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HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
 FOR THURSTON COUNTY**

In the Matter of the Application of)	NO. 2016101431
)	
Aaron Koelsch)	Koelsch Dock (Revision)
)	
For Approval of a)	
Shoreline Substantial Development Permit)	FINDINGS, CONCLUSIONS, AND DECISION
)	
_____)	

SUMMARY OF DECISION

The requested revision to the shoreline substantial development permit issued on August 22, 2017 to relocate the pier, ramp, and float proposed at 4904 Keating Road NW is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request:

Aaron Koelsch (Applicant/Owner) requested a shoreline substantial development permit (SSDP) to construct a new pier, ramp, and float for recreational boating, with a total overwater length of 100 feet. The Hearing Examiner granted the request on August 22, 2017. On October 31, 2018, the Applicant submitted a revised SSDP application to relocate the proposed pier approximately 31 feet south of the originally approved location on the parcel. The Applicant does not propose to modify any other aspect of the proposed development. The subject property is located on the west shore of Eld Inlet at the southern entrance to Young Cove, at 4904 Keating Road NW in Olympia, Washington.

Hearing Date:

The Thurston County Hearing Examiner held an open record hearing on the revision request on January 8, 2019.

Testimony:

At the hearing the following individuals presented testimony under oath:

Scott McCormick, Associate Planner, Resource Stewardship Department
Dawn Peebles, Thurston County Environmental Health Division
Randy Popp, Marine Floats Corporation, Applicant representative
Lorrie Chase, Marine Floats Corporation, Applicant representative
Darren Nienaber
Richard Burkhalter
Peter Reid
Troy Stephens

Exhibits:

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

- Exhibit 1 Community Planning and Economic Development Department Staff Report, including the following attachments:
- A. Notice of public hearing
 - B. Zoning/site map
 - C. Master application, received October 31, 2018
 - D. JARPA application, received October 31, 2018
 - E. Letter (project description) from Marine Floats, dated September 21, 2018
 - F. Letter from Aaron Koelsch to Scott Steltzner, Fisheries Biologist, Squaxin Tribe, dated July 30, 2018
 - G. Dock and site plan, received December 18, 2018
 - H. Notice of application, dated July 26, 2016, with list of adjacent property owners within 500-feet, dated November 15, 2018
 - I. Photo of pier mitigation site, received October 31, 2018
 - J. Email memo of approval from Dawn Peebles, Thurston County Environmental Health, dated December 11, 2018
 - K. Letter in opposition to the proposal from Peter Reid and Barbara Ogle, dated November 29, 2018
 - L. Email communication between Scott Steltzner, Fisheries Biologist, Squaxin Island Tribe, and Marine Floats, dated July 11, 2018
- Exhibit 2 Hearing Examiner decision, dated August 22, 2017
- Exhibit 3 Photos of public hearing notice posting
- Exhibit 4 Memo from Environmental Health Division, dated May 3, 2016

Exhibit 5 Site plan with rectangle depicting general pier location approved by Squaxin Island Tribe

Exhibit 6 Site plan, dated August 2, 2018, revised December 18, 2018

Exhibit 7 Boundary line adjustment map, No. BLAD-961123, Auditor File No. 3047911

Exhibit 8 Staff report from the original request, dated August 8, 2017, with attachments

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

FINDINGS

1. The Applicant requested a shoreline substantial development permit (SSDP) to construct a new pier, ramp, and float for recreational boating, with a total overwater length of 100 feet. The subject property is located on the west shore of Eld Inlet at the southern entrance to Young Cove, at 4904 Keating Road NW in Olympia, Washington. *Exhibit 8.*
2. The Hearing Examiner granted the request, subject to conditions, on August 22, 2017. The Hearing Examiner incorporates by reference the Findings of the August 22, 2017 decision, which describe the details of the project, the surrounding environment, the regulatory context, and the County's review process. *Exhibit 2.*
3. As described in Finding 17 of the August 22, 2017 decision, the Squaxin Island Tribe had objected to the pier in comments to the Army Corps of Engineers based on the pier location and impacts to treaty fishing rights. The County's 2017 SSDP approval concluded as follows with regard to the Squaxin Island Tribe's concerns:

Although it is arguable that the treaty fishing rights objection raised by the Squaxin Island Tribe is relevant to the Shoreline Management Act policies to protect the public interest, the Tribe did not submit any evidence into the record from which any conclusions could be drawn. Further, County decision makers lack authority to enforce Treaty rights. The record does note that the issue of Treaty rights has been raised in the appropriate forum and will be addressed there.

Exhibit 2 (conclusion 1, page 11). In subsequent negotiations, the Tribe requested that the proposed dock be moved to the south (within a specific area identified in a graphic), that the Tribe be allowed to tie nets to the proposed dock, and that the existing dilapidated dock on Young Cove be removed. *Exhibits 1.E, 1.F, 1. L, 2, 5, and 8.K.* These Squaxin Island Tribe requests brought about the proposed revision to the approved dock permit. *Lorrie Chase Testimony.*

4. On October 31, 2018, the Applicant submitted a revised SSDP application, relocating the proposed pier approximately 31 feet south of its originally approved location on the parcel. In the instant record, Exhibit 6 shows both the originally approved and revised

pier locations. At the revised location, the pier would be approximately 41 feet from the south property line as measured at the existing rock bulkhead, and at least 20 feet, nine inches from the south property line as measured at the far (waterward) end. The 20 feet, nine inches represents a minimum setback, because there is a small discrepancy in the record as to the location of the southern property boundary. While Geographic Information System (GIS) parcel mapping depicts that the southern parcel boundary continues into the water in a straight eastward trajectory, a boundary line adjustment map recorded for an adjacent parcel in 1996 contains a notation that the tideland property line is approximately perpendicular to the ordinary high water mark (on a southeast trajectory). If the trajectory were to the southeast, the setback from the south property line at the end of the pier/float would exceed 20 feet, nine inches. *Exhibits 1.C, 1.D, 1.E, 5, and 6; Lorrie Chase Testimony.*

5. The proposed angle of the dock (roughly perpendicular to the bulkhead), with the waterward end closer to the southern property line than the landward end (if the GIS mapping boundary is correct), is a requirement of the Squaxin Tribe. *Exhibits 1.L and 6.*
6. County Staff and one member of the public requested that the Applicant be required to obtain a survey of the property to confirm the location of the south property line as it extends into the water. The Applicant objected to such a condition because the evidence shows that the minimum 20-foot setback required by the Shoreline Master Program for the Thurston Region (SMPTR) would be met whether the southern tideland property line is as shown on GIS maps or is perpendicular to the ordinary high water mark. A drawing in the record suggesting intrusion into the setback (see Exhibit 1.G) was hand drawn and not to scale. *Testimony of Scott McCormick, Darren Nienaber, and Lorrie Chase.*
7. The Applicant does not propose to modify any other aspect of the proposed pier development, such as pier/float size or building materials. The relevant policies and regulations of the SMPTR have not changed. The only regulatory change is that the County Building Department has determined that a building permit is required for the fixed pier portion of the project. Planning Staff recommended revisions to the original conditions of approval to accommodate this change and ensure that mitigation required by the original approval (the removal of an existing, dilapidated walking pier) occurs prior to pier construction. The County further recommended language clarifying that the 20-foot setback applies to the tidelands portion of the property line. The Applicant did not object to these changes to the original conditions of approval; the Applicant's only objection was to Staff's suggestion that the Applicant obtain a survey. *Testimony of Scott McCormick and Lorrie Chase.*
8. Thurston County Environmental Health Division Staff reviewed the revised application and submitted that their original recommendation of approval from May 3, 2016 has not changed. *Exhibits 1.J and 4; Dawn Peebles Testimony.*
9. Notice of the open record hearing on the SSDP for the revised pier location was mailed to surrounding property owners on December 20, 2018, published in *The Olympian* on

December 28, 2018, and posted on-site at least ten days prior to the hearing. *Exhibits 1.A and 3.*

10. Public comment on the revised pier location raised issues similar to those raised during the 2017 public hearing. Specifically, the adjacent neighbors to the south argued that the pier would change the tide flow, interfere with shellfish harvesting on their tidelands, affect their recreational activities, impair their views, and encroach on the property line. The next neighbor to the south alleged impacts to recreational uses including trolling for Cutthroat trout along the shoreline and to navigation in general. Both argued that the pier should be located farther to the north, at the location of the existing walking pier which extends into Young's Cove, and that approval would act as precedent for approval of other similar piers along this stretch of shoreline, which they asserted would negatively impact their views, recreation, and property values. *Exhibits 1.K and 6; Testimony of Richard Burkhalter and Peter Reid; also see Exhibit 2, Finding 17, and Exhibits 8.M and 8.O.*
11. Because the subject property is located on a point, it is not possible to avoid view impacts of any boating facilities developed along the subject shoreline. Planning Staff submitted that removal of the dilapidated dock would improve views adequately to mitigate the impacts of the proposed new dock. With regard to navigation impacts, Eld Inlet is wider at the revised dock location than at the originally approved location. In addition, the proposed revised location results in greater depth, such that boat moorage on the dock would have less impact on the substrate than would the previously approved dock location. There are approximately 11 docks within 2,000 feet of the subject shoreline, primarily on Young Cove. Planning Staff submitted that while the SMPTR discusses view impacts, it does not mandate mitigation for view impacts. *Exhibit 1 (page 7).*

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 revised proposal is consistent with the policies and procedures of the Shoreline Management Act. Significantly, the previous SSDP was approved and not appealed. The instant record contains no evidence that would support the conclusion that relocating the pier to within 20 feet of the south lot boundary would cause the proposed boating facility to fall out of compliance with applicable provisions of the SMPTR and the Shoreline Management Act itself. Boating facilities are water-dependent uses. With the conditions imposed by the HPA and the MDNS (described in the original decision at Exhibit 2), the proposed pier would be protective of the ecology of the shoreline. The removal of the existing pier and debris from the Young Cove portion of the site and the grated surface of the proposed pier would result in a net improvement with respect to light penetration and thus to habitat for marine wildlife. The revised conditions of

approval would ensure that this mitigation occurs prior to construction of the new pier. The revised location and other mitigation agreed to by the Applicant address the treaty fishing rights issue raised by the Squaxin Island Tribe. With respect to the objections raised by neighbors, while aquaculture has been identified by the Washington legislature as being of statewide interest (WAC 173-26-241(3)(b)(i)(A)), the affected neighbor did not provide evidence capable of supporting a conclusion that the pier would be detrimental to aquaculture or recreational shellfish harvesting uses. The Washington State Department of Natural Resources and the US Army Corps were notified of the proposal and did not submit comments expressing concern about impacts to navigation. There is no evidence in the record that a dock protruding 100 feet from the southern portion of the subject shoreline would interfere with navigation. The dock would be fitted with reflectors to alert boaters near and after dark to its location. Although it is true recreational users of the subject shoreline would have to navigate around the structure to fish, water ski, and recreate in the area, the record presented does not establish that having to move around the dock would constitute an adverse impact to recreational uses that would amount to grounds for permit denial. *Findings 2 (see Exhibit 2, Findings 1, 2, 3, 4, 7, 9, 10, 11, 12, 13, 15, 16, 18, 19, and 20), 3, 5, 7, 8, 10, and 11.*

2. As conditioned, the revised proposal complies with applicable regulations in the Washington Administrative Code. As found in the original decision, the pier would not be more than 35 feet over average grade. A condition of approval would ensure compliance with the requirements of WAC 173-27-190. *Finding 2 (see Exhibit 2, Finding 7).*
3. As conditioned, the revised proposal is consistent with the applicable Boating Facilities policies and regulations of the Shoreline Master Program for the Thurston Region. The subject property is in a highly visible location; however, an existing dilapidated pier would be removed in conjunction with the project, mitigating the visual impact of the proposed project. The pier has been designed to comply with bulk dimensional standards established in the SMPTR that are intended to address aesthetic impacts (among others). At the revised location, the proposed pier would extend into Eld Inlet at a location that is sufficiently wide so as not to interfere with navigation. The distance to the opposite shore would be well over 150 feet. Cooperative use of piers and the use of moorage buoys in lieu of piers are preferred in the SMPTR, but not mandatory. Conditions of approval require the existing moorage buoy and the proposed dock to be marked with reflectors for visibility. The pier/ramp/float would not exceed 100 feet in length, and its width would not exceed eight feet. The float would be 240 square feet in area. The pier would be set back more than 20 feet from the side property line, irrespective of whether the accurate tideland boundary line follows GIS mapping or the 1996 BLA. This decision does not require submittal of a survey, because such a survey would not provide information that would affect the location of the pier; the record submitted sufficiently demonstrates compliance with the 20-foot setback. The span between pilings would exceed eight feet. No new mooring buoy is proposed; the existing buoy would not be altered. Conditions of approval limit the number of mooring buoys to one. *Findings 2 (see Exhibit 2, Findings 2, 4, 5, 6, 7, and 8), 4, 6, 7, 8, 10, and 11.*

4. As conditioned, the revised proposal is consistent with the applicable regional criteria. The proposal was reviewed for impacts to the aquatic environment, both by County Staff through the SEPA process, and by the Washington Department of Fish and Wildlife through the HPA process. Both processes identified extensive mitigation measures that would prevent or minimize impacts. Conditioned to comply with the HPA and MDNS in the use of appropriate materials, there is no evidence that the proposal would affect aquaculture. The proposed pier would replace a poor-quality existing pier along the subject property shoreline. The proposal has been reviewed for impacts to public health, and the conditions of the MDNS address potential construction impacts to septic system components and spill containment. *Findings 2 (see Exhibit 2, Findings 9, 10, 11, 12, 13, 14, 15, 18, and 19) and 8.*

DECISION

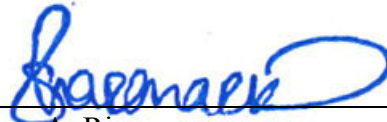
Based on the preceding findings and conclusions, the requested revision to the August 22, 2017 shoreline substantial development permit to construct a new pier, ramp, and float with a total overwater length of 100 feet at 4904 Keating Road NW is **GRANTED** subject to the following conditions. [Additions to the original conditions are shown with underlining, and deletions are shown with strikethrough.]

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 a permit from the US Army Corps of Engineers.
2. All construction shall be in substantial compliance with the plans included in the project JARPA application and shall comply with all applicable general policies and use regulations of the Shoreline Master Program for the Thurston Region (SMPTR).
3. As mitigation for the proposed pier, ramp, and float, the existing walkway and pier shall be removed as proposed. Removal of this existing in-water structure, including its concrete foundation, shall be completed prior to construction of the new pier, ramp, and float. ~~installation of the proposed 30-by-eight-foot float at the terminus of the proposed ramp.~~
4. A Thurston County building permit is required for the fixed pier portion of the pier, ramp, and float. Prior to issuance of the building permit for the pier, all mitigation activities shall be completed and inspected by Thurston County Community Planning and Economic Development Staff. Please contact Staff at 360-867-2116 or by email at scott.mccormick@co.thurston.wa.us to schedule an inspection once the mitigation activities have been completed.
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 beach habitat, construction of the proposed dock shall be done with marine grade or non-treated wood and/or materials that will not release toxic substances into the water.
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 be constructed in the location proposed, maintaining a minimum of a 20-foot setback from property lines, including the property line as it extends out onto the beach.
9. The maximum dock length shall not exceed 100 feet as measured from the mean higher high-water mark (OHHW) and not exceed a depth of minus three (-3) feet as measured from mean lower low water. The OHHW is located at the upper face of the existing bulkhead.
10. To avoid potential damage, caution should be taken to prevent any vehicle or equipment travel over the existing on-site sewage system or water lines. There shall be no parking of vehicles or equipment and no staging of materials over the drainfield area, on-site sewage components (tanks, building sewer lines, transport lines, etc.), or water lines.
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. 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. The Applicant shall obtain an aquatic lands lease from the Washington State Department of Natural Resources, if necessary.
14. 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.
15. To minimize the adverse effects of increased noise and/or increased turbidity on migrating salmonids and bull trout, pile driving and dock construction should take place during the work window from July 16th to February 15th. A forage fish survey is required since there is no overlap in the Surf Smelt work window with the salmonids and bull trout work windows. Work during this period will reduce the possibility of contact with these species. Any in-water work windows specified by WDFW shall also be observed and shall take precedence over this condition if there are conflicts.

16. Mooring buoys and recreational floats shall be designed and marked to be clearly visible. No more than one buoy shall be permitted to support the boating activities on-site.
17. 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
18. Construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140 (5)(a) and (b).

Decided January 23, 2019.



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.



Project No. _____ Appeal Sequence No.: _____

Check here for: **RECONSIDERATION OF HEARING EXAMINER DECISION**

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

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

Check here for: **APPEAL OF HEARING EXAMINER DECISION**

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

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

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

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

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

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

STANDING

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

Signature required for both Reconsideration and Appeal Requests

APPELLANT NAME PRINTED

SIGNATURE OF APPELLANT

Address _____

Phone _____

Please do not write below - for Staff Use Only:

Fee of \$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___.