



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. 2015105472
	)	
<b>Lorrie Chase,</b>	)	<b>Rudd/Salcetti Marine Dock</b>
<b>Marine Floats</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 joint-use pier, ramp and float is **GRANTED**, subject to conditions. Conditions of permit approval limit the length of the dock to 100 feet from the face of the bulkhead.

**SUMMARY OF RECORD**

**Request:**

Lorrie Chase of Marine Floats (Applicant), on behalf of property owners Jay Rudd and Robert Salcetti, requested a shoreline substantial development permit (SSDP) to construct a 115-foot long joint-use pier, ramp and float to serve two adjacent residential properties located at 6841 and 6947 Cooper Point Road NW, Olympia, Washington.

**Hearing Date:**

The Thurston County Hearing Examiner held an open record hearing on the request on May 14, 2019.

**Testimony:**

At the hearing the following individuals presented testimony under oath:

- Scott McCormick, Associate Planner, Resource Stewardship Department
- Logan Brown, Marine Floats Corporation, Applicant representative
- Lorrie Chase, Marine Floats Corporation, Applicant representative
- Jay Rudd, Owner

**Exhibits:**

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

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

- Attachment a           Notice of Public Hearing
- Attachment b           Zoning Map
- Attachment c           Master Application, received July 17, 2015
- Attachment d           JARPA Application (revised), received July 31, 2018
- Attachment e           Agreement Regarding Joint-Use Overwater Structure, dated March 4, 2016
- Attachment f           Dock plans (undated)
- Attachment g           2015 Aerial photos
- Attachment h           Notice of application dated June 2, 2016, with adjacent property owners list dated February 22, 2016
- Attachment I           SEPA Mitigated Determination of Non-Significance, dated February 7, 2019 and SEPA Environmental Checklist received July 31, 2018
- Attachment j           Google Earth Aerial photo of shoreline with approximate dock location shown and vicinity map
- Attachment k           Rudd-Salcetti Joint-Use Pier, Ramp and Float Biological Evaluation / Assessment, dated January 28, 2019
- Attachment l           Rudd Project Habitat Report regarding a SCUBA survey conducted November 5, 2014
- Attachment m           Compensatory Mitigation Plan for Little Fishtrap Nearshore Restoration Project (undated)
- Attachment n           Mitigation Planting Plan, received November 13, 2018
- Attachment o           Residential Dock Lease (undated)
- Attachment p           Comments from the Squaxin Tribe regarding cultural resources, dated February 26, 2019

- Attachment q      Comments from the Nisqually Tribe, dated February 7, 2019
- Attachment r      Email regarding “no net loss” from Brad Murphy, Senior Planner  
Thurston County CPED, dated July 18, 2016
- Attachment s      Comments from Scott Steltzner, Squaxin Tribe Biologist, dated June 22,  
2016
- Attachment t      Comments from the WA Department of Ecology, dated June 22, 2016
- Attachment u      Approval memo from Dawn Peebles, TC Environmental Health, dated  
January 19, 2016
- Attachment v      Approval memo from Kevin Chambers, TC Public Works, dated August  
13, 2015
- Attachment w      Comments from the Nisqually Tribe, dated July 29, 2015
- Attachment x      Comments from Scott Steltzner with the Squaxin Tribe, dated April 30,  
2019

EXHIBIT 2      Site and hearing notice photos (nine photos)

EXHIBIT 3      Buoy Drawing

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 an SSDP to construct a 115-foot long joint-use pier, ramp, and float to serve two adjacent residential properties located at 6841 and 6947 Cooper Point Road NW, Olympia, Washington.<sup>1</sup> *Exhibits I, I.C, and I.D.*
2.      The use of the structure would be for recreational boating, sunbathing, swimming, and fishing. *Exhibit I.C.* The components of the project as proposed would include the

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<sup>1</sup> The legal descriptions of the residential parcels and adjacent tidelands are as follows:

Section 16 Township 19 Range 2W; W.M. BOSTON HARBOR Waterfront Acre Tracts BLA-1377 TR C Document 9306110244 CORRECTION UNDER AFN 9307080136, 2ND CORRECTION UNDER AFN; Tax parcel number 36010005700 (Salcetti property).

Plat BOSTON HARBOR WATERFRONT ACRE TRACTS BLA-1377 TR A Document 014/373 (Rudd property).

OL 16 / 21-19-2W COM MEANDER COR BETWEEN SEC 16 / 21 N 29-0 -0 E 8. (Sirena Shores LLC)

*Exhibit I, page 2.*

following:

- A three- by 40-foot upland access ramp of 100% fiberglass deck grating;
- A four- by 30-foot aluminum pier of 100% fiberglass deck grating (69% open area), supported by four eight-inch diameter galvanized steel piles;
- A three- by 46-foot prefabricated grated aluminum ramp (three- by 40 feet over water);
- An eight- by 30-foot float (240 square feet) with 50% fiberglass grating, with float stops to prevent grounding. The float would be secured with four 10-inch diameter galvanized steel piles.
- A mooring buoy with helix anchor system, to be located 330 feet from mean higher high water (MHHW) at a depth of -11.8 MLLW.

*Exhibits 1, 1.D, 1.F, and 1.K; Exhibit 3; Lorrie Chase Testimony.*

3. The subject parcels are located on the Puget Sound shoreline on the west side of the Cooper Point peninsula. 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 \$7,047.00 set forth in the Shoreline Management Act. *RCW 90.58.030(3)(e); Washington State Register 17-17-007; Exhibit 1.D*.
4. The subject residential parcels are 5.5 and 5.25 acres in area and are zoned Rural Residential Resource One Dwelling Unit per Five Acres (RRR 1/5). Both parcels are developed with single-family residences and accessory structures. The proposed pier would be located at the shared property boundary, and the owners have entered into a written joint-use agreement, which (among other things) restricts them and any successors in interest from building additional overwater structures along the subject shoreline and provides for access easements. The tidelands abutting the parcels (which the proposed pier would cross) are owned by Sirena Shores, LLC, a company that cultivates shellfish on the subject tidelands. The owners of the subject parcels have entered into a lease agreement with Sirena Shores that allows extension of the pier into the tidelands. *Exhibits 1, 1.B, 1.E, 1.F, 1.G, and 1.O*.
5. There are no docks within 100 feet of the subject property, and the distance to the opposite shore is more than 3,000 feet. *Exhibit 1, pages 5 and 7*.
6. As proposed, the overwater length would be 115 feet from the MHHW (the MHHW coincides with the bulkhead on the Salcetti parcel). The reason for the requested 115-foot length - instead of the 100-foot length authorized by the SMPTR without approval of a shoreline variance - is to provide one extra foot of depth. However, because the Applicant has not applied for a shoreline variance, the question of whether the additional length should be approved is not presently before the Hearing Examiner. *Exhibits 1, 1.D*

*and 1.F; Testimony of Scott McCormick and Lorrie Chase.*

7. The Applicant submitted that the width of the subject parcels (approximately 172 feet of shoreline), bank height, and distance to opposite shore would minimize potential view impacts associated with the pier. *Testimony of Logan Brown and Lorrie Chase.*
8. The proposed buoy location was selected to comply with Washington State Department of Natural Resources (DNR) requirements, which requires buoys to be located at a minimum depth of -7 feet extreme low tide, or between -11 and -12 feet MLLW, depending on location in Puget Sound. The 330-foot distance from MHHW is needed to achieve the required depth. The buoy would include required markings. *Exhibits 1.K and 3; Lorrie Chase Testimony.*
9. Due to proposed joint-use of the pier and its location on the common property line, the pier is exempt from the 20-foot setback requirement required by the SMPTR with respect to the common property line. The setback from adjacent properties to the north and south would exceed 20 feet. *Exhibits 1, 1.F, and 1.J.*
10. The span between pilings would be approximately 30 feet or more. *Exhibit 1.F.*
11. While it is known that shading caused by overwater structures can reduce or eliminate eelgrass, macroalgae, and other epibenthic organisms, a survey of the subject substrate found no macroalgae or eelgrass within the footprint of the proposed pier. The Applicant proposes to use grating to reduce shading impacts. The proposed mooring buoy would be in an area with low-percentage (less than five percent) macroalgae cover. *Exhibits 1.K (including attachments) and 1.L.*
12. The subject property contains documented surf smelt spawning habitat (a prey species for migrating salmon). Piles for the proposed pier would impact a total of 3.68 square feet of the upper shore zone comprising the spawning habitat. Although the float would also be in the upper shore zone, proposed float stops and stub pilings would prevent the float from resting on the substrate, thereby allowing forage fish to continue to use the area beneath the float (which would have a grated surface). *Exhibit 1.K.*
13. As compensatory mitigation for impacts to the upper shore zone, the Applicant proposes to participate in an off-site mitigation project located on the east side of Budd Inlet at 8400 NE Zangle Road. The project is to remove an existing “eco-block” bulkhead abutting a small estuarine area and to restore the native shoreline. The mitigation area is documented surf smelt and sand lance spawning habitat. The Applicant would be responsible for a 15-foot section of bulkhead. *Exhibits 1.K (see Appendix A) and 1.M.*
14. In addition to the compensatory mitigation, the Applicant proposes the following conservation and mitigation measures as outlined in the project Biological Evaluation/Assessment:

- Limit construction to the window of July 16 through February 15 to minimize effects on ESA-listed species and forage fish, and conduct a forage fish survey prior to commencing construction.
- Use 50% functional grating in float, and 100% in pier and ramp.
- Ensure float stops and stub piles elevate the float at least one foot above the substrate.
- Use a wood block and bubble curtain for sound attenuation during impact pile driving.
- Use a floating surface boom to capture debris or oil sheen.
- Do not perform vibratory or impact pile driving if ESA-listed marine mammals are present within 300 feet of the work site, or marbled murrelets are within 160 feet.
- Limit pile driving to daylight hours, with no more than 300 strikes per day.
- Avoid the use of toxic compounds not approved for marine use.
- Operate equipment from a barge, rather than the shoreline, in a manner designed to minimize turbidity.
- Prevent construction barges from grounding.
- Restore disturbed beach areas immediately upon completion of construction and mitigation work.
- Retain existing habitat features (such as woody debris) to the extent possible.
- Limit disturbance of bank stabilization.
- Obtain approval prior to removing woody vegetation with a diameter at breast height of four inches or greater.

*Exhibit I.K.*

15. As mitigation for habitat impacts on the subject property, the Applicant proposes to clear English Ivy and other invasive species from the area on top of and behind the bulkhead on the Salcetti parcel and plant native species including shore pine, hooker's willow, ocean spray, evergreen huckleberry, nootka rose, honeysuckle, and snowberry. *Exhibit I.N.*
16. Based on the analysis contained in the Biological Evaluation/Assessment, the project "may affect, [but is] not likely to adversely affect" several species listed under the Endangered Species Act with potential to be in the project area, including Puget Sound Chinook salmon, Bocaccio and yelloweye rockfish, Puget Sound steelhead, marbled murrelet, southern resident killer whale, and humpback whale, and would have "no effect" on leatherback sea turtles, bull trout, or Hood Canal summer-run chum. *Exhibit I.K.*

17. The Thurston County Environmental Health Division reviewed the proposal and determined that it would not result in any adverse public health impacts, and recommended approval. The ramp and float would be manufactured upland and towed to the site by tugboat. There would be no impact to the on-site sewage disposal systems and wells because all work would be performed from a barge. *Exhibit 1.U.*
18. The Thurston County Public Works Department reviewed the proposal and determined that the requirements of Thurston County Road Standards and the Drainage Design and Erosion Control Manual have been satisfied. Public Works recommended approval on condition that the Applicant obtain a Construction Stormwater Permit from the Washington State Department of Ecology, if required by that agency. *Exhibit 1.V.*
19. The Thurston County Community Planning and Economic Development Department reviewed the project for compliance with the State Environmental Policy Act (SEPA) and issued a mitigated determination of non-significance (MDNS) on February 7, 2019. This determination was based on review of the Master Application, SEPA Environmental Checklist, JARPA, Interim Abbreviated Biological Evaluation, comments received from the Squaxin Island Tribe (which raised concerns regarding impacts to juvenile salmon and prey species), comments received from the Washington Department of Ecology and the Thurston County Environmental Health Division, FEMA Habitat Assessment, and Little Fish Trap Restoration Project materials. The MDNS contains conditions requiring the following: that state and federal permits be obtained (including from the Washington Department of Fish and Wildlife and the U.S. Army Corps of Engineers); that financial support be provided for the off-site mitigation project (Little Fish Trap Project); that a financial surety be provided for the on-site invasive species removal/re-planting mitigation project; 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. The MDNS became final on February 28, 2019 at the close of the appeal deadline. No appeals were filed. *Exhibits 1 (page 3), 1.I, 1.U, 1.T, and 1.S.*
20. 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 May 3, 2019. *Exhibits 1, 1.A, and 2.*
21. The Nisqually Indian Tribe did not object to the proposal, but requested that an Inadvertent Discovery Plan be put in place for the project, and requested to be informed of any inadvertent discoveries of archaeological resources or human burials. The Squaxin Island Tribe also requested to be informed of any archaeological or cultural resources uncovered during the project. *Exhibits 1.P, 1.Q and 1.W.*
22. The Squaxin Island Tribe objected to the proposal, submitting that the dock would negatively impact its treaty fishing rights. The Tribe did not submit evidence in support

of its objection. Community Planning and Economic Development Staff submitted that the issue of treaty fishing rights would be addressed in the federal permit review process. *Exhibit 1.X; Scott McCormick Testimony (see also, Exhibit 1.I, describing applicable state and federal permits).*

## 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 MDNS, the mitigation described in the Biological Evaluation, and compliance with the requirements of state and federal agencies with jurisdiction, the pier would be protective of the ecology of the shoreline. The design includes grating to reduce shade impacts. Off-site compensatory mitigation is proposed, which would result in the restoration of currently degraded shoreline to a natural condition. Per the terms of the joint-use agreement, the parties and future owners would be prohibited from constructing additional overwater structures. Potential treaty fishing rights issues would be addressed at the federal level in a separate permitting process. *Findings 2, 4, 7, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, and 22.*
2. As conditioned, the proposal complies with applicable regulations in the Washington Administrative Code. No structure of more than 35 feet above average grade is proposed. A condition of approval would ensure compliance with the requirements of WAC 173-27-190. *Findings 2 and 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 proposed pier location along the shared property boundary increases the distance of the pier from surrounding parcels, thereby minimizing view impacts. The distance from the opposite shore (which far exceeds the minimum imposed in the SMPTR) minimizes conflict with recreational boaters and fisherman. The proposed mooring buoy would be as close to shore as possible while maintaining sufficient depth to comply with state requirements, and, per conditions of approval, would be marked to be clearly visible. The width of the pier would not exceed eight feet; the area of the float would not exceed 400 square feet, and the span between pilings would exceed eight feet. The parties have entered into a joint-use agreement, and, per conditions of approval, must record required easements prior to building permit issuance. A condition is needed to restrict the length of the structure to 100 feet in accordance with General Regulation No. 17 of the SMPTR. The Hearing Examiner does not have jurisdiction to waive this requirement outside of the shoreline variance process. *Findings 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10.*

4. As conditioned, the proposal is consistent with the applicable regional criteria. The proposal has been reviewed for impacts to the aquatic environment by County Staff through the SEPA process and would be subject to future review by the Washington Department of Fish and Wildlife and the US Army Corps of Engineers. Both on-site and off-site habitat mitigation is proposed. The proposal has been reviewed for impacts to public health (no impacts are anticipated), and the conditions of the MDNS address spill containment. *Findings 11, 12, 13, 14, 15, 16, 17, 18, and 19.*

### DECISION

Based upon the preceding findings and conclusions, the request for an SSDP to construct a joint-use pier, ramp and float to serve 6841 and 6947 Cooper Point Road NW is **GRANTED** subject to the following conditions:<sup>2</sup>

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. A Thurston County Building permit is required for the pier portion of the project prior to construction.
3. Prior to issuance of the required Thurston County building permit for the pier portion of the project, proof of payment of mitigation fees for the Little Fish Trap restoration project (bulkhead removal) shall be provided to and verified by Thurston County CPED Staff.
4. All construction shall be in substantial compliance with the plans included in the project JARPA application as modified by these conditions and shall comply with all applicable general policies and use regulations of the Shoreline Master Program for the Thurston Region.
5. 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 of the Applicants.
6. The Applicants shall remove construction debris to an approved site (landfill or recycling center) outside of the shoreline area to avoid degradation of state waters.
7. To minimize impacts to shallow water, water quality and beach habitat, construction of the proposed dock shall be done with marine grade, non-treated wood and/or materials that will not release toxic substances into the water.
8. 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

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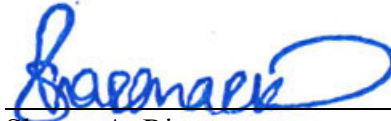
<sup>2</sup> Please note that these conditions limit the length of the dock to 100 feet from the face of the bulkhead, as opposed to the 115 feet requested in the SSDP application.

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.

9. The maximum dock length shall not exceed one hundred (100) feet as measured from the face of the existing bulkhead and not exceed a depth of minus three (-3) feet as measured from mean lower low water.
10. To avoid potential damage, caution shall 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.
11. Reflectors shall be used to identify both the dock and the buoy in order to prevent hazardous conditions for water surface users during day or night.
12. 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.
13. If archaeological artifacts are observed during any phase of the project, all work shall be immediately halted. The State Department of Archaeology and Historic Preservation, Thurston County CPED, 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 shall take place during the work window from July 16th to February 15th. A forage fish survey shall be conducted prior to pile driving since there is no overlap in the Surf Smelt work window with the salmonids and bull trout work windows. Any in water work windows specified by WDFW shall be observed and shall take precedence over this condition if there are conflicts.
15. Both property owners must record a non-exclusive easement granting each other the right to use the pier. The easement must acknowledge that each property owner is giving up the right to construct a separate single-family pier. This shall be done prior to building permit issuance for the proposed pier.
16. The proposed planting plan shall be installed prior to final approval of the building permit for the proposed pier unless a bond or irrevocable assignment of savings is put in place to ensure the planting plan is completed.
17. A Construction Stormwater Permit from the Washington State Dept. of Ecology may be required. Information about the permit and application can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. It is the applicant's responsibility to obtain this permit if required.

18. 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.

Decided May 30, 2019.



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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 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 **\$750.00** for a Request for Reconsideration or **\$1,020.00** 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  \$750.00 for Reconsideration or \$1,020.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_  
 Filed with the Community Planning & Economic Development Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_.