



**STAFF REPORT AND RECOMMENDATION  
TO THE HEARING EXAMINER**

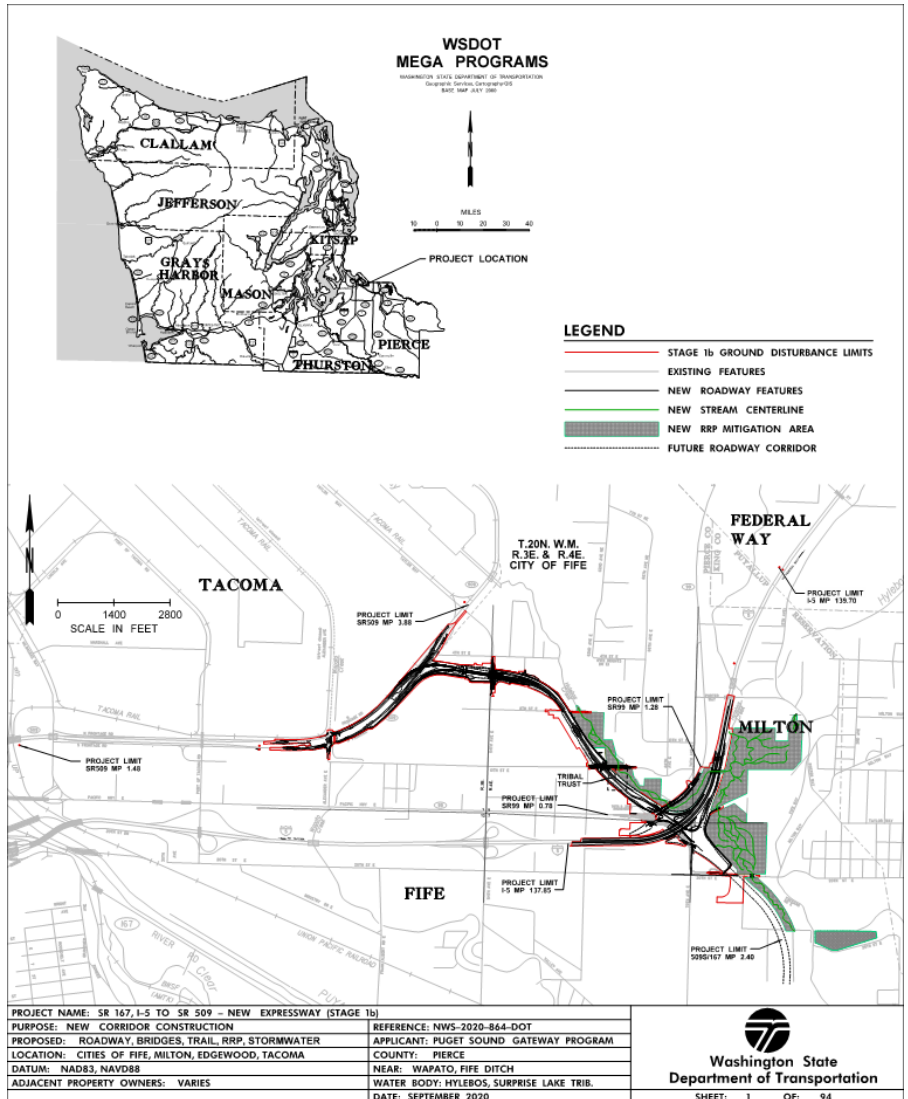
**TO:** Phil A. Olbrechts - Hearing Examiner  
**FROM:** Chris Larson AICP, Senior Planner – City of Fife *Chris Larson*  
 Brittany Port AICP, Contract Senior Planner – City of Milton *Brittany Port*  
**PROJECT:** SR 167/I-5 to SR 509 – New Expressway (Stage 1b) Project  
**DATE:** May 28<sup>th</sup>, 2021

**Applicant:**  
 Steve Fuchs, P.E., Project Manager,  
 SR 167 Completion Project,  
 Washington State Department of Transportation

**Owner:** Washington State Department of Transportation (WSDOT)

**Project Name/Location:**  
 SR 167/I-5 to SR 509 – New Expressway (Stage 1b) Project

The project is located within the following mileposts (MP) along I-5, SR 99, SR 167, SR 509 Spur, and SR 509:  
 I-5: 137.85 to 139.70  
 SR 99: 0.78 to 1.28  
 SR 167: 1.58 to 2.40  
 SR 509 Spur: 0.00 to 1.58  
 SR 509: 1.48 to 3.88



## **I - EXHIBITS:**

### Project Wide:

1. Vicinity Map  
(Filename: SR 167 JARPA Impact Map by Jurisdiction)
2. NEPA-SEPA Re-evaluation  
(Filename: 2018-12-20\_167\_PW\_PE\_ENV\_NEPA  
SEPARevaluationForm\_FINAL\_signed)
3. Stage 1b NEPA Memo  
(File name: 2021\_04\_02\_SR167Stage1b\_NEPAmemo\_SIGNED)
4. JARPA Form –  
(Filename: P3 - 2020-09-18\_167\_1b\_PE\_ENV\_JARPAForm\_FINALsigned (1))
5. JARPA Drawings –  
(Filename: 2020-09-18\_167\_1b\_PE\_ENV\_JARPAPmtDrawings\_FINAL)
6. Wetland and Stream Assessment Report Phase 1A –  
(Filename: Attachment\_F\_2020-09-18\_167\_1a\_PE\_ENV\_WtldStrmAssmtRpt\_FINAL)
7. Wetland and Stream Assessment Report Phase 1B –  
(Filename: Attachment\_G\_2020-09-  
18\_167\_1b\_PE\_ENV\_WtldStrmAssmtRpt\_FINAL\_MnTxtWithApxA\_D)
8. Wetland Rating Forms Phase 1B –  
(Filename: Attachment\_G\_2020-09-  
18\_167\_1b\_PE\_ENV\_WtldStrmAssmtRpt\_FINAL\_ApxE\_F)
9. Stage 1B Mitigation Plan  
(Filename: Attachment\_H\_2020-09-18\_167\_1b\_PE\_ENV\_MitigationPlan\_DRAFT)

### City of Fife

10. City of Fife Master Land Use Application  
(Filename: SR 167 Stage 1b Master Land Use Permit App\_signed)
11. City of Fife Permit Cover Letter  
(Filename: 2020-11-25\_167\_1b\_PE\_ENV\_Permit submittal cover letter\_Fife\_FINAL)
12. WSDOT Technical Memorandum – Floodplain impacts and Mitigations in the City of Fife  
(Filename: Attachment\_I\_2020-09-18\_167\_1b\_PE\_HYD\_TM-FldplnImpcts\_Fife\_FINAL)
13. City of Fife Shoreline Permit Questionnaire  
(Filename: SMP Compliance Questionnaire\_SR 167 Stage 1b\_Fife\_04222021)
14. FEMA Policy Guide  
(Filename: FAQ\_FEMAR10  
RescindmentofPolicyFishEnhancementStructuresinFloodway 03242021)
15. Downstream 2-yr event  
(Filename: CBNR Area 2yr Flood Event\_reduced)
16. Downstream 50-yr event  
(Filename: CBNR Area 50yr Flood Event\_reduced)
17. Downstream 100-yr event  
(Filename: CBNR Area 100yr Flood Event\_reduced)
18. Photos downstream Tidal influence

- (Filename: Photos - Reach of HLY Creek downstream of 4th St. E)*
19. Technical Memo – Analysis of Hydraulic Effects Following Project Construction in Hylebos Creek Downstream of 8<sup>th</sup> St East.  
*(Filename: 2021\_05\_05\_167\_PW\_PE\_HYD\_Memo\_HydraulicEffects\_8th-Downstream\_FINAL)*
  20. City of Fife 12<sup>th</sup> St. E. Annexation  
*(Filename: Ordinance 2028)*
  21. City of Fife 62<sup>nd</sup> Ave E. Annexation  
*(Filename: Ordinance 2029)*
  22. CBNRT Cooperative Agreement.  
*(Filename: 200303271250)*
  23. Gather Place Flood storage agreement.  
*(Filename: GCA-6263\_SR167 Floodplain Storage)*

City of Milton:

24. City of Milton Master Land Use Application  
*(Filename: 2020-12-02\_SR167\_Stage1b\_Milton\_Master-Application)*
25. City of Milton Permit Cover Letter  
*(Filename: 2020-12-01\_167\_1b\_PE\_ENV\_Permit submittal cover letter\_Milton\_Signed)*
26. WSDOT Technical Memorandum – Floodplain Impacts and Mitigations in the City of Milton  
*(Filename: Attachment\_J\_2020-09-18\_167\_1b\_PE\_HYD\_TM-FldplnImpcts\_Milton\_FINAL)*
27. City of Milton Responses to Shoreline CUP Approval Criteria  
*(Filename: Responses to City of Milton Shoreline CUP approval criteria\_SR 167)*
28. City of Milton Responses to Shoreline Permit Questionnaire  
*(Filename: Milton SMP Compliance Questionnaire\_05052021)*

## II - GENERAL RECITALS

### Procedural:

1. Of the jurisdictions impacted by the SR 167 Stage 1b project, only the City of Milton and the City of Fife require a decision to be issued by a hearing examiner. In an effort to expedite the review and issuance of this regionally important transportation project, the City of Fife and City of Milton have chosen to conduct a joint public hearing. The hearing examiner is holding a joint public hearing and issuing two separate decisions, one to Milton and one to Fife.
2. WSDOT is proceeding with a design-build contract, by which a contractor will have the right to propose design modifications to the proposal being considered under this decision. The design-build proposal will be reviewed against WAC 173-27-100 and applicable Municipal Code Titles, to determine the necessity of a revision to this approval. Each municipality shall review and process any revisions separately and according their locally adopted provisions. If a revision is necessary, it must be completed prior to work commencing.

### Project Wide:

3. The SR 167/I-5 to SR 509 – New Expressway Project is the second construction stage of the SR 167 Completion Project and will include construction of a new SR 509 Spur alignment from I-5 west to SR 509, as well as construction of the Riparian Restoration Program (RRP) for Hylebos Creek and Surprise Lake Tributary.

Specific construction activities are identified in section 6a of the JARPA application included as exhibits 4 & 5. Generally, construction activities include:

- Land clearing.
  - Construction of roadways, retaining walls and fences.
  - Environmental enhancements, stream channel modification, and implementation of a Riparian Restoration Program (RRP) to mitigate project effects on wetlands, streams, and floodplains, as well as to provide stormwater flow control.
  - Removal, replacement and construction of bridges and culverts.
  - Construction and relocation of utilities.
  - Construction of stormwater infrastructure.
4. Hylebos Creek has a history of flooding in the immediate vicinity of the project. This has, on numerous occasion, resulted in floodwater blocking travel lanes of I-5.
  5. WSDOT coordinated extensively with regulatory agencies and stakeholders, including the Puyallup Tribe of Indians, and federal and state agencies on development and design of the Project, and specifically the Hylebos Riparian Restoration Program (RRP), through a Technical Advisory Group (TAG). Four TAG meetings took place between February 2018 and December 2019.
  6. RRP implementation will enact a suite of aquatic and riparian improvements on approximately 149 acres within the Hylebos Creek basin that will enhance ecological

functions throughout a roughly 2-mile-long corridor. The RRP will restore, realign, and create approximately 19,519 lineal feet of Hylebos Creek and Surprise Lake Tributary channels; and create or rehabilitate over 118 acres of wetlands. A mix of emergent, scrub shrub, and forested riparian wetland and upland native vegetation will be planted within the RRP boundaries. Streams will be widened to accommodate increased flows from Project stormwater runoff and to increase flood flow conveyance. Stormwater treatment facilities surrounding the RRP will provide enhanced stormwater treatment for road runoff.

7. In addition to construction of the RRP, the project will utilize the balance of the advance restoration credits available from the Spring Valley advanced mitigation site, located upstream, outside of the project area.
8. The Federal Highway Administration (FHWA) is the federal Lead Agency pursuant to the November 2006 Tier II FEIS and the ROD issued in October 2007. On December 20, 2018 a NEPA Environmental Re-evaluation of Phase 1 Improvements was issued jointly by WSDOT and FHWA.
9. Additional permitting or approval is required from the United States Army Corps of Engineers, United States Environmental Protection Agency, Federal Emergency Management Agency, the Puyallup Tribe of Indians, State Department of Fish and Wildlife, and State Department of Ecology, and other Local Jurisdictions.

Fife:

10. The proposed project was submitted through the City's online permitting portal on November 25<sup>th</sup>, 2020. The submittal items were accepted by the City on December 11<sup>th</sup> and the applicable fees were paid on January 8<sup>th</sup>, 2021. The application was deemed completed on January 11<sup>th</sup>, 2021.
11. A notice of application was published in a newspaper of general circulation, posted on site, and mailed to all properties within 300 feet, as required by the FMC, on January 27<sup>th</sup>, 2021.
12. The Fife Municipal Code (FMC) and City of Fife Shoreline Master Program (Fife SMP) grant the Hearing Examiner with the authority to review and issue a decision on applications for Shoreline Conditional Use Permits.
13. A notice of public hearing was published in a newspaper of general circulation, posted on site, and mailed to all properties within 300 feet, as required by the FMC, on May 7<sup>th</sup>, 2021. Additionally, the City mailed notice of public hearing to all properties with Hylebos Creek frontage, downstream of 4<sup>th</sup> St. E., on May 17<sup>th</sup>, 2021.
14. On November 30<sup>th</sup>, 2020 two annexations (see exhibits 20 & 21) within the project area became effective.

The intent of these annexations was to assure consistency in development regulations along the SR 509 spur, and adjacent to the Hylebos Creek portion of the project area, and to streamline review and approval authority for this regionally important project.

The properties included in the annexations are included in the City of Fife's Shoreline jurisdiction and are therefore included in this decision.

15. While the project will provide overall benefits to the flood capacity and flood conveyance in the "project area" and watershed, there will be flood level increases downstream, outside of the project area, on City of Fife owned property.
16. The SR 167 Completion Project has been planned for well over 20 years. The City of Fife participated in the original NEPA/SEPA review completed in the early 2000s, and has partnered with regional stakeholders to lobby Federal, State, and regional agencies to fund this project. In 2018 the City of Fife agreed to take on a funding share of the project, and the Council approved the project's inclusion in the City of Fife's Transportation Improvement Plan (6-yr TIP). Completion of this project will provide a benefit not only to the citizens of Fife, but to the local economy and regional public as well.

Milton:

17. WSDOT is the owner of real property located at Pierce County Tax Parcel No. 042005-3075 and -3076.
18. The subject site(s) are within 200' of the ordinary high water mark of Hylebos Creek, a "shoreline of the state" under RCW 90.58.030 subject to the City's Shoreline Master Program.
19. The applicant submitted application on December 11th, 2020 for Shoreline Conditional Use Permit Approval to construct improvements related to the SR167 Stage 1b Project. The application for Shoreline Conditional Use Permit was determined to be complete on January 18th, 2021.
20. Timely notice of the application was posted in accordance with MMC 17.71.120 on February 2, 2021. A notice was mailed to surrounding property owners within 500 feet of the project site, sent to SEPA agencies, published in The Tacoma News Tribune, and posted on a board on the site.
21. Notice of a neighborhood public meeting was published in accordance with MMC 17.71.090 on February 2, 2021. The neighborhood public meeting was held on March 2, 2021.
22. The City received no comments on the application from the public.
23. The MMC and City of Milton Shoreline Master Program (Milton SMP) grants the Hearing Examiner with the authority to review and issue a decision on applications for Shoreline Conditional Use Permits.

24. Notice of the required public hearing meeting was published in accordance with MMC 17.71.090 on May 15, 2021, more than fifteen days prior to the date and time of the hearing.

### **III - PROJECT ANALYSIS**

#### **Fife:**

1. The “project area” is located within the following City of Fife Shoreline Designations; “Urban”, “Shoreline Residential”, “Conservancy” and “Aquatic” Shoreline Jurisdictions.
2. The type of work being completed in each shoreline designation is either permitted or conditional permitted, depending on the shoreline designation. A conditional use permit is required due to the following components; “fill”, “shoreline stabilization” and “transportation facilities”. The entire project is being processed as Shoreline Conditional Use Permit under Fife’s SMP.
3. The criteria for a Shoreline Conditional Use Permit are found in chapter 10.F of the Fife SMP. Analysis for compliance with the criteria for a Shoreline Conditional Use Permit is presented in Exhibit 13.
4. The project requires compliance with numerous chapters and sections of the Fife SMP. The applicable sections, together with analysis of compliance can be found in exhibit 13.
5. Through the use of an offsite mitigation bank and construction of the RRP, the project will exceed the mitigation requirements of Fife’s Critical Areas regulations, and will result in excess credits after the project is completed. See Exhibit 9.
6. Outside of the “project area”, there will be an increase to the base flood elevations and flow velocities, on property immediately downstream. Both banks and adjacent uplands of Hylebos Creek, immediately downstream from the project area, between 4<sup>th</sup> St E. and 8<sup>th</sup> St. E. are owned by the City of Fife.

The west bank of the creek and adjacent uplands is the Milgard Nature Area and contains the Milgard Nature Area Trail. This was a mitigation project that was dedicated to the City, and the City currently holds maintenance obligations as both a restoration area and as part of the City’s trail system.

The east bank of the creek and adjacent uplands is the Hylebos Nature Area and contains the Hylebos Creek Nature Area trail. This area is owned by the City and the City is responsible for maintenance obligations as both a restoration area and as part of the City’s trail system. Alterations to this property, including a change in hydrology, require approval of the Commencement Bay Natural Resource Trustees Board consistent with the covenant attached to the property (see exhibit 22).

7. The analysis in exhibits 15-19 shows an increase in the base flood elevations and flow velocities for the area between 8<sup>th</sup> St E and 4<sup>th</sup> St E, along Hylebos Creek. There will be an estimated surface elevation increase of up to “greater than 2.5 feet” at the peak of a 100-year flood event, on city owned property. The largest projected surface water elevation increases occur within the existing regulated floodplain. In areas that will go from “dry to wet”, it is estimated that the depth of water will be between 3 and 9 inches



during the 2-year flood event. An estimate of inundation depths during the 50, and 100 year eventer flood events was not provided.

8. As discussed in exhibit 19, these increases to flood elevations and flow velocities, outside the project area are not expected to adversely affect the aquatic habitat of listed salmonid species.
9. Downstream of 4<sup>th</sup> St E, the watershed is tidally influenced. Due to the complexities of modeling saline environments, the hydraulic model used upstream for the RRP cannot predict accurate results downstream of 4<sup>th</sup> St. E.

The hydraulic analysis provided downstream of 4<sup>th</sup> St. E. (see page 4, exhibit 19) is completed “qualitatively based on indicators in the model results at the 4<sup>th</sup> St Bridge and observations of stream channel conditions downstream of that bridge”.

Pursuant to this analysis, tidal action greatly exceeds any impact resulting from the increased base flood elevation and/or change in water velocity, downstream of 4<sup>th</sup> St E. Furthermore, the creek banks are armored with a variety of concrete and rock material in this area. Accordingly, no adverse impacts to stream channel conditions are expected downstream of 4<sup>th</sup> St E. This is further analyzed in exhibit 19.

10. There are numerous parcels that are not proposed for restoration or mitigation activity associated with stage 1a or 1b. Their use for stage 2 may be limited and is currently under analysis by WSDOT. Specifically the parcels at the intersection of 20<sup>th</sup> St E, and Wapato Way E. (Formally 70<sup>th</sup> Ave E.).

#### Milton:

11. The “project area” is located within the following City of Milton “Urban Conservancy” and “Aquatic” Shoreline Environment Designations.
12. “Roads” are a permitted use in the Urban Conservancy Shoreline Environment Designation. A conditional use permit is required for “Roads” in the Aquatic Shoreline Environment Designation. The entire project is being processed as Shoreline Conditional Use Permit under Milton’s SMP.
13. The criteria for a Shoreline Conditional Use Permit are found in Chapter 7.B.1 of the Milton SMP. Analysis for compliance with the criteria for a Shoreline Conditional Use Permit is presented in Exhibit 27.
14. The project requires compliance with numerous chapters and sections of the Milton SMP. The applicable sections, together with analysis of compliance can be found in Exhibit 28.
15. The analysis in Exhibit 26 shows a modeled decrease in the base flood elevations within the Hylebos RRP area of 2.59 feet within Hylebos Creek at the northern boundary of the RRP, 3.29 feet within Hylebos Creek between I-5 and SR-99, and 1.47 feet within Surprise Lake Tributary between 20th Street East and the Interurban Trail. The project will place approximately 310 cubic yards of fill in floodplain areas regulated by the City

of Milton, however the effects of the displaced flood storage will be offset by reducing creek-related flood elevations in Milton. No compensatory flood storage mitigation is required to comply with Milton's flood damage prevention regulations.

## IV - CONCLUSIONS

### Project Wide:

1. The entire SR 167 Completion project will complete the critical missing link in the State's highway system, between SR 167 and I-5, as well as provide a new connection between I-5 and SR 509.

Once complete, the project will connect industrial and regional centers, improve freight mobility in and out of the Port of Tacoma, improve congestion on local surface streets, construct new portions of the Interurban Trail, provide for an expansive restoration of the Hylebos Creek watershed, and address historical flooding problems within the project area.

2. The project proposes to mitigate the majority of impacts to Hylebos Creek, Surprise Lake Tributary and associated wetlands and tributaries through the construction of an expansive Riparian Restoration Program (RRP). See exhibit 9. The RRP was developed through intense coordination and review with numerous stakeholders including the Puyallup Tribe of Indians and other Federal and State Agencies that will have an approval role or a vested interest in the project and habitat impacts.
3. A minor portion of the project's wetland impacts will be mitigated at the Spring Valley mitigation site, through which the West Fork of Hylebos Creek flows, and which has completed its 10 year maturation process. Spring Valley credits will be used based on the agreed-upon ratio of 1:1.5 for wetland impact to wetland rehabilitation. Per the guidance for the Spring Valley site, impacts for all wetlands were "normalized" to Category III. Impacts on Category II wetlands were increased by 25 percent to express them as equivalent to Category III. Upon completion of this project, there will be no mitigation credits remaining at the Spring Valley site. This is further discussed in exhibit 9.
4. The construction of the RRP will exceed the applicable wetland and stream mitigation ratios. Specifically, the retained credits are as follows:

Wetland (Rehabilitation)	Stream		Buffer (Stream & Wetland)	Flood
	Acres	Feet		
18.06 acres	3.275	1,198	53.71	11 acre feet

Excess mitigation is being recognized through an advance mitigation agreement that will require approval by state and federal agencies.

5. This project will be bid and constructed as a design-build contract, wherein the winning bidder will be expected to create final plans and documents for final review and comment by WSDOT. This will occur after the issuance of this decision. It is anticipated that revisions to this decision will be required prior to construction commencing.

6. The Washington State Department of Ecology is the lead agency for environmental permitting for stage 1b. The issuance of a Shoreline Conditional Use Permit, along with any revisions, also requires the final approval by the Ecology. Delegating the Hearing Examiner's authority in approving a revision, to the local Shoreline Administrator will assist in streamlining the review and approval of design-build revision, and still result in Ecology having the final approval.
7. The WSDOT and FHWA finalized and signed a joint NEPA/SEPA decision, "Environmental Re-evaluation of Phase 1 Improvements" on December 20, 2018. The signed Re-evaluation Form was provided to the City of Fife as part of the JARPA package submitted on 11/25/2020. The Re-evaluation found that the proposed 2018 Phase 1 Improvements do not create new significant adverse effects compared to the 2006 FEIS Build Alternative, as documented in the October 2007 Record of Decision. WSDOT's "SR 167/I-5 to SR 509 – New Expressway (Stage 1b)" Project is covered by the December 2018 joint NEPA/SEPA decision. See exhibit 2 and 3.
8. CFR Title 44 Parts 60.3(d)(3) and (4), clearly outline the mandatory steps communities must follow when reviewing proposals for development or alterations to a floodway. FEMA defines development as "any man-made change to improved or unimproved real estate". If analysis shows a rise in the base flood elevation, and a community still wishes to support the project, it must require a Conditional Letter of Map Revision (CLOMR) prior to construction and a Letter of Map Revision (LOMR) once construction is complete.

City of Fife:

9. As discussed in the analysis above, and as conditioned below, development within the project area is consistent with the requirement of the Fife SMP and Critical Areas Ordinance, and provides an enhancement to the net ecological function of the shoreline and the watershed.
10. Throughout the project area vast improvements are being made to the flood storage capacity and conveyance capability of the watershed. The result will allow a "flood wave" to move through the system quicker and more efficiently, thus reducing stacking of the flood wave, in the project area.
11. As discussed in the analysis above and detailed in exhibits 15-19, the project will result in increased base flood elevations and flow velocities on City of Fife owned property, outside of the project area between 8<sup>th</sup> St. E. and 4<sup>th</sup> St E.
12. The City of Fife desires to support this regionally critical transportation infrastructure project, and is willing to accept additional flood impacts on City owned property outside of the project area, provided all applicable requirements from other federal, tribal and state agencies are met, critical fish habitat is not impacted, and there is no downstream impact to privately owned property.
13. In the area between 8<sup>th</sup> St. E. and 4<sup>th</sup> St. E., the east bank and associated uplands is owned by the City and controlled by a covenant on the property. The covenant is a result of an

interagency partnership to acquire the property and perform restoration work with Conservation Futures dollars.

While the City owns the property, any modifications must be consistent with the covenants contained in the cooperative agreement (see exhibit 22) which is overseen by the Commencement Bay Natural Resource Trustees.

The City and WSDOT provided presentations to the Trustees at their March 9<sup>th</sup> and April 13<sup>th</sup>, 2021 meetings.

14. WSDOT has the ability to surplus property no longer necessary for transportation purposes. RCW 47.12.063 contemplates the different scenarios in which surplus property can be sold, including for low income housing.
15. There are numerous local and regional policies that speak to economic development and coordination regarding future development adjacent to the project boundaries.

The City of Fife SMP contains the following economic development policies:

- a. Maintain current uses that have limited impacts upon the ecological functions and values of shoreline areas, while providing for new environmentally sensitive development.*
- b. Provide incentives for public/private partnerships designed to enhance property values and provide public amenities.*
- c. Review proposed economic use of the shoreline for consistency with the Comprehensive Plan and the Program.*

The City of Fife Comprehensive Plan Land Use Chapter contains Goal 13, which encourages future development along the SR 167 corridor, and states as follows:

*Goal 13 Where appropriate, encourage a mixture of appropriate commercial, industrial, and office park uses along the SR 167 freeway corridor in compliance with all City concurrency requirements and policies.*

The City of Fife Comprehensive Plan Chapter on Economic Development contains the following policy:

*Goal: Improve the local economy meeting the needs of local residents and businesses and providing for a sustainable tax base.*

*Policy 1 Strategically coordinate economic development planning efforts and establish partnerships with other economic development organizations.*

*Implementation 1.1 Work with other public agencies and private interests, including the Economic Development Board (EDB), Port of Tacoma, Chamber of Commerce, Washington State Departments, and others to coordinate resources, programs, promotions, information tools, and other materials to recruit and successfully locate new business interests in Fife.*

The Pierce County Countywide Planning Policies chapter on Affordable Housing contains the following policy:

*AH-7. The County, and each municipality in the County, should explore and identify opportunities to reduce land costs for non-profit and for-profit developers to build affordable housing.*

*7.1 Jurisdictions should explore options to dedicate or make available below marketrate surplus land for affordable housing projects.*

*7.2 All jurisdictions should explore and identify opportunities to assemble, reutilize, and redevelop existing parcels.*

*7.3 All jurisdictions should review and streamline development standards and regulations to advance their public benefit, provide flexibility, and minimize costs to housing.*

The properties in the NW and NE corners of the intersection of 20<sup>th</sup> St E and Wapato Way E. (formerly 70<sup>th</sup> Ave E). are on the corner of the City's Community Mixed Use (CMU) zone, providing an "edge" or "end node" to this pedestrian oriented corridor.

Recent development on the south side of 20<sup>th</sup> St E, near these properties, has furthered the intent of the CMU zone and it is anticipated to lead to future development along the corridor. Trails be developed as part of stage 1a and 1b will connect the eastern boundary of the CMU, to the City's Center of Local Importance (COLI)

The future use of these WSDOT properties is of critical importance to the continued development of the City's pedestrian oriented corridor along 20<sup>th</sup> St E

Portions of these properties are not currently proposed for use by stage 1a or 1b, and their utility and potential for use by stage 2 is currently being analyzed. It may be the case these properties are turned back for non-transportation related development.

16. As identified in the conclusions above, WSDOT will be retaining wetland rehabilitation credits, and will also potentially surplus property with remnants of wetlands remaining (specifically around the intersection of Wapato Way E. and 20<sup>th</sup> St E).

Applying the excess wetland rehabilitation credits from the RRP, to property that will be surplusd for future development, will allow for those properties to be more readily developed into an asset to the community and region, including the potential for affordable housing. This approach is supported by City and Countywide Policies.

Not applying excess wetland rehabilitation credits from the RRP will result in a vacant WSDOT owned piece of property with extremely limited development potential due to the remnants of wetland 2. As has been the experience along the I-5 corridor, people experiencing homelessness often take up residence on these vacant WSDOT owned properties. This in turn leads to numerous health and safety concerns for those seeking shelter and refuge on the property, the neighborhood, and the public traveling along state and federal highways.

An advanced mitigation agreement, which is the mechanism by which the RRP will store and maintain the excess credits for future use, does not allow for said credits to be used by a 3<sup>rd</sup> party other than the permittee (WSDOT). Other mechanisms, such as an in-lieu or mitigation bank agreement may allow the credits to be transferred to a 3<sup>rd</sup> party. However, WSDOT has stated this approach is inconsistent with the intent of the RRP.

City of Milton:

17. As discussed in Exhibits 27 and 28, the development within the project area is consistent with the requirements contained within the Milton SMP. The overall project provides an enhancement to the net ecological function of the shoreline and the watershed.
18. The project will improve regional mobility of the transportation system to serve multimodal local and port freight movement, reduce traffic congestion, improve safety on arterial roads and intersections in the project vicinity, consistent with the City of Milton's Comprehensive Plan. Specifically the project aligns with the following goals and policies in the Transportation Element of the City's Comprehensive Plan:

*Pol. TR 1.5 The City will coordinate with the appropriate agencies to ensure the efficient movement of goods to serve local and regional markets.*

*Pol. TR 3.1 Ensure that the City's transportation system preserves existing habitats and requires enhancement of disrupted habitats.*

## **V - RECOMMENDATION(S):**

### **City of Fife:**

Based on review of the application material, and as detailed in the recitals, analysis and conclusions contained in this staff report, City of Fife Staff recommends the City of Fife Shoreline Substantial Conditional Use Permit (SLCUP20-0001) and Critical Areas Permit (CAP21-0001) considered in this staff report be GRANTED, subject to conditions 1-13 listed below.

### **City of Milton:**

Based on review of the application material, and as detailed in the recitals, analysis and conclusions contained in this staff report, City of Milton Staff recommends the City of Milton Shoreline Conditional Use Permit (LUA2020-0016) considered in this staff report be GRANTED, subject to conditions 14-20 listed below.



## **VI - CONDITIONS:**

### City of Fife:

1. Within the City of Fife, all mitigation and restoration boundaries adjacent to a road right of way, sidewalk, shared use path, walking trail, or similar pedestrian feature, shall be delineated by a wildlife passable split rail fence, with critical area markers and signage in locations approved by the City of Fife Shoreline Administrator. This shall be protected in perpetuity and a maintenance requirement shall be identified in the title note listed in condition #2.
2. All land used for mitigation, restoration, and meant for long term protection shall be placed in a critical areas tract with a note placed on title regarding the ownership and long term maintenance responsibilities.
3. WSDOT shall be responsible for all monitoring and maintenance required under applicable state and federal permitting requirements. Transfer of ownership of the underlying land shall not remove WSDOT from the federal and state permit monitoring requirements, excluding post monitoring period long term maintenance.
4. Prior to finalizing the mitigation strategy for stage 2, and/or determining the future use of the WSDOT owned properties around the intersection of 20<sup>th</sup> St E. and Wapato Way E. (formerly 70<sup>th</sup> Ave E), WSDOT shall consider the immense public benefit of allowing these properties to be turned back for non-transportation uses and be developed consist with local planning efforts, compared with the public benefit provided if these properties were to be used as mitigation or retained indefinitely by WSDOT for an unknown or unplanned use.
5. Excess wetland rehabilitation credits shall only be available for use once they have been formally identified in an executed advanced mitigation agreement with the State Department of Ecology, the US Army Corps of Engineers, and other applicable agencies.
6. Excess stream credits shall only be available for use once they have been formally identified in an executed advanced mitigation agreement with the State Department of Ecology, the US Army Corps of Engineers, and other applicable agencies.
7. The excess buffer credits within City of Fife jurisdiction shall only be available for use consistent with the provision of Fife's Municipal Code, and any other state or federal regulations, in place at the time of application for a project proposing to utilize the credits.
8. The excess flood capacity created in the RRP may be used by WSDOT for future floodplain fill in Fife, only after a LOMR has been provided for project Stages 1a and 1b, and additional project level analysis is conducted to assure the use of said credits is consist with the intent of the Fife Municipal Code and best available science and management practices for floodplain development and credit banking.

9. The Flood Storage agreement with the City of Fife shall be amended to reflect the changes necessary to the agreement resulting from the RRP construction.
  
10. Design-Build conditions – The following conditions shall be met as part of review and approval of the design build revisions. If there are no revisions to shoreline or critical areas impacts from the design-build process, those applicable provisions shall be completed prior to the City issuing civil permits for construction of the project.
  - a. The design-build proposal shall receive approval for a revision to this permit, as applicable under WAC 173-27-100 and FMC Title 17, prior to commencing work.
  - b. The design-build proposal shall apply for and receive all applicable civil permits from the City of Fife prior to commencing work.
  - c. The flood model used by the design-build contractor shall take into account the City’s entitlement of 10 acre feet of floodplain fill capacity.
  - d. The design-build proposal shall take into account the City’s build out of Wapato Way E connecting from Pacific Hwy, north to 8<sup>th</sup> St. E. The design build proposal shall preserve the agreed upon right-of-way corridor for Wapato Way. E, and shall not in any way further inhibit the City’s future development of Wapato Way E.
  - e. The design-build proposal shall re-calculate all applicable critical areas impacts and credits currently identified in the mitigation proposal.
  - f. The design-build proposal shall maintain the mitigation area utilized by the Olympic Pipeline relocation project (CAP21-0001).
  
11. Increased base flood elevation conditions – As a result of the project’s proposed increase in the base flood elevations for properties outside of the “project area”, and the City’s willingness to accept this impact on City owned and maintained restoration and parks property, the following conditions shall be met.
  - a. Pursuant to 44 CFR 60.3, the base flood elevation cannot be increased and construction in designated floodplain areas cannot commence until a Conditional Letter of Map Revision (CLOMR) is issued.
  - b. Upon approval of the design-build modifications, and prior to issuance of civil permits authorizing development in the floodplain, a Conditional Letter of Map Revision (CLOMR) must be completed.
  - c. Work outside of the regulated floodplain may occur prior to the completion of the CLOMR process, provided the regulated floodplain boundary is clearly marked on all construction plans and in the field.
  - d. Upon completion of Stage 1b a Letter of Map Revision (LOMR) must be completed for all affected floodplains.
  - e. Prior to the issuance of a grading and drainage permit, or a revision to this permit authorizing construction to commence, WSDOT shall provide the City with a long term (10 yr., plus contingency) monitoring and maintenance plan, and bond or mutually agreed upon mechanism, to address the potential for flood impacts to the City owned property, subject to City approval. This should address the following at a minimum:

- i. Commitment to remove debris from pedestrian surfaces and trails resulting from any flooding event equivalent or less than a 100 yr. event.
  - ii. Baseline site assessment of pre-project inundation and estimated durations.
  - iii. Annual overview of flood events and estimated duration of inundations.
  - iv. Annual review of increased flooding and showing high water mark in relationship to the trail and associated pedestrian amenities.
  - v. Annual review of increased flooding effect on non-aquatic upland habitat and plants.
  - vi. Recommendations to address impacts identified during monitoring visits.
  - vii. Contingency plan to address unintended consequences and ongoing issues.
  - viii. Contain a cost estimate for purpose of bonding or other mutually agreed upon mechanism.
12. WSDOT shall indemnify, defend, and hold the City harmless from any claim or cause of action for injury to persons or damages to property downstream of the “project area” that is the direct result of the increased flood elevation and flow velocities resulting from the project.
13. The authority of the Hearing Examiner to approve a revision to WSDOT’s Shoreline Condition Use Permit (SLCUP20-0001) considered in this application, is hereby delegated to the City of Fife Shoreline Administrator, subject to final approval by the Washington State Department of Ecology.

City of Milton:

14. In the case of a violation of these conditions or the Shoreline Management Act, all work shall stop until such violation is remedied.
15. The Applicant shall obtain other applicable permits, required of state and federal regulatory agencies, as indicated in Exhibit 4.
16. Compliance with all applicable City codes is required during and following any site development activity, including MMC 13.26 (Storm Drainage of Surface Water – Utility, Management and Maintenance).
17. If there are revisions to shoreline impacts from the design-build process, the applicant shall receive approval for a revision to this permit, as applicable under WAC 173-27-100 and MMC 18.12.150, prior to commencing work.
18. The design-build proposal shall apply for and receive all applicable civil permits from the City of Milton prior to commencing work.
19. WSDOT shall be solely responsible for any impact to private or City of Milton property that is a direct result of the relocation and/or re-meandering of the Hylebos Creek.
20. This Shoreline Conditional Use Permit is subject to approval by the Department of Ecology.