



COUNTY COMMISSIONERS

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District One

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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. 2020105811 |
| |) | |
| Michael Zittel, |) | |
| Zittel's Marina |) | Zittel's Marina Dredging |
| |) | |
| For Approval of a |) | FINDINGS, CONCLUSIONS, |
| Shoreline Substantial Development Permit |) | AND DECISION |
| _____ |) | |

SUMMARY OF DECISION

The request for a shoreline substantial development permit of 10-year duration for maintenance dredging at Zittel's Marina, including initial dredging over 3.28 acres and subsequent dredging of smaller amounts in years five and ten, is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request:

Michael Zittel of Zittel's Marina (Applicant) requested a shoreline substantial development permit of 10-year duration for maintenance dredging at Zittel's Marina, including subsequent dredging in years five and ten of the permit within the southern portion of the basin. The subject property is addressed as 9144 Gallea Street NE, Olympia, Washington.

Hearing Date:

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on October 12, 2021. The record was held open through October 14, 2021 to allow any members of the public having difficulty joining the virtual hearing to submit written comments. No post-hearing public comment was submitted and the record closed on October 14, 2021.

Testimony:

At hearing, the following individuals presented testimony under oath:

Sharon Lumbantobing, Senior Planner, Thurston County

Arthur Saint, Civil Engineer, Thurston County Public Works

Dawn Peebles, Environmental Health Specialist, Thurston County

Jason Zittel, Applicant representative

Marlene Meaders, Confluence Environmental Company, Applicant representative

Ralph Murphy

George Walter, Environmental Program Manager, Nisqually Tribe Natural Resources Department

Michelle Burkheimer

Margaret Homerding, Nisqually Tribe Natural Resources Department

Exhibits:

At hearing, the following exhibits were admitted into the record:

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

- A. Notice of Public Hearing, dated September 23, 2021
- B. Master Application and JARPA Application with site photos, dated December 1, 2020
- C. Cover Letter, dated December 1, 2020
- D. Vicinity Map, dated August 17, 2021
- E. Dredging Plan View, dated August 17, 2021
- F. Pre-Dredge Map, dated August 17, 2021
- G. Post Dredge Map, dated August 17, 2021
- H. Map of disposal site near Steilacoom, dated August 17, 2021
- I. Draft Findings and Consistency with County Shoreline Master Plan Policies and Requirements, dated December 1, 2020
- J. Ordinary High Water Mark Clarification, dated June 9, 2021
- K. Applicant's clarification letter, dated June 4, 2021
- L. Zittel's Marina Maintenance Dredging FEMA Floodplain Habitat Assessment, dated August 2021
- M. Applicant's response letter, dated June 14, 2021
- N. Dredging Project Narrative, dated June 14, 2021
- O. Zittel's Marina Maintenance Dredging Biological Assessment, dated October 2020
- P. Suitability Determination Memorandum and Antidegradation Assessment for Maintenance Dredging of the Zittel's Marina in Olympia, Washington (NWS-2009-1188), Sediment dated January 2021
- Q. Sedimentation Characterization Report, dated January 2021
- R. Water Quality Monitoring and Protection Plan (WQMPP), dated May 2021

- S. Notice of Application, dated May 28, 2021
- T. SEPA Mitigated Determination of Non-Significance, dated July 14, 2021
- U. SEPA Environmental Checklist, received December 1, 2020
- V. Comment Memorandum from Amy Crass, Thurston County Environmental Health Division, January 11, 2020.
- W. Email from Heather Tschaekofske, Thurston County Biologist, dated August 13, 2021
- X. Comment from Tim Rubert, Thurston County Flood Plain Manager
- Y. Comment letter from WA Dept. of Ecology, dated January 5, 2021
- Z. Comment letter on the MDNS from WA Dept. of Ecology, dated July 8, 2021
- AA. Applicant's response to WA Dept of Ecology's Jan 5, 2021 letter, dated July 20, 2021
- BB. Nisqually Indian Tribe comment, dated June 29, 2021
- CC. Nisqually Indian Tribe comment, dated July 12, 2021
- DD. Nisqually Indian Tribe comment on the MDNS, dated July 14, 2021
- EE. Squaxin Island Tribe comment, dated December 22, 2020
- FF. Squaxin Island Tribe comment, dated July 28, 2021
- GG. Staff Report for Zittel's Marina, Project No 2009102635, dated June 7, 2010
- HH. Findings, Conclusions, and Decision of the Hearing Examiner for Thurston County, Case No. 2009102635 (Zittel's Marina Dredging Permit)
- II. WA State Department of Ecology's email, dated August 26, 2021 (interpretation of RCW 90.58.143 SDDP permit duration)
- JJ. Applicants Response to Comments Related to No Net Loss, dated September 16, 2021

Exhibit 2 Comments received after publication of the legal notice:

- A. Comment from Scott Rieffler and Diana Hackett, received October 5, 2021
- B. Comment from Don Thurston, received October 7, 2021

Exhibit 3 Letter to Thurston County from Robert Smith, dated October 8, 2021

Exhibit 4 Applicant PowerPoint Presentation

Exhibit 5 DMMO Determination

- A. Dredged Materials Management Office (DMMO) Suitability Determination Memorandum and Antidegradation Assessment for Maintenance Dredging of

the Zittel's Marina in Olympia, Washington (NWS-2009-1188), issued January 20, 2021

- B. Supplement to the Suitability Determination Memorandum and Antidegradation Assessment for Maintenance Dredging of the Zittel's Marina in Olympia, Washington (NWS-2009-1188), issued July 8, 2021

Based on the record developed through the virtual hearing process, the following findings and conclusions are entered in support of the decision of the Hearing Examiner:

FINDINGS

1. Michael Zittel (Applicant) requested a shoreline substantial development permit (SSDP) of 10-year duration for maintenance dredging at Zittel's Marina, including the dredging of approximately 17,060 cubic yards of sediment over 3.28 acres, and subsequent dredging in years five and 10 of the permit of a maximum 4,500 cubic yards each within the southern portion of the basin. The subject property is located at 9144 Gallea Street NE, Olympia, Washington.¹ *Exhibits 1.B, 1.D, 1.E, and 1.N.*
2. The application was submitted on November 9, 2020 and determined to be complete on June 15, 2021. *Exhibits 1.B and 1.S.*
3. Zittel's Marina is located at the mouth of Baird Cove on the east side of Johnson Point along the Nisqually Reach of Puget Sound. Surrounding development consists primarily of single-family residences, with a business use on one adjacent parcel. *Exhibits 1, 1.B, 1.D, and 1.N.*
4. Zittel's Marina is the only commercial recreational marina in unincorporated Thurston County. The marina has been operated by the Applicant's family since 1957 and has been in its current configuration since 1976. The upland portion of the marina consists of a marina office, boat maintenance building, restrooms, boat ramp, boat storage area, and customer parking area. The overwater portion of the marina consists of 168 boat slips, of which 117 are covered and 51 are open. Services provided on site include dry storage, moorage, boat sling and ramp launches, bottom painting, and boat rentals. The marina provides a base for tribal fishing and geoduck harvest activities, an important water access for emergency response vessels, and a site for research and for school environmental education programs. *Exhibits 1.N and 4; Testimony of Jason Zittel, Ralph Murphy, George Walker and Margaret Homerding.*
5. Maintenance dredging was previously conducted at the marina in 1976, 1990, and 2011. The 2011 dredging was pursuant to an SSDP (No. 2009102635) authorizing the removal of 32,000 cubic yards of sediment. The mitigation required by that SSDP was completed. *Exhibits 1.N, 1.HH, 3, and 5.A; Sharon Lumbantobing Testimony.*
6. The need for the proposed maintenance dredging is due to sediment accumulation in the marina's navigational channels, which is deposited from an unnamed stream that enters at

¹ Tax Parcel Number 11904130500. *Exhibits 1 and 1.B.*

the south end of the marina. The needed depth for safe vessel navigation is -10 feet mean lower low water (MLLW), which depth is not reached throughout the marina. *Exhibits 1.N, 1.F, and 5.A.* The initial dredging of 17,060 cubic yards would allow passage by all vessels. The smaller year 5 and year 10 dredges would ensure the channels are maintained. The estimated dredge amount of 4,500 cubic yards in years 5 and 10 is based on the amount of sediment deposited in the past. The proposed use of smaller, more frequent dredging events is less impactful on the environment than less frequent, larger dredging events. *Marline Meaders Testimony.*

7. The Puget Sound shoreline is regulated under the Shoreline Master Program for the Thurston Region (SMPTR). The SMPTR designates the project area as a Conservancy shoreline environment. Dredging to deepen navigational channels and to increase recreation benefits is allowed in the Conservancy environment subject to the applicable regulations of the SMPTR. A shoreline substantial development permit is required for the development because it is within the regulated shoreline, the value exceeds the permit threshold of \$7,047.00, and the dredging is not otherwise exempt. *Exhibits 1 and 1.B; WAC 173-27-040; WSR 17-17-007; RCW 90.58.030; SMPTR Section Three, Chapter VI(D).*
8. The subject property is zoned Rural Residential Resource One Dwelling Unit per Five Acres (RRR 1/5). Marinas are not permitted in the RRR 1/5 zone but boat launches and boat storage facilities are allowed with a special use permit. *Exhibit 1; TCC 20.54, Table 1.* Due to the length of time that the marina has been operational, the County considers it to be a legal nonconforming use. *Exhibits 1 and 1.I; Sharon Lumbantobing Testimony.*
9. The proposed maintenance dredging would be conducted with a clamshell dredge bucket deployed from a barge. Dredging would occur to a depth of -10 feet MLLW with one foot of allowable overdredge. Dredging operations would be confined to an area of 3.28 acres within the footprint of the existing marina. Dredge spoils would be loaded onto a split-hull bottom-dump barge for off-site disposal. The Applicant proposes to use the Anderson-Ketron open-water disposal site in Pierce County, Washington, approximately 10 miles from the marina. No structures and no expansion of the existing marina are proposed. *Exhibits 1.H, 1.N, 1.G, 1.Q, 4, and 5.*
10. Best management practices proposed to be implemented during dredging include the following (paraphrased):

Standard BMPs

- All in-water work would be restricted to the in-water work window approved by the U.S. Army Corps of Engineers for protection of Chinook salmon and bull trout (July 16 to February 15).
- If activities occur in, or adjacent to, an area listed as documented surf smelt or sand lance spawning habitat by Washington Department of Fish and Wildlife (WDFW), a survey for forage fish eggs would be conducted within two weeks of construction.

- During in-water work, a floating debris boom would be installed around the perimeter of the in-water work. If water quality requirements are not being met, a turbidity curtain would be installed.
- All equipment to be used for construction activities would be cleaned and inspected prior to arriving at the project site to ensure no potentially hazardous materials are exposed, no leaks are present, and the equipment is functioning properly.
- Construction equipment would be inspected daily to ensure there are no leaks of hydraulic fluids, fuel, lubricants, or other petroleum products. Should a leak be detected on heavy equipment used for the project, the equipment would be removed from the area and not used again until adequately repaired.
- All hydraulic fluids and lubricants would be vegetable based.
- All construction activities would be restricted to daylight hours except at the open-water disposal site, which might occur at night.
- Should any BMPs not function as intended, the contractor would take additional action to minimize erosion, maintain water quality, and achieve the intended environmental performance.

Maintenance Dredging BMPs

- Turbidity and other water quality parameters would be monitored to ensure construction activities are in conformance with Washington State Surface Water Quality Standards or other conditions as specified in the Washington State Department of Ecology Water Quality Certification. Monitoring results would be submitted weekly to Ecology.²
- A detailed Dredging and Dredge Material Handling Plan, including descriptions of site-specific work equipment, activities, and approaches, and the corresponding BMPs and water quality protection measures that would be implemented for conformance with the permit requirements, would be developed for the project.
- A Spill, Prevention, Control, and Countermeasure (SPCC) plan would be used for the duration of the project. The SPCC plan would provide advanced planning for potential spill sources and hazardous materials that the contractor may encounter or utilize as part of conducting the work. The SPCC plan would outline roles and responsibilities, notifications, inspection, and response protocols.
- Dredging operations would utilize equipment appropriate to the site conditions to minimize turbidity and other possible adverse impacts.
- Dredging activities would stop if a southern resident killer whale is observed within 150 feet of the project site and would not resume until the whale has exited the area.

² See Exhibit 1.R for the proposed water quality monitoring plan.

- A split hull barge equipped with a one-foot by one-foot grid for debris screening would be used for dredge spoil disposal.

Exhibit I.N.

11. The Applicant commissioned a professionally prepared biological assessment (BA) to address the potential effects of the project on species listed under Section 7 of the Endangered Species Act and their designated critical habitat. There are seven ESA-listed species of wildlife potentially present near the action area, including Coastal-Puget Sound bull trout, Puget Sound Chinook salmon, Puget Sound steelhead, Puget Sound/Georgia Basin bocaccio, Puget Sound/Georgia Basin yelloweye rockfish, marbled murrelet, and Southern resident killer whale. For all of the species except for the yelloweye rockfish and marbled murrelet, there is designated critical habitat within the action area. *Exhibit I.O.*
12. Potential project effects that were evaluated in the BA in reference to the listed species included water quality, sediment quality, dredging-related noise, entrainment, and aquatic vegetation. With respect to water quality, increases in turbidity are expected to be localized, intermittent, and short-term in duration, and fish exposure would be limited due to the timing of the work window. With respect to sediment, the sediments to be disturbed on site do not contain levels of contaminants likely to harm or injure listed species or their prey. With respect to noise, no significant underwater sound pressure waves would be generated by the dredging activities. Marbled murrelets are not likely to experience injury or a significant disruption of normal behaviors as a result of airborne sound levels. With respect to entrainment, fish entrainment in dredging equipment is unlikely because the work would have a short duration, the species would likely respond to noise and turbidity by avoiding the area before encountering the dredge bucket, and the approved in-water work window would make it unlikely that ESA-listed species would be present. With respect to aquatic vegetation impacts, there is no eelgrass or kelp within the action area. Impacts to aquatic vegetation that is present (*Ulva*, *Sarcodiotheca*, and *Laminaria* species) would be short-term as the substrate would be similar after dredging and the area is expected to be recolonized with similar species. The conclusion of the BA was that the project “may affect, [but is] not likely to adversely affect” the listed species of wildlife and the critical habitat occurring within the action area. *Exhibit I.O.*
13. The Applicant had a habitat assessment (HA) prepared for the project for compliance with FEMA floodplain permitting requirements, as the project is within FEMA Zones VE and AE. The HA contained similar analysis as the BA, and concluded that the project “may affect, [but is] not likely to adversely affect” federally listed species of wildlife and critical habitat. Further, the HA concluded that the project would avoid or minimize impacts to species of concern to Thurston County, including forage fish species. *Exhibits I.L and I.X.*
14. The Thurston County critical areas ordinance regulates activities within marine riparian habitat areas. Alteration of marine riparian habitat areas is allowed to the minimum extent necessary to accommodate water dependent structures and uses authorized by the

shoreline master program when no other practicable alternative exists, provided the use avoids or minimizes impacts to important wildlife habitat. *TCC 24.25.410; Exhibit 1.* All activities within critical areas must ensure no net loss of critical areas functions. *TCC 24.01.035.*

15. The Applicant proposes to remove two creosote pilings as mitigation for the temporary impacts to benthic habitat associated with dredging to ensure that there is no net loss of critical areas functions and values. Creosote consists primarily of polycyclic aromatic hydrocarbons (PAHs). Removal of the pilings is expected to improve water quality and benthic invertebrate habitat by decreasing PAH concentrations in the water column and surrounding sediments. Removal would also provide new benthic habitat for colonization. The value of the mitigation (using guidance from the National Marine Fisheries Service and the Army Corps of Engineers) exceeds the value of the vegetation enhancement required as mitigation for the last dredging approval, even though the prior authorization was for a larger quantity of dredged material. The effects of the mitigation proposed would be permanent, whereas the impacts to habitat associated with the dredging would be temporary, in that benthic invertebrates would be able to recolonize affected areas. *Exhibit 1.JJ; Marlene Meaders Testimony.*
16. The Thurston County Environmental Health Division reviewed the proposal against Thurston County Sanitary Code requirements and did not identify any issues of concern. Environmental Health recommended approval of the project. *Exhibit 1.V.*
17. Thurston County acted as lead agency for review of the environmental impacts of the proposal under the State Environmental Policy Act (SEPA) and issued a mitigated determination of non-significance (MDNS) on July 14, 2021. The MDNS imposed mitigation measures addressing: spill prevention, containment, and cleanup; disposal of dredged materials; compliance with the mitigation measures specified in the Biological Opinion; the timing of the work to avoid major fish migration runs; and compliance with Thurston County and other local, state, and federal regulations and permit requirements. The MDNS was not appealed and became final on August 4, 2021. *Exhibits 1 and 1.T.*
18. Representatives of the Squaxin Island and Nisqually Tribes' natural resources departments commented in favor of the proposal. The tribes have fishing and shellfish harvesting treaty rights in the area of the marina and use the marina as a base for these activities. The Nisqually Tribe has its geoduck fleet moored at the marina and conducts enforcement and research activities from the marina. Both tribes emphasized the importance of maintenance dredging to allow for ongoing usage and neither identified any unaddressed issues of environmental concern. *Exhibits 1.CC and 1.EE; Testimony of George Walter and Margaret Homerding.*
19. With respect to the proposed in-water disposal of dredged spoils, the Dredged Materials Management Program (DMMP) agencies (U.S. Army Corps of Engineers, Washington Departments of Ecology and Natural Resources, and the U.S. Environmental Protection Agency, acting in concert as the Dredged Materials Management Office (DMMO), are the body charged with assessing the suitability of in-water disposal for dredged materials

from a given location. A total of eight cores were taken over a period of two days and tested. Pollutant concentrations in the proposed dredge prism composite samples were determined to be below the DMMP marine screening levels. On January 20, 2021, the DMMP agencies issued a suitability determination memorandum concluding that all of the material from the proposed dredging project would be suitable for open-water disposal at the Anderson/Ketron or Commencement Bay non-dispersive disposal sites. This determination remains valid, and removal of sediment within the project is authorized, until the recency expiration date of June 2025 as long as there are no significant changes to the project scope or new contaminant sources identified. Dredging after the recency expiration would require additional characterization and should be coordinated with the DMMO. *Exhibit 5A*. Subsequently, a supplemental suitability determination clarification was issued July 8, 2021, adding to the previous approval a requirement to perform debris screening to prevent the disposal of solid waste and large debris at open-water disposal sites in Puget Sound. The clarification did not alter the recency expiration date. *Exhibit 5.B*. Washington Department of Natural Resources final approval was still pending at time of hearing. Should the instant SSDP be approved and DNR not grant approval for in-water disposal, the Applicant would need to apply for permit modification. *Robert Smith Testimony*.

20. Although the standard time limitation for construction activities pursuant to an SSDP is five years from the date of permit issuance, Revised Code of Washington (RCW) 90.58.143(1) allows local governments to adopt different time limits upon a finding of good cause, “based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of the master program and this chapter.” *RCW 90.58.143(1); Exhibit 1.II*. The Applicant requested a 10-year authorization, which is not an unusual request for dredging activities. Department of Ecology staff indicated in correspondence to the County that it considers such a request to be reasonable. *Exhibit 1.II*.
21. Notice of the public hearing was mailed to all property owners within 500 feet of the site on September 23, 2021 and published in The Olympian on October 1, 2021. *Exhibits 1 and 1.A*.
22. Public comment on the proposal was in support of the SSDP, emphasizing the importance of the facility to the community for tribal, recreational, and commercial purposes. Members of the public indicated that Zittel’s Marina provides safe moorage for smaller boats, allows for boat trailer access, and urged that the requested maintenance dredging be approved to continue these important community uses. *Testimony of Ralph Murphy, George Walker, Michelle Burkheimer, and Margaret Homerding; Exhibits 2.A and 2.B*.
23. Having evaluated the project for compliance with the policies and regulations of the SMPTR, Planning Staff recommended approval subject to conditions. The recommended conditions (as modified at the hearing) incorporate the best management practices summarized in Finding 10 and address state and federal permitting requirements, mitigation requirements, spill prevention and response measures, disposal of dredged materials, and construction hours. *Exhibit 1; Sharon Lumbantobing Testimony*.

Applicant representatives did not raise any objection to the recommended conditions; however, they requested minor clarifications and/or corrections to the staff report for the record. *Exhibit 3.*

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.

- a. 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.
- b. 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 proposal is governed by the policies and regulations contained in the “Dredging” chapter of the SMPTR (Section Three, Chapter VI).

SMPTR Section Three, Chapter VI, Part B. Dredging Policies

1. Dredging should be conducted in such a manner as to minimize damage to natural systems in both the area to be dredged and the area for deposit of dredged materials.
2. Dredging of bottom materials for the single purpose of obtaining fill material should be discouraged.
3. Deposition of dredge material in water areas should be allowed for habitat improvement, to correct problems of material distribution adversely affecting aquatic populations, or when a site has been approved by the Interagency Open Water Disposal Site Evaluation Committee.

SMPTR Section Three, Chapter VI, Part C. Dredging General Regulations

1. All applications for Substantial Development Permits which include dredging shall supply a dredging plan which includes the following information:
 - a. Location and quantity of material to be removed.
 - b. Method of removal.
 - c. Location of spoil disposal sites and measures which will be taken to protect the environment around them.
 - d. Plans for the protection and restoration of the wetland environment during and after dredging operations.

2. Toxic dredge spoil deposits on land shall not be placed on sites from which toxic leachates could reach shorelines and/or associated wetlands.
3. The Administrator and/or the legislative body may require that dredge disposal sites on land be completely enclosed by dikes designed to allow sediments to settle before dredge discharge water leaves the diked area. Such dikes must be protected from erosion.
4. No permit shall be issued for dredging unless it has been shown that the material to be dredged will not exceed the Environmental Protection Agency and/or Department of Ecology criteria for toxic sediments.
5. Dredging for the sole purpose of obtaining landfill material is prohibited.
6. Permits for dredging shall be granted only if the project proposed is consistent with the zoning and/or the land use designation of the jurisdiction in which the operation would be located.
7. Dredge materials shall not be deposited in water unless:
 - a. The operation improves habitat; or
 - b. The site is approved by the Interagency Open Water Disposal Site Evaluation Committee (WAC 330-30-166).
 - c. The disposal of spoils will increase public recreational benefits.

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

1. Urban, Suburban, Rural and Conservancy Environments. The following dredging activities are allowed:
 - a. Dredging to deepen navigational channels
 - b. Dredging to improve water quality
 - c. Dredging to bury public utilities
 - d. Dredging to increase recreation benefits
 - e. Dredging to maintain water flow
 - f. Dredging which is required to allow an activity permitted by this Master Program.

SMPTR Section Two, Chapter V. REGIONAL CRITERIA

The Shoreline Master Program for the Thurston Region contains regional criteria that apply to the proposal. All development within the jurisdiction of this Master Program shall demonstrate compliance with the following criteria:

- A. Public access to shorelines shall be permitted only in a manner which preserves or enhances the characteristics of the shoreline which existed prior to establishment of public access.
- B. Protection of water quality and aquatic habitat is recognized as a primary goal. All applications for development of shorelines and use of public waters shall be closely analyzed for their effect on the aquatic environment. Of particular concern will be the

preservation of the larger ecological system when a change is proposed to a lesser part of the system, like a marshland or tideland.

- C. Future water-dependent or water-related industrial uses shall be channeled into shoreline areas already so utilized or into those shoreline areas which lend themselves to suitable industrial development. Where industry is now located in shoreline areas that are more suited to other uses, it is the policy of this Master Program to minimize expansion of such industry.
- D. Residential development shall be undertaken in a manner that will maintain existing public access to the publicly-owned shorelines and not interfere with the public use of water areas fronting such shorelines, nor shall it adversely affect aquatic habitat.
- E. Governmental units shall be bound by the same requirements as private interests.
- F. Applicants for permits shall have the burden of proving that a proposed substantial development is consistent with the criteria which must be met before a Permit is granted. In any review of the granting or denial of an application for a permit as provided in RCW 90.58.18.180 (1), the person requesting the review shall have the burden of proof.
- G. Shorelines of this Region which are notable for their aesthetic, scenic, historic or ecological qualities shall be preserved. Any private or public development which would degrade such shoreline qualities shall be discouraged. Inappropriate shoreline uses and poor quality shoreline conditions shall be eliminated when a new shoreline development or activity is authorized.
- H. Protection of public health is recognized as a primary goal. All applications for development or use of shorelines shall be closely analyzed for their effect on the public health.

Conclusions Based on Findings

1. As conditioned, the proposal is consistent with the policies and procedures of the Shoreline Management Act. The marina is a shoreline-dependent use that provides numerous benefits to the community, including recreational, public safety, and educational benefits, and supports tribal treaty fishing rights. The proposed dredging would ensure the marina's continued viability. With adherence to the best management practices proposed by the Applicant and included in the conditions of this decision, there would not be permanent impacts to the ecology of the shoreline and pollution would be controlled. *Findings 1, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 22, and 23.*

With respect to the procedures of the Shoreline Management Act, good cause has been shown for the ten-year permit duration. The proposal for multiple smaller dredging events instead of a single larger event would be protective of the environment and would address the ongoing deposition of sediment from the stream entering the marina. *Findings 5, 6, 10, 11, 12, 13, 14, and 15.*

2. As conditioned, the proposal complies with applicable regulations in the Washington Administrative Code. No structures are proposed. *Findings 6 and 9.*

3. As conditioned, the proposal is consistent with the policies and regulations of the Shoreline Master Program for the Thurston Region.
 - a. The proposal is consistent with the dredging policies. BMPs would be implemented to minimize damage to natural systems, and approval has been granted for open-water disposal by the DMMO, the interagency board with jurisdiction. The dredging is not proposed for the purpose of obtaining fill material. *Findings 5, 6, 9, 10, and 19.*
 - b. The proposal is consistent with the SMPTR use-specific dredging regulations. Consistent with regulation 1, the Applicant has identified the location and quantity of material to be removed, the location of the proposed spoil disposal site, and sediment analysis demonstrating that applicable thresholds for contaminants would not be exceeded. No wetlands would be impacted by the dredging. Regulation 2 is inapplicable because there would not be toxic dredge spoil deposits on land, as open-water disposal is proposed and the site sediments do not exceed state and federal thresholds for toxicity. As conditioned, any screened debris would be required to be disposed of consistent with state solid waste handling standards (WAC 173-350). Regulation 3 is inapplicable. Consistent with regulation 4, the material dredged would not exceed EPA and DOE criteria for toxic sediments. Consistent with regulation 5, the dredging would not be done for the purpose of landfill. Regulation 6 on zoning consistency is met because the use predates the zoning ordinance. Consistent with regulation 7, the proposed open-water disposal has been approved by the DMMO. *Findings. 6, 8, 9, 10, and 19.*
 - c. The proposal is consistent with the Conservancy shoreline environment regulation in that the dredging would be to deepen navigational channels and to increase recreation benefits at the marina. *Findings 6, 9, 18, 19, and 22 .*
 - d. The proposal is consistent with the applicable regional criteria (A, B, F, G, and H). The project would facilitate ongoing public access to waters of the state at a location historically used for public access. The project has been closely analyzed for its effect on the aquatic environment. Credible scientific evidence demonstrates that with the proposed mitigation there would be no net loss of critical areas functions and values. The BMPs would be protective of water quality. The conditions of this decision require compliance with the BMPs as well as with all mitigation measures required by the state and federal agencies with jurisdiction over the project. As conditioned, the project would not degrade existing shoreline qualities, as the marina is an established use and has been dredged in the past, and the BMPs and other mitigation would be protective of the environment. The project has been analyzed for public health impacts through sediment sampling and DMMO analysis of the sediment. The Thurston County Environmental Health Division did not identify any issues of concern. The Applicant has met the burden of proving that the criteria for SSDP approval have been satisfied. *Findings 4, 6, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 22, and 23.*

DECISION

Based on the preceding findings and conclusions, the requested shoreline substantial development permit of 10-year duration for maintenance dredging at Zittel's Marina, including initial dredging of approximately 17,060 cubic yards of sediment over 3.28 acres and subsequent dredging of up to a maximum 4,500 cubic yards in years five and 10 of the permit, is **GRANTED** subject to the following conditions:

1. The project must be implemented in accordance with the proposal as provided herein. If there are any changes to the project or conditions made based on further outside agency reviews, the County will need to rereview the proposed/required changes.
2. No work shall occur until all outside permits have been obtained, including the Army Corps of Engineer, and any other agency permits. The Applicant must provide proof of Army Corps of Engineer permit approval prior to commencing work.
3. Two creosote pilings, equivalent to approximately 110 cubic feet of creosote, shall be removed from the marina within Baird Cove as a mitigation measure prior to the onset of the maintenance dredging.
4. During construction, all releases of oils, hydraulic fluids, fuels, and other deleterious materials must be contained and removed in a manner that prevents 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. If contamination is currently known or suspected during construction, testing of potentially contaminated media must be conducted. If contamination of soil or groundwater is readily visible, or is revealed by testing, the Washington State Department of Ecology must be notified (Contact the Environmental Report Tracking System Coordinator at the Southwest Regional Office at (360) 407-6300).
5. Dredged material must be handled and disposed appropriately. Both sediment testing and appropriate handling and disposal of the dredge spoils is required. Dredged material resulting from this project and regulated under Section 404 or 401 of the Clean Water Act must be disposed of at an approved open water disposal site. Any screened debris resulting from this project must be disposed of at an approved site and be in compliance with Chapter 173- 350 WAC, Solid Waste Handling Standards.
6. In-water work shall be timed to avoid major fish migration runs.
7. The proposed project is subject to compliance with the following policies and regulations, including any applicable mitigation requirements: Thurston County Comprehensive Plan, Zoning Ordinance (TCC 20), Critical Areas Ordinance (TCC 24), Stormwater Drainage Design and Erosion Control Manual (TCC 15.05), Uniform Building Code (TCC 14), State Environmental Policy Act (SEPA) Ordinance (TCC 17.09.).

8. The Applicant must comply with all other applicable local, state, and federal regulations and obtain the necessary permits prior to beginning construction activities. This includes the US Army Corps of Engineers, Washington State Department of Ecology, the Washington State Department of Fish and Wildlife and Washington State Department of Natural Resources. It is the sole responsibility of the Applicant to contact other agencies and secure any permits required for this project.
9. No dredging shall occur in State owned aquatic lands without prior authorization from the Washington State Department of Natural Resources.
10. At a minimum, the proposed dredging may not proceed until the Applicant receives Hydraulic Project Approval from the State Department of Fish and Wildlife, a water quality certification from the State Department of Ecology under Section 401 of the Federal Clean Water Act, a permit from the U.S. Army Corps of Engineers (Corps) under Section 404 of the Federal Clean Water Act, a permit from the Army Corps under Section 10 of the Federal Rivers and Harbors Act, a Site Use Authorization (SUA) from DNR to use the open water disposal site, a Suitability Determination from the Dredged Material Management Office (DMMO) to use the open water disposal site, an Aquatic Resources Use Authorization from the WA State Department of Natural Resources for the dredging. The Applicant shall comply with all conditions and requirements in such permits.
11. Construction equipment shall be inspected daily to ensure there are no leaking fluids. If leaks are detected, construction equipment shall be serviced immediately. Equipment and machinery shall be serviced, fueled, maintained, and washed only in confined areas specifically designed to control runoff and prevent discharges to surface waters.
12. General hours of construction activities shall be limited to daytime hours between 7:00 am and 7:00 pm.
13. The proposed project must be consistent with all applicable policies and other provisions of the Shoreline Management Act, its rules, and the Shoreline Master Program for the Thurston Region.
14. This shoreline substantial development permit is for dredging only. Any expansion in use of the existing marina is subject to additional review and permitting by Thurston County CPED.
15. At the end of the project, the permittee shall inspect the project area and ensure that no trash or debris has been left on the shore or in the water, and that the project has not created any hazards to navigation.
16. The approved subsequent maintenance dredging in permit years five and ten remains subject to all of the conditions contained herein.

17. This permit may not be extended longer than ten years per RCW 98.58.143. It is the Applicant's responsibility to request timely extensions from CPED in accordance with the provisions of RCW 90.58.143. Permit extension fees are specified in the Thurston County CPED, Land Use Application Fee Schedule.
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).

Dredging pursuant to this permit shall comply with the following standard best management practices (BMPs):

19. All in-water work will be restricted to the in-water work window approved by the Corps for Tidal Reference Area 2. The timeframe that is approved for both salmon and bull trout will be used (July 16 to February 15), subject to Corps approval through Section 404 of the CWA and WDFW approval during the HPA process.
20. If activities occur in, or adjacent to, an area listed as documented surf smelt (*Hypomesus pretiosus*) or sand lance (*Ammodytes hexapterus*) spawning habitat by WDFW, a survey for forage fish eggs will be conducted within 2 weeks of construction. A map showing the location of documented surf smelt spawning habitat is available at the WDFW website.
21. During in-water work, a floating debris boom shall be installed around the perimeter of the in-water work. If water quality requirements are not being met, a turbidity curtain would be installed.
22. All equipment to be used for construction activities shall be cleaned and inspected prior to arriving at the project site to ensure no potentially hazardous materials are exposed, no leaks are present, and the equipment is functioning properly.
23. Construction equipment will be inspected daily to ensure there are no leaks of hydraulic fluids, fuel, lubricants, or other petroleum products. Should a leak be detected on heavy equipment used for the marina project, the equipment shall be immediately removed from the area and not used again until adequately repaired.
24. All hydraulic fluids and lubricants will be vegetable based.
25. All construction activities will be restricted to daylight hours.
26. Should any BMPs not function as intended, the contractor shall take additional action to minimize erosion, maintain water quality, and achieve the intended environmental performance.
27. A detailed Dredging and Dredge Material Handling Plan will be developed by the contractor and submitted to the Marine Project Engineer for review and approval prior to

the start of construction. The Plan will include descriptions of site-specific work equipment, activities, and approaches, and the corresponding BMPs and water quality protection measures that will be implemented for conformance with the permit requirements.

28. The contractor will be responsible for the preparation of a Spill, Prevention, Control, and Countermeasure (SPCC) plan to be used for the duration of the project. The SPCC plan will be submitted to and approved by the Marina Project Engineer prior to the commencement of any construction activities. A copy of the SPCC plan with any updates will be maintained at the work site by the contractor. The SPCC plan will provide advanced planning for potential spill sources and hazardous materials (gasoline, oil, chemicals, etc.) that the contractor may encounter or utilize as part of conducting the work. The SPCC plan will outline roles and responsibilities, notifications, inspection, and response protocols and will be submitted to the WA State Department of Ecology for review and approval.

Maintenance Dredging BMPs

29. Turbidity and other water quality parameters will be monitored to ensure construction activities are in conformance with Washington State Surface Water Quality Standards, or other conditions as specified in the Washington State Department of Ecology (Ecology) Water Quality Certification. The Contractor will monitor turbidity during dredging operations in order to ensure compliance with water quality standards. Appropriate BMPs will be employed to minimize sediment loss and turbidity generation during dredging, re-handling, and dewatering. Monitoring results will be submitted weekly to Ecology.
30. A detailed Dredging and Dredge Material Handling Plan (the Plan) will be developed by the contractor and submitted to the marina project engineer for review and approval prior to the start of construction. The Plan will include descriptions of site-specific work equipment, activities, and approaches, and the corresponding BMPs and water quality protection measures that will be implemented for conformance with the permit requirements.
31. The contractor will be responsible for the preparation of a Spill, Prevention, Control, and Countermeasure (SPCC) plan to be used for the duration of the project. The SPCC plan will be submitted to and approved by the Marina Project engineer prior to the commencement of any construction activities. A copy of the SPCC plan with any updates will be maintained at the work site by the contractor. The SPCC plan will provide advanced planning for potential spill sources and hazardous materials (gasoline, oils, chemicals, etc.) that the contractor may encounter or utilize as part of conducting the work. The SPCC plan will outline roles and responsibilities, notifications, inspection, and response protocols.
32. Dredging operations will utilize equipment appropriate to the site conditions to minimize turbidity and other possible adverse impacts, including using as large a bucket for the clamshell dredge as possible and minimizing dragging of the bucket on the bed.

33. Dredging activities will stop if a southern resident killer whale is observed within 150 feet of the project site. Work will resume only once whales have exited the area. All dredging related vessels will avoid approaching whales when transiting between the project area and disposal site.
34. A split-hull barge equipped with a one- by one-foot grid for debris screening will be used for dredge spoil disposal.

Decided October 28, 2021 by



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 **\$777.00** for a Request for Reconsideration or **\$1,054.00** 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.



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| 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 \$777.00 for Reconsideration or \$1,054.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Community Planning & Economic Development Department this _____ day of _____, 20___.