



COUNTY COMMISSIONERS

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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. 2020101516         |
|                                              | ) |                        |
| <b>Stephen Burns</b>                         | ) |                        |
|                                              | ) |                        |
| For Approval of a Shoreline Substantial      | ) |                        |
| Development Permit and Shoreline Conditional | ) | FINDINGS, CONCLUSIONS, |
| Use Permit                                   | ) | AND DECISIONS          |
|                                              | ) |                        |

### SUMMARY OF DECISIONS

The request shoreline substantial development permit and shoreline conditional use permit are **GRANTED** subject to conditions.

### SUMMARY OF RECORD

#### **Request:**

Stephen Burns (Applicant) requested a shoreline substantial development permit (SSDP) and shoreline conditional use permit (SCUP) to construct a boat house, dock, and retaining walls at 7509 Holmes Island Road SE. The proposed structures would replace existing structures of the same type but would differ from the existing structures in size and location. One entirely new retaining wall is also proposed.

#### **Hearing Date:**

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on September 26, 2023. The record was held open through September 28, 2023 to allow members of the public who experienced technology-based barriers to joining the virtual hearing to submit written comments, with time scheduled for responses from the parties. No post-hearing public comment was submitted, and the record closed on September 28, 2023. No in-person site visit was conducted, but the Examiner viewed the property on Google Maps.

#### **Testimony:**

At the hearing the following individuals presented testimony under oath:

Heather Tschaekofske, Associate Planner/Biologist, Thurston County Community Planning and Economic Development Department

Leann McDonald, Shoreline Solutions, Applicant Representative

Stephen Burns, Applicant

John Woodford

**Exhibits:**

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

- Exhibit 1 Community Planning & Economic Development Department Report including the following exhibits:
- A. Notice of Public Hearing, dated September 15, 2023
  - B. Zoning/Vicinity Map
  - C. Master and Revised JARPA Application SSDP, received June 14, 2022
  - D. SSDP Revised Project Narrative, dated January 23, 2023
  - E. Master and JARPA Application CUP, received May 10, 2023
  - F. Additional notes on Retaining wall replacement, dated May 10, 2023
  - G. Notice of Application for Shoreline permits, dated January 29, 2021 for SSDP and May 26, 2023 for CUP
  - H. Topographic Survey, dated February 2022
  - I. Shoreline Mitigation plan, dated May 2, 2023
  - J. Revised site plan and boat house plan, dated January 25, 2023
  - K. Hydraulic Project Approval application issued by WDFW, dated February 23, 2022
  - L. Conditional Use permit responses, submitted May 10, 2023
  - M. Retaining wall design letter, dated June 13, 2022
  - N. Revised dock plan, dated January 24, 2023 and March 15, 2022
  - O. Existing site plan and dock plan, dated March 9, 2020
  - P. Revised site plan for mitigation, dated May 4, 2023
  - Q. Revised Environmental Checklist, received August 14, 2020
  - R. Revised SEPA Mitigated Determination of Non-Significance, issued August 11, 2023
  - S. Soil sample results, dated October 15, 2021
  - T. Asbestos survey results, dated July 14, 2020

- U. Approval memos from Thurston County Environmental Health, dated August 19, 2020 and August 4, 2023
- V. Comment email from the Squaxin Island Tribe, dated April 29, 2020
- W. Comment letters from the Nisqually Indian Tribe, dated April 28, 2020, and June 1, 2023
- X. Comment letters from the Department of Ecology, dated May 10, 2020, and October 26, 2021
- Y. Comment emails from Olympic Region Clean Air Agency (ORCAA), dated May 5, 2020, January 18, 2023, and May 31, 2023
- Z. Site photos, submitted April 15, 2020

Exhibit 2 Hydraulic Project Approval, issued July 11, 2023

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

### FINDINGS

1. Stephen Burns (Applicant) requested a shoreline substantial development permit (SSDP) and shoreline conditional use permit (SCUP) to construct a boat house, dock, and retaining walls at 7509 Holmes Island Road SE.<sup>1</sup> The proposed structures would replace existing structures of the same type but would differ from the existing structures in size and location. One entirely new retaining wall is also proposed. *Exhibits 1, 1.C, 1.D, and 1.J.*
2. The subject property is 0.48 acres in area and is located on the Long Lake shoreline of Holmes Island. The subject property is developed with a single-family residence, a bulkhead, a set of two cinder block retaining walls with staircase located parallel to and upland of the bulkhead, a seven- by nine-foot boat house located on a lawn area between the bulkhead and the retaining wall, and a seven- by 25-foot dock. *Exhibits 1, 1.H, 1.J, 1.O, and 1.Z.* Surrounding properties are of similar area and are developed with single-family residences, docks, and other shoreline structures. *Exhibit 1.*
3. The Applicant proposes to replace the existing improvements with the following: a new, larger eight- by 40-foot L-shaped dock to be placed just north of the original dock footprint; a new, larger 12- by 16-foot boat house to be placed north of the original footprint; a new retaining wall at the same location as the existing but with reconfigured design; and the proposal would construct a new retaining wall along a portion of the northwestern property line, near the site driveway. The bulkhead would not be modified. *Exhibits 1 and 1.J.*
4. Long Lake is a Shoreline of the State that is regulated under the Shoreline Master

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<sup>1</sup> The legal description of the subject property is: Section 26 & 27 Township 18 Range 1W LT 5 HOLMES ISLAND UNRECORDED PLAT AND PT LT 6 AS SHOWN ON BDSA 4922036; also known as Parcel no. 11827110500. *Exhibit 1.*

Program for the Thurston Region (SMPTR). The SMPTR regulates all upland areas within 200 feet of the ordinary high water mark (OHWM) and designates the subject shoreline as Rural shoreline environment. *Exhibit 1*. Docks and boat houses are allowed in the Rural shoreline environment subject to the Boating Facilities policies and regulations standards contained in the SMPTR. *Exhibit 1; SMPTR, Section 3, Chapter IV(D)(2)*. Because retaining walls not directly supporting a residence are not considered a normal appurtenance to the residential use and the SMPTR does not contain any other applicable use category, the retaining walls are considered an unclassified use and require approval of a SCUP. In addition, the overall project requires an SSDP because the fair market value would exceed the exemption limit of \$8,504. *Exhibits 1 and 1.C*.

5. The subject property is within the Lacey Urban Growth Area and is zoned Low Density Residential District 0-4 units per acre (LD 0-4). Single-family detached residences and accessory structures are allowed in the LD 0-4 zone. The subject property conforms to the minimum lot area of the LD 0-4 zone. *Exhibits 1 and 1.B; Thurston County Code (TCC) 21.12.020*.
6. The existing dock has a solid surface (i.e., no grating). The proposed replacement dock would consist of a five-foot wide by 12-foot long fully grated ramp leading to an eight-foot wide by 30-foot long float with an eight-foot by 10-foot float forming an “L” extension. The floats would have 50% functional grating and would be secured with four four-inch galvanized steel pilings, spaced more than eight feet apart. The total overwater length would be 40 feet. The proposed dock location, slightly to the north of the existing dock, was selected so that the dock would align with the existing staircase. The setback to the nearest property line would be 26 feet, and the distance to the opposite shore would exceed 150 feet. *Exhibits 1, 1.D, 1.J, and 1.N; Stephen Burns Testimony*.
7. The proposed increase in boathouse area (from 63 square feet to 192 square feet) is to accommodate a 14-foot boat and pulley. The height of the structure would not exceed 10 feet. The setback to the nearest property line would be 10 feet, consistent with the minimum five-foot setback required by TCC 21.12.050. *Exhibits 1.D and 1.J; TCC 21.12.050(D) and (J)*. As mitigation for the added 129 square feet of shoreline development, the Applicant proposes to enhance 129 square feet of shoreline with native plants, including red osier dogwood, salal, camas blue melody, and beach strawberry. These plants would be installed in the northwest corner of the property, between the bulkhead and the retaining wall along the property line. The plants would be monitored for a minimum of three years. *Exhibits 1.I and 1.P*.
8. The Applicant submitted that the existing cinder block retaining walls are beginning to collapse and are rapidly deteriorating. The Applicant proposes to replace the cinder blocks with Redi-Rock pre-cast concrete blocks, and to slightly reconfigure the walls. Redi-Rock blocks are each 18 inches high. They would be stacked three blocks high for a total height of 54 inches, with six inches below grade and 48 inches above grade. This represents a slight, six-inch increase in height over the existing wall in some areas, and a decrease in wall height in other areas; the existing wall reaches a height of 84 inches in one location. The Applicant is unable to maintain the existing wall height of 48 inches

due to the pre-cast nature of the blocks, requiring the wall height to be in multiples in 18 inches. A height reduction would require re-grading the site and removing approximately 60 yards of soil. *Exhibits 1.F and 1.J.* The Applicant submitted an engineering report in support of the proposed design. *Exhibit 1.M.*

9. The new retaining wall along the northwest property line is designed to prevent soil from eroding onto the neighboring property. *Exhibit 1.L.*
10. The total impervious surface coverage after development is complete would be 8,328 square feet, or approximately 35% of the 23,674 square-foot parcel. *Exhibit 1.P.* The maximum impervious surface coverage for residential lots in the Rural shoreline environment is 30%. *SMPTR, Section 3, Chapter XVI (D)(3).* The 30% limitation was explicitly incorporated into the mitigated determination of non-significance that was issued for the proposal. *Exhibit 1.R.* As can be seen on the revised mitigation plan, a swath of the property at least 30 feet deep along the Holmes Road frontage is outside of shoreline jurisdiction. The portion of the property outside shoreline jurisdiction contains a high percentage of impervious surface area including (at least) large portions of driveway and the residence, which based on a rough visual estimate would comprise more than 5% of the total impervious coverage – meaning the total percentage within shoreline jurisdiction appears to easily be under 30%. Based on the information submitted, it is not possible to determine at the time of writing what percentage of the subject property within the shoreline jurisdiction would be covered with impervious surfaces; however, because the limitation of 30% within shoreline jurisdiction was expressly called out in the MDNS, it is clear both Staff and the Applicant were aware of this limit prior to hearing. Planning Staff submitted that the proposal can comply with this SMPTR impervious surface coverage limit and stated that compliance would be ensured through the building permit process. *Exhibits 1, 1.J, 1.P, and 1.R; Heather Tschaekofske Testimony.*
11. None of the structures within the regulated shoreline would be more than 35 feet tall. *Exhibits 1 and 1.J.*
12. The SMPTR requires docks to be painted, marked with reflectors or otherwise identified to prevent hazardous conditions for water surface users. Because the application does not disclose whether the dock would include markings, County Staff recommended a condition of approval to address the requirement. *Exhibit 1.*
13. Consistent with the County’s flood hazard development regulations (TCC Chapter 14.38), the proposed boat house would be constructed above the base flood elevation of 157 feet. *Exhibit 1; Exhibits 1.O and 1.J; Heather Tschaekofske Testimony.*
14. The subject property is served by City of Lacey public water and an individual on-site septic system. The Thurston County Environmental Health Division reviewed the proposal against the requirements of the Sanitary Code and recommended approval, subject to a condition cautioning the Applicant to prevent vehicle or equipment travel over the septic system components, and prohibiting materials staging or vehicle/

equipment parking over any portion of the septic system. *Exhibit 1.U.*

15. Thurston County acted as lead agency for review of the project under the State Environmental Policy Act (SEPA) and issued a mitigated determination of non-significance (MDNS) on August 11, 2023. The MDNS contains conditions requiring the Applicant to perform the following: notify the Department of Archaeology and Historic Preservation and the tribes if archaeological artifacts are observed during development; limit construction activity to the hours of 7:00 am to 7:00 pm; comply with approved plans; limit impervious surface coverage to 30% as required by the SMPTR; prevent vehicle travel over septic system components; contain and remove any releases of hazardous materials; avoid the use building materials containing toxic compounds (e.g., creosote) for overwater or in-water structures; locate the boat house above the base flood elevation of 157 feet; implement erosion and stormwater control best management practices; install erosion control measures prior to any clearing, grading, or construction; dispose of construction debris and demolition material at an approved site; and test the soil for arsenic and lead in accordance with the 2012 Tacoma Smelter Plume Guidance and remediate the soil if warranted. *Exhibits 1 and 1.R.*
16. In comments dated May 12, 2020, the Washington Department of Ecology (DOE) had commented that the subject property is in an area that might have been contaminated with arsenic and lead from air emissions from the old Asarco smelter in north Tacoma. The Applicant subsequently tested the soil and submitted the results to the DOE for review and thus has already performed the soils testing required in the MDNS. The DOE concluded that the average concentrations of arsenic and lead in the soil were below their respective cleanup levels, and no samples exceeded the maximum allowable concentration. In comments dated October 26, 2021, DOE submitted that it expects that soil mixing during concentration would further reduce arsenic and lead concentrations, and that no soil remediation is needed for the project. *Exhibits 1.S and 1.X; Heather Tschaekofske Testimony.*
17. In response to comments submitted by the Olympic Region clean Air Agency (ORCAA), the Applicant had a good-faith asbestos survey performed on the dock and boathouse proposed for demolition. The survey did not identify any asbestos containing materials. *Exhibits 1.T and 1.Y.*
18. The Applicant obtained hydraulic project approval (HPA) from the Washington Department of Fish and Wildlife (WDFW) for the project as reflected on the most recent version of the project plans on July 11, 2023.<sup>2</sup> The HPA contains numerous conditions addressing the following: work timing (July 16 through September 30); invasive species control; notification requirements; work staging, job site access, and equipment; construction-related sediment, erosion, and pollution containment; dock/float specifications (including requirements to include functional grating and not use wood treated with creosote); pile removal and driving; and demobilization and cleanup. *Exhibit*

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<sup>2</sup> WDFW first issued a Hydraulic Project Approval on February 23, 2022 based on plans dated January 18, 2022. *Exhibit 1.K.*

2. In addition to compliance with the MDNS mitigation requirements and any conditions imposed for County shoreline approvals, the Applicant would be required to comply with the HPA conditions.
19. Notice of the public hearing was mailed to all property owners within 300 feet of the site on September 11, 2023 and published in The Olympian on September 15, 2023, at least ten days prior to the hearing. *Exhibits 1 and 1.A.* Public comment was in support of the proposal. *John Woodford Testimony.*
20. Having heard all testimony, County Planning Staff maintained their recommendation that the conditions recommended in the staff report should be imposed if approval is granted. *Exhibit 1; Heather Tschaekofske Testimony.* The Applicant waived objection to the recommended conditions

## **CONCLUSIONS**

### **Jurisdiction**

The Hearing Examiner is granted jurisdiction to hear and decide applications for shoreline substantial development permits and shoreline conditional use permits pursuant to Section 19.04.010 of the Thurston County Code 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*

SMPTR Section Three, Chapter IV, Part B. Boating Facilities 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.

*Covered Moorage:*

18. The size of the covered moorage should be the minimum necessary for the use proposed.
19. Covered moorage over the water should be discouraged in tidal waters and prohibited in fresh water.
20. Covered moorage should be designed and located to maintain view corridors and blend with the surrounding development.



SMPTR Section Three, Chapter IV, Part C. Boating Facilities 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. [N/A]
18. [N/A]
19. The width of recreational docks or piers shall not exceed eight (8) feet.
20. In fresh water areas, new docks shall not exceed the average length of the existing docks within one hundred (100) feet of the property lines. If there exists a dock on one side of a new proposed one but not on the other, the average to be used for the side without a dock shall be fifty (50) feet. If there are no docks within one hundred (100) feet, the length shall not exceed fifty (50) feet as measured from the ordinary high water mark.
21. At the terminus of a dock or pier, a float is normally attached for purposes of a landing and for moorage of watercraft. These floats may either be parallel to the dock or pier, or form a tee. The float cannot exceed four hundred (400) gross square feet for a piling dock/pier in tidal waters, two hundred fifty (250) gross square feet for a floating dock/pier on tidal water, and two hundred (200) gross square feet for docks/piers on fresh water. The total length of the dock/pier with an attached float cannot exceed the total length allowed under General Regulations #17 and #20.
22. Docks and piers shall be set back ten (10) feet on fresh and twenty (20) feet on tidal water from the side property line. These setbacks may be waived if two single-family property owners wish to construct a joint pier on the common property line under the following conditions: a. Both property owners must record a non-exclusive easement granting each other the right to use the pier. b. The easement must acknowledge that each property owner is giving up the right to construct a separate single-family pier.
23. Span between pilings for piers or docks on pilings shall be eight (8) feet or greater.

*Covered Moorage*

30. A boathouse for residential property is permitted landward of the ordinary high water mark. It shall not exceed one hundred (100) square feet unless the size of the applicant's boat demands a larger structure. The structure shall not exceed ten (10) feet in height.
31. Covered moorage is prohibited over fresh water.

## 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.

### Shoreline Conditional Use Permit (WAC 173-27-160)

- 1. Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:
  - A. That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;
  - B. That the proposed use will not interfere with the normal public use of public shorelines;

- C. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;
  - D. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
  - E. That the public interest suffers no substantial detrimental effect.
2. In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.
  3. Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.
  4. Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section.

### **Conclusions Based on Findings**

1. As conditioned and with approval of the shoreline conditional use permit, the proposal satisfies the criteria for a shoreline substantial development permit.
  - a. Approval of the project is consistent with the policies and procedures of the Shoreline Management Act. The project is reasonable in light of the established use of the site and the proposed dock design (which includes grating), the conditions of the HPA, and the proposed mitigation plan would ensure that the ecology of the shoreline is protected. The soil has been tested for contaminants consistent with SMA policies to control pollution. Consistent with the procedures of the SMA, a conditional use permit was requested for the retaining walls. *Findings 1, 2, 3, 4, 6, 7, 16, 18, 19, and 20.*
  - b. Approval of the project is consistent with the applicable regulations in the Washington Administrative Code. None of the structures would exceed 35 feet in height or obstruct views. A condition of approval would address WAC timing requirements. *Findings 6, 7, 8, and 11.*
  - c. As conditioned, the proposal would be consistent with the applicable policies and regulations of the SMPTR. The floating dock would not obstruct views, would be more than 150 feet from the opposite shore, would not exceed eight feet in width, would not exceed 50 feet in length, would have an L float of less than 200 square feet, would be set back more than 10 feet from the side property line, and would have pilings spaced more than eight feet apart. A condition of approval addresses the

marking requirement of the SMPTR, and another condition expressly requires compliance with the limit of 30% coverage by impervious surfaces in the portion of the subject property within 200 feet of the shoreline; compliance with both requirements would be addressed through the building permit process. The proposed boat house is the minimum size needed for the Applicant's boat, would not be constructed over water, would be screened by mitigation plantings, and would not exceed 10 feet in height. *Findings 3, 6, 7, 10, 12, and 20.*

- d. As conditioned, the project is consistent with the applicable regional criteria. The conditions of this decision, which require erosion control measures to be implemented on the site and septic system components to be protected during construction, and the conditions of the HPA would ensure that water quality and aquatic habitat are protected. The project would not affect public access to the shoreline, as there is no existing public access on site. No evidence was submitted that the subject shoreline is notable for its aesthetic, scenic, historic, or ecological qualities; however, to the extent such qualities exist, the proposed development preserves them. The proposed development is similar in nature to the existing development, with newer structures replacing the older structures. As conditioned, the public health would be protected. The structures on site have been evaluated for asbestos and the soil has been evaluated for lead and arsenic, with results indicating the proposed scope of work would not cause public health hazards related to these potential contaminants. *Findings 2, 3, 4, 14, 15, 16, 17, and 18.*

2. As conditioned, the proposal satisfies the criteria for a shoreline conditional use permit.

- a. The proposed retaining walls are consistent with the policies of the Shoreline Management Act and the Master Program. The retaining walls are compatible with the allowed residential use of the site and would not affect the existing character of the shoreline. *Findings 2, 3, 4, and 8.*
- b. The retaining walls would not interfere with normal public use of the shoreline. The project area is wholly located on private property, and the retaining walls would be behind the bulkhead. *Findings 2 and 3.*
- c. The retaining walls are compatible with the residential use of the site and would protect adjacent residential property. *Findings 8 and 9.*
- d. The upland retaining walls would not cause significant adverse effects to the Rural shoreline environment. The overall shoreline project was reviewed against the requirements of SEPA and an MDNS was issued. *Finding 15.*
- e. As conditioned, the public interest would suffer no substantial detrimental effect. The conditions of approval address cultural resources protection as specified in the MDNS. *Finding 15.*
- f. Potential cumulative impacts have been considered, and no evidence was submitted

that approval of additional similar projects would produce substantial adverse effects to the shoreline. Much of the retaining wall portion of the proposal would consist of replacing existing retaining walls, and the amount of new impervious surfaces would be minor. *Findings 8, 9, and 10.*

- g. The retaining walls are an unclassified use which, as described above, are consistent with the criteria for a shoreline conditional use permit. *Finding 4.*
- h. Retaining walls are not a use prohibited by the SMPTR. *Finding 4.*

### **DECISIONS**

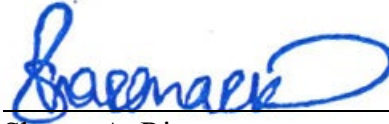
Based on the preceding findings and conclusions, the requested shoreline substantial development permit and shoreline conditional use permit are **GRANTED** subject to the following conditions:

1. Caution should be taken to prevent any vehicle or equipment travel over the existing septic system components. There should be no staging of materials and no parking of vehicles or equipment over any portion of the septic system.
2. A construction stormwater permit from Washington State Department of Ecology may be required. Information about the permit and the application can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. It is the Applicant's responsibility to obtain this permit if required.
3. The Applicant and subsequent property owners must comply with all requirements of state and/or federal law to avoid disturbance and alteration of artifacts, remains, or other cultural resources on site during development. In the event of inadvertent disturbance or alteration, the Applicant must immediately stop work and contact the Tribes and the State Department of Archaeology and Historic Preservation.
4. The dock shall be painted, marked with reflectors, or otherwise identified so as to prevent unnecessarily hazardous conditions for water surface users during day or night.
5. All activities shall be in substantial compliance with the submitted plans and accepted critical area reports.
6. Prior to or in conjunction with the issuance of any building permit, all regulations and requirements of the Thurston County Environmental Health Department, Thurston County Public Works Department, and the Thurston County Community Planning and Economic Development Department shall be met.
7. Construction and use of 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, including the limit of 30% impervious surface coverage within the shoreline jurisdiction.

8. Any revision to the shoreline permit must be in compliance with WAC 173-27-100.
9. The Applicant must obtain a building permit from the Thurston County Community Planning and Economic Development Department for the boat house and retaining wall. Engineered plans must be submitted with the building permit application.
10. No discharge of sediments into waterways shall be permitted at any time. Erosion control shall be in place prior to any ground disturbance on site.
11. During construction, all releases of oils, hydraulic fluids, fuels, other petroleum products, paints, solvents, 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 should take precedence over other work on the site.
12. Restoration and Enhancement of the site shall occur in accordance with the submitted shoreline planting and monitoring plan dated May 2, 2023.
13. All removed debris resulting from this project must be disposed of at an approved site. Contact the Department of Ecology or the local jurisdictional health department for proper management of these materials.
14. This project will comply with the Stormwater Management Manual for Western Washington, developed by the Washington Department of Ecology. Erosion control shall be in place during all site disturbance.
15. Construction activity shall be limited to the hours of 7:00 am to 7:00 pm to minimize associated noise. All activities onsite shall fully comply with noise limitations outlined in WAC 173-60.
16. This approval does not relieve the Applicant from compliance with all other local, state and/or federal approvals, permits, and/or laws necessary to conduct the development activity for which this permit is issued. Any additional permits and/or approvals shall be the responsibility of the Applicant.
17. All development shall be in substantial compliance with drawings and site plan submitted and made part of this staff report. Any expansion or alteration of this use will require approval of a new or amended SSDP/CUP. The Community Planning and Economic Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.

18. Construction pursuant to the permit shall not begin and is not authorized until 21 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 21 days from the date of such filing have been terminated, except as provided in RCW 90.58.140 (5)(a) and (b).

Decided October 13, 2023.



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Sharon A. Rice  
Thurston County Hearing Examiner

**THURSTON COUNTY**  
**PROCEDURE FOR RECONSIDERATION AND APPEAL**  
**OF HEARING EXAMINER DECISION TO THE BOARD**

|                                                                                                                                                                                                                             |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NOTE:</b> 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 **\$821.00** for a Request for Reconsideration or **\$1,112.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center at 3000 Pacific Ave SE, Suite 100 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 ☐ \$821.00 for Reconsideration or \$1,112.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_  
Filed with the Community Planning & Economic Development Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.