



COUNTY COMMISSIONERS

Cathy Wolfe  
 District One  
 Sandra Romero  
 District Two  
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 District Three

**HEARING EXAMINER**

*Creating Solutions for Our Future*

**BEFORE THE HEARING EXAMINER  
 FOR THURSTON COUNTY**

In the Matter of the Application of	)	NO. SSDP-2009102647
	)	
<b>Rollie and Audrey Martin</b>	)	FINDINGS, CONCLUSIONS,
	)	AND DECISION
For Approval of a	)	
Shoreline Substantial Development Permit	)	
	)	
	)	

**SUMMARY OF DECISION**

The request for a shoreline substantial development permit to allow construction of a 420 square foot boathouse and 50-foot by eight-foot recreational dock on a currently vacant lot in the Residential LAMIRD Zoning District (RL 2/1) within the Rural Shoreline Environment associated with Summit Lake is **GRANTED** subject to conditions.

**SUMMARY OF RECORD**

**Request:**

Rollie and Audrey Martin (Applicants) requested a shoreline substantial development permit to allow construction of a 420 square foot boathouse and 50-foot by eight-foot recreational dock on a currently vacant lot in the Residential LAMIRD Zoning District (RL 2/1) within the Rural Shoreline Environment associated with Summit Lake.

**Hearing Date:**

The Thurston County Hearing Examiner held an open record hearing on the request on February 19, 2013.

**Testimony:**

At the hearing the following individuals presented testimony under oath:

- Scott McCormick, Associate Planner, Resource Stewardship Department
- Rollie Martin, Applicant
- Audrey Martin, Applicant

Exhibits:

At the hearing the following exhibits were admitted in the record:

- Exhibit 1      Resource Stewardship Department Staff Report, including the following attachments:
- Attachment a    Notice of Hearing
  - Attachment b    Master Application received September 30, 2009
  - Attachment c    JARPA Application received September 30, 2009
  - Attachment d    Narrative Summary
  - Attachment e    Mitigated Determination of Non-Significance issued January 28, 2013
  - Attachment f    Notice of Application dated January 8, 2010
  - Attachment g    Vicinity Maps
  - Attachment h    Site Plans 1 and 2
  - Attachment i    Marine railway drawings and schematics, dated January 20, 2010, (3 pages)
  - Attachment j    Boathouse West elevation drawing dated January 20, 2010
  - Attachment k    Boathouse South elevation drawing dated January 20, 2010
  - Attachment l    Boathouse Floor Plan dated January 20, 2010
  - Attachment m    Dock drawings, plan and side view with dimensions (undated)
  - Attachment n    Cost estimate for dock (one page undated)
  - Attachment o    Cost estimate for boathouse (two pages dated January 22, 2010)
  - Attachment p    Boat ownership and dimensional information (two pages dated October 15, 2009)
  - Attachment q    Site photos by staff (five pages)
  - Attachment r    Letter from WA State Department of Ecology dated October 21, 2009

Attachment s Memorandum from Brad Sangston, Environmental Health Department, dated January 25, 2013

Attachment t Memorandum from Chuck Meyers, Development Review Section of Public Works Department, dated October 15, 2009

Exhibit 2 Color copy of two photos of the notice of hearing posted on-site

Based upon the record developed at hearing, the following findings and conclusions are entered in support of the decision of the Hearing Examiner:

### FINDINGS

1. The Applicant requested a shoreline substantial development permit (SSDP) to allow construction of a 420 square foot boathouse and 50-foot by eight-foot recreational dock on a currently vacant lot in the Residential LAMIRD Zoning District (RL 2/1) within the Rural Shoreline Environment associated with Summit Lake.<sup>1</sup> *Exhibit 1, page 1; Exhibit 1, Attachments B and C.*
2. The subject property is a legally nonconforming 0.33-acre waterfront residential lot that is currently vacant. Surrounding parcels are developed with residences. The Applicants plan to build a residence on-site; however, due to the narrow width of the property and the relatively large size of equipment needed to construct the proposed boathouse, dock, and marine railway, it is necessary to build the shoreline improvements first. The site plan for a future residence and septic system was approved October 4, 2012, but no building permits have been requested. *Exhibit 1, page 2; Rollie Martin Testimony; Exhibit 1, Attachment Q.*
3. The shorelands of Summit Lake are subject to the jurisdiction of the Shoreline Master Program for the Thurston Region (SMPTR). The site has a Rural Shoreline Environment designation. *Exhibit 1, page 2.*
4. The proposal is to build 420 square foot boathouse, accessed by a marine railway from a 50-foot by eight-foot dock with an attached ten-foot by ten-foot wide float on Summit Lake. The float would be attached to the south side of the dock perpendicular to the end of dock. The boathouse is proposed landward of the ordinary high water mark. The Applicant's boat would be stored in the boathouse via a marine railway, consisting of two rails that rest in the water on which a dolly rides, using a powered winch to pull the boat into the boathouse. *Exhibit 1, Attachments C, H, I, J, K, L, and M.*
5. Because the site is not developed with a house, the dock and boathouse are not

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<sup>1</sup> The legal description of the subject property is a portion of Section 07, Township 18, Range 3W, Quarter SE SW, Plat NORTH SHORE SUMMIT LAKE LOT 21, Document 011/083; also known as Parcel no. 65400002100. *Exhibit 1, page 1.*

considered typical accessory structures or exempt residential appurtenances, but rather stand alone shoreline development. An SSDP is required for non-exempt shoreline development with a fair market value that exceeds the threshold in effect at the time. When the instant application became complete, the threshold was \$5,718.00; at the time of hearing, the threshold is \$6,416. The project has an estimated value of \$24,355.31 and an SSDP is required. *Exhibit 1, page 3; Exhibit 1, Attachments C, N, and O.*

6. The shoreline permit application was submitted on September 30, 2009 and became complete on October 29, 2009. *Exhibit 1, page 2.*
7. The SMPTR allows boathouses for residential properties, but limits them to a maximum height of 10 feet and a maximum area of 100 square feet unless "the size of the applicant's boat demands a larger structure". *SMPTR Section Three Chapter IV.C.30.* The Applicants own a 2004 Larson 210 LXI, which is a fiberglass runabout style boat with a wake board tower.<sup>2</sup> Including the motor and tower, the boat is 22 feet eight inches long, eight feet seven inches wide, and nine feet five inches tall. The marine rail way motor and winch system must also occupy the boathouse. Allowing only two feet of space to walk around the sides and front of the boat, and two feet on either side of the garage door per County building code, the minimum structure size required has an exterior footprint of 14 by 30 feet, or approximately 420 square feet. The structure is proposed to be no more than ten feet tall. County Planning Staff submitted the opinion that the application had successfully demonstrated that a larger boathouse was necessary based on the size of the Applicants' boat. *Exhibit 1, pages 2,4; Exhibit 1, Attachment D; Rollie Martin Testimony.*
8. The dock is proposed to be built just above water level to accommodate loading and unloading of the boat via the marine railway. The marine railway is proposed to be built as close to at grade as possible. The proposed length of the dock is required to feasibly serve the Applicants' nearly 23-foot long boat. The end of the pier and float is proposed to be 50 feet from the ordinary high water mark. The proposal includes the use of reflectors and other design materials such that the overwater structure would be visible night and day to users of the lake. The design is consistent with many other similar recreational docks along the Summit Lake shoreline. The dock would be set back at least ten feet from either side boundary of the subject property. *Exhibit 1, pages 4, 7; Exhibit 1, Attachment H.*
9. All proposed improvements would be for the private use of the Applicants or successors in interest; no public improvements are proposed. There is no public access to the waterfront in the vicinity of the project. The parcels on either side of the subject property are already developed with similar docks. *Exhibit 1, pages 4-5; Exhibit 1, Attachment H.*

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<sup>2</sup> Evidence of boat ownership was provided to County Staff during application review but not included in the record. *Rollie Martin Testimony.*

10. The dock drawings at Exhibit 1, Attachment M depict pilings for the float that are too close to the dock. County Planning Staff recommended a condition of approval requiring site plan modification to ensure that the minimum span between pilings would be at least eight feet. *Exhibit 1, pages 7, 9; Exhibit 1, Attachment M.*
11. Summit Lake is greater than 150 feet wide in the location of the subject property. *Exhibit 1, page 5.*
12. No overwater covered moorage is proposed. *Exhibit 1, page 8; Exhibit 1, Attachments C and H.*
13. Thurston County was designated lead agency for review of the proposal's environmental impacts. Upon review of the application, an environmental checklist, memoranda from Thurston County Public Works and Environmental Health staff, and site plans, the County's SEPA responsible Official issued a mitigated determination of non-significance (MDNS) on January 28, 2013. This MDNS contained twelve conditions with which all shoreline development of the site must comply, including:
  - Preventing discharge of sediment laden water into the lake;
  - Revegetation or equivalent erosion protection for all newly disturbed areas;
  - Retention of native vegetation within 50 feet of the shoreline, or replacement with similar native species consistent with a revegetation plan to be reviewed and approved by the County;
  - Dry weather ground disturbance only;
  - Erosion control prior to clearing, grading, or construction;
  - Use of clean fill material;
  - Application for and compliance with the conditions of a hydraulic project approval from the Washington Department of Fish and Wildlife, if required;
  - Application for and compliance with the conditions of a Section 404 permit if required by the US Army Corps of Engineers;
  - Must obtain a lease from Washington Department of Natural Resources for a proposed dock within waters of the state;
  - Compliance with the SMA and SMPTR; and
  - Compliance with all other applicable local, state, and federal regulations and conditions of shoreline permit approval.

The MDNS was not appealed.<sup>3</sup> *Exhibit 1, Attachment E; McCormick Testimony.*

14. Thurston County Public Works Development Review Section reviewed the application

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<sup>3</sup> At hearing it was noted that the SEPA appeal deadline had been advertised as 4:00 pm on Monday February 18, 2013. That day was a County holiday. The hearing in the instant application was held on February 19, 2013. The Applicants were informed at hearing that a SEPA appeal submitted before close of business on the date of the hearing would be honored and would require the record to be reopened. The Examiner notes that based on lack of follow up communication from County Staff, it appears no SEPA appeal was filed before close of business on February 19, 2013.

and plans and determined that as proposed, the project satisfies all requirements of the County's Road Standards and Drainage Design and Erosion Control Manual. Public Works Staff recommended approval. *Exhibit 1, Attachment T.*

15. The proposal was routed to Thurston County Environmental Health Division (EHD) for review of the project for compliance with County health code requirements. EHD Staff noted that all on-site improvements must maintain a minimum setbacks of five feet from the septic tank and pump chamber and at least two feet from the pressure sewer transport line. With a condition to that effect, EHD Staff recommended approval. *Exhibit 1, Attachment S.*
16. The Washington State Department of Ecology (DOE) submitted comments indicating that the dock width must comply with the SMPTR and also addressing potential discovery of contaminated soils during construction. *Exhibit 1, Attachment R.*
17. Notice of the public hearing was sent to all property owners within 500 feet of the site and published in The Olympian on February 8, 2013, more than ten (10) days prior to the hearing. Notice was posted on-site on February 8, 2013. *Exhibit 1, page 3; Exhibit 1, Attachment A; Exhibit 2.*

## **CONCLUSIONS**

### **Jurisdiction**

The Hearing Examiner is granted jurisdiction to hear and decide applications for shoreline substantial development permits pursuant to RCW Chapter 36.70, WAC 173-27, and Section One, Part V of the Thurston County Shoreline Master Program.

### **Criteria for Review**

To be approved by the Hearing Examiner, the proposed shoreline substantial development permit must be consistent with:

- A. The policies and procedures of the Shoreline Management Act;
- B. The provisions of applicable regulations; and
- C. The Shoreline Master Program for the Thurston Region.

*Washington Administrative Code (WAC) 173-27-150.*

#### *(a) Shoreline Management Act*

Chapter 90.58 RCW, the Washington State Shoreline Management Act (SMA) of 1971, establishes a cooperative program of shoreline management between the local and state governments with local government having the primary responsibility for initiating the planning required by the chapter and administering the regulatory program consistent with the Act. The Thurston County Shoreline Master Program (SMPTR) 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 intent of the policies of RCW 90.58.020 is to foster “all reasonable and appropriate uses” and to protect against adverse effects to the public health, the land, and its vegetation and wildlife. The SMA mandates that local governments adopt shoreline management programs that give preference to uses (in the following order of preference) that: recognize and protect the statewide interest over local interest; preserve the natural character of the shoreline; result in long term over short term benefit; protect the resources and ecology of the shoreline; increase public access to publicly owned areas of the shorelines; and increase recreational opportunities for the public in the shoreline. The public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state is to be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses that are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline, are to be given preference.

*(b) Applicable regulations from the Washington Administrative Code*

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

- (1) 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.
- (2) No permit shall be issued for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

WAC 173-27-190 Permits for substantial development, conditional use, or variance.

- (1) Each permit for a substantial development, conditional use or variance issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140 (5)(a) and (b).

*(c) Shoreline Master Program for the Thurston Region*

The following are applicable provisions of the SMPTR:

Section Two -- General Goals and Policies

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C. Rural Environment (page 30)

Purpose. The primary purposes of the Rural Environment are to protect areas from urban expansion, restrict intensive developments along undeveloped shore-lines, function as a buffer between urban areas, and maintain open spaces for recreational purposes compatible with rural uses. New developments in a Rural Environment are to reflect the character of the surrounding area.

Definition. The "Rural Environment" designates shoreline areas in which land will be protected from high-density urban expansion and may function as a buffer between urban areas and the shorelines proper. This environment is characterized by low intensity land use and moderate to intensive water use. Residential development does not exceed two dwellings per acre. Visual impact is variable with a moderate portion of the environment dominated by structures of impermeable surfaces. Intensive cultivation and development of the renewable soils, aquatic and forest resources, as well as limited utilization of nonrenewable mineral resources is permitted. Recreational activities and public access to the shoreline are encouraged to the extent compatible with other rural uses and activities designated for this environment.

Goal Statements: (pages 30-31)

1. Economic Development. Available resources should be utilized consistent with the definition and purpose of the Rural Environment.
2. Public Access. The primary goal of this element is to provide adequate public access areas to ensure maximum enjoyment of recreational and scenic opportunities with minimum conflict with other rural uses. It is the intent of this goal to:
  - a. Recognize and protect private property rights consistent with the public interest;
  - b. Prevent the destruction of the more fragile recreation areas through excessive use; and
  - c. Exercise due regard for the safety of the public.
3. Circulation. The goal of the Circulation Element in the Rural Environment is to provide facilities that are necessary only for local usage. Trail systems for safe nonmotorized traffic are to be encouraged where compatible with rural uses. Major planned circulation systems shall be located away from shoreline areas whenever possible.
4. Recreation. The recreation goal is to assure diverse, convenient and adequate water-related recreational opportunities along the shorelines of the County located in such a way as to minimize conflicts with other rural activities.
5. Shoreline Use. Areas for intensive public use should be distributed in such a manner as to avoid concentration of user pressure, to discourage intrusions endangering life or property, and to avoid uses having adverse effects on fragile natural systems.
6. Conservation. This goal shall be to have sound management in the conservation of all natural resources within the Rural Environment.
7. Historical and Cultural Values. The goal of this element shall be to promote, protect and preserve historical, cultural scientific or educational values on shorelines where these values are acknowledged.
8. Restoration. This goal is to restore to a useful or original condition those areas (including waters) which are blighted by present uses, discontinued uses and dilapidated or abandoned structures.

Section Three -- Policies and Regulations For Use Activities (pages 47-54)

IV. Boating Facilities

A. Scope and Definition: Boating facilities include marinas, boat ramps, piers, docks, boathouses, mooring buoys, recreational floats and marine railways. ".... "Piers and docks" are structures generally built from the shore extending out over the water to provide moorage for commercial and/or private recreation water craft or float planes or for water recreational use. ....



"Marine railways" are a pair of sloping tracks used to launch watercraft. ... "Boathouses" are a type of covered moorage which have walls and are usually for the storage of one (1) boat.

## B. Policies

...

### *Piers and Docks:*

12. Pier and docks should be designed and located to minimize obstructions to scenic views, and conflicts with recreational boaters and fishermen.
13. Cooperative uses of piers, docks and floats are favored especially in new subdivisions.
14. Moorage buoys are preferred over piers and docks especially in tidal waters.

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### *Marine Railways:*

17. Marine railways should not obstruct shoreline access.

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### *Covered Moorage:*

18. The size of the covered moorage should be the minimum necessary for the use proposed.
19. Covered moorage over the water should be discouraged in tidal waters and prohibited in fresh water.
20. Covered moorage should be designed and located to maintain view corridors and blend with the surrounding development.

## C. General Regulations

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### *Piers and Docks:*

13. Prior to final project approval of a residential development, a usable area shall be set aside for pier or dock unless there is no suitable area. Only one dock or pier is permitted in a new residential development.
14. All pier and dock development shall be painted, marked with reflectors or otherwise identified so as to prevent unnecessarily hazardous conditions for water surface users during day or night.
15. Docks and piers are prohibited on lakes or marine water bodies where the distance to the opposite shore is one hundred fifty (150) feet or less. This is to insure the maintenance of navigation.

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18. There is no maximum length and width for commercial piers or docks; however, the proponent must show the size proposed is the minimum necessary to allow the use proposed.
19. The width of recreational docks or piers shall not exceed eight (8) feet.
20. In fresh water areas, new docks shall not exceed the average length of the existing docks within one hundred (100) feet of the property lines. If there exists a dock on one side of a new proposed one but not on the other, the average to be used for the side without a dock shall be fifty (50) feet. If there are no docks with one hundred (100) feet, the length shall not exceed fifty (50) feet as measured from the ordinary high water mark.
21. At the terminus of a dock or pier, a float is normally attached for purposes of a landing and for moorage of watercraft. These floats may either be parallel to the dock or pier, or form a tee. The float cannot exceed four hundred (400) gross square feet for a piling dock/pier in tidal waters, two hundred fifty (250) gross square feet for a floating dock/pier on tidal water,

and two hundred (200) gross square feet for docks/piers on fresh water. The total length of the dock/pier with an attached float cannot exceed the total length allowed under General Regulations #17 and #20.

22. Docks and piers shall be set back ten (10) feet on fresh and twenty (20) feet on tidal water from the side property line. These setbacks may be waived if two single-family property owners wish to construct a joint pier on the common property line under the following conditions:
  - a. Both property owners must record a non-exclusive easement granting each other the right to use the pier.
  - b. The easement must acknowledge that each property owner is giving up the right to construct a separate single-family pier.
23. Span between pilings for piers or docks on pilings shall be eight (8) feet or greater.

...

*Marine Railways:*

29. Marine railways shall be located on the existing grade where feasible.

*Covered Moorage:*

30. A boathouse for residential property is permitted landward of the ordinary high-water mark. It shall not exceed one hundred (100) square feet unless the size of the applicant's boat demands a larger structure. The structure shall not exceed ten (10) feet in height.
31. Covered moorage is prohibited over fresh water.

D. Environmental Designations and Regulations

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2. *Suburban and Rural Environments.* Marinas, boat ramps, piers, docks, boathouses, mooring buoys, recreational floats and marine railways are permitted subject to the Policies and General Regulations.

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Conclusions Based on Findings

1. As conditioned, the proposal would be consistent with the policies and procedures of the Shoreline Management Act. The proposed dock with float and boathouse accessed via marine railway are allowed in the SMPTR in the Rural Shoreline Environment and are a “reasonable and appropriate use” of the on-site shorelands. Conditions would ensure that minimal disruption to the shorelands would occur and that disturbed areas would be revegetated or provided with permanent erosion control. The project was reviewed by the County's Health Department and no impacts to public health were identified. The project would not impact public shoreline access or views from the upland property. *Findings 3, 4, 5, 7, 8, 9, 13, and 15.*
2. As conditioned, the proposed dock, float, marine railway, and boathouse comply with applicable regulations in the Washington Administrative Code. No part of the structure would be taller than ten feet above grade at any point. There would be no significant impact to views of the upland residences because the improvements would be substantially similar to existing amenities in the vicinity. A condition of approval would ensure compliance with the requirements of WAC 173-27-190. *Findings 7 and 8.*

3. The proposal is consistent with the applicable SMPTR policies and regulations. The dock would be built just above the water level and the marine railway would be built as close to at grade as possible. The boathouse would not be taller than ten feet in height. The proposal is substantially similar to existing amenities on waterfront parcels on Summit Lake. The overall dock length would comply with the 50-foot limit imposed in the SMPTR and is necessary to accommodate the Applicants' boat and proposed railway system. At least a ten-foot setback would be provided from the property boundary to the dock. The width of the dock and size of the float comply with SMPTR requirements. Conditions would ensure that reflectors or other design elements are incorporated to ensure the dock is visible to nighttime lake users. There is no public shoreline access in the vicinity and the project would not impact public access. Conditions would ensure that a span of at least eight feet separates all proposed pilings. The proposed 420 square foot boathouse is the minimum size necessary to accommodate the Applicants' boat. No covered overwater moorage is proposed. *Findings 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16.*

### **DECISION**

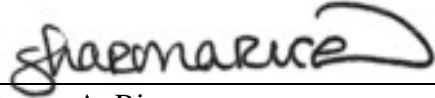
Based upon the preceding findings and conclusions, the requested shoreline substantial development permit to allow construction of a 420 square foot boathouse and 50-foot by eight-foot recreational dock on a currently vacant lot in the Residential LAMIRD Zoning District (RL 2/1) within the Rural Shoreline Environment associated with Summit Lake is **GRANTED** subject to the following conditions:

1. Any discharge of sediment-laden runoff or other pollutants to waters of the state is in violation of Chapter 90.48, Water Pollution Control, and WAC 173-201A, Water Quality Standards for Surface Waters of the State of Washington, and is subject to enforcement action.
2. Earth disturbing work shall take place during dry weather.
3. Erosion control measures must be in place prior to any clearing, grading or construction. These control measures must be effective to prevent soil from being carried into surface water by stormwater runoff. Sand, silt, clay particles, and soil will damage aquatic habitat and are considered pollutants when discharged to waters of the state.
4. To protect water quality, only clean fill material shall be used for backfill. No solid waste, hazardous materials, organic debris, or other such materials shall be mixed in the backfill.
5. All development shall be in substantial compliance with drawings, and site plans submitted and made part of this staff report as modified by these conditions.
6. Any areas of disturbed or exposed soil and or vegetation related to the project shall be revegetated prior to final approval of the proposed boathouse. Any vegetation that is removed or disturbed shall be replaced with native grasses, shrubs or trees.

7. After completion of construction and prior to final building permit approval for the boathouse, the Applicants shall request a final inspection from Thurston County Resource Stewardship, Planning and Environmental Section to ensure that conditions of approval have been met.
8. The proposed boathouse must maintain a five-foot setback to the septic tank and pump chamber on site and at least two foot setback to the pressure sewer transport line.
9. The dock and attached float shall be clearly visible both in day time and night through the use of reflectors and other design features to avoid navigational impacts.
10. Spans between pier and dock pilings shall be eight feet or greater. The site plan at Exhibit 1, Attachment M requires modification to comply with this requirement.
11. Prior to beginning construction activities, the Applicants shall obtain a Thurston County Building Permit for the proposed boathouse.
12. All development of the project shall be consistent with all applicable policies and other provisions of the Shoreline Management Act, its rules, and the Shoreline Master Program for the Thurston Region.
13. This approval does not relieve the Applicants from compliance with all other local, state and/or federal approvals, permits, and/or laws necessary to conduct the development activity for which this permit is issued. Any additional permits and/or approvals shall be the responsibility of the Applicants.
14. A Hydraulic Permit Approval (HPA) may be required by the Washington Department of Fish and Wildlife (RCW 77.55.011(7)). It is the responsibility of the Applicants to ascertain if a permit is required and to comply with any conditions imposed.
15. A Section 404 Permit may be required by the U.S. Army Corps of Engineers prior to work being done in navigable waters of the United States. It is the responsibility of the Applicants to ascertain if a permit is required and to comply with any conditions imposed.
16. A lease from the WA Department of Natural Resources is required for the proposed dock within waters of the State. Contact WA DNR Aquatic Resources at (360) 902-1100 for more information.
17. Construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140 (5)(a) and (b).

18. All other applicable state and federal permits must be obtained prior to the start of project work.

Decided March 5, 2013 by



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Sharon A. Rice  
Thurston County Hearing Examiner



**THURSTON COUNTY**  
**PROCEDURE FOR RECONSIDERATION AND APPEAL**  
**OF HEARING EXAMINER DECISION TO THE BOARD**

**NOTE:** THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.\* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).

**A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)**

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

**B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)**

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Resource Stewardship Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

**C. STANDING** All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

**D. FILING FEES AND DEADLINE** If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$595.00** for a Request for Reconsideration or **\$820.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Permit Assistance Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

\* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.



<b>Project No.</b> <u>2009102647 SSDP</u> <b>Appeal Sequence No.:</b> _____
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Check here for: RECONSIDERATION OF HEARING EXAMINER DECISION

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

Check here for: APPEAL OF HEARING EXAMINER DECISION

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW \_\_\_\_\_  
 on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, as an APPELLANT in the matter of a Hearing Examiner's decision rendered on \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_ relating to \_\_\_\_\_

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1. Zoning Ordinance \_\_\_\_\_
2. Platting and Subdivision Ordinance \_\_\_\_\_
3. Comprehensive Plan \_\_\_\_\_
4. Critical Areas Ordinance \_\_\_\_\_
5. Shoreline Master Program \_\_\_\_\_
6. Other: \_\_\_\_\_

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

**STANDING**

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

\_\_\_\_\_  
 APPELLANT NAME PRINTED

\_\_\_\_\_  
 SIGNATURE OF APPELLANT

Address \_\_\_\_\_

\_\_\_\_\_  
 Phone \_\_\_\_\_

Please do not write below - for Staff Use Only:

Fee of  \$595.00 for Reconsideration or \$820.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_

Filed with the Resource Stewardship Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_.