



COUNTY COMMISSIONERS

John Hutchings  
District One  
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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. 2016101431
	)	
<b>Aaron Koelsch</b>	)	<b>Koelsch Dock</b>
	)	
For Approval of a	)	
Shoreline Substantial Development Permit	)	FINDINGS, CONCLUSIONS, AND DECISION
	)	
	)	

**SUMMARY OF DECISION**

The requested shoreline substantial development permit to construct a new pier, ramp, and float at 4904 Keating Road NW is **GRANTED**, subject to conditions.

**SUMMARY OF RECORD**

**Request:**

Aaron Koelsch (Applicant/Owner) requested a shoreline substantial development permit (SSDP) to construct a new pier, ramp, and float for recreational boating, with a total overwater length of 100 feet. The subject property is located on the west shore of Eld Inlet at the southern entrance to Young Cove, at 4904 Keating Road NW, Olympia, Washington.

**Hearing Date:**

The Thurston County Hearing Examiner held an open record hearing on the request on August 8, 2017.

**Testimony:**

At the hearing the following individuals presented testimony under oath:

Scott McCormick, Associate Planner, Resource Stewardship Department  
Dawn Peebles, Thurston County Environmental Health Division  
Randy Popp, Marine Floats Corporation, Applicant representative  
Lorrie Chase, Marine Floats Corporation, Applicant representative  
Ralph Munro

Attorney Dennis Reynolds represented the Applicant at the hearing.

**Exhibits:**

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

EXHIBIT 1            Resource Stewardship Planning & Environmental Section Report including the following attachments:

Attachment a	Notice of Public Hearing
Attachment b	Zoning/Site Map
Attachment c	Master Application, received April 8, 2016
Attachment d	JARPA Application, received April 8, 2016
Attachment e	Letter (project description) from Marine Floats, dated November 4, 2016
Attachment f	Dock and Site Plan, received November 8, 2016
Attachment g	Notice of Application, dated July 26, 2016, with list of adjacent property owners within 500 feet, dated June 17, 2016
Attachment h	Mitigated Determination of Non-Significance, issued on April 27, 2017
Attachment i	SEPA Environmental Checklist, submitted April 8, 2016
Attachment j	Habitat Assessment Study for Koelsch Dock Project by Marine Surveys & Assessments dated October 27, 2016
Attachment k	Email from Scott Steltzner, Fisheries Biologist, Squaxin Indian Tribe dated July 17, 2017 <sup>1</sup>
Attachment l	Comment letter from the Washington State Department of Ecology, dated August 15, 2016
Attachment m	Email from Edward Dee and Carolyn Carlson, property owners at 4906 Keating Rd NW, dated August 15, 2016
Attachment n	Letter from Terry and Andrea Norberg, dated August 15, 2016
Attachment o	Letter from Richard Burkhalter PE, dated August 8, 2016

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<sup>1</sup> Applicant representative Lorrie Chase objected to this exhibit, because the Tribe's comments were solicited by Associate Planner Scott McCormick. The Hearing Examiner admitted the email over her objection. The email was relevant to the application (it contained information from an affected party that Mr. McCormick relied on in his analysis) and was submitted prior to the close of the record. There is no legal basis to exclude the document.

- Attachment p Letter from Thurston County Resource Stewardship to Richard Burkhalter, dated September 12, 2016
- Attachment q Letter from Thurston County Resource Stewardship to Marine Surveys and Assessments, dated June 16, 2016
- Attachment r Letter from the Nisqually Tribe, dated May 3, 2017
- Attachment s Memorandum from Kyle Overton, Thurston County Public Health & Social Services Department, dated May 3, 2016
- Attachment t Comment Letter from the Washington State Department of Ecology, dated April 29, 2016
- Attachment u Letter from the Nisqually Tribe, dated April 19, 2017
- EXHIBIT 2 Photos of posted Notice of Public Hearing (three)
- EXHIBIT 3 Comment letters from Chase Salyers, Christian Salyers, and Alex Bunn
- EXHIBIT 4 Letter from Washington State Department of Natural Resources (DNR) to Aaron Koelsch (re: Mooring Buoy Registration Application), dated May 17, 2016
- EXHIBIT 5 Letter from DNR to Aaron Koelsch (re: Proposed Private Recreational Dock and Mooring Buoy), dated May 17, 2016
- EXHIBIT 6 Letter from Lorrie Chase, Marine Floats, to Theresa Nation, WDFW (re: Mitigation Scope of Work), dated June 27, 2017
- EXHIBIT 7 WDFW Hydraulic Project Approval, issued June 28, 2017
- EXHIBIT 8 Email from Nam Siu to Lorrie Chase, dated August 2, 2017

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 approval of an SSDP to construct a new pier, ramp, and float for recreational boating. The subject property is located on the west shore of Eld Inlet at the southern entrance to Young Cove, at 4904 Keating Road NW, Olympia, Washington.<sup>2</sup> *Exhibits 1, 1.C, 1.D, and 1.E.*

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<sup>2</sup> The parcel is known as Tax Parcel No. 12930331300. *Exhibit 1.*

2. The components of the project include the following:
  - A six- by 42-foot aluminum pier with fiberglass grated deck surface, supported by two eight-inch diameter galvanized steel piles (the overwater portion would be 36 feet);
  - A three- by 40-foot prefabricated aluminum ramp with fiberglass grating (net overwater length of 34 feet, due to overlap with other structures);
  - An eight- by 30-foot float framed with Chemonite pressure-treated Douglas fir and decked with 50% composite decking and 50% fiberglass grating. The float would be secured with four 10-inch diameter galvanized steel piles equipped with float stops and four three-inch diameter stub piles to prevent grounding and bowing; and
  - Landward of the ordinary high water mark, access steps framed with Chemonite pressure-treated Douglas fir with fiberglass grated decking surface.
  - Total overwater length would be 100 feet.

The proposal also includes obtaining official recognition/approval for the existing helix anchor buoy approximately 350 feet east of the bulkhead at the proposed pier location. No additional or new buoy is proposed. *Exhibit 1.E.*

3. The Shoreline Master Program for the Thurston Region (SMPTR) designates the subject shoreline as Rural. *Exhibit 1.* Boating facilities including docks, piers, and floats are allowed in the Rural environment subject to the standards contained in the SMPTR. *Exhibit 1; SMPTR, Section 3, Chapter IV(D).* The project requires an SSDP because the value exceeds the permit threshold of \$6416.00. *Exhibit 1.D; WAC 173-27-040; WSR 12-16-035.*
4. The subject property is zoned Residential LAMIRD two dwelling units per acre (RL 2/1) and is developed with two single-family residential structures, a garage, a sports court, a bulkhead, a concrete boat ramp, and a dilapidated, unusable walking pier. The Applicant proposes to remove the walking pier as mitigation for the proposed development and retain the boat ramp. *Exhibits 1 and 1.E.*
5. Surrounding land uses are residential. There are 11 docks within 2,000 feet of the proposed dock site, none of which have Thurston County permits on file. None of the docks are within 100 feet of the subject property. *Exhibit 1, pages 5-6.*
6. The subject property is on a point at the south entrance to Young Cove. The existing walking pier (to be removed) extends north from the tip of the point into Young Cove. The proposed dock would be constructed south of the existing pier, and would extend east/southeast into Eld Inlet. The location was chosen to allow for sufficient depth such that boat use would not degrade water quality and to prevent grounding. The distance to the opposite shore (Cooper Point) is more than 5,000 feet. The distance to the nearest (south) property line would be approximately 83 feet. *Exhibits 1 and 1.E.*

7. The proposed pier would be 11 feet high as measured between mean higher high water and the top of the railing. The Applicant submitted that view impacts to the south would be minimized through landscaping and placement of the structure near a large tree. *Exhibit 1.F.*
8. The span between pilings would be 30 feet or more. *Exhibit 1.E.*
9. The total overwater area of the proposed structure would be 558 square feet, but approximately 78% (438 square feet) would be grated to allow 69% light penetration. *Randy Popp Testimony.*
10. Removal of the existing walking pier would eliminate approximately 633 square feet of concrete pier material, concrete debris, and wood from the shoreline. *Exhibit 6.*
11. Eld Inlet is designated as critical habitat for Puget Sound Chinook salmon, which is a threatened species under the Endangered Species Act. The conclusion of the Habitat Assessment Study prepared for the project was that it "may affect, [but was] not likely to adversely affect" Chinook salmon, Puget Sound steelhead, bull trout, and marbled murrelet. The project is expected to have "no effect" on the Southern Resident killer whale. *Exhibit 1.J.*
12. Washington Department of Fish and Wildlife (WDFW) Priority Habitat and Species mapping classifies the subject shoreline as a surf smelt breeding area. The Hydraulic Project Approval issued by the WDFW for the project addresses potential impacts to surf smelt by requiring a survey of surf smelt eggs prior to commencement of construction. The results would affect the allowed construction window. After construction is complete, the pier would span elevations where spawning occurs, and is not expected to change baseline conditions for surf smelt. *Exhibits 1.J and 7.*
13. The Thurston County Resource Stewardship Department reviewed the project under the State Environmental Policy Act (SEPA) and issued a mitigated determination of non-significance (MDNS) on April 27, 2017. This determination was based on review of the Master Application, SEPA Environmental Checklist, JARPA, Revised Site Plans dated November 8, 2016, and a Revised Habitat Assessment Study received November 8, 2016. The MDNS contains conditions requiring the following: that state and federal permits be obtained; that removal of the existing pier occur prior to installation of the proposed float; that there be no vehicle parking or materials staging on on-site sewage system components or water lines; that no lighting be installed on the dock; that reflectors be used to prevent hazard to water surface users; that work stop and agencies/tribes be notified if archaeological artifacts are observed; that the project conform to submitted plans; that any spills be contained; that construction materials and debris be disposed of on land; and that best management practices be implemented. Only one comment was received during the SEPA comment period ending May 11, 2017, and that was from the Nisqually Indian Tribe, which concurred with the determination. The MDNS became final on May 18, 2017 at the close of the appeal deadline. No appeals were filed. *Exhibits 1.H and 1.R.*

14. On May 17, 2016 the Washington State Department of Natural Resources (DNR) confirmed that a lease would not be required to build the dock over state-owned aquatic lands, provided the dock does not provide moorage for more than four boats, is not used for commercial activity, does not infringe on state-owned lands subject to prior rights or in harbor areas, is not used to moor floating homes, and conforms to the local Shoreline Master Program. *Exhibit 5.*
15. The Applicant obtained Hydraulic Project Approval (HPA) from WDFW on June 28, 2017. The HPA contains numerous detailed conditions to mitigate potential impacts to the environment. With the conditions, an approved biologist must conduct a survey for surf smelt eggs shortly prior to commencing construction (construction not allowed if eggs detected), equipment would not be driven over aquatic vegetation, natural habitat features on the beach would be retained, staging areas would be placed to prevent contaminants from entering the water, light penetration would be maximized through required use of grating on deck surfaces, noise attenuation would be used when driving pilings (a bubble curtain and wood block cushion is proposed, and is authorized by HPA), and construction debris would be removed from the site, among other mitigation measures. *Exhibits 7 and 1.D.*
16. The Squaxin Island Tribe has objected to the project in comments submitted to the US Army Corps of Engineers (ACOE), based on the proposed dock location and resulting impacts to Treaty fishing rights. The Tribe did not submit any evidence in the record of the instant SSDP proceeding in support of its objection. Treaty fishing rights are outside of the regulatory purview of the County. However, the Applicant is negotiating with the Tribe and with the ACOE to address the Tribe's concerns. *Exhibit 1.K; Scott McCormick Testimony; Lorrie Chase Testimony; Argument of Dennis Reynolds.*
17. Notice of the application was issued on July 26, 2016. In response to the notice of application, comments objecting to the project were submitted by three owners of nearby properties. One of the residents did not object to the project per se, but objected to removal of the existing pier because eagles perch on the railing. Another resident objected based on negative impacts to the natural beauty of shoreline, to wildlife, and to the flow of currents and the movement of rocks and sand. The third resident (second property to south) objected based on potential impacts to his shellfish farming in front of his property, impacts to water quality due to chemicals to treated wood, and interference with waterskiing and fishing activities including trolling for cutthroat trout along the shoreline. *Exhibits 1.M, 1.N, and 1.O.*
18. The proposed dock would not interfere with the existing littoral drift on the shoreline. *Exhibit 8.*
19. Chemonite is an approved treatment methodology for the aquatic environment. All pilings would be steel. The WDFW Hydraulic Project Approval addresses construction materials and allows use of waterborne preservative chemicals as long as certain best management practices are satisfied. *Randy Popp Testimony; Exhibit 7, page 2.*

20. In response to neighbor's concerns about impacts to trolling along the shoreline, an Applicant representative testified that trolling in the area is already complicated by the shallowness of the shoreline and the presence of in-water items (15 within 1,000 feet of the proposed dock) and in the existing condition is only possible during high tide. He asserted that the proposed dock would have little impact to this activity. *Randy Popp Testimony.*
21. Notice of the public hearing was sent to all property owners within 500 feet of the site, posted on-site, and published in The Olympian on or before July 28, 2017. *Exhibits 1, 1.A, and 2.*
22. Public comment at the hearing, including three submitted letters, was in favor of the proposal. The substance of the comments included that the proposed dock is more environmentally friendly than the creosote-treated structures of the past, that the dock could improve first responder/emergency access along the subject shoreline, and that it would allow for access that is less impactful to the shoreline by reducing the incidence of recreators walking through the mud. *Exhibit 3; Ralph Munro Testimony.*

## 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 Shoreline Master Program for the Thurston Region.

### **Criteria for Review**

*Shoreline Substantial Development Permit (WAC 173-27-150)*

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.

#### *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 Shoreline Master Program for the Thurston Region designates the shoreline jurisdiction on the subject property as Rural. Docks, piers, and floats are covered in the “Boating Facilities” chapter, Section Three, Chapter IV, and are allowed subject to standards contained in the specific regulations of the chapter and a permit review process.

SMPTR Section Three, Chapter IV, Part 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.

*Mooring Buoys and Recreation Floats:*

15. Mooring buoys and recreation floats should be as close to the shore as possible.
16. Mooring buoys and recreational floats should be designed and marked to be clearly visible.

SMPTR Section Three, Chapter IV, Part C. General Regulations

*Piers and Docks:*

13. [N/A]
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.
16. [N/A]
17. In marine water, the length of piers or docks for recreational use may be the average length of the existing docks or piers within one hundred (100) feet of each property line. 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 one hundred (100) feet. If there are no piers or docks within one hundred (100) feet, the maximum length shall not exceed one hundred (100) feet as measured from the mean higher high-water mark and not exceed a depth of minus three (-3) feet as measured from mean lower low water. If this is not sufficient length to reach the desired depth for moorage, then a buoy shall be used.
18. [N/A]
19. The width of recreational docks or piers shall not exceed eight (8) feet.
20. [N/A]
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.

*Mooring Buoys and Recreational Floats:*

24. Buoys and floats must be discernible under normal daylight conditions at a minimum of one hundred (100) yards and must have reflectors for nighttime visibility.
25. [N/A]
26. [N/A]
27. Mooring buoys and recreational floats shall not be located farther waterward than the existing floats and mooring buoys, or established swimming areas, unless the draft of the boat dictates it.
28. Only one mooring buoy or recreational float will be allowed per waterfront lot unless there is a demonstration of need. Such demonstration may include a community park or residential development where lot owners both on and away from the shoreline share a shoreline open space area.

SMPTR Section Three, Chapter IV, Part D. Environmental Designations and Regulations

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

SMPTR Section Two, Chapter V. REGIONAL CRITERIA

The Shoreline Master Program for the Thurston Region contains regional criteria that apply to the proposal. 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 be channeled into shoreline areas already so utilized or into those shoreline areas which lend themselves to suitable industrial development. Where industry is now located in shoreline areas that are more suited to other uses, it is the policy of this Master Program to minimize expansion of such industry.
- 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. As conditioned, the proposal is consistent with the policies and procedures of the Shoreline Management Act. Boating facilities are water-dependent uses. With the conditions of the HPA and the MDNS, the pier would be protective of the ecology of the shoreline. The removal of the existing pier and debris from the site, along with the grated surface of the new pier, would ensure a net improvement with respect to light penetration. Although it is arguable that the treaty fishing rights objection raised by the Squaxin Island Tribe is relevant to the Shoreline Management Act policies to protect the public interest, the Tribe did not submit any evidence into the record from which any conclusions could be drawn. Further, County decision makers lack authority to enforce Treaty rights. The record does note that the issue of Treaty rights has been raised in the appropriate forum and will be addressed there. *Findings 1, 2, 3, 4, 7, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, and 22.*

2. As conditioned, the proposal complies with applicable regulations in the Washington Administrative Code. The pier would not be more than 35 feet over average grade. A condition of approval would ensure compliance with the requirements of WAC 173-27-190. *Finding 7.*
3. As conditioned, the proposal is consistent with the applicable Boating Facilities policies and regulations of the Shoreline Master Program for the Thurston Region. The subject property is in a highly visible location; however, an existing dilapidated pier would be removed in conjunction with the project, mitigating the visual impact of the proposed project. Only eight feet wide, the pier has been designed to comply with bulk dimensional standards established in the SMPTR that are intended to address aesthetic impacts (among others). The proposed pier would extend into Eld Inlet at a location that is sufficiently wide so as not to interfere with navigation. Cooperative use of piers and use of moorage buoys in lieu of piers is preferred, but not mandatory. Conditions of approval require the existing moorage buoy and the proposed dock to be marked with reflectors for visibility. The distance to the opposite shore would well over 150 feet. The pier/ramp/float would not exceed 100 feet in length, and its width would not exceed eight feet. The float would be 240 square feet in area. The pier would be set back more than 20 feet from the side property line. The span between pilings would exceed eight feet. No new mooring buoy is proposed; the existing buoy would not be altered. Conditions of approval limit the number of mooring buoys to one. *Findings 2, 4, 5, 6, 7, and 8.*
4. As conditioned, the proposal is consistent with the applicable regional criteria. The proposal has been reviewed for impacts to the aquatic environment, both by County staff through the SEPA process, and by the Washington Department of Fish and Wildlife through the HPA process. Both processes identified extensive mitigation measures that would prevent or minimize impacts. Conditioned to comply with the HPA and MDNS is use of appropriate materials, there is no evidence that the proposal would affect aquaculture. The proposed pier would replace a poor quality existing pier along the subject property shoreline. The proposal has been reviewed for impacts to public health, and the conditions of the MDNS address potential construction impacts to septic system components and spill containment. *Findings 9, 10, 11, 12, 13, 14, 15, 18, and 19.*

### **DECISION**

Based upon the preceding findings and conclusions, the requested shoreline substantial development permit to construct a new pier, ramp, and float with a total overwater length of 100 feet at 4904 Keating Road NW is **GRANTED** subject to the following conditions:

1. No physical work on the dock shall be initiated until the Applicant obtains all required State and Federal permits and approvals, including a Hydraulic Project Approval (HPA) from the Washington State Department of Fish and Wildlife (WDFW) and permit from the US Army Corps of Engineers.
2. All construction shall be in substantial compliance with the plans included in the project JARPA application and shall comply with all applicable general policies and use regulations of the Shoreline Master Program for the Thurston Region (SMPTR).

3. As mitigation for the proposed pier, ramp, and float, the existing walkway and pier shall be removed as proposed. Removal of this existing in-water structure, including concrete foundation, shall be completed prior to installation of the proposed 30- by eight-foot float at the terminus of the proposed ramp.
4. The Applicant shall remove construction debris and other debris related to mitigation to an approved site (landfill or recycling center) outside of the shoreline area to avoid degradation of state waters.
5. To minimize impacts to shallow water, water quality and beach habitat, construction of the proposed dock shall be done with marine grade or non-treated wood and/or materials that will not release toxic substances into the water.
6. During construction, all releases of oils, hydraulic fluids, fuels, and other deleterious materials must be contained and removed in a manner that will prevent their discharge to waters and soils of the state. The cleanup of spills shall take precedence over all other work at the site. Spill prevention and response material shall be kept at the site for quick response to any toxic spills, such as fuel, at the site.
7. The dock shall be constructed in the location proposed, maintaining a minimum of a 20-foot setback from property lines.
8. The maximum dock length shall not exceed 100 feet as measured from the mean higher high-water mark (OHWM) and not exceed a depth of minus three (-3) feet as measured from mean lower low water. The OHWM is located at the upper face of the existing bulkhead.
9. To avoid potential damage, caution should be taken to prevent any vehicle or equipment travel over the existing on-site sewage system or water lines. There shall be no parking of vehicles or equipment and no staging of materials over the drainfield area, on-site sewage components (tanks, building sewer lines, transport lines, etc.), or water lines.
10. Reflectors shall be used to identify the dock in order to prevent unnecessary hazardous conditions for water surface users during day or night.
11. Permanent lighting of the dock shall not be permitted. Any temporary lighting shall be directed such that off-site glare is minimized to the extent possible.
12. The Applicant shall obtain an Aquatic lands lease from the Washington State Department of Natural Resources, if necessary.
13. If archaeological artifacts are observed during any phase of the aquaculture operation, all work shall be immediately halted. The State Department of Archaeology and Historic Preservation, the Thurston County Resource Stewardship Department and affected Tribes shall be contacted to assess the situation prior to resumption of work.

14. To minimize the adverse effects of increased noise and/or increased turbidity on migrating salmonids and bull trout, pile driving and dock construction should take place during the work window from July 16th to February 15th. A forage fish survey is required since there is no overlap in the Surf Smelt work window with the salmonids and bull trout work windows. Work during this period will reduce the possibility of contact with these species. Any in water work windows specified by WDFW shall also be observed and shall take precedence over this condition if there are conflicts.
15. Mooring buoys and recreational floats shall be designed and marked to be clearly visible. No more than one buoy shall be permitted to support the boating activities on-site.
16. Best management practices shall include:
  - In-water work will occur during a period when juvenile salmonids are absent or present in very low numbers
  - Work will be completed at low tide whenever possible
  - Comply with State water quality standards (WAC 173-201A)
  - Have spill cleanup materials on vessel
  - Regularly check and maintain fuel hoses, oil valves, and fittings for leaks
  - Comply with federal, state, and local permit conditions and Best Management Practices
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).

Decided August 22, 2017.



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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 **\$669.00** for a Request for Reconsideration or **\$890.00** 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> _____ <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  \$669.00 for Reconsideration or \$890.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_  
 Filed with the Resource Stewardship Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_.