

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF KENNEWICK**

In the Matter of the Application of)	SDP 18-01/PLN-2018-01228
City of Kennewick)	
)	FINDINGS, CONCLUSIONS
For a Shoreline Substantial)	and DECISION
<u>Development Permit</u>)	

SUMMARY OF DECISION

A Shoreline Substantial Development Permit for the replacement of a walkway and parking area, the construction of a deck, and construction of trash enclosure that are all elements of a construction project for replacement of a golf-course club house is granted subject to conditions listed. The walkway, the parking area, the deck and the trash enclosure are all in the shoreline jurisdiction the State of Washington. The project is located at 2701 Columbia Park Trail, Parcel Number 135991000001000 in Kennewick, Washington.

INTRODUCTION

The City of Kennewick (Applicant) requested approval of a Shoreline Substantial Development Permit (shoreline permit) to replace a deck, walkways, parking area and trash enclosure associated with the construction of a proposed replacement golf course club house. The proposed clubhouse structure is not within the 200’ shoreline and will be reviewed with the conditional use permit process. The above listed elements of the project are within the 200 feet threshold of the shoreline and require a shoreline permit. The project is located at 2701 Columbia Park Trail, Kennewick Washington¹.

A hearing on the request was held before the Hearing Examiner of the City of Kennewick on June 11, 2018. At the hearing the following presented testimony and evidence:

Mr. Steve Donovan- City of Kennewick Planner
Greg Duffy- City of Kennewick Parks & Facilities M&O Supervisor (Applicant)
Wes Romine-City of Kennewick Development Services Manager

The hearing was advertised and noticed consistent with City of Kennewick and State requirements.

At the hearing the following exhibits were submitted and admitted as part of the administrative record of the hearing:

¹ The legal description of the property is: Section 35 Township 9 North Range 29: That Portion of Government Lots 1, 2, 3, and 4, Laying Northerly of P.S. Highway No. 3 and US Route 410 Right of Way’s: (Portion of Columbia Park in Section 35), Benton County, Washington.

1. Staff Report
2. Application/Supplemental Materials
3. Notices of Application, Mailing List and Affidavits
4. Notice of Public Hearing, Mailing List and Affidavits
5. SEPA Determination and Affidavit
6. Site Plan
7. Public Works Comments
8. Fire Department Memorandum
9. Building Comments
10. Traffic Memorandum
11. Confederated Tribes of the Umatilla Indian Reservation Email
12. Copy of Power Point presentation

Based upon the testimony and evidence admitted at the open record hearing, the Hearing Examiner enters the following Findings and Conclusions.

FINDINGS OF FACT

1. The Applicant requested approval of a shoreline permit to replace: an existing parking area, constructions of walkways, a new trash enclosure and a deck at 2701 Columbia Park Trail (Columbia Park). The activities covered in the shoreline permit application are elements of the proposed replacement of the previously existing golf course club house. The proposed deck, walk way, trash enclosure and parking area replacement are within 200-feet of the ordinary high-water mark of the Columbia River and are subject to the City of Kennewick Shoreline Management Code. Because the proposed clubhouse is not within the 200-foot shoreline, the club house structure is not subject to shoreline permit review process. *Exhibit 1, pgs. 1 and 2; Exhibit 2 and attachments to application.*
2. The project is located at 2701 Columbia Park Trail, Kennewick Washington. The proposal is on a 154-acre site on the Columbia Park Golf Links at 2701 Columbia Park Trail. The Comprehensive Plan designation for the site is Open Space and it is zoned Open Space. The property is in Benton County but is used as City of Kennewick recreational property. *Testimony of Mr. Donovan; Testimony of Mr. Romine; Testimony of Mr. Duffy.*
3. The existing golf clubhouse on site was structurally unsound and was demolished in 2017. At that time, it was replaced with a temporary structure. There will be numerous improvements to the general golf facilities with the new clubhouse. *Exhibit 2, narrative; Testimony of Mr. Donovan.*
4. The total cost or fair market value of the proposed improvements will exceed \$7,047.00, the shoreline permit review threshold amount in the state of Washington (*RCW 90.58.030(3)(e)*). The project is being reviewed to determine if there are any parts of the

development that would interfere with the normal public use of the water or shorelines of the State. *Testimony of Mr. Donovan.*

5. Pursuant to the City of Kennewick's Master Shoreline Program, the subject property is classified as an "Urban Conservancy" Environment. The City's review staff determined that the proposal is a permitted use and is consistent with the policies of this classification. *Testimony of Mr. Donovan; Exhibit 1, pg. 3.*
6. The purpose of the entire project is replacement of an existing clubhouse with a new structure. It is a continuation of an established use that has been a non-polluting use that has not caused damage to the natural environment. The portions of the project that is subject to the shoreline review have limited, if any, impact on the shoreline. *Testimony of Mr. Donovan.*
7. The new facility will be located in the same area as the old structure that is being replaced. The design has been proposed to increase the ecological management of the site, including preserving the shoreline area. The parts of the project that are subject to shoreline permit review have been considered pursuant to the state of Washington's Shoreline Management Act. *Exhibit 2 and attachments; Exhibits 7 and 9; Testimony of Mr. Donovan.*
8. The projects that are subject to shoreline review are a new accessible parking area with four lined spaces: a dumpster enclosure next to the parking; with a fence and sight obscuring screen; a walkway from the main building to the parking area; and a deck attached to the main building. *Exhibit 6.*
9. The purpose of the "Urban Conservancy" Environment in the City Shoreline Program is to protect and restore ecological functions of open spaces, floodplains and other sensitive lands where they exist in urban and developed settings, while, at the same time, allowing a variety of compatible uses. These purposes will be satisfied with the project and especially those items that are within the shoreline jurisdiction. *Testimony of Mr. Donovan.*
10. The management policies of Urban Conservatory properties have been reviewed by the Kennewick staff. The Plan encourages "Uses that preserve the natural character of the area or promote preservation of open space, floodplain or sensitive lands either directly or over the long-term should be the primary allowed uses. Uses that result in restoration or enhancement of ecological functions will be allowed if the use is otherwise compatible with the purpose of the environment and the setting." Based on the City's review of the project and especially those items that are within the shoreline jurisdiction, these purposes will be satisfied. *Testimony of Mr. Donovan.*

11. The proposed improvements will be similar to the improvements that have been on site for many years. As a result of natural forces, the existing improvements have deteriorated and are to be replaced with the proposed features. The new improvements will preserve similar amounts of open space that currently exist, and, will enhance ecological functions with improved storm water controls. The existing uses have been compatible with the environment and setting and will continue to be so with the new features. *Testimony of Mr. Donovan; Exhibit 2; Testimony of Mr. Duffy.*
12. There will be no net loss of shoreline ecological processes or functions that occur as a result of new development. The ecological functions will improve with controlled storm drainage and walkway improvements. *Testimony of Mr. Donovan; Testimony of Mr. Romine; Testimony of Mr. Duffy; Exhibit 2.*
13. The location and design of the new facility provide public access and public recreation opportunities and any significant ecological impacts can be mitigated. *Testimony of Mr. Donovan; Exhibit 2 attachments.*
14. The Columbia River and its shoreline is significant and is of statewide interest. While the proposal will benefit the residents of Kennewick and Benton County it will also be available to other visitors and will have a long-term benefit as being part of a recreational area. *Testimony of Mr. Donovan.*
15. The improvements proposed in the shoreline permit will protect the resources and ecology of the Columbia River shoreline. The design will continue to provide public access to this shoreline and will promote increased recreational opportunities, including walking near the shoreline and improvements to the existing golf course. The proposal satisfies a shoreline goal of enhancing recreational facilities potential of shorelines. (*KMC 18.68.060: Goals – Shoreline Development Elements*). *Testimony of Mr. Donovan.*
16. The general provisions of *KMC 18.68.110* apply to the instant request. *Testimony of Mr. Donovan.*
17. Archaeological and historic resources located within shoreline jurisdiction that are either recorded at the State Department of Archaeology and Historic Preservation and/or by local jurisdictions or those that are inadvertently discovered are to be considered in shoreline permit reviews. Archaeological sites within shoreline jurisdiction are subject to *27.44 RCW* and *27.53 RCW*. The development or uses that may impact such sites must comply with *Chapter 25-48 WAC* as well as the provisions of *KMC 18.68.11*. In Kennewick a process has been established should an archaeological and historic resource located within shoreline jurisdiction be found. *Testimony of Mr. Duffy.*

18. The Kennewick Shoreline Master Program provides for management of critical areas designated pursuant to *RCW 36.70A.170(1)(d)*. The critical areas are required to be protected pursuant to *WAC 173-26-221(2) and (3) and RCW 36.70A.060(2)* that are located within shorelines of the State. Requirements include consistency with the specific provisions of *173-26-221(2) WAC* and *173-26-221(3) WAC*. In addition, the City must provide a level of protection to critical areas within the shoreline area that is at least equal to that provided by the Kennewick Shoreline Critical Areas Regulations in Appendix A-2. Upon review of the property involved with the request, the City concluded that there are no critical areas involved with the instant project. *Testimony of Mr. Donovan.*
19. There are no geologic hazards within the shoreline jurisdiction of the instant project. *Testimony of Mr. Donovan.* The proposed project is not being done for the purpose of reducing flood damage or hazard or to uses, development, and shoreline modifications that may increase flood hazards in shoreline jurisdiction. *Testimony of Mr. Donovan.*
20. The project does not front the Columbia River. There is a public road separating the golf course on which the clubhouse will be located and the River. Public Access is not an issue. *Testimony of Mr. Romine.*
21. The project has been designed to result in no net loss of ecological functions associated with the shorelines. *Testimony of Mr. Donovan; Exhibit 2 and 6.*
22. The City of Kennewick Departments of Public Works Department and Building submitted comments relating to the development of the entire project, including that portion that is not subject to a shoreline permit review. Both Department comments are relevant for the portion of the project that is reviewable pursuant to the Shoreline Act because they relate to the general function of the entire project. The implementation of the activities described in the comments are intertwined with *all* of the proposed construction and must be followed in order to comply with the Shoreline Act and local requirements. *Exhibit 7; Exhibit 9; Testimony of Mr. Donovan.*
23. Included in the review of the project by the City of Kennewick staff was consideration of the City's Comprehensive Plan (Plan). *Exhibit 1, pgs. 5 and 6.*
24. A stated goal in the Plan is that the unique environmental elements of the critical areas and shoreline be protected. As part of its review, the Staff considered environmental regulations and applicable maps of critical areas and shoreline with the best available science. As proposed, staff stated that it "...is unaware of any development activities that will degrade the shoreline." *Exhibit 1, pg. 5; Testimony of Mr. Donovan.*
25. Another goal of the Plan required regulation and mitigation of activities in or adjacent to critical areas or the shoreline to avoid adverse environmental impacts. Based on the

review and comments of the various City and other government agencies there has been a review and cooperation between agencies with jurisdiction over critical areas and shorelines. *Exhibit 1, pg. 5; Testimony of Mr. Donovan.*

26. Another goal of the Plan is encouragement and support for public access to the shoreline for recreational purposes. The proposed project does not interfere with access to the shoreline. The proposed development will provide members of the general public additional recreational activities adjacent to the shoreline. *Exhibit 1, pg. 5; Testimony of Mr. Donovan.*
27. Pursuant to the Washington State Environmental Act (SEPA) (*RCW 42.21c*) the City of Kennewick was designated as the lead agency for the review of any environmental impacts that could be caused by the proposed development. On May 21, 2018 the City issued a threshold decision of Determination of Non-Significance (DNS) for the project. *Exhibit 5; Testimony of Donovan.* No appeals were filed. *Testimony of Mr. Donovan.*
28. A comment on the DNS was filed by the Confederated Tribes of the Umatilla Indian Reservation. The Tribes did not object to the project or identify any environmental issues but requested to be kept informed by the City of problems or discoveries resulting from the development. Exhibit 11. The City stated it would comply with the request. *Testimony of Mr. Donovan.*
29. Based on the City's review of its shoreline master plan and map and the facts and law presented in the staff report for the shoreline permit, the proposed project is consistent with the policies and regulations of the City of Kennewick's Shoreline Master Program. *Testimony of Mr. Donovan.*

CONCLUSIONS

Relevant law

Jurisdiction: The Hearing Examiner of the City of Kennewick has jurisdictional authority to hold a hearing and to issue the decision. That authority is set forth in *KMC 4.02.080(1)(b)iii.*

Relevant statutes and ordinances and regulations:

WAC 173-27-140 Review criteria for all development.

No authorization to undertake use or development on shorelines of the state shall be granted by the local government unless upon review the use or development is determined to be consistent with the policy and provisions of the Shoreline Management Act and the master program.

RCW 90.58.140- Development permits — Grounds for granting permit

- A development shall not be undertaken on the shorelines of the state unless it is consistent with the policy of this chapter and, after adoption or approval, as appropriate, the applicable guidelines, rules, or master program.
- A substantial development shall not be undertaken on shorelines of the state without first obtaining a permit from the government entity having administrative jurisdiction under this chapter
- A permit shall be granted:
After adoption or approval, as appropriate, by the department of an applicable master program, only when the development proposed is consistent with the applicable master program and this chapter.

KMC 18.68.230(1)

KMC 18.68.230(1) states that applications for a Substantial Development Permit must comply with submittal requirements of 18.68.260 and state that “A Substantial Development Permit shall be granted only when the development proposed is consistent with:

- a. The policies and procedures of the Shoreline Management Act;
- b. The provisions of this regulation; and
- c. The adopted Shoreline Master Program for Kennewick’s shoreline.”

Washington State Environmental Act-RCW 43.21C

City of Kennewick Comprehensive Plat

Conclusions based on facts of administrative record of request

1. The shoreline permit is for certain improvements that will be made as part of replacement of a previously existing golf course club-house. These include a deck, walkways, parking area and trash enclosure that are features of a proposed replacement golf course club house. *Findings of Fact Nos. 1, 6 and 7.*
2. Chapter 90.58 RCW, the Washington State Shoreline Management Act of 1971, establishes a cooperative program of shoreline management between the local and state governments. The local government (City of Kennewick) has the primary responsibility for initiating the planning required by the chapter and administering the regulatory program consistent with the Shoreline Management Act. With conditions of approval, the proposed development is consistent with the policies of Chapter 90.58 RCW. *Findings of Fact 4-18.*
3. The Kennewick Master Program provides goals, policies and regulatory standards for ensuring that development within the shorelines of the state is consistent the policies and provisions of Chapter 90.58 RCW. The City reviewed the project pursuant to its Shoreline Master Program and Shoreline Map. The proposal is a permitted use with a

Shoreline Permit. *Finding of Fact No.5* All proposed improvements, those that are subject to shoreline permit review and those that are not, will be consistent with the regulations and requirements of the Program and the Map. *Findings of Fact Nos. 4-18.*

4. No significant environmental impact to the shoreline will not be created by the project. *Finding of Fact No. 15.*
5. The proposed development will be consistent with the policies and procedures of the State Shoreline Act, the regulations of KMC chapter 18.68 and the regulations and restrictions of the City's Shoreline Master Program. *Findings of Fact Nos.6-22.*
6. The project has been reviewed pursuant to RCW42.21C. A DNS was issued for the project. *Finding of Fact No. 28.*
7. The proposal is consistent with the provisions required in the City of Kennewick Comprehensive Plat. *Findings of Fact Nos. 22-26.*

DECISION

Based on the above stated Finding of Facts and Conclusions, it is ordered that a Shoreline Substantial Development Permit for the replacement of a walkway and parking area, the construction of a deck, and the construction of a trash enclosure that are all part of a construction project of a replacement golf course club house is granted subject to conditions listed. The three elements of the proposed construction are within a shoreline jurisdiction of the State of Washington. The project is located at 2701 Columbia Park Trail Kennewick, Washington. The Shoreline Substantial Development Permit is granted subject to the following Conditions:

1. The Applicant must comply with City of Kennewick regulatory controls, policies and codes, including Shoreline Management KMC 18.68.
2. An archeology professional shall be on-site at all times during excavation activities. Any archeological finds must be processed consistent with City of Kennewick and Corp of Engineer's protocol.
3. Any night lights are to be oriented in a manner that minimizes illumination of surrounding waters. Exterior lighting must be shielded to comply with the City of Kennewick lighting ordinance.
4. Disturbed areas of the site used for construction must be controlled with an approved dust control plan.
5. If there is potential for stormwater discharge from any construction site with more than one acre of disturbed ground an NPDES Construction Stormwater General Permit is required to be

secured from the Washington State Department of Ecology. It is the Applicant's responsibility to obtain required stormwater permits from the Department of Ecology.

6. Building permits must be applied for within two (2) years of shoreline permit approval. The entire project must be completed within five (5) years of the date of approval.
7. The Applicant and its agents shall comply with all conditions submitted at the public hearing by the City of Kennewick Departments of Public Works and Building Departments.

Dated this 19th day of June, 2018.



James M. Driscoll-Hearing Examiner