Before the Planning Commission, City of Anacortes
Shoreline Management Substantial Development/
Conditional Use/Special Use/Variance Permit
Application by the City of Anacortes Parks Department

Shoreline Permit # 312 – Guemes Channel Trail Phase I

Findings of Fact and Conclusions of Law and Decision Thereon

FINDINGS OF FACT

1. General Background

1.1 The City of Anacortes Planning Director has been designated the Shorelines "Administrator" and "Environmental Officer" for the City of Anacortes Shoreline Management Master Plan.

1.2 Under Section 11: Permit Procedure:

1.2.1. Upon determination that a substantial development permit is required, the applicant shall obtain a Shoreline Management Substantial Development Permit Application Form from the Shoreline Administrator.

1.2.2. Upon receipt of the application, the Shoreline Administrator shall publish notices of the application once a week for two consecutive weeks in a newspaper of general circulation in the City of Anacortes. In addition, the Shoreline Administrator shall post at least four copies of the notice prominently on the subject property or in conspicuous public places within 300 feet thereof. Within thirty days of the final publication of notice, any interested person may submit his/her views upon the application, in writing, to the Shoreline Administrator. All persons' submitting written views or, in writing, requesting notice shall be entitled to receive a copy of the action taken on the application.

1.2.3. As a part of the substantial development permit review process, the Planning Commission will hold a public hearing on the application.

1.2.4. After the hearing, the Shoreline Administrator shall recommend approval or denial of the permit to the Planning Commission.

1.2.5. Following a final decision on the permit by the City, the application shall be forwarded to the Department of Ecology for state review and filing.

1.2.6. Construction pursuant to the permit may commence following the state review period, unless an appeal has been filed and all applicable permits have been secured.
1.3 On June 16, 2008 Mr. Gary Robinson, Director of Parks and Recreation for the City of Anacortes, applied for a Shoreline Substantial Development/Conditional Use/Variance/Special Use Permit. The application is for the development of a segment of the Guemes Channel Trail; the project includes a pedestrian trail 2,600 lineal feet long and varying in width up to 12 feet wide, with planting areas as mitigation; and a 0.2 acre Overlook Park on the bluff above the trail which is associated with the Plat of San Juan Passage, together with a 300-lineal foot path from the Park to the shoreline trail. This segment of the Trail begins at the Edwards Way cul-de-sac and runs east 2,600 lineal feet; the Ocean View Park is located on a bluff above the trail approximately 500 feet east of the cul-de-sac; Section 22, Township 35 North, Range 1 East, Anacortes, Skagit County, Washington. The JARPA application is Exhibit 1.

1.4 The proposed project is located within Guemes Channel and/or its associated wetlands.

1.5 Applicant:
Mr. Gary Robinson  
Director of Parks and Recreation  
P.O. Box 547  
Anacortes, WA 98221 360.293.1918

2. State Environmental Policy Act

2.1 The Planning Director has been designated the responsible official for those proposals for which the City is the lead agency. A Mitigated Determination of Nonsignificance (hereinafter “MDNS”) (Exhibit 2) was issued for this project on July 25, 2008 by the City of Anacortes, the SEPA lead agency.

Exhibit 3: Environmental Checklist

Attachment A: Drawings and Vicinity Map  
Attachment B: May 8, 2008 Geotechnical Engineering Services Report  
Attachment C: December 2007 Habitat Assessment ATSI  
Attachment D: May 2008 Mitigation Plan for Guemes Trail Phase I - ATSI

2.2 This lead agency determined that the Guemes Trail proposal does not have a probable significant adverse impact on the environment provided that the conditions set-out below are satisfied. Accordingly, an environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

1. All state, federal and local permits shall be secured prior to work taking place on site.
2. A Large Parcel Storm Water Plan and Water Quality Plan shall be developed by the applicant, approved by the Public Works Director and implemented.
3. Existing railroad ties shall be removed and disposed of in an appropriate manner.
4. Native shoreline vegetation pockets shall be constructed at approximately every 100 feet of trail length. The consulting project
biologist shall determine planting area, type of vegetation, and amount of vegetation.

5. Near shore enhancement shall include the removal of invasive plant species such as English Ivy and Himalayan Blackberry as determined by the project biologist.

6. The project biologist shall be present during construction to determine trees, shrubs and other vegetation that need not be impacted by the trail construction. This may include narrowing the trail in some areas to avoid impacts and determined by the project biologist and Parks Director.

7. A consulting archeologist shall be available and contacted in the event artifacts are discovered during construction. Appropriate state law and tribal guidelines shall be followed.

2.3 The MDNS was made available for public comment on July 25, 2008, and mailed to the following agencies with a deadline for public comment of August 18, 2008: State Department of Ecology, Olympia; State Department of Ecology, Bellingham; the Samish Indian Nation; and the State Department of Fish and Wildlife.

2.4 The MDNS was published in the Anacortes American on July 30, 2008 again with a deadline for public comment of August 18, 2008.

2.4.1 No letters of comment were received in response to this MDNS.

2.5 The MDNS was posted on the project site.

3.0 Notice

3.1 Section 11: "Permit Procedure", (2.) states, in part:

Upon receipt of the application, the Shoreline Administrator shall publish notices of the application once a week for two consecutive weeks in a newspaper of general circulation in the City of Anacortes. In addition, the Shoreline Administrator shall post at least four copies of the notice prominently on the subject property or in conspicuous public places within 300 feet thereof. Within thirty days of the final publication of notice, any interested person may submit his/her views upon the application, in writing, to the Shoreline Administrator. All persons’ submitting written views or, in writing, requesting notice shall be entitled to receive a copy of the action taken on the application.

3.2 Notice of Shoreline Substantial Development/Conditional Use/Variance/Special Use Application, Notice of Public Hearing, and Notice of Completeness, were published in the Anacortes American on July 30, 2008 and August 6, 2008 (See Exhibit 4) and four copies of the Notice were posted on the site on August 7, 2008 and copies were also posted at the Municipal Building, Library, and Post Office on July 30, 2008. (Exhibit 5)

3.3 Copies of the Notices were mailed to property owners within 300' of the exterior boundaries of the subject property on July 31, 2008.

3.3.1 Two letters of comment were received in response to these Notices.
Exhibit 6: August 19, 2008 letter from Christine Woodward, Samish Indian Nation
Exhibit 7: September 2, 2008 e-mail from Diana Barg, Samish Indian Nation

34. Written comments were received from staff and incorporated into these Findings as follows:

The application was received on June 16, 2008. The JARPA application, SEPA Checklist and attachments were distributed to the Design Review Group (DRG) on June 16, 2008 requesting that the Planning Department be notified of any additional information needed to evaluate the application. No requests for additional information were forwarded to the Planning Department and the conditions recommended by the DRG were mailed to the applicant (Exhibit 8). The Park Department response is (Exhibit 9). The Shoreline Permit application was determined to be complete and a Public Hearing scheduled.

All applicable ordinances and standards will apply when the site plan accompanies a Building Permit application. All departments will impose those standards through the Plan Review process. Proposed conditions are both standard and tailored to the environmental and archeological concerns associated with the Trail. It is noted that additional issues will be addressed in City staff's review of the Building Permit Application that will follow on from approval, if granted, of this application.

3.5 The 30-day application review period for this project ended on September 6, 2008. The Environmental Officer forwarded Findings of Fact and Conclusions of Law to the Planning Commission on September 4, 2008. The Public Hearing before the Planning Commission was held on September 10, 2008 and continued to September 24, 2008 (a site visit was held on the afternoon of September 24, 2008).

3.5.1 The following exhibits were submitted and are part of the Land Use record:

**EXHIBITS – Guemes Channel Trail – Phase I**

<table>
<thead>
<tr>
<th>DATE OF LETTER</th>
<th>NAME</th>
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<tbody>
<tr>
<td>Exhibit 10</td>
<td>September 18, 2008</td>
</tr>
<tr>
<td>Exhibit 11</td>
<td>September 23, 2008</td>
</tr>
<tr>
<td>Exhibit 12</td>
<td>September 22, 2008</td>
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</tbody>
</table>

3.5.2 At the conclusion of the September 24, 2008 meeting the Planning Commission voted to approve the project subject to the conditions outlined on pages 9 and 10.

4.0 Shoreline Master Plan

4.1 The subject property is in a shoreline area designated Urban II by the Shoreline Master Plan for the City of Anacortes. This designation is primarily for those areas which contain a mixture of water-oriented commercial, light manufacturing, and high density residential uses (and non-water-oriented development, provided that a substantial amount of public access is provided). Uses include, but are not limited to: Ferry terminals; urban parks and water-oriented commercial recreation facilities; restaurants; resorts, convention centers, and hotels; marinas; shops and markets.
4.1.2 The proposal is located in the appropriate shoreline designation.

4.2 The applicable goals and policies of the Shoreline Master Plan have been met by this application as conditioned.

4.2.1 GOALS AND OBJECTIVES

SHORELINE USE ELEMENT

GOAL A/Objective (i)
Identify and designate those shoreline areas suited for particular long term uses, including conservancy, recreational, residential, commercial, and industrial.

GOAL B/Objective (i)
Develop existing public view and access easements to facilitate public access to the water and to the shoreline and pursue additional public and private access opportunities.

PUBLIC ACCESS ELEMENT

GOAL A - Increase public physical and visual access to shorelines and the water.

GOAL B – Increase uses and activities which attract public to shorelines.

RECREATION ELEMENT

GOAL A – Maintain existing shoreline which is available for recreation use and increase amount of shoreline available for active and passive public use, while enhancing shore dependent recreation opportunities.

HISTORICAL/CULTURAL ELEMENT

GOAL A – preserve, protect, and restore shoreline areas identified as having historical or cultural significance, including underwater archeological resources.

4.2.2. SECTION 23: USE-ACTIVITY POLICIES AND REGULATIONS

18) RECREATION: Recreation and refreshment of body and mind through forms of play, sports, relaxation, amusement or contemplation.

Policies
a. Public recreation facilities shall be planned and designed to augment and enhance private recreation facilities and vice versa.
b. Unique shoreline recreational areas and vistas shall be preserved for future generations.
c. Recreational planning and development should recognize the wide variety of needs generated by the diverse local and regional population.

**Regulations**

b. Recreational developments, public and private, shall be located, constructed, and operated so as not to be a hazard to public health and safety nor should they materially interfere with normal public use of the water and shorelines.

4.2.2.1 As conditioned below this project meets the applicable Use-Activity policies and regulations.

**4.2.3 Section 15: Shoreline Variances**

The purpose of a variance permit is strictly limited to granting relief to specific bulk, dimensional or performance standards set forth in this Master Program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the Master Program would impose unnecessary hardships on the applicant or thwart the policies set forth in this Master Program.

Variances may be authorized by the Planning Commission after public hearing, and upon approval of the Department of Ecology:

1. Variance permits should be granted in a circumstance where denial of the permit would result in a thwarting of the policy enumerated in this Master Program. In all instances extraordinary circumstances should be shown and the public interest shall suffer no substantial detrimental effect.

2. Variance permits for development may be authorized provided the applicant can demonstrate all of the following:

a. That the strict application of the bulk, dimensional or performance standards set forth in the applicable Master Program precludes a reasonable use of the property not otherwise prohibited by the Master Program.

b. That the hardship described above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the Master Program, and not, for example, from deed restrictions or the applicant's own actions;

c. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation;

d. That the requested variance will not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum to afford relief;

e. That the public rights of navigation and use of the shorelines will not be adversely affected by the granting of the variance;

f. That the public interest will suffer no substantial detrimental effect.
3. In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if the variances were granted to other developments in the area where similar circumstances exist the total of the variances should also remain consistent with the policies of this Master Program and should not produce substantial adverse effects to the shoreline environment.

4. Requests for varying the use to which a shoreline area is to be put are not requests for variances, but rather requests for conditional uses.

4.2.3.1 The shoreline designation is Urban II and the setback required in Urban II area for non-water dependent use is 25'. Portions of this trail project encroach into the setback and a Shoreline Variance is required.

4.2.3.2 The purpose of special use is to allow greater flexibility in varying the application of the use regulations in a manner consistent with the policies of this Master Plan. Uses which are identified in this Master Plan as special uses may be authorized by the Planning Commission after a public hearing and upon a showing by the applicant that the following conditions are satisfied:

4.2.3.2.1 A public hearing has been scheduled and held.

4.2.3.3 The proposed use will not have a significant adverse effect upon the environment or other adjacent or nearby uses, or such adverse effects can be mitigated, or the public benefits of such use outweigh such adverse effects.

4.2.3.3.1 The proposed use will not have a significant adverse effect on the environment as mitigated and conditioned.

4.2.3.3.2 The proposed use will not have a significant adverse effect on other adjacent or nearby uses as conditioned below; the adjacent uses to the east and west are marine terminals and industrial uses and to the south is boat repair.

4.2.3.4 The proposed use will be consistent with the policies and general intent of this Master Plan.

4.2.3.4.1 The proposed use as conditioned below is consistent with the policies and general intent of the City Shoreline Master Program.

4.2.3.5 The proposed use will not interfere with the public use of public shorelines.

4.2.3.5.1 The applicant has provided public access to the beach area.

4.2.3.6 The location, design and appearance of the proposed development will be compatible with the surrounding uses.

4.2.3.6.1 The location, design and appearance of the proposed development as conditioned below are compatible with surrounding uses.

5.0 Zoning Ordinance

5.1 The City Zoning Map establishes zone boundaries and the City Zoning Ordinance establishes (1) the permitted use of land in the various zones and (2) development standards.
Shoreline Permit # 312 Guemes Channel Trail

5.2 The subject property is in a Commercial Marine Zone - Chapter 17.21 of the Anacortes Municipal Code, Title 17, Zoning.

5.2.1 Section 17.21.010 - "Purpose" states: The Commercial Marine Use District (CM) is established in recognition of the unique and irreplaceable nature of certain marine sites within Anacortes, and creates a special commercial district providing for the establishment of such uses as marinas, boat docking facilities, and other commercial enterprises where orientation to navigable waterways and tourism trade is of prime importance. Uses in this district are intended to serve the needs of marine oriented and tourist activity, and not to create large-scale commercial centers providing basic goods and services to the entire community.

5.2.2 Section 17.21.20 - "Permitted Uses": Boat moorage, ship building, private and public marinas, repair facilities for repair of small craft, boat and marine equipment sales and services. Small scale retail sales and specialty shops, eating and drinking establishments, offices, boatels, hotels, motels, indoor and outdoor public and private recreation facilities. Movie theaters. Parks.

5.2.3 These general purposes and uses as set forth in Section 17.21.010 and 17.21.030 as conditioned below, have been met by this proposal.

6.0 Findings of Fact

6.1 The requirements of the State Environmental Policy Act have been complied with.

6.2 The Public Notice and Public Hearing requirements of the Shoreline Management Act have been complied with.

6.3 The project as conditioned below is consistent with the shoreline designation, general goals and objectives of the Anacortes Shoreline Master Plan.

6.4 The proposed use will not have a significant adverse effect on the environment or adjacent or nearby uses, and in fact will bring additional benefits in line with the shoreline designation of the site.

6.5 The proposed use will be consistent with the policies and general intent of this master plan.

6.6 The proposed use will not interfere with the public use of the shorelines.

6.7 The location, design and appearance of the proposed development will be compatible with surrounding uses.
7.0 Conclusions

Shoreline Substantial Development and Variance Permit # 312 should be issued to the City of Anacortes Parks Department for the Guemes Channel Trail Phase I subject to the conditions that:

1. The scope of this project not exceed that as set-out in the shoreline application (including attachments), and the accompanying SEPA checklist (including attachments).

2. All state, federal and local permits shall be secured prior to work taking place on site.

3. A Large Parcel Storm Water Plan and Water Quality Plan shall be developed by the applicant, approved by the Public Works Director and implemented.

4. Existing railroad ties shall be removed and disposed of in an appropriate manner.

5. Native shoreline vegetation pockets shall be constructed at approximately every 100 feet of trail length. The consulting project biologist in conjunction with WDFW, shall determine planting area, type of vegetation, and amount of vegetation.

6. Near shore enhancement shall include the removal of invasive plant species such as English Ivy and Himalayan Blackberry as determined by the project biologist.

7. The project biologist shall be present during construction to determine trees, shrubs and other vegetation that need not be impacted by the trail construction. This may include narrowing the trail in some areas to avoid impacts as determined by the project biologist and Parks Director.

8. A consulting archeologist shall be available and contacted in the event artifacts are discovered during construction. Appropriate state law and tribal guidelines shall be followed.

9. Prior to construction beginning the City will adopt rules governing trail access, rules that include prohibiting pets and litter.

10. All construction activities are to be scheduled around sensitive life-cycle events of local species.
11. A building permit shall be secured from the City Building Department.

12. This project is subject to applicable water, sewer, and stormwater hookup fees and transportation, fire, school, and park impact fees. These fees are payable at levels in effect at the time of building permit issuance and may differ from those fee levels currently in effect.

13. Any violation of this permit and its conditions shall constitute a violation of the State Shoreline Management Act and its regulations and be subject to its penalties.

Ryan C. Larsen, Shorelines Administrator

9-26-04

Date