University Place
WASHINGTON

August 27, 2018

City of University Place
3715 Bridgeport Way
University Place, WA 98466

Pierce County Parks and Recreation
9112 Lakewood Drive S.W.
Lakewood, WA 98499

City of Lakewood
Attn: David Bugher, Community Development Director
6000 Main Street S.W.
Lakewood, WA 98499-5027

RE: SSD18-0001/SEP18-0003
SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT
CHAMBERS CREEK CANYON TRAIL

Dear Applicants:

Transmitted herewith is the Report and Decision of the City of University Place Hearing Examiner relating to the above-entitled matter.

Very truly yours,

STEPHEN K. CAUSSEAUX, JR.
Hearing Examiner

SKC/jjp
cc: Parties of Record

University Place City Hall
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University Place, WA 98466
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The hearing was opened on August 6, 2018, at 1:32 p.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

EXHIBIT "1" - Staff Report
EXHIBIT "A" - Joint Procedural Agreement
EXHIBIT "B" - Preliminary Design Report
EXHIBIT "C" - Application
EXHIBIT "D" - Environmental Checklist
EXHIBIT "E" - Mitigated Determination of Nonsignificance
EXHIBIT "F" - Notices and Notification Mailing List
EXHIBIT "G" - Comments and Correspondence
EXHIBIT "2" - Additional Public Comments
EXHIBIT "3" - Mr. Swindale Submittal
EXHIBIT "4" - Follow Up of July 19, 2018 Meeting Letter with Attachments
EXHIBIT "5" - Sandra Karwhite Submittal
EXHIBIT "6" - Follow Up of July 19, 2018 Meeting Letter
EXHIBIT "7" - Photographs of Parking on Road
EXHIBIT "8" - UP Comprehensive Plan Goals and Policies and Maps
EXHIBIT "9" - Email from Jessica Stone dated August 3, 2018

The Minutes of the Public Hearing set forth below are not the official record and are provided for the convenience of the parties. The official record is the recording of the hearing that can be transcribed for purposes of appeal.

DAVID SWINDALE appeared, presented the Staff Report, and testified that the jurisdictions of University Place, Lakewood, and Pierce County propose to construct a 2.5 mile long trail that will include three pedestrian bridges within the Chambers Creek Canyon. The project will include boardwalks to cross wetlands and steep slopes. The western portion of the trail will be located on the south side of the creek within the City of Lakewood and the eastern portion of the trail will be located on the north side of the creek within the City of University Place. The City provided proper notice and the site was properly posted. Pierce County evaluated the trail environmental impacts as part of its overall EIS for the Chambers property in April, 1997, and also prepared an SEIS in 2007, and a second SEIS in 2017. The City of University Place also conducted SEPA review and issued a threshold MDNS on July 31, 2018, that was published on August 2, 2018. The appeal period will extend until August 18, 2018. Staff from all three jurisdictions contributed to the preparation of the present Staff Report. The jurisdictions have also entered a Joint Procedural Agreement for development of the trail and University Place serves as the lead for all permits. The University Place Hearing Examiner serves as a joint Hearing Examiner for all three jurisdictions. The three Shoreline Master Programs are similar due to their recent adoptions by Department of Ecology. The application is consistent with all Master

issues.

NADINE LEWTAS appeared and testified that any access from 86th is not appropriate. The canyon wall is very steep and many nettles and blackberries are on the slope. The canyon has no cell service and no bathrooms. The City needs to provide phones, garbage cans, and other amenities for walkers. The University Place side experiences a lot of traffic. She has seen quads run across the creek. She is concerned about the steepness of the banks and falling trees. She has noted no signs and people have asked permission to park cars on her property. Her main concern is safety.

MIKE TIERNEY appeared and testified that he recently moved here. He previously performed volunteer work with the Federal Way Police Department. He is familiar with Steele Lake on 304th that is a City park. He was there when they removed 100 plus shopping carts, and they also had two to three fires. Fire is a real concern in the canyon. He favors the trail if the jurisdictions will address the problems.

HEIDI HUNGATE appeared and testified that she opposes the trailhead at 86th. People can only park on one side of 86th and can't park in the cul-de-sac. Kobayashi is turning into a drug hangout and she does not want that on her street.

ZACHARY SALAZAR testified that he resides on Zircon Drive in Lakewood and enjoys the golf course and other amenities, but his concern is also safety to include fire safety and parking. He wonders about the response time if an incident occurs on the trail. Homeless people are within the canyon and the increased pedestrian traffic will create more issues. He wonders if animals were considered in the EIS and questions whether there are any negative impacts. He also questioned how the trail would affect property values.

MR. SWINDALE responded that studies show that trails do not adversely impact property values. Mr. Swindale then concluded the hearing by introducing Exhibit 8, the goals and polices that were not included in the Staff Report, as well as the zoning code and subdivision code.

No one spoke further in this matter and so the Examiner took the request under advisement and the hearing was concluded at 2:37 p.m.

NOTE: A complete record of this hearing is available in the office of the City of University Place Community Development Department.

FINDINGS, CONCLUSIONS, AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, previously viewed the property, heard testimony, and taken this matter under advisement.

City of University Place. In upland areas the trail will cross solid ground, will consist of a soft surface, and will measure three to five feet in width. The Cities have designed the trail to minimize impacts to sensitive areas and to limit tree removal. The trail will cross Chambers Creek at a maximum of four locations: Kobayashi Park, mid-canyon, the lower third of the canyon, and Chambers Creek Road West. The project also includes a footbridge across Peach Creek within University Place. The trail will cross sensitive areas (wetlands) and steep slopes. In such areas the Cities will construct the trail on boardwalks at grade level over wetlands, and cantilevered boardwalks across steep slopes. Improved trailheads are proposed at Kobayashi Park, Phillips Road, Zircon Drive, Chambers Creek Road, 91st Avenue Court Southwest, 86th Avenue West, and Chambers Creek Road West. The project includes reclamation of the existing, informal trail network within the canyon as well as elimination of invasive plant species. The trail may be constructed in as many as five phases. See Exhibit B to the Staff Report for the trail design.

5. The Chambers Creek Canyon consists of a deeply incised, stream corridor located primarily between the Cities of University Place and Lakewood. Vegetation consists of second growth Douglas fir, western red cedar, alder, and big leaf maple as well as a dense understory of native vegetation. The creek supports nursery bred salmon, steelhead, and trout. The canyon includes numerous seeps and springs located at the bottom of steep hillsides along with wetlands. A picnic facility with restrooms exists at Kobayashi Park at the proposed eastern terminus of the trail. A network of informal trails presently provides access to the creek and to areas within the canyon.

6. The south side of Chambers Creek is located within the City of Lakewood and the north side within the City of University Place. The mouth of the creek is within unincorporated Pierce County, and the County owns land on both sides of the creek. Abutting improvements are primarily single-family residential homes located along both the north and south rims of the canyon. Several homes are located in the stream corridor to the south of Kobayashi Park, but none to the west thereof.

7. Zoning in the University Place area of the canyon is Residential 1 (R1) with a Chambers Creek Properties Overlay. The trail is located in the Open Space and Recreation (OSAE 1) zone classification within the City of Lakewood. In the City of University Place the trail is located in the Urban Conservancy and Natural Shoreline Environments and in Lakewood the Natural Environment. Other than the trail and informational kiosks at trailheads, no buildings are proposed.

8. Pierce County and the two Cities entered into a Joint Procedural Agreement (Exhibit A to Staff Report) regarding the Chambers Creek Properties and the Chambers Creek Properties Master Site Plan. Section 5 of said Agreement identifies Phase I Projects that include:

   B. Improvements to existing Chambers Creek Canyon Trails (Area 7)...

improvements proposed within the shoreline jurisdiction as set forth in the above definition. Concerns regarding appropriate access, parking, and safety in areas located outside of the shoreline jurisdiction must be considered in other forums.

11. Some residents challenge the wisdom of the three legislative bodies in locating a public trail within the canyon. Determining the location of a trail is analogous to determining the location of a public road. In Harris v. Hornbaker, 98 Wn. 2d 650 (1983), our Washington State Supreme Court held that the determination of where to locate a public road is a legislative decision:

> The determination of where to place a road has traditionally been a distinctly legislative decision...We hold, therefore, that the issue of where to locate a highway interchange is a legislative decision....
>
> ...The Board's responsibility was not to decide which of the two groups (appellants or intervenors) made the best argument; its task was to decide which interchange location was in the best interest of the county....
>
> All policy decisions are the result of balancing the entirety of discrete individual rights in the community. It is not surprising that two groups may make a legislative decision appear adjudicatory by focusing the decision makers on how the decision will affect their individual rights. This does not make the decisions adjudicatory, however....98 Wn. 2d 650 @ 658, 659

While the three councils' decision to construct a public trail within Chambers Creek Canyon is a legislative decision, the proposed trail must still meet the requirements for a SDP. Such requirements are primarily concerned with the protection of Chambers Creek, its shorelands, and adjacent critical areas.

12. The three jurisdictions must obtain a joint shoreline substantial development permit prior to constructing a public trail along Chambers Creek. Chapter 173.27 of the Washington Administrative Code (WAC) implements the policies and standards of the SMA. The criteria for a SDP in Lakewood and University Place mirror the criteria set forth in WAC 173-27-150. Said section provides in part:

(1) A substantial development permit shall be granted only when the development proposed is consistent with:
   - (a) The policies and procedures of the act [SMA];
   - (b) The provisions of this regulation; and
   - (c) The applicable master program adopted or approved for the area....

structure's intended use.

Management Policies for the Conservancy Environment authorize public access to include walking/hiking trails whenever feasible so long as significant ecological impacts can be avoided or mitigated. Policies specifically allow recreational uses set forth in the MSP. Thus, the Management Policies for the Natural and Conservancy Environments and the Aquatic Zone authorize construction of the trail to include its proposed bridges and boardwalks.

15. Pages 2 and 3 of the Staff Report set forth a chronology of the numerous planning efforts and legislative actions that strongly encourage construction of a pedestrian trail within the Chambers Creek Canyon and are incorporated herein by this reference as if set forth in full. Thus, the trail meets the adopted MSP and policies of all jurisdictions to include SMP policies as set forth on pages 2 and 3 and elsewhere in the Staff Report.

16. Section 18.25.050 UPMC encourages public access to the shoreline to include shared use pathways along or adjacent to the shoreline and shoreline parks. General policies encourage the City to continue working with private property owners, the City of Lakewood, and Pierce County to develop shoreline trail systems and other means of shoreline access. General Policy 11 encourages improvements within the Chambers Creek Properties Master Site Plan that include a trail along Chambers Creek.

17. The project satisfies all regulations for the design of public access (within the shoreline jurisdiction), and the City has previously identified accesses to the trail and shoreline in accordance with past decisions. The parking policies and regulations apply only "to off-street parking located within shoreline jurisdiction". Parking facilities are allowed within the shoreline jurisdiction only for approved uses. However, parking is encouraged outside of the shoreline jurisdiction, but if inside, then as far landward from the ordinary high watermark as possible. Thus, the SDP has no jurisdiction over parking in non-shoreline areas. Parking requirements and locations are within the jurisdiction of the City and County Councils. It is further noted that the Pierce County SMP includes Policy (h) under the "Recreational Practices Element" that reads:

> Pierce County should employ a variety of measures such as limiting parking lot size to prevent the over-use of fragile shorelines.

Thus, the Cities and the County have authority to limit the hours of usage of the park (trail) as well as provide for the number and locations of parking spaces.

18. Section 18.25.070 UPMC sets forth the policies and regulations concerning shoreline ecological protection and mitigation for impacts. Said section notes that both the SMA and UPSMP emphasize protection of shoreline ecological functions

ecological impacts. As previously found the trail provides significant mitigation and protection for the Chambers Creek Canyon critical areas.

23. Critical areas located within the shoreline jurisdiction are regulated by the LSMP. Chapter 3B(3) LSMP authorizes bridges and transportation structures where no feasible alternative exists, and the repair and maintenance of legal uses. In the present case, from Bridge 2 the portion of the trail in Lakewood will follow old logging roads to the Zircon Drive trailhead. From there, a new trail will utilize several, informal, user-defined trails. The new trail will eventually merge into an existing trail system within the City. Furthermore, plans include a view point, access trail that will provide views of Chambers Creek. The plan also includes the possibility of restoration of user-defined, spur trails that access Chambers Creek. Formalizing a single trail system will ensure protection of critical areas.

24. Chapter 5 of the LSMP entitled "Public Access" recognizes existing, formal, public access to the Chambers Creek Canyon Park. Policies encourage the enhancement of access such as easements and signage. The City will provide and/or enhance formal access to the park.

25. The proposal is consistent with the 2014 Lakewood Legacy Plan that encourages urban, non-motorized trails, and includes the Chambers/Flett Creek Trail. The Plan contemplates a gravel, multi-purpose, bike and hiking trail to several areas to include the Chambers Creek corridor. The Plan also identifies improvements to Chambers Creek Canyon trails.

26. Chapter 4D(5) LSMP addresses "Recreational Development" and encourages water dependent or water related activities such as picnicking, hiking, and bicycling on non-commercial, recreation sites and shoreline areas. Chapter 4(D)(8) LSMP specifically addresses trails and distinguishes between major and minor trails. The Chambers Creek Canyon Trail meets the definition of a minor trail as it will have an unpaved surface (either gravel, bare dirt, or woodchips) and is designed for local access. Said section requires trails to maintain a setback of at least 25 feet from the ordinary high watermark except for bridges and limited spurs to physical access points and overlooks. The proposed trail is consistent with Chapter 4(D) LSMP.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.

2. The request for a shoreline substantial development permit is consistent with both the University Place and Lakewood Shoreline Master Programs.

3. The proposed substantial development permit is consistent with policies of the SMA as implemented by WAC 173-27.

DECISION:

The request for a shoreline substantial development permit to allow construction of a 2.5 mile long, four to six foot wide, soft surface trail with pedestrian bridges and boardwalks within the Chambers Creek Canyon between the Chambers Creek Bridge on Chambers Creek Road West and Kobayashi Park at 6420 Chambers Creek Road West, University Place, is hereby granted subject to the conditions contained in the conclusions above.

ORDERED this 27th day of August, 2018.

STEPHEN K. CAUSSEAUX, JR.
Hearing Examiner

TRANSMITTED this 27th day of August, 2018, to the following:

APPLICANT/ PROPERTY OWNERS:

City of University Place
3715 Bridgeport Way
University Place, WA 98466

Pierce County Parks and Recreation
9112 Lakewood Drive S.W.
Lakewood, WA 98499

City of Lakewood
Attn: David Bugher, Community Development Director
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CITY OF UNIVERSITY PLACE