



CITY OF EVERETT
 Community, Planning, & Economic Development Department
 Planning Division

STAFF REPORT TO THE HEARING EXAMINER – EXHIBIT 1

REQUIRED APPROVAL	Shoreline Substantial Conditional Use Permit
PROJECT #:	SMA21-003
APPLICANT:	Dike District 5 / City of Everett Public Works – Paul Carne
PROJECT NAME:	Union Slough dike
PROJECT OVERVIEW:	Public Works proposes to repair and strengthen approximately 6,075 lineal feet of the Union Slough dike to address levee deficiencies and provide additional scour protection.
STAFF CONTACT:	Dennis Osborn
REPORT DATE:	March 23, 2022
HEARING DATE:	April 14, 2022
LOCATION:	South side of Union Slough between SR-529 and I-5
EXISTING LAND USE:	Dike
SHORELINE DESIGNATION:	Urban Mixed Use Industrial, Aquatic, Aquatic Conservancy for work below the OHWM - Exhibit 10
ZONING:	HI - Heavy Industrial
FLOODPLAIN	AE Zone Floodway
PUBLIC NOTICE	Notice of Application and Hearing Date: February 18, 2022 Affidavit of Posting: February 15, 2022 Published Hearing Date: February 18, 2022
SEPA	DNS was issued March 9, 2022, Exhibit 15 & 16
PUBLIC COMMENT LETTERS	Tulalip Tribe Exhibit 2
REVIEW PROCEDURE	Everett Municipal Code 15.16.110 requires projects with sites that have one or more acres within shoreline jurisdiction to be processed as a Review Process III
DETAILED PROJECT DESCRIPTION:	The proposed project will restore the necessary level of flood protection for developed areas on Smith Island, including protecting commercial and critical infrastructure such as the City of Everett’s water pollution control facility. The following eight construction activities are proposed: <ul style="list-style-type: none"> • Dike Repair Type A: From dike center line Station 62+75 to Station 45+16 (1,759 lineal feet) (east of SR 529 eastward). The dike will be raised to a minimum elevation of 15 feet North American Vertical Datum of 1988 (NAVD88) to meet USACE requirements.



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	<ul style="list-style-type: none"> • Dike Repair Type B: From dike center line Station 45+16 to Station 42+54 (262 lineal feet) (east of Union Slough side channel and the access road to the Buse Timber & Sales, Inc. [Buse] yard). The dike will be raised to a minimum elevation of 15 feet NAVD88 to meet USACE requirements. • Dike Repair Type C: From dike center line Station 42+54 to Station 33+74 (880 lineal feet) (near the access road to the Buse yard west to the Buse log ramp). The dike will be raised to a minimum elevation of 15 feet NAVD88 to meet USACE requirements. • Dike Repair Type D: From dike center line Station 28+20 to Station 27+00 (120 lineal feet) (under I 5). The dike will not be raised in this portion to avoid interference with existing I-5 bridge girders (at varying elevations from 15.1 to 16.0 feet NAVD88). A sandbag berm will be constructed on the top of the dike, up to an elevation of 15 feet NAVD88. • Dike Repair Type E: From dike center line Station 27+00 to Station 10+38 (1,662 lineal feet) (from I-5 eastward). The dike will be raised to a minimum elevation of 15 feet NAVD88 to meet USACE requirements. • Riprap Erosion Protection: From dike center line Station 35+42 to Station 32+09 (333 lineal feet) (near the Buse log ramp). Riprap erosion protection will include installing geotextile for permanent erosion control over the top of the existing dike waterward surface. • Ditch Reconstruction: Throughout the project limits, from dike center line Station 60+68 to Station 53+95, from Station 41+35 to Station 36+96, from Station 25+90 to Station 22+15, and from Station 21+60 to Station 11+52 (3,495 lineal feet). Ditches will be re-established at the new dike toe slope following dike repair activities. • Log Ramp: From dike center line Station 33+40 to Station 30+00 (340 lineal feet) (west of I-5). The new log ramp will be raised to elevation 15 feet NAVD88. (Exhibit 3)
SHORELINE MASTER PROGRAM CHAPTER 2 APPLICABILITY	<p>The project exceeds \$7,047 in value and is subject to the City of Everett Shoreline Master Program (SMP). Table 2 in the SMP list certain shoreline modification activities. Shoreline Stabilization and Flood Control Structures, which includes dikes, are listed as a permitted use in the Urban Mixed Use Industrial and Aquatic shoreline designation and a Conditional Use in the Aquatic Conservancy shoreline designation.</p>
CONDITIONAL USE PERMIT CRITERIA	<p>The applicant must demonstrate that the portion of the project within the Aquatic Conservancy meets the Conditional Use criteria per 6 of the Applicability section of Chapter 2 of the SMP. The applicant's response to the criteria are in Exhibit 4B. Below are staff findings to each of the criteria.</p> <ol style="list-style-type: none"> 1. <i>That the proposed use is consistent with the policies of RCW 90.58.020 and Everett's Shoreline Master Program and regulations.</i> <p>Staff Findings: The use is consistent with SMP policies and regulations which allows for dikes. The applicable SMP regulations are addressed further under Chapter 3 and 6 of this report below.</p> <ol style="list-style-type: none"> 2. <i>That the use will not interfere with the normal public use of public shorelines.</i>

	<p>Staff Findings: The dike is in existence and the reconstruction of the dike will not interfere with public use of the shoreline except during construction. There is a road/trail atop the dike and the new dike will have the same access available.</p> <p>3. <i>That the use of the site and design of the project will be compatible with other authorized uses in the area and with uses planned for the area under the Comprehensive Plan and Shoreline Master Program.</i></p> <p>Staff Findings: The reconstructed dike will continue to be compatible with existing and planned uses in the area.</p> <p>4. <i>That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located.</i></p> <p>Staff Findings: Portions of the dike will be expanded into critical areas. See Exhibit 4A for details. Mitigation is required for any new impacts to wetlands, shorelines, or their buffers. This is addressed further in the Critical Area section of this report below.</p> <p>5. <i>That the public interest suffers no substantial detrimental effect.</i></p> <p>Staff Findings: Failure to upgrade the dike could impact and cause detrimental effects to the surrounding properties during a flood event.</p>
<p>CHAPTER 3 GENERAL SHORELINE REQUIREMENTS</p>	<p>Listed below are the elements and their requirements from the City of Everett Shoreline Master Program applicable to this project.</p>
<p>SHORELINE USE ELEMENT</p>	<p><i>Regulation #2. All shoreline development and activities shall comply with the City's noise regulations, both during and after construction. The City may require the applicant to prepare noise studies to determine if a proposal is in conformance with the regulations.</i></p> <p>Staff response: The applicant indicated in conversation that construction will occur within authorized construction hours.</p>
<p>FLOOD HAZARD REDUCTION</p>	<p>The site is Floodplain Zone AE and the Regulatory Floodway. See Exhibit 5.</p> <p><i>Regulation #2. All development in the Flood Fringe and Floodway overlay zones shall comply with EMC 19.30, as applicable.</i></p> <p>Staff response: Applicable Chapter 30 regulations are as follows: EMC 19.30.080.A.1. Development Permit Required. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 19.30.030. EMC 19.30.090.D. Floodways. Located within areas of special flood hazard established in EMC 19.30.030 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that can carry debris and increase erosion potential, the following provisions apply:</p> <p>1. No Rise Standard. Prohibit encroachments, including fill, new construction, substantial improvements, and other development, unless certification by a</p>

	<p>registered professional engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge.</p> <p>Staff response: A zero rise analysis by OTAK states: The results of the zero-rise analysis for the Diking District 5 Dike Repair project indicate that no increase in 100-year water surface will result from the proposed improvements.” (Exhibit 6)</p>
<p>PUBLIC ACCESS ELEMENT</p>	<p><i>Regulation #1. Public access shall be required in the review of all shoreline substantial development and conditional use permits ...</i></p> <p><i>Regulation #16. The City may require that parking facilities be provided in conjunction with required public access improvements.</i></p> <p><i>Regulation #17. Pedestrian access shall be required along new and reconstructed dikes, jetties and groins, except where the access would cause unavoidable health or safety hazards to the public, inherent and unavoidable security problems, unacceptable and unmitigated significant ecological impacts, significant unavoidable conflict with the proposed use, or a cost that is disproportionate and unreasonable to the total long-term cost of the development.</i></p> <p><i>Regulation #19. Existing public access shall not be eliminated unless the Applicant shows that there is no feasible alternative and replaces the public access at another location.</i></p> <p>Staff response: There is a gravel road on top of the existing dike that is used by the public for recreational purposes. This trail is identified in the Shoreline Access Plan (Exhibit 7). Public access for trail purposes must be reestablished on top of the reconstructed dike. There may be public parking at the far east end of the project near the Smith Island Estuary. This site is private property and no discussion have occurred about use of this site. (Exhibit 7A)</p>
<p>CONSERVATION ELEMENT</p>	<p><i>Regulation #2. Except for the reasonable use exception, proposed shoreline activities and modifications within shoreline jurisdiction shall comply with Everett’s Critical Areas regulations and other local, state and federal regulations relating to critical areas, as applicable.</i></p> <p><i>Regulation #20. When restoring and enhancing buffers along the Snohomish River and its estuary, overhanging vegetation shall be provided along dikes and shoreline stabilization structures when feasible.</i></p> <p><i>Regulation #21. Buffers shall be maintained to eliminate invasive non-native species when practicable.</i></p> <p>Staff response: The Critical Areas report prepared by Wood Environment and Infrastructure Solutions, Inc. (Wood) dated June 10, 2020, in Exhibit 4A states under conclusions on Page 27 of the report that “Public Works would rectify minimized, unavoidable temporary impacts by revegetation in the work areas.” In addition, the conclusion go on to state:</p>

	<p>“Where both wetlands and open waters exist on the project site, the USACE district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis, per the NWP 3 USA CE National General Condition 23.” Since this proposal requires multi-jurisdictional permits and requirements will be forth coming for the Diking District from US Army Corps of Engineers and Fish & Wildlife, the City will require a planting schedule to be compliant with 19.37 upon mitigation compensation and other mitigation issues are resolved at the state and federal level. Given this, prior to any alteration, the applicant shall submit a planting plan for the wetlands and buffers that is complaint with 19.37. 19.37.120.A.4 allows for alteration of wetlands and buffers so long as compensating for wetlands impact is proposed and complaint with 19.37.120.B. A breakdown of impacts to the wetlands can be found in the Wood report on page 23 in Exhibit 4A.</p>
<p>CHAPTER 6 SHORELINE STABILIZATION AND FLOOD CONTROL STRUCTURES</p>	<p>Shoreline Stabilization and Flood Control Structures includes actions taken to address erosion impacts to property and dwellings, businesses, or essential structures caused by, or associated with current, flood, tides, wind, or wave action. Structures, such as levees are used to protect land from flooding.</p> <p><i>Regulation #7. An existing shoreline stabilization structure may be replaced with a similar structure if the applicant demonstrates the need to protect uses or structures from shoreline erosion caused by tidal action, currents, or waves. The replacement structure must be designed, located, sized and constructed to minimize harm to ecological functions. In this case, demonstration of need does not necessarily require a geotechnical report.</i></p> <p>Staff response: The dike’s top elevation and dike’s top width have been increased. The dike’s width has been widened landward to the maximum extend feasible to minimize encroachments into the waterside.</p>
<p>CRITICAL AREAS</p>	<p>19.37.075.B.5 EMC 19.37.190.D requires the following:</p> <p>... In areas within the riparian habitat zone or special flood hazard area, a biological assessment is required The biological assessment must demonstrate that any proposed development in the riparian habitat zone or the floodway, coupled with appropriate habitat conservation measures, does not adversely affect water quality, water quantity, flood volumes, flood velocities, spawning substrate, and/or floodplain refugia for listed salmonids.</p> <p>Staff response:</p> <ol style="list-style-type: none"> 1. Compensation must be provided for any effects to floodwater storage and fish habitat function within the one-hundred-year floodplain. Indirect adverse effects of development in the floodplain (effects to storm water, riparian vegetation, bank stability, channel migration, hyporheic zones, wetlands, etc.) must be mitigated such that equivalent or better salmon habitat protection is provided.

3. Calculation of impacts and mitigation shall be performed in accordance with Planning Director Interpretation No. 2011-1, or as amended. (Exhibit 8)

4. The following priorities for mitigation of impacts to fish habitat within the one-hundred-year floodplain shall be considered in the habitat assessment and mitigation plan, with the long-term goal of improving functions and values of fish habitat in the estuary over existing conditions:

b. Creation or restoration of the functions and values of fish habitat in an area that is available to fish more frequently than the habitat being impacted;

Staff response: Tables 3 and 4 in the Wood Critical Area Review report shows that five Category II and III wetlands totaling .76 acres will be impacted by the reconstructed dike along with .38 acres of Union Slough below the mean higher high mark. Compensation will take place on and off-site at a minimum 1:1 ratio. Per the memo (Exhibit 4) from Geo Engineers dated December 10, 2020: "Updated documentation describing the mitigation approach consistent with federal, state and local requirements, including a Mitigation Site Use Plan per DID5's approved Smith Island AMP, will be submitted for review and approval to the above regulatory agencies. The updated permit applications will describe how the proposed mitigation is consistent with the City of Everett Municipal Code, including provisions of 19.37.075.B.5. The Mitigation Site Use Plan will specifically include a description of how the AMS adequately compensates for unavoidable impacts on waters of the United States and aquatic species from DID5's proposed dike maintenance work."

The Tulalip Tribe commented on the Critical Area Review report and noted the report is absent the criteria analysis required of Chapter 19.37. The City Public Works Department/Dike District 5 responded with a memo from Geo Engineers dated December 10, 2021, stating they would address these deficiencies. Prior to receiving an updated report from the Wood Environment and Infrastructure Solutions, Inc. in compliance with Chapter 19.37, the US Army Corps has contacted the applicant and informed them that they are reevaluating the location of the Ordinary High-Water Mark. Therefore, the updated Critical Area Review report by Wood has not been submitted due to this revision which would/could have impacts on the Critical Areas report. However, the city has the Geo Engineers memo stating the report will be compliant with Chapter 19.37 standards. Staff is comfortable awaiting the final report from Woods/Geo Engineers after the Corps resolves the issues they are addressing. No permits will be issued for work on the Dike until this report is completed per the criteria noted in the Geo Engineers report. Additionally, this was a condition of the DNS as well.

<p>RECOMMENDATION</p>	<p>Planning staff recommends the Hearing Examiner APPROVE the requested Shoreline Substantial Conditional Use Permit to reconstruct the Dike along the south shore of Union Slough from I-5 to the SR-529 bridge with the following conditions:</p> <ol style="list-style-type: none"> 1. Permanent public access must be provided on top of the reconstructed dike. 2. Impacts to Union Slough and the wetlands must be compensated at a minimum of 1:1 ratio or higher based on what is required by the US Army Corps, other agencies, and as recommended when a final CAO with Habitat score is completed for DD5. 3. All federal and state permits must be obtained prior to land alteration. 4. No work may begin until this shoreline permit is reviewed and approved by Ecology.
<p>EXHIBITIS</p>	<ol style="list-style-type: none"> 1. Staff Report 2. Tulalip Tribe Comment letter 3. Design Plans 4. DD5 response to Tulalip Tribe Comments 4A. CAO Analysis 4B. Applicant response to CUP criteria 5. Flood Map 6. No Net Rise summary 7. Trail Plan Map 7A. Potential Parking 8. Planning Director Interpretation 9. JARPA 10. Shoreline Designation Map 11. Affidavit of Publishing 12. Notice Board 13. Notice post card 14. Affidavit of posting 15. DNS 16. SEPA checklist 17. Site map