

WHATCOM COUNTY HEARING EXAMINER

RE: SHORELINE SUBSTANTIAL DEVELOPMENT) SHR2012-0012
SHORELINE CONDITIONAL USE) SHC2012-0020
SHORELINE VARIANCE) SHV2012-0002
Application for)
)
Washington State)
Department of Fish and Wildlife) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting a Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, and a Shoreline Variance to replace the public boat ramp for Lake Samish, pave the parking lot, and install ADA-accessible boat-loading ramp and vault toilet.

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: Washington State Department of Fish and Wildlife

Property Location: East Lake Samish Drive
Bellingham, WA

Legal Description: Section 25, Township 37 North, Range 03 East, W.M.
Assessor's Parcel No. 370325-034243

Adjacent Water Body: Lake Samish

Shoreline Designation: Conservancy

Statewide Significance: No

Zoning: Recreation and Open Space (ROS)

Authorizing Ordinances:	WCC 23.50	Applicability
	WCC 23.70.010	Administration
	WCC 23.70.030	Hearing Examiner

Applicable Shoreline Program Provisions:

WCC 23.10	Purpose and Intent
WCC 23.20	Goals and Objectives
WCC 23.30.020	Official Shoreline Map
WCC 23.30.060	Shoreline Residential Area Designation
WCC 23.50	Applicability and Non-conforming Uses
WCC 23.60.010	Substantial Development Permit Criteria
WCC 23.60.030	Variance Permit Criteria
WCC 23.60.040	Conditional Use Permit Criteria
WCC 23.70	Administration
WCC 23.90	General Policies & Regulations
WCC 23.100.040	Boating Facilities – Marinas & Launch Ramps
WCC 23.110	Definitions

SEPA Review: Determination of Non-Significance (DNS) issued Feb. 23, 2012

Legal Notices: Published – August 8 and November 20, 2012 Notices of Application
December 6, 2012 Notice of Public Hearing
Posted – December 3, 2012
Mailed – August 16 and November 20, 2012 Notices of Application
November 30, 2012 Notice of Public Hearing

Hearing Date: December 21, 2012

Parties of Record:

Cindy Knudsen
Washington Department of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501

Mary White
Division of Engineering

Bryan Sehmel
Planning and Development Services

Exhibits:

- 1 Land Use Application, PRE2012-0002, with attachments
 - 1-1 Major Project Permit Application, PRE2012-0002
 - 1-2 Major Project Permit Application Criteria
 - 1-3 Major Project Permit Application Intake Checklist
 - 1-4 Agent Authorization
 - 1-5 Fee Responsibility
 - 1-6 Major Project Permit – List of neighboring properties
 - 1-7 Supplemental Application, PRE2012-0002
 - 1-8 Cover Letter, WA Dept of Fish and Wildlife, June 19, 2012
 - 1-9 Land Disturbance Application
 - 1-10 Samish Lake Access Stormwater Drainage Plan, January 11, 2012
 - 1-11 Preliminary Traffic and Concurrency Info
 - 1-12 Customer Receipt, July 17, 2012
 - 1-13 Revocable Encroachment Permit Application
 - 1-14 WA State JARPA Form
 - 1-15 Statutory Warranty Deed
 - 1-16 Letter of Complete Application, August 6, 2012
 - 1-17 Cover memo with application materials from Bryan Sehmel, October 12, 2012
 - 1-18 PDS Form Letter, Notice of Application, SHR, [Comment Form] August 15, 2012
 - 1-19 Notice of Application, SHR2012-0012, Distribution List, August 15, 2012
 - 1-20 Certificate of Mailing, Notice of Application, SHR, August 16, 2012
 - 1-21 Legal Notice of Application, SHR, Aug 8, 2012
 - 1-22 PDS Form Letter, Notice of Application, SHV/SHC, Comment Form, Nov 20, 2012
 - 1-23 Hearing Examiner Checklist, SHR, Oct 12, 2012
- 2 Staff Report, November 29, 2012
- 3 Technical Committee Review Comments, includes
 - Kershner, Watershed Office, 9/13/12
 - Kwiatkowski, Plans Examiner, 9/13/12
 - Bouma, River and Flood Division, 8/21/2012, with attached Samish Lake Access Stormwater Drainage Plan, April 25, 2012
 - Spencer Robbins, Engineering, Email 9/7/2012
 - Bouma, River/Flood, email 11/28/2012, with DFIRM, dated 3/09/12
 - Bouma email to Cindy Knudsen, 3/9/12 re: flood review
 - Lyn Morgan-Hill, Critical Areas Memo, Sept 7, 2012
 - Email from Cindy Knudsen to Morgan-Hill, Sept 7, 2012 re: additional mitigation
- 4 Comment Form, with attached letter from Harry Warren, Sept 12, 2012
- 5 DNS, submitted by WA State Dept of Fish and Wildlife, issued Feb 23, 2012, with

attached Environmental Checklist and Comment Letter from DOE, Aug 21, 2012

- 6 Bundle of Email correspondence betw Staff and Applicant re issues including the need for additional review: Stormwater, Land Disturbance, CAO, ADA loading platform, safety sign
- 7 Aerial Maps
- 8 Vicinity Map and Proposed Site Plans
- 9 Critical Areas Map
- 10 ESA Checklist Application
 - 10-1 Informal ESA Consultation for Impacts to Listed Species and Critical Habitat from West Lake Samish Road Shoulder Repair
 - 10-2 Web Soil Survey
 - 10-3 Critical Areas Report, 6/18/2012
 - 10-4 Wetland Biological and Delineation Report, March 31, 2012
- 11 Notice of Application, SHV/SHC, November 20, 2012
- 12 Legal Notice of Application, SHV/SHC, 11/20/12, with attached tear sheet
- 13 Certificate of Mailing, Notice of Application, SHV/SHC, 11/20/2012
- 14 PDS Form Memo to Tech Review Committee re: SHV/SHC applications, Nov 15, 2012, with attached Supplemental Applications for SHV and SHC, and handwritten note indicating mailing to three property owners
- 15 Certificate of Mailing Notice of Public Hearing, Nov 30, 2012
- 16 Certificate of Posting, Notice of Public Hearing, Dec 3, 2012
- 17 Legal Notice of Public Hearing, Dec 6, 2012
- 18 Staff emails re: scheduling hearing
- 19 Memorandum, December 21, 2012, from Bryan Sehmel re: Revised Conditions 3 and 4 with attached emails, comments, revised plans, and usage permit [submitted at the hearing]

II.

The Applicant seeks Shoreline Permits for the proposed replacement of the public boat ramp for Lake Samish, including paving the parking lot, installation of an ADA-accessible boat-

loading ramp, and vault toilet.

III.

The Applicant has indicated that the Staff Report is factually correct. The Applicant stated no objection to the Conditions of Approval recommended by Staff. There was no public comment on this matter at the hearing. The Findings of Fact and Conclusions of Law of the Shoreline Planner of the Land Use Services Division of Whatcom County Planning and Development Services, as set forth in the Staff Report, Exhibit No. 2, dated November 29, 2012, 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 Permits for the proposed replacement of the public boat ramp, including paving the parking lot, and the installation of an ADA-accessible boat-loading ramp and vault toilet.

Findings of Fact and Conclusions of Law are set forth in the Staff Report, Exhibit No. 2, dated November 29, 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, a Shoreline Conditional Use Permit, and a Shoreline Variance are hereby granted to the Washington State Department of Fish and Wildlife for the proposed replacement of the public boat ramp, including paving the parking lot, and installing ADA-accessible boat-loading ramp and vault toilet. The property in question is located on Assessor's Parcel No. 370325-034243, East Lake Samish Drive, Bellingham, Washington. The permits are granted subject to the following conditions:

1. All work shall be consistent with the approved site plan and approved project scope in both size and location. A revised site plan incorporating the conditions of approval shall be submitted to – and approved by – the Shoreline Administrator prior to starting work; this will become the approved site plan. **The revised site plan shall show the split rail fences and locations where existing impervious surfaces are proposed for removal.
2. Any additional alteration of the approved project proposal shall require additional review by the Shoreline Administrator. If substantive modifications are proposed, a revision may be required to be approved by the Whatcom County Hearing Examiner and the Washington State Department of Ecology.
3. The overall length of the boat launch ramp shall not exceed 76-feet (including 8-feet of Armorflex), including no more than 42-feet as measured from the OHWM of Lake Samish. Its width shall not exceed 20-feet (including 4-feet of Armorflex per side).
4. Work in excess of 500 SF shall not be authorized landward of the OHWM between Oct. 1 and May 31 with the exception of the approved phased plan dated Dec. 11, 2012 (exclusive to the boat ramp). Proper erosion and sedimentation controls (ESC) shall be installed prior to land disturbance activities. The Applicant shall request an ESC inspection from the WCPDS Watersheds Office while land disturbance activities are occurring. **Any proposed changes to the approved best management practices (BMPs) and/or approved temporary erosion and sedimentation control (TESC) plan shall be reviewed and approved by the Shoreline Administrator.
5. The Applicant shall submit a building permit application and obtain a commercial building permit from the Whatcom County Building Services Division prior to construction of the toilet building, the loading platform, and the information kiosk. The permit will be reviewed pursuant to the current adopted edition of the International Building Code (IBC). It must also comply with all other applicable codes and ordinances adopted by Whatcom County. **A pre-application screening will not be required prior to submittal of the building permit. A pre-application meeting (PRE2012-00002) was already held on Feb. 29, 2012.
6. The Applicant is encouraged to pursue an alternative location for the information kiosk that would not block, or that would limit blockage of, existing visual access of the shoreline, while still achieving the intended purpose of the sign.
7. The required plantings, rain gardens, and split rail fences shall be installed pursuant to the approved reports and/or plans. All other work shall be limited to, and contained within, the approved construction boundaries.
8. All work shall be performed from excavation equipment operating landward of the OHWM of Lake Samish. Any alteration to this authorization shall be reviewed and approved by the Shoreline Administrator.

9. Prior to start of work, the Applicant shall submit to the Flood Dept. a copy of the final U.S. Army Corps of Engineers permit demonstrating compliance with the Endangered Species Act (ESA).
10. The Applicant shall contact the Washington State Dept. of Fish and Wildlife (WDFW) and obtain a Hydraulics Project Approval (HPA) or any other approvals as required by WDFW prior to performing any work waterward of the OHWM. A copy of the HPA shall be submitted upon application of the required building permit.
11. It is the Applicant's responsibility to contact the Dept. of Ecology to determine which permit (NPDES Construction and/or Industrial Stormwater General Permit) is required, and then apply for and obtain the resultant permit.
12. Garbage or litter receptacles shall be provided and maintained by the operator at several locations convenient to users (WCC 23.100.040.B.5.c). Disposal or discarding of fish or shellfish cleaning wastes, scrap fish, viscera, or unused bait into water or in other than designated garbage receptacles is prohibited (WCC 23.100.040.B.5.d).
13. 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. (WCC 23.90.040.B.5).
14. Construction and/or demolition debris shall be removed from the shoreline area upon completion of the project.
15. The project is subject to all applicable Federal, State and local laws and regulations. It is subject to Washington State Dept. of Ecology (DOE) water quality and all other applicable water quality standards. Quality of ground and surface waters shall not be significantly degraded. The proposed work shall be completed during periods of dry weather (as appropriate) and in accordance with BMP's for erosion and sedimentation control. Such measures shall be maintained throughout the duration of the project.
16. If archaeological materials (bone, shell midden, cobble tools, etc.) are observed during site work, work in the area of discovery shall cease and the Whatcom County SEPA Administrator (360-676-6907), LNTHPO (360-384-2298), and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911) and LNTHPO Dept. (360-384-2298) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.

17. Construction shall commence within two years of the effective date of the shoreline variances and substantial development permit as defined by WAC 173-27-090 (3), provided that the Whatcom County Hearing Examiner may authorize a single extension for a period not to exceed one year based on reasonable factors if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the Department of Ecology.
18. The Applicant shall contact the Shoreline Administrator upon completion of the work to schedule a final inspection ensuring compliance with the scope and conditions of this permit.
19. The Conditions of Approval from comments submitted by Whatcom County Agencies, as set forth on pages 14 and 15 of the Staff Report, Exhibit No. 2, are adopted as Conditions of Approval herein unless amended by the agency requesting the Condition.

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 21st day of December 2012.



Michael Bobbink, Hearing Examiner