utilities that benefit the surrounding residential development. Concentrating these utilities on a parcel that is not feasible for residential development would be preferred to using a larger site that has potential for other uses. The property will remain a public right-of-way so there is no grant of special privilege.

e. *That the public interest will suffer no substantial detrimental effects.*

The subject property is public right-of-way used for public utilities and given the narrow width, mature trees, a pedestrian trail, and existing utilities, other site uses are limited. A stormwater outfall currently is located on the property and has not caused a detrimental effect to the public interest. As the existing outfall is at risk of shoreline erosion, no action could potentially impact the public interest.

(3) *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 in the area*

where similar circumstances exist, the total of the variances should also remain consistent with the policies of RCW 90.58.020 and this Master Program and should not produce substantial adverse effects to the shoreline environment.

The development surrounding Big Lake is served by the Skagit County Drainage Utility which protects public and private property from drainage threats. Drainage concerns in the County often fall within the categories of ditch maintenance/grading, culvert maintenance, lack of infrastructure, failing infrastructure, inadequate conveyance, and sedimentation. There are a large number of stormwater conveyances, both manmade and natural, that drain into Big Lake and as development continues in the area, these will need to be upgraded to provide safe, clean movement of water to avoid damage to private property. Any future stormwater outfall upgrades will be required to comply the applicable provisions of the SMP and RCW 90.58.020 to avoid substantial adverse effects to the shoreline environment.

13. **Shoreline Conditional Use**

Chapter 7.18, 2A6 Aquatic, requires a conditional use permit for submarine or buried outfalls within the aquatic designation. While the outfall structure will terminate above the ordinary high water mark, the proposed Armorflex mat will be located below the ordinary high water mark, within the Aquatic designation.

11.01 General

The objective of the conditional use permit is to allow more control and flexibility in the implementation of this Master Program. By applying special conditions, the scope of uses within each of the six shoreline areas can be expanded to include many additional uses. Activities classified as conditional uses shall be permitted only where the applicant can demonstrate that the proposed use will meet standards and criteria that will ensure that the proposed use will be compatible with the permitted uses within the same area.

11.02 Authority

1. The Hearing Examiner is hereby authorized to hear, review, grant or deny shoreline conditional use permit applications for:
a. Developments which are permitted under these regulations in particular shoreline areas only as conditional uses; or
b. Development for expansion of non-conforming uses and structures on shorelines, or
c. Repair or restoration of a non-conforming use or structure; or
d. Development for a use which may be unnamed and/or not contemplated in this program.

The Hearing Examiner is further authorized to impose any reasonable conditions and standards which may be required to enable any proposed conditional use to satisfy the criteria established in Section 11.03 on a case-by-case basis, PROVIDED that any decisions rendered by the Examiner may be appealed to the Board of County Commissioners by notifying the Administrator in writing within five (5) days from the date of the Examiner's decision.

11.03 Criteria for Granting Conditional Use Permits

1. Permits for uses which are classified or set forth in this Master Program as conditional uses may be authorized providing the applicant can meet all the following criteria, the burden of proof shall be on the applicant.

a. That the proposed use will be consistent with the policies of this Master Program and policies of RCW 90.58.020.

The stormwater outfall improvements will be consistent with the policies outlined in RCW 90.58.020. The proposed improvements will include the installation of a buried storm drain line that will terminate above the OHWM and placement of a precast concrete bank stabilization mat that extends from the end of the outfall pipe to approximately 11 feet below the OHWM. The precast Armorflex mat provides protection against erosion while allowing vegetation to grow through the matrix, preserving the natural character of the shoreline. The material is commonly used for shoreline stabilization and due to its permeable nature is not considered a permanent impact. As only temporary impacts to the shoreline will occur during installation of the concrete mat, no adverse impacts to the shoreline are anticipated. Additionally, due to the existing erosion risk, the stormwater outfall improvements are anticipated to provide a benefit to the shoreline area.

b. That the proposed use will not interfere with the normal public use of public shorelines.

The proposed stormwater outfall improvements will not interfere with the public use of the shoreline as the proposal includes preservation of the existing trail that is currently used to access Big Lake. The outfall armoring will allow vegetation to grow through, which maintains public access along the shoreline. The removal of non-native and invasive plants and replacement with native vegetation will enhance the public use and shoreline environment over the existing conditions.

c. That the proposed use of the site and design of the project will be compatible with other permitted uses in the area.

The right-of-way is currently used for public utilities, including the existing stormwater outfall. There are other nearby stormwater outfalls into Big Lake with similar sized pipes. Storm drainage is essential public infrastructure that must be continually improved to serve the public good.

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

The proposed stormwater improvements will greatly reduce the risk of erosion to the shoreline compared to the existing outfall. The proposed improvements will include installation of a storm drain line that daylights above the OHWM onto a precast concrete mat. Only the precast mat will be located within the Aquatic shoreline designation. The interlocking, permeable concrete that provides erosion protection will allow vegetation to grow through the matrix, preserving the natural character of the shoreline. Invasive species will be removed, and native plants will be installed to enhance the shoreline area. Due to the existing erosion risk, the proposed improvements are anticipated to be beneficial to the shoreline.

e. That the public interest suffers no detrimental effect.

The proposed improvements are located within an existing public right-of-way that contains public utilities including a stormwater outfall. The existing trail along the northern portion of the site will be retained and the project site will be enhanced with native vegetation. The proposed drainage improvements will mitigate upstream flooding of private property by the existing public drainage system. As such, the proposed stormwater outfall improvements are anticipated to have a beneficial impact to the shoreline and nearby property owners and will cause no detrimental effect.

2. Other uses which are not classified or set forth in this Master Program may be granted as conditional uses provided the applicant can demonstrate, in addition to the criteria set forth in Section 11.03 a., b., c., d. and e., that extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of this Master Program.

3. Conditional use permits may not be granted for uses which are prohibited by this Master Program.

The proposed stormwater outfall improvements are not a prohibited use.

4. In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other development in the area where similar circumstances exist, the total of the conditional uses should also remain consistent with the policies of the Master Program and RCW 90.58.020 and should not produce substantial adverse effects to the shoreline environment.

The development surrounding Big Lake is served by the Skagit County Drainage Utility which protects public and private property from drainage threats. Drainage concerns in the County often fall within the categories of ditch maintenance/grading, culvert maintenance, lack of infrastructure, failing

infrastructure, inadequate conveyance, and sedimentation. There are a large number of stormwater conveyances, both manmade and natural, that drain into Big Lake and as development continues in the area, these will need to be upgraded to provide safe, clean movement of water to avoid damage to private property. Any future stormwater outfall upgrades will be required to comply the applicable provisions of the SMP and RCW 90.58.020 to avoid substantial adverse effects to the shoreline environment.

RECOMMENDATION

Based on a review of all submitted information and the above findings, Skagit County Planning and Development Services recommends approval of the requested Shoreline Substantial Development/Variance/Conditional Use application PL22-0528 for the proposed stormwater outfall improvements with the following conditions:

1. The recommendations of the Shoreline, Wetland, and Fish and Wildlife Habitat Assessment Report prepared by Soundview Consultants dated October 24, 2022, are considered conditions of approval unless modified by the conditions below.
2. The applicant will submit a stormwater management plan in compliance with the current stormwater management manual as part of the land disturbance/grading permit application.
3. The applicant shall submit an as-built site plan of the mitigation plantings as well as provide photographs of the installed plants. This must be submitted within 30 days of plant installation.
4. All mitigation plants shall maintain a survival rate of 100% following the first year and 80% following years three and five. If the plants do not meet that survival rate, a qualified professional must assess the site and determine the best method to improve the rate of survival for additional native plants.
5. The applicant and its contractors shall comply with the State Water Quality Criteria, Surface Water WAC 173-201A and Ground Water WAC 173-200, and WAC 173-60 Maximum Environmental Noise Levels for noise and light.
6. Temporary erosion/sedimentation control measures shall be utilized in accordance with the Skagit County Code 14.32 Stormwater Management.
7. If this request is approved, the applicant shall submit a copy of the Hearing Examiner's written order (decision) with the land disturbance/grading permit application.
8. The project shall be commenced within 2 years of the shoreline variance approval and completed within 5 years.
9. The applicant shall strictly adhere to the project information (site diagram) submitted for this proposal. If the applicant proposes any modification of the

subject proposal, he/she shall notify Planning & Development Services prior to the start of construction.

Prepared By: Leah Forbes
Reviewed By: Betsy Stevenson
Dated: August 6, 2024