

Type III Staff Report and Recommendation

Project Name: 10th Avenue Bridge

Case Number: HAB2016-00059; WET2016-00053

Location: NE 10th Ave north of NE 154th St. extending to NE 164th St

Request: Public Interest Exception approval in Priority Habitat and Wetland Permit approval for road and bridge construction to extend NE 10th Avenue over Whipple Creek

Applicant: Troy Pierce
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Property Owner: Same as applicant

Recommendation

Approval, with Conditions

Wetland and Habitat Review Manager's Initials: _____

Date issued: October 26, 2016

Hearing Date: November 10, 2016

Permit Type

Habitat (40.440) Wetland (40.450)

Monitoring Period and Schedule:

10 year monitoring; reports due by November 30 following the first growing season.

Revised 6/10/16



Community Development
1300 Franklin Street, Vancouver, Washington
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For an alternate format,
contact the Clark County
ADA Compliance Office.
Phone: (360) 397-2322
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County Review Staff

Department/Program	Name	Ext.	Email Address
Wetland and Habitat Review (360) 397-2375			
Review Manager	Brent Davis	4152	brent.davis@clark.wa.gov
Biologist	Lance Watt	5601	lance.watt@clark.wa.gov

Applicable Laws

Clark County Code (CCC) Chapter 40.440 (Habitat Conservation), Chapter 40.450 (Wetland Protection), Section 40.510.020 (Type II Process), and Chapter 40.570 (SEPA).

Neighborhood Association and Contact

The North Salmon Creek Neighborhood Association	Stephan B. Abramson, Ph.D.	(360) 574-3363 abramson@lifescipartners.net
The Fairgrounds Neighborhood Association	Bridget Schwarz, president	(360) 573-5873 bridget@bridge-i-t.com

Vesting

An application is reviewed against the subdivision, zoning, transportation, stormwater and other land development codes in effect at the time a fully complete application for preliminary approval is submitted. If a pre-application conference is required, the application shall earlier contingently vest on the date the fully complete pre-application is filed.

The fully complete application was submitted on August 10, 2016, and determined to be fully complete on August 29, 2016. Given these facts, the application is vested on August 10, 2016. This vesting date only applies to the applicable standards identified in this decision.

There are no disputes regarding vesting.

Time Limits

The application was determined to be fully complete on August 29, 2016. Therefore, the code requirement for issuing a decision within 92 days lapses on November 29, 2016. The state requirement for issuing a decision within 120 calendar days, lapses on December 27, 2016.

Public Notice

Notice of this application was mailed to the applicant, The North Salmon Creek and the Fairgrounds Neighborhood Associations, and property owners within 300 ft. feet of the site on October 26, 2016.

Summary of Public Comments

None known at the time of writing this report

Project Overview

The purpose of the proposed NE 10th Avenue bridge project is to complete a portion of the planned transportation network for this region, between NE 154th Street and NE 164th Street, in order to improve local circulation west of Interstate 5 (I-5), enhance public health and safety, and support existing land use and zoning. The project is needed to improve local circulation and connectivity for motorized and non-motorized uses because there is a gap in the transportation corridor and grid system at Whipple Creek. The existing roads leading to this gap do not meet County roadway design standards and the circulation and access to local

recreation facilities such as the Clark County Fairgrounds, regional parks, and the Sleep Country Amphitheater are limited. Construction is anticipated to start in 2017 or 2018 and is expected to take approximately two years to construct. The applicant has applied for a Public Interest Exception under the Habitat Conservation Ordinance due to proposed impacts to both riparian and non-riparian (Biodiversity Area and Corridor) habitat areas. The applicant has coordinated with The National Marine Fisheries Service and the Washington Department of Fish and Wildlife, which have approved the August 2015 mitigation plan and have issued their respective permits. The applicant also has a Final SEPA determination of non-significance dated September 30, 2015 for the proposed project (Exhibit 2). The applicant has also coordinated with the U.S. Army Corps of Engineers and the Washington Department of Ecology for wetland and stream related impacts under the Clean Water Act.

The proposed project occurs on both the north and south sides of Whipple Creek Canyon. Whipple Creek is designated as a Type F stream by the Washington Department of Natural Resources; a Type Ns stream (non-fish bearing, seasonal stream) will also be impacted by the proposed development near the intersection of 164th Street and 10th Avenue. County staff confirmed the water typing and the Ordinary High Water Mark (OHWM) for the streams during a site visit. Per the Habitat Conservation Ordinance, the streams are considered priority riparian habitat and are afforded protection of a riparian habitat conservation zone (HCZ) to protect ecological and water quality functions. The riparian HCZ for the streams extend outward from the OHWM to the edge of the 100 year floodplain, or to a set distance based on stream type (75 feet for the Type Ns stream and 200 feet for the Type F stream), whichever is greater; in this instance the 200 foot HCZ is greater for the Type F stream and the 75 foot HCZ is greater for the Type Ns stream. The Washington Department of Fish and Wildlife has mapped portions of the north and south sides of Whipple Creek as priority non-riparian habitat (Biodiversity Area and Corridors). Biodiversity Area and Corridors are defined by the Washington Department of Fish and Wildlife as areas that have been identified as biologically diverse through a scientifically based assessment conducted over a landscape scale for various species of fish and wildlife. They also include areas within a city or urban growth area containing habitat that is valuable to fish or wildlife and is mostly comprised of native vegetation. Relative to other vegetated areas in the same city or Urban Growth Area, the mapped areas are vertically diverse (e.g. multiple canopy layers, snags, or downed wood), horizontally diverse (e.g. contains a mosaic of native habitats), or supports a diverse community of species as identified by a qualified professional. These areas may have more limited wildlife functions than other priority habitat areas due to the general nature and constraints of these sites in that they are often isolated or surrounded by highly urbanized lands. The corridors are areas of relatively undisturbed and unbroken tracts of vegetation that connect fish and wildlife habitat conservation areas, priority habitats, areas identified as biologically diverse, or valuable habitats within a city or Urban Growth Area. Portions of the forested slopes within Whipple Creek Canyon meet this criterion.

The proposed completion of the NE 10th Avenue corridor in this area will provide a critical connecting link in the transportation system for the Vancouver Urban Growth Area. No complete North-South corridor between NE/NW 139th Street and NE/NW 179th Street exists in this vicinity west of I-5. The NE 10th Avenue project will include a new bridge over Whipple Creek that will complete the local transportation grid and reduce the need for local traffic to use the interstate to make local trips between NE 139th and NE 179th Streets. The completed grid system will offer an alternative transportation route and improve ingress and egress to regional parks and recreation facilities.

The existing roadway section between 154th Street and 164th Street is narrow, with the unstriped width varying between 10 and 20 feet, with little or no shoulders; additionally there are no curb, gutter, sidewalk, or drainage facilities. The roadway section will be improved to meet County roadway design standards. The work will also include associated stormwater and drainage improvements. The project includes improvements to the existing sections of NE 10th Avenue between NE 154th and 164th Streets to meet current standards, including widening for two travel lanes, a center turn lane, bicycle lanes and sidewalks, totaling approximately 0.6 miles of new road to complete NE 10th Avenue. The new bridge would consist of two 12-foot wide lanes, two 6 foot wide bicycle lanes, and two 6 foot wide raised sidewalks plus 6-inch wide curbs and bridge barriers. Facilities would be constructed to manage and treat stormwater runoff related to this project.

The project is needed to enhance public health and safety because local emergency services are hindered by limited access to residences and businesses in this area west of I-5; there is currently only one direct access to the Clark County Fairgrounds which is an emergency logistics facility. The Clark County Public Safety Complex, located immediately west of the Clark County Fairgrounds and houses the Sheriff's office West Precinct, the Clark County Fire Marshal's Office and a volunteer fire station shared by three Fire Districts (Districts 6, 11, and 12). South of the project site, Fire Station 63 serves the entire NE 10th Avenue project area. Emergency responders from this station currently are required to take NW 11th Avenue or I-5 to access the north end of their service area; the new connection should improve emergency response times for all local service providers in the vicinity. The County has been tasked by the State to provide a secondary access route which meets current roadway standards, to the Fairgrounds which has two State emergency designations; first as a primary logistics staging area for Washington State Homeland Security Region 4 and as a Key Emergency Planning Location for local emergencies. The proposed 10th Avenue project will provide the required secondary access route. Additionally, because there is no sidewalk or bike lane, both pedestrians and bicyclists currently use the existing roadway for travel, which is narrow and does not meet current standards. The NE 10th Avenue project will construct the needed bike lanes and sidewalks for the length of the project and improve motorist and non-motorist safety.

The project is also needed to support the existing land use defined in Clark County's Comprehensive Growth Management Plan and the adopted zoning designations in the Clark County Code because the existing zoning for the area is light industrial and business park and currently the access is limited for existing commercial and industrial users in the area due to substandard roads and low overpasses below NE 179th Street. Clark County's adopted Comprehensive Growth Plan designates the land within the project limits for light industrial and business park uses. The project is located within the Vancouver Urban growth Area, an area designated for higher density urban development. The proposed project is consistent with and supports the land uses within these designations. This project is included in the adopted Metropolitan Transportation Plan as well as the Regional Travel Demand Model. The NE 10th Avenue project has also been included in the Clark County Transportation Capital Facilities Plan since 2004 and in the County's Transportation Improvement Plan since 2005. The proposed project will improve access for users in two ways. First, access will be provided to the NE 10th Avenue Corridor from both the north at the 179th Street Interchange (which has current height deficiencies at 14 feet, 5 inches) and from the south at the NE 139th Street interchange. Presently parcels in the corridor are accessible only from one direction or the other. Second, access to the parcels will be improved by widening the road and adding a center left turn land, facilitating safer turns for both trucks and cars. Utility connections, such as

sanitary sewer, water, etc., are planned for the future but are not now widely available in the area. The 10th Avenue project will allow utility purveyors to provide infrastructure improvements needed to support the Comprehensive Growth Plan by installing or attaching their facilities on the bridge.

The proposed corridor consists of existing roadway and/or driveway, maintained right of way and lawn, private residences, commercial and light industrial operations, and vegetated slopes. The project is applying for a Public Interest Exception for habitat and wetland impacts related to construction of the proposed road, bridge, and associated stormwater/utility structures. The bridge has been designed to completely span Whipple Creek, thus avoiding physical alteration of the creek's aquatic environment and associated floodplain habitat; additional impacts have been minimized through the design process. The bridge will, however, have temporary and permanent impacts to the riparian habitat conservation zone of Whipple Creek and to the Non-riparian Biodiversity Area and Corridor designated by the Washington Department of Fish and Wildlife. The impacts to the Whipple Creek priority Habitat Areas are primarily due to the construction of the bridge, erecting temporary work platforms and access roads, widening the existing NE 10th Avenue roadway, and construction of stormwater pipes and outfalls, and the construction outfalls. Vegetation impacts within the riparian HCZ of the Type Ns stream include removal of vegetation to widen the existing NE 10th Avenue roadway, replace a culvert, construct a stormwater facility, build stormwater pipes and outfalls, and provide outfall dissipation pads within the creek.

The Habitat Conservation Ordinance has performance standards which require substantial maintenance of existing habitat functions and values, and minimization of habitat alteration beyond what is necessary to complete the project (CCC 40.440.020.A.2). This project will require the removal of all riparian vegetation along 193 linear feet of the Whipple Creek shoreline on the north bank of Whipple Creek and 225 linear feet along the south bank; the proposed bridge is 52 feet wide. The removal of vegetation beyond the width of the permanent bridge structure is necessary to construct temporary work platforms and access roads on each side of Whipple Creek Canyon in order to build the bridge. The project will result in 3.75 acres of impacts to riparian and non-riparian habitats within the project footprint consisting of 1 acre of forest, 1.13 acres of scrub/shrub habitat, and 1.63 acres of open grassland with priority habitat areas. The narrative notes, in total, the project will permanently impact 1.11 acre of the riparian HCZ for both streams, including 0.08 acres of Biodiversity Area and Corridor Impact. The narrative notes the project will temporarily impact 2.64 acres of riparian HCZ, including 0.37 acres of Biodiversity Area and Corridor.

Forested impacts within the riparian and non-riparian (Biodiversity Area and Corridor) are considered permanent impacts due to the amount of time it takes to replace lost ecological functions. Impacts to habitat functions as a result of removing trees and other woody plant species include, but are not limited to, large woody debris recruitment, microclimate and stream temperature regulation, streambank stability, nutrient cycling, fish and wildlife cover, and nesting, perching, and roosting habitat for birds. The applicant proposes 7.22 acres of planting and 1.68 acres of riparian zone averaging as mitigation, however they note that this will not be adequate to maintain the functions and values of forested riparian vegetation for many years. Thus, the applicant is applying for the public interest exception under the Habitat Conservation Ordinance (CCC 40.440.020.B.4) which states this chapter shall not be used to deny a development proposal from a public agency or utility if there is not practical alternative to the proposed project with less impact on the habitat area, and the ability of the public agency or utility to provide services to the public would be unreasonably restricted. The applicant has

indicated that multiple alternative locations were considered for a crossing. The alternative chosen was a compromise between minimizing environmental impacts, reducing permitting timelines, limiting construction costs, and minimizing long-term maintenance efforts all while still providing safe driving conditions.

The impacts to the Whipple Creek priority Habitat Areas are primarily due to the construction of the bridge, erecting temporary work platforms and access roads, widening the existing NE 10th Avenue roadway, and construction of stormwater pipes and outfalls. and the construction outfalls. Vegetation impacts within the riparian HCZ of the Type Ns stream include removal of vegetation to widen the existing NE 10th Avenue roadway, replace a culvert, construct a stormwater facility, build stormwater pipes and outfalls, and provide outfall dissipation pads within the creek. The narrative notes, in total, the project will permanently impact 1.11 acre of the riparian HCZ for both streams, including 0.08 acres of Biodiversity Area and Corridor Impact. The narrative notes the project will temporarily impact 2.64 acres or riparian HCZ, including 0.37 acres of Biodiversity Area and Corridor. Forested riparian and Biodiversity Area impacts are considered permanent impacts given the amount of time required to replace habitat ecological functions; Biodiversity Area and Corridor is considered irreplaceable within the lifespan of the proposed mitigation.

Major Issues

Only the major issues, errors in the development proposal, or justification for any conditions of approval are discussed below. Staff finds that all other aspects of this proposed development comply with the applicable code requirements and, therefore, are not discussed below.

Habitat Conservation (CCC 40.440)

The purpose of the HCO is to further the goal of no net loss of habitat functions and values within designated habitat areas by protecting environmentally distinct, fragile and valuable fish and wildlife habitat areas for present and future generations, while also allowing for reasonable use of private property. This chapter intends to conserve the functional integrity of the habitats needed to perpetually support fish and wildlife populations.

Finding 1 - Two streams are mapped by the Washington Department of Natural Resources within the proposed project area. Whipple Creek is designated as a Type F (fish bearing) stream by the Washington Department of Natural Resources; a Type Ns stream (non-fish bearing, seasonal stream) will also be impacted by the proposed development near the intersection of 164th Street and 10th Avenue. The proposed roadway and bridge corridor consists of existing roadway and/or driveway, maintained road and powerline right of way, lawn, private residences, commercial and light industrial operations, and vegetated slopes. The vegetated slopes of Whipple Creek are in poor condition and consist of large areas of open grass with patches of blackberry (*Rubus armeniacus*), sword fern (*Polystichum munitum*), and scattered individual trees including Oregon ash (*Fraxinus latifolia*), willow (*Salix* sp.) and red alder (*Alnus rubra*). Farther from the right of way and to the west, the buffer quality improves and includes western red cedar (*Thuja plicata*), big leaf maple (*Acer macrophyllum*), vine maple (*Acer circinatum*), sword fern, and lady fern (*Athyrium filix-femina*); sections of the Whipple Creek canyon designated as Biodiversity Area and Corridor have western red cedar, Douglas fir (*Pseudotsuga menziesii*), big-leaf maple, red alder, Oregon ash, with and understory of snowberry (*Symphoricarpos albus*), vine maple, twinberry

(*Lonicera involucrata*), elderberry (*Sambucus* sp.), beaked hazelnut (*Corylus cornuta*), Indian plum (*Oemleria cerasiformis*), sword fern, large-leaf avens (*Geum macrophyllum*), and fringe cup (*Tellima grandiflora*).

- Finding 2** - The impacts to the Whipple Creek priority riparian HCZ and Biodiversity Area and Corridor are primarily due to the construction of the bridge, erecting temporary work platforms and access roads, widening the existing 10th Avenue roadway, construction of stormwater pipes and outfalls, and the construction outfalls.
- Finding 3** - Vegetation impacts within the riparian HCZ of the Type Ns stream include removal of vegetation to widen the existing NE 10th Avenue roadway, replace a culvert, construct a stormwater facility, build stormwater pipes and outfalls, and provide outfall dissipation pads within the creek.
- Finding 4** - The applicant has provided a Habitat Mitigation Plan dated August 13, 2015 prepared by ESA Vigil-Agrimis which identifies the location and classification of the streams within the project corridor. County staff conducted a site visit and confirmed the stream ratings and the Ordinary High Water Mark (OHWM) for the streams.
- Finding 5** - Per the Habitat Conservation Ordinance, the streams are considered priority riparian habitat and are afforded protection of a riparian habitat conservation zone (HCZ) to protect ecological and water quality functions. The riparian HCZ for the streams extend outward from the OHWM to the edge of the 100 year floodplain, or to a set distance based on stream type (75 feet for the Type Ns stream and 200 feet for the Type F stream), whichever is greater; in this instance the 200 foot HCZ is greater for the Type F stream and the 75 foot HCZ is greater for the Type Ns stream.
- Finding 6** - The Washington Department of Fish and Wildlife has mapped portions of the north and south sides of Whipple Creek canyon as priority non-riparian habitat (Biodiversity Area and Corridor). Biodiversity Area and Corridors are defined by the Washington Department of Fish and Wildlife as areas that have been identified as biologically diverse through a scientifically based assessment conducted over a landscape scale for various species of fish and wildlife. They also include areas within a city or urban growth area and contain habitat that is valuable to fish or wildlife and is mostly comprised of native vegetation. Relative to other vegetated areas in the same city or Urban Growth Area, the mapped areas are vertically diverse (e.g. multiple canopy layers, snags, or downed wood), horizontally diverse (e.g. contains a mosaic of native habitats), or supports a diverse community of species as identified by a qualified professional. These areas may have more limited wildlife functions than other priority habitat areas due to the general nature and constraints of these sites in that they are often isolated or surrounded by highly urbanized lands. The corridors are areas of relatively undisturbed and unbroken tracts of vegetation that connect fish and wildlife habitat conservation areas, priority habitats, areas identified as biologically diverse, or valuable habitats within a city or Urban Growth Area. Portions of the forested slopes within Whipple Creek Canyon meet this criterion, however areas which currently are lawn,

have a cleared understory, or have been cleared within the powerline right of way lack the vertical and horizontal diversity do not meet the criteria.

- Finding 7 -** The applicant has provided a Habitat Mitigation Plan dated August 13, 2015 prepared by ESA Vigil-Agrimis and a supplemental habitat mitigation plan dated August 2, 2016 prepared by Clark County Public Works which identify the location of the non-riparian habitat within the proposed project area. County staff conducted a site visit and confirmed the location of the Biodiversity Area and Habitat within the project corridor. The Washington Department of Fish and Wildlife indicate that they verified the locations of the biodiversity areas within the August 2015 mitigation plan (Exhibit 3).
- Finding 8 -** The proposed project will impact approximately 3.75 acres of riparian habitat consisting of approximately 0.99 acres of forest (0.16 acres permanent impact and 0.83 acres of temporary impact), 1.13 acres of scrub/shrub habitat (0.14 acres permanent impact and 0.99 acres of temporary impact), and 1.63 acres of open grassland (0.81 acres permanent impact and 0.82 acres temporary impact) within priority habitat areas.
- Finding 9 -** The Habitat Mitigation plan narrative notes the project will permanently impact 1.11 acres of the riparian HCZ for both streams (0.67 acres of permanent impact on the Type Ns stream and 0.44 acres on the Type F stream); this includes 0.08 acres of Biodiversity Area and Corridor impact within the Type F riparian HCZ. The narrative notes the project will temporarily impact 2.64 acres of riparian HCZ (0.86 acres on the Type Ns stream and 1.78 acres on the Type F stream); this includes 0.37 acres of Biodiversity Area and Corridor impact.
- Finding 10 -** Ordinarily, impacts to Biodiversity Area and Corridors are considered irreplaceable and would not be permitted under the Habitat Conservation Ordinance. The Reasonable Use Assurances clause (CCC 40.440.020.B.4) indicates allows development provided that impacts are mitigated to the maximum extent practicable and erosion control measures shall be required. Section 4 indicates that the chapter shall not be used to deny a development proposal from a public agency under the following conditions:
- a. If there is no practical alternative to the proposed project with less impact on the habitat area. The applicant has provided an alternatives analysis which indicates that the chosen alternative provided in the habitat permit application was a compromise between minimizing environmental impacts, reducing permitting timelines, limiting construction costs, and minimizing long term maintenance efforts all while still providing safe driving conditions. County Wetland and Habitat Review staff find this clause has been met.
 - b. The ability of the public agency to provide services to the public would be unreasonably restricted. The applicant has provided analysis for the public need for this crossing over Whipple Creek and through a priority non-riparian habitat (Biodiversity Area and Corridor). The project would improve local circulation west of Interstate 5, enhance public health and safety, and support existing land use and zoning. County Wetland and Habitat Review staff find this clause has been met.

- c. The application is approved through a Type III process pursuant Section 40.510.030 (Type III Processes). The applicant has applied for a Type III habitat permit; this clause has been met.

- Finding 11 -** The mitigation plan indicates temporary impacts to forested riparian and Biodiversity Area. Given the amount of time required to replace habitat ecological functions of a forest, riparian forested habitat and the mature forest (Biodiversity Area and Corridor) is considered irreplaceable within the lifespan of the proposed mitigation. Impacts to habitat functions as a result of removing trees and other woody plant species include, but are not limited to, large woody debris recruitment, microclimate and stream temperature regulation, streambank stability, nutrient cycling, fish and wildlife cover, and nesting, perching, and roosting habitat for birds. County Habitat and Wetland staff find that forested impacts within the riparian and non-riparian (Biodiversity Area and Corridor) shall be considered permanent impacts due to the amount of time it takes to replace lost ecological functions. As such, the total permanent riparian forest impact is 0.99 acres and the total Biodiversity Area and Corridor impact is 0.33 acres. The Biodiversity Area and Corridor is located within the riparian HCZ, and as such the impacts are considered to be included in the 0.99 acres of forested impact versus being additive to the total.
- Finding 12 -** The applicant has provided a supplemental habitat mitigation plan dated August 2, 2016 and prepared by Clark County Public Works for specific County habitat impacts; the narrative in the supplemental report indicates that the original August 13, 2015 Habitat Mitigation Plan did not adequately mitigate for impacts to priority riparian habitat per the Clark County Habitat Conservation Ordinance. The supplemental report provides updated temporary and permanent habitat impacts as well as appropriate mitigation ratios for the proposed impacts. It indicates a total of 3.75 acres of impact with 8.68 acres of required mitigation.
- Finding 13 -** Figure 3c in the supplemental habitat mitigation plan indicates an abandoned section of Union Road to the east of 10th Avenue. This section of road used to be a public road, but it has been abandoned from vehicular travel by a gate at 10th Avenue, however the paved road is still present; the applicant indicates on Figure 3c temporary and permanent forested impacts to the riparian HCZ on the northern side of the abandoned section of Union Road, opposite the Type Ns stream and south of the proposed stormwater facility #1. Ordinarily, a public or private road which serves three or more lots would functionally isolate the riparian HCZ and be exempt under the Habitat Protection Ordinance (Table 40.440.010-1). This section of Union Road has been abandoned by vehicular traffic by barriers at 10th Avenue, however the paved section of road is still present. Given that the road is abandoned and no longer serves any lots, it would not meet the exemption criteria under the Habitat Conservation Ordinance for functionally isolated riparian habitat separated by a public or private road and the riparian HCZ shown by the applicant is correct. County Wetland and Habitat Review staff concur with the amount of impact shown for the proposed project as well as the proposed ratios and amount of habitat mitigation required (the Sara Mitigation Site and the Fairgrounds Park Mitigation Site, respectively).

Finding 14 - The supplemental mitigation plan indicates the applicant proposes to replant and/or reseed all temporarily disturbed areas within the project right of way as well as buffer averaging and utilizing two additional off-site mitigation areas on County lands. On-site mitigation is preferred in order to compensate for impacts in the immediate area of the project, however given the amount of impact and mitigation required is larger than what is available on-site; the applicant will replant or reseed areas which are temporarily impacted within the construction footprint. When compensatory mitigation cannot be achieved onsite, the next preferred off-site options should be within the same watershed. The applicant proposes to utilize offsite mitigation at two offsite locations within the same Whipple Creek watershed which are publicly owned by Clark County to help make up some of the required mitigation.

Finding 15 - The supplemental mitigation plan provides rationale for the off-site mitigation site selection.

- a. The Sara mitigation site is located on Whipple Creek 3.2 miles downstream. It was selected for restoration due to the poor habitat condition onsite to the north of the stream and it is located within a mapped Biodiversity Area and Corridor and riparian habitat. The portion of the Sara mitigation site which will be restored (north of the stream) is currently dominated by reed canary grass and does not meet the Biodiversity Area and Corridor criterion; areas south of the stream do meet the criterion.
- b. The Fairgrounds Park mitigation site is located along a small tributary of Whipple Creek in a County owned park approximately 1 mile west of the project; the site has no overstory and only field grasses and invasive reed canary grass onsite.
- c. Both sites were considered to have potential as mitigation sites due to the existing poor conditions and could benefit from the lift of supplemental plantings.
- d. County Wetland and Habitat Review staff concur that there is not enough space onsite for compensatory mitigation, however that which is present will be utilized to the extent possible.

Finding 16 - County Wetland and Habitat Review staff also find the choice of the two off-site mitigation options is appropriate as there is potential for mitigation at these sites and they are within the same watershed as the impact. The proposed mitigation replanting of temporarily disturbed areas onsite is 5.25 acres, consisting of 3.49 acres of native trees, 0.60 acres of native shrubs, and 1.16 acres of native grasses/herbaceous vegetation to be planted. The Sara mitigation site has 1.32 acres available for replanting, consisting of 0.31 acres of native trees and 1.01 acres of native shrubs to be planted. The Fairgrounds Park has 0.65 acres of planting available, all of which will be replanted in native trees. This totals 7.22 acres of mitigation between the three sites consisting of 4.45 acres of native trees, 1.61 acres of native shrubs, and 1.16 acres of native grasses to be planted; this leaves a deficit of 1.46 acres of required mitigation. County staff concur with the proposed mitigation

plantings onsite within the temporarily disturbed areas as well as the two offsite locations.

Finding 17 - The applicant also proposes internal riparian zone averaging for the remaining 1.46 acres of required mitigation. They propose to protect 1.68 acres of habitat adjacent to the current riparian zones of Whipple Creek and the unnamed tributary (1.53 acres along Whipple Creek and 0.152 acres to the Type Ns unnamed tributary), which were previously impacted due to temporary impacts, thus expanding the riparian HCZ. The additions to the riparian buffer would be placed under a Conservation Covenant.

Finding 18 - The proposed internal riparian zone averaging area to be added along the Type Ns unnamed tributary to Whipple Creek is 0.152 acres. Figure 4A in the supplemental habitat mitigation plan indicate two sections of averaging, the first on the eastern side of the NE 164th and 10th Avenue intersection in an abandoned section of Union Road which is currently paved or grasses. The second area is just south of the proposed stormwater facility and north of the abandoned Union Road section; the vegetation is currently young forest, blackberry, and grasses.

Finding 19 - The proposed internal zone averaging area to be added along the Type F (Whipple Creek) riparian HCZ is 1.53 acres. Figures 4B and 4C in the supplemental habitat mitigation plan indicate three sections of averaging.

- a. The first is on the northern side of Whipple Creek and immediately east of the proposed 10th Avenue within the right of way and to the east of the proposed stormwater facility (underneath the powerline right of way); this section is currently shrubs and grasses which are maintained so they do not grow to a height to interfere with the powerlines.
- b. The second area is also on the northern side of Whipple Creek and to the south and west of the proposed stormwater facility; the vegetation is currently maintained lawn/field.
- c. The third area is south of Whipple Creek on parcel 185413000 at 914 NE 155th Circle; the vegetation is currently maintained lawn and garden, as well as portions of a residential structure.

Finding 20 - The standards for internal riparian zone averaging (CCC 40.440.020.C.3) allow for the reduction of riparian zones by up to 50% from the normal standards of the chapter if the riparian zone widths are correspondingly increased elsewhere within the applicant parcel, such that the overall size and function and values of the riparian zone are maintained in the parcel. Riparian zone averaging proposals must clearly identify the existing riparian function and values on the subject parcel and any impacts that the proposed averaging may have upon them.

- a. It appears that the areas within the project corridor to utilize averaging are those areas which have been temporarily impacted and are being replanted, in some cases to conditions which are better than their previous state (converting grass/lawn to forest and/or shrubs).

- b. County Wetland and Habitat Review staff generally concur with utilizing internal riparian zone averaging as proposed to achieve the required compensatory mitigation. There are sections of the proposed averaging that County Wetland and Habitat Review staff have concerns with, primarily the area to the east of 10th Avenue within the powerline right of way and the area shown on Figure 4B of the supplemental habitat mitigation plan to the south and west of the proposed stormwater facility that is covered by porous pavers.
- c. The concern of accepting the powerline right of way is related to the ability to obtain a Conservation Covenant on a powerline easement.
- d. The concern on accepting the portion with the porous pavers is that mitigation credit would be given to an access road.
- e. County Wetland and Habitat Review staff recommend that these areas be removed from the proposed mitigation plan for internal riparian zone averaging.
- f. Additional mitigation would be required for the internal zone averaging areas which are removed. The applicant has proposed preservation credit of 1.7 acres of the Sara Mitigation site which will be covered by a Conservation Covenant which includes wetlands, riparian, and Biodiversity Area at an 8:1 ratio; this would amount to 0.21 acres of preservation credit which should cover the deficit.

Finding 21 - The supplemental mitigation plan indicates that the monitoring period will be for 5 years. Due to the impacts being to Biodiversity Area and Corridor, County Wetland and Habitat Review staff believe the monitoring period should be for 10 years to ensure that similar conditions are recreated. Monitoring reports shall be submitted at years 1, 2, 3, 5, 7, and 10. The performance standard #1 indicated in the supplemental habitat mitigation plan shall be observed for years 1-5. The Native Cover shall be 35% at year 7 and 50% at year 10. Performance Objective #2 may remain as is.

Conclusion Staff concludes that the proposed preliminary plan, subject to conditions identified above, meets the habitat conservation requirements of the Clark County Code.

Wetland Protection (CCC 40.450)

It is the purpose of this chapter to provide balanced wetland protection measures pursuant to the Washington State Growth Management Act (GMA, RCW 36.70A.172) that include best available science to protect the functions and values of wetlands with special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries; further the goal of no net loss of wetland functions; encourage restoration and enhancement of degraded and low quality wetlands; provide a high level of protection for higher-quality wetlands; complement state and federal wetland protective measures; and allow reasonable use of property.

Finding 22 - Numerous wetland indicators are mapped within the proposed project corridor. Modeled depressional and riverine wetlands are indicated along the Type Ns stream (unnamed tributary to Whipple Creek) which begins just northwest of the 164th Street and 10th Avenue intersection and continues to the southeast towards Interstate 5. Additionally, the National Wetland

Inventory indicates Palustrine Scrub/Shrub wetlands associated with Whipple Creek at the location of the proposed crossing. Finally, three permitted wetlands are mapped onsite as well which had their wetland ratings confirmed in the wetland predetermination WET2016-00016. The first permitted wetland (Wetland A) is northwest of the 10th Avenue/164th Street intersection and is rated as a Category I slope wetland due to the presence of a state listed threatened plant, dense sedge (*Carex densa*) in the northwest corner of parcel 182139000; otherwise the wetland has emergent vegetation with low habitat scores and would have scored as a Category IV slope wetland with emergent vegetation. Wetland B is east of the 10th Avenue and 164th Street intersection on the north side of the old Union Road. It is rated as a Category III depressional wetland with a low habitat score; the vegetation is a mix of emergent and scrub/shrub with scattered trees overhead. Wetland C is a complex of forested wetlands associated with Whipple Creek. They rated as a Category III slope wetland with a high habitat score.

Finding 23 - WET2016-00016 also confirmed offsite wetland ratings within the proposed off-site mitigation area for Wetlands D and E. Wetland H has a valid wetland rating as a Category III slope wetland with a high habitat score under WET2015-00011. As a part of this wetland permit, County Wetland and Habitat Review staff have verified the ratings of Wetlands F and G as Category III wetlands. Updated wetland rating forms are provided for these wetlands which utilize the 2014 Wetland Rating forms for Western Washington developed by the Washington Department of Ecology; the applicant provided wetland rating forms using the 2004 form. There are no proposed impacts to Wetlands E, F, G, or H; these wetlands are proposed for preservation credit.

Finding 24 - The proposed roadway and bridge corridor consists of existing roadway and/or driveway, maintained road and powerline right of way, lawn, private residences, commercial and light industrial operations, and vegetated slopes. The vegetated slopes of Whipple Creek are in poor condition and consist of large areas of open grass with patches of blackberry, sword fern, and scattered individual trees including ash, willow and alder. Farther from the right of way and to the west, the buffer quality improves and includes western red cedar, big leaf maple, vine maple, sword fern, and lady fern; sections of the Whipple Creek canyon designated as Biodiversity Area and Corridor have western red cedar, Douglas fir, big-leaf maple, alder, ash, with and understory of snowberry, vine maple, twinberry, elderberry, hazelnut, Indian plum, sword fern, large-leaf avens, and fringe cup.

Finding 25 - The applicant has provided a habitat and wetland mitigation report prepared by ESA Vigil-Agrimis dated August 13, 2015; the mitigation report references the wetland determination WET2016-00016. The narrative indicates that the proposed project will permanently impact 7,796 square feet (0.18 acres) of wetland and 19,114 square feet (0.44 acres of wetland buffer).

- a. Wetland A: 2,871 square feet (0.07 acres) of permanent wetland impacts to Wetland A are due to fill placement northwest of the NE 10th Avenue and NE 164th Street intersection to elevate and widen the roadway, replace an existing culvert, and construct curb ramps for future sidewalks. The

impact location will have no direct or indirect impact on the state listed dense sedge within the wetland.

- b. Wetland B: 2,469 square feet (0.06 acres) of permanent wetland impact due to fill placement to construct Stormwater Facility #1 and facility maintenance access southeast of the NE 10th Avenue and NE 164th Street intersection.
- c. Wetland C: 77 square feet (0.002 acres) north of Whipple Creek due to construction of the Pier 3 bridge shafts. 2,379 square feet (0.05 acres) associated with the construction of the pier shaft as indirect but permanent wetland impact to the entire lobe of the wetland.

Finding 26 - The project will temporarily impact 6,885 square feet (0.16 acres) of wetland and temporarily impact 33,233 (0.76 acres) of wetland buffer.

- a. Wetland A: temporary impacts to Wetland A buffer are caused by construction activities northwest of the NE 10th Avenue and NE 164th Street intersection to elevate and widen the roadway, replace an existing culvert, and construct curb ramps for future sidewalks.
- b. Wetland B: Temporary impacts to Wetland B are caused by activities associated with construction of Stormwater facility #1 including trenching to install pipes and work areas for grading and other activities. These activities and tree removal will also temporarily impact the wetland B buffer. County Wetland and Habitat Review staff shall require the use of trench dams for trenching/piping impacts within the wetland to prevent dewatering of the wetland.
- c. Wetland C: Temporary impacts to the wetland C complex, north of Whipple Creek, are due to activities associated with the construction of Pier 3 and the construction and removal of temporary work platforms. These activities and tree removal will also temporarily impact the Wetland C buffers. Additional wetland buffer impacts will occur by trenching and construction activities associated with construction of the Whipple Creek Outfall and Storm Line F that drains Stormwater Facility #2 and offsite flow. There appear to be temporary impacts to wetlands on the south side of Whipple Creek as well for construction of temporary work pads.
- d. Wetland D: [offsite mitigation at the Sara mitigation site] 48,599 square feet (1.12 acres) of temporary impacts to the wetland and wetland buffer related to the grading activities needed to create wetlands and lay back the stream banks along the north bank of Whipple Creek to improve channel-floodplain connectivity.

Finding 27 - Ordinarily, impacts to a Category I wetland would not be allowed due to the high value of the wetland and that they are irreplaceable within the lifespan of the mitigation. Wetland A has been categorized as Category I due to the presence of a listed threatened plant, dense sedge (*Carex densa*). If not for this plant occurring within the wetland, the wetland would have rated as a Category IV wetland. The wetland is generally degraded due to grazing and mowing for hay and consists of emergent vegetation. The proposed impacts occur at the southern and downhill end of this slope wetland, over 400 feet

from the known occurrences of dense sedge and will have no direct or indirect impact on the listed plant. The impacts proposed in Wetland A have been minimized to the extent possible and encompass expansion of NE 10th Avenue and NE 164th Street to meet current road standards.

Finding 28 - Per Table 40.450.040-1, the Standard Wetland Mitigation Ratios for a Category III wetland are 1:1 for Creation and 4:1 for Enhancement; the ratios for a Category I wetland, are 1:1 for Creation and 12:1 for Enhancement (restoration of a Natural Heritage Site is not considered possible). For reference, the ratios for a Category IV wetland are 1:1 for Creation and 2:1 for Enhancement. Therefore the required mitigation for the Category I wetland impacts should be 0.07 acres of wetland creation and 0.84 acres of wetland enhancement; the required mitigation for the Category III wetland impacts should be 0.11 acres of wetland creation and 0.44 acres of wetland enhancement. The total wetland mitigation should be 0.18 acres of wetland creation and 1.28 acres of wetland enhancement.

Finding 29 - The applicant indicates in the wetland mitigation plan that mitigation ratios were based on impacts to Category III wetlands. The narrative proposes a 2:1 creation and 8:1 enhancement ratios for wetland impacts; this would amount to 0.36 acres of wetland creation and 1.44 acres of wetland enhancement. The plan also proposes a 1:1 enhancement ratio and 8:1 preservation ratio for buffer impacts by protecting the whole of the Sara mitigation site under a conservation covenant. The total acreage of wetlands on the Sara site is 0.78 acres, however Wetland D currently has mitigation enhancement from a previous project and would already have protection; the remainder wetlands available for preservation (due to being within a Biodiversity Area and Corridor) amounts to 0.48 acres. The proposed numbers for wetland creation and enhancement meet the standard requirements.

Finding 30 - In reviewing the mitigation plan drawings, the actual acreage of wetland creation appears to be 0.29 acres versus 0.36 acres which amounts to a 1.6:1 ratio versus the 2:1 proposed for the 0.18 acres of wetland impact. This amount is still greater than that required by the standard mitigation ratios for creation. The amount of proposed wetland enhancement is 0.27 acres which amounts to a 1.5:1 ratio, some of which includes a previous mitigation site in Wetland D. This amount is considerably lower than the 1.28 acres required (1.01 acre deficit) and the 1.44 acres proposed (1.17 acre deficit). The proposed preservation ratio of 8:1 for wetlands at the Sara Mitigation site would potentially add 0.06 acres of mitigation credit. The remainder of the preservation would be for wetland buffer, riparian habitat, and Biodiversity Area and Corridor and would not count towards the wetland compensatory mitigation totals.

Finding 31 - Per the Wetland Protection Ordinance (CCC 40.450.040.D.4.c), the responsible official has the authority to reduce wetland mitigation ratios under the following circumstances:

- a. Documentation by a qualified wetland specialist demonstrates that the proposed mitigation actions have a very high likelihood of success based on prior experience; Clark County Public Works has performed successful

wetland mitigation on past projects and has the resources to perform a successful mitigation for this project. The proposed wetland creation will be achieved by grading the existing floodplain for Packard and Whipple Creeks to a level which will support wetlands and restoring the hydrologic connectivity of the wetlands to the streams and has a high likelihood for success given the mitigation occurs at the confluence of the two streams and should receive frequent overbank water inputs.

- b. Documentation by a qualified wetland specialist demonstrates that the proposed actions for compensation will provide functions and values that are significantly greater than the wetland being affected.
 - i. The indicated wetland creation mitigation is higher than what is required under the standard (1.6:1 ratio versus a 1:1 ratio); the total wetland creation proposed is 0.29 acres of wetland creation for 0.18 acres of wetland impact, resulting in 0.6 acres of wetland creation above that required by the standard mitigation ratios.
 - ii. The actual wetland enhancement mitigation indicated is lower (1.5:1 versus 4:1 for the Category III wetland and 12:1 for the Category I wetland); the total wetland enhancement proposed is 0.27 acres for 0.18 acres of wetland impact, resulting in a deficit of 1.01 acres of wetland enhancement credits.
 - iii. The proposed preservation ratio of 8:1 for the remaining wetlands at the Sara Mitigation site is lower than what would normally be considered for Category I and II wetlands. These wetlands may be considered for preservation credit given that they occur within a Priority Habitat Area (Biodiversity Area and Corridor; CCC 40.450.040.C.4.b), are not on an existing or proposed wetland mitigation site, and would be protected by a Conservation Covenant; the proposed wetland preservation does not meet condition CCC40.450.040-C.4.b.2 which stipulates that the preservation area is at least one acre in size, however. The preservation also does not protect the entirety of Wetlands G or H, which continue offsite to the south. Despite not meeting the 1 acre requirement for preservation, inclusion of the wetlands for preservation credit may be warranted to protect the water quality function of Whipple Creek by protecting the wetlands and their buffers; the portions of Wetlands G and H protected are those that are adjacent to Whipple Creek and would provide the highest ecological, water quality, and habitat functions. Using the 8:1 mitigation ratio proposed the 0.48 acres of wetland onsite (Wetland D is already being utilized as a mitigation site and has protection) would add 0.06 acres of mitigation credit.
 - iv. The applicant has proposed 0.6 acres of wetland creation which is greater than that required, thus a portion of the wetland creation can be credited towards this deficit.
 - v. Additionally, temporary impacts to Wetlands A, B, and C on-site will be restored to their pre-construction grade and replanted with

- vegetation appropriate for the hydrology and use (trees may not be planted within the powerline right of way or within 10 feet of the proposed road).
- vi. Utilizing the additional preservation credit (0.06 acres), the deficit for mitigation through enhancement is 0.95 acres ($1.01 - 0.06 = 0.95$ acres). The additional wetland creation has a high possibility for success given that it will be connected hydrologically to both Whipple Creek (via floodwaters) and Wetland D (via groundwater). The site is currently field and has great potential for woody wetland plantings to survive. This creation should also help restore Wetland D by maintaining a more steady hydrology, although restoration credit for Wetland D is not proposed with this plan. By subtracting the additional creation area from the deficit results in a 0.35 acre deficit ($0.95 - 0.60 = 0.35$ acres). The applicant has utilized all available options for wetland creation, preservation, and enhancement both on-site and offsite at the Sara Mitigation site.
 - vii. The proposed project occurs within the Whipple Creek watershed. Clark Public Utilities has a restoration program within the Whipple Creek watershed. Per the Wetland Protection Ordinance (CCC 40.450.040.D.7.b) the County may accept payment of a voluntary contribution to an established cumulative effects fund for off-site watershed scale habitat and wetland conservation in lieu of wetland mitigation of unavoidable impacts where additional mitigation measures have been applied to the greatest extent possible. County staff find that all possible mitigation options have been exhausted for on and off-site mitigation within the watershed on publicly owned parcels and that Clark Public Utilities operates habitat and wetland conservation at the watershed scale within Whipple Creek. The current rate for wetland mitigation is \$22,500 per acre of impact. Pro-rating the remaining 0.35 acres of enhancement required at the current rates, the recommended contribution would be \$7,875 to Clark Public Utilities. The applicant can make a voluntary contribution of \$7,875 to Clark Public Utilities or provide an updated wetland mitigation plan which addresses the 0.35 acre deficit prior to construction.

Finding 32 - The temporary wetland impacts and wetland buffer impacts are properly mitigated at a 1:1 ratio. Temporary wetland impacts related to trenching and piping in Wetland B shall have trench dams installed at the upland edge to prevent dewatering of the wetland.

Conclusion Staff concludes that the proposed preliminary plan, subject to conditions identified above, meets the wetland protection requirements of the Clark County Code.

Recommendation

Based upon the proposed plan known as Exhibit 1 and the findings and conclusions stated above and within the attached reports and decisions, the Community Development Director hereby recommends **approval** of this request, subject to the following conditions of approval.

Conditions of Approval**A General Conditions**

- A-1** The applicant shall only impact areas indicated on the provided plans during construction of this project. Any clearing or disturbance beyond that indicated on the plans and narrative provided would require additional habitat and wetland review by County staff and may include additional permit and mitigation requirements.
- A-2** The applicant shall implement the Wetland and Habitat Mitigation Plan by ESA Vigil-Agrimis (dated August 13, 2015) and the Supplemental Habitat Mitigation plan submitted by Clark County Public Works (dated August 2, 2016), except as amended below.
- A-3** The applicant shall utilize best management practices to control erosion and prevent sediment from entering adjacent streams and riparian habitat, non-riparian habitat (Biodiversity Area and Corridor), wetlands, and wetland buffers.
- A-4** The applicant shall grade all temporary impacts to pre-disturbance grades. These areas shall be replanted with native vegetation as outlined in the Wetland and Habitat Mitigation Plan and the Supplemental Habitat Mitigation Plan to maintain and enhance habitat ecological function.
- A-5** Non-native vegetation and noxious weeds shall be removed and replanted with native vegetation (where encountered) within the temporarily disturbed areas and mitigation areas.
- A-6** Any unforeseen disturbance to the indicated riparian buffers not mentioned as a part of this permit shall be replanted with native vegetation. DES shall be notified of any additional impacts and the replanted area shall be included with the permitted restoration areas and maintained and monitored accordingly.

B Habitat Specific Conditions

- B-1** The mitigation plantings shall be monitored for 10 years. Monitoring reports shall be submitted at years 1, 2, 3, 5, 7, and 10. The performance standard #1 indicated in the supplemental habitat mitigation plan shall be observed for years 1-5. The Native Cover shall be 35% at year 7 and 50% at year 10. Performance Objective #2 may remain as is.
- B-2** Prior to construction the applicant shall record a conservation covenant that runs with the land as adequate to incorporate the requirements of CCC 40.440 and this permit approval and to give notice of the requirement to obtain a habitat permit prior to engaging in regulated activities within priority riparian and non-riparian habitat, as well as mitigation areas shall be submitted for review, and upon approval, recorded with the Clark County Auditor.
- B-3** The applicant shall delineate all priority habitat on the Final Construction Plans. Markings shall be installed in the field prior to construction and maintained throughout the duration of construction.
- B-4** The location of all permanent and temporary impacts shall be delineated on the Final Construction Plans.
- B-5** The applicant shall provide financial assurances for the planting, monitoring, and maintenance of the on and offsite riparian habitat mitigation.

- B-6** The applicant shall provide permanent physical demarcation of the priority habitat boundaries in a manner approved by the Responsible Official (for example, fencing, hedgerows, berms, etc.). In addition, small signs shall be posted at an interval approved by the Wetland and Habitat Review Program Manager, and perpetually maintained at locations along the outer perimeter of the priority habitat zone approved by the responsible official worded substantially as follows:

*Priority Habitat Conservation Zone –
Please retain in a natural state*

C Wetland Specific Conditions

- C-1** Prior to construction, a conservation covenant that runs with the land as adequate to incorporate the requirements of CCC 40.450 and this permit approval and to give notice of the requirement to obtain a wetland permit prior to engaging in regulated activities within a wetland or its buffer shall be submitted for review, and upon approval, recorded with the Clark County Auditor.
- C-2** The Permittee shall provide permanent physical demarcation of the wetland and wetland buffer boundaries in a manner approved by the Responsible Official (for example, fencing, hedgerows, berms, etc.).
- C-3** The location of all permanent and temporary impacts shall be delineated on the Final Construction Plans.
- C-4** The applicant shall provide financial assurances for the planting, monitoring, and maintenance of the on and offsite wetland and wetland buffer mitigation.
- C-5** Where piping and trenching shall occur through wetlands (Wetland B), the applicant shall install trench dams on the upland side of the wetlands to prevent dewatering of the wetland. These trench dams shall be shown on the Final Construction Plans.
- C-6** Prior to construction, the applicant shall provide a voluntary contribution to the cumulative effects fund of \$7,875 to Clark Public Utilities for unavoidable impacts to 0.35 acres of wetland enhancement required, or provide an updated wetland mitigation plan which addresses the mitigation deficit.

Note: Any additional information submitted by the applicant within fourteen (14) calendar days prior to or after issuance of this report, may not be considered due to time constraints. In order for such additional information to be considered, the applicant may be required to request a “hearing extension” or “open record” and shall pay the associated fee.

Hearing Examiner Decision and Appeal Process

This report to the Hearing Examiner is a recommendation from the Land Use Review program of Clark County, Washington.

The examiner may adopt, modify or reject this recommendation. The examiner will render a decision within 14 calendar days of closing the public hearing. Clark County will mail a copy of the decision to the applicant and neighborhood association within 7 days of receipt from the Hearing Examiner. All parties of record will receive a notice of the final decision within 7 days of receipt from the Hearing Examiner.

Motion for Reconsideration

Any party of record to the proceeding before the Hearing Examiner may file with the responsible official a motion for reconsideration of an examiner's decision within fourteen (14) calendar days of written notice of the decision. A party of record includes the applicant and those individuals who signed the sign-in sheet or presented oral testimony at the public hearing, and/or submitted written testimony prior to or at the Public Hearing on this matter.

The motion must be accompanied by the applicable fee and identify the specific authority within the Clark County Code or other applicable laws, and/or specific evidence, in support of reconsideration. A motion may be granted for any one of the following causes that materially affects their rights of the moving party:

- Procedural irregularity or error, clarification, or scrivener's error, for which no fee will be charged;
- Newly discovered evidence, which the moving party could not with reasonable diligence have timely discovered and produced for consideration by the examiners;
- The decision is not supported by substantial evidence in the record; or,
- The decision is contrary to law.

Any party of record may file a written response to the motion if filed within fourteen (14) calendar days of filing a motion for reconsideration.

The examiner will issue a decision on the motion for reconsideration within twenty-eight (28) calendar days of filing of a motion for reconsideration.

Appeal Rights

Any party of record to the proceeding before the hearings examiner may appeal any aspect of the Hearing Examiner's decision, except the SEPA determination (i.e., procedural issues), to the Superior Court.

<https://www.clark.wa.gov/sites/all/files/community-development/land-use/appeals-motions.pdf>

Attachments

- Attachment A: Exhibit List