DECISION OF SNOHOMISH COUNTY PUBLIC WORKS

SUMMARY

PROJECT NUMBER: RC 1730

APPLICATION VESTING DATE: March 29, 2019

PROJECT NAME: Little Bear Creek Advanced Mitigation Site (LBCAMS)

APPLICANT: Snohomish County Public Works Engineering Services
3000 Rockefeller Ave. M/S 607
Everett WA 98201

TYPE OF REQUEST: Land Disturbing Activity Permit for clearing, grading, and planting with native plants to restore wetlands and enhance wetland and stream buffers.

DECISION (Summary): Approve with conditions

DECISION DATE: February 19, 2020

PERMIT ISSUE DATE: March 16, 2020
PROJECT INFORMATION

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FINDINGS OF FACT

Background Information

Proposed Project

Snohomish County Public Works ( SCPW ) proposes to construct and operate a 17-acre advance wetland mitigation site in the Little Bear Creek Subbasin. SCPW intends to restore the site and improve the functions and values of the wetlands and streams so that the site generates mitigation credits that can be used to offset unavoidable impacts of future road improvement projects identified in the County's 6-year Annual Construction Plan – Transportation Improvement Program (ACP-TIP). The project site contains extensive wetlands, a segment of Little Bear Creek, and several spring-fed tributaries. Ditching and filling have altered the hydrology of the project area. Based on the amount of proposed clearing, grading, and proposed improvements, a land disturbing activity (LDA) permit and a State Environmental Policy Act (SEPA) review pursuant to Chapter 30.61 Snohomish County Code (SCC) are required. Per SCC 30.71.020, the project is therefore a Type 1 permit that requires an administrative decision.

Project Chronology

The LDA vesting date was March 29, 2019
The LDA Notice and SEPA-DNS was issued April 7, 2019
The comment period closed 4/29/2019
It is a condition of approval that the LDA Decision will expire 36 months after approval in accordance with SCC 30.70.140.

Site Description

The 17-acre Little Bear Creek Advance Mitigation Site (LBCAMS) contains degraded...
wetlands, a habitat-impaired 450-foot-long reach of Little Bear Creek, and channelized spring-fed tributaries. Prior to its purchase by Snohomish County in 2017, the site had a long history of rural residential and agricultural use which involved ditching, filling, grazing, and construction of interior roads and structures. As a result, a substantial portion of the site has been disturbed and filled for past agricultural use including livestock grazing, raising fowl, and outbuildings to support these activities. These practices altered the hydrology of the wetlands, reduced the quality and complexity of aquatic and terrestrial habitats, affected in-stream habitat conditions, and contributed to water quality problems in this portion of the subbasin.

**Project Consistency**

**Project Authorization**

This project is consistent with the Snohomish County Growth Management Act Comprehensive Plan – Transportation Element. It is identified in the Snohomish County Transportation Improvement Program for 2020-2025 and designated as a Miscellaneous Engineering and Studies project and identified as TIP #A.19 – Advanced Mitigation Site Development.

**Environmental Review (SEPA) (Chapter 30.61 SCC)**

Public Works – Environmental Services (ENVS) determined that this project is not exempt from the requirements of the State Environmental Policy Act (SEPA). This determination is based on the extent of site disturbance associated with grading and clearing. The applicant submitted a SEPA checklist on 3/26/2019, and the Public Works Director issued a determination of nonsignificance (DNS) on 3/29/2019. Notice was provided on April 7, 2019 with a comment period that ended on April 29, 2019.

**Wetlands and Fish and Wildlife Habitat Conservation Areas (Chapter 30.62A SCC)**

ENVS performed a site visit on 2/6/2018 and staff determined that there are jurisdictional critical areas as defined and regulated pursuant to Chapter 30.62A SCC that exist on the project site. ENVS contracted with ESA to perform field work including wetland delineations and the identifying the ordinary high water mark of onsite streams. ESA prepared a Critical Areas Report (CAR) that was completed on 8/22/2019.

Little Bear Creek, a Type S stream, and 4 unnamed watercourses are located on the proposed advance mitigation site. The unnamed watercourses include three Type Np, and one Type Ns streams.

Little Bear Creek flows through the south portion of the project site from east to west. Approximately 450 linear feet of channel is located on the site. Little Bear Creek is 20 to 25 feet wide within the project area, primarily contains pool and riffle habitats, and has moderate floodplain connectivity in the upstream reach where bank heights are low. Top-of-bank is approximately 3 feet above the stream thalweg.

Ten wetlands have been identified and delineated within the advance mitigation site.
boundaries. Four wetlands (A, C, H, and J) are relatively large with multiple hydrogeomorphic (HGM) classes and Cowardin classes. The remaining 6 wetlands (E, F, K, L, M, N) are smaller and less complex in both vegetation structure and hydrologic variation. The emergent wetlands (A, C, E, F, J, K, L, M, N) are dominated by species including soft rush, skunk cabbage, cattail, slough sedge, giant horsetail, bulrush, water parsley, and reed canarygrass. The forested wetlands are dominated by red alder, black cottonwood, salmonberry, creeping buttercup, and bentgrass.

The areas identified and mapped as wetland occur in the north-central, central, and southern portions of the site in low-lying areas. These are the areas where most of the planned advance mitigation activities (e.g., wetland creation, reestablishment, rehabilitation and enhancement) will occur. On-site wetlands are fragmented by interior roads and fill which disrupts the natural hydrologic pathways and impairs hydrologic and water quality functions. Removal of the fill and reestablishment of natural hydrologic process will improve the functions and values of the on-site wetlands.

Stream and wetland buffers throughout the proposed mitigation site are generally degraded as a result of past clearing and heavy livestock grazing. The buffer area along Little Bear Creek in the project area consists primarily of young age class deciduous trees with an understory of salmonberry and invasive Himalayan blackberry. A few mature conifers are located in the riparian buffer, although overall canopy cover remains far less than historic conditions. Dead trees are common along the wetland edge where grazing was allowed.

Buffers on the tributary streams range from non-existent to highly degraded. Streams are frequently immediately adjacent to existing outbuildings or gravel driveways. Where vegetated buffers do exist, they primarily consist of short pasture grasses.

Wetland buffers are similar to tributary stream buffers. Several wetlands on-site are adjacent to or coincident with streams and share a common buffer. Wetlands within the central portion of the project area typically feature buffers impacted by buildings, paved areas, or historic grazing. Wetlands on the fringes of the project area tend to have more intact buffers. Specifically, Wetlands H and J have a relatively intact second-growth mixed forest buffer on one side for at least 100 feet.

A mitigation plan has been prepared for the site and was submitted with the Shoreline permit applications. The implementation of the proposed mitigation plan provides a long term benefit to watershed processes and will provide ecological benefits that are in the public interest. The net beneficial effect is provided by restoring natural conditions to a site adversely affected by past development. The site design has been developed in a manner that incorporates environmentally beneficial mitigation to compensate for future road project unavoidable impacts.

Implementation of the LBCAMS mitigation plan will result in a substantial increase in wetland functions. Because these functional gains will be used as credits to offset debits incurred by Public Works due to unavoidable critical area impacts of future road projects, the County must document that these functional lifts have occurred before the release of credits can occur. The success of the LBCAMS and the subsequent release of credits will be determined by meeting the project objectives as outlined in the mitigation plan’s Project Monitoring Criteria and Performance Standards. Methods of evaluation as well as possible contingency measure for each performance standard are included in the performance standards.

Geologically Hazardous Areas (Chapter 30.62B SCC)

There are steep slopes present on the site and erodible soils. A geotechnical report was

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prepared to identify onsite geologic hazards and address onsite ground disturbance in proximity to these areas. The report provided important information for the proposed design and was submitted with the Shoreline permit applications. The report concluded: “The geology and hydrogeology on this site are favorable for wetland creation and/or re-establishment without significant augmentation.”

The report also concluded the following: “Flood, erosion, landslide, fault and seismic hazards have all been identified for this site. Of these hazards, the landslide and fault hazards have the highest potential of impact to the site and to the site and properties immediately adjacent to the site. Removal of the existing structures on the property will reduce the potential risks to the site from seismic related hazards. Based on our review of the data developed and presented in this report and the 60% design plans, it is our opinion that the project as proposed will either not be impacted by flood and erosion hazards in a preventable or detrimental manner, or will not increase the impact of the hazard in the immediate vicinity of the project site over its design lifespan. Additional mitigations beyond the proposed site improvements as outlined in the 60% design plan set and/or previously discussed in this report are not recommended or required given the presence of flood and erosion hazards on this site.”

**Critical Aquifer Recharge Areas (Chapter 30.62C SCC)**

A Hydrogeology Report was prepared and submitted with the Shoreline permit applications. The report identified that Advance Outwash and Recessional Outwash aquifers are exposed at the ground surface and that the project site has a high sensitivity to groundwater contamination. The report concluded: “The project as proposed will improve existing hydrology through re-establishing and/or improvement of surface water and wetland elements. Observed hydrologic conditions suggest that the wetlands across the property are ground water supported. Re-establishing wetlands and drainages on this site will improve water quality while at the same time help with water quality issues currently experienced in Little Bear Creek. All project BMPs and the application and use of a contractor submitted SCPW approved Spill Prevention and Response Plan will need to be implemented and followed during site improvement work in order to maintain a no impact policy to the underlying groundwater resource and to the adjacent Little bear Creek. It is also recommended that grading and filling operation take place during periods of extended dry weather.”

**Drainage (Chapter 30.63A SCC)**

**Land Disturbing Activity (Chapter 30.63B SCC)**

The LDA permit application for the Little bear Creek Advance Mitigation Site was reviewed for compliance with the Snohomish County Code and standards related to drainage, land disturbing activity (grading). The 95% preliminary construction plans were used for this compliance review as allowed by Department of Public Works (DPW) policy. Final construction plans and specifications are required before DPW advertises the project for contractor bids.

The proposed Project is to re-establish wetlands and enhance onsite critical areas. Preliminary estimates indicate approximately 10,000 cubic yards of fill were placed on the site, much of which will be removed or relocated as part of the mitigation project. Approximately 4,800 cubic yards of fill will be removed. After removal, site contours will be graded to restore wetlands, generally removing fill down to the naturally formed wetland hydric soils that lie
beneath the fill. The project will involve deposition of approximately 95 CY of fill into existing wetlands. The fill will be used to create hummocks, which will be low enough so that the wetlands retain wetland characteristics. An additional 10 CY of fill will be placed within streams and ditches to create the desired hydrologic and flow path conditions. The total volume of fill in streams and wetlands is 105 CY. The fill will be derived from areas of the site that are being excavated to create, rehabilitate and reestablish wetland. The project does not propose to dredge material from onsite streams. The project will not add impervious surface area. The existing impervious surface area totals 0.96 acres (41,817 square feet). An estimated 0.88 acres (38,332 square feet) of impervious surface area will be removed. All impervious surfaces within the internal portion of the site will be removed, including structures, asphalt, concrete and gravel surfaces associated with internal site access roadways, structural foundations, and other fill pads used for past site operations. Two site access entrances will remain to provide for future site access to allow for maintenance and monitoring. Altering the existing ground surface with onsite grading to provide the appropriate contours for wetland creation, rehabilitation and wetland re-establishment will remove fill that was placed and some of the existing site vegetation that has become established in these areas. Vegetation clearing and grading totaling approximately 4.65 acres will temporarily expose bare soils that are more prone to erosion. These bare soil areas are expected to revegetate over a several-months-long period which would reduce the erosion potential.

**Modifications or Waivers**

This project does not have any EDDS deviations or Code Modifications/Waivers.

**Discussion of Drainage Minimum Requirements (MR)**

**MR #1: Preparation of Stormwater Site Plans (SCC 30.63A.400)**
A targeted drainage report has been prepared for the project and adequately addresses on-site stormwater requirements.

**MR #2: Stormwater Pollution Prevention Plans (SWPPPs) (SCC 30.63A.445 to 30.63A.450)**
The applicant has provided adequate SWPPP information for issuance of LDA.

**MR #3: Source Control of Pollution (SCC 30.63A.515)**
Permanent source control BMPs are not required for this project. Temporary Source Control BMPs are addressed in the SWPPP (MR#2 above).

**MR #4: Preservation of Natural Drainage Systems and Outfalls (SCC 30.63A.520)**
Natural drainage systems discharge locations will be preserved with the proposal. No impacts to the downstream drainage system have been identified by the engineer.

**MR #5: On-Site Stormwater Management (SCC 30.63A.525)**
On-site stormwater management BMPs were infeasible due to high groundwater and saturated conditions.

**MR #6: Runoff Treatment (SCC 30.63A.530 to 30.63A.545)**
The threshold requiring flow control has not been exceeded given the proposed amount of hard surfaces.
MR #7: Flow Control (SCC 30.63A.550)
The threshold requiring flow control has not been exceeded given the proposed amount of hard surfaces.

MR #8: Wetlands Protection (SCC 30.63A.570)
The project does not propose utilizing wetlands for either flow control or stormwater treatment. This MR is specific to utilizing wetlands and the associated buffers for flow control or treatment or both. Since the proposal does not include this in the design no additional information or analysis is required.

MR #9: Inspection, Operation Maintenance etc. (SCC 30.63A.575 to 30.63A.605)
Operation and Maintenance information about the anticipated BMPs is provided in the Stormwater Site Plan Report (Drainage Report?) Other items related to this MR will be addressed in the permit issuance and the construction completion stages of the project.

Summary

Based on the review of the application relating to drainage and grading, this project can fulfill the requirements of Snohomish County codes and policies, including the Snohomish County Drainage Manual and Engineering Design and Development Standards (Chapter 5 Drainage). Prior to the final inspection of the LDA, it is a condition of approval that a letter from the design engineer certifying compliance with the approved reports and plans be submitted to PW.

Utilities

The project proposes utility relocations of an existing PUD pole located in the proposed grading area.

CONCLUSIONS

A. The proposed project is consistent with the GMACP, GMA-based County codes and applicable design and development standards.
B. With conditions of approval, the proposal will comply with County codes and regulations, which will assure adequate provisions for the public health, safety, and general welfare.

DECISION

Snohomish County Public Works hereby APPROVES the requested land disturbing activity Little Bear Creek Advance Mitigation Site (RC 1730) with the following conditions:

Conditions

A. General conditions:
1. Subject to and in accordance with all conditions of approved Drainage Report, Stormwater Site Plan, SWPPP, and/or Soil Management Plan.

2. Work shall be accomplished from approved final plans and specifications. A copy of these plans shall be available on site during construction.

3. No disturbance, except as shown on the approved LDA site plan set, shall occur on this property without further review and approval from Snohomish County PW.

4. Prior to final inspection a letter from the design engineer shall be submitted certifying compliance with the approved reports and plans listed above.

5. No disturbance is allowed until the following permits have been approved by PDS: Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, Flood Hazard Permit. Shoreline Permit Conditions include the following:

   Development pursuant to this permit shall also be subject to the following special terms and conditions: 1) The Shoreline Site Plan received on September 11, 2019 is the approved site plan. Revisions to such plans are governed by SCC 30.44.270. 2) Prior to initiation of construction, the applicant shall have obtained the following permits/approvals: Land Disturbing Activity, Flood Hazard, and Demolition permits. 3) Best management practices for temporary erosion and sediment control shall be in place for the full extent of the project. 4) Construction equipment shall be fueled, maintained and stored in a fashion to minimize the potential for spills of hazardous materials into a critical area and buffer. 5) Construction shall be consistent with the approved development plans inclusive of the wetland and stream and buffer mitigation, restoration, and planting provisions. 6) Snohomish County shall be promptly notified if any possible archaeological data is uncovered during excavation or development. 7) Per the Interagency Regulatory Guide on Advance Permittee-Responsible Mitigation (Ecology Publication no. 12-06-015, December 2012): Even if compensatory mitigation activities are themselves authorized by a permit, establishing compensatory mitigation in advance of the impacts does not create any presumption or guarantee that a future proposed impact will be authorized, or that the advance compensatory mitigation will be considered adequate and/or suitable mitigation for any specific future project. 8) Use of the site for Advance Permittee-Responsible Mitigation and the release of any associated credits will be determined by the jurisdictional authorities responsible for approving and monitoring the use of the site as an advanced mitigation site (including but not limited to the US Army Corps of Engineers and Washington State Department of Ecology). 9) Any permits or approvals from state or federal agencies with jurisdiction shall have been obtained prior to construction. 10) An HPA (Hydraulic Project Approval) shall have been obtained from the Washington Department of Fish and Wildlife prior to any in-water work. 11) All conditions of permits issued by agencies with jurisdiction shall become conditions of the shoreline permit. The following conditions were part of the Washington State Department of Ecology’s approval of the Shoreline permits: 1. The applicant hereby authorizes Ecology staff and their designees to have access to the subject property for the purposes of compliance inspection and monitoring. Such right of access shall begin from the date of receipt of this letter, during construction, and extend for a period of five years following project completion. Ecology staff must
provide reasonable verbal notice to the applicant or their designee prior to coming into
the site.2. Final site design, operation, and mitigation credit details shall be authorized
through Ecology’s Section 401 Water quality Certification prior to development of the
proposed wetland advanced mitigation site.

6. There are no ROW or easement commitments for this project.

7. Describe any mitigation commitments or planting requirements

With implementation of the proposed mitigation plan, LBCAMS would provide the
potential for approximately 0.3 acre of wetland creation, 4.3 acres of wetland
reestablishment, 0.2 acre of wetland rehabilitation, 6.1 acres of wetland
enhancement, 5.6 acres of buffer and upland preservation with enhancement, and
approximately 225 linear feet of floodplain enhancement. The final acreage
provided by the plan’s implementation would be determined at the time of final
design and construction. SCPW expects to generate sufficient mitigation credits
at LBCAMS to offset wetland, stream, and buffer impacts associated with up to 11
planned road improvement projects over the next 10 years.

The proposed mitigation actions include:

- Remove invasive vegetation throughout the site (4.65 acres of clearing and
  grubbing, primarily herbaceous vegetation with a few scattered trees)
- Remove structures, conduit, culverts, piping, utilities, internal fencing and
decommission an existing water supply well.
- Excavate fill and regrade to appropriate elevations for wetland reestablishment or
  creation.
- Use fill material to selectively plug internal drainages (ditches) to enhance site
  hydrology and restore historical wetland conditions.
- Create complex microtopography to encourage habitat diversity and retain water on
  the site.
- Retain and/or install habitat features such as brush piles, habitat logs, stumps,
  standing snags, and root wads.
- Plant a diverse assemblage of native plants to establish forested and scrub-shrub
  wetland communities.
- Reconnect Little Bear Creek with its floodplain.
- Enhance instream habitat through placement of large wood, creation of a floodplain
  bench, and enhancement of the riparian corridor.
- Enhance wetland and stream buffers and upland areas by removing invasive
  vegetation and planting native species.
- Plant new buffers and riparian vegetation in areas that were previously cleared.
- Retain and enhance exterior fencing to restrict unauthorized access.
- Establish a conservation easement or similar protective covenant to ensure long-
  term protection of the mitigation area.
- Monitor, maintain and adaptively manage the site in perpetuity.

8. This project must comply with all conditions of HPA Permit 2020-4-17+01.
9. This project must comply with all conditions of Army Corps Permit NWS-2019-00505-WRD and Washington State department of Ecology Section 401 Water Quality Certification.

B. Timing of approval expiration:
   1. In accordance with SCC 30.70.140, an approved LDA Decision will expire 36 months after approval.

Nothing in this approval excuses the Project from compliance with any other federal, state, or local statutes, ordinances, or regulations applicable to this project.

Decision issued: 2/19/2020  Concurred By: 2/19/2020

Oscar Fuentes, Project Manager  Janice Fahning, Director
Snohomish County Public Works  Snohomish County Public Works

EXPLANATION OF APPEAL PROCEDURES
The decision of the Department is final and conclusive with right of appeal to the Snohomish County Hearing Examiner. For more information about the appeal procedures, please see SCC 30.71.050 and the respective Examiner Rules of Procedure.

Appeals
An appeal to the County Hearing Examiner may be filed by any aggrieved party of record. Appeals shall be addressed to the County Hearing Examiner but shall be filed in writing with the Department of Planning and Development Services, 2nd Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) prior to 5:00 pm on Friday March 13, 2020, and shall be accompanied by a filing fee in the amount of five hundred dollars ($500.00); that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction, or other procedural defect.

An appeal must be in writing and contain all requirements found in SCC 30.71.050 to be complete, including: facts demonstrating that the person is aggrieved by the decision; a concise statement identifying each alleged error and the manner in which the decision fails to satisfy the applicable decision criteria; the specific relief requested; and any other information necessary to make a decision on the appeal.

Distribution List
Karen Walter, Fisheries Division, Muckleshoot Tribe
Piper and Andrea Roelen

Administrative Decision: Little Bear Creek Advance Mitigation Site (RC 1730)
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**Verification** provided by person responsible for incorporating the conditions set forth in the supporting documentation (typically the Project Manager).