



City of Tacoma
Planning and Development Services

March 24, 2021

Mark Rettmann, Port of Tacoma
P.O. Box 1837
Tacoma, WA 98401-1837

Via Electronic Transmittal: MRettmann@portoftacoma.com

Subject: LU20-0113 Letter to File for Critical Area Development Permit for the Lower Wapato Creek Advance Habitat Project, 4400 SR 509 S Frontage Road Parcel Number 0320013157

Dear Mr. Rettmann,

I reviewed the CAPO Minor Modification Memorandum March 15, 2021, the FINAL Advance Mitigation Plan, Revised March 2021 and the Washington Department of fish and Wildlife HPA describing the changes to the issued Critical Area Development Permit LU20-0113.

I understand that the Port of Tacoma is seeking to revise the following as a result of final engineering and design. Specifically, the request includes the following actions:

1. Revised In-Water Work window from July 8th through February 15th.
 - No changes to permit drawings
2. Revised Wetland contours
 - Proposed wetland surfaces were lowered (from the original +16 feet MLW elevation as shown on the Phase 1 Sheets C1.0 through C1.3. In the eastern portion of the site, wetland elevations were lowered to between +13 and +15 feet MLLW.
3. Revised Large Woody Material types, Details, Anchoring and Locations
 - Current LWM types and locations area shown on the Phase 1 Sheets C1.0 through C1.3, and details are shown n C5.0 and C5.1. The total number of LWM structures including standing snags and rootwads remains 230 pieces (178 LWM, 29 rootwads, 23 standing snags) but the distribution and locations were modified slightly.
4. Revised Bridge Geometry and Foundation
 - The revised bridge geometry and foundation includes a bridge span of 41 feet-3 ½ inches and the width of the bridge foundation is 49 feet-11 ¼ inches. The bridge foundation plan will be 12 vibratory driven 24" diameter concrete filled steel tubes/shafts. Overhead power lines and other utilities will be temporarily and permanently relocated as part of the project.
5. Revisions to Electrical Utilities Design
 - The design has been updated to more specifically show the location of the proposed utility relocation work, including Tacoma Public Utilities (TPU) power poles and associated infrastructure. The locations of the TPU power pole work (five power poles and associated lines and infrastructure) are shown on Phase 1 Sheet C1.0 and C1.1 and on the Phase 1 transmission line plans. Other utility relocations and temporary locations will be conducted as part of the culvert removal and bridge construction work.
6. Revisions to TPU Access Pads

- The geometry of the two originally proposed TPU access pads (at 12th St East and at East Alexander Avenue) have been updated and a third (at SR 509) access pad was added at TPU's request. The access pad locations are shown on Phase 1 Sheet C6.0 and the details are shown on the Phase 1 Sheet C7.1.
7. Revised contours near 12th Street East and East Alexander Avenue for existing Outfall
 - As depicted on Phase 1 Sheets C1.1 and C6.0
 8. Revision to Soil amendment and stabilization
 - As depicted on Phase 1 Sheet L1.0
 9. Revisions to proposed Seed mixes
 - As depicted on Phase 1 Sheet L2.0
 10. Revisions to Proposed Vegetation Communities
 - Reference the JARPA Update Memo and attached Phase 2 sheets and the Advance Mitigation Plan. The planting of the vegetation community will be conducted in Phase 2 (2022) and are not part of SDEV20-0453. Changes since the June 2020 JARPA include changes to species, quantities, planting zones, plant layout, and container stock size.
 11. Updated JARPA Quantities
 - Table 3 of the JARPA Update Memo provides the revised areas and volumes for the table contained in Section 8e of the JARPA.
 12. Final Advance Mitigation Plan
 - The Advance Mitigation Plan has been revised to incorporate the revisions in the JARPA Update memo and in response to Ecology's comments. The Final Advance Mitigation Plan is dated March 2021.

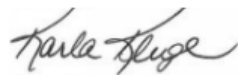
Under TMC 13.05.130 modification or revisions to issued permits may result in additional review and permitting if the modifications are considered a major modification. The proposed revision is considered "minor" under TMC 13.05.130.B as the project does not result in a change of use; the proposal does not add to the size of the structures (the bridge will actually decrease in size); the conditional requirements are not being changed; the impervious surfaces have not increased by more than 25%; the revision is not likely to cause new significant adverse impacts to the critical areas; and the revision is not part of multiple revisions exceeding the minor modification criteria.

I have also received the Hydraulic Project Approval, dated March 19, 2021 from Elizabeth Bockstiegel of the WA State Department of Fish and Wildlife (WDFW) approving the proposed project.

Therefore, the project revisions comply with a Minor Modification under TMC 13.05.130 and no further review or permitting is required. I also verified that the associated building permit under SDEV20-0453 contains the updated design proposal for the Lower Wapato Creek Habitat Project.

Please retain this letter for your files and I'll upload it to the City's online record for LU20-0113. If you have any questions regarding this letter, please contact me at 253-591-5773.

Sincerely,



Karla Kluge
Senior Environmental Specialist

CC: Shirley Schultz, Principal Planner - sschultz@cityoftacoma.org
Washington Department of Fish and Wildlife, Elizabeth Bockstiegel - Elizabeth.Bockstiegel@dfw.wa.gov
US Army Corps of Engineers - Halie.N.Endicott@usace.army.mil
Washington Department of Ecology, Shorelands & Environmental Assistance Program, Zach Meyer - zmeyer461@ecy.wa.gov



City of Tacoma
Planning and Development Services
Report and Decision

**CRITICAL AREA DEVELOPMENT
PERMIT FOR:**

File No. LU20-0113

Port of Tacoma
Mark Rettmann
PO Box 1837
Tacoma, WA 98421

SUMMARY OF REQUEST:

A Critical Area Development Permit for an 18.52-acre habitat improvement project to restore Wapato Creek with a diverse mosaic of interconnected estuary, emergent, and forested wetlands and riparian habitat as advance permittee-responsible compensatory mitigation to mitigate for unavoidable impacts to wetlands and non-Endangered Species Act (ESA)-listed fish (habitat) resulting from future Port projects. The project will serve as an Advance Mitigation Site.

LOCATION:

4400 SR 509 Frontage Road, Parcels 0320013157 and 0320013158

DECISION:

The request for a Critical Area Development Permit is **Approved**, subject to conditions.

Notes:

The reconsideration/appeal period on this decision closes **October 15, 2020**; the decision will be final on **October 16, 2020**, provided no appeals or requests for reconsideration are timely filed as identified in APPEAL PROCEDURES of this Report and Decision.

For additional information concerning this land use permit please contact:

Shirley Schultz, Principal Planner
Planning and Development Services Department
747 Market Street, Room 345, Tacoma, WA 98402
253-345-0879 | shirley.schultz@cityoftacoma.org

SUMMARY OF RECORD

The following exhibits and attachments constitute the administrative record:

Attachments:

- A. Site Plans
- B. Technical Memorandum from Karla Kluge, Senior Environmental Specialist, September 23, 2020

Exhibits:¹

- A. Joint Aquatic Resources Permit Application (JARPA)
- B. Lower Wapato Creek Habitat Project, Critical Area Report prepared by the Port of Tacoma, May 2020
- C. SEPA Determination of Non-Significance-encompasses both projects and issued January 3, 2013
- D. Draft Advance Mitigation Plan, Lower Wapato Creek Habitat Project prepared by the Port of Tacoma, June 1, 2020. (Note: the draft plan is only draft until it is accepted by all agencies)

FINDINGS

Proposal:

1. The applicant requests a Critical Area Development Permit to allow for the construction of an Advance Permittee-Responsible Mitigation Site at Lower Wapato Creek for future Port of Tacoma impacts. The advance mitigation project is to restore the existing ditched and confined portion of Wapato Creek to a more natural, pre-developed state with a complex and dynamic stream and associated wetland and upland habitats in a tidally influenced area of Wapato Creek for future Port projects that will require mitigation. The Port anticipates a need for stream and/or wetland mitigation areas for future Port-related impacts to wetland and/or streams, and this advance mitigation project will help fulfill those needs.

The proposal for an Advanced Permittee-Responsible Mitigation Site is consistent with the requirements for a concurrent mitigation plan according to the joint Department of Ecology (ECY), US Army Corps of Engineers (USACE) and the Environmental Protection Agency (EPA) guidance document Wetland Mitigation in Washington State Part 2: Developing Mitigation Plans. In addition, the Plan follows the recommendations in the Interagency Regulatory Guide – Advance Permittee-Responsible Mitigation, published by USACE, ECY and WDFW.

2. The site is referred to as the Lower Wapato Creek Habitat Project (LWCHP) and includes 10.02 areas of creditable aquatic resource habitat restoration to be used as advance permittee-responsible compensatory mitigation, or advance mitigation, to mitigated for unavoidable impacts to aquatic resources (wetlands) and fish habitat (downstream of LWCHP on Wapato Creek) with no Endangered Species Act (ESA)-listed species resulting from future Port projects.

¹ All Exhibits are contained within associated file of the Planning and Development Services Department. They are referenced and incorporated herein as though fully set forth. Additional materials are included in the project file for information purposes but are not referenced in this report and decision.

3. The Port proposes to conduct estuarine wetland re-establishment actions at the 18.52-acre Project site as advance permittee-responsible mitigation, in advance of other potential wetland impacts related to future Port projects. The proposed restoration actions are intended to provide large-scale contiguous habitat restoration on a site containing Wapato Creek, an independent creek discharging to Commencement Bay, as opposed to conducting small, disconnected on-site mitigation actions throughout Port of Tacoma property on a project-by-project basis.

By consolidating small wetland impacts into a larger mitigation site, the Project will provide greater estuarine, wetland, stream and floodplain benefits for Wapato Creek and Commencement Bay by creating diverse estuarine habitat and tidal and non-tidal wetland functions, correcting a partial fish passage barrier at the 12th Street East culverts, improving creek channel, floodplain, mudflat and wetland connectivity, increasing habitat interspersion, and providing contiguous re-forested upland riparian buffer areas to protect aquatic habitat.

4. The project also includes the relocation of TPU poles, relocating utilities for the bridge replacement, the placement of excess excavated soils on adjacent Port property and other ancillary projects activities.
5. The project proposal includes the following:
 - The replacement of twin culverts carrying Wapato Creek under 12th Street East with a full span bridge.
 - The relocation of Wapato Creek from a ditch into a longer, sinuous stream channel.
 - The establishment of permanent access areas for utility maintenance for the Power Poles currently located within the buffer of Wapato Creek.
 - The project is also designed to accommodate the potential widening to the north of 12th Street East to a typical three-lane road footprint that includes sidewalks and bike lanes and accommodates the current preliminary design for the anticipated future connection of SR-509 to SR-167. However, these improvements may not include the expansion of the roadway in favor of retention of the vegetated filter strip, and any increase in road width would be subject to further permitting and review.

Project Site:

1. The site is addressed as 1131 East Alexander Avenue (Port owned) and is located on four adjacent parcels: Parcel No's. 0320017003, 0320013055, 0320013157, 0320013158 and a disposal site 0320011117. The site is alternatively addressed as 4400 SR 509 Frontage Road, with the bulk of the habitat work taking place on parcels 0320013157 and 0320013158.
2. Work on the culvert to be replaced under 12th Street East will be completed on two private properties (parcel numbers 0320013055 and 0320017003. Parcel number 0320013055 is owned by the Puyallup Tribe and is located within the City of Fife. Parcels 0320013157 and 0320013158 include the project site habitat restoration area. The Disposal site is located on parcel number 0320011117.
3. The site (1131 East Alexander Avenue, including the disposal site) is located in the "M-2" Heavy Industrial District with a Land Use Intensity of High. The additional parcels identified within the JARPA application form are outside of the City limits and are included within this Technical Memorandum for informational purposes only regarding adjoining properties where associated activities may take place.
4. The surrounding area consists of residential, commercial, and industrial development. Industrial development associated with the Port of Tacoma is located primarily north of

Highway 509. Single-family residences and commercial development are situated south of the parcel on 12th Street East.

5. Historically, the proposed restoration area was a tidally influenced wetland or mudflat area. The wetland was converted to agricultural use in the first half of the 20th Century. The site was legally filled with dredge material from the expansion of the Blair and Hylebos Waterways, and the Wapato Creek channel was rerouted to its present location and configuration.
6. Wapato Creek, a tributary to the Blair Waterway of Commencement Bay, Puget Sound is contained within the identified project site. Wapato Creek enters the LWCHP site through twin, 60-inch-diameter, perched culverts and flows north under 12th street East. The creek immediately turns 90 degrees to the west and flows parallel with 12th Street East as a channelized roadside ditch. As the creek approaches Alexander Avenue East, it turns another 90 degrees to the north and flows parallel to Alexander Avenue north, exiting the project sit at State route 509. Wapato Creek is tidally influenced throughout the LWHCP site. The creek has been constructed into a trapezoidal ditch and in-stream habitat is limited with no structure or stream habitat complexity and is confined, straight, and incised with no accessible floodplain and no connected wetlands.
7. The project site also contains a portion of the “Fife ditch” that is parallel and just north of 12th Street East. The ditch is above ordinary high water elevation of 8.7 feet on this property. It is not connected to the existing Wapato Creek, or to the proposed restored creek or wetlands. There is a “berm” that exists between the creek and the Fife Ditch at the area that crosses under 12th Street.
8. The site is primarily open and vegetated by weedy, herbaceous plants with some shrubs and trees. Invasive plants including reed canarygrass (*Phalaris arundinacea*) and Himalayan blackberry (*Rubus armeniacus*) form dense patches on the site. Native trees, also found in patches on the site include Douglas hawthorne (*Crataegus douglasii*), a few small willows and black cottonwood (*Populus balsamifera*). Salt tolerant vegetation occurs at the low bank elevation, including saltgrass (*Distichlis spicata*) and seaside arrowgrass (*Triglochin maritime*).
9. Salt-tolerant vegetation occurs at low-bank elevation, including saltgrass (*Distichlis spicata*) and seaside arrowgrass (*Triglochin maritima*). The presence of salt-tolerant vegetation in the low-bank elevation and salt-sensitive vegetation (reed canarygrass) at higher bank elevations also indicates that a saltwater wedge forms during high tides, in which denser saltwater is situated below the freshwater originating from upstream.
10. The US Fish and Wildlife Service and the National Marine Fishery Service Threatened and Endangered Lists indicate there are three federally-listed Endangered or Threatened fish that could occur in the Project Area; Chinook salmon, steelhead trout and bull trout. While these species may be present within Commencement Bay, there are no documented occurrences of juvenile Chinook salmon in Wapato Creek or documented use of steelhead within the last 20 years and NMFS does not consider Wapato Creek to provide suitable habitat for steelhead. Similarly, sparse suitable habitat and water quality issues may deter the presence of bull trout in Wapato Creek.
11. The Marbled Murrelet could potentially be present within the Project area; however, the lack of nesting habitat and shipping activity does not provide suitable habitat and foraging areas for the Marbled Murrelet.
12. No jurisdictional wetlands are currently located on the site. The nearest wetland shown on U.S. Fish and Wildlife Service’s National Wetland Inventory maps is on the north side of 12th

street East, East of 54th Avenue East and about 4000 feet east of the Wapato Creek crossing of 12th Street East. Several depressional features are located on the eastern portion of the undeveloped area known as Parcel 14 which is immediately north of the mitigation site. These areas currently meet the three-parameter criteria for wetlands; however, these areas were determined to be non-jurisdictional by the US Army Corps of Engineers in 2008, 2013 and 2020 and Washington State Department of Ecology in 2011 and 2020. Under the City of Tacoma code. These areas were formed by differential settlement within and atop legally placed dredge-spoil fill throughout Parcel 14. These areas extend onto the subject property on the northwestern corner and are included in the non-jurisdictional determination. A recent Army Corps of Engineers determination included all similar depressions within its non-jurisdictional determination.

13. Within the proposed restoration area, Wapato Creek is located on the site and is a straight channel that lacks habitat and geomorphic complexity, floodplain connectivity, or associated wetland habitat. The channel enters the parcel through a 5-foot diameter culvert under 12th Street East, which acts as a partial fish barrier, and flows west along the parcel boundary parallel to 12th Street East. The channel turns 90 degrees to the north, and parallels Alexander Avenue before passing under the spanning bridge for Highway 509. Wapato Creek in its present state is a straight channel that lacks habitat and geomorphic complexity, floodplain connectivity, or associated wetland habitat.
14. Wapato Creek is designated as a regulated "Stream of Local Significance" per *TMC* 13.11.420 with a required 150-foot. The existing left bank stream buffer for Wapato Creek along 12th Street East is approximately 10 feet wide. The riparian area is dominated by grasses and invasive species. The stream buffer area along East Alexander Avenue is approximately 70 feet wide and is also dominated by grasses and invasive species, and includes access roads to power poles within 10 feet of Wapato Creek.
15. Wapato Creek is located within designated floodplain area (Zone X) and is a floodway (Zone AE) on the FEMA flood maps. The site contains fill that will be excavated to increase overbank storage. The Project Site will create a substantial increase in the flood storage capacity within the Wapato Creek Base Flood elevation (BFE) and the Puyallup River Overtopping BFE, an increase of 24.33 acre-feet and 72.62 acre-feet, respectively (GeoEngineers 2020).

Details of Proposal

16. The project design includes two primary habitat elements: (1) fish passage improvement through replacement of twin undersized 60-inch-diameter culverts with an approximately 50-foot-wide single span bridge at the 12th Street East crossing to provide unimpeded fish passage to the upper reaches of Wapato Creek; and (2) re-establishment of wetland and fish habitat through relocation of Wapato creek and construction of a diverse complex of associated floodplain and wetland habits historically present in the Commencement Bay intertidal mudflats.
17. The recommendations for Wapato Creek restoration in the *Commencement Bay Natural Resource Restoration Plan* (Commencement Bay Natural Resource Trustees 1997) include the following target habitat for salmonid migration and spawning, waterfowl and wildlife use, and furbearing mammals:
 - Freshwater channels;
 - Wetlands; and Riparian corridors
18. Wapato Creek will be relocated from a ditch into a longer, sinuous stream channel which will increase the length of Wapato Creek from 1,040 lineal feet to approximately 1,875 lineal feet

with an additional 350 lineal feet of retained off-channel habitat in the existing Wapato Creek by meandering the creek channel within a re-established broad floodplain corridor that includes an interconnected mosaic of forested wetlands, intertidal mudflats and emergent wetlands.

19. The proposal includes a total of 10.02 acres of wetland/aquatic resource re-establishment including 5.51 acres of palustrine forested wetland to provide shade and organic input, 2.35 acres of estuarine emergent wetland to improve water quality and increase forage habitat, 2.10 acres of tidal stream channel/mudflats re-establishment to increase epibenthic and prey production for higher level species as well as 7.34 total acres of forested upland buffer enhancement to filter pollutants and provide screening from adjacent developed areas.
20. The Project will generate advance mitigation credits for wetlands and non-Endangered Species (non-ESA) fish habitat as detailed in the AMP. The Project is anticipated to generate 10.02 Acre-Credits of wetland mitigation credit from one or more crossings totaling 60 feet in width, parallel to flow, downstream of the Project. The final mitigation credit generated by the Project will be detailed in the final AMP approved by the permitting agencies.
21. The stream will include large woody material, pool/riffle sequences, and suitable substrate. The wetland would include a variety of habitat types, as well as downed wood and snags. The stream relocation and extension and wetland restoration will restore the upper tidal reach of Wapato Creek, recreate natural meanders, restore historic floodplain connectivity, restore wetland functions, and create mudflat habitat. The design deliberately avoids routing the stream through an area that would be impacted by future potential development, and plans to provide functioning buffer area bordering all remaining and created habitats.
22. Approximately 713 linear feet of the linear Wapato Creek channel will be filled along 12th Street East and the remaining portions of Wapato Creek that connects to the proposed channel confluence will be retained as aquatic habitat. From the tie-in point of the proposed re-established channel, the remaining existing channel segment will be a backwater slough that transition into intertidal mudflat and estuarine emergent wetland habitat to the south. The existing 12th Street Ditch will all be reconfigured into a vegetated filter strip swale.
23. The project also include relocation of the TPU poles, relocating utilities for the bridge replacement, the placement of excess soils on adjacent Port property and other ancillary project activities.
24. The goal of the LWHCP is to restore ecological functions and processes in and near Wapato Creek with two central goals:

Goals:

- Replace aquatic resource (wetland) acreage and functions that are lost or impacted by future Port Projects
- Offset impacts to fish habitat for non-ESA-listed fish species from future Port projects that impact Wapato Creek downstream of the LWHCP site.

Objectives:

- Objective 1: Restore Wapato Creek from a straight ditch to a meandering, tidally-influenced channel with a functioning floodplain and in-stream habitat features;
- Objective 2: Re-establish intertidal mudflats and hydrologically connected estuarine emergent and palustrine forested wetlands;
- Objective 3: Establish and preserve a dense forested upland buffer; and
- Objective 4: Improve fish passage at the 12th street East crossing.

25. Estuarine emergent wetlands created under the proposed mitigation plan are expected to meet the Ecology definition of an estuarine wetland system. Estuarine wetlands are highly rated under Special Characteristics, which would result in a Category I or Category II wetland with corresponding required buffers of 100-175 feet.
26. The proposed mitigation site lies within the bounds of three paved roadways (SR509, East Alexander Ave. and 12th Street East or Ward Street). The buffer of the stream and proposed wetland is proposed to be constructed with a reduced buffer due to physical limitations associated with the built infrastructure. The applicant proposes that through buffer reduction, the LWCHP will provide elevated functional lift by increasing the wetland and stream area and allowing a reduction that on average will be approximately 70 feet. The Port argues that the 70-foot enhanced buffer allows the Port to maximize the wetland habitat improvements within the available space, while ensuring that wetland functions are not compromised by the surrounding urban environment.
27. The Port argues that water quality functions will be improved by the enhanced stormwater bio-filtration and the dense plantings. Wildlife habitat functions will be protected and enhanced by leaving existing trees, planting a native diverse and dense planting within the buffer, and building a fence. No reduction in wetland functions will result from reducing the buffer. The Port concludes that the proposed freshwater/intertidal wetland complex will recreate a rare habitat type in Commencement Bay, partially replacing wetland functions lost over the last 150 years by the filling of over 98% of the original wetland marsh that once existed within the area.
28. The applicant has proposed that the creation of the advance mitigation site will offset any temporary impacts to the stream and its current function and that the Lower Wapato Creek Habitat Project will be built as concurrent or advance mitigation for future impacts. The Port is requesting authorization of the physical construction of the mitigation site and the acknowledgement of the proposed mitigation acreage. However, additional approvals are required before and credits area used for future impacts from the Permittee-responsible Advance Mitigation Site.
29. The following table represents the potential credits that may be generated by the advanced mitigation site:

Restoration Action	Habitat Type	Creditable Area (acres)	Non-Creditable Area (acres)	Total Area (acres)
Re-establishment	Wapato Creek Channel/Intertidal Mudflat	2.16	0.02	2.18
	EEM	2.35	-	2.35
	PFO	5.51	-	5.51
Rehabilitation	Wapato Creek Channel/Intertidal Mudflat	-	0.21	0.21
	EEM	-	0.02	0.02
Enhancement	Forested Upland Buffer	-	7.34	7.34
	ROW/Vegetated Filter Strip	-	0.91	0.91
TOTAL:		10.02	8.50	18.52

Avoidance and Minimization Measures

30. The proposed project is an advance mitigation project specifically designed to positively impact the current critical areas and buffers on site. Due to the nature of the project, impacts to the stream cannot be avoided. However, proposed construction methods and construction work that is sensitive to salmonid work windows will be observed.

Tacoma Municipal Code (TMC) Critical Areas Preservation Ordinance pertinent code, applicant's arguments and analysis

31. TMC 13.11.130 Scope and Applicability

- a. *The provisions of this chapter apply to all lands and waters, all land uses and development activities, and all structures and facilities in the City, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the City. This Chapter specifically applies to any activity which would destroy vegetation; result in a significant change in critical habitat, water temperature, physical, or chemical characteristics; or alter natural contours and/or substantially alter existing patterns of tidal, sediment, or storm water flow on any land which meets the classification standards for any critical area define herein. In addition, this chapter applies to all public or private actions, permits, and approvals in or adjacent to a critical area and its buffer, management area, or geo-setback including, but not limited to the following:*

4. Land Use permits;

32. TMC 13.11.140 Regulated Uses/Activities

Pursuant to the requirements of this chapter, a site review or permit shall be obtained prior to undertaking any of the following activities in or adjacent to Critical Areas and their associated buffer, geo-setback, or management area, unless otherwise covered in Sections 13.11.200 and 13.11.210.

A. Filling, placing, or dumping any soil, loam, peat, sand, gravel, rock, chemical substance, refuse, trash, rubbish, debris, or dredge material:

B. Excavating, dredging, grading or clearing any soil, loam peat, sand, gravel, rock, vegetation, trees, or mineral substance;

C. Discharge of hazardous substances, including, but not limited to heavy metals, pesticides, petroleum products, or secondary effluent;

D. Any act which results in draining, flooding, or disturbing the water level or table;

E. Exterior alteration, construction, demolition, or reconstruction of a building, structure or infrastructure, including driving pilings or placing obstructions;

F. Destroying or altering vegetation through clearing, harvesting, shading, pruning, or planting vegetation that would alter the character of the site; and

G. Any act or use which would destroy natural vegetation; result in significant change in water level, water temperature, physical, or chemical characteristics of the wetland or stream; substantially alter the existing pattern of tidal flow, obstruct the flow of sediment, or alter the natural contours of the site.

33. TMC 13.11.220 Application Types.

- A. *This chapter allows three types of Critical Area applications, which result in the issuance of an administratively appealable decision consistent with chapter 13.05. After the appeal period expires, the Director's approved decision becomes the official permit. Programmatic Restoration Projects processed under with the Minor Development Permit or the Development permit may qualify for additional time extensions according to 13.05.070.*

- B. *3. Development Permit. A decision will be issued where the Director determines that avoidance and minimization have not eliminated all impacts and compensatory mitigation will be required as a result of the proposal.*
- i. The applicant must meet the requirements of one of three legal tests; No Practicable Alternatives, Public Interest or Reasonable Use, and*
 - ii. Demonstrate Mitigation Sequencing, and*
 - iii. Provide mitigation as required in accordance with the Chapter.*

Mitigation for impacts or loss of wetlands, streams or their buffers does not apply in the traditional sense, with one exception, in that the impacts or loss is temporary while the site is being re-constructed to a more complex, multi-habitat site. The stream relocation will provide a sinuous, extended stream with complex riparian systems that are intended to provide freshwater and estuarine riparian wetland areas. The exception is the designation and gravel surface that will be installed for continued access to the power poles. The disturbance of the stream requires a Critical Area Development Permit as the initial impacts will be extensive and completely change the stream into a complex wetland mosaic and sinuous stream with mudflats, intertidal flow, and a tiered vegetation structure. Innovative Mitigation will be provided that allows a functional wetland and stream buffer at a reduced width; however, functional lift will be realized through the creation of the wetland/stream system.

34. TMC 13.11.240 Legal Test(s)

A. *No Practicable Alternatives. And alternative is considered practicable if the site is available and the project is capable of being done after taking into consideration cost, existing technology, infrastructure, and logistics in light of overall project purposes. No practicable alternatives need be considered if the applicant can demonstrate all of the following:*

- 1. The project cannot be reasonably accomplished using one or more other sites in the general region that would avoid or result in less adverse impact to the Critical Areas.*

The applicant argues that the Project cannot be reasonably accomplished using another site in the general region. The LWHCP site is the last, best place to build a tidally-influenced stream channel and floodplain wetland mosaic in the Wapato Creek watershed. The Project will not result in adverse impacts to the Critical Area; it will provide an immediate net benefit to the Critical Area.

- 2. The goals of the project cannot be accomplished by a reduction in the size, scope, configuration or density as proposed, or by changing the design of the project in a way that would avoid or result in fewer adverse effects on the Critical Area; and,*

The applicant argues that reducing the size, scope or configuration, or changing the design of the Project will reduce the amount of benefit to the Critical Area. The goals of the Project will not result in adverse effects to the critical area; it will provide an

immediate net ecological gain and expand and restore the existing Critical Area (Wapato Creek) and re-establish a floodplain wetland mosaic.

3. In cases where the applicant has rejected alternatives to the project as proposed, due to constraints on the site such as inadequate zoning, infrastructure or parcel size, the applicant has attempted to remove or accommodate such constraints, unless the applicant can demonstrate that such attempt would be futile.

The applicant indicates that attempting to remove or accommodate the site's constraints is futile. Surrounding land use development prohibits the expansion of the proposed advance mitigation site; the Project is limited to the parcel size. The Project has been designed to maximize the amount of aquatic resource restoration actions to provide mitigation credit in advance of future Port development projects with impacts to Critical Areas.

35. TMC 13.11.250

A. General permit standards. No regulated activity or use shall be permitted in or adjacent to a Critical area or buffer, management area, or geo-setback without prior approval and without meeting the provisions of this section.

1. The applicant has taken appropriate action to first, avoid adverse impacts, then minimize impacts and finally, compensate or mitigate for unavoidable impacts:

2. The result of the proposed activity is no net loss of Critical Area functions;

3. The existence of plant or wildlife species appearing on the federal or state endangered or threatened species list will not be jeopardized;

4. The proposal will not lead to significant degradation of groundwater or surface water quality; and

5. The proposal complies with the remaining standards of this chapter, which include those pertaining to wetland compensation and the provision of bonds.

6. The alteration is the minimum necessary to allow reasonable use.

36. TMC 13.11.270.

*M. Innovation Mitigation. The Director may approve innovative mitigation projects that area based on best available science including but not limited to activities such as **advance mitigation** and preferred environmental alternatives. Innovative mitigation proposals must offer an equivalent or better level of protection of critical are functions and values that would be provided by strict application of this chapter. Such mitigation measures proposal must demonstrate special consideration for conservation and protection measures for anadromous fisheries. The following is considered for approval:*

1. Creation or enhancement of a larger system of natural areas and open space is preferable to the preservation of many individual habitat areas.

The applicant indicates that the LWCHP will be approximately 18.5 acres in total and includes the re-establishment /creation of a creek ad floodplain wetland mosaic that provides contiguous habitat instead of small, isolated area that provide little to no habitat connectivity.

2. The applicant demonstrates that long-term protection and management of the habitat area will be provided;

The Port has a history of successfully completing and maintaining habitat/mitigation projects which provide exceptionally high ecological value. Once the LWCHP is complete, the Port will protect and maintain the site in perpetuity. This will be memorialized through the implementation of a restrictive covenant, a conservation easement or a deed restriction.

3. There is clear potential for success of the proposed mitigation at the proposed mitigation site;

The applicant argues that as demonstrated in the AMP, the LWCHP site displays characteristics (hydrophytic vegetation, hydric soils and consistent hydrologic inputs) consistent with the types of habitat the Port is proposing to construct.

4. Mitigation according to TMC 13.11.270.E is not feasible due to site constraints such as parcel size, stream type, wetland category, or excessive costs;

This provision does not apply as the Port is proposing to construct habitat mitigation in advance of Port development projects with the potential to impact aquatic resources.

5. A wetland of a different type is justified based on regional needs or functions and values;

Generally, the aquatic resources that may be impacted by Port development projects are low-functioning (Category III or IV) isolated wetlands with little habitat value. The Port's proposal is to construct intertidal mudflats, and Category I estuarine emergent and palustrine forested wetlands, and a densely vegetated forested upland buffer. Intertidal mudflats, estuarine emergent wetlands and forested wetlands represent now rare wetland types in Wapato Creek, the lower Puyallup River watershed and Commencement Bay.

6. The replacement ratios are not reduced or eliminated; unless reduction results in a preferred environmental alternative; and

The Port is proposing reduced mitigation ratios. The rationale for the reduction in mitigation ratios is provided in the LWCHP AMP.

7. Public entity cooperative preservation agreements such as conservation easements are applied.

Site protection will be implemented after the LWCHP is complete.

37. TMC 13.11.320 Wetland Buffers

<i>Table 3. Buffer Widths for all Wetlands</i>	
<i>Wetland Category</i>	<i>Buffer Width (feet)</i>
<i>Category I</i>	<i>H and M – 200 L - 175</i>
<i>Category II</i>	<i>H and M – 150 L - 100</i>
<i>Category III</i>	<i>H,M,L - 75</i>
<i>Category IV</i>	<i>H,M,L - 50</i>

38. TMC 13.11.330.E. Buffer averaging or Buffer Reduction beyond the minimum standards indicated above (in Table 3) may be allowed to allow a reasonable use of a legal lot of record when all of the following criteria are met:

- a. There are no feasible alternatives to the site design that could be accomplished with the standard buffer averaging or buffer reduction provisions above; and,*

The applicant provide a response to the No Practicable Alternatives Legal Test that continues to apply here. This is the last, best place to build a tidally-influenced stream channel and floodplain wetland mosaic in the Wapato Creek watershed. The physical limitations of the site due to confining roads and urban development significantly limit the inclusion of potential 200-foot wetland buffers and 150-foot stream buffer for Wapato Creek. Following the restoration, the new stream and wetland buffers will have an average of 70 feet of buffer surrounding the wetland and stream riparian corridor. While the site constrictions do not allow for larger buffers, the “credits” that will be generated will be based on the functional lift of the site overall and not reliant on the buffer distance. The final restored site will support a net gain of stream length and wetland area and functional buffer.

- b. *The averaged or reduced buffer will not result in degradation of the wetland’s functions and values as demonstrated by a report from a qualified wetland expert, and*

The site is being developed as Permittee-Responsible Advance Mitigation Site as voluntary action by the Port. Considerable analysis and development of a successful project has been employed to provide the maximum functional lift potential of the site to realize credit development and release. The proposal includes projected credit values as a result of the functional increase expected.

- c. *The remaining buffer are on site shall be enhanced and/or restored by removing invasive species that do not perform needed functions and replanting with an appropriate plant community, and*

The entire site will be restored and enhanced. All invasive species, including Himalayan Blackberry, Poison Hemlock, reed canarygrass, English Ivy, and Scotch broom will be removed. Excavation of 3-4 feet will remove roots from reed canary grass and the seed bank that exists.

- d. *The project shall meet the requirements of one of the three legal test; No Practicable Alternatives, Public Interest, or Reasonable Use.*

The applicant has provided a response for the No Practicable Alternatives Test above.

39. TMC13.11.420. Stream Buffers

<i>Streams of Local Significance</i>	<i>Buffer (feet)</i>
<i>Wapato Creek</i>	<i>150</i>

40. TMC 13.11.440 Stream Standards.

A. *Type F1, F2, Np, and Ns1 and Ns2 streams may be relocated or placed in culverts provided it can be demonstrated that:*

1. *There is no other feasible alternative route with less impact on the environment;*

The applicant provided a response to the No Practicable Alternatives legal test that explains this site is the last best place to build a tidally-influenced stream channel and floodplain wetland mosaic in the Wapato Creek watershed.

2. *Existing location of the stream would prevent a reasonable economic use of the property;*

This is not applicable as there is no development proposed for the area other than utility movement to accommodate a habitat restoration project.

3. *No significant habitat will be destroyed;*

The Project will not result in adverse impacts to the Critical Area; it will provide an immediate net benefit to the Critical Area.

4. The crossing minimizes interruption of downstream movement of wood and gravel;

The entire site design will include the additional large woody debris and will provide space for movement of some smaller wood within the channel.

5. The new channel or culvert is designed and installed to allow passage of fish inhabiting or using the stream and complies with WDFW requirements;

An HPA will be obtained to replace the culvert with a full span bridge that will provide unlimited space for fish access and passage.

6. The channel or culvert also complies with the City of Tacoma current Storm Water Management Manual.

The bridge design will comply with the City of Tacoma building code and current Storm Water Management Manual.

7. The applicant will, at all times, keep the channel or culvert free of debris and sediment to allow free passage of water and fish;

The full span bridge design and required maintenance and monitoring in perpetuity will continue to ensure a channel free of debris and sediment and open to fish passage.

8. Roads in riparian habitat areas or buffers shall not run parallel to the water body;

The LWCHP site has been designed to move an incised, linear stream currently running parallel to a road inland and create meanders for a sinuous, natural stream with various bank elevations, mudflats and associated wetland areas.

9. Crossing, where necessary, shall occur as near to perpendicular with the water body as possible;

The bridge design does cross the road in a perpendicular manner.

10. Road bridges are designed according to Washington Department of Fish and Wildlife Design of Road Culverts for Fish Passage, 2003, and the National Marine Fisheries Service guidelines for Salmonid Passage at Stream Crossing, 2000.

An HPA will be obtained and coordination with the WDFW and National Fisheries Services will occur to ensure compliance for the bridge design.

41. TMC 13.11.510 FWHCA Classification.

A. Fish and wildlife habitat conservation areas identified by the Washington Department of Wildlife as being of critical importance to the maintenance of fish and wildlife species. These areas may include other critical areas such as geologically hazardous area, stream corridors, wetland and these critical areas' associative buffers.

1. Fish and wildlife Habitat Conservation Areas (FWHCA's). Fish and wildlife habitat areas include:

a. Lands and water containing priority habitats and species including Commencement Bay and all waterways.

(1) Great Blue Herons

(13) Anadromous fish (including Bull Trout)

(16) Streams and riparian areas

(19) Biodiversity areas and Corridors

The site does meet the definition for a Biodiversity Corridor and will be preserved as such following the restoration activities. In addition, fish species have been found within the stream and great blue herons are frequently observed “fishing” at the culvert and stream intersection. There are no endangered species identified within the vicinity of the project site. The Port has prepared a “no effects” Biological Assessment (BA) for the project and previous consultations for Wapato Creek have concluded a “no effect” to listed species.

42. TMC 13.11.520 Standards

General Standards.

No development shall be allowed within a fish and wildlife habitat conservation area with which state or federally endangered, threatened or sensitive species have a primary association without approval from the City of Tacoma and/or WDFW,

Preservation of FWHCA's are necessary to improve the likelihood that species will survive and or reproduce. Alteration of FWHCAs may reduce this likelihood. Activities allowed in FWHCAs shall be consistent with the species located there and all applicable state and federal regulations regarding that species. In determining allowable activities for priority habitats and species that are known or that become known, the provision of the Washington State Hydraulic Code and Department of Fish and Wildlife's (WDFW) Management Recommendations for Washington Priority Habitats and Species shall be reviewed. Development in these areas shall be in accordance with the requirements of the underlying zone and any overlapping critical are classification.

Wetland and Stream. Where a designated FWHCA geographically coincides with a stream or wetland, the appropriate wetland or stream buffer and associated buffer requirements shall apply as described within this Chapter.

Additional information

43. The Permittee-Responsible Advance Mitigation Site is unique in that project impact specifics and impacts, and appropriate mitigation are not identified when constructing an advance mitigation site. The applicant cannot avoid the initial impacts due to the nature of the advance mitigation project. Temporary impacts associated with construction are necessary to create a higher functioning restored system that will provide long lasting environmental benefits for both areas upstream and downstream within the watershed.
44. As part of minimizing future impacts to the permittee-responsible advance mitigation site the utility power pole access shall be formerly designated. Invasive vegetation shall be removed and replaced with native vegetation along a new sinuous stream channel with benched areas and associated wetlands providing for a complex riparian system. The applicant will minimize further impacts to the stream and its buffer through corrective actions, design components, best available science construction practices, and construction timelines associated with avoidance of fish species in the area. In addition, a Conservation Easement or similar protection instrument shall be placed on the site to prevent future impacts in perpetuity.
45. The creation of additional “benched” aquatic areas along the stream will provide additional floodplain storage and as a result of emptying into Commencement Bay, no additional compensatory storage is required. The advanced mitigation site has been designed to retain most of the large trees, including a tree currently occupied by a nesting pair of red-tail hawks.

46. The proposed corrective action will not result in the addition of any new paved surfaces although existing access areas will be graveled to allow consistent use of access areas which will prevent unintended impacts and vegetation destruction to be spread over a larger area.
47. The construction techniques will not have permanent negative impacts. BMP's including appropriate fish windows and site protection including the preservation of significant large trees will be conducted while work is completed at the site. All long-term impacts to the buffer are expected to improve natural functions. An HPA will be obtained from the WA Department of Fish and Wildlife.
48. In addition, the Port of Tacoma shall obtain future permits for projects sites that will utilize the Permittee - Responsible Advance Mitigation Site for any project where mitigation is required and on-site mitigation is not possible or does not provide a preferred environmental alternative.

Environmental Review

49. The Port of Tacoma, acting as Lead Agency for the purposes of SEPA, issued a Determination of Nonsignificance for the project effective January 26, 2013. The Director concurs in this SEPA determination.

Public and Agency Comments:

50. The application was determined to be complete for review on June 15, 2020.
51. Written notice of the application was transmitted to state agencies and for public review on July 14, 2020. The City received no written comments regarding the proposal; a meeting was held with the Puyallup Tribe of Indians, the Port of Tacoma, and the Cities of Fife and Tacoma in September, 2020, to discuss future use of the roadway.

Conclusion of Law as Finding of Fact:

52. Any conclusion of law hereinafter stated which may be deemed a finding of fact herein is hereby adopted as such.

CONCLUSIONS

1. The applicant has met the requirements for issuance of a Critical Area Development Permit as the impacts to create the Lower Wapato Creek Advanced Mitigation Site cannot avoid impacts due to the nature of the restoration and replacement of the limiting culvert with a full span bridge. Further, the proposal meets the requirements of the No Practicable Alternatives Legal Test as this site is the last, best place to build a tidally-influenced stream channel and floodplain wetland mosaic in the Wapato Creek watershed. The required mitigation is being performed through the construction of a more highly functioning stream and wetland complex. Temporary impacts are self-mitigating in that the "development" occurring is restoration and creation of natural, functioning systems where little function exists.
2. The applicant cannot avoid the impacts to the proposed project due to the restorative nature of the Permittee-Responsible Advance Mitigation project. In order to provide the stream and wetland complexities, temporary impacts will occur during construction and restoration of the stream and the creation of an advanced mitigation site that will create estuarine riparian wetland areas along a lengthened sinuous stream, and provide higher functioning stream and riparian areas and wetlands intended to be used for future Port project related impacts.

3. The applicant's proposal will result in improvements to a low functioning stream through the rerouting and lengthening of the stream and replanting or restoring the riparian area to a highly functioning stream and wetland complex. The restored riparian system will support threatened and endangered species while providing no net loss of wetland areas when the Port of Tacoma has an unavoidable impact in future development proposals. The construction impacts will be temporary and the resulting system will be preserved in perpetuity through a Conservation Easement or similar instrument that will prevent impacts in the future.
4. The construction of a Permittee-Responsible Advance Mitigation Site is allowed under the Critical Area code provided that future projects that impact wetlands or streams shall follow the avoidance, minimization and mitigation hierarchy first prior to looking at the site for mitigation where impacts have occurred.
5. Under Innovative Mitigation, the restoration and enhancement of the existing stream will create a larger, more diverse and complex habitat area that will be more sustainable and is part of an existing habitat corridor associated with Wapato Creek. The placement of this Permittee-Responsible Advance Mitigation Site will provide long-term protection and management as the Port of Tacoma will continue to oversee its success. The Port of Tacoma has experience with many complex, large habitat restoration areas such as this and the likelihood of success is high. The selection of this site and the proposed restoration is appropriate and needed within the Puyallup-white watershed area as this area has had a significant reduction (98% over the last 150 years) and the regional needs for this type of function is great.
6. The permittee-responsible advance mitigation site will provide a complex, sinuous stream and wetland habitat area and improve water quality that will benefit Commencement Bay and open up additional habitat for both marine and terrestrial fauna. The proposed project will result in a net gain of wetland area and stream length with a restored buffer that will provide a higher level of all functions including stormwater runoff filtration, habitat diversity and increase area, floodplain connection and expansion and visual aesthetics. The proposed restored stream and wetland with additional buffer plantings will not only replace similar functions as those lost, but will provide a functional lift and the value of the stream and wetland complex will also provide enhanced habitat and an aesthetic value to the areas surrounding the mitigation area.
7. The designation of the utility access and the removal of vegetation and placement of gravel are not contained within the proposed buffer "credit". The utility poles are existing at the site and cannot be moved and thus will continue to require repair and maintenance which would likely continue to cause impacts within the vegetated buffer. Two new power poles will be constructed on or near the site. The designation of the area and restoration of the surrounding buffer will provide protection to the restored buffer area. While the removal of vegetation and gravel are considered impacts, the restoration of the remaining buffer accounts and offsets this impact.
8. Based on the above findings and compliance with construction BMP's, the proposal is consistent with the policies of the *TMC 13.11 Critical Areas Preservation Ordinance* with the following recommended conditions.

DECISION

Based upon the above findings and conclusions, the Critical Area Development Permit is **approved**, subject to the following conditions:

Conditions

1. The applicant shall record Notice on Title per *TMC* Section 13.11.280 for the advance mitigation site prior to approval of any development permits.
2. The Port shall provide documentation with the City of Tacoma and City of Fife that all parties agree on jurisdictional boundaries for the Project prior to construction activities associated with the bridge installation. The City of Tacoma permit staff shall be provided a copy of the agreements prior to issuance of any development permits.
3. The applicant shall conduct the site restoration and mitigation in substantial accordance with all of the following documents:
 - Joint Aquatic Resources Permit Application (JARPA)
 - Lower Wapato Creek Habitat Project, Critical Area Report prepared by the Port of Tacoma, May 2020
 - Civil Plans/Drawings
 - SEPA Determination of Non-Significance-encompasses both projects and issued January 3, 2013
 - Draft Advance Mitigation Plan, Lower Wapato Creek Habitat Project prepared by the Port of Tacoma, June 1, 2020. (Note: the draft plan is only draft until it is accepted by all agencies)
4. The applicant shall attend a preconstruction meeting with the SES and Building Inspector prior to the issuance of any development permits for the site.
5. The applicant shall inform the City SES when the plantings will be installed. The applicant shall have a qualified wetland specialist on site during the plant installation. The applicant shall provide to the City a Year 0, or an "as-built", of the vegetation on site following planting along with the associated fee. The City understands that the site creation shall be phased to allow for observance and hydrologic monitoring for appropriate placement of vegetation. Thus, the As-Built (Year 0) Monitoring report shall be provided following site stabilization and planting.
6. The applicant shall provide vegetative maintenance and monitoring of the advance mitigation site for a period of 10 years according to the provisions contained in the Draft Lower Wapato Creek Advance Mitigation Plan. Monitoring reports shall be provided in Years 1, 3, 5, 7, and 10. Monitoring reports shall be provided to the City no later than March 1 of the year following formal monitoring.
7. The applicant shall provide a barricade fence and silt fence along the perimeter of the work area to prevent accidental intrusion into the stream and wetland areas prior to conducting site work. Tree protection fencing shall be installed prior to commencement of site work. The applicant shall ensure that once the development is complete and erosion control is no longer needed, the barricade and silt fence are removed.
8. Permanent fencing such as a split rail fence or similar fence shall be constructed along the outside perimeter of the wetland (or stream) buffer and signage shall be attached to the fence to alert the public of the boundary limits of the Critical Area. The applicant shall use the approved sign template of the City of Tacoma and signs shall be placed approximately every 50 feet where large open areas border the wetland and stream. Additional information signage is permitted as indicated in the Advance Mitigation Plan.
9. A copy of the approved HPA shall be provided to the City of Tacoma prior to the issuance of development permits.

Advisory Notes

1. This permit is only applicable to the proposed verification project as described above and based upon the information submitted by the applicant. Modifications to this proposal and future activities or development within the site may be subject to further review and additional permits as required in accordance with the *Tacoma Municipal Code*.
2. The applicant must obtain other approvals prior to construction as required by other local, state and federal agencies including the Army Corps of Engineers, Department of Ecology and the Washington Department of Fish and Wildlife as applicable.

ORDERED this 1st day of October, 2020.



PETER HUFFMAN, DIRECTOR
PLANNING AND DEVELOPMENT SERVICES DEPARTMENT

FULL DECISION TRANSMITTED this 1st day of October, 2020, by electronic mail to:

Mark Rettmann, Port of Tacoma
Andrew Strobel, Puyallup Tribe of Indians
Russ Blount and Steve Friddle, City of Fife

SUMMARY OF DECISION TRANSMITTED by first class mail or electronic mail to the following:

All property owners within 400 feet of the subject site

Tahoma Audubon Society: Emily Kalnicky

Northeast Tacoma Neighborhood Council: Yvonne McCarty

Puyallup Tribe of Indians: Andrew Strobel, Char Naylor, Brandon Reynon, Carolann Hawks, David Duenas, Jeffrey Thomas, Lisa Anderson, Charlene Matheson, Russ Ladley, Jennifer Keating

Citizens for a Healthy Bay: Melissa Malott, Erin Dilworth

Pierce County Office of the Assessor-Treasurer: Darci Brandvold

Port of Tacoma: Tony Warfield - Senior Manager Environmental and Planning Program

U.S. Army Corps of Engineers - COT WRDA Projects (City of Tacoma Facilities): Attn: Regulatory Branch, CENWS-OD-RG ATTN: Dan Krenz

U.S. Army Corps of Engineers (Pierce County West): Attn: Regulatory Branch, CENWS-OD-RG ATTN: Halie Endicott

U.S. Army Corps of Engineers (Pierce County East): Attn: Regulatory Branch, CENWS-OD-RG ATTN: Jenae Churchill

U.S. Fish & Wildlife Service: Attn: Judy Lantor

Washington Department of Ecology: Shorelands & Environmental Assistance Program - Zach Meyer

Washington Department of Fish and Wildlife: Kelly Still

Washington Department of Fish and Wildlife (Commencement Bay): Liz Bockstiegel

NOTE: Pursuant to RCW 36.70B.130, you are hereby notified that affected property owner(s) receiving this notice of decision may request a change in valuation for property tax purposes consistent with Pierce County's procedure for administrative appeal. To

request a change in value for property tax purposes you must file with the Pierce County Board of Equalization on or before July 1st of the assessment year or within 30 days of the date of notice of value from the Assessor-Treasurer's Office. To contact the board, you may call 253-798-7415 or by e-mail at www.co.pierce.wa.us/boe.

RECONSIDERATION AND APPEALS

RECONSIDERATION:

Any person having standing under the ordinance governing this application and feeling that the decision of the Director is based on errors of procedure or fact may make a written request for review by the Director within fourteen (14) days of the issuance of the written order. The fee for reconsideration is \$260.00. This request shall set forth the alleged errors, and the Director may, after further review, take such further actions as deemed proper, and may render a revised decision.

A request for RECONSIDERATION of the Director's decision in this matter must be filed in writing, via electronic mail, to the staff contact listed on the first page of this document. Filing of the reconsideration shall not be complete until both the reconsideration request and required filing fee are received. THE FEE SHALL BE REFUNDED SHOULD TO THE REQUESTOR, SHOULD THE REQUESTOR PREVAIL. (Pursuant to Section 2.09.020 of the Tacoma Municipal Code, fees for reconsideration shall be waived for qualifying senior citizens and persons who are permanently handicapped who are eligible for tax exemption because of financial status.)

APPEAL TO HEARING EXAMINER:

Any decision of the Director may be appealed by any aggrieved person or entity as defined in Section 13.05.100 of the Tacoma Municipal Code, within fourteen (14) days of the issuance of this decision, or within seven (7) days of the date of issuance of the Director's decision on a reconsideration, to appeal the decision to the Hearing Examiner.

"The Rules of Procedures for Hearings" may be viewed at:

http://cms.cityoftacoma.org/hex/HEX_RulesofProcedureforHearings_ResolutionNo39843_Adopted10.pdf

An appeal to the Hearing Examiner is initiated by filing a Notice of Appeal accompanied by the required filing fee of **\$1,030.00**. Filing of the appeal shall not be complete until both the Notice of Appeal and required filing fee are received. THE FEE SHALL BE REFUNDED TO THE APPELLANT SHOULD THE APPELLANT PREVAIL. (Pursuant to Section 2.09.020 of the Tacoma Municipal Code, fees for appeals shall be waived for qualifying senior citizens and persons who are permanently handicapped who are eligible for tax exemption because of financial status.)

The Notice of Appeal must be submitted in writing, via electronic mail to the staff contact listed on the first page of this document, and shall contain the following:

- (1) A brief statement showing how the appellant is aggrieved or adversely affected.
- (2) A statement of the grounds for the appeal, explaining why the appellant believes the administrative decision is wrong.
- (3) The requested relief, such as reversal or modification of the decision.
- (4) The signature, mailing address and telephone number of the appellant and any representative of the appellant.