

WHATCOM COUNTY HEARING EXAMINER

RE: SHORELINE SUBSTANTIAL DEVELOPMENT) SHR2012-0003
Application for)
)
Whatcom County) FINDINGS OF FACT,
Parks and Recreation Department) CONCLUSIONS OF LAW,
) AND DECISION
)

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting a Shoreline Substantial Development Permit for the replacement and reconfiguration of existing recreational docks at Lake Samish Park.

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: Whatcom County Parks and Recreation Department

Property Location: 673 North Lake Samish Drive
Bellingham, Washington 98229

Legal Description: Section 27 Township 37 North, Range 03 East, W.M.
Parcel(s) No. 370327 182523

Adjacent Water Body: Lake Samish

Shoreline Designation: Conservancy / Aquatic

Statewide Significance: No

Applicable Shoreline Program Provisions:

SMP 23.10	Purpose and Intent
SMP 23.20	Goals and Objectives
SMP 23.30	Shoreline Jurisdiction and Area Designations
SMP 23.50	Applicability
SMP 23.60	Shoreline Permits
SMP 23.70	Administration
SMP 23.80	Legal Provisions
SMP 23.90	General Policies and Regulations
SMP 23.100.09	Moorage: Docks, Piers and Mooring Bouys
SMP 23.110	Definitions

SEPA Review: Determination of Non-significance (DNS) issued on April 20, 2010 by Whatcom County Planning and Development Services (WCPDS)

Legal Notices: Published – February 8, 2012, Notice of Application
- April 26, 2012, Notice of Public Hearing
Posted – Notice of Public Hearing, April 24, 2012
Mailed – Notice of Public Hearing, April 19, 2012

Hearing Date: May 9, 2012

Parties of Record

Rod Lamb
Whatcom County Parks and Recreation Department
3373 Mount Baker Highway
Bellingham, Washington 98226

Chad Yunge
Planning and Development Services

Exhibits

- 1 Land Use Application, with attachments
 - 1-1 Fee Responsibility
 - 1-2 Supplemental Application
 - 1-3 PDS Form: Guidelines for Property Owner Notices
 - 1-4 Property Owner Addresses within 1000-ft
 - 1-5 Statutory Warranty Deed
 - 1-6 PDS Form: Shoreline Permit Submittal Requirements
 - 1-7 PDS Comment Form/Letter Notice of Application to Property Owners, February 8, 2012
 - 1-8 Determination of Complete Application, February 2, 2012

- 1-9 Memo from Rod Lamb to Chad Yunge, January 11, 2012
- 1-10 Property Owner Address Labels

- 2 Staff Report, dated May 3, 2012

- 3 Site Plan Packet, January 2012

- 4 Certificate of Mailing, Notice of Application, not dated

- 5 Legal Notice of Application, February 8, 2012

- 6 Certificate of Mailing, Notice of Public Hearing, April 19, 2012

- 7 Certificate of Posting, Notice of Public Hearing, April 24, 2012.

- 8 Legal Notice of Public Hearing, April 26, 2012

II.

Whatcom County Parks and Recreation Department is proposing the replacement and reconfiguration of existing recreational docks at Lake Samish Park.

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 either in writing or at the public 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 May 3, 2012, 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 replacement and reconfiguration of existing recreational docks at Lake Samish Park.

Findings of Fact and Conclusions of Law are set forth in the Staff Report, Exhibit No. 2, dated May 3, 2012. 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 Whatcom County Parks and Recreation Department for the replacement and reconfiguration of existing recreational docks at Lake Samish Park, located on Assessor's Parcel No. 370327 182523, at 673 North Lake Samish Drive, Bellingham, Washington. The permit is granted subject to the following conditions:

1. The Applicant/Proponent shall obtain a commercial building permit from the Whatcom County Building Services Division prior to any development activity on the subject property including any clearing and/or grading. The building permit shall include engineered construction plans and applicable details as conditioned within this approval. The building permit will require additional review by the Whatcom County Shoreline Administrator to determine compliance with conditions of these shoreline permits prior to issuance of the building permit.
2. 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. A copy of the issued HPA shall be submitted along with the above required building permit. 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.
3. If necessary, the use of heavy machinery shall be limited to use via floating barge. No heavy machinery shall be utilized in upland areas or on the bedlands of Lake Samish unless reviewed and approved by the Shoreline Administrator. Minor upland excavation associated with abutment retrofits and the access path replacement shall be done using manual means to avoid damage to existing buffer vegetation outside of the approved development area.
4. Temporary Erosion and Sedimentation Control (TESC) Measures shall be shown on the development plans required for building permit review and approval. WCPDS can assist

with selection of proper Best Management Practices (BMPs) upon request during the building permit review. TESC inspections will be conducted by WCPDS throughout construction as required within the Lake Samish Watershed.

5. The docks shall be constructed of untreated materials such as untreated wood, approved plastic composites, concrete or steel. This condition applies to any portion of the docks that comes in contact with the water including wave splash, rain or runoff. Materials to be utilized shall be clearly identified on the construction plans required for review of the building permit. Use of galvanized metals is prohibited on Lake Samish.
6. Dock surfaces designed to allow maximum light penetration shall be used on the entire dock structure. Materials and specifications to be utilized shall be clearly identified on the construction plans required for review of the building permit.
7. The dock shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night. Aluminum components such as the access ramps and any other visible aluminum component shall be powder-coated or otherwise finished to eliminate glare and to blend in with the natural surroundings. "Horse-fencing" panels associated with the proposed railings shall also be painted or coated to blend in with the natural surroundings. This could be done by using bare steel fencing and allowing it to oxidize or by painting or powder-coating. Such information shall be shown on the required construction drawings.
8. Storage of fuel, oils, and other toxic materials is prohibited on docks except portable containers when provided with secondary containment. If such storage is proposed, the construction plans shall illustrate compliance with the required containment structures.
9. All railings 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.
10. Clearing of existing vegetation shall be kept to the absolute minimum necessary to accommodate the approved project. Wire-backed silt/exclusion fencing shall be installed adjacent to the existing pathway areas to be replaced and the shoreline of Lake Samish to ensure existing vegetation adjacent to the lake is protected throughout construction. The location of the fencing to be installed shall be shown on the construction drawings required as part of the commercial building permit.
20. Construction shall be commenced within two years of the effective date of this permit as defined in 23.60.19.A.3, The Hearing Examiner or Administrator, as appropriate, may authorize a single extension for a period of not more than one (1) year based on a showing of good cause, if a request for extension has been filed with the Hearing Examiner or Administrator, as appropriate, before the expiration date of the shoreline permit and notice of the proposed extension is given to Parties of Record and the

Department of Ecology.

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. Appeal to County Council. Within ten calendar days of the date of the written decision a written notice of appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The appeal notice must state either:

- 1) The specific error of law which is alleged, or
- 2) How the decision is clearly erroneous on the entire record.

Any party of record may request a closed record review of the Hearing Examiner's Decision, issued under SMP 23.60.15.H.4, by the County Council. Such an appeal shall be filed with the County Council on forms supplied by the County within ten (10) calendar days of the written decision. If appeal is made to the County Council, notice of appeal shall be provided to all parties of record at least fifteen (15) days prior to consideration by the County Council. The Council shall meet to review the Hearing Examiner's decision within twenty-one (21) days of transmittal thereof, at which time it may approve or disapprove the application, or remand the matter to the Hearing Examiner. More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830 and Section 23.60.15.H. A copy of this document is available for review at the County Council Office. After an appeal has been filed and the Council Office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 9th day of May 2012.



Michael Bobbink, Hearing Examiner

EXHIBIT

#2

WHATCOM COUNTY
Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-676-6907, TTY 800-833-6384
360-738-2525 Fax



J.E. "Sam" Ryan
Director
RECEIVED
MAY 08 2012

WHATCOM COUNTY
HEARING EXAMINER

May 3, 2012

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

The application of
Whatcom County Parks and Recreation
for a Shoreline Substantial Development
Permit

SHR2012-00003
FINDINGS, CONCLUSIONS, AND
RECOMMENDATIONS

I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Application: Replacement and reconfiguration of existing recreational docks at Lake Samish Park.

Recommendation: Staff recommends approval of the requested permits subject to modifications and conditions outlined within this staff report.

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: Whatcom County Parks and Recreation Department
3373 Mount Baker Highway
Bellingham, Washington 98226

Property Location: 673 North Lake Samish Drive
Bellingham, Washington 98229

Legal Description: Section 27 Township 37 North, Range 03 East, W.M.
Parcel(s) #: 370327182523

Adjacent Water Body: Lake Samish

Shoreline Designation: Conservancy / Aquatic

Statewide Significance: No

B. PROCEDURAL INFORMATION

Applicable Shoreline Program Provisions:

SMP 23.10	Purpose and Intent
SMP 23.20	Goals and Objectives
SMP 23.30	Shoreline Jurisdiction and Area Designations
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SMP 23.90	General Policies and Regulations
SMP 23.100.09	Moorage: Docks, Piers and Mooring Bouys
SMP 23.110	Definitions

SEPA REVIEW: Determination of Non-significance (DNS) issued on April 20, 2010 by Whatcom County Planning and Development Services (WCPDS).

III. INTRODUCTION

The applicant is requesting approval of a shoreline substantial development permit to replace and reconfigure two existing public recreational docks at Lake Samish Park. The project includes demolition and removal of an existing small boat dock, storage locker and fishing dock along with a section of concrete walkway within the park. The small boat dock and fishing dock will be replaced with new structures within the same general areas with new configurations to better facilitate recreational operations and to bring the structures up to current construction standards. The new dock structures will utilize pre-manufactured aluminum gangways atop existing reinforced shoreline abutments. Floating portions of the dock structures will use encapsulated foam with grated fiberglass surfacing to allow light penetration. The portions of the existing concrete walkways will be replaced with gravel surfacing within the same footprint as now exists.

The proposed development is located within Samish Park on the northwest portion of Lake Samish. The 39-acre park was originally developed by the County in the late 1960s and the existing docks have reached their useful life and require replacement. Adjacent land uses consist of single-family residences to the east and west along Lake Samish and commercial forestry to the north on Chuckanut Mountain.

IV. FINDINGS / CONCLUSIONS

Shoreline Substantial Development

Section 23.60.010.A states that 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 outlined in 23.60.020.2. The reconfiguration of portions of the existing docks does not qualify as maintenance and repair nor did the project qualify for exempt review per the other exemptions listed in 23.60.020.2.

According to 23.60.010.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 23.60.03;
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; and
3. For projects located on shorelines of statewide significance, the policies of Chapter 4 shall be also adhered to.

In addition to the above criteria, 23.60.010.C states that in the granting of all shoreline substantial development permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if shoreline substantial development 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.

General and use-specific policies and regulations associated with dock development are found within Sections 23.90 and 23.100.090, respectively. The following policies and regulations are appropriate for the type of use and development being proposed:

23.90.030 Ecological Protection and Critical Areas

23.90.030.A Policies

1. Shoreline use and development should be carried out in a manner that prevents or mitigates adverse impacts so that the resulting ecological condition does not become worse than the current condition. This means assuring no net loss of ecological functions and processes and protecting critical areas designated in WCC 16.16, in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property. Permitted uses shall be designed and conducted to minimize, in so far as practical, any resultant damage to the ecology and environment (RCW 90.58.020). Shoreline ecological functions that should be protected include, but are not limited to, fish and wildlife habitat, food chain support, and water temperature maintenance. Shoreline processes that should be protected include, but are not limited to, water flow; littoral drift; erosion and accretion; infiltration; ground water recharge and discharge; sediment delivery, transport, and storage; large woody debris recruitment; organic matter input; nutrient and pathogen removal; and stream channel formation/maintenance.
2. In assessing the potential for net loss of ecological functions or processes, project-specific and cumulative impacts should be considered.
3. Development standards for density, frontage, setbacks, impervious surface, shoreline stabilization, vegetation conservation, buffers, critical areas, and water quality should protect existing shoreline ecological functions and processes. During permit review, the Administrator should consider the expected impacts associated with proposed shoreline development when assessing compliance with this policy.

23.90.030.B Regulations

1. Mitigation Sequencing - To comply with the policies of SMP 23.90.030.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 23.10.060.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.
4. Use of motor vehicles including unlicensed off-road vehicles is permitted only on roads or trails specifically designated for such use. Motor vehicle use, except for vessels and float planes, is prohibited waterward of the ordinary high water mark, on tidelands, public or private beaches, wetlands and/or their associated buffers; except as necessary for public health and safety or permitted maintenance activities associated with approved developments or as otherwise permitted.
7. The cumulative effects of individual development proposals shall be identified and evaluated to assure that no net loss standards are achieved.

The proposed project is consistent with the above referenced policies and regulations. The subject property is currently developed with docks in the same general area as those proposed. In addition, the section of paved walkway proposed for removal will be replaced with a new gravel pathway within the same footprint. A narrow band of native vegetation currently exists between the existing trail and the shoreline of Lake Samish. No substantial impacts to this

buffer area are anticipated to accomplish the project proposal. Conditions of approval have been added to this recommendation so that such areas are physically excluded from the work area to avoid disturbance. The proposed dock structures will utilize untreated materials, encapsulated float tubs and light-penetrating decking. In addition, the applicant is removing a storage locker; portions of which are currently located over the water. Pre-fabricated aluminum ramps are also proposed to span the nearshore area between the upland abutment and the floating portions of the docks. The above measures will reduce shading impacts in comparison to the existing dock structures. A Hydraulics Project Approval (HPA) is required from the Washington State Department of Fish and Wildlife (WDFW) for the proposed development. Any conditions of the HPA that are more restrictive than conditions imposed by the SMP shall become conditions of this approval pursuant to 16.16.215.A

23.90.040 Water Quality and Quantity

23.90.040.A Policies

1. The location, construction, operation, and maintenance of all shoreline uses and developments should maintain or enhance the quantity and quality of surface and ground water over the long term.
2. Shoreline use and development should minimize the need for chemical fertilizers, pesticides or other similar chemical treatments to prevent contamination of surface and ground water and/or soils, and adverse effects on shoreline ecological functions and values.
3. Appropriate buffers along all wetlands, streams, lakes, and marine water bodies should be provided and maintained in a manner that avoids the need for chemical treatment.

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.

As conditioned, the proposed project is consistent with the above water quality provisions. The project does not create additional impervious surfaces, nor does it propose any tree canopy clearing. The Lake Samish watershed is located within a Water-Resource Overlay pursuant to the Whatcom County Zoning Ordinance (WCC Title 20). The project was reviewed for consistency with such provisions and approved subject to conditions requiring best management practices (BMP) be implemented during construction to control the potential for sediment runoff to Lake Samish as a result of the trail replacement portions of the project. In addition, the trail work must be conducted during the dry season pursuant to 20.80.735(2)(e).

This approval recommendation has been conditioned that the proposed dock structures be constructed of untreated materials consistent with the above water quality regulations as well as those required in Section 23.100.090 referenced later within this staff report. Galvanized metal is considered and treated material and is not permitted for use on Lake Samish.

23.90.060 Vegetation Conservation

23.90.060.A Policies

1. Where new developments and/or uses are proposed, native shoreline vegetation should be conserved to maintain shoreline ecological functions and/or processes and mitigate the direct, indirect and/or cumulative impacts of shoreline development, wherever feasible. Important functions of shoreline vegetation include, but are not limited to:
 - a. Providing shade necessary to maintain water temperatures required by salmonids, forage fish, and other aquatic biota.
 - b. Regulating microclimate in riparian and nearshore areas.
 - c. Providing organic inputs necessary for aquatic life, including providing food in the form of various insects and other benthic macro invertebrates.
 - d. Stabilizing banks, minimizing erosion and sedimentation, and reducing the occurrence/severity of landslides.
 - e. Reducing fine sediment input into the aquatic environment by minimizing erosion, aiding infiltration, and retaining runoff.
 - f. Improving water quality through filtration and vegetative uptake of nutrients and pollutants.
 - g. Providing a source of large woody debris to moderate flows, create hydraulic roughness, form pools, and increase aquatic diversity for salmonids and other species.
 - h. Providing habitat for wildlife, including connectivity for travel and migration corridors.

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 23.90.060.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.

This recommendation has been conditioned that construction exclusion fencing be installed prior to start of construction to preserve exist shoreline buffer vegetation from disturbance during the construction of the proposed docks and trails. As such, the proposed project is consistent with the above vegetation conservation policies and regulations.

23.100.090 Moorage: Docks, Piers and Mooring Buoys

Moorage including docks, piers and mooring buoys in shoreline areas shall be subject to the policies and regulations of this Section and Chapter 9.

23.100.090.A Moorage: Docks, Piers and Mooring Buoys – Policies

2. New moorage, excluding docks accessory to single family residences, should be permitted only when the applicant/proponent has demonstrated that a specific need exists to support the intended water-dependent or public access use.
4. Docks, piers and mooring buoys, including those accessory to single family residences, should avoid locations where they will adversely impact shoreline ecological functions or processes, including currents and littoral drift.
5. Moorage should be spaced and oriented in a manner that minimizes hazards and obstructions to public navigation rights and corollary rights thereto such as, but not limited to, fishing, swimming and pleasure boating, as well as private riparian rights of adjacent land owners.

6. Moorage should be restricted to the minimum size necessary to meet the needs of the proposed use. The length, width and height of piers and docks should be no greater than that required for safety and practicality for the primary use.
7. Pile supports are preferred over fills because piles do not displace water surface and intertidal or aquatic habitat and are removable and thus more flexible in terms of long term use patterns. Floats may be less desirable than pile structures where aquatic habitat or littoral drift are significant.
8. The use of buoys for small craft moorage is preferred over pile or float structures because of lesser long term impact on shore features and users; moorage buoys should be placed as close to shore as possible to minimize obstruction to navigation.
11. Piers and docks should be constructed of materials that will not adversely affect water quality or aquatic plants and animals in the long term.
12. New pier and dock development should be designed so as not to interfere with lawful public access to or use of shorelines. Developers of new piers and shared moorage should be encouraged to provide physical or visual public access to shorelines whenever safe and compatible with the primary use and shore features.

The proposed dock is consistent with the above policies through compliance with the following regulations associated with new moorage development:

23.100.090.B Moorage: Docks, Piers and Mooring Buoys – Regulations

6. Piers and docks shall be constructed of materials that will not adversely affect water quality or aquatic plants and animals over the long term. Materials used for submerged portions of a pier or dock, decking and other components that may come in contact with water shall be approved by applicable state agencies for use in water to avoid discharge of pollutants from wave splash, rain or runoff. Wood treated with creosote, pentachlorophenol or other similarly toxic materials is prohibited. Piers and docks in lakes providing a public water supply shall be constructed of untreated materials, such as untreated wood, approved plastic composites, concrete or steel.

As Lake Samish is utilized as a source of freshwater for the residents in the area, this permit recommendation has been conditioned that all materials used for the proposed docks be untreated.

7. Piers and docks shall be the minimum size necessary to meet the needs of the proposed water-dependent use.

The project proposal will replace two existing dock structures at Samish Park. The westernmost dock is a fishing pier and not for use by vessels. The easternmost dock will replace an existing dock utilized for moorage of small boat rentals provided by the park. The size and configuration of the two docks are based on the use patterns of the existing public docks over the past thirty years since the park was created. The boat rental dock has been reconfigured to be slightly longer with a different float layout. Such layout is consistent with the above regulation in that its design is associated with a specific water-dependent use.

8. In order to minimize impacts on nearshore areas and avoid reduction in ambient light level:
 - a. The width of piers, docks and floats shall be the minimum necessary and shall not exceed 4 feet in width, except where specific information on use patterns justifies a greater width. Marine floats shall not exceed 8 feet in width nor 40 feet in length and freshwater floats shall not exceed 6 feet in width and 20 feet in length unless authorized by a variance.

The width of the proposed gangways are six feet including the width of the proposed railings. The width is necessary to provide adequate ingress and egress for ADA compliance as well as for simultaneous use by multiple members of the general public.

- b. Dock surfaces that allow maximum light penetration shall be used on walkways or gangplanks in nearshore areas.

The proposed dock structures have been designed to allow maximum light penetration; consistent with this regulation.

- c. Piers, docks and floats shall be located along a north/south orientation to the maximum extent feasible.

The proposed docks are consistent with this regulation with a primary north/south orientation.

10. Dock and Pier Design

- a. Piers and docks shall use pile supports unless engineering studies demonstrate that pile supports are insufficient to ensure public safety. Riprapped or bulkheaded fills may be approved only as a conditional use and only when demonstrated that no feasible alternative is available. Mitigation shall be provided to ensure no net loss of shoreline ecological functions and processes.

The proposed docks utilize pre-manufactured aluminum gangways to span the distance between the upland abutments and the proposed floats. As such, piping supports are not necessary. The floats are anchored back to the shoreline utilizing cables to avoid the need for support pilings to secure the floats.

- b. Approaches to piers and docks shall use piers or other structures to span the entire upper foreshore to the point of intersection with stable upland soils and shall be design to avoid interference with littoral drift or wave refraction. Limited fill or excavation may be allowed landward of the OHWM to match the upland with the elevation of the pier or dock.

The proposed docks will utilize the existing upland abutments/shoreline attachments associated with the existing docks. These existing abutments do not substantially interfere with existing shore processes in the area and are consistent with this regulation.

15. If a dock is provided with 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.

The proposed railings have an open framework consistent with this regulation. This approval recommendation has been conditioned that no railing exceeds the required 36 inch maximum height.

17. Moorage facilities shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night. Exterior finish shall be generally non-reflective.

This permit recommendation has been conditioned that all visible aluminum components be powder-coated or otherwise finished to be non-reflective and to blend with the surrounding uplands. Ends of the proposed docks shall be marked with reflectors.

18. Moorage facilities shall be constructed and maintained so that no part of a facility creates hazardous conditions nor damages other shore property or natural features during predictable flood conditions. Floats shall be securely anchored.

The above regulations will be reviewed during construction permit review. An engineered design will likely be required to address flooding issues.

23.60.010.C Cumulative Impacts

Section 23.60.010.C states that in the granting of all shoreline substantial development permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if shoreline substantial development 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.

The proposed project is consistent with the above standard. No significant impacts to the shoreline environment were identified during review of the project. The proposal will replace two existing docks of similar size and configuration with new structures built with modern materials and designed to minimize aquatic impacts. Overall, the project will result in less over-water shading than the existing structures. In addition, no opportunity exists elsewhere on Lake Samish where public docks can be replaced. As such, no additional approvals for like actions can occur in the future at this point in time.

V. PUBLIC COMMENTS

No adverse written public comment was received during the review of this permit. One phone call was received regarding the size of the replacement docks. The caller was an adjacent landowner and was concerned that the use of the docks was being expanded. Upon explanation of the project proposal, the caller had no concerns with the project.

VI. AGENCY COMMENTS

No agency comments were received during review of the permit.

VII. RECOMMENDATIONS

Based on the above findings and technical review, Staff recommends approval of the request for a shoreline substantial development permit and shoreline conditional use permit, as modified by staff and subject to the following conditions of approval:

1. *The applicant/proponent shall obtain a commercial building permit from the Whatcom County Building Services Division prior to any development activity on the subject property including any clearing and/or grading. The building permit shall include engineered construction plans and applicable details as conditioned within this approval. The building permit will require additional review by the Whatcom County Shoreline Administrator to determine compliance with conditions of these shoreline permits prior to issuance of the building permit.*
2. *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. A copy of the issued HPA shall be submitted along with the above required building permit. 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.*
3. *If necessary, the use of heavy machinery shall be limited to use via floating barge. No heavy machinery shall be utilized in upland areas or on the bedlands of Lake Samish unless reviewed and approved by the Shoreline Administrator. Minor upland excavation associated with abutment retrofits and the access path replacement shall be done using manual means to avoid damage to existing buffer vegetation outside of the approved development area.*
4. *Temporary erosion and sedimentation control (TESC) measures shall be shown on the development plans required for building permit review and approval. WCPDS can assist with selection of proper best management practices (BMPs) upon request during the building permit review. TESC inspections will be conducted by WCPDS throughout construction as required within the Lake Samish Watershed.*
5. *The docks shall be constructed of untreated materials such as untreated wood, approved plastic composites, concrete or steel. This condition applies to any portion of the docks that comes in contact with the water including wave splash, rain or runoff. Materials to be utilized shall be clearly identified on the construction plans required for review of the building permit. Use of galvanized metals is prohibited on Lake Samish.*
6. *Dock surfaces designed to allow maximum light penetration shall be used on the entire dock structure. Materials and specifications to be utilized shall be clearly identified on the construction plans required for review of the building permit.*
7. *The dock shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night. Aluminum components such as the access ramps and any other visible aluminum component shall be powder-coated or otherwise finished to eliminate glare and to blend in with the natural surroundings. "Horse-fencing" panels associated with the proposed railings shall also be painted or coated to blend in with the natural surroundings. This could be done by using bare steel fencing and allowing it to oxidize or by painting or*

powder-coating. Such information shall be shown on the required construction drawings.

- 8. Storage of fuel, oils, and other toxic materials is prohibited on docks except portable containers when provided with secondary containment. If such storage is proposed, the construction plans shall illustrate compliance with the required containment structures.*
- 9. All railings 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.*
- 10. Clearing of existing vegetation shall be kept to the absolute minimum necessary to accommodate the approved project. Wire-backed silt/exclusion fencing shall be installed adjacent to the existing pathway areas to be replaced and the shoreline of Lake Samish to ensure existing vegetation adjacent to the lake is protected throughout construction. The location of the fencing to be installed shall be shown on the construction drawings required as part of the commercial building permit.*
- 20. Construction shall be commenced within 2 years of the effective date of this permit as defined in 23.60.19.A.3, The Hearing Examiner or Administrator, as appropriate, may authorize a single extension for a period of not more than one (1) year based on a showing of good cause, if a request for extension has been filed with the Hearing Examiner or Administrator, as appropriate, before the expiration date of the shoreline permit and notice of the proposed extension is given to parties of record and the Department of Ecology.*

Report prepared by:

Chad J. Yunge

Whatcom County Shorelines Administrator

Planning and Development Services – Land Use & Natural Resource

WHATCOM COUNTY
Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-676-6907, TTY 800-833-6384
360-738-2525 Fax



J.E. "Sam" Ryan
Director

SEPA Determination of Nonsignificance (DNS)

File: SEP2012-00006

Project Description: Replacement and reconfiguration of existing public recreational docks at Lake Samish Park

Proponent: Whatcom County Parks and Recreation

Address and Parcel #: Lake Samish Park, 673 North Lake Samish Road

Lead Agency: Whatcom County Planning & Development Services

Zoning: N/A

Comp Plan: N/A

The lead agency for this proposal has determined that with proper mitigation, no significant adverse environmental impacts are likely. Pursuant to RCW 43.21C.030(2)(c), an environmental impact statement (EIS) is not required. This decision was made following review of a completed SEPA environmental checklist and other information on file with the lead agency. This information is available to the public on request.

There is no comment period for this DNS.

Pursuant to WAC 197-11-340(2), the lead agency will not act on this proposal for 14 days from the date of issuance indicated below. Comments must be received by May 14, 2012 and should be sent to: Chad Yunge

Responsible Official: Tyler Schroeder

Title: Planning Manager

Telephone: 360-676-6907

Address: 5280 Northwest Drive
Bellingham, WA 98226

Date of Issuance: April 30, 2012

Signature: _____

An aggrieved agency or person may appeal this determination to the Whatcom County Hearing Examiner. Application for appeal must be filed on a form provided by and submitted to the Whatcom County Current Planning Division located at 5280 Northwest Drive, Bellingham, WA 98226, during the ten days following the comment period, concluding May 24, 2012.

You should be prepared to make a specific factual objection. Contact Whatcom County Current Planning Division for information about the procedures for SEPA appeals.

WHATCOM COUNTY HEARING EXAMINER

Shoreline Substantial Development) SHR2012-0003
Permit for)
)
Whatcom County Parks and Recreation Dept) Lead Agency: Whatcom County
)
) Date Received: February 2, 2012
) Date Approved: May 9, 2012

Pursuant to WCC Chapter 90.58, a permit is hereby granted to

Whatcom County Parks and Recreation Department

to undertake the following development: replace and reconfigure existing recreational docks at Lake Samish Park

Property Description: 673 North Lake Samish Drive
Bellingham, Washington 98229

Legal Description: Section 27 Township 37 North, Range 03 East, W.M.
Parcel(s) No. 370327 182523

within the shoreline area of Lake Samish and/or its associated wetlands.

The project will not be located within a Shoreline of Statewide Significance.

The following Shoreline Master Program provisions are applicable to the development:

SMP 23.10	Purpose and Intent
SMP 23.20	Goals and Objectives
SMP 23.30	Shoreline Jurisdiction and Area Designations
SMP 23.50	Applicability
SMP 23.60	Shoreline Permits
SMP 23.70	Administration
SMP 23.80	Legal Provisions
SMP 23.90	General Policies and Regulations
SMP 23.100.09	Moorage: Docks, Piers and Mooring Bouys
SMP 23.110	Definitions

Development undertaken through this permit shall be subject to the following conditions:

1. The Applicant/Proponent shall obtain a commercial building permit from the Whatcom County Building Services Division prior to any development activity on the subject

property including any clearing and/or grading. The building permit shall include engineered construction plans and applicable details as conditioned within this approval. The building permit will require additional review by the Whatcom County Shoreline Administrator to determine compliance with conditions of these shoreline permits prior to issuance of the building permit.

2. 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. A copy of the issued HPA shall be submitted along with the above required building permit. 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.
3. If necessary, the use of heavy machinery shall be limited to use via floating barge. No heavy machinery shall be utilized in upland areas or on the bedlands of Lake Samish unless reviewed and approved by the Shoreline Administrator. Minor upland excavation associated with abutment retrofits and the access path replacement shall be done using manual means to avoid damage to existing buffer vegetation outside of the approved development area.
4. Temporary Erosion and Sedimentation Control (TESC) Measures shall be shown on the development plans required for building permit review and approval. WCPDS can assist with selection of proper Best Management Practices (BMPs) upon request during the building permit review. TESC inspections will be conducted by WCPDS throughout construction as required within the Lake Samish Watershed.
5. The docks shall be constructed of untreated materials such as untreated wood, approved plastic composites, concrete or steel. This condition applies to any portion of the docks that comes in contact with the water including wave splash, rain or runoff. Materials to be utilized shall be clearly identified on the construction plans required for review of the building permit. Use of galvanized metals is prohibited on Lake Samish.
6. Dock surfaces designed to allow maximum light penetration shall be used on the entire dock structure. Materials and specifications to be utilized shall be clearly identified on the construction plans required for review of the building permit.
7. The dock shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night. Aluminum components such as the access ramps and any other visible aluminum component shall be powder-coated or otherwise finished to eliminate glare and to blend in with the natural surroundings. "Horse-fencing" panels associated with the proposed railings shall also be painted or coated to blend in with the natural surroundings. This could be done by using

bare steel fencing and allowing it to oxidize or by painting or powder-coating. Such information shall be shown on the required construction drawings.

8. Storage of fuel, oils, and other toxic materials is prohibited on docks except portable containers when provided with secondary containment. If such storage is proposed, the construction plans shall illustrate compliance with the required containment structures.
9. All railings 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.
10. Clearing of existing vegetation shall be kept to the absolute minimum necessary to accommodate the approved project. Wire-backed silt/exclusion fencing shall be installed adjacent to the existing pathway areas to be replaced and the shoreline of Lake Samish to ensure existing vegetation adjacent to the lake is protected throughout construction. The location of the fencing to be installed shall be shown on the construction drawings required as part of the commercial building permit.
20. Construction shall be commenced within two years of the effective date of this permit as defined in 23.60.19.A.3, The Hearing Examiner or Administrator, as appropriate, may authorize a single extension for a period of not more than one (1) year based on a showing of good cause, if a request for extension has been filed with the Hearing Examiner or Administrator, as appropriate, before the expiration date of the shoreline permit and notice of the proposed extension is given to Parties of Record and the Department of Ecology.

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. This approval does not release the applicant from any regulations and procedures required of any other public agency, or any County requirements other than the requirement to obtain a Shoreline Substantial Development Permit and Shoreline Conditional Use Permit. This permit may be rescinded pursuant to RCW 90.58.140(8) in the event the permittee fails to comply with the terms or condi-

tions thereof. Pursuant to Whatcom County Shoreline Management Program Section 23.60.151 this permit shall expire within two years of the date of its approval and a new permit will be required, if the permittee fails to make substantial progress toward completion of the project for which it was approved. Pursuant to Section 23.60.152 it shall expire if the project is not completed within five years of the date of the approval, unless the permittee has requested a review, and upon good cause shown, been granted an extension of the permit.

THIS PERMIT IS NOT VALID (AND NO CONSTRUCTION NOR OPERATION AUTHORIZED BY THIS PERMIT SHALL BEGIN) UNTIL THIRTY (30) DAYS AFTER THE DATE OF FILING AS DEFINED BY RCW 90.58.140(6) AND WAC 197-14-090, OR UNTIL ALL REVIEW PROCEEDINGS INITIATED WITHIN THIRTY DAYS FROM THE DATE OF SUCH FILING HAVE TERMINATED; EXCEPT AS PROVIDED IN RCW 90.58.140(5)(A)(B)(C).

DATED this 9th day of May 2012.



Michael Bobbink, Hearing Examiner

THIS SECTION FOR DEPARTMENT USE ONLY IN REGARD TO A SHORELINE
CONDITIONAL USE AND/OR SHORELINE VARIANCE.

Date received by Department _____

Approved _____ Denied _____

This Shoreline Variance/Conditional Use is approved/denied by the Department pursuant to Chapter 90.58 RCW. Development shall be undertaken pursuant to the following additional terms and conditions:

DATED _____

Signature of Authorized Department Official