

Re: **Type II Critical Area Permit**) **File No. LUP21-083**

Application of:) **FINDINGS,**
City of Port Townsend) **CONCLUSIONS AND**
Discovery Road Project) **FINAL DECISION**

SUMMARY OF APPLICATION AND DECISION

Date: March 24, 2022

Application: Discovery Road Project - The City proposes to reconstruct Discovery Road from Rainier Street to McClellan Street and to add pedestrian and bicycle facilities, stormwater drainage and treatment, lighting, and intersection improvements. A Type II Critical Area Permit is required for unavoidable impacts to 0.033 acres of Category II wetland (Wetland N) and 0.321 acres of buffer associated with both a Category II wetland (Wetland N) and a Category III wetland (Wetland S).

Location. That 0.82-mile section of Discovery Road within the City of Port Townsend, from Rainier Street to Sheridan Street. The project lies within Sections 9 and 10, Township 30 North, Range 1 West.

Staff Contact: Judy Surber, Planning Manager

Decision: The application is **CONDITIONALLY APPROVED.**

After respectful consideration of the above referenced application, the Development Services Director hereby adopts the following Findings, Conclusions and Decision:

FINDINGS OF FACT

Introduction

1. **Application:** On November 4, 2021, City Engineer Laura Parsons P.E., on behalf of the City of Port Townsend Engineering Department, submitted application for a Type II Critical Area permit (LUP21-083) for unavoidable impacts to wetland and wetland buffers associated with the Discovery Road Project. Wetlands are generally located north and south of Discovery Road between Rainier and Eddy Streets (Exhibit 1E, Figure 1 Project Area Extent and Wetland Areas).

2. **Proposal:** The Discovery Road Project proposes street improvements to increase pedestrian and cyclist safety by improving Discovery Road from the roundabout at Rainier Street to Salish Coast Elementary at McClellan Street (Exhibit 1B. Critical Areas Permit Application, 3 90% Design Set). Improvements include a two-way bikeway, sidewalks, curbs, curb ramps, enhanced crosswalks, stormwater drainage and treatment, lighting, and intersection improvements. Stormwater facilities are designed to infiltrate 100% of the runoff from the project's impervious surfaces. A bioretention swale will encroach into the wetland buffer on the north side of Discovery Road. Overflow will be collected and conveyed to the wetland on the south side.

The roadway centerline will be shifted approximately five feet northwesterly, still within the existing right-of-way, to accommodate the new bicycle and pedestrian facilities on the south side of Discovery Road. The roadway pavement width (for one travel lane in each direction) remains unchanged at approximately 22-feet. This changes the offset from center of the closest lane to the closest residence by about 10 percent (from approximately 45 feet to approximately 40-feet). Landscape strips will be provided between the roadway and the bicycle/pedestrian lanes. Conceptual plans call for a combination of grassy swales, street trees and clusters of ornamentals. Existing overhead utility lines will be placed underground.

3. **Existing Conditions:** This 0.82-mile section of Discovery Road, between Rainier and Sheridan Streets, is designated in the City's Engineering Design Standards (EDS) as a major collector. Currently, it provides two travel lanes, however, most of the road segment lacks bicycle and pedestrian improvements. Salish Coast Elementary, zoned P-I Public Infrastructure lies at the corner of Discovery and Grant Streets. The rest of the corridor is a mix of residential development and undeveloped land zoned for both single-family (R-II) and medium and high-density multi-family (R-III and R-IV) development. Forested wetlands abutting Discovery Road are generally located between Rainier and Eddy Streets. The qualified wetlands consultant, Lisa Palazzi of SCJ Alliance, has identified two wetlands adjacent to Discovery Road(Exhibit 1E) that will be impacted by the proposed improvements.
4. On March 10, 2022, the Department of Ecology (Ecology) received the Corps of Engineers' letter authorizing the project under Nationwide Permit #14. Ecology confirmed that the work complies with Ecology's Section 401 Water Quality Certification (WQC) requirements and an individual WQC is not required because the project is covered under Ecology's programmatic WQC for the Nationwide Program. (Attachment 7, Ecology Email)

Procedural

Administrative Review Required

5. Consistent with Port Townsend Municipal Code¹, all Critical Area permit applications that impact wetlands are classified as Type II permits. Type II permits require a Notice of Application comment period followed by administrative review and decision by the DSD Director.² No open-record public hearing is required for Type II permits unless the Director's decision is appealed. Appeals of Type II decisions are heard by the City's Hearing Examiner as outlined at the end of this decision.

State Environmental Policy Act (SEPA) Review

6. Minor road improvements undertaken wholly or partly on lands covered by water (i.e., impacting wetlands) are subject to review under the State Environmental Policy Act (SEPA).³ On February 2, 2022, the City issued a SEPA Mitigated Determination of Non-Significance and adopted the January 4, 2022, NEPA Categorical Exclusion (CE) issued by the Washington State Department of Transportation in its entirety (Exhibit 1D). On 2/28/22, the City issued a Final MDNS with revised mitigation measures to address comments received from the Department of Ecology.

Public Notice

7. The City's critical areas (CA) application was received November 4, 2021 and deemed complete for processing on December 21, 2021. In accordance with the city's noticing requirements⁴, Notice of Application and Pending SEPA Threshold Determination was posted on-site and mailed to adjacent property owners within 300 feet, consistent with the public notice requirements of Section 20.01.160 of the Port Townsend Municipal Code (PTMC). Notice was published on-line December 29, 2021; however, notice in the paper was delayed due to inclement weather. Notice was published in the January 5, 2022, and the initial 20-day comment period extended to January 25, 2022 (Exhibit 1G, Public Notice).
8. Two (2) public comments (Exhibit 1H – SEPA MDNS, Public Comment) were received in response to the Notice of Application and Pending SEPA Threshold Determination. Letters from Ms. Quinn and Mr. Bertsch provide design suggestions (e.g., speed tables and landscaping). Neither raises concerns regarding impacts/mitigation. Comment letters have been forwarded to Engineering for consideration.

Substantive Analysis

Critical Areas (PTMC 19.05); Wetland Report & Mitigation Plan; Applicable Performance Standards

¹ PTMC 20.01.040, Table 1 Permits/Decisions

² PTMC 20.01.040, Table 2- Action Type

³ WAC 197-11-800(2)(ix)

⁴ PTMC 20.01.150

9. Port Townsend's Critical Area regulations (PTMC 19.05) contain general performance standards that are specific to each critical area type (e.g., wetlands, habitat, geologically hazardous, etc.). PTMC 19.05 also has a set of overarching standards that apply to all development regardless of the associated critical area type. As the City's proposal involves development and/or alteration of a site containing confirmed wetlands, the work must demonstrate compliance with the overall performance standards of PTMC 19.05.060 and the geo-hazard specific standards of PTMC 19.05.110.D.
10. The submitted application includes a Wetland Report and Mitigation Plan and a Mitigation Planting Plan prepared by a qualified wetland consultant (Exhibits 1E and 4). The Director finds the reports consistent with the Critical Area (CA) Ordinance⁵ and accepts the analysis as additional Findings of this Type II decision.
11. In Exhibit 6 Critical Areas Performance Standards Checklist, the project is analyzed for consistency with all applicable CA standards. The Director's analysis in Exhibit 6 constitutes additional Findings of this Type II decision and, in sum, the project has demonstrated compliance with all applicable polices and performance standards of PTMC 19.05.
12. Summary of Impacts: The Discovery Road Project will impact two (2) wetlands: Wetland N, on the north side of Discovery Road and Wetland S on the southside. These features and their anticipated impacts are detailed in Exhibit 1E. Impacts are summarized in the report as follows:

The project impacts will occur only within the public street ROW, but some of the adjacent wetlands on the NW side of the road seep into the outer edge of the ROW at five locations. There is no way to provide sidewalks and bike lanes along this corridor without impacts to wetlands and their buffers. However, impacts were minimized, resulting in 0.033 acres of wetland impacts in Wetland N, and 0.321 acres of the 150 ft wetland buffer impacts for both Wetland N and Wetland S within the ROW.

Although the majority of Wetland N outside of the ROW is forested, the wetland and buffer areas within the ROW are mostly vegetated by herbaceous vegetation or small shrubs. Thus, project impacts are limited to portions of the wetlands and buffers already impacted by proximity to the road and standard road use and maintenance activities, such as periodic mowing of the ROW to preserve safety view corridors and to clean out ditches, as well as narrow public paths that are worn into some of the vegetated roadway margins.

⁵ PTMC 19.05.110 K Special Reports

12. Summary of Mitigation: Wetland mitigation ratios are contained in PTMC Table 19.05.110(B). Impacts to wetland buffers may be mitigated by preservation of wetland areas in combination with other forms of mitigation such as enhancement at a minimum of 1:1⁶. To mitigate for 0.033 acres of permanent Palustrine Forested, Depressional Category II wetland impacts, between 0.4 (minimum required) and 0.62 acres of wetland will be enhanced (a 12:1 ratio). To mitigate for 0.321 acres of buffer impacts, 0.36 acres of wetland buffer will be enhanced (slightly greater than a 1:1 ratio) – a total of 0.98 acres. This work will be on City owned Block 14 of the Phillips Addition, abutting Discovery Road on the north and south (Exhibit 5 Mitigation Plan). Work will include removal of weedy vegetation, invasive species, and garbage and subsequent interplanting of native plant species in the target mitigation area. Fencing and signage is proposed to keep people out of the mitigation area.

Any wetland or buffer areas with temporary impacts from construction will be revegetated with native plants common to the surrounding area.

The proposed mitigation plan and mitigation planting plan (Exhibits 1E and 5) demonstrate that the proposal is adequate to protect critical areas functions and values. Proposed mitigation ratios are consistent with the City's Compensatory Mitigation Requirements.⁷

CONCLUSIONS

1. The Discovery Road Project will result in unavoidable impacts to wetland and wetland buffer which are regulated under the City's adopted Critical Area code (See Finding of Fact (FOF) 1, 4 and 11 above).
2. The project is subject to review under the State Environmental Policy Act (SEPA). The City has issued a SEPA Mitigated Determination of Non-Significance and Adoption of Existing NEPA Documents (FOF #5 above).
3. The applicant has provided a report from a qualified consultant that delineates the wetlands, identifies applicable buffers, assess impacts, and recommends mitigation measures to protect and mitigate impacts to critical area functions and values consistent with best available science (Exhibits 1E, 5 and 6; See FOF # 9-12 above).
4. Conditions have been applied to ensure consistency with all laws and ordinances of the City of Port Townsend, including but not limited to the policies and performance standards for Critical Areas contained in PTMC 19.05 and Chapter 5, Clearing, Grading and Erosion Control

⁶ PMTC 19.05.110(H)8.

⁷ PTMC 19.05.110 H

of the Engineering Design Standards Manual which requires implementation of BMPs to control erosion and sedimentation (See Exhibit 6 and FOF #12 above).

DECISION

Based on the foregoing Findings and Conclusions, a Type II Critical Area Permit application by the City of Port Townsend for the Discovery Road Project (LUP21-083) as described above is **APPROVED** subject to compliance with the following **CONDITIONS**:

GENERAL

1. The proposal shall comply with the Mitigation Measures set forth in the Final SEPA Mitigated Determination of NonSignificance (LUP21-084).
2. Construction activities shall be completed in substantial conformance with the Discovery Road Plans (Exhibit 3), Wetland Mitigation Report (Exhibit 1E) and Mitigation Plan (Exhibit 5), including any additional conditions established by this permit, any other city approvals obtained for the project (i.e., building permit, clearing, and grading permit, etc.), and any state/federal permitting requirements.
3. All construction activities, including undergrounding of utilities, shall be limited to the existing Discovery Road ROW.
4. The DSD Director may approve minor modifications to the approved plans provided they conform to the analysis and conclusions provided herein. If the plans are significantly modified and/or contingency plans are required, the revised plans shall require an Addendum to the Critical Areas permit which shall be distributed to parties of record.

PRIOR TO CONSTRUCTION

5. Pursuant to PTMC 19.05.040.E(j)(i), the applicant shall:
 - i. Mark, via flagging in the field, the outer extent of all construction with wetland buffers (as identified in Exhibit 1E) for Wetlands N and S. Flagging must be confirmed by the applicant's wetland professional and be sufficient to clearly allow for buffer demarcation and protection with silt fencing and/or high visibility fencing (whichever is deemed most appropriate by city).

- ii. Schedule a preconstruction meeting at the development site. The meeting is to be attended by the applicant (Public Works staff), the applicant's wetlands consultant, earth moving contractor, and DSD staff, to review specific project details and methods of construction. Field markings shall be verified by staff.
 - iii. Install erosion control measures (silt fence) and/or high visibility fencing in accordance with the construction plans (Exhibit 3). Depending upon the location, said measures may require sequencing of the clearing and grading work to allow some earthwork to occur prior to formalizing the buffer boundary fencing. Said sequencing shall be determined via discussion between the parties (applicant, wetlands consultant, contractor, and staff) at the pre-construction meeting. If necessary, a brief written summary of the agreed upon sequencing shall be prepared by Engineering staff and provided to the contractor prior to beginning work.
8. The applicant or his/her designee shall be responsible for maintenance of the site, including maintenance of field markings, fencing and temporary erosion control devices. Additional best management practices shall be implemented as necessary to control runoff and/or sedimentation from the site.
9. Upon completion of construction activities, the applicant shall stabilize any exposed soils in accordance with the recommendations of the landscape and re-vegetation plans (Exhibits 4 and 5).

MAINTENANCE AND MITIGATION MONITORING

10. The Street Development permit/Minor Improvement permits for franchise utilities constructed in the right-of-way adjacent to the wetland/wetland buffer (e.g., generally Discovery Road between Eddy and Rainier Streets) shall include conditions to address corridor maintenance in a manner that protects the regulated wetland and buffer environment. Measures may include but are not limited to:
 - a. Spray painting or sandblasting of utility equipment may only be allowed if appropriate containment measures are used. Lead-based paints shall not be used.
 - b. No pesticides, herbicides or fertilizers may be used in wetland areas or their buffers except those approved by the U.S. Environmental Protection Agency (EPA) and Washington Department of Ecology. Where approved, federal, state, and local

regulations of pesticides and water quality must be followed, including requirements for pesticide applicator licensing from the Washington State Department of Agriculture.

11. Mitigation and Monitoring shall be carried out in accordance with the Wetland Report and Mitigation Plan and Mitigation Planting Plan (Exhibits 1E and 5). Mitigation shall occur within city-owned wetlands/wetland buffers on Block 14 of the Phillips Addition. Detailed mitigation instructions are provided in the Mitigation Planting Plan and are not repeated here.
12. Applicant shall retain a qualified wetlands specialist or biologist to serve as the Monitoring Project Lead to carry out the responsibilities specified in the Mitigation Planting Plan (Exhibit 5) including removal of invasives/weedy species, overseeing planting, post-installation inspection and post-installation completion report. The MPL shall establish photo points to be used in the monitoring and define monitoring transects.
13. Monitoring and maintenance, as detailed in the Mitigation Planting Plan (Exhibit 5), may be completed by City of Port Townsend staff or their assignees. Annual progress reports shall be submitted to the DSD. Monitoring shall occur in the **early fall**.
14. Consistent with the associated ACOE 404 permit, mitigation monitoring period shall be for a period of ten years from the date of the initial planting unless an extended period is found necessary to achieve success. Annual monitoring reports shall be due to the City no later than **December 31 of each year for ten years**.
15. The wetland mitigation will be considered successful when the following has been achieved on the mitigation parcels: a minimum of 80% survival of new plants, and/or 80% cover by native plants. There shall be no more than 5% cover of Himalayan blackberry and no Scots broom, English ivy, or poison hemlock in the mitigation planting areas.
16. Contingency Plans – If monitoring results indicate that any of the performance standards set forth in the Mitigation Planting Plan (Exhibit 5) are not being met, a contingency plan appropriate to conditions causing the failure will be developed at the time and will be implemented with approval from permitting agencies.
17. To discourage future impacts in replanted wetland and buffer areas, the applicant shall install wetland buffer fencing and signage along the perimeter of the mitigation areas. The standard fence and sign installation and frequency shall be coordinated between DSD staff and the applicant. Fencing may be waived if existing vegetation provides adequate barrier (e.g., rose thicket between mitigation area and trail). In general, the signs should utilize

short, galvanized posts (4' in height above ground; 1"-2" O.D.) mounted with a standard format City Critical Area sign face (8" x 11" in size).

TERMS OF CONSTRUCTION TIMING/ EXPIRATION

18. Construction may not begin until the appeal period has expired or, if an appeal is filed, until all review proceedings are terminated. (19.05.050G (4)).
19. As provided for by PTMC 19.05.050.B (9) (2), the DSD Director may establish a shorter or longer period of validity beyond the standard time allotted of one (1) year. In this case, as it involves a city-initiated public project requiring federal, state, and local permitting, DSD Director approves a three-year expiration date.



Judy Surber, Interim Director (Planning)
Development Services Department

3/24/22
Date

EXHIBITS

Exhibit 1 SEPA Mitigated Determination of Nonsignificance

- 1A: SEPA Application (LUP21-084)
- 1B: Critical Areas Application (LUP21-083)
- 1C: 30% Submittal Design Set prepared by SCJ Alliance (November 8, 2021)
- 1D: NEPA Categorical Exclusion (approved January 4, 2022)
- 1E: Wetland Report and Mitigation Plan prepared by SCJ Alliance (October 2021)
- 1F: Hazardous Materials Technical Memo was prepared by SCJ Alliance (Federal Aid Number: 7627(001))
- 1G: Notice of Application and Pending SEPA Threshold Determination (December 29, 2021)
- 1H: Public Comment Letters
- 1 I: Email from Bryan Murphie, WDFW Wildlife Biologist (January 25, 2022)

Exhibit 2 Final SEPA Mitigated Determination of NonSignificance

- 2A Ecology comment letter (February 17, 2022)

Exhibit 3 90% Submittal Design Set prepared by SCJ Alliance (February 23, 2022)

- 3A 90% with wetland/wetland buffers highlighted

Exhibit 4 Landscaping Plans

Exhibit 5 Wetland Mitigation Planting Plan Technical Memo, SCJ Alliance, (February 18, 2022)

- Exhibit 6 Critical Area Performance Standards Checklist
- Exhibit 7 Ecology Email regarding NWP and WQ Certification (March 10, 2022)

APPEALS

Per Table 2 of Subsection 20.01.040 PTMC, Type II permits are afforded an administrative appeal to the City's hearing examiner; provided, that a written appeal in conformance with Chapter 1.14 PTMC is filed within 14 calendar days after the notice of the decision. The date on which a decision is deemed issued is 3 days after a written decision is mailed by the City. The administrative appeal period ends April 7, 2022.