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HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE THURSTON COUNTY
 HEARING EXAMINER**

In the Matter of the Application of)	Project No. 2013100044
)	Sequence No. 13-103344 XM
)	
Timothy and Lorraine Stensager)	
)	
)	
For Approval of a Shoreline Variance)	
_____)	FINDINGS, CONCLUSIONS, AND DECISION

SUMMARY OF DECISION

The request for shoreline variance to allow an existing 87-foot dock on residential property in the Rural Shoreline Environment of Lawrence Lake to exceed the maximum allowed length is **GRANTED** with conditions.

SUMMARY OF RECORD

Request:

Timothy and Lorraine Stensager (Applicants) requested approval of a shoreline variance to allow an existing 87-foot dock on residential property in the Rural Shoreline Environment of Lawrence Lake to exceed the maximum allowed length beyond the ordinary high water line.

Hearing Date:

The Thurston County Hearing Examiner held an open record hearing on the request on July 1, 2013.

Testimony:

At the hearing the following individuals presented testimony under oath:

- Robert Smith, Senior Planner, Thurston County Resource Stewardship Department
- Lorraine Stensager, Applicant
- Timothy Stensager, Applicant

Exhibits:

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

- Exhibit 1 Resource Stewardship Department Report including the following attachments:
- Attachment a Notice of Public Hearing
 - Attachment b Zoning/Site Map
 - Attachment c Master Application, received April 1, 2013
 - Attachment d JARPA Application (Shoreline Variance), received April 1, 2013
 - Attachment e Supplemental Report from Timothy and Lorraine Stensager, received April 1, 2013
 - Attachment f Site Plan, received April 1, 2013
 - Attachment g Dock Plans, undated
 - Attachment h Mitigated Determination of Non- Significance (Folder 13 100128 XA), issued on May 16, 2013
 - Attachment i Comment Memorandum from Brad Sangston, Thurston County Public Health & Social Services Department, dated March 21, 2013
 - Attachment j Comment Memorandum from Kevin Chambers, Thurston County Public Works Department, dated April 23, 2013
 - Attachment k Comment Letter from Denise Wilhelm, Washington State Department of Natural Resources, dated February 25, 2013
 - Attachment l Comment Letter from the Washington State Department of Ecology, dated May 30, 2013
 - Attachment m Shoreline Administrative Exemption determination letter from Cynthia Wilson, Thurston County Development Services Department, dated August 14, 2003
- Exhibit 2 Color copies of photos of posted Public Hearing Notice

Based on the record developed at hearing, the following findings and conclusions are entered:

FINDINGS

1. The Applicants requested approval of an after-the-fact shoreline variance to authorize a previously constructed extension to a permitted dock on Lawrence Lake. The subject property is addressed as 16302 Pleasant Beach Drive, Yelm, WA.¹ *Exhibit 1, page 1; Exhibit 1, Attachment d, JARPA Application.*
2. The subject property was created in the Division 1, Edwards Lake Lawrence Subdivision, recorded with the Thurston County Auditor on October 1, 1962. The 0.39-acre lot (16,988 square feet) is 75 feet wide. Surrounding land uses include single-family residences on lots of the Division 1 Edwards Lake Lawrence subdivision to the north, west, and south, and Lawrence Lake to the east. The existing residence on-site was built in 2003. In the same year, the Applicants obtained a permit to build a five- by 40-foot wooden dock. *Exhibit 1, page 2; Exhibit 1, Attachments E and M.*
3. The subject property is zoned Residential LAMIRD Two Dwelling Units Per Acre (RL 2/1), which requires a minimum lot size of 12,500 square feet, a minimum lot width of 75 feet, and a maximum density of two dwellings per acre. *Exhibit 1, page 2; Thurston County Code (TCC) 20.13.A.030.* Pursuant to the Shoreline Master Program for the Thurston Region (SMPTR), the Lawrence Lake shorelands on-site are designated as Rural Shoreline Environment, which requires a minimum lot size of 20,000 square feet and minimum lot width of 100 feet. *Exhibit 1, page 2; SMPTR Section Three, Chapter XVI, Part D3.* The property is legally nonconforming as to size and maximum density because the subdivision was approved prior to adoption of the SMPTR and associated shoreline designation as well as the LAMIRD zoning classification. *Exhibit 1, page 3.*
4. Lawrence Lake's water levels fluctuate significantly during summer months. After its construction in 2003, the Applicants noted that the 40-foot dock did not go far enough out into the water to moor a ski boat during the drier months of the year. Upon inquiring at the Thurston County permitting counter, the Applicants understood County Staff to inform them that no permit was required to add a floating dock onto the end of the permitted wooden dock. They added a seven-foot ramp leading down to three 10-foot sections of ShoreMaster PolyDock (a pre-fabricated floating dock). At 77 feet in length, the lake at the dock's end was still too shallow and the muck substrate too deep to access their boat from the dock in the drier summers, including 2004, 2006, and 2008. They added one more ten-foot dock section for a total length of 87 feet, and at that length, have been able to use their boat from the end of the dock. *Exhibit 1, Attachment E; Lorraine Stensager Testimony.*
5. The application materials included data showing that the water level of Lawrence Lake changes by at least four feet over the course of the year, following rainfall. Lake levels are lowest from July to September, which comprise the typical boating season. According to the Applicants' submitted comments, most boats are designed to operate in

¹ The legal description of the property is Lot 7, Division 1 of Edwards Lake Lawrence Subdivision; also known as tax parcel number 45850000700. *Exhibit 1, page 1.*

1.5 to two feet of water; however, because of the muck substrate adjacent to their parcel, three feet is more appropriate for safe maneuvering. The Applicants' boat is 17.5 feet long and has an outboard motor that can raise in shallow water. *Exhibit 1, Attachment E; Lorraine Stensager Testimony.*

6. The Applicants asserted that because of these water level fluctuations, many docks on Lawrence Lake are longer than 50 feet. According to measurements obtained in 2012, there are approximately 108 docks on the lake. Of these, 72 are 50 feet or shorter in length, while 36 are greater than 50 feet in length. The longest is 400 feet long. South of the subject property, neighbors have an 80-foot dock with a 20- by 20-foot platform at the end. To the north, an 80-foot dock with a 10- by 20-foot platform has been approved. *Exhibit 1, page 2; Exhibit 1, Attachment E.*
7. In the SMPTR, adopted on September 5, 1989 and effective on May 15, 1990, docks are covered in the "Boating Facilities" chapter (Section Three, Chapter IV) and are allowed in the Rural Shoreline Environment subject to standards. In fresh water, docks may be a maximum of 50 feet in length from the ordinary high water mark or the average of existing docks within 100 feet of the property lines. They are restricted to a maximum of eight feet in width and must be set back at least 10 feet from side property lines, must have a minimum eight-foot span between pilings, and may have a maximum 200 square foot "float" at the end. *Section Three, Chapter IV, Part C, Numbers 19, 20, 21, 22, and 23.* The average length of existing docks within 100 feet of the subject property is approximately 72 feet. The width and property line setbacks of the Applicants' dock comply with the SMPTR standards; however, at 87 feet long, a variance from standards must be approved in order retain it as built. *Exhibit 1, page 3; Exhibit 1, Attachment F; Smith Testimony.*
8. The Applicants' dock does not interfere with navigation or public access to the lake. It extends from their private property and has equally long docks on either side also extending from private parcels. Lawrence Lake is fairly large and provides adequate room for navigation outside the area in which these docks are located. The affected stretch of shoreline is not notable for its aesthetic, scenic, historic or ecological qualities. *Exhibit 1, Attachment E; Exhibit 1, page 8.*
9. Pursuant to the State Environmental Policy Act, Thurston County acted as lead agency for review of potential environmental impacts of approval of the existing 87-foot dock. Review included the following documents: an environmental checklist; JARPA for a shoreline exemption request as well as for the variance; the Applicants' narrative; a dock plan and site plans; a March 2013 cost estimate; Thurston County Public Works comments; Thurston County Environmental Health comments; comments from Washington State Department of Ecology; and comments from Washington Department of Natural Resources. The SEPA Responsible Official issued a mitigated determination of non-significance (MDNS) on May 6, 2013, which was not appealed and became final on May 30, 2013. Required mitigation measures included erosion control, observing for contamination uncovered during construction, removal of debris to an approved site, the use of non-treated wood or other non-polluting materials, and compliance with Thurston

County Road Standards and Drainage Design and Erosion Control standards. However, as the dock was already built when the MDNS was issued, no mitigation was anticipated to be performed. *Exhibit 1, page 3; Exhibit 1, Attachment H, MDNS; Smith Testimony.*

10. County Staff submitted the position that the fluctuating water levels and the shallowness of the near shore lake would limit the usability of a 50-foot or a 72-foot dock to the extent that neither could provide reasonable recreational access to Lawrence Lake during periods of low water levels, which naturally coincide with boating season. Staff further noted that allowing the 87-foot dock length moves the Applicants' access of the lake farther from shore, reducing impacts to shoreline vegetation and protecting the shoreline environment. *Exhibit 1, pages 4, 7; Smith Testimony.*
11. Thurston County Public Health and Social Services Department submitted comments recommending approval with a condition that any work performed for the project be kept away from existing septic system components. On the record, both Staff and the Applicants clarified that no construction is proposed. Staff kept the condition in place in case of future work. *Exhibit 1, Attachment I; Exhibit 1, pages 8-9; Timothy Stensager Testimony.*
12. Thurston County Public Works Department submitted comments indicating that the Department waived the requirement for a drainage and erosion control and grading plan, based on a review of the application materials. *Exhibit 1, page 8; Exhibit 1, Attachment J.*
13. After receiving notice of application, the Washington State Department of Natural Resources submitted a comment noting that the project may require an aquatic lease. Resource Stewardship Staff noted that it is the Applicant's responsibility to determine whether a lease is required and recommended a condition of approval ensuring that the Applicant obtains a lease, if required. *Exhibit 1, page 8; Exhibit 1, Attachment K.*
14. The Washington State Department of Ecology (DOE) submitted comments that did not require any mitigation or action beyond obtaining a shoreline variance permit. *Exhibit 1, page 8; Exhibit 1, Attachment L.*
15. Resource Stewardship Staff indicated that the Applicants would be required to apply for a hydraulic project approval (HPA) from the Washington Department of Fish and Wildlife (WDFW). *Exhibit 1, page 7.* The Applicants contacted WDFW regarding their requested authorization of the existing dock. According to their testimony, they were told that HPAs are not typically issued on after-the-fact permits. *Lorraine Stensager Testimony.*
16. Written notice of the public hearing was mailed to property owners within 500 feet of the site, published in The Olympian, and posted on-site on June 21, 2013, at least ten (10) days prior to the hearing. *Exhibit 1, page 2; Exhibit 2; Exhibit 1, Attachment A.* The County received no public comment on the application. *Smith Testimony.*

CONCLUSIONS

Jurisdiction

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

Criteria for Review

Pursuant to Washington Administrative Code (WAC) 173-27-170, in order for a shoreline variance to be approved, all of the following applicable criteria must be satisfied.

- (1) Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.
- (2) ... (not applicable)
- (3) Variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(b), or within any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:
 - (a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property;
 - (b) That the proposal is consistent with the criteria established under subsection (2)(b) through (f) of this section; and
 - (c) That the public rights of navigation and use of the shorelines will not be adversely affected.
- (4) In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

Applicable Provisions of the Shoreline Master Program for the Thurston Region

SMPTR Section Two, Chapter V: Regional Criteria

All development within the jurisdiction of this Master Program shall demonstrate compliance with the following criteria:

- A. Public access to shorelines shall be permitted only in a manner which preserves or enhances the characteristics of the shoreline which existed prior to establishment of public access.
- B. Protection of water quality and aquatic habitat is recognized as a primary goal. All applications for development of shorelines and use of public waters shall be closely analyzed for their effect on the aquatic environment. Of particular concern will be the preservation of the larger ecological system when a change is proposed to a lesser part of the system, like a marshland or tideland.
- C. Future water-dependent or water-related industrial uses shall ...
- D. Residential development shall be undertaken in a manner that will maintain existing public access to the publicly-owned shorelines and not interfere with the public use of water areas fronting such shorelines, nor shall it adversely affect aquatic habitat.
- E. Governmental units shall be bound by the same requirements as private interests.
- F. Applicants for permits shall have the burden of proving that a proposed substantial development is consistent with the criteria which must be met before a Permit is granted. In any review of the granting or denial of an application for a permit as provided in RCW 90.58.18.180 (1), the person requesting the review shall have the burden of proof.
- G. Shorelines of this Region which are notable for their aesthetic, scenic, historic or ecological qualities shall be preserved. Any private or public development which would degrade such shoreline qualities shall be discouraged. Inappropriate shoreline uses and poor quality shoreline conditions shall be eliminated when a new shoreline development or activity is authorized.
- H. Protection of public health is recognized as a primary goal. All applications for development or use of shorelines shall be closely analyzed for their effect on the public health.

Conclusions Based on Findings

1. The Shoreline Management Act at RCW 90.58.020 promotes uses that provide for public use and enjoyment of shorelines consistent with an overall policy of protecting the public interest in the shorelines. The record contains undisputed evidence that a 50-foot dock and a 72-foot dock would be equally useless to support boating and personal watercraft use on-site due to the fluctuating water levels and deep muck along the property frontage. Denial of the variance would limit the Applicants' ability to access the waters of Lawrence Lake from their waterfront residential parcel with any vessel or water recreation equipment, thwarting this preferred policy of the Act. If variances were granted to other properties facing similar circumstances, the cumulative effect would continue to be consistent with policies of RCW 90.58.020, so long as all criteria for shoreline variance were shown to be satisfied. The record contains no evidence indicating that additional docks, similarly conditioned, would adversely affect the

shoreline environment or the public interest. *Findings 2, 4, 5, 6, 7, 8, 9, 10, 11, and 12.*

2. The maximum length of dock allowed without variance on the subject shoreline would extend 72 feet beyond the ordinary high water mark. Because of Lawrence Lake naturally occurring seasonal water level variations, a 72-foot dock would be useless for most boating seasons and would prevent the Applicants' reasonable use of their waterfront parcel. The previously constructed 87-foot dock has been shown to be the minimum length necessary to afford the Applicants similar use and enjoyment of their parcel as that enjoyed by neighboring property owners. The Applicants are not responsible for the circumstances that give rise to the variance request. The 87-foot dock is compatible with surrounding uses. It does not adversely affect navigation, public access to public shorelines, or public access to the lake in any way. Retention of the dock would discourage foot traffic in the riparian area, protecting riparian vegetation and habitat from trampling and erosion. Surrounding parcels have legally nonconforming docks and docks permitted via shoreline variance greater than 50 feet in length. Other parcels similarly affected by the lake's fluctuating water levels and deep mud could apply for shoreline variances. The proposal was reviewed by the Department of Ecology, Department of Natural Resources, and the Department of Fish and Wildlife; none of the state agencies recommended denial. The project was reviewed pursuant to the requirements of the State Environmental Policy Act (SEPA) and an MDNS was issued. The record contains no evidence of adverse impact to the environment if the 87-foot dock is retained. *Findings 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15.*
3. With conditions, variance approval would comport with applicable SMPTR policies and regulations. The affected stretch of Lawrence Lake shoreline is not notable for unique aesthetic, or environmental qualities. The dock is not an industrial use. Approval would not interfere with public access to public shorelines or the lake and would not adversely affect public health. The 87-foot dock is compatible with existing and approved uses on surrounding parcels and with the character of the shoreline environment. *Findings 4, 5, 6, 8, and 10.*

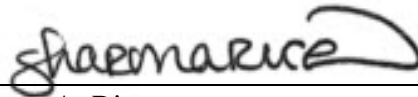
DECISION

Based upon the preceding findings and conclusions, the request for shoreline variance to allow an existing 87-foot dock on residential property in the Rural Shoreline Environment of Lawrence Lake to exceed the maximum allowed length is **GRANTED** subject to the following conditions:

1. If contamination is currently known or suspected during construction, testing of potentially contaminated media must be conducted. If contamination of soil or groundwater is readily visible, or is revealed by testing, the Washington State Department of Ecology must be notified. Contact the Environmental Report Tracking System Coordinator at the Southwest Regional Office at (360) 407-6300.
2. Erosion control measures must be in place prior to any clearing, grading, or construction. These control measures must be effective to prevent stormwater runoff from carrying soil and other pollutants into the lake. Sand, silt, clay particles, and soil will damage aquatic habitat and are considered to be pollutants.

3. The Applicants shall remove construction debris to an approved site (landfill or recycling center) outside of the shoreline area.
4. To minimize impacts to shallow water and beach habitat, construction and future maintenance of the dock shall conform to the following requirements:
 - a. Construction shall be done with non-treated wood and/or materials that will not release toxic substances into the water.
5. The dock shall maintain a 10-foot setback from the property line.
6. If any future upland work associated with dock maintenance is required, caution should be taken to prevent any vehicle or equipment travel over the existing septic system or water lines, and there should be no parking of vehicles or equipment and no staging of materials over the drainfield area, septic system components (tanks, building sewer lines, transport lines, etc.), and water lines in order to avoid potential damage to the septic system.
7. A Hydraulic Project Approval is required from the Washington State Department of Fish and Wildlife. It is the Applicants' responsibility to obtain the HPA, if required by that agency.
8. The Applicants shall obtain an aquatic lands lease from the Washington State Department of Natural Resources, if deemed necessary by that agency.

Decided July 8, 2013.



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.



Project No. <u>2013100044</u> Appeal Sequence No.: _____

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___.