

Walla Walla County Community Development Department

310 W. Poplar Street, Suite 200, Walla Walla, WA 99362 / 509-524-2610 Main

File No. SHR19-001

CAP19-004

NOTICE OF DECISION

Date of Notice: 7/23/2019
Applicant: WA STATE DEPT OF TRANSPORTATION
Type of Application: SHORELINE CUP, CRITICAL AREAS PERMIT
File Number: SHR19-001, CAP19-004

Enclosed is the Hearing Examiner's decision from the 5/24/2019 agenda.

Walla Walla County Code Section 14.11.060 allows for the reconsideration of the final decision. The request must be submitted to the administrator within ten (10) days of the final decision or action; the submittal period ends **8/2/2019**. Reconsideration of the final decision must be granted or denied by the Hearing Examiner prior to an appeal being submitted to Walla Walla County Superior Court. Pursuant to Walla Walla County Code Sections 14.11.020 and 14.11.040 the Hearing Examiner's decision may be appealed to the Walla Walla County Superior Court. The appeal must be submitted to the Walla Walla County Superior Court within twenty-one (21) days of the final decision or action date. The Hearing Examiner's decision will be considered final if no appeals are filed within the allowed time frame described in Walla Walla County Code Chapter 14.11.

Please review Chapter 14.11 for the County's appeal requirements.

Activities pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing has been terminated; except as provided in RCW 90.58.140(5)(a).

The complete project file is available for inspection at the Walla Walla County Community Development Department (CDD) office during normal office hours Monday through Friday from 8 AM to 5 PM. Please contact the CDD at the phone number above to arrange for inspection.

Feel free to contact me at 509-524-2620 if you have any further questions.



Lauren Prentice, Principal Planner
Walla Walla County Community Development Department

Enc. SHR19-001
Cc. Parties of Record
Applicant

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**BEFORE THE HEARING EXAMINER
FOR WALLA WALLA COUNTY**

Applications for a Shoreline Conditional
Use Permit and a Critical Areas Permit
submitted by

**WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION,**

Applicant

*(Project: Known as the "US 12 Phase 7" Project, to
re-align 11 miles of US Highway 12 to the north of the
existing highway generally between Wallula and
Frenchtown, and widen the route to a 4-lane highway
in such segment, constructing new bridge crossings
over the Touchet River and its floodway, with some
work in and near critical areas regulated by County
Codes and policies.)*

File Nos. SHR 19-001 and CAP 19-004

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION APPROVING
SHORELINE CONDITIONAL USE
PERMIT and CRITICAL AREAS
PERMIT**

I. SUMMARY OF DECISION.

The requested Shoreline Conditional Use Permit and Critical Areas Permit, for the "US 12 Phase 7" Project, both meet applicable County development regulations and policies for such project and are therefore approved, subject to conditions.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
DECISION – APPROVING SHORELINE
CONDITIONAL USE PERMIT AND CRITICAL
AREAS PERMIT FOR THE US 12 PHASE 7 PROJECT,
WSDOT, APPLICANT –
FILE NOS. SHR 19-001 AND CAP 19-004**

WALLA WALLA COUNTY HEARING EXAMINER
310 W. POPLAR STREET, SUITE 200
WALLA WALLA, WASHINGTON 99362

1 provisions, as explained in the Staff Report and reflected in some specific conditions of
2 approval for the project.

3 ***Jurisdiction of Hearing Examiner:***

4 The County Code vests the Hearing Examiner with authority to hear and issue
5 decisions on applications for Shoreline Conditional Use Permits. See *WWCC*
6 *2.50.070(A)(3); 14.09.020(C), and 14.09.025, Table 14-1.*

7 **III. RECORD.**

8 All exhibits entered into evidence as part of the record, and an audio recording of
9 the public hearing, are maintained by the County, and may be examined or reviewed by
10 contacting the County's public records officer.

11 ***Exhibits entered into evidence by the Examiner:***

12 *Exhibit 1 – Staff Report – Walla Walla County Community Development Department Report and*
13 *Recommendation of Approval to the Hearing Examiner for the Phase 7 US-12 Nine Mile Hill to*
14 *Frenchtown Vicinity Project, File Nos. SHR19-001/CAP19-004, Shoreline Conditional Use and Critical*
15 *Areas Permit application, dated May 22, 2019, prepared by Principal Planner, Lauren Prentice (six*
16 *pages);*

17 *Exhibits 2(A)-(O) and 3, as numbered and described on page 6 of the Staff Report.*

18 ***Testimony:*** The following persons provided testimony under oath as part of the record
19 during the open-record hearing held on May 2019:

- 20 1. Lauren Prentice, Principal Planner and primary Staff Contact for the pending application,
21 for Walla Walla County, summarized the Staff Report, noting that no person or agency
22 submitted written comments opposing or questioning the project, that the applications meet
23 approval criteria, and that staff recommends approval subject to conditions;
- 24 2. William M. Sauriol, WSDOT Environmental Manager for the South Central Region of the
25 state, appeared for the applicant, noted that WSDOT would like to start the project at some
26 point in or about the Spring of 2020, expressed agreement with the Staff Report, and noted
flood plain and sensitive areas covered by the requested permit approval(s), answered
questions and provided information responsive to comment made at hearing; and
3. Thomas McMarkin, property owner on Cummins Road, did not oppose the project, but
wanted to learn more to see if it might impact his property.

No one appeared at the public hearing to oppose the pending applications.

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IV. FINDINGS OF FACT.

Based on the record, and following consideration of all the evidence, testimony, codes, policies, regulations, and other information included therein, the undersigned issues the following findings of fact:

1. All statements of fact included in previous or following sections of this Decision, including without limitation those included in the Background summary, that are deemed to be findings of fact are incorporated by reference into this section as findings of fact issued by the Hearing Examiner.

2. The Washington Department of Transportation submitted applications seeking a shoreline conditional use permit and a critical areas permit needed for its US 12 Phase 7 Project, which will replace and realign an existing 11-mile segment of US Highway 12 generally located between Wallula and the Frenchtown vicinity in the western portion of Walla Walla County. The new route will begin near milepost 317, an area WSDOT materials identify as “Nine Mile Hill” and end just after milepost 328. (*Exhibit 2-C, Project Plans, sheet 1 of 10, map showing existing and proposed new alignment with mileposts marked*).

3. The Project includes construction of a new 4-line highway alignment located to the north of the existing highway that will shorten the travel distance in this part of the highway, which now dips to the south. The Project will also include construction of new bridge crossings over the Touchet River and its floodway, and some work in and near regulated critical areas.

4. The requested permits are limited in scope to portions of the Project that are located within the County’s designated shoreline jurisdiction and regulated critical areas, specifically those portions of the new highway that are: within Touchet River shorelands (shoreline areas); and portion(s) that cross Dry Creek, which is a regulated critical area, but not a shoreline. (*Staff Report, at page 1; Testimony of WSDOT hearing representative, Bill Sauriol. Exhibit 2, Application Materials*).

5. Staff confirmed that all notices were provided in accord with applicable county and state regulations.

6. No one presented any evidence, via written comments or during testimony at the

1 public hearing, that would rebut or question the credible application materials,
2 environmental documentation, wetlands reports, and the like that are all included as part of
3 the record for this matter, and all of which demonstrate how the Project has been designed
or can be conditioned to comply with all applicable county shoreline and critical area
regulations.

4 7. The Staff Report and application materials credibly explain how the project has
5 been the subject of thorough environmental review, in accord with SEPA and NEPA,
6 among other applicable state and federal laws. The environmental documentation included
7 in the record has provided the Examiner and other decision-makers with details, studies,
8 and descriptions of design features sufficient to reach an informed decision on this matter.
9 (*Staff Report, at page 2; Application materials included in Exhibit 2, including without
limitation Ex. 2(D), the SEPA DNS issued for the Project, adopting existing environmental
documents prepared regarding the project, Ex. 2(F), NEPA Finding of No Significant
Impact, from 2010, and Ex. 2(G), NEPA Reevaluation from 2014, Environmental
Classification Summary*).

10 8. Based on substantial evidence in the record, the Examiner finds and concludes that,
11 as conditioned, the WSDOT US-12 Phase 7 Project satisfies all of the applicable shoreline
12 policies and approval criteria for a Shoreline Conditional Use Permit set forth in Section
13 7.7(D) of the County's Shoreline Master Program (SMP). This is the only major federal
14 highway in the area effected by this application, so there are not likely to be any other
15 "like" projects or actions that could generate cumulative impacts in the area, satisfying
consideration mandated by Sec. 7.7(E) of the County's SMP. Findings regarding each of
the specific criteria are included on page 4 of the Staff Report, and are adopted by the
Examiner as findings supporting this Decision.

16 9. Based on substantial evidence in the record, the Examiner finds and concludes that,
17 as conditioned, the WSDOT US-12 Phase 7 Project satisfies all of the approval criteria for
18 the requested Critical Areas Permit, including without limitation those found in WWCC
19 18.08.620(B). Findings explaining how the Project satisfies applicable County Critical
Areas regulations are found in the Staff Report, including without limitation the analysis
provided on page 5.

20 10. The Staff Report explains that the Project is located within the floodway and
21 floodplain for the Touchet River. WWCC Chapter 18.12 limits development of new or
22 expanded transportation facilities within the floodway except where no feasible alternative
23 exists, or the alternative would result in unreasonable and disproportionate costs. (*Staff
Report, pages 5 and 6*). Based on substantial evidence in the record, including without
24 limitation thorough environmental reports, wetlands reports, biological, geological, and
water resources reports (*all included as part of Ex. 2*), the Examiner finds and concludes

1 that there is no feasible alternative to re-align the highway to avoid crossing the Touchet
2 River floodway. As recommended in the Staff Report, a condition of approval has been
3 included to ensure compliance with applicable provisions of the County's Flood
4 regulations, found in WWCC Chapter 18.12.

5 11. Except as modified in this Decision, all Findings, analysis, and statements of fact
6 contained in the Staff Report, are incorporated herein by reference as Findings of the
7 undersigned hearing examiner.

8 **V. CONCLUSIONS OF LAW.**

9 1. As explained above, the record, particularly the County Staff's recommendation of
10 approval, includes substantial evidence that the pending permit applications satisfy all
11 applicable decision criteria specified in the County's code and shoreline master program.

12 2. As explained in the Findings of Fact, the applicant has satisfied its burden of proof,
13 to demonstrate that its proposal complies with, or can be conditioned to comply with, all
14 applicable approval criteria for a Shoreline Conditional Use Permit and Critical Areas
15 Permit.

16 3. Any finding or other statement contained in this Decision that is deemed to be a
17 Conclusion of Law is hereby adopted as such and incorporated by reference.

18 **VI. DECISION.**

19 Based upon the preceding Findings of Fact and Conclusions of Law, evidence
20 presented through the course of the open record hearing, all materials contained in the
21 contents of the record, previous site visits, and the examiner's online review of aerial maps
22 and images of the project site and surrounding area, the undersigned Examiner APPROVES
23 the Shoreline Conditional Use Permit and Critical Areas Permit for the WSDOT US 12
24 Phase 7 Project, all as described in the application materials included in the Record as
25 Exhibit 2, subject to the following Conditions of Approval:

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
DECISION – APPROVING SHORELINE
CONDITIONAL USE PERMIT AND CRITICAL
AREAS PERMIT FOR THE US 12 PHASE 7 PROJECT,
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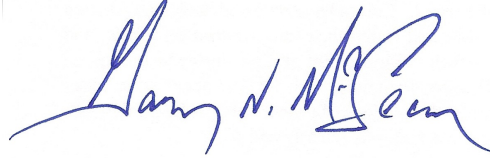
WALLA WALLA COUNTY HEARING EXAMINER
310 W. POPLAR STREET, SUITE 200
WALLA WALLA, WASHINGTON 99362

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CONDITIONS OF APPROVAL

1. As set forth in WAC 173-27-190 and the Walla Walla County SMP (Section 7.5(F)), construction pursuant to the permit may not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have terminated; except as provided in RCW 90.58.140(5)(a) and (b).
2. The applicant shall comply with the requirements of WWCC Chapter 18.12, Re: Flood Damage Prevention. No development will be allowed within the floodway unless a certification by a registered engineer or architect demonstrating through hydrologic and hydraulic analysis that the proposed encroachments will not increase in flood levels during the base flood discharge (WWCC 18.12.290).
3. Before construction, the applicant must first obtain all other associated permit(s) or approvals required by the County or any other government agency or regulatory authority with jurisdiction over a particular aspect of the project. Any conditions of approval or requirements imposed as part of such permits or approvals, or that may be found in applicable county, state or federal highway regulations, shall be and are hereby incorporated as Conditions of Approval for the two permits issued herein.

ISSUED this 1st Day of July, 2019



Gary N. McLean
Hearing Examiner

1 **FINALITY OF DECISION AND NOTICE OF RIGHTS OF APPEAL**

2 As provided in WWCC 2.50.070(B), *the decision of the hearing examiner on all matters is final and*
3 *conclusive, unless appealed pursuant to Chapter 14.11 of the Walla Walla County Code.*

4 WWCC 2.50.120, captioned “Reconsideration”, provides that: *An applicant or party of record to a*
5 *hearing examiner's public hearing may seek reconsideration only of a final decision by filing a written*
6 *request for reconsideration with the community development director within ten days of the final decision.*
7 *The request shall comply with Section 14.11.030 of this code. The hearing examiner shall consider the*
8 *request at the next regularly scheduled meeting, without public comment or argument by the party filing the*
9 *request. If the request is denied, the previous action shall become final as of the date of the decision on the*
10 *request for reconsideration. If the request is granted, the hearing examiner may immediately revise and*
11 *reissue its decision or may call for argument in accordance with the procedures for closed record appeals.*
12 *Reconsideration should be granted only when an obvious legal error has occurred or a material factual issue*
13 *has been overlooked that would change the previous decision.*

14 Finally, WWCC 2.50.130 addresses appeals of a hearing examiner decision, and reads as follows:
15 *The final decision by the hearing examiner on any matter within his or her jurisdiction may be appealed in*
16 *accordance with Chapter 14.11 of the Walla Walla County Code.*

17 ***NOTE:*** *The Notice provided on this page is only a short summary, and is not a complete*
18 *explanation of fees, deadlines, and other filing requirements applicable to appeals.*
19 *Individuals should confer with advisors of their choosing and review all relevant codes,*
20 *including without limitation the code provision referenced above and state law, particularly*
21 *the Land Use Petition Act (Chapter 36.70C RCW), for additional information and details*
22 *that may apply.*