

**WHATCOM COUNTY HEARING EXAMINER**

RE: SHORELINE SUBSTANTIAL DEVELOPMENT ) SHR2010-0019  
SHORELINE CONDITIONAL USE ) SHC2010-0023  
Application for )  
)  
*Douglas Tomczak* ) FINDINGS OF FACT,  
) CONCLUSIONS OF LAW,  
) AND DECISION

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**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicant is requesting approval of a Shoreline Substantial Development Permit to construct a joint-use recreational dock to serve two adjacent shoreline parcels on Lake Whatcom. In addition, the Applicant requests a Shoreline Conditional Use Permit to utilize the dock for float plane moorage in the future.

Decision: The requested permits are 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: Douglas Tomczak  
Property Location: 962 and 968 Iowa Heights Road  
Sedro Woolley, Washington 98284  
Legal Description: Section 21 Township 37 North, Range 04 East, W.M.  
Parcel Numbers: 370421 036055 & 370421 047072  
Adjacent Water Body: Lake Whatcom  
Shoreline Designation: Rural / Aquatic

Statewide Significance: Yes

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 23.40	Shorelines of Statewide Significance
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 Buoys
SMP 23.110	Definitions

SEPA Review: Determination of Non-significance (DNS) issued on January 21, 2010 by Whatcom County Planning and Development Services (WCPDS).

Legal Notices: Published – March 31, 2011, Notice of Application and Public Hearing  
Posted – April 2, 2011, Notice of Application and Public Hearing  
Mailed – March 23, 2011, Notice of Application and Public Hearing

Hearing Date: April 13, 2011

Parties of Record:

Douglas Tomczak  
51 Pine Street, Suite 208  
Edmonds, WA 98020

Greg Corrado, Washington Field Director  
Seaplane Pilots Association  
7512 Long Lake Road SE  
Port Orchard, WA 98367

Wendy Harris  
3925 East Connecticut Street  
Bellingham, WA 98226

City of Bellingham  
Attn: Kurt Nabbefeld  
Planning and Community Development Department  
210 Lottie Street  
Bellingham, WA 98225

Chad Yunge  
Whatcom County Department of Planning and Development Services

Exhibits:

- 1 Land Use Application, with attachments
  - 1-1 Customer Receipt
  - 1-2 Supplemental Application
  - 1-3 Project Narrative
  - 1-4 Handwritten Names and Addresses
  - 1-5 Staff email re: hearing schedule
  - 1-6 Letter of Complete Application, December 22, 2010
  - 1-7 Notice of Application, letter to property owners, January 7, 2010[sic]
- 2 Staff Report, April 7, 2011
- 3 Detail Dock Drawings
- 4 Revised and PDS Approved Dock Site Plan
- 5 Easements, Mouton Short Plat, SSS 1997-00108
- 6 Mouton Short Plat, showing “Proposed site location”
- 7 Certificate of Mailing, Notice of Application, not dated
- 8 Certificate of Mailing, Notice of Public Hearing, March 23, 2011
- 9 Legal Notice of Public Hearing, March 31, 2011
- 10 Certificate of Posting, Notice of Public Hearing, April 2, 2011
- 11 Email request for notice of public hearing
- 12 Aerial Site Photo
- 13 Letter dated February 4, 2010 from City of Bellingham Planning and Community Development Department, Kurt Nabbefeld, Senior Planner
- 14 Public Comments: Wendy Harris
- 15 DNS, dated January 31, 2011
- 16 Wendy Harris: Supplemental Comments to Exhibit #14

## **II.**

The Applicant seeks approval for a Shoreline Substantial Development Permit in order to construct a joint-use recreational dock to be shared by two adjacent properties. The Applicant also seeks approval for a Shoreline Conditional Use Permit to utilize the dock for float plane moorage in the future.

## **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. 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 #2, dated April 7, 2011, a copy of which is attached hereto, are adopted and incorporated herein by this reference.

There was public comment on this matter during the application comment period and at the public hearing. The Shoreline Planner for Whatcom County indicated at the public hearing that the concerns and opposition to the requested permits had been adequately addressed in the Staff Report. The Hearing Examiner concurs with Staff's review and analysis of these comments.

There was also public comment on this matter in support of the application by a member of the National Seaplane Pilots Association, confirming the Association's dedication to seaplane inspection and the training and certification of pilots.

## **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 and Shoreline Conditional Use Permit for the proposed construction of a joint-use recreational dock to serve two adjacent shoreline parcels and also to be utilized for float plane moorage in the future.

Findings of Fact and Conclusions of Law are set forth in the Staff Report, Exhibit #2, dated April 7, 2011. 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 and Shoreline Conditional Use Permit are hereby granted to Douglas Tomczak to construct a joint-use recreational dock to serve two shoreline parcels on Lake Whatcom and to be utilized in the future for float plane moorage on Assessor's Parcel Numbers 370421 036055 and 370421 047072, located at 962 and 968 Iowa Heights Road, Sedro Woolley, Washington. The permits are granted subject to the following conditions:

1. The Applicant/Proponent shall obtain a 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. 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 Whatcom unless reviewed and approved by the Shoreline Administrator. Minor upland excavation associated with abutment placement and the pedestrian access path 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 Whatcom Watershed.

5. Use of the proposed dock is limited to private recreational use by the owners of the two subject properties within the Mouton Short Plat. No moorage shall be leased.
6. Prior to issuance of a building permit, the applicant shall file with the Whatcom County Auditor a legally-enforceable joint use agreement that at a minimum, addresses the following:
  - a. Apportionment of construction and maintenance expenses;
  - b. Liability Agreements; and
  - c. Use Restrictions

Prior to filing, a copy shall be provided to the Whatcom County Shoreline Administrator and County Prosecuting Attorney for review. It is recommended that an Attorney familiar with such documents be retained to draft such provisions on behalf of the Applicant.

7. The dock shall be constructed of untreated materials such as untreated wood, approved plastic composites, concrete or steel. This condition applies to any portion of the dock 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.
8. 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.
9. The dock 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. Such information shall be shown on the required construction drawings.
10. 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.
11. If the Applicant proposes a railing within the building permit application, 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.
12. The dock shall not be used as a residence and no live aboard vessels are allowed.
13. Prior to issuance of a building permit, the Applicant shall provide a mitigation plan in accordance with all applicable provisions outlined within WCC 16.16.260 and 16.16.760

to compensate for unavoidable adverse impacts to existing shoreline buffer vegetation on the subject property. The plan shall include the measures for eradication of non-native species and enhancement of the existing buffer area with appropriate native plant species. The plan shall include monitoring and maintenance provisions. The mitigation plan shall be reviewed and approved by WCPDS prior to start of construction activity on the property. Mitigation assurances will also be required as determined by WCPDS per 16.16.260.D.

14. Pursuant to WCC 16.16.265, prior to issuance of a building permit, the Applicant shall file a Critical Areas Notice on Title with the Whatcom County Auditor's Office, real estate records on forms provided by WCPDS. The copy of the filed document shall be provided to WCPDS.
15. Clearing shall be limited to the maximum extent feasible within approved development areas. This approval does not authorize any clearing or development of any kind other than the approved dock and associated access pathway.
16. The Applicant or any future owner of the dock for floatplane moorage shall carry the appropriate pilot's license for operation of such aircraft. The pilot shall follow all applicable Federal Aviation Associations (FAA) regulations including those associated with takeoff, landing and taxiing within the water.
17. The Applicant or future owner shall comply with all applicable regulations outlined within WCC Title 11 – Boating and Swimming.
18. Floatplane use shall be limited to hours of daylight between the hours of 7:00a.m and 10:00 p.m.
19. The Applicant or any future user of a floatplane on the subject property shall abide by the following conditions of approval in order to minimize the potential for introduction and control the spread of invasive species within Lake Whatcom:
  - a. All floatplane pilots utilizing the approved moorage facility on the subject property shall view the seaplane inspection and cleaning training video, complete the training course and carry a certificate available from the National Seaplane Pilots Association or 100<sup>th</sup> Meridian Initiative websites ([www.seaplanes.org](http://www.seaplanes.org) and [www.100thmeridian.org](http://www.100thmeridian.org)).
  - b. Prior to entering the floatplane, the pilot shall remove all aquatic plants or attached mussels, snails or other animals from the exterior surfaces of floats, wires, cables and rudders and remove all water from floats, wheel wells and any other compartments or areas of the aircraft that can contain or maintain raw water.
  - c. Prior to takeoff, the pilot shall raise and lower rudders several times to remove aquatic plants, avoid taxiing through heavy surface growths of aquatic plants and make sure all

floats remain as dry internally as possible during takeoff.

d. After takeoff, the pilot shall raise and lower rudders several times to free any remaining aquatic plants while over the departing waterbody or over dry land. If aquatic plants persist and are still visible on floats, cables or rudders, return to the same waterbody and physically removing them is required.

e. During storage and/or moorage, the pilot shall remove the aircraft from the water whenever practical to better facilitate self inspection, drainage, removal, cleaning and drying as recommended in the previously-referenced training video.

f. The pilot shall comply with any future updates to the above-referenced guidelines or regulations on this matter including any inspection officers once established in Washington State.

g. Prior to landing on Lake Whatcom from a waterbody known to contain invasive species, the pilot shall make a saltwater landing if feasible in order to kill any freshwater organisms on the aircraft.

20. Construction shall be commenced within two (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.

### **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 19<sup>th</sup> day of April 2011.

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Michael Bobbink, Hearing Examiner



April 7, 2011

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

The application of <b>Doug Tomczak</b> for a Shoreline Substantial Development and Shoreline Conditional Use Permit	SHR2010-00019, SHC2010-00023 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Application: The applicant requests approval of a shoreline substantial development permit to construct a joint-use recreational dock to serve two shoreline parcels on Lake Whatcom. In addition, the applicant requests a shoreline conditional use permit to utilize the dock for float plane moorage in the future.

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:** Doug Tomczak  
51 Pine Street, Suite 208  
Edmonds, Washington 98020

**Property Location:** 962 & 968 Iowa Heights Road

**Legal Description:** Section 21 Township 37 North, Range 04 East, W.M.  
Parcel(s) #: 370421036055 & 370421047072

**Adjacent Water Body:** Lake Whatcom

**Shoreline Designation:** Rural / Aquatic

**Statewide Significance:** Yes

## 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
SMP 23.40	Shorelines of Statewide Significance
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 January 21, 2010 by Whatcom County Planning and Development Services (WCPDS).

### III. INTRODUCTION

The applicant is requesting approval of a shoreline substantial development permit in order to construct a joint-use recreational dock for use by two shoreline properties on Lake Whatcom. In addition, the applicant seeks conditional approval to utilize the dock for float plane moorage in the future. Specifically, the proposed dock measures approximately 50-feet in overall length as measured from the ordinary high water mark (OHWM) of Lake Whatcom with an additional 10-feet of the pier to be located approximately 10-feet landward of OHWM. The proposed dock consists of a pier on piling walkway measuring 4-feet in width to a 4-foot wide ramp to an irregularly-shaped accessory float measuring 240-square feet in size. As proposed, 5-pilings will be driven in support of the walkway and accessory float. The applicant proposes a concrete abutment landward of the OHWM to anchor the proposed dock to the upland. A pedestrian access trail is also proposed from South Bay Drive to the point of intersection of the proposed dock.

The site plan submitted as part of this permit review illustrates a large graveled area existing along the southern portion of the subject site. During a site visit to the property, this area is much smaller than shown on the site plan and the graveled area appears to be located largely within the right of way of South Bay Drive. Establishment of such a gravel pad is not part of this permit review and would likely not be consistent with the Whatcom County Shoreline Management Program (SMP) nor would parking in this area likely be allowed by the Whatcom County Public Works – Engineering Division for safety purposes.

The subject site is part of a community access and/or open space area established through the Mouton Short Plat which established the two shoreline lots in question. This area consists of a narrow band of upland located between Lake Whatcom and South Bay Drive. The area is heavily vegetated with a mixture of native and non-native plant species. A single-family residence and accessory developments including a dock, is located immediately adjacent to the southwest. The

adjacent site to the northeast is currently undeveloped with exception of a residential dock structure. Although both adjacent waterfront lots are developed with docks, both structures are located a significant distance from the proposed joint-use dock. The upland portions of the subject properties consist of vacant, residential lots which are heavily wooded within areas subject to shoreline jurisdiction. A pedestrian access easement to access the shoreline was also established as part of the Mouton Short Plat. This easement is located across the street from the proposed dock.

#### IV. FINDINGS / CONCLUSIONS

##### **Shoreline Substantial Development**

Section 23.60.01.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 23.60.02.2. According to the applicant, the fair market value of the proposed dock development exceeds the \$10,000.00 threshold necessary for the dock to qualify for review via an exemption from substantial development permitting pursuant to 23.60.02.2.H.1. As such, a substantial development permit is required.

According to 23.60.01.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, 23.60.01.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 residential dock development are found within Sections 23.90 and 23.100.09, respectively. The following policies and regulations are appropriate for the type of use and development being proposed:

##### **23.90.03            Ecological Protection and Critical Areas**

##### **23.90.03.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.

### **23.90.03.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.
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 dock development as conditioned is consistent with the above policies and regulations. Lake Whatcom is classified as a Habitat Conservation Area (HCA) according to Section 16.16.710 of the Whatcom County Critical Areas Ordinance (CAO) which is incorporated by reference within the SMP per Section 23.10.06. Alterations are allowed to critical areas and associated buffers to facilitate water-oriented uses such as the proposed dock and access trail. The applicant has designed and re-designed the proposed location and configuration of the dock to minimize, insofar as practical, any resultant damage to Lake Whatcom and/or its buffer. The applicant currently owns both upland lots and as such, has the opportunity to construct a joint-use dock which is preferred over individual recreational docks within the SMP. By doing so, impacts to Lake Whatcom and its buffer will be avoided by consolidation of shoreline access points to reduce buffer impacts and over water development. The proposed dock is consistent with the design criteria outlined within the SMP for new dock configuration and construction in order to minimize impacts to the shoreline environment. These measures include use of light-penetrating decking materials to the maximum extent feasible and a north/south orientation of the accessory float to reduce shading impacts, use of untreated materials for the entire dock structure, and clear spanning of the nearshore area to avoid interference with wave action and shore processes. In addition to the above-mitigating measures, additional mitigation may be required by the Washington State Department of Fish and Wildlife (WDFW) through a Hydraulics Project Approval (HPA) which is required as a condition of this permit recommendation. Such mitigation measures imposed by WDFW shall be adopted as conditions of approval of this permit pursuant to 16.16.215. Note that in the event that there is a conflict between the WDFW permit requirements, the more restrictive standards shall apply.

Necessary access to the proposed dock site will require some clearing of existing vegetation within the regulated buffer areas. The proposed pathway has been conditioned that it be constructed of woodchips or other approved pervious surface and be limited to four-feet in total width. A compensatory mitigation plan is required to mitigate the loss of vegetation displaced by the pathway and those portions of the dock located landward of OHWM. The applicant has proposed removal and control of non-native and/or invasive species in the area and enhancement of the area with native plants. Such a conceptual plan will require review of a

vegetation management plan and has been required as a condition of approval prior to construction permit issuance.

#### **23.90.04 Water Quality and Quantity**

##### **23.90.04.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.

##### **23.90.04.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.

The proposed development is consistent with the above policies and regulations as conditioned by this staff recommendation. The entire dock structure is required to be composed of untreated materials. In addition, the dock structure and proposed access pathway will be constructed of pervious materials and are not believed to affect water quality and or runoff patterns on the subject property. This permit recommendation has been conditioned that a TESC plan be submitted for review by WCPDS as part of the required construction permit application. Such work shall be subject to applicable WCC within the Lake Whatcom Watershed which includes erosion control inspections throughout the construction process.

## **23.90.06 Vegetation Conservation**

### **23.90.06.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.

### **23.90.06.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 proposed project is consistent with the above vegetation conservation policies and regulations. As mentioned previously within this staff report, an area of existing buffer area between South Bay Drive and Lake Whatcom will be impacted in order to install a 4-foot wide pedestrian access trail consisting of woodchips or other approved pervious surfacing. A vegetation management plan is required outlining mitigating measures including control of invasive species and enhancement of the area with maintaining and planting appropriate native species. Such a plan is required prior to construction activity of any kind at the subject site.

### **23.90.09 Site Planning**

#### **23.90.09.A Policies**

1. Development and use should be designed in a manner that directs land alteration to the least sensitive portions of the site to maximize vegetation conservation; minimize impervious surfaces and runoff; protect riparian, nearshore and wetland habitats; protect wildlife and habitats; protect archaeological, historic and cultural resources; and preserve aesthetic values. This may be accomplished by minimizing the project footprint, the use of clustering and other appropriate design approaches.
2. Low impact and sustainable development practices such as rain gardens, and pervious surfacing methods including but not limited to, porous paving blocks, porous concrete and other similar materials, should be incorporated in developments where site conditions allow to maintain shoreline ecological functions and processes. Topographic modification, vegetation clearing, use of impervious surfaces and alteration of natural drainage or other features should be limited to the minimum necessary to accommodate approved uses and development. An engineering geologist should be consulted prior to using infiltration practices on shore bluffs.
3. Accessory development or use that does not require a shoreline location should be located outside of shoreline jurisdiction unless such development is required to serve approved water-oriented uses and/or developments. When sited within shorelines jurisdiction, uses and/or developments such as parking, service buildings or areas, access roads, utilities, signs and storage of materials should be located inland away from the land/water interface and landward of water-oriented developments and/or other approved uses.
5. Shoreline uses should not deprive other uses of reasonable access to navigable waters. Public recreation activities such as fishing, clam digging, swimming, boating, and wading, and water-related recreation should be preserved and enhanced. The rights of treaty tribes to resources within their usual and accustomed areas should be accommodated.

### **23.90.09.B Regulations**

1. Where appropriate new development shall use clustering to minimize adverse impacts on shoreline ecological functions and processes.
4. Impervious surfacing for parking lot/space areas shall be minimized through the use of alternative surfaces where feasible, consistent with the May 2005 Low Impact Development Technical Guidance Manual for Puget Sound.
6. Design of structures should conform to natural contours and minimize disturbance to soils and native vegetation. Foundations shall be tiered with earth retention incorporated into the structure.
7. Stormwater infiltration systems shall be employed to mimic the natural infiltration and ground water interflow processes where appropriate.
8. Fencing, walls, hedges and similar features shall be designed in a manner that does not preclude or significantly interfere with wildlife movement to/from important habitat areas.
9. Accessory uses that do not require a shoreline location shall be sited away from the land/water interface and landward of the principal use and unless, otherwise specified, shall observe critical area regulations and buffers in WCC 16.16.
10. Development shall be located, designed, and managed so that impacts on public use of the shoreline are minimized.
11. Public recreation activities such as fishing, clam digging, swimming, boating, and wading, and water-related recreation shall be protected through specific provisions to avoid impacts, or provide access as applicable.
12. Interior and exterior lighting shall be designed and operated to avoid illuminating nearby properties or public areas, prevent glare on adjacent properties, public areas or roadways to avoid infringing on the use and enjoyment of such areas, and to prevent hazards. Methods of controlling spillover light include, but are not limited to, limits on height of structure, limits on light levels of fixtures, light shields, setbacks, buffer areas and screening.
13. All facilities shall be located and designed to avoid impediments to navigation and to avoid depriving other properties of reasonable access to navigable waters. Review and approval by the U.S. Coast Guard may be required as a condition of issuance of building or development permits to assure compliance. All in-water structures shall be marked and lighted in compliance with U.S. Coast Guard regulations.
14. All shoreline use and development shall provide setbacks from adjacent properties in accordance with SMP Table 23.90.13.C. Setbacks shall be of adequate width to attenuate proximity impacts such as noise, light and glare, and may address scale and aesthetic impacts. Fencing or landscape areas may be required to provide a visual screen.

The proposed dock development is consistent with the above-referenced site planning policies and regulations. The area of the subject site was selected primarily due to the fact that a shared pedestrian access created through the Mouton Short Plat is located across South Bay Drive. This area is the only access area approved for both upland lots. In addition, an existing impacted area consisting of gravel exists in this location. The project does not involve substantial upland clearing or grading to construct the proposed access trail or upland portions of the dock. The trail and dock structure will utilize pervious surfacing materials. No significant impacts to the public's right to navigation or recreational uses were identified during the review of the proposed project.

### **23.90.10 Landfill and Excavation**

#### **23.90.10.A Policies**

1. Landfill and excavation should only be permitted to the minimum extent necessary to accommodate an approved shoreline use or development and with assurance of no net loss of shoreline ecological functions and processes. Enhancement and voluntary restoration of landforms and habitat are encouraged.
2. Landfill in water bodies, floodways, and/or wetlands should not be permitted for creation of new uplands, unless it is part of an approved ecological restoration activity. Landfill should be permitted in limited instances to restore uplands where recent erosion has rapidly reduced upland area, to build beaches and protective berms for shore stabilization or recreation, to restore or enhance degraded shoreline ecological functions and processes, or to moderately elevate low uplands to make such uplands more suitable for purposes consistent with this Program.
3. Fill should not be allowed where shore stabilization works would be required to maintain the materials placed.
4. Landfills and excavation should be located and developed so that water quality, hydrologic and runoff patterns are not altered.
5. The predicted economic benefits of landfills and excavation should be weighed against long term cumulative impacts on ecological processes and functions.

#### **23.90.10.B Regulations**

1. Landfill and excavation shall be minimized to the maximum extent practicable and allowed only along with approved shoreline use and development activities that are consistent with this Program.
2. Landfill and excavation within wetlands or waterward of the ordinary high water mark shall only be permitted in limited instances for the following purposes only, with due consideration given to specific site conditions, and only along with approved shoreline use and development activities that are consistent with this Program:
  - a. Port development for water-dependent uses where other upland alternatives or structural solutions, including pile or pier supports are infeasible.

- b. Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline where alternatives to fill are infeasible.
- c. Ecological restoration or enhancement such as beach nourishment, habitat creation, or bank restoration when consistent with an approved restoration plan.
- d. Maintenance of lawfully established development.
- e. Development of shore stabilization projects, flood control and instream structures.

Except for landfill for county-approved ecological restoration, fill and excavation waterward of the OHWM or in a wetland may only be authorized as a conditional use.

- 3. Excavation waterward of the OHWM or within wetlands shall be considered dredging or gravel bar scalping for purposes of this Program.
- 4. Landfills or excavation shall not be located where shore stabilization will be necessary to protect materials placed or removed. Disturbed areas shall be immediately stabilized and revegetated, as applicable.
- 6. Landfills, beach nourishment and excavation shall be designed to blend physically and visually with existing topography whenever possible, so as not to interfere with long term appropriate use including lawful access and enjoyment of scenery.
- 8. A temporary erosion and sediment control (TESC) plan shall be provided for all proposed landfill and excavation activities.

The proposed project is consistent with the above policies and regulations associated with landfill and excavation. Minimal excavation and fill are proposed on the upland portions of the subject property and the number of pilings proposed for the dock has been kept to the minimum necessary to construct the dock. As stated previously, a TESC plan is required prior to issuance of a construction permit.

### **23.100.09 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. Shared moorage with more than four (4) berths and boat launching facilities are regulated under SMP 23.100.04, Boating Facilities: Marinas and Launch Ramps.

#### **23.100.09.A Moorage: Docks, Piers and Mooring Buoys – Policies**

- 1. Moorage associated with a single family residence is considered a water-dependent use provided that it is designed and used as a facility to access watercraft, and other moorage facilities are not available or feasible. Moorage for water-related and water-enjoyment uses or shared moorage for multifamily use should be allowed as part of a mixed use development or where it provides public access.
- 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.

3. As an alternative to continued proliferation of individual private moorage, mooring buoys are preferred over docks or floats. Shared moorage facilities are preferred over single-user moorage where feasible, especially where water use conflicts exist or are predictable. New subdivisions of more than two (2) lots and new multifamily development of more than two (2) dwelling units should provide shared moorage.
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.
9. Shoreline resources and water quality should be protected from overuse by boaters living on vessels (liveaboards). Boaters living on vessels are restricted to established marinas with facilities to address waste handling and other sanitary services.
10. Vessels should be restricted from extended mooring on waters of the state unless authorization is obtained from the DNR and impacts to navigation and public access are mitigated.
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:

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

1. Shared moorage to serve new development shall be limited to the amount of moorage needed to serve lots with water frontage; provided that, a limited number of upland lots may also be accommodated. Applications for shared moorage shall demonstrate that mooring buoys are not feasible prior to approval of dock moorage. Shared moorage currently leased or proposed to be leased to upland property owners shall be reviewed as a marina.

The applicant proposes a joint-use dock for use by two existing upland lots; consistent with the above shared moorage preference. The proposed dock structure will also be utilized by a float plane and as such, use of mooring buoys is not practical in this case due to the difficulty in taxiing a floatplane to a tender moored on a buoy.

3. Shared moorage shall be required in accordance with the following to prevent the proliferation of moorage facilities:
  - a. Shared moorage shall be provided for all new residential developments of more than two (2) dwelling units. New subdivisions shall contain a restriction on the face of the plat prohibiting individual docks. A site for shared moorage should be owned in undivided interest by property owners within the subdivision. Shared moorage facilities shall be available to property owners in the subdivision for community access and may be required to provide public access depending on the scale of the facility. If shared moorage is provided, the applicant/proponent shall file at the time of plat recordation a legally enforceable joint use agreement or other legal instrument that, at minimum, addresses the following:
    - (1) Apportionment of construction and maintenance expenses;
    - (2) Easements and liability agreements; and
    - (3) Use restrictions.
  - d. Prior to issuing a permit for shared moorage, a proponent shall file with the Whatcom County Auditor a legally enforceable joint use agreement that at minimum, addresses the following:
    - (1) Apportionment of construction and maintenance expenses;
    - (2) Easements and liability agreements; and
    - (3) Use restrictions.

The Mouton Short Plat consists of a two-lot plat of which was vested prior to enactment of this version of the SMP. Irrespective of that, the applicant has proposed a joint-use dock consistent with the above provisions. This approval recommendation has been conditioned that the above assurances be development prior to issuance of a construction permit for the proposed shared moorage.

5. Private moorage for float planes may be permitted as a conditional use where construction will not adversely affect shoreline functions or processes, including wildlife use. Ecological restoration may be required to compensate for the greater intensity of activity associated with the use.

The applicant has proposed use of the dock via a floatplane and has requested the above-required conditional use approval. Discussion of the conditional use criteria is found later within this staff report.

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.

This approval recommendation has been conditioned to be consistent with the above-referenced regulation.

7. Piers and docks shall be the minimum size necessary to meet the needs of the proposed water-dependent use and shall observe the following criteria:
  - a. If allowed under the provisions of this Program, only one (1) private dock with one (1) accessory float, one (1) boat lift, and one (1) covered moorage accessory to a permitted moorage, shall be permitted on a shoreline lot owned for residential or private recreational use.
  - b. Docks with or without a float shall be the minimum size required to provide for moorage. Single family docks and floats shall not exceed 40 feet in length measured perpendicularly from the OHWM nor exceed 3 feet in height above the extreme high water level. Shared moorage may extend to 80 feet in length if demonstrated to be necessary to provide adequate moorage. In the case of pile docks at marine or river locations, the height shall be limited to that which may be reasonably necessary to accommodate landing and moorage of watercraft. Commercial docks shall be the minimum length necessary to serve the type of vessel served.
  - c. Private docks up to 60 feet in length or shared moorage up to 100 feet in length measured perpendicularly from the OHWM, including floats, may be permitted by the Administrator in shallow areas where a dock sized to accommodate a tender to provide access to a mooring buoy is not feasible and where existing docks on adjacent properties presently extend out as far as that which is proposed, and where such added length is necessary in order to allow a reasonable use of the dock, as determined based upon adjacent uses; and where the extension in dock length will not adversely affect ecological processes and functions, provided the required dock length is the minimum necessary to achieve such purposes. Docks that cannot reasonably meet this standard may request a review under the variance provisions of this Program.
  - d. Moorage shall be designed to avoid the need for maintenance dredging. The moorage of a boat larger than provided for in the original moorage design shall not be grounds for approval of dredging.

The proposed dock is consistent with the above regulations associated with shared moorage. The proposed dock consists of an elevated pier to a single accessory float for use by two properties. The dock measures approximately 50-feet in length from OHWM which is the minimum necessary to allow for a moorage berth on the inboard side of the proposed float.

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. Exceptionally large vessels or vessels that require a relatively deep draft may be required to use a buoy, other alternative mooring scheme, or to moor in a marina. Materials that will allow light to pass through the deck may be required where width exceeds 4 feet.
  - b. Dock surfaces designed to allow maximum light penetration shall be used on walkways or gangplanks in nearshore areas.
  - c. Piers, docks and floats shall be located along a north/south orientation to the maximum extent feasible.

The proposed dock is consistent with the above regulations. The width of the pier and ramp does not exceed 4-feet in width. The maximum float size requirement of 6-feet by 20-feet is associated with single-use docks as it is obvious that such a float would be too small to accommodate use by two vessels. As such, the allowable over-water area for the proposed joint use dock was allowed to be doubled to a maximum of 240-square feet. The larger float size and configuration was also necessary to accommodate the accessory moorage via floatplane as proposed through the conditional use approval. The proposed dock will incorporate light-penetrating decking to the maximum extent feasible for the entire dock structure as conditioned. The initial dock configuration was revised at the request of this Administrator so that the proposed accessory float is located in a north/south orientation to the maximum extent feasible. The revised plans are consistent with the above regulation.

9. Private docks shall not encroach into the required sideyard setbacks for residential development (both onshore and offshore); provided that, a shared moorage may be located adjacent to or upon a side property line of the affected properties upon filing of an easement agreement or other legal instrument by the affected property owners.

The proposed dock configuration is consistent with the above required setbacks. No easement agreements were necessary in this case as the subject site was already set up for shared use through the plat that created the two upland lots.

#### 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 dock consists of a pile supported pier and accessory float consistent with the above regulation.

- 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 dock structure will utilize a small concrete abutment located approximately 10-feet landward of the OHWM. This design was required so that the proposed abutment would have no interference with existing shore processes; consistent with the above regulation. With exception of installation of the abutment, no substantial grading is necessary.

- c. Pile spacing shall be the maximum feasible to minimize shading and avoid a "wall" effect that would block or baffle wave patterns, currents, littoral drift, or movement of aquatic life forms, or result in structure damage from driftwood impact or entrapment.
- d. Offshore and foreshore pile structures shall allow for continuity of hydraulic energy patterns, unless specifically designed to reduce wave impact on shores.

The proposed dock design involves minimal use of pilings (5) and the configuration is consistent with the above-referenced regulations.

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.

No railing has been proposed; however the above regulation has been incorporated as a condition of approval if the applicant decides to install a railing prior to construction permit application.

16. Water supply, sewage disposal and disposal of non-hazardous materials associated with activities on docks and piers shall conform to applicable health standards.

The proposed dock will not be serviced with water or sewage handling utilities.

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 approval recommendation has been conditioned to be consistent with the above regulation.

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.

A construction permit is required which will include fully engineered construction plans to ensure consistency with the above regulation and the applicable building codes.

19. No pier or dock shall be used for a residence.

Condition of approval.

20. Storage of fuel, oils, and other toxic materials is prohibited on docks and piers except portable containers when provided with secondary containment.

This permit recommendation has been conditioned to be consistent with the above regulations. No fuel storage has been proposed in association with dock. If the applicant plans to utilize portable containers for fueling, appropriate secondary containment shall be illustrated for review by WCPDS during construction permit review.

As stated previously, 23.60.01.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 design of the proposed dock is not believed to represent a significant adverse effect to shoreline ecological functions and processes as conditioned by this approval recommendation. The structure has been limited in size to represent the minimum necessary to accommodate moorage of vessels for use by two shoreline properties and for the accessory moorage of a single floatplane. The proposed dock will be constructed of untreated materials and involve minimal ground disturbance to construct. The dock and accessory pedestrian pathway will be surfaced with pervious materials and no impacts to water quality or runoff patterns are anticipated. The joint-use nature of the proposed dock is a preferred mooring strategy of the SMP and reduces the amount of overwater construction as well as impacts to buffer areas. If other opportunities exist in the area for shared moorage and similar conditions of approval were required, no adverse effect should occur.

#### **23.60.04 Conditional Use Permit Criteria**

- A. The purpose of a conditional use permit is to allow greater flexibility in administering the use regulations of this Program in a manner consistent with the policy of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by the County or the Department of Ecology to control any undesirable effects of the proposed use.
- B. Uses specifically classified or set forth in this Program as conditional uses and unlisted uses may be authorized provided the applicant/proponent can demonstrate all of the following:
  1. That the proposed use will be consistent with the policy of RCW 90.58.020 and this Program.

2. That the proposed use will not interfere with normal public use of public shorelines.
3. That the proposed use of the site and design of the project will be compatible with other permitted uses within the area.
4. That the proposed use will not cause adverse effects to the shoreline environment in which it is to be located.
5. That the public interest suffers no substantial detrimental effect.

According to 23.100.09.B.4 and 23.100.09.C.5, private moorage for float planes may be permitted as a conditional use within the aquatic/rural shoreline designation where construction will not adversely affect shoreline functions or processes, including wildlife use. Ecological restoration may be required to compensate for the greater intensity of activity associated with the use. The proposed accessory moorage and use of a floatplane is consistent with all of the criteria outlined in 23.60.04.B.1 - 5 as addressed below:

1. The proposed float plane use is consistent with the policy of RCW 90.58.020 and the SMP as modified and conditioned by this approval. The above guiding policy of the Shoreline Management Act (SMA) prefers uses which are consistent with control of pollution and prevention of damage to the natural environment or unique to or dependent on the State's shoreline. Permitted uses in the shorelines of the State shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline areas and any interference with the public's use of the water. The proposed dock development is consistent with all applicable policies and regulations outlined within the SMP as discussed previously within this staff report. As conditioned, the proposed moorage and use of a float plane on the subject property is not believed to represent significant adverse effects to the shoreline ecological functions and processes of Lake Whatcom. In addition, no impacts identified to the public rights of navigation and/or corollary rights incidental thereto.

2. The location and configuration of the proposed dock structure is not believed to interfere with the normal public's use of Lake Whatcom. The proposed structure has been reduced to the minimum size necessary to accommodate use by two upland property owners. Obviously, placement of any structure within shorelines of the State has some affect to navigation from certain users; however RCW 90.58.020 allows such limited reduction in rights for water dependent developments such as a dock when it is designed and constructed in a manner that avoids significant impacts to the shoreline. Use of floatplanes is regulated primarily by the Federal Aviation Association (FAA) and requires a special certification in order to operate one. While on the water, including takeoff and landing, floatplanes follow the same right-of-way protocols applied to vessels as outlined in Title 11 of the Whatcom County Code – Boating and Swimming. Title 11 exempts use of seaplanes from much of the regulation; however based on review of the FAA regulations, they appear equitable. If FAA requirements for floatplane use are following by the pilot, no interference with the public's use of Lake Whatcom is likely. This approval recommendation has been conditioned that any operator utilizing a float plane in association with the subject moorage shall have the appropriate license from the FAA.

3. The proposed dock layout and construction is consistent with other permitted docks in the area of the subject property. The design of the proposed dock is no different than the design of a typical joint-use dock for use by two vessels. This Administrator is aware of only one other

permitted float plane moorage in the area of the subject property located off of Blue Canyon Road to the east of the subject site.

4. The proposed use and moorage of a floatplane does not represent an adverse impact to Lake Whatcom as modified and conditioned by this recommendation. The design of the actual joint-use dock is consistent with the applicable policies and regulations for such structures as discussed previously within this staff report. With exception of takeoff and landing, use of a float plane on the surface waters of Lake Whatcom is not substantially different than operation of any other recreational vessel. During the SEPA review associated with this permit, concerns were raised regarding the potential for introduction and spread of invasive species in association with the floatplane use. Introduction and spread of such species, including *Dreissena bugensis*, otherwise known as Quagga or Zebra Mussels, could affect aquatic life forms as well as affect public utility infrastructure including water intakes. Although the County issued a DNS in association with the SEPA review, conditions have been added to this use approval in order to address this valid concern. Mr. Jesse Schultz of the Washington State Department of Fish and Wildlife – Aquatic Nuisance Species (WDFW – ANS) division was contacted regarding any applicable regulations on this issue. According to Mr. Schultz, WDFW has collaborated with other western regulatory agencies and aviation groups in producing a draft set of general requirements and best management practices (BMPs) for floatplane operation. In addition, Mr. Schultz provided links to an instructional video that has recently been produced on this exact issue. The above information has been incorporated into conditions of approval pursuant to the authority granted in Section 23.60.04.A.

Other environmental concerns raised via comment from the City of Bellingham include prohibition of fuel storage and other toxic materials on the dock, proper use, storage and disposal of spill cleanup equipment, prohibition regarding use of detergents over the water, and observance of no wake laws to reduce shoreline erosion. All the above concerns already exist as regulations within the Whatcom County SMP and have been incorporated as conditions of the substantial development permit.

5. The proposed float plane use is not believed to represent a significant detrimental affect to the public interest. Comments raised during the public comment period include the applicant's need for a floatplane, noise impacts, the type of plane to be utilized and the training of the pilot.

Based on review of the applicable SMP regulations, no demonstration of need is required for an applicant to seek conditional use approval for use and moorage of a floatplane on Lake Whatcom. It is considered a recreational use not unlike use of a vessel on the lake. The purpose of a conditional use permit is to provide flexibility in the administration of the use regulations and grants the decision-maker(s) to attach special conditions to control undesirable effects of the proposed use. If use of a floatplane was prohibited, it would be stated so within the SMP.

Impacts associated with noise have been considered. It is obvious the floatplanes make noise; especially during takeoff where a greater horsepower is necessary to leave the water surface. The proposed floatplane moorage is located at the southernmost end of Lake Whatcom in an area of relatively large lots. Few homes are located near the shoreline of Lake Whatcom in the immediate area of the subject property with exception of a non-conforming residence immediately adjacent to the west which is built waterward of OHWM. No comments have been received from this property owner during the time of this permit review. A majority of the noise generated from the plane will likely occur when the plane is out in the middle of the lake during takeoff; away from shoreline developments and from the most sensitive shoreline areas. Hours of use have been limited through conditions of approval in order to prohibit the noise generation during hours of darkness.

As stated previously, use of floatplanes on Lake Whatcom requires certification and training through the FAA. This Administrator has no reason to believe that the applicant will not abide by Federal law and obtain the proper pilot license. According to the applicant, he does not currently own a floatplane.

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

As conditioned, the use of the proposed dock to moor a floatplane is not believed to represent an adverse impact to the shoreline ecological functions and processes of Lake Whatcom. Special conditions have been required through this review to abate any foreseeable impacts in association with such use. If the same conditions were applied to other applications to floatplane use in the area, no cumulative adverse impacts should occur.

#### V. PUBLIC COMMENTS

The following public comments were received during the review of this project. Due to length, they are located within the hard file associated with this staff report. Summary and discussion of such comments is embodied within the conditional use criteria analysis previously within this staff report:

Letter from Ms. Wendy Harris received via email by WCPDS on January 31, 2011 (hard copy located within project file).

#### VI. AGENCY COMMENTS

The following agency comments were received during the review of this project. Summary and discussion of the comments are located within the conditional use analysis previously within this staff report:

Letter from Mr. Kurt Nabbeffeld, Senior Planner, City of Bellingham – Planning and Community Development Department dated February 4, 2010 (hard copy located within this staff report).

#### 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 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. 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 Whatcom unless reviewed and approved by the Shoreline Administrator. Minor upland excavation associated with abutment placement and the pedestrian access path 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 Whatcom Watershed.*
- 5. Use of the proposed dock is limited to private recreational use by the owners of the two subject properties within the Mouton Short Plat. No moorage shall be leased.*
- 6. Prior to issuance of a building permit, the applicant shall file with the Whatcom County Auditor a legally-enforceable joint use agreement that at a minimum, addresses the following:
  - a. Apportionment of construction and maintenance expenses;*
  - b. Liability agreements; and*
  - c. use restrictions**

*Prior to filing, a copy shall be provided to the Whatcom County Shoreline Administrator and County Prosecuting Attorney for review. It is recommended that an attorney familiar with such documents be retained to draft such provisions on behalf of the applicant.*

- 7. The dock shall be constructed of untreated materials such as untreated wood, approved plastic composites, concrete or steel. This condition applies to any portion of the dock 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.*
- 8. 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.*
- 9. The dock 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. Such information shall be shown on the required construction drawings.*

10. *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.*
11. *If the applicant proposes a railing within the building permit application, 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.*
12. *The dock shall not be used as a residence and no live aboard vessels are allowed.*
13. *Prior to issuance of a building permit, the applicant shall provide a mitigation plan in accordance with all applicable provisions outlined within WCC 16.16.260 and 16.16.760 to compensate for unavoidable adverse impacts to existing shoreline buffer vegetation on the subject property. The plan shall include the measures for eradication of non-native species and enhancement of the existing buffer area with appropriate native plant species. The plan shall include monitoring and maintenance provisions. The mitigation plan shall be reviewed and approved by WCPDS prior to start of construction activity on the property. Mitigation assurances will also be required as determined by WCPDS per 16.16.260.D.*
14. *Pursuant to WCC 16.16.265, prior to issuance of a building permit, the applicant shall file a Critical Areas Notice on Title with the Whatcom County Auditor's Office real estate records on forms provided by WCPDS. The copy of the filed document shall be provided to WCPDS.*
15. *Clearing shall be limited to the maximum extent feasible within approved development areas. This approval does not authorize any clearing or development of any kind other than the approved dock and associated access pathway.*
16. *The applicant or any future owner of the dock for floatplane moorage shall carry the appropriate pilot's license for operation of such aircraft. The pilot shall follow all applicable Federal Aviation Associations (FAA) regulations including those associated with takeoff, landing and taxiing within the water.*
17. *The applicant or future owner shall comply with all applicable regulations outlined within WCC Title 11 – Boating and Swimming.*
18. *Floatplane use shall be limited to hours of daylight between the hours of 7:00a.m and 10:00 p.m.*
19. *The applicant or any future user of a floatplane on the subject property shall abide by the following conditions of approval in order to minimize the potential for introduction and control the spread of invasive species within Lake Whatcom:*
  - a. *All floatplane pilots utilizing the approved moorage facility on the subject property shall view the seaplane inspection and cleaning training video, complete the training course and carry a certificate available from the National Seaplane Pilots Association or 100<sup>th</sup> Meridian Initiative websites ([www.seaplanes.org](http://www.seaplanes.org) and [www.100thmeridian.org](http://www.100thmeridian.org)).*

*b. Prior to entering the floatplane, the pilot shall remove all aquatic plants or attached mussels, snails or other animals from the exterior surfaces of floats, wires, cables and rudders and remove all water from floats, wheel wells and any other compartments or areas of the aircraft that can contain or maintain raw water.*

*c. Prior to takeoff, the pilot shall raise and lower rudders several times to remove aquatic plants, avoid taxiing through heavy surface growths of aquatic plants and make sure all floats remain as dry internally as possible during takeoff.*

*d. After takeoff, the pilot shall raise and lower rudders several times to free any remaining aquatic plants while over the departing waterbody or over dry land. If aquatic plants persist and are still visible on floats, cables or rudders, return to the same waterbody and physically removing them is required.*

*e. During storage and/or moorage, the pilot shall remove the aircraft from the water whenever practical to better facilitate self inspection, drainage, removal, cleaning and drying as recommended in the previously-referenced training video.*

*f. The pilot shall comply with any future updates to the above-referenced guidelines or regulations on this matter including any inspection officers once established in Washington State.*

*g. Prior to landing on Lake Whatcom from a waterbody known to contain invasive species, the pilot shall make a saltwater landing if feasible in order to kill any freshwater organisms on the aircraft.*

*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:

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Whatcom County Shorelines Administrator

Planning and Development Services – Land Use & Natural Resource