

WHATCOM COUNTY HEARING EXAMINER

RE: SHORELINE SUBSTANTIAL DEVELOPMENT) SHR2018-0001
Application for)
)
Sudden Valley Community Association) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: Sudden Valley Community Association is requesting approval of a Shoreline Substantial Development Permit to upgrade the existing fire infrastructure for the Sudden Valley Marina in order to meet current Fire Codes.

Decision: The requested permit is granted, subject to conditions.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing.

I.

PRELIMINARY INFORMATION

Applicant: Sudden Valley Community Association

Property Location: 20 Marina Drive
Bellingham, Washington 98229

Assessor's Parcel No. 370405 227126

Legal Description: Within Section 05, Township 37 North, Range 04 East, W.M.

Adjacent Water Body: Lake Whatcom

Shoreline Designation: Urban/Aquatic

Statewide Significance: Yes

<u>Authorizing Ordinances:</u>	SMP 23.50	Applicability
	SMP 23.70.010	Administration
	SMP 23.70.030	Hearing Examiner

Applicable Shoreline Program Provisions

SMP 23.20	Goals and Objectives
SMP 23.30.020	Official Shoreline Map
SMP 23.30	Shoreline Designations
SMP 23.40	Shoreline of Statewide Significance
SMP 23.60.010	Substantial Development Permit Criteria
SMP 23.60.130	Public Hearings
SMP 23.90	General Policies & Regulations
SMP 23.100	Shoreline Use Policies and Regulations

SEPA Review: Determination of Non-Significance, issued by Whatcom County Planning and Development Services, June 26, 2018

Legal Notices: Published – Notice of Public Hearing, August 2, 2018

Posted – Notice of Public Hearing, July 31, 2018

Mailed – Notice of Public Hearing, July 25, 2018

Hearing Date: August 15, 2018

Parties of Record

Sudden Valley Community Association
Mitch Waterman, General Manager
4 Clubhouse Circle
Bellingham, Washington 98229

Wilson Engineering, LLC
Danielle Johnston, P.E.
805 Dupont Street, Suite 7
Bellingham, Washington 98225

Kyla Walters, Shoreline Administrator
Planning and Development Services

Exhibits:

1. Shoreline Substantial Development Master Land Use Application with attachments
 - 1-1 Project Proposal
 - 1-2 Agent Authorization
 - 1-3 Fee Responsibility
 - 1-4 Shoreline Substantial Supplemental Application
 - 1-5 SVCA Marina Fire Protection: Project Narrative
 - 1-6 PDS Application Requirements
 - 1-7 Quit Claim Deed, dated December 20, 1977
 - 1-8 Customer Receipt, February 15, 2018
 - 1-9 PDS Comment Letter, with Project Description, May 8, 2018
2. Staff Report, July 26, 2018
3. Agency Comments:
 - Engineering Technician, April 30, 2018, with attached FEMA Flood Insurance Rate Map
 - Whatcom County Fire Inspector, May 17, 2018
 - PDS Stormwater, May 4, 2018
 - Lummi Nation email re: response as affected tribe, May 14, 2018
 - Revised Wetlands & Habitat Conservation Areas memo, July 26, 2018
4. SEPA Determination of Non-significance, issued June 26, 2018, with attached Environmental Checklist, dated February 21, 2018
5. Staff emailed comments with Wilson Engineering, March 1 and 8, 2018
6. Critical Areas Assessment for the Sudden Valley Marina, prepared by Northwest Ecological Services, December 7, 2017
7. Washington State JARPA Form, dated February 13, 2018
8. Washington State Dept of Natural Resources: Application for Use of State-owned Aquatic Lands, posted: November 1, 2012
9. Marina Dry Fire Standpipe Plans prepared by Wilson Survey / Engineering, 10-06-2017, stamped Shoreline Approved, July 26, 2018
10. Certificate of Mailing Notice of Application, May 8, 2018
11. Notice of Application & Optional SEPA Determination of Non-significance, May 8, 2018, with attached mailing labels
12. Notice of Application & Optional DNS Distribution List, issued May 8, 2018, with attached Planner Checklist
13. Certificate of Mailing Notice of Public Hearing, July 25, 2018
14. Certificate of Posting: Notice of Public Hearing, July 31, 2018
15. Legal Notice of Public Hearing, August 2, 2018

II.

Sudden Valley Community Association is seeking approval for a Shoreline Substantial Development Permit to upgrade the existing fire infrastructure for the Sudden Valley Marina in order to meet current Fire Codes. The proposal includes the installation of new water lines, replacement of two gangways, installation of water piping system to the two existing docks, and installation of dry stand pipe assemblies. Current fire regulations require a dry fire standpipe on docks over 150-feet in length. Both existing docks are approximately 267-feet in length.

III.

The Applicant has indicated that the Staff Report is factually correct. The Applicant stated no objection to the Conditions of Approval recommended by Staff. There was no public comment on this matter at the hearing. The Findings of Fact and Conclusions of Law of the Shoreline Planner of the Land Use Services Division of Whatcom County Planning and Development Services, as set forth in the Staff Report, Exhibit No. 2, dated July 26, 2018, a copy of which is attached hereto, are adopted and incorporated herein by this reference.

IV.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

CONCLUSIONS OF LAW

I.

The Whatcom County Shoreline Planner has recommended approval of the requested Shoreline Substantial Development Permit for the proposed upgrade of the existing fire infrastructure for the Sudden Valley Marina in order to meet current Fire Codes.

The Findings of Fact and Conclusions of Law are set forth in the Staff Report, Exhibit No. 2 in the Hearing Examiner file, dated July 26, 2018. Subject to the Conditions of Approval recommended by Staff, the Hearing Examiner also concludes that the proposal is consistent with the Goals, Policies, and Purpose of the Shoreline Management Act, RCW 90.58, and with the Goals and Policies of the Whatcom County Shoreline Management Program. The Conclusions of Law adopted by Staff in the Staff Report are incorporated herein as Conclusions of Law.

II.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

DECISION

A Shoreline Substantial Development Permit is hereby granted to Sudden Valley Community Association for the upgrade of the existing fire infrastructure at the Sudden Valley Marina, Assessor's Parcel No. 370405 227126, 20 Marina Drive, Bellingham, Washington. The permit is granted subject to the following conditions:

1. The proposed shoreline developments shall be consistent with the scope and site plan approved by this Shoreline Substantial Development Permit. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner.
2. The project must be constructed in accordance with the submitted plans/drawings and supporting documentation and comply with all agency permit conditions.
3. Issuance of this shoreline permit does not release the applicant from any other Local, State, regional or Federal statutes or regulations applicable to the proposed development.
4. The applicant shall contact the Washington State Department of Fish and Wildlife (WDFW) and obtain a Hydraulics Project Approval (HPA) or any other requirements as determined by WDFW. Note that any additional mitigation

measures imposed by WDFW shall hereby be adopted as conditions of approval pursuant to WCC 16.16.215. In the event that there is a conflict between such HPA conditions and applicable WCC, the more restrictive standards shall apply.

5. The building permit shall be routed to critical areas for review.
6. A copy of the approved WDFW permit must be submitted to the River and Flood Division and Planning and Development Services prior to issuance of the building permit.
7. The project must be constructed in accordance with the submitted plans/drawings and supporting documentation.
8. An ESC inspection shall be performed during construction. Contact Watershed staff at (360) 778-5948 or (360) 778-5946 to schedule the ESC inspection. Please call 24 hours in advance of your desired inspection date.
9. Activities which expose more than 500 sq. ft. of soil are prohibited from October 1 through May 31.
10. Separate Fire Marshal's Office permitting/fees required for the installation of the fire suppression system.
11. All materials utilized below the ordinary high water mark (OHWM) shall be untreated.
12. Gangway surfaces shall be designed to allow maximum light penetration. Material types shall be depicted on the plans submitted for building permit review.
13. If the gangways have a railing, such railing shall not exceed 36-inches in height and shall be an open framework that does not unreasonably interfere with shoreline views of adjoining properties or lawful use of water surfaces.
14. The existing gangways shall be wholly removed prior to commencing construction of the new gangways. If this involves removal of any treated wood infrastructure, it must be disposed of in a manner that is protective of the environment and disposed of in accordance with state and federal regulations. Wood typically treated with pentachlorophenol and creosote often designates for state toxicity or persistence and is excluded from the Dangerous Waste Regulations if managed in accordance with WAC 173-303-071(g). This exclusion allows the disposal of treated wood to a municipal solid waste landfill permitted under chapter 173-351 WAC, a permitted treatment storage and disposal facility (TSDF), or it can be reused. If the wood is repurposed, it is not regulated as a dangerous waste provided that the reuse is consistent with the intended end use of the treated wood. For additional information please refer to WAC 173-303-071(g) or

Ecology's publication "Focus on Treated Wood Exclusion."

15. Washington State Department of Ecology Water Quality Standards shall be maintained.
16. The project shall not result in significant degradation of ground or surface waters and shall be completed during periods of dry weather.
17. The proposal must comply with all bulk and dimensional setback requirements as required by the Whatcom County Shoreline Management Program and the Whatcom County Zoning Code.
18. Construction Best Management Practices (BMP's) shall be required according to approved TESC in order to reduce or eliminate any potential construction storm water impacts to the adjacent waters and/or floodplain area.
19. All disturbed areas will be required to be seeded and/or mulched upon completion of the project.
20. All construction debris shall be removed from the shoreline environment upon completion of the project and disposed of in accordance to all applicable regulations.
21. Should archaeological resources (e.g. shell midden, faunal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and the area should be secured. The Washington State Department of Archaeology and Historic Preservation (Gretchen Kaehler, Local Government Archaeologist 360-586-3088) and the Lummi Nation Tribal Historic Preservation Office (Lena Tso, THPO 360-312-2257; Tamela Smart, Deputy THPO 360-312-2253) should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.
22. If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all

affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

23. Construction shall be commenced within two (2) years of the effective date of this shoreline permit, as defined by 23.60.190(A)(3), and shall be completed in five (5) years. The Shoreline Administrator may grant a single extension for a period of not more than one (1) year based on a showing of good cause. Such request must be filed with the Shoreline Administrator before the expiration date described above.

NOTICE

In addition to incurring civil liability under Shoreline Management Program Section 23.80.20 and RCW 90.58.210, pursuant to RCW 90.58.220 any person found to have willfully engaged in activities on shorelines of the state in violation of the provisions of the act or the Shoreline Management Program or other regulations adopted pursuant thereto shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than \$25 or more than \$1,000 or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment; provided that the fine for the third and all subsequent violations in any five year period shall not be less than \$500 nor more than \$10,000. Any person who willfully violates any court order, regulatory order or injunction issued pursuant to the Shoreline Management Program shall be subject to a fine of not more than \$5,000, imprisonment in the county jail for not more than 90 days, or both.

NOTICE OF ADMINISTRATIVE APPEAL PROCEDURES FROM FINAL DECISIONS OF THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the Applicant, any opponent of record, or any County department.


Appeals to the shoreline hearings board of a decision on a shoreline substantial development permit, shoreline variance or shoreline conditional use permit may be filed by the applicant/proponent or any aggrieved party pursuant to RCW 90.58.180 within 21 days of filing the Final Decision by Whatcom County with the Department of Ecology.

Whatcom County Council shall consider an appeal of a decision on a shoreline substantial development permit, shoreline variance or shoreline conditional use only when the applicant/proponent waives his/her right to a single appeal to the shoreline hearings board. Such waivers shall be filed with the County in writing concurrent with a notice of appeal within 10 days of a final action. When an applicant/proponent has waived his/her right to a single appeal,

such appeals shall be processed in accordance with the appeal procedures of WCC 23.60.150.H and shall be an open record hearing before the Hearing Examiner.

More detailed information about appeal procedures is contained in the Shoreline Management Program at WCC 23.60.150. Whatcom County Code can be viewed online at <http://www.codepublishing.com/WA/WhatcomCounty>.

DATED this 15th day of August 2018.



Michael Bobbink, Hearing Examiner

WHATCOM COUNTY
Planning & Development Services
5280 Northwest Drive
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Mark Personius, AICP
Director

July 26, 2018

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

The application of Sudden Valley		SHR2018-00001
Community Association for Shoreline		FINDINGS, CONCLUSIONS, AND
Substantial Development		RECOMMENDATIONS

I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Application: The applicant proposes to upgrade the existing fire infrastructure at the Sudden Valley Marina to meet current fire codes. This involves the installation of new water lines, replacement of two gangways, installation of water piping system to the two existing docks, and installation of dry stand pipe assemblies.

Recommendation: Staff recommends approval of the requested developments, subject to the conditions of approval.

II. PRELIMINARY INFORMATION

Applicant: Sudden Valley Community Association
Danielle Johnston, P.E., Wilson Engineering LLC
805 Dupont St., Ste. 7
Bellingham, WA 98225

Property Location: 20 Marina Dr., Bellingham, WA

Parcel Number: 370405 227126

Legal Description: Within Section 05, Township 37 North, Range 04 East, W.M.

Adjacent Water Body: Lake Whatcom

Shoreline Designation: Urban, Aquatic

Statewide Significance: Yes

<u>Authorizing Ordinances:</u>	WCC 23.50	Applicability
	WCC 23.70.010	Administration
	WCC 23.70.030	Hearing Examiner

Applicable Shoreline Program Provisions:
WCC 23.20 Goals and Objectives
WCC 23.30.020 Official Shoreline Map

WCC 23.30	Shoreline Designations
WCC 23.40	Shorelines of Statewide Significance
WCC 23.60.010	Substantial Development Permit Criteria
WCC 23.60.130	Public Hearings
WCC 23.90	General Policies & Regulations
WCC 23.100	Shoreline Use Policies & Regulations

SEPA Review: A determination of Non-Significance (DNS) was issued by Whatcom County, June 26, 2018.

III. PROJECT DESCRIPTION

Proposal: The Sudden Valley Community Association proposes to upgrade the existing fire infrastructure at the Sudden Valley Marina to meet current fire codes. This involves the installation of new water lines, replacement of two gangways, installation of water piping system to the two existing docks, and installation of dry stand pipe assemblies.

Water distribution piping, a fire department connection and other appurtenances will be trenched in through existing gravel and asphalt parking/access areas at the Sudden Valley Marina. Two existing wood gangways will be removed and replaced with two new aluminum gangways with concrete abutments that will support the new waterline, supports, and additional flotation. The water distribution piping will be attached to the new gangways and to the two existing docks, including support systems, flexible connection systems, thrust restraint systems, and dry stand pipe assemblies.

Project Need: The purpose of this project is to upgrade the existing marina fire infrastructure to meet current code requirements. Current fire regulations require a dry fire standpipe on docks over 150 ft. in length. Both existing docks are approximately 267 ft. in length.

Project Area Description: The project is proposed to be located in the gravel parking lot and along the two existing docks at the Sudden Valley Marina, located in Gate 1 of the Sudden Valley Community Association. The site is generally flat and consists of gravel and asphalt driving/parking surfaces, boat storage, and some vegetation. The shoreline of Lake Whatcom borders the northern portion of the parcel, a golf course is to the south, and residential development is to the west.

IV. APPLICABLE CODE & ANALYSIS

Shoreline Jurisdiction: According to the Official Shoreline Map as outlined in WCC 23.30.020.A, the subject site is located within the Urban and Aquatic shoreline designations. Pursuant to WCC 23.30.020.B, the map does not necessarily identify or depict the lateral extent of shoreline jurisdiction nor does it identify associated wetlands. The lateral extent of the shoreline jurisdiction shall be determined on a case-by-case basis based on the location of the OHWM, floodway and presence of associated wetlands. As proposed, the project is located within Shoreline Jurisdiction.

Shorelines of Statewide Significance: Lake Whatcom is considered a shoreline of statewide significance, and therefore subject to the regulations of WCC 23.40.

Substantial Development Permit Requirement: The proposal requires approval of a shoreline substantial development permit pursuant to WCC 23.60.010.A, as it does not strictly meet one of the exemptions listed in WCC 23.60.022.

Public Hearing Requirement: Pursuant to WCC 23.60.130, a public hearing shall be required when the project meets one of the eight criteria enumerated in that section. One criterion for requiring a public hearing is for any proposal that has a cost or fair market value of over

\$100,000. The application states that the cost or fair market value of this project is \$156,911. Therefore, a public hearing is required and has been scheduled for August 15, 2018.

23.60.010 Substantial Development Permit Criteria

- A. A substantial development permit shall be required for all proposed use and development of shorelines unless the proposal is specifically exempt from such requirements pursuant to one or more of the listed exemptions in 23.60.020.2 (23.60.010.A).
- B. In order to be approved, the decision maker must find that the proposal is consistent with the following criteria:
 - 1. All regulations of the SMP appropriate to the shoreline designation and the type of use or development proposed shall be met, except those bulk and dimensional standards that have been modified by approval of a shoreline variance under SMP 23.60.030.
 - 2. All policies of the SMP appropriate to the shoreline area designation and the type of use or development activity proposed shall be considered and substantial compliance demonstrated.
 - 3. For projects located on shorelines of statewide significance, the policies of Chapter 23.40 WCC shall also be adhered to.

The applicable SMP regulations are detailed below. Staff comments are provided in italics. Lake Whatcom is designated as a shoreline of statewide significance per WCC 23.40.020. As such, the statewide interest should be recognized and protected over the local interest. Staff reviewed this proposal for consistency with WCC 23.40.030 and RCW 90.58.030 and finds that this specific proposal conforms to the policies and statutes for shorelines of statewide significance.

23.90.030 Ecological Protection and Critical Areas
23.90.030.B Regulations

- 1. Mitigation Sequencing - To comply with the policies of SMP 23.90.03.A, a shoreline permit applicant or project proponent shall demonstrate all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not have significant adverse impacts. Mitigation shall occur in the following prioritized order:
 - a. Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or moving the action.
 - b. Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology and engineering, or by taking affirmative steps to avoid or reduce adverse impacts.
 - c. Rectifying the adverse impact by repairing, rehabilitating or restoring the affected environment.
 - d. Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of action.
 - e. Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments and monitoring the adverse impact and the mitigation project and taking appropriate corrective measures.
- 2. Because of its incorporation by reference herein under Section 23.10.06.A. above, the provisions of the Whatcom County Critical Areas Ordinance, WCC 16.16, shall apply to any use, alteration or development within shoreline jurisdiction whether or not a shoreline permit or written statement of exemption is required. Unless otherwise stated, no development shall be constructed, located, extended, modified, converted, or altered,

or land divided without full compliance with WCC 16.16 and the Program, provided that alteration for a water-oriented use may be allowed in accordance with WCC 16.16.225.B.3. Within shoreline jurisdiction, the regulations of WCC 16.16 shall be liberally construed together with the Program to give full effect to the objectives and purposes of the provisions of the Program and Act.

3. Unless otherwise stated, critical area buffers shall be protected and/or enhanced pursuant to this Program and WCC 16.16.
7. The cumulative effects of individual development proposals shall be identified and evaluated to assure that no net loss standards are achieved.

This project was reviewed by critical areas staff for conformance with WCC 16.16, specifically habitat conservation areas (HCA). Staff finds that the proposal meets all policies and regulations related to ecological protection and critical areas. The proposed improvements are located within existing disturbed areas and within an existing footprint.

23.90.040 Water Quality and Quantity
23.90.040.B Regulations

1. Shoreline use and development shall incorporate measures to protect and maintain surface and ground water quantity and quality in accordance with all applicable laws.
2. New development shall provide stormwater management facilities designed, constructed, and maintained in accordance with the current stormwater management standards. Deviations from these standards may be approved where it can be demonstrated that off-site facilities would provide better treatment, or where common retention, detention and/or water quality facilities meeting such standards have been approved as part of a comprehensive stormwater management plan.
3. Best management practices (BMPs) for control of erosion and sedimentation shall be implemented for all development in shorelines through an approved temporary erosion and sediment control (TESC) plan, or administrative conditions.
5. All materials that may come in contact with water shall be constructed of materials, such as untreated wood, concrete, approved plastic composites or steel, that will not adversely affect water quality or aquatic plants or animals. Materials used for decking or other structural components shall be approved by applicable state agencies for contact with water to avoid discharge of pollutants from wave splash, rain, or runoff. Wood treated with creosote, copper chromium arsenic or pentachlorophenol is prohibited in or above shoreline water bodies.

Staff finds that the proposal meets all policies and regulations related to water quality and quantity. The proposed activities are considered underground utilities and are exempt from providing a stormwater design, pursuant to WCC 20.51.420(1). The project will be conditioned to require BMPs during construction, and construction of more than 500 sq. ft. is limited to June 1 – September 30 of any year. All new materials proposed for the gangway and float will be untreated.

23.90.060 Vegetation Conservation
23.90.060.B Regulations

1. Shoreline developments shall comply with the vegetation conservation policies of this Program through compliance with the critical area standards of WCC 16.16.335, 16.16.360, 16.16.630 and 16.16.740 for protection and maintenance of critical area and buffer vegetation.
2. Where compliance with SMP 23.90.06.B.1 is not feasible or required, new developments shall be required to develop and implement a vegetation management plan. When

required, vegetation management plans shall be prepared by a qualified professional and shall be consistent with the requirements in WCC 16.16.260.B and .C, provided that the Administrator may establish prescriptive standards for vegetation conservation and management as an alternative to requiring a specific plan for a development. Vegetation management plans shall describe actions that will be implemented to ensure that buffer areas provide ecological functions equivalent to a dense native vegetation community to the extent possible given the area that is feasibly available. Required vegetation shall be maintained over the life of the use and/or development by means of a conservation easement or similar legal instrument recorded with the Whatcom County Auditor.

4. Vegetation clearing shall be limited to the minimum necessary to accommodate approved shoreline development.
5. Removal of noxious weeds and/or invasive species shall be incorporated in vegetation management plans, as necessary, to facilitate establishment of a stable community of native plants.

The proposal will have minimal impacts on vegetation conservation, as the only area proposed where vegetation removal may occur is the new concrete abutments for the replacement gangways, and vegetation removal would be temporary as the new abutments will be located in the same footprint as the existing abutments. Critical Areas staff has reviewed the proposal and found that this will not have an impact on ecological functions. Staff finds that the proposal is consistent with the regulations of WCC 23.90.060 listed above.

23.100.160 Utilities
23.100.160.B Regulations

1. Design and Operation.
 - f. Fire Protection Facilities. Storage and handling facilities for water-borne firefighting or rescue equipment may be permitted on shoreline jurisdiction at locations which are suitable considering the purpose of the proposal and the policies of this program.

Staff finds that the proposal meets the above regulation for utilities within Shoreline Jurisdiction as the purpose of the project is to provide fire protection for an existing marina.

V. Cumulative Impact Analysis

In the granting of all shoreline substantial development permits, shoreline conditional use permits, and shoreline variance permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if shoreline permits were granted for other developments in the area where similar circumstances exist, the sum of the permitted actions should also remain consistent with the policy of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes or other users.

Pursuant to WCC 23.60.010.C, the project was reviewed for consideration of potential cumulative impacts that would result if similar developments were permitted under similar circumstances. The proposal as conditioned appears to comply with the development standards, bulk and dimensional setbacks, vegetation conservation standards, and critical area requirements. As such, additional approvals for additional developments where similar circumstances exist are not likely to represent a cumulative environmental impact to the shoreline. It is the opinion of staff that this project as proposed and conditioned meets the ecological protection policies of the Whatcom County Shoreline Management Program resulting in no net loss of ecological functions and process and that the sum of similar permitted actions appears to comply with the policy of RCW 90.58.020.

VI. PUBLIC COMMENTS

One public comment was received during the public comment period for this application. The Lummi Nation submitted comments via email on May 14, 2018. They requested that Whatcom County's Inadvertent Discovery Plan should remain on site during all project activities to ensure that a clear plan is available should archaeological resources or human remains be encountered. These have been incorporated as conditions of approval below.

VII. AGENCY COMMENTS

Erin Page, Critical Areas Planner – Planning & Development Services: Submitted a memorandum on May 9, 2018 signing off on project approval with the following conditions:

- The building permit shall be routed to critical areas for review.
- A copy of the approved HPA with WDFW approved site plan is required prior to issuance of the building permit.

Denise Doezema, Engineering Technician – Public Works River & Flood: Submitted a memorandum on April 30, 2018 signing off on project approval with the following conditions:

- A copy of the approved DFW permit must be submitted to the River and Flood Division and/or Planning and Development Services prior to start of any work.
- The project must be constructed in accordance with the submitted plans/drawings and supporting documentation.

Michael Kershner, Watershed Planner – Planning and Development Services: Submitted a memorandum on May 4, 2018 signing off on project approval with the following conditions:

- An ESC inspection shall be performed during construction. Contact watershed staff at (360) 778-5948 or (360) 778-5946 to schedule the ESC inspection. Please call 24 hours in advance of your desired inspection date.
- Activities which expose more than 500 sq. ft. of soil are prohibited from October 1 through May 31.

Mitch Nolze, Fire Marshal Planning & Development Services: Submitted an email dated May 17, 2018 signing off on project approval with the following conditions:

- Separate Fire Marshal's Office permitting/fees required for the installation of the fire suppression system.

VIII. RECOMMENDATION

Based on the above findings, Staff recommends approval of the Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, and Shoreline Variance subject to the following conditions:

1. *The proposed shoreline developments shall be consistent with the scope and site plan approved by this shoreline conditional use permit. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner.*
2. *The project must be constructed in accordance with the submitted plans/drawings and supporting documentation and comply with all agency permit conditions.*

3. *Issuance of this shoreline permit does not release the applicant from any other Local, State, regional or Federal statutes or regulations applicable to the proposed development.*
4. *The applicant shall contact the Washington State Department of Fish and Wildlife (WDFW) and obtain a Hydraulics Project Approval (HPA) or any other requirements as determined by WDFW. Note that any additional mitigation measures imposed by WDFW shall hereby be adopted as conditions of approval pursuant to WCC 16.16.215. In the event that there is a conflict between such HPA conditions and applicable WCC, the more restrictive standards shall apply.*
5. *The building permit shall be routed to critical areas for review.*
6. *A copy of the approved WDFW permit must be submitted to the River and Flood Division and Planning and Development Services prior to issuance of the building permit.*
7. *The project must be constructed in accordance with the submitted plans/drawings and supporting documentation.*
8. *An ESC inspection shall be performed during construction. Contact watershed staff at (360) 778-5948 or (360) 778-5946 to schedule the ESC inspection. Please call 24 hours in advance of your desired inspection date.*
9. *Activities which expose more than 500 sq. ft. of soil are prohibited from October 1 through May 31.*
10. *Separate Fire Marshal's Office permitting/fees required for the installation of the fire suppression system.*
11. *All materials utilized below the ordinary high water mark (OHWM) shall be untreated.*
12. *Gangway surfaces shall be designed to allow maximum light penetration. Material types shall be depicted on the plans submitted for building permit review.*
13. *If the gangways have a railing, such railing shall not exceed 36-inches in height and shall be an open framework that does not unreasonably interfere with shoreline views of adjoining properties or lawful use of water surfaces.*
14. *The existing gangways shall be wholly removed prior to commencing construction of the new gangways. If this involves removal of any treated wood infrastructure, it must be disposed of in a manner that is protective of the environment and disposed of in accordance with state and federal regulations. Wood typically treated with pentachlorophenol and creosote often designates for state toxicity or persistence and is excluded from the Dangerous Waste Regulations if managed in accordance with WAC 173-303-071(g). This exclusion allows the disposal of treated wood to a municipal solid waste landfill permitted under chapter 173-351 WAC, a permitted treatment storage and disposal facility (TSDF), or it can be reused. If the wood is repurposed, it is not regulated as a dangerous waste provided that the reuse is consistent with the intended end use of the treated wood. For additional information please refer to WAC 173-303-071(g) or Ecology's publication "Focus on Treated Wood Exclusion."*
15. *Washington State Department of Ecology Water Quality Standards shall be maintained.*
16. *The project shall not result in significant degradation of ground or surface waters and shall be completed during periods of dry weather.*

17. *The proposal must comply with all bulk and dimensional setback requirements as required by the Whatcom County Shoreline Management Program and the Whatcom County Zoning Code.*
18. *Construction Best Management Practices (BMP's) shall be required according to approved TESC in order to reduce or eliminate any potential construction storm water impacts to the adjacent waters and/or floodplain area.*
19. *All disturbed areas will be required to be seeded and/or mulched upon completion of the project.*
20. *All construction debris shall be removed from the shoreline environment upon completion of the project and disposed of in accordance to all applicable regulations.*
21. *Should archaeological resources (e.g. shell midden, faunal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and the area should be secured. The Washington State Department of Archaeology and Historic Preservation (Gretchen Kaehler, Local Government Archaeologist 360-586-3088) and the Lummi Nation Tribal Historic Preservation Office (Lena Tso, THPO 360-312-2257; Tamela Smart, Deputy THPO 360-312-2253) should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.*
22. *If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.*
23. *Construction shall be commenced within two (2) years of the effective date of this shoreline permit, as defined by 23.60.190(A)(3), and shall be completed in five (5) years. The Shoreline Administrator may grant a single extension for a period of not more than one (1) year based on a showing of good cause. Such request must be filed with the Shoreline Administrator before the expiration date described above.*

Report prepared by:

Kyla Walters
Whatcom County Shoreline Administrator
Planning and Development Services