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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. 2018103834
)	
William & Shina Wysocki)	Wysocki Dock
)	
For Approval of a)	
Shoreline Substantial Development Permit)	FINDINGS, CONCLUSIONS, AND DECISION
)	
)	

SUMMARY OF DECISION

The requested shoreline substantial development permit to construct a new dock at 1412 Madrona Beach Road NW is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request:

William and Shine Wysocki (Applicants/Owners) requested a shoreline substantial development permit to construct a new dock for recreational boating, consisting of a ramp and float with a total overwater length of 60 feet. The subject property is located on the west side of Mud Bay in southern Eld Inlet, at 1412 Madrona Beach Road NW, Olympia, Washington.

Hearing Date:

The Thurston County Hearing Examiner held an open record hearing on the request on August 27, 2019. Without advance notice to the County, the Applicants sent a representative to speak for them at the public hearing. Testimony proceeded but the record was held open through September 4, 2019 in order to allow submission by the Applicants of written authorization for Conrad Newell to represent their interests at hearing and to allow them to submit any additional written comment into the record. This resulted in a decision issuance deadline of September 18, 2019.

Testimony:

At the hearing the following individuals presented testimony under oath:

Scott McCormick, Associate Planner, Thurston County
Dawn Peebles, Thurston County Environmental Health

Conrad Newell, Applicant Representative
Laurel Juhl

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 January 31, 2019
- Attachment d JARPA Application, received January 31, 2019
- Attachment e Dock plans (undated)
- Attachment f Project description, dated December 3, 2018
- Attachment g Site plan with septic location
- Attachment h Biological Evaluation / Assessment, received January 31, 2019
- Attachment i Final SEPA Determination, dated June 13, 2019
- Attachment j Combined Notice of Application and SEPA Determination, dated
 February 14, 2019
- Attachment k Adjacent Property Owner list, dated August 30, 2018
- Attachment l SEPA Environmental Checklist
- Attachment m Memorandum from Amy Crass, TC Environmental Health, dated July
 10, 2019
- Attachment n Email from the Squaxin Tribe, dated June 28, 2019
- Attachment o Nisqually Indian Tribe comments, dated June 24, 2019
- Attachment p Letter from the WA Dept. of Ecology, dated July 3, 2019

EXHIBIT 2 Photos of posted hearing notice, dated August 16, 2019

EXHIBIT 3 Email from William Wysocki, dated August 27, 2019 (including authorization

for Conrad Newell too act as Applicants' agent)

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 substantial shoreline development permit (SSDP) to construct a new dock for recreational boating, consisting of a ramp and float, with a total overwater length of 60 feet. The subject property is located on the west side of Mud Bay in southern Eld Inlet, at 1412 Madrona Beach Road NW, Olympia, Washington.¹ *Exhibits 1, 1.C, 1.D, and 1.E.*
2. The subject property contains an unpermitted ramp and float, and a boat ramp beneath the walking ramp. These structures connect to an existing creosote-treated wood bulkhead. The float, piles supporting the float, and boat ramp are also constructed of creosote-treated wood. The float is 160 square feet in area, contains no grating, and grounds on the tidal flat with each recession of the tide. It is located approximately 50 feet from the nearest property boundary. Historically there was a dock and/or boat ramp on the subject property in approximately the same location as the existing structure; however, historical photos of the site and other information available to the County indicate that the historical dock was removed for a period of longer than three years; this removal constituted abandonment of the historic dock such that its replacement required review for compliance with applicable County provisions. The existing dock was replaced without undergoing required County review by a previous owner of the property and is therefore considered unpermitted. *Exhibits 1 and 1.H; Testimony of Scott McCormick and Conrad Newell.*
3. The Applicant proposes to remove the existing ramp, float, piles, and boat ramp and install the following in the same location:
 - A 20-foot long by eight-foot wide grated float (60% open space), constructed of “EnviroTuff” material;
 - Four steel piles (two 10.75-inch structural piles and two stub piles), with float stops on the structural piles to prevent grounding; and
 - A 45-foot long by four-foot wide grated pier ramp (overwater length of 40 feet) providing access to the float from an existing concrete landing pad located behind the bulkhead.

The total overwater length of the structures would be 60 feet. As mitigation for project shoreline impacts and to improve habitat, the Applicant proposes to remove 281 linear feet of existing creosote-treated bulkhead from the subject property's shoreline frontage, along with existing manmade debris (concrete, rebar, broken glass, etc.) that has been

¹ The legal description of the subject property is a portion of Section 12, Township 18 North, Range 3 West, W.M.: also known as Tax Parcel No. 13812320400. *Exhibit 1.*

previously dumped behind the bulkhead.² The existing concrete landing pad would be retained. *Exhibits 1, 1.D, 1.E, and 1.F.*

4. The subject property is 1.06 acres in area and is zoned Residential LAMIRD one dwelling unit per acre (RL 1/1). The subject property is developed with a single-family residence, a storage structure, and the previously described dock and boat ramp. *Exhibits 1 and 1.B.*
5. 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 shoreline 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 \$7047.00. *Exhibit 1.D; WAC 173-27-040; WSR 17-17-007.*
6. There are no docks within 100 feet of the subject property. In such cases, the SMPTR specifies that a pier or dock may not exceed a maximum length of 100 feet as measured from the mean higher high-water mark, and not exceed a depth of minus three feet as measured from the mean lower low water mark. The proposed dock would meet these requirements. The dock would also meet the maximum width requirement of eight feet. *Exhibits 1 and 1.E.*
7. The distance between the proposed dock and the opposite shore would be more than 1,500 feet. The distance between the proposed dock and adjacent property lines would be at least 20 feet, as required by the SMPTR. *Exhibit 1; see also Exhibit 1.B.*
8. The span between pilings would exceed eight feet. *Exhibits 1 and 1.E.*
9. Eld Inlet is designated as critical habitat for nearshore and deepwater rockfish, Puget Sound Chinook salmon, southern resident killer whales, and bull trout. However, due to shallow water depth, the endangered bocaccio rockfish and southern resident killer whales would not occur in the project area. Based on a Biological Evaluation, the project “may affect, not likely to adversely affect” listed species of wildlife. Impacts associated with turbidity are expected to be localized and brief, with water quality improving in the long term due to removal of creosote-treated surfaces. The project is not expected to affect salmonid migratory pathways, as there is already a dock in the area, and the grated replacement dock would reduce shade-related impacts to salmonids and their prey resources. *Exhibit 1.H.*
10. The Applicant would be required to obtain a hydraulic project approval (HPA) from the Washington State Department of Fish and Wildlife, a process which would result in conditions addressing construction methods and timing to protect aquatic resources. The Applicant would also be required to obtain a permit from the Army Corps of Engineers addressing water quality and Endangered Species Act compliance. *Exhibits 1 and 1.C.*

² The County has already approved this mitigation through an SSDP exemption. *Exhibit 1, page 4.*

11. The Washington Department of Archaeology and Historic Preservation (DAHP) determined that a cultural resources survey is not required for the site. *Exhibit 1, page 4.* The Squaxin Island and Nisqually Tribes requested to be informed if archaeological or cultural resources are discovered during construction. *Exhibits 1, 1.N, and 1.O.*
12. The subject property is served by an existing on-site septic system and a Group A water system. The Thurston County Environmental Health Division reviewed the application, determined that it meets the requirements of the Thurston County Sanitary Code, and recommended approval. *Exhibits 1.G and 1.M.*
13. The Thurston County Community Planning and Economic Development Department reviewed the project (including the proposed bulkhead removal mitigation) for compliance with the requirements of the State Environmental Policy Act (SEPA). Acting as the County's SEPA Responsible Official, the Department issued a combined notice of application and of likely issuance of a mitigated determination of non-significance (MDNS) pursuant to the optional MDNS process (WAC 197-11-355) on February 14, 2019. This determination was based on review of the master application, SEPA environmental checklist, the joint aquatic resources permit application (JARPA), site plans, a biological evaluation, and comments from the Washington State DAHP and Department of Ecology. The MDNS, which became final on June 13, 2019, contains conditions requiring the following: that excavated materials be disposed of in an approved upland location; that disturbed upland areas be revegetated with native plants immediately after completion; that all required local, state and federal permits be obtained; that there be no vehicle parking or materials staging on on-site sewage system components; 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; that best management practices be implemented (including limiting in-water work to periods when juvenile salmonids are absent or present in low numbers); and that County erosion and stormwater control standards be followed during the project. No appeals of the MDNS were filed. *Exhibits 1, 1.J, and 1.I.*
14. 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 August 16, 2019. *Exhibits 1, 1.A, and 2.*
15. One neighboring property owner testified at hearing, asking clarifying questions about the comparative lengths between the existing and proposed docks. She also inquired whether the proposed facility would be used in the Applicants' commercial shellfish business. Aside from these questions, she expressed support for permit approval. *Laurel Juhl Testimony.*
16. Planning Staff noted that additional permitting processes would be required to use the proposed dock for commercial purposes and that, at a length of 60 feet, the proposed dock is unlikely to provide enough depth for larger commercial vessels in the future.

Scott McCormick Testimony. The Applicant representative testified that proposed dock would be the same length as the existing dock and that the Applicants have no intention of using the proposed dock for commercial purposes; he concurred that the float would be too small for commercial vessels. *Conrad Newell Testimony.*

CONCLUSIONS

Jurisdiction

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

Criteria for Review

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

To be approved by the Hearing Examiner, the proposed shoreline substantial development permit must be consistent with:

- A. The policies and procedures of the Shoreline Management Act;
- B. The provisions of applicable regulations; and
- C. The Shoreline Master Program for the Thurston Region.

A. Shoreline Management Act

Chapter 90.58 RCW, the Washington State Shoreline Management Act (SMA) of 1971, establishes a cooperative program of shoreline management between the local and state governments with local government having the primary responsibility for initiating the planning required by the chapter and administering the regulatory program consistent with the Act. The Thurston County Shoreline Master Program (SMPTR) provides goals, policies and regulatory standards for ensuring that development within the shorelines of the state is consistent the policies and provisions of Chapter 90.58 RCW.

The intent of the policies of RCW 90.58.020 is to foster “all reasonable and appropriate uses” and to protect against adverse effects to the public health, the land, and its vegetation and wildlife. The SMA mandates that local governments adopt shoreline management programs that give preference to uses (in the following order of preference) that: recognize and protect the statewide interest over local interest; preserve the natural character of the shoreline; result in long term over short term benefit; protect the resources and ecology of the shoreline; increase public access to publicly owned areas of the shorelines; and increase recreational opportunities for the public in the shoreline. The public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state is to be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses that are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline, are to be given preference.

B. Applicable regulations from the Washington Administrative Code

WAC 173-27-140 Review criteria for all development.

- (1) No authorization to undertake use or development on shorelines of the state shall be granted by the local government unless upon review the use or development is determined to be consistent with the policy and provisions of the Shoreline Management Act and the master program.
- (2) No permit shall be issued for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

WAC 173-27-190 Permits for substantial development, conditional use, or variance.

- (1) Each permit for a substantial development, conditional use or variance issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140 (5)(a) and (b).

C. Shoreline Master Program for the Thurston Region

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

SMPTR Section Three, Chapter IV, Part B. Policies

Piers and Docks:

12. Pier and docks should be designed and located to minimize obstructions to scenic views, and conflicts with recreational boaters and fishermen.
13. Cooperative uses of piers, docks and floats are favored especially in new subdivisions.
14. Moorage buoys are preferred over piers and docks especially in tidal waters.

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.

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 preferred, water-dependent uses. With the proposed bulkhead removal mitigation, the conditions of the MDNS, and the

prospective conditions of state and federal agencies with jurisdiction, replacement of the existing dock with the proposed dock would be protective of the ecology of the shoreline. The removal of creosote-treated structures and the use of grating in the new dock components would improve water quality and light penetration to the net benefit of habitat and shoreline function. *Findings 1, 2, 3, 9, 10, 12, and 13.*

2. As conditioned, the proposal complies with applicable regulations in the Washington Administrative Code. The dock would not be more than 35 feet taller than average grade; the ramp would connect to the top of the shoreline bank. A condition of approval would ensure compliance with the requirements of WAC 173-27-190. *Findings 2 and 3.*
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 modest scale of the proposed dock, the distance from the opposite shore, and the fact that the proposal would replace an existing unpermitted facility mean that approval would not result in obstruction or even significant alteration of scenic views or existing navigational conditions. In addition, existing poor shoreline conditions would be remedied as part of the project mitigation. The dimensions and setbacks of the dock as proposed comply with applicable regulations. The conditions of approval address the need for reflectors or other markers. *Findings 3, 6, 7, and 8.*
4. As conditioned, the proposal is consistent with the applicable regional criteria. The proposal has been reviewed for impacts to the aquatic environment by County Staff through the SEPA process and would be reviewed by the Washington Department of Fish and Wildlife through the HPA process. Water quality is expected to improve as a result of the project. The proposed removal of the existing bulkhead and debris would eliminate existing poor-quality shoreline conditions. Consistent with the protection of public health, the conditions of approval ensure that septic system components are not used for parking or equipment storage. *Findings 3, 9, 10, 12, and 13.*

DECISION

Based on the preceding findings and conclusions, the requested shoreline substantial development permit to construct a new dock at 1412 Madrona Beach Road NW is **GRANTED** subject to the following conditions:

1. No physical work on the dock shall be initiated until the applicant obtains all required State and Federal permits and approvals, including a Hydraulic Project Approval (HPA) from the Washington State Department of Fish and Wildlife (WDFW) and permit from the US Army Corps of Engineers.
2. Construction pursuant to this 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).

3. 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).
4. The Applicant shall remove construction debris to an approved site (landfill or recycling center) outside of the shoreline area to avoid degradation of state waters.
5. To minimize impacts to water quality and beach habitat, construction of the proposed dock shall be done with marine grade or non-treated wood and/or materials that will not release toxic substances into the water.
6. During construction, all releases of oils, hydraulic fluids, fuels and other deleterious materials must be contained and removed in a manner that will prevent their discharge to waters and soils of the state. The cleanup of spills shall take precedence over all other work at the site. Spill prevention and response material shall be kept at the site for quick response to any toxic spills, such as fuel, at the site.
7. The dock shall be constructed in the location proposed, maintaining a minimum of a 20-foot setback from property lines.
8. The maximum dock length shall not exceed 60 feet as measured from the ordinary high-water mark (OHWM) and not exceed a depth of minus three (-3) feet as measured from mean lower low water.
9. To avoid potential damage, caution should be taken to prevent any vehicle or equipment travel over the existing on-site sewage system or water lines. There should be no parking of vehicles or equipment and no staging of materials over the drainfield area, on-site sewage components (tanks, building sewer lines, transport lines, etc.) or water lines.
10. Reflectors shall be used to identify the dock in order to prevent unnecessary hazardous conditions for water surface users during day or night.
11. The span between pilings shall not be less than eight feet.
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 should take place during the work window from July 16th to February 15th. Any in water work windows specified by WDFW shall also be observed and shall take precedence over this condition

if there are conflicts.

15. 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 Applicants' responsibility to obtain this permit if required.
16. Best Management Practices to be implemented 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 September 12, 2019.



Sharon A. Rice
Thurston County Hearing Examiner