

to serve neighboring properties, or for general circulation purposes. The variance will not be unduly detrimental to the public welfare nor injurious to the property or improvements in the vicinity and will, in fact, benefit the public. For these reasons all three variances are consistent with this criterion and should be approved.

VI. Shoreline Substantial Development and Conditional Use Permit

The Property has frontage along Chuckanut Bay, which is a regulated shoreline within the City of Bellingham, subject to the rules and regulations in the City's Shoreline Management Program (SMP, BMC 22). Chuckanut Bay is in Reach 19, which has a Marine, Natural designation. The SMP jurisdiction extends 200' from the OHWM of the Bay, and in Reach 19, the buffer from the shoreline also extends 200' from the OHWM. The project has been designed to avoid development and impacts within the shoreline jurisdiction to the greatest extent possible. No developable lots, roads, trails, or utility infrastructure will be located within this area, apart from a storm water outfall pipe and energy dissipator, serving a portion of the project. These are the only improvements related to the Project located within the jurisdiction of the State Shoreline Management Act and City Shoreline Management Program. As discussed in the project narrative Section III the project SSP contemplates discharge of storm water to three locations (Viewcrest, Wetland B, and Chuckanut Bay). *See Exhibit A & F.* These discharge locations are dictated by the existing topography of the site. Due to the steep slopes on the site within 300' of Chuckanut Bay, it is not possible to discharge the project storm water runoff onto the slope, outside of the shoreline jurisdiction. To avoid the risk of erosion on the steep slopes, it is necessary to extend an outfall pipe to a point near the base of the slope. This utility improvement, located within the shoreline jurisdiction, requires a Shoreline Substantial Development Permit to authorize the activity. Due to the location of the improvement within Reach 19, in a Marine Natural designated area, a Shoreline Conditional Use Permit is also required to authorize storm water facility improvements.

The storm water system within the shoreline jurisdiction will consist of a large diameter conveyance pipe, which will be anchored to the surface of the ground (to reduce clearing and grading associated with the activity), as well as the installation of an energy dissipater at the terminus of the pipe. The energy dissipater will primarily consist of gabion baskets filled with 6" – 12" quarry spall, sourced from an approved pit. The dissipater will be a rectangle approximately 15' x 12' (168 square feet) in size and will require approximately 10 cubic yards of quarry spall material to be placed within the gabion baskets. This will require excavation and fill immediately above the existing sandstone shoreline edge of the Bay, but no activity at the beach level or below the OHWM. Details on this design are provided on Sheet 5 of the Preliminary Plat plan set. *See Exhibit A.*

BMC 22.06.030 identifies the regulations applicable to all non-exempt activities within the shoreline jurisdiction. The proposed improvements within the shoreline jurisdiction do not meet the exemption criteria in BMC 22.05.020 and are therefore subject to the regulations in BMC 22.06.030. Section 030.C identifies the specific criteria that a proposal must meet in order to be approved:

C. In order to be approved, the director must find that the proposal is consistent with the following criteria:

- 1. All regulations of this program appropriate to the shoreline designation and the type of use or development activity proposed shall be complied with, except those bulk and dimensional standards that have been modified by approval of a shoreline variance under BMC [22.06.040](#), Variances.*
- 2. All policies of this program appropriate to the shoreline designation and the type of use or development activity proposed shall be considered and substantial compliance demonstrated. A reasonable proposal that cannot fully conform to these policies may be permitted, provided it is demonstrated that the proposal is clearly consistent with the overall goals, objectives and intent of the program.*

The proposed improvements located within the shoreline jurisdiction are entirely consistent with applicable Regulations and Policies appropriate to the shoreline designation (Marine, Natural) and the type of development activity (storm water facilities) at the Property. No variances from the bulk and dimensional standards are requested. The proposed activity is a necessary component of the proposed project, and is clearly consistent with the overall goals, objectives and intent of the SMP, and the State Act. Specifically, the project improvements within the shoreline jurisdiction are consistent with:

- The applicable General Goals and Policies identified in Section BMC 22.02,
- The applicable Sections of BMC 22.03.030.A.2.a-h, which identifies the Management Policies for shoreline reaches with a Natural designation,
- BMC 22.04, Shorelines of Statewide Significance (as discussed below),
- The applicable General Policies in BMC 22.08, which regulate specific types of development activity, including BMC 22.08.210, which regulates storm water facilities within the shoreline jurisdiction. The project as designed is consistent with the applicable storm water facility Policies and Regulations in Section .210 A and B. This includes, by reference, compliance with applicable shoreline modification/stabilization Policies and Regulations in BMC 22.08.120, water quality, stormwater, and non-point pollution Policies and Regulations in BMC 22.08.110, and applicable shoreline buffer Policies and Regulations in BMC 22.08.010,
- The Regulation in Section 22.08.010.B.4.g, which specifically authorizes the construction of storm water conveyance and outfall facilities within shoreline buffers, subject to certain requirements.
- The applicable residential Policies in Section 090.A 1-9, and the applicable residential Regulations in 090.B 1-11.

3. *For projects located on shorelines of statewide significance, the policies of Chapter [22.04](#) BMC shall be also be adhered to.*

BMC 22.03.010 identifies Chuckanut Bay as a Shoreline of the State. As such, the proposed activity is subject to Section 22.04 of the SMP. Section 22.04.030 identifies general policies applicable to the Shorelines of the State, which as applied to this Property are focused on preservation and access. As designed the project is entirely consistent with these applicable policies; preservation of the shoreline area is a cornerstone of the project design, and there will be no impact to beach access, use of the beach area, or access to Chuckanut Bay in general. The proposed trail easement connection through the site will facilitate and improve public access to the shoreline for residents of the Edgemoor Neighborhood.

In addition to compliance with the Shoreline Substantial Development Permit requirements in BMC 22.06.030, the proposed improvements are also subject to conditional use permit requirements. According to the use table in BMC 22.03.030.A.4, storm water facilities are permitted in Reach 19, as conditional uses.

BMC 22.06.050 identifies the regulations applicable to a conditionally permitted activity or improvement. There are seven criteria for review and approval of a conditional use, identified in Section 050.C:

C. Prior to the granting of a conditional use permit, as specifically required by this program or for uses which are not classified as such by this program, the applicant shall demonstrate all of the following:

1. *The provisions spelled out in the master program have been met and the proposed use is consistent with the policies of the Act;*

Applicable provisions spelled out in the master program have been met and no variances have been requested from the SMP. Compliance with the many applicable Regulations and Policies contained in the SMP are discussed in this narrative, above, and are reflected in the plans and reports attached with this application. The State Shoreline Management Act prioritizes single family uses along shorelines, if ecological impacts are avoided, and appropriate public access is provided. The project, as designed, fulfills these aims.

2. *The proposed use will cause no significant, adverse impacts to the shoreline environment, ecological functions, or other uses;*

The proposed development will have no significant or adverse impact on the shoreline environment or ecological functions. As noted throughout this narrative, the entire shoreline buffer area, extending 200' from the OHWM, will be set aside in two Open Space tracts intended to preserve and protect the natural environment. Impacts to upland critical areas will be avoided. All storm water discharged to the Bay will meet enhanced treatment requirements, eliminating the potential for water quality impacts to the Bay. The majority of the site (approximately 80%) will be retained in natural vegetation, reducing the risk of habitat impacts and temporal loss.

3. *The proposed use will not interfere with the normal public use of public shorelines;*

The proposed development is almost entirely located outside the shoreline jurisdiction. Development of homes, roads and utilities will be located over 300' from the OHWM of the shoreline, screened by a preserved natural forested area, and located hundreds of feet above the beach in elevation. The limited infrastructure that is proposed within the shoreline jurisdiction will be designed to reduce impacts on the land, and will terminate above the beach level, to reduce the potential for interference with normal public use of the public shoreline.

4. *That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and the program;*

There are no specific uses planned for this shoreline area under the Comprehensive Plan or the SMP. The shoreline of Chuckanut Bay is already designated as a natural area and is set aside for environmental preservation, open space and public access. No physical improvements are planned by the City or other organization along this shoreline, and none would be appropriate. As noted, No developable lots, roads, trails, or utility infrastructure will be located within this area, apart from a storm water outfall pipe and energy dissipator, serving a portion of the project. These are the only improvements relate to the Project located within the jurisdiction of the State Shoreline Management Act and City Shoreline Management Program. The project, as discussed, has no infrastructure located at the shoreline/OHWM. *See Exhibit A.* The use of the broader site is compatible with the shoreline designation, and the design of the project is sensitive to the surrounding environment, and existing public uses in the vicinity.

5. *The proposed use will not be contrary to the purpose and intent of the environment designation in which it is located and the general intent of the master program;*

The proposed infrastructure improvement is not contrary to the purpose and intent of the environment designation in which it is located (in this instance, the Marine, Natural designation), and to the general intent of the master program. The Purpose of the Natural designation is identified as:

Purpose. To protect those shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions intolerant of human use. Natural designated shorelines are best suited for very low-intensity uses to ensure that ecological function and ecosystem-wide processes are maintained.

The design of the overall project, and the proposed improvements within the shoreline jurisdiction, protect the shoreline from new or increased human influence, and contribute to preservation of ecological functions and ecosystem-wide processes. The project is entirely consistent with the Management Policies identified in BMC 22.03.030.A.2 for Natural shoreline designated areas.

6. *The proposed use(s) shall provide a long-term public benefit in terms of providing public access or implementing habitat restoration that is consistent with the goals of this program; and*

The proposed project will result in improved pedestrian connectivity from the Edgemoor Neighborhood to existing public infrastructure accessing the shoreline, resulting in a long-term public benefit. The design of the project will preserve the entire shoreline buffer in perpetuity (with the limited exception of the storm water outfall infrastructure). This preservation activity will contribute to the ecological function of this area, specifically for habitat, by retaining native vegetation, and providing an intact wildlife corridor through the entire site. This will also provide a long-term public benefit.

7. *That the public interest shall suffer no substantial detrimental effect.*

The public interest will not suffer any detrimental effect. As discussed in great detail in this application, the project will result in almost no impact within critical areas or buffers, incorporates design features to limit impacts from development as much as possible, retains approximately 80% of the site in natural vegetation, including all of the shoreline jurisdiction, and all wetlands and buffers on the Property. The project provides a new public pedestrian trail easement, and pedestrian improvements along Viewcrest Road. For all of these reasons, the public interest will not suffer detrimental effect, and to the contrary, the project will generate clear public benefit.

In addition to consistency with these Conditional Use Permit criteria, BMC 22.06.050.E requires the cumulative impact of a proposal to be evaluated:

E. In the granting of conditional use permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the sum of the conditional uses and their impacts shall also remain consistent with the policies of RCW [90.58.020](#) and shall not produce a significant adverse effect to the shoreline environment.

There will be no cumulative impact from the project. The Property is the only large undeveloped property in the vicinity. There is no likelihood that a similar project will be developed in the future in this area, and therefore no cumulative impact could occur from multiple similar actions. The project proposes to connect to existing public shoreline access infrastructure in the vicinity instead of constructing separate and new public shoreline access. Due to this, and the other design components that are discussed in detail throughout this application, all of which reduce or eliminate adverse effect to the shoreline environment, there will be no risk of negative cumulative impact. To the contrary, if any future development projects are developed along this shoreline, and utilize similar approaches to design, there would be cumulative benefit to the shoreline environment, not cumulative impact.

Please reference the project plans, environmental reports, and SSP report for additional information on the proposed activities within the shoreline jurisdiction. *See Exhibit List at page 29.*

VII. Street Vacation

The project includes a proposal to vacate portions of several historic unopened platted rights of way that bisect the Property. These rights of way were dedicated in the past without consideration for topography, environmental features or other site characteristics, and are not practical or necessary for the City to improve. In exchange for the vacation of these rights of way, the project includes the dedication of pedestrian access easements, new public rights of way, and the construction of public road and utility improvements within the new rights of way. The right of way vacation and right of way dedication are similar in area, with the vacation area including 113,807 square feet of right of way, and the dedication area including 76,489 square feet of right of way. The proposal is illustrated in the Right of Way Vacation Exhibit included with this application. *See Exhibit J.*

The City Council has adopted policies for review of street vacation requests. These policies are included with the street vacation request application, which is consolidated with this application. The proposed street vacation is consistent with these policies as discussed below, and the City Council should support the vacation.

CITY COUNCIL ADOPTED STREET VACATION POLICIES

It is the policy of the City of Bellingham to grant vacation of a street right of way when it is determined both that such right of way is not needed presently or in the future for public access (including vehicular, pedestrian, and visual access) and that such vacation advances the public good. All of the following policies should be met prior to the vacation of a right of way.

The proposed right of way vacations is consistent with the adopted policies listed below. The sections of right-of-way proposed for vacation are not needed presently or in the future for public access, including vehicular, pedestrian and/or visual access, and the vacation would advance the public good.

- 1. The proposed vacation should be determined to be necessary to the public good either in terms of needed development or when such vacation will result in a better or more desirable situation. In some instances a more desirable situation may be a better road pattern in terms of safety, or when an exorbitant amount of land is devoted to unneeded right of way.*

The vacation will allow for a better and more desirable situation while improving public access through the site. The existing rights of way are laid out in such a way that they could not be reasonably constructed, or that they generate unnecessary environmental impacts, occur within buffers, and do not connect to navigable portions of the Property. They are relics of a historic development concept for the site that cannot be reconciled