



COUNTY COMMISSIONERS

John Hutchings  
District One  
Gary Edwards  
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. 2016106248
	)	
<b>Kate Condit,</b>	)	
<b>Benchmark Communities, LLC</b>	)	<b>Park and Dock at Long Lake</b>
	)	
For Approval of a	)	
Shoreline Substantial Development Permit	)	FINDINGS, CONCLUSIONS, AND DECISION
	)	
	)	

**SUMMARY OF DECISION**

The requested shoreline substantial development permit to develop a private park and dock on the shoreline of Long Lake in Cantergrove at Long Lake Division 2 is **GRANTED** subject to conditions.

**SUMMARY OF RECORD**

**Request:**

Kate Condit of Benchmark Communities, LLC (Applicant) requested a shoreline substantial development permit (SSDP) to develop a private park and dock on the shoreline of Long Lake, in a 2.31-acre open space and recreation tract within Cantergrove at Long Lake Division 2 (also known as the Townhomes at Long Lake subdivision). The subject property is located at 1919 Mayes Road SE, Olympia, Washington.

**Hearing Date:**

The Thurston County Hearing Examiner held an open record hearing on the request on February 27, 2018.

**Testimony:**

At the hearing the following individuals presented testimony under oath:

- Scott McCormick, Associate Planner, Thurston County
- Dawn Peebles, Thurston County Environmental Health Division
- Kevin Hughes, Development Review Manager, Thurston County Public Works
- Craig Steepy, Applicant Representative

Chris Aldrich, Hatton Godat Pantier, Applicant Representative  
Lorraine Swartling

**Exhibits:**

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

EXHIBIT 1            Community Planning and Economic Development Report including the following attachments:

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|--------------|--|
| Attachment a | Notice of Public Hearing   |
| Attachment b | Zoning/Site Map  |
| Attachment c | Master Application, received December 29, 2016   |
| Attachment d | JARPA Application, received December 29, 2016  |
| Attachment e | Narrative description dated October 17, 2017   |
| Attachment f | Dock and Site Plan, received December 15, 2017   |
| Attachment g | Dock plans (undated)   |
| Attachment h | Planting (restoration) plan dated November 20, 2017  |
| Attachment i | Lot layout for Town homes at Long Lake plat, AKA Cantergrove at Long Lake Division 2 (two pages)   |
| Attachment j | Notice of application, dated March 30, 2017 with list of adjacent property owners within 500-feet, dated March 17, 2017                              |
| Attachment k | Mitigated Determination of Non-Significance issued on January 11, 2017, with list of adjacent property owners within 500 feet, dated January 8, 2018 |
| Attachment l | SEPA Environmental Checklist, date signed December 23, 2016  |
| Attachment m | Cantergrove Dock and Boat Launch Critical Areas Report & Mitigation Plan dated November 26, 2017   |
| Attachment n | Letters from the Washington Department of Ecology, dated January 25, 2018 and January 31, 2017   |
| Attachment o | Letter from Century Communities, dated December 7, 2017  |
| Attachment p | Approval memo from Dawn Peebles with Thurston County   |

Environmental Health, dated May 12, 2017

- Attachment q Letter from the Nisqually Indian Tribe dated, January 12, 2018
- Attachment r Letter from the Washington Department of Ecology, dated April 18, 2017
- Attachment s Letter from Rainier Cottages LLC and Mau Realty Investment LLC, dated April 17, 2017
- Attachment t Email from Craig Steepy, Century Communities, dated January 26, 2018
- Attachment u Letter from the Washington Department of Natural Resources, dated January 30, 2018

EXHIBIT 2 Photos of posted public notice and site photos, dated February 16, 2018 (10 photos)

EXHIBIT 3 Aerial photo of project site depicting locations of neighboring docks

Based on 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 develop a private park and dock on the shoreline of Long Lake. The project is proposed to be developed in a 2.31-acre open space and recreation tract within the Cantergrove at Long Lake Division 2 subdivision (also known as the Townhomes at Long Lake subdivision). The subject property is located at 1919 Mayes Road SE, Olympia, Washington.<sup>1</sup> *Exhibits 1 (pages 1-2) 1.C, 1.D, 1.E, 1.F, and 1.G.*
2. The Shoreline Master Program for the Thurston Region (SMPTR) designates the subject shoreline as Rural. *Exhibit 1 (page 3)*. Recreation uses and docks are allowed in the Rural shoreline environment subject to the standards established in the SMPTR. *Exhibit 1 (page 7); SMPTR, Section 3, Chapters IV and XIV*. The project requires an SSDP because the value exceeds the permit threshold. *Exhibit 1.D (page 6); WAC 173-27-040; WSR 12-16-035.*
3. The subject property is within the Lacey Urban Growth Area and is zoned Moderate Density Residential (MD). *Exhibit 1 (page 3)* Accessory structures that are “designed for and related to the recreational needs of the residents of a residential complex” are allowed in the MD zone. *TCC 21.15.020(B)*. The proposed park and dock would serve Cantergrove at Long Lake Divisions 1 through 4, which are the subdivisions known as

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<sup>1</sup> The subject property is known as Tax Parcel No. 76100000101. *Exhibit 1.*

Townhomes at Long Lake (the subject subdivision), Cantergrove at Long Lake (immediately east of the subject subdivision), Freestone Place, and Freestone Crossing. *Craig Steepy Testimony; Exhibits 1 (pages 4-5) and 1.E.*

4. Surrounding land uses besides the residential subdivisions to be served by the project include an apartment complex to the north (with its own shoreline picnic area and dock), and unopened Thurston County right-of-way to the south, which provides a buffer between the subject property and residential development further to the south. *Exhibits 1 (page 6), 1.M (page 4) and 1.S.*
5. The proposed shoreline improvements would include an approximately 700 square foot, L-shaped floating dock; an eight-foot wide pedestrian path of pervious paving to accommodate non-motorized boat launching and access to the floating dock; additional three-foot wide wood chip surface pedestrian trails; and an approximately 18- by 24-foot picnic shelter with concrete floor, which would be set back at least 100 feet from the shoreline. No recreational float or mooring buoy is proposed in conjunction with the proposed dock. No excavating, dredging, or filling below the ordinary high water mark (OHWM) are proposed. *Exhibits 1.D, 1.E, and 1 (page 14); Craig Steepy Testimony.*
6. The subject property is primarily forested by Douglas fir, Pacific madrone, and big-leaf maple. Non-native invasive plant species dominate the understory, including Himalayan blackberry, Scotch broom, English holly, reed canarygrass, and English Ivy. Portions of the project area are dominated by European lawn grasses, and portions contain dense thickets of Himalayan blackberry and Scotch broom. *Exhibit 1.M (page 4).*
7. There is a lake-fringe wetland within a narrow strip along the shoreline that totals 11,500 square feet in area. The dominant wetland vegetation includes slough sedge, reed canarygrass, hardstem bulrush, yellow-flag iris, and cattail. *Exhibit 1.M (page 4).* It meets the definition of a Category III wetland under the Thurston County Code and requires a 200-foot buffer. The proposed recreational facilities are allowed in Category III wetlands and buffers pursuant to TCC Table 24.30-4, subject to review under the County's critical area standards; however, no development within the wetland itself is proposed. The proposed dock and pervious pavement access trail would be located within a small segment of the shoreline that is not encumbered by wetland, near the southern property boundary. *Exhibit 1.M.*
8. As mitigation for impacts to the wetland buffer, the Applicant proposes to preserve large trees and understory vegetation within the buffer, eliminate non-native invasive weeds, plant native vegetation in area dominated by non-native invasive weeds and by European lawngrass, and install large woody debris in planting areas. Additional habitat enhancements would include installation of educational signs, two bird boxes, and two bat boxes. The Applicant submitted a planting plan depicting dense plantings along the eastern buffer edge and along the northern property boundary, which are intended to discourage wetland disturbance. *Exhibits 1.H and 1.M.*

9. The proposed dock would extend 64 feet into Long Lake as measured from the OHWM and would be eight feet wide. These dimensions are consistent with applicable SMPTR regulations that limit the length of new docks to the average of existing docks within 100 feet of the property line lines, with a length of 50 feet used in the calculation if there is not a dock on one side. In this case there is an 82-foot-long dock approximately 84 feet north of the north property line, and no dock within 100 feet of the south property line. The proposed 64-foot length is less than the average of 82 feet and 50 feet.<sup>2</sup> The distance to the opposite shore would be more than 150 feet, satisfying SMPTR requirements for the protection of navigation. *Craig Steepy Testimony; Scott McCormick Testimony; Exhibits 1 (pages 6, aerial photo, and 12) and 3.*
10. The SMPTR requires docks on fresh water to be set back at least ten feet from each side property line. Planning Staff initially recommended 20-foot setbacks from both side property lines, but at the hearing clarified that the recommended 20-foot setback only applied to the north property line and is intended to reduce potential conflicts with the adjacent development to the north. As shown on the submitted site plan, the dock would be located near the *south* property line – substantially more than 20 feet from the north property line – in order to avoid wetland impacts. Although the site plan depicts that the dock would be approximately 20 feet from the south property line, the Applicant requested that the required setback be retained at the ten feet required in the SMPTR, in order to provide flexibility in the event that other reviewing agencies (including the Washington Department of Natural Resources and the Washington Department of Fish and Wildlife) specify a different location than that shown on the site plan. Notably, the landward end of the dock as proposed is setback nearly 80 feet from the south lot line, and it is only the southernmost end of the L-shape of the dock that may be within 20 feet as proposed. *Exhibit 1.F; Craig Steepy Testimony; Scott McCormick Testimony.*
11. Public comment on the application included a request (dated April 2017) from the owner of the apartment complex to the north that the Applicant be required to install barriers to ensure that users of the proposed park facilities do not trespass onto the apartment complex’s park facilities. Since then, the Applicant has installed a solid six-foot fence between the properties to prevent trespassing between the properties. In addition, the proposed planting plan calls for significant wetland buffer plantings along the north property boundary. *Exhibits 1.H, 1.S, and 1.T; Craig Steepy Testimony.*
12. Primary access to the site would be by foot, as the recreation tract is within walking distance of the developments it would serve. An existing private driveway leading to the tract would be retained to provide utility service and handicapped accessibility. *Exhibit 1, page 7; Exhibit E.*

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<sup>2</sup> There is a discrepancy between the application materials and the project description contained in the mitigated determination of non-significance (Exhibit 1.K). The MDNS indicates that it would be a 50-foot-long dock, whereas the application materials (see Exhibit 1, Attachment G) depict a 64-foot-long dock. Both describe the area of the dock to be 700 square feet. At the hearing, Planning Staff concurred with the Applicant that a 64-foot length is permissible under the SMPTR and verbally withdrew the recommended condition limiting dock length to 50 feet. The change in length does not conflict with any mitigation measures contained in the MDNS. *Exhibits 1.G and 1.K; Scott McCormick Testimony.*

13. Prior to commencing construction, the Applicant would be required to obtain approval from the Washington Department of Natural Resources (WDNR), as the dock might be over state-owned bedlands/shorelands. *Exhibit 1.U.*
14. The project would require hydraulic project approval (HPA) from the Washington Department of Fish and Wildlife (WDFW). The Applicant has not yet applied for this permit. *Exhibit 1.D; Craig Steepy Testimony.*
15. The County recommended several conditions of approval designed to protect water quality, including use of marine-grade or non-treated dock materials, removal of construction debris from the shoreline, and containment of any releases of hazardous materials. In addition, WDFW's hydraulic project approval would include conditions designed to protect water quality and the aquatic environment. *Exhibit 1 (pages 15 and 18).*
16. No restrooms or potable water facilities are proposed with the project. There is an existing well in the tract, which would be retained for irrigation. The sanitary control radius for the well extends onto the property to the north (see Exhibit 1, page 5). The Thurston County Environmental Health Division recommended that prior to release of a building permit, the Applicant obtain a non-public restrictive covenant for the adjacent property encumbered by the sanitary control area. Subject to that condition, the Environmental Health Division recommended approval of the project. *Exhibit 1.P; Dawn Peebles Testimony.*
17. Consistent with the State Environmental Policy Act (SEPA), Thurston County acted as lead agency for review of the proposal's environmental impacts. Upon completion of review, which included consideration of the master application, SEPA Environmental Checklist, JARPA, site plans, notice of application, and revised wetland and mitigation report, the County issued a mitigated determination of non-significance (MDNS) on January 11, 2018. Imposed mitigation measures address wetland buffer signage, bonding for mitigation plantings, construction fencing, invasive species removal, noise restrictions, erosion control, spill containment, protection of archaeological resources, and vehicle maintenance. The MDNS was not appealed and became final on February 1, 2018. *Exhibits 1 (page 6) and 1.K.*
18. Notice of the public hearing was sent to all property owners within 500 feet of the site on February 14, 2018, and was published in The Olympian and posted onsite on February 16, 2018. *Exhibits 1.A and 2.*
19. Neighboring property owner Lorraine Swartling testified at the hearing, expressing questions about the project including whether the park would be fenced and gated to exclude residents from other places and whether the adjacent right-of-way would be chained in the future, as it was in the past, to prevent public access. She expressed concerns about higher traffic there and crime in the wooded setting. Ms. Swartling was also concerned about water runoff and other impacts to her property that she attributed to

construction of the plat. *Lorraine Swartling Testimony.*

20. Applicant representatives indicated that there is no plan to gate and close the park from vehicle access, although it is intended for the use of the residents of the four plats only and is a private facility. The subdivisions' covenants, conditions, and restrictions (CCRs) inform of lot owners maintenance obligations and that the park is a private facility. The homeowners could post signs indicating that the facility is not for public use. Regarding the adjacent right-of-way (that is not within the subject property), there is an existing City of Lacey sewer station accessed by this right-of-way, and the city has an access easement thru this site off of Mayes Road. Gating the park would not be in the interest of the City. *Craig Steepy Testimony; Chris Aldrich 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. The proposed improvements are governed by the policies and regulations contained in the "Recreation" chapter of the SMPTR (Section Three, Chapter XIV), and the "Boating Facilities" chapter of the SMPTR (Section Three, Chapter IV).

SMPTR Section Three, Chapter XIV, Part B. Recreation Policies

1. Priorities for recreational development of shorelines should relate directly to densities and unique characteristics of the population served. Priorities for acquisition should consider need and special opportunities as well as access by public transit.
2. All recreational development projects should be considered on the basis of their compatibility with the environment.
3. Access to recreational locations such as fishing streams and hunting areas should be planned to prevent concentration of use pressures.



4. The linkage of shoreline parks and public access points through provisions for linear open spaces should be encouraged. Such open space could include hiking paths, bicycle paths and/or scenic drives located as close to the water's edge as feasible.
5. Recreational developments should be designed to preserve, enhance or create scenic views and vistas. Favorable consideration should be given to those projects that complement their environment.
6. Where possible, parking areas should be located inland, away from the immediate edge of the water, and recreational beaches, and should be linked with the shoreline by walkways.
7. Recreational development should comply with all applicable city, county, state, and federal regulations.
8. Facilities for intensive recreational activities should be permitted only where sewage disposal and pest control can be accomplished to meet public health standards without altering the environment adversely.
9. Development of public fishing piers, underwater fishing reefs, and access to public waters and tidelands should be encouraged as part of an overall recreation plan or development.
10. Where appropriate, nonintensive, recreational use should be encouraged on flood plains that are subject to recurring flooding.
11. Artificial marine life habitats should be encouraged in order to provide increased aquatic life for recreation. Such habitats should be constructed in areas of low habitat diversity.

SMPTR Section Three, Chapter XIV, Part C. Recreation General Regulations

1. Public access points on lakes must provide parking space appropriate for the intended use.
2. Recreation facilities or structures which are not compatible with the environmental designation in which they are proposed are prohibited.
3. Events and temporary uses in the public interest may be approved by the Administrator in any environment, provided that such uses will not damage the wetland environment.
4. Recreational developments must provide facilities for nonmotorized access, such as pedestrian, bicycle and/or equestrian path links to the shoreline.
5. Sewage disposal and pest control must meet public health standards; waste must not be allowed to enter the water.

6. The following regulations shall apply to artificial aquatic life habitats:
  - a. Habitats shall minimize interference with surface navigation.
  - b. Habitats shall be constructed of long-lasting, nonpolluting materials, and moored so as to remain in their original location even under adverse current or wave action.
  - c. Habitats may not be installed on publicly-owned submerged land without written permission of the administering governmental agency.
7. Public or private recreation areas which cater to the use of all-terrain or off-road vehicles as the primary recreational activity shall not be allowed in the shoreline areas.
8. All stair towers meeting one of the following conditions must be designed by a licensed civil engineer:
  - a. The location proposed is mapped as "Unstable" or "Intermediate Stability" in the Washington Coastal Zone Atlas prepared by the state Department of Ecology.
  - b. All stair towers 24 feet in height or taller.
  - c. Other instances where the building official determines that site conditions dictate the preparation of plans by a licensed civil engineer.
9. Stair towers shall be designed to minimize obstructing the views enjoyed by adjoining residences.

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

3. Rural Environment. Low to medium intensity recreational uses shall be permitted on Rural Environment shorelines, subject to the general regulations and following specific regulation:
  - a. A recreational facility or structure which changes or detracts from the character of the Rural Environment (by building design or intensity of use) shall be prohibited.
  - b. Roads, parking and vehicular camping facilities, including restrooms, shall not be located within fifty (50) feet of the ordinary high-water mark of any shoreline with the exception of access to boat launching facilities. Parking facilities and roadways may be within fifty (50) only if they provide access for handicap or scenic viewpoints. Maintenance or upgrading of existing roads, parking and/or vehicle camping facilities including restrooms is permitted provided the area devoted to these facilities is not enlarged. Pedestrian and hiking trail access shall be provided to link upland facilities with the shoreline.

SMPTR Section Three, Chapter IV, Part B. Boating Facilities Policies (as applicable to Piers and Docks)

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.
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. Boating Facilities General Regulations (as applicable)

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.
16. When bulkheads are constructed in conjunction with pier or dock development, the bulkhead shall be placed no farther waterward of the ordinary high water mark than is necessary to achieve erosion control. The most landward portion of the footing shall be at the toe of the bank or the vegetation line where the toe of the bank is not discernible.
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. 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.

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. Single property owner recreation floats shall not exceed sixty-four (64) square feet.
26. Multiple property owner recreational floats shall not exceed ninety-six (96) square feet.
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. Boating Facilities 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.

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. The proposed private park/dock project is a reasonable and appropriate use of the shoreline and is consistent with state policy. It would allow residents of four nearby subdivisions to enjoy the shoreline, yet would protect shoreline ecology. Specifically, the dock would be sited to avoid lake fringe wetlands. The project would incorporate measures identified by state agencies with jurisdiction and with environmental expertise, including the Washington Department of Fish and Wildlife and the Washington Department of Natural Resources. Invasive species would be removed and replaced with native species. *Findings 5, 6, 7, 8, 13, 14, 15, 16, and 17.*
2. As conditioned, the proposal complies with applicable regulations in the Washington Administrative Code. The only above-ground structure proposed is a picnic shelter, which would not be more than 35 feet above grade. A condition of approval would ensure compliance with the requirements of WAC 173-27-190. *Finding 5.*
3. As conditioned, the proposal is consistent with the applicable policies and regulations of the Shoreline Master Program for the Thurston Region.
  - a. With conditions, the proposal is consistent with applicable recreation policies. The project has been designed to be compatible with the environment, based on dock siting, use of pervious materials within the shoreline area, removal of invasive species, and mitigation plantings. Concentration of use pressures is not an issue due to the private nature of the park. The park would include walking paths to connect upland areas with the shoreline. The low-intensity character of the development would preserve views and would complement the environment. New parking areas within the shoreline are not proposed. The project would be required to comply with all applicable regulations and with the requirements of agencies with jurisdiction. No intensive recreational activities or sewage disposal are proposed. *Findings 1, 3, 5, 6, 7, 8, 12, 13, 14, 15, 16, and 17.*
  - b. With conditions, the proposal is consistent with the recreation general and environment-specific regulations. No public access is proposed. The recreation facilities are consistent with the Rural designation of the shoreline, in that the uses would be low intensity and would not detract from the character of the shoreline. The project includes trails for pedestrian access. No sewage disposal is proposed, and no waste would be permitted to enter the water. No artificial aquatic life

habitat is proposed. The park would not be designed for off-road vehicles. No stair towers are proposed. No roads would be within 50 feet of the OHWM. *Findings 1, 2, 3, 5, 12, 15, 16, and 17.*

- c. With conditions, the proposal is consistent with the applicable boating facilities policies. The floating dock would not obstruct views. The dock provides for cooperative use, as it would be available to residents of four subdivisions. No mooring buoys or recreational floats are proposed, but the conditions of approval contain provisions that would apply if a mooring buoy is considered. *Findings 3 and 5.*
- d. With conditions, the proposal is consistent with the applicable boating facilities general and environment-specific regulations. Only one dock would serve the residential development. The conditions of approval require reflectors on the dock. The dock would not conflict with navigation, and the 64-foot length is consistent with the dock length formula established in the SMPTR. The dock would not exceed eight feet in width. The dock would be set back at least ten feet from the side property lines. The additional setback recommended by Planning Staff is not adopted. No evidence was presented showing a need for a 20-foot setback from south property line to protect adjacent off-site uses, and environmental constraints would prevent the dock from being within 20 feet of the north property line. No mooring buoys or recreational floats are proposed. *Findings 5, 7, 9, and 10.*
- e. With conditions, the proposal is consistent with the SMPTR regional criteria. Water quality and aquatic habitat would be protected, and with the wetland buffer mitigation plan, shoreline habitat would be enhanced. With this proposal, poor quality shoreline conditions (i.e., invasive species) would be eliminated. Impacts to public health were considered. Approval is conditioned upon protection of the sanitary control radius of the on-site irrigation well. *Findings 6, 7, 8, 15, and 16.*

## DECISION

Based on the preceding findings and conclusions, the requested shoreline substantial development permit to develop a private park and dock on the shoreline of Long Lake in Cantergrove at Long Lake Division 2 at 1919 Mayes Road SE 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.
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.

3. The proposed picnic shelter shall be no more than 432 square feet and located no closer than 100 feet from the shoreline. The final location of the picnic shelter shall be approved by Thurston County Community Planning and Economic Development prior to building permit issuance or associated construction.
4. Prior to release of the building permit, a non-public restrictive covenant must be granted by the neighboring property in which the existing well's 100 foot sanitary control area encroaches. The covenant must be recorded with the Thurston County Auditor's Office and a copy of the recorded document must be submitted to Environmental Health. If the covenant is unable to be obtained, the existing well must be decommissioned by a licensed well driller per Washington State Department of Ecology standards and a copy of the decommissioning report must be submitted to Environmental Health.
5. 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.
6. To minimize impacts to shallow water, water quality, and 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.
7. 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.
8. The dock shall maintain a minimum setback of ten feet from property lines.
9. The maximum dock length shall not exceed 64 feet as measured from the ordinary high-water mark (OHWM) as determined by Community Planning and Economic Development staff and/or the Washington State Department of Ecology.
10. The maximum dock width shall be eight feet and the maximum area shall be no more than 700 square feet.
11. Reflectors shall be used to identify the dock in order to prevent unnecessary hazardous conditions for water surface users during day or night.
12. The span between pilings for piers and docks on pilings shall be eight feet or greater.
13. A bond or irrevocable assignment of savings in the amount of 125% of the value of the mitigation plan (as proposed, \$8,564<sup>3</sup>) shall be required prior to earth disturbing activities on the site.

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<sup>3</sup> Page 38 of the project Critical Areas Report & Mitigation Plan, dated November 26, 2017.



14. 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.
15. The Applicant shall obtain an Aquatic lands lease or authorization of use from the Washington State Department of Natural Resources, if necessary, prior to dock placement.
16. 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.
17. Any mooring buoys shall be designed and marked to be clearly visible. No more than one buoy shall be permitted to support boating activities.<sup>4</sup>

Decided March 12, 2018.



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Sharon A. Rice  
Thurston County Hearing Examiner

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<sup>4</sup> A single mooring buoy does not require a permit from CPED. No mooring buoy is proposed.



**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 Community Planning & Economic Development 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 **\$688.00** for a Request for Reconsideration or **\$921.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development 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  \$688.00 for Reconsideration or \$921.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_  
 Filed with the Community Planning & Economic Development Department this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_.