

WHATCOM COUNTY HEARING EXAMINER

RE: SHORELINE SUBSTANTIAL DEVELOPMENT)	SHR2010-0015
SHORELINE CONDITIONAL USE)	SHC2010-0020
SHORELINE VARIANCE)	SHV2010-0009
Application for)	
)	
<i>Washington State</i>)	FINDINGS OF FACT,
<i>Department of Fish and Wildlife</i>)	CONCLUSIONS OF LAW,
)	AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: Washington State Department of Fish and Wildlife is requesting a Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, and Shoreline Variance Permit to renovate an existing fishing pier located at Lake Terrell. The proposal includes construction of a parking area for twenty-two vehicles (one ADA parking spot and twenty-one standard spots), vault toilet, an ADA accessible walkway, signage, and landscaping at the Lake Terrell Wildlife Reserve. The application also requests the relocation/reconfiguration of an existing 193-foot fishing pier.

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: Ms. Cindy Knudsen, Washington State Department of Fish and Wildlife

Property Owner: Washington State Department of Fish and Wildlife

Property Location/Address: 5975 Lake Terrell Road, Ferndale, WA
Parcel Number: 390121 279392

Adjacent Water Body: Lake Terrell
Shoreline Designation: Natural and Aquatic

Shoreline of State-Wide Significance: No

Authorizing Ordinances: SMP 23.50 Applicability
SMP 23.70 Administration

Applicable Shoreline Program Provisions:

SMP 23.20	Goals and Objectives
SMP 23.30.10	Natural Shoreline Area
SMP 23.60.02	Shoreline Substantial Development Permit Criteria
SMP 23.50.07	Non-conforming Development
SMP 23.60.03	Variance Permit Criteria
SMP 23.90	General Policies and Regulations
SMP 23.100.10	Recreation Policies and Regulations
SMP 23.100.14	Signs Policies and Regulations
SMP 23.100.15	Transportation Policies and Regulations
SMP 23.100.16	Utilities Policies and Regulations
SMP 23.110	Definitions

SEPA Review: Determination of Non-Significance (DNS) issued on October 25, 2010 by Washington State Department of Fish and Wildlife as lead agency.

Legal Notices: Published – May 5, 2011
Posted – May 2, 2011
Mailed – April 29 and 2011

Hearing Date: May 18, 2011

Parties of Record:

Ms. Cindy Knudsen
Washington State Department of Fish and Wildlife
600 Capitol Way North
Olympia, Washington 98501

Sam McDaniel
Planning and Development Services

Exhibits:

1. Land Use Application
 - 1-1 Fee Responsibility
 - 1-2 Supplemental Application
 - 1-3 Determination of Completeness, November 5, 2010
 - 1-4 PDS Notice of Application, Property Owner Form
 - 1-5 Adjoining Property Owners Mailing Address
2. Staff Report, May 12, 2011
3. Revised Site Plan Packet, includes Site Plan, Existing Site Plan, Profile, Bioswale Plan, Parking Pad Plan, Site Kiosk, Site Fence Diagram, Concrete Sidewalk Detail, CXT Vault Toilet Plan, Planting Plan
4. DNS, October 25, 2010, issued by Dept of Fish and Wildlife
5. Certificate of Mailing, Notice of Application, not dated
6. Certificate of Mailing, Notice of Public Hearing, April 29, 2011
7. Certificate of Posting, Notice of Public Hearing, May 2, 2011
8. Legal Notice of Public Hearing, May 5, 2011
9. Letter dated February 7, 2011, from Sam McDaniel to Ms. Knudsen re: additional information
10. Letter dated March 2, 2011, from Ms. Knudsen to Sam McDaniel re: additional information request
11. Memo dated March 9, 2011 from Lyn Morgan-Hill to Sam McDaniel with attached Wetland Biological and Delineation Report: Lake Terrell Pier Replacement Project, Prepared by Marty Peoples, Fish and Wildlife Biologist, WA Dept of Fish and Wildlife, March 7, 2011
12. Agency Comments, including PW Engineering, April 20, 2011; Watersheds, March 28, 2011; Lummi Nation Tribal Historic Preservation Office, January 26, 2011; Email from John Hansen and Cindy Knudsen to Lyn Morgan-Hill, January 26-27 re: ADA access; Email from Cindy Knudsen to Sam McDaniel, April 26, 2011 re: amended response re: Lake Terrell Project; Email from Cindy Knudsen to Sam McDaniel re: Parking Lot Size Response, dated May 5, 2011

II.

The Applicant is requesting Shoreline Permits to renovate an existing fishing pier located on the shores of Lake Terrell. The proposal includes construction of a parking area for twenty-two vehicles (one ADA parking spot and twenty-one standard spots), vault toilet, an ADA accessible walkway, signage, and landscaping at the Lake Terrell Wildlife Reserve. The Applicant also requests to relocate / reconfigure an existing 193-foot fishing pier.

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 #2, dated May 12, 2011, a copy of which is attached hereto, are adopted and incorporated herein by this reference.

IV.

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

CONCLUSIONS OF LAW

I.

The Whatcom County Shoreline Planner has recommended approval of the requested Shoreline Permits for the proposed construction and renovation of the existing fishing pier on the shores of Lake Terrell.

Findings of Fact and Conclusions of Law are set forth in the Staff Report, Exhibit #2, dated May 12, 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, Shoreline Conditional Use Permit, and Shoreline

Variance Permit are hereby granted to the Washington State Department of Fish and Wildlife for the renovation and relocation/reconfiguration of an existing fishing pier located at Lake Terrell. The project includes construction of a 22-vehicle parking area, vault toilet, ADA accessible walkway, signage, and landscaping at the Lake Terrell Wildlife Reserve, and the relocation / reconfiguration of an existing 193-foot fishing pier, located at 5975 Lake Terrell Road, Ferndale, Washington, Assessor's Parcel No. 390121 279392. The permits are granted subject to the following conditions:

1. The proposed shoreline developments shall be consistent with the scope and site plans approved by this shoreline substantial development permit, shoreline conditional use permit, and shoreline variance. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner.
2. Construction and/or demolition debris shall be wholly removed from the shoreline. Disposal shall occur in accordance with all applicable agency laws and regulations, including but not limited to Whatcom County Planning and Development Services, DOE and Northwest Air Pollution Authority. Offsite deposition of excavation spoils, concrete debris, etc., within unincorporated Whatcom County will require a Land Disturbance Permit from Whatcom County Planning and Development Services.
3. If archaeological materials (shell midden, faunal remains, stone tools) or human remains are observed during project activities, all work in the immediate vicinity shall stop, and the area shall be secured. Whatcom County SEPA Administrator (676-6907) LNTHPO (384-2280) and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all other applicable laws pertaining to archaeological resources is required.
4. The Applicant shall obtain a Building Permit from the Whatcom County Planning & Development Services – Building Services Division prior to start of construction on the subject property. Such Building Permit shall require development review by the Shoreline Administrator pursuant to 23.60.02.2.B. The building permit submittal shall include site plans consistent with the plans approved by this permit and provide an engineered design as determined by Building Services. A demolition permit to remove the existing dock may also be required as determined by Building Services.
5. The Applicant/Proponent shall contact the Washington State Department of Fish and Wildlife (WDFW) to obtain a Hydraulics Project Approval (HPA) or any other necessary approvals as determined by the WDFW. A copy of the issued HPA shall be included with the above-required building permit application for review by the Shoreline Administrator.
6. The Applicant shall submit a Temporary Erosion and Sedimentation Control Plan for review by the Shoreline Administrator prior to issuance of future development permits.

7. The Applicant shall comply with all of the requirements of the Whatcom County Critical Areas Technical Administrator prior to any development approvals, as outlined in the March 9, 2011 memorandum, unless modified by PDS or appealed to the appropriate agency.
8. The Applicant shall comply with all of the requirements of the Whatcom County Division of Engineering, as outlined in the April 11, 2011 memorandum unless modified by the Engineering Department or appealed to the appropriate agency, prior to any development approvals.
9. The Applicant shall comply with all of the requirements of the Whatcom County Watershed Technical Administrator, as outlined in the March 28, 2011 memorandum unless modified by PDS or appealed to the appropriate agency, prior to any development approvals.
10. Impervious surfacing for parking 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.
11. If construction of the proposed dock requires upland land disturbance or operation of equipment directly upon the bedlands of Lake Terrell below the ordinary high water mark (OHWM), additional review and approval is required by the Shoreline Administrator.
12. Construction shall be commenced within two years, and authorization to conduct the construction shall terminate five years after the effective date of this shoreline permit as defined in 23.60.160.

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 18th day of May 2011.

Michael Bobbink, Hearing Examiner



May 12, 2011

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES
STAFF REPORT

The application of Washington State Department of Fish and Wildlife For a Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, & Shoreline Variance		FINDINGS, CONCLUSIONS AND RECOMMENDATIONS SHR2010-00015 SHC2010-00020 SHV2010-00009
--	--	---

I. SUMMARY OF APPLICATION AND RECOMMENDATION

Application: The applicant is requesting approval of a shoreline substantial development permit, a shoreline conditional use permit, and a shoreline variance to renovate an existing fishing pier located at Lake Terrell. The proposal includes construction of a parking area for twenty-two vehicles (one ADA parking spot and twenty-one standard spots), vault toilet, an ADA accessible walkway, signage, and landscaping at the Lake Terrill Wildlife Reserve and relocation/reconfiguration of an existing 193 foot fishing pier.

Recommendation: Staff recommends approval of the proposed project subject to the conditions outlined within this staff report.

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: Ms. Cindy Knudsen
Washington State Department of Fish and Wildlife
600 Capitol Way North
Olympia, Washington 98501

Property Owner: Washington State Department of Fish and Wildlife
600 Capitol Way North
Olympia, Washington 98501

Property Location/Address: 5975 Lake Terrell Road, Ferndale, WA
Parcel Number: Section 390121279392

Adjacent Water Body: Lake Terrell

Shoreline Designation: Natural & Aquatic

Shoreline of State-Wide Significance: No

B. PROCEDURAL INFORMATION

Authorizing Ordinances: SMP 23.50 Applicability

Applicable Shoreline Program Provisions:

SMP 23.20	Goals and Objectives
SMP 23.30.10	Natural Shoreline Area
SMP 23.60.02	Shoreline Substantial Development Permit Criteria
SMP 23.50.07	Non-conforming Development
SMP 23.60.03	Variance Permit Criteria
SMP 23.90	General Policies and Regulations
SMP 23.100.10	Recreation Policies and Regulations
SMP 23.100.14	Signs Policies and Regulations
SMP 23.100.15	Transportation Policies and Regulations
SMP 23.100.16	Utilities Policies and Regulations
SMP 23.110	Definitions

SEPA Review:

Determination of Non-Significance (DNS) issued on October 25, 2010 by Washington State Department of Fish and Wildlife as lead agency.

III. FINDINGS

The applicant is requesting approval of a shoreline substantial development permit, a shoreline conditional use permit, and a shoreline variance to renovate an existing fishing pier and construct associated developments for recreational purposes. The site presently contains one fishing pier and one vault toilet in need of replacement. This project is designed to enhance accessible public access for fishing and wildlife viewing opportunities by removing the old fishing pier and installing a new fishing pier and associated developments.

The project will be conducted in two phases. The first phase of the project includes development of the uplands including construction of a 9,245 square foot parking area having a total of twenty-two parking spots, including one ADA accessible parking spot, installation of a new vault toilet and ADA accessible walkway, stormwater controls, a kiosk and landscaping and removing the existing vault toilet.

The second phase of the project includes the removal of the existing fishing pier and construction of the new T-shaped fishing platform with ADA accessible railing.

The proposed project area is located within the 1,500-acre Lake Terrell unit and is ten miles northwest of Bellingham and five miles west of Ferndale. The Lake Terrell Unit is owned by the Washington State Department of Fish and Wildlife. It includes Lake Terrell, a 500-acre man-made, shallow lake with two peat bog marshes on its south and southwest sides, and Terrell Creek. Several artificial islands, constructed to attract nesting waterfowl, have been used extensively by Canada geese. The adjacent fields are excellent brooding areas for goslings. Wintering trumpeter and tundra swans also use the lake as a night roost area. Lake Terrell, with its uniquely undeveloped shoreline and diverse fishery, has become one of the prime destination fishing venues in North Puget Sound.

Pursuant to 23.60.01.A, a Shoreline Substantial Development Permit is required for the above proposal as the activity or development is not specifically exempt per 23.60.02.2. In addition, per 23.50.07, existing nonconforming docks may be modified, reoriented or altered within the same general location to be more consistent with the provisions of the SMP through the conditional use process. Lastly, the applicant is requesting a variance to the bulk restriction limiting the parking area to a maximum of ten vehicles as outlined in 23.30.10.4.

IV. CONCLUSIONS

Shoreline Substantial Development Permit:

In the review of Shoreline Substantial Development Permits, the Administrator or Hearing Examiner, as appropriate, 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 pursuant to 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.**

General and applicable use-specific policies and regulations associated with the various developments are found within Sections 23.90 and 23.100, respectively. Applicable policies and regulations associated with the proposed development are listed and discussed below:

Ecological Protection and Critical Areas

23.90.03.A Policies

- 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.
- In assessing the potential for net loss of ecological functions or processes, project-specific and cumulative impacts should be considered.
- 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

- 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:
 - Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or moving the action.
 - 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.

- Rectifying the adverse impact by repairing, rehabilitating or restoring the affected environment.
- Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of action.
- 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.
- 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.
- Unless otherwise stated, critical area buffers shall be protected and/or enhanced pursuant to this Program and WCC 16.16.
- The cumulative effects of individual development proposals shall be identified and evaluated to assure that no net loss standards are achieved.
- Whenever the administrator issues a determination or recommendation and/or conditions of approval on a proposal, which will result in the denial or substantial alteration of a proposed action, such determinations will be provided in writing stating the relationship(s) between the ecological factors, the proposed action and the condition(s).

Staff Comment:

The proposed project is consistent with the ecological protection policies and regulations. The proposed developments meet the required Habitat Conservation Area (HCA) setback/buffer requirement as required by the Whatcom County Critical Areas Ordinance (16.16.740). Relocating the parking area and other developments to meet the HCA setback requires a longer ADA walkway. The proposed ADA walkway to access the fishing pier will result in unavoidable critical area impacts. This recommendation of approval has been conditioned to require mitigation for the unavoidable impacts. The applicant has demonstrated avoidance to the greatest extent possible. No new road development is proposed as an existing road will be utilized to gain access to the proposed fishing area.

Water Quality and Quantity

23.90.04.A Policies

- 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.
- 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.

- 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

- Shoreline use and development shall incorporate measures to protect and maintain surface and ground water quantity and quality in accordance with all applicable laws.
- 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.
- 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.

Staff Comment:

The proposal is consistent with the water quality and quantity policies and regulations. The proposal maintains the required HCA buffer as required by 16.16.740. This recommendation of approval has been conditioned that prior to issuance of future development permits the applicant demonstrate that the proposed on site stormwater management facilities meet the Whatcom County Development Standards. Additionally, this recommendation of approval has been conditioned that the applicant submits a TESC plan with the development application for review and approval.

Vegetation Conservation

23.90.06.A Policies

- 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:
 - Providing shade necessary to maintain water temperatures required by salmonids, forage fish, and other aquatic biota.
 - Regulating microclimate in riparian and nearshore areas.
 - Providing organic inputs necessary for aquatic life, including providing food in the form of various insects and other benthic macro invertebrates.
 - Stabilizing banks, minimizing erosion and sedimentation, and reducing the occurrence/severity of landslides.
 - Reducing fine sediment input into the aquatic environment by minimizing erosion, aiding infiltration, and retaining runoff.
 - Improving water quality through filtration and vegetative uptake of nutrients and pollutants.

- Providing a source of large woody debris to moderate flows, create hydraulic roughness, form pools, and increase aquatic diversity for salmonids and other species.
- Providing habitat for wildlife, including connectivity for travel and migration corridors.

23.90.06.B Regulations

- 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.
- 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.
- Vegetation clearing shall be limited to the minimum necessary to accommodate approved shoreline development.
- 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.

Staff Comment:

The proposed project is consistent with the vegetation conservation policies and regulations. The proposal will be located outside of critical areas buffers as required by 16.16.740. The proposed ADA accessible walkway to the pier will result in unavoidable impacts to the Habitat Conservation Buffer and will require mitigation to compensate for the unavoidable impacts. This recommendation of approval has been conditioned to require appropriate mitigation. The applicant has indicated that the amount of clearing is the minimum necessary to accommodate the development.

Site Planning

23.90.09.A Policies

- 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.
- 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.

- 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.
- Development should be located, designed, and managed so that impacts on shoreline or upland uses are minimized through bulk and scale restrictions, setbacks, buffers, and control of proximity impacts such as noise or light and glare.
- 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

- Where appropriate new development shall use clustering to minimize adverse impacts on shoreline ecological functions and processes.
- Vehicle and pedestrian circulation systems shall be designed to minimize clearing, grading and alteration of topography and natural features. Roadway and driveway alignment shall follow the natural contours of the site and minimize width to the maximum extent feasible. Elevated walkways should be utilized to cross wetlands.
- 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.
- Utilities shall be located within roadway and driveway corridors and right-of-ways wherever feasible.
- 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.
- Stormwater infiltration systems shall be employed to mimic the natural infiltration and ground water interflow processes where appropriate.
- 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.
- Development shall be located, designed, and managed so that impacts on public use of the shoreline are minimized.
- 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.
- 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.

- 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.
- 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.

Staff Comment:

The proposed project is consistent with the site planning policies and regulations. The proposal has incorporated a bio-swale for stormwater infiltration that will be constructed in accordance with the Whatcom County Development Standards. This recommendation of approval has been conditioned to require alternative surfaces for the parking area where feasible consistent with the May 2005 Low Impact Development Technical Guidance Manual for Puget Sound. There is nothing in the record that would indicate the proposal would impede navigation or deprive other properties of reasonable access to navigable waters. This recommendation of approval has been conditioned to ensure compliance with the bulk and dimensional setbacks outlined in 23.90.13.C prior to approving any development permits.

Landfill and Excavation

23.90.10.A Policies

- 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.
- 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.
- Landfills and excavation should be located and developed so that water quality, hydrologic and runoff patterns are not altered.
- 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

- 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.

- 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:
 - Port development for water-dependent uses where other upland alternatives or structural solutions, including pile or pier supports are infeasible.
 - Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline where alternatives to fill are infeasible.
 - Ecological restoration or enhancement such as beach nourishment, habitat creation, or bank restoration when consistent with an approved restoration plan.
 - Maintenance of lawfully established development.
 - 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.
- 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.
- Perimeter banks shall generally be sloped no steeper than 1 foot vertical for every 3 feet horizontal unless a specific engineering analysis has been provided, and the Administrator determines that the landfill blends physically and visually with existing topography.
- A temporary erosion and sediment control (TESC) plan shall be provided for all proposed landfill and excavation activities.

Staff Comment:

The proposed project is consistent with the landfill and excavation policies and regulations. No significant impacts to shoreline ecological functions or processes were identified in association with the permit review. The recommended approval has been conditioned to require the submittal of a Temporary Erosion and Sediment control plan prior to ground disturbing activities. The applicant has designed to proposal to represent the minimum necessary construct the scope of work.

Recreation

23.100.10.A Recreation – Policies

- Shoreline recreational development should be given priority for shoreline location to the extent that the use facilitates the public's ability to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline. Where appropriate, such facilities should be dispersed along the shoreline in a manner that supports more frequent recreational access and aesthetic enjoyment of the shoreline for a substantial number of people.
- Recreational developments should facilitate appropriate use of shoreline resources while conserving them. These resources include, but are not limited to: accretion shoreforms, wetlands, soils, ground water, surface water, native plant and animal life, and shore processes.

- Recreational development requiring extensive structures, utilities and roads and/or substantial modifications of topography or vegetation removal should not be located or expanded in areas where damage to persons, property, and/or shoreline functions and processes is likely to occur.
- Recreational developments and plans should provide the regional population a varied and balanced choice of recreation experiences in appropriate locations. Public agencies and private developers should coordinate their plans and activities to provide a wide variety of recreational opportunities without needlessly duplicating facilities.
- Trail links between shoreline parks and public access points should be encouraged for walking, horseback or bicycle riding and other non-motorized vehicle access where appropriate. The Whatcom County Comprehensive Park and Recreation Open Space Plan should be considered in design and approval of public trail systems.
- Access to natural character recreational areas, including but not limited to beaches and fishing streams, should be a combination of linear shoreline trails or easements and small parking or access tracts to minimize user concentration on small portions of the shoreline.
- Recreation facilities should incorporate public education regarding shoreline ecological functions and processes, the role of human actions on the environment and the importance of public involvement in shorelines management. Opportunities incorporating educational and interpretive information should be pursued in design and operation of recreation facilities and nature trails.
- Reasonable physical or visual public access to shorelines should be provided and integrated with recreational developments in accordance with SMP 23.90.08.
- Recreation development should be located only where utility and road capability is adequate, or may be provided without significant damage to shore features commensurate with the number and concentration of anticipated users.
- Cooperative efforts among public and private persons toward the acquisition and/or development of suitable recreation sites or facilities should be explored to assure long term availability of sufficient public sites to meet local recreation needs.

23.100.10.B Recreation – Regulations

Where significant adverse impacts are adequately mitigated, recreational development is a priority use for shoreline location, subject to the following:

- Water-related and water-enjoyment uses do not displace water-dependent uses and are consistent with existing water-related and water-enjoyment uses.
- Activities provided by recreational facilities must bear a substantial relationship to the shoreline, or provide physical or visual access to the shoreline. Facilities for water-dependent recreation such as fishing, clam digging, swimming, boating, and wading, and water-related recreation such as picnicking, hiking, and walking should be located near the shoreline, while nonwater-related recreation facilities shall be located inland.
- Recreation areas or facilities on the shoreline shall provide physical or visual public access consistent with the criteria of SMP 23.90.08.

Staff Comment:

The subject proposal meets the definition of “Recreational Development” pursuant to the definition contained in the SMP. The construction of an ADA accessible fishing pier and appurtenant developments

bear a substantial relationship to the shoreline and will significantly improve the public's access to the shoreline. Section 23.30.10.4 of the SMP identifies low intensity water-oriented recreation as a permitted use in the Natural Shoreline Designation, provided that facilities do not require substantive alterations to topography. The proposed developments will not require substantial alterations of topography. Section 23.30.10.4 offers examples of low intensity water-oriented recreation, such as public forest preserves, wildlife reserves, natural systems education, and/or interpretive areas, trailheads, with associated restrooms and parking areas, and buildings for interpretive facilities. The proposed fishing pier is a water-dependent use. Significant impacts have been avoided to the greatest extent possible by ensuring the associated developments will meet the required HCA buffer requirements as required in WCC 16.16.740. The proposal will relocate an existing fishing pier and will significantly improve physical and visual public access to the shoreline.

Signs

23.100.14.A Signs – Policies

- Whatcom County recognizes the constitutional right for property owners to communicate using signs on their property. These policies are intended to ensure that signage within shoreline areas is consistent with the purpose and intent of the Act and this Program by addressing impacts to ecological functions, public safety and visual aesthetics.
- Signs should be located, designed and maintained to be visually compatible with local shoreline scenery as seen from both land and water, especially on shorelines of statewide significance.
- Sign location and design should not significantly impair shoreline views.
- Signs near scenic vistas and view points should be restricted in number, location, and height so that enjoyment of these limited and scarce areas is not impaired.

23.100.14.B Signs – Regulations

- Unless otherwise prohibited by zoning regulations or this Program, shoreline developments are permitted to maintain a total of three (3) on-premise signs. Only one (1) may be a free-standing, roof, or projecting sign; provided, that if this sign is double-faced, then only one (1) other wall sign is permitted. This provision does not apply to private informational signs posted on private property by the owner for reasonable purposes such as address, home occupation signs, No Trespass, and temporary signs such as For Sale, Rent and campaign signs; provided, no sign exceeds four (4) square feet in area. All signs proposed for a development requiring a substantial development permit shall be designated on application and approval documents.
- Applications for substantial development permits shall include a conceptual sign package addressing the size and location of all signs and shall include design standards to assure that all signs in a development are consistent in terms of material, color, height, size, and illumination.
- Sign illumination shall be indirect incorporating exterior lighting shining on the sign, or shadow illumination behind non-transparent materials. Internally illuminated signs are prohibited.
- Signs may not be located in critical areas or buffers as established by WCC 16.16 except as otherwise provided for in WCC 16.16; provided that, pursuant to SMP 23.100.14.B.1 and 23.100.14.B.4, signs may be permitted within critical area buffers where the placement of such signs does not require the removal of vegetation.

Staff Comment:

The proposed informational kiosk complies with the sign policies and regulations. Pursuant to 23.100.014.C, signs are allowed in the Natural Shoreline Designation signs for trail marking, hazard warnings, or interpretive scientific or educational purpose. The applicant is proposing a self-supporting, non-illuminated information kiosk on site that will display interpretive and educational information regarding the Lake Terrell Game Reserve. The proposed sign will meet the HCA buffer requirements set forth in WCC 16.16.740.

Transportation

23.100.15.A Transportation – Policies

- New public or private transportation facilities should be located inland from the land/water interface, preferably out of the shoreline, unless:
 - a. Perpendicular water crossings are required for access to authorized uses consistent with this Program; or
 - b. Facilities are primarily oriented to pedestrian and non-motorized use and provide an opportunity for a substantial number of people to enjoy shoreline areas, and are consistent with policies and regulations for ecological protection in SMP 23.90.03.
- Transportation facilities should be located and designed to avoid public recreation and public access areas and significant natural, historic, archaeological or cultural sites.
- Parking is not a preferred use in shorelines and should only be allowed to support authorized uses where no feasible alternatives exist.
- New or expanded public transportation facility route selection and development should be coordinated with related local and state government land use and circulation planning.
- Transportation system route planning, acquisition, and design in the shoreline should provide space wherever possible for compatible multiple uses such as utility lines, pedestrian shore access or view points, or recreational trails.
- Transportation system plans and transportation projects within shorelines should provide safe trail space for non-motorized traffic such as pedestrians, bicyclists, or equestrians. Space for such uses should be required along roads on shorelines, where appropriate, and should be considered when rights-of-way are being vacated or abandoned.
- Public access should be provided to shorelines where safe and compatible with the primary and adjacent use, or should be replaced where transportation development substantially impairs lawful public access. Viewpoints, parking, trails and similar improvements should be considered for transportation system projects in shoreline areas, especially where a need has been identified.
- Public transportation routes, particularly arterial highways and railways, should be located, designed, and maintained to permit safe enjoyment of adjacent shore areas and properties by other appropriate uses such as recreation or residences. Vegetative screening or other buffering should be considered.

23.100.15.B Transportation – Regulations

23.100.15.B.1 Design and Operation

- Transportation facilities on shorelines shall be designed to generally follow natural topography, to minimize cuts and/or fills, to avoid cutting off meander bends or point bars, and to avoid adverse

impacts to shoreline ecological functions and processes. Wherever such roads or railway embankments cross depressions remaining from remnant channels and oxbow bends, crossings of ample cross-section shall be provided to span the remnant feature.

- Parking facilities are not a water-dependent use and shall only be permitted in the shoreline to support an authorized use where it can be demonstrated that there are no feasible alternative locations away from the shoreline. Parking facilities shall be buffered from the waters' edge and less intense adjacent land uses by vegetation, undeveloped space, or structures developed for the authorized primary use.
- Earth cut slopes and other exposed soils shall be placed, compacted, and planted or otherwise stabilized and protected from surface runoff with native vegetation. Transportation facilities sited close to water, wetlands or other sensitive features shall incorporate the maximum feasible buffer of native vegetation in accordance with critical area regulations in WCC 16.16.
- Parking areas shall be developed utilizing low impact development techniques whenever possible including, but not limited to, the use of permeable surfacing materials.
- Transportation development shall be carried out in a manner that maintains or improves State water quality standards for affected waters.
- Non-emergency construction and repair work shall be scheduled for that time of year when seasonal conditions (weather, streamflow) permit optimum feasible protection of shoreline ecological functions and processes.
- RCW 36.87.130 prohibits the County from vacating any County road that abuts a body of saltwater or freshwater except for port, recreational, educational or industrial purposes. Therefore, development, abandonment, or alteration of undeveloped County road ends within SMP jurisdiction is prohibited unless approved in accordance with this Program.
- Minimum required setbacks from shorelines are contained in SMP 23.90.13 - Setback, Height and Open Space Standards for Shoreline Development.

23.100.15.B.2 Application Requirements

All applications for new or expanded transportation facilities shall be accompanied by adequate documentation that the proposal meets the policies and regulations of this Program, including but not limited to:

- a. Documentation that the facility cannot be feasibly located outside of shoreline jurisdiction due to the uses served or the need to connect specific end points. An analysis of alternatives may be required. New or expanded public or private transportation facilities should be located inland from the land/water interface, preferably out of the shoreline.
- b. Documentation that the facilities are primarily oriented to pedestrian use and provide an opportunity for a substantial number of people to enjoy shoreline areas.
- c. Documentation that the proposed facilities comply with critical area regulations in WCC 16.16.
- d. Documentation of how the location, design and use achieves no net loss of shoreline ecological functions and incorporate appropriate mitigation in accordance with SMP 23.90.03.
- e. Documentation that facilities avoid public recreation areas and significant natural, historic, archaeological or cultural resources, or that no alternative is feasible outside of the shoreline and that all feasible measures to minimize adverse impacts have been incorporated into the proposal.

Staff Comment:

The applicant is proposing to place a 9,245 square foot parking area within the Natural Shoreline Designation. The proposed parking area meets the definition of "Transportation Development" pursuant to the definition contained in the SMP. Pursuant to 23.100.15.C transportation facilities in the Natural shoreline designation are prohibited except to access approved recreational development. The subject fishing pier meets the definition of recreational development outlined in the SMP. The proposed parking area will meet the required HCA buffer requirements as outlined in 16.16.740. An ADA accessible walkway is proposed between the new parking area and the fishing pier that will be constructed. This walkway will result in unavoidable impacts and will require mitigation as outlined in 23.90.03. This recommendation of approval has been conditioned to require appropriate mitigation at time of development permit. This recommendation of approval has been conditioned to require alternative surfaces where feasible consistent with the May 2005 Low Impact Development Technical Guidance Manual for Puget Sound. The applicant submitted documentation required by 23.100.15.B.2 and are listed below.

- a. The applicant indicates that the locating all elements of the project out of shoreline jurisdiction would not result in a viable project. The key feature of the proposal is the fishing pier and wildlife viewing opportunities. All other components support the key feature and must be situated reasonable close to the pier to provide their intended function. The parking area must be close to the pier to reduce walking distance for elderly, children, and ADA users restricted to wheelchairs. If the vault toilet and the parking area components of the Lake Terrell project are moved outside of shoreline jurisdiction, more extensive land clearing and road grading activities would be required. The applicant recognizes the value of this shoreline area and has designed the project to occur within a previously cleared area to protect and preserve valuable undisturbed habitat and to avoid wetlands in this specific area.
- b. The pier is designed specifically to provide pedestrian access to Lake Terrell Shoreline area including ADA access. The facility will be open to the public during daylight hours year round and will provide substantial opportunity for public use.
- c. The proposed parking area will meet the required Habitat Conservation Area Setback as outlined in 16.16.740. An ADA accessible walkway is proposed between the new parking area and the fishing pier that will be constructed.
- d. This walkway will result in unavoidable impacts and will require mitigation as outlined in 23.90.03. This recommendation of approval has been conditioned to require appropriate mitigation at time of development permit. The mitigation will ensure no net loss of shoreline ecological functions.
- e. This facility cannot avoid public recreation areas because Lake Terrell is a public recreation area and the project is intended to enhance and protect public recreation. The archeological Department at Eastern Washington University was contracted to perform a historic, archaeological, and cultural resources assessment. This survey was completed and no resources were identified. The Lummi Indian Business Council (LIBC) submitted a request that an inadvertent archeology discovery condition be added to the approval. This recommendation of approval has been conditioned accordingly at the request of LIBC.

Utilities

23.100.16.A Utilities – Policies

1. New public or private utilities should be located inland from the land/water interface, preferably out of the shoreline jurisdiction, unless:
 - a. Perpendicular water crossings are unavoidable; or
 - b. Utilities are required for authorized shoreline uses consistent with this Program.

2. Utilities should be located and designed to avoid public recreation and public access areas and significant natural, historic, archaeological or cultural resources.
3. Utilities should be located, designed, constructed, and operated to result in no net loss of shoreline ecological functions and processes with appropriate mitigation as provided in SMP 23.90.03.
4. All utility development should be consistent with and coordinated with all local government and state planning, including comprehensive plans and single purpose plans to meet the needs of future populations in areas planned to accommodate growth. Site planning and rights-of-way for utility development should provide for compatible multiple uses such as shore access, trails, and recreation or other appropriate use whenever possible; utility right-of-way acquisition should also be coordinated with transportation and recreation planning.
5. Utilities should be located in existing rights-of-way and corridors whenever possible.
6. Utilities serving new development should be located underground, wherever possible.
7. Development of pipelines and cables on aquatic lands and tidelands, particularly those running roughly parallel to the shoreline, and development of facilities that may require periodic maintenance which would disrupt shoreline ecological functions should be discouraged except where no other feasible alternative exists. When permitted, provisions shall assure that the facilities do not result in a net loss of shoreline ecological functions or significant impacts to other shoreline resources and values.

23.100.16.B Utilities – Regulations

23.100.16.B.1 Design and Operation

b. Sewage Systems:

- (1) Sewage trunk lines, interceptors, pump stations, treatment plants and other components that are not water-dependent shall be located away from shoreline jurisdiction unless alternative locations, including alternative technology, are demonstrated to be infeasible and it is demonstrated that the facilities do not result in a net loss of shoreline ecological functions and processes or significant impacts to other shoreline resources and values such as parks and recreation facilities, public access and archaeological, historic, and cultural resources, and aesthetic resources.
- (2) Outfall pipelines and diffusers are water-dependent, but should be located only where there will be no net loss in shoreline ecological functions and processes or adverse impacts upon shoreline resources and values.
- (3) Septic tanks and drainfields are prohibited where public sewer is reasonably available.

23.100.16.B.2 Application Requirements

All applications for new or expanded utilities shall be accompanied by adequate documentation that the proposal meets the policies and regulations of this Program, including but not limited to:

- a. Documentation that the facility cannot be feasibly located outside of shoreline jurisdiction due to the uses served or the need to cross shorelands to connect specific end points. An analysis of alternatives may be required. New or expanded public or private utilities should be located inland from the land/water interface, preferably out of shoreline jurisdiction.
- b. Documentation that the proposed facilities comply with critical area regulations in WCC 16.16.

- c. Documentation of how the location, design and use achieves no net loss of shoreline ecological functions and incorporates appropriate mitigation in accordance with SMP 23.90.03.
- d. Documentation that facilities will avoid public recreation areas and significant natural, historic, archaeological or cultural sites, and that all feasible measures to minimize adverse impacts to such resources have been incorporated into the proposal.
- e. Applications must demonstrate adequate provisions for preventing spills or leaks, as well as procedures for mitigating damages from spills or other malfunctions and shall demonstrate that periodic maintenance will not disrupt shoreline ecological functions.

Staff Comment:

The applicant is proposing to place a vault toilet associated with an approved recreational development within shoreline jurisdiction associated with Lake Terrell. The proposed vault toilet meets the definition of "Utility Development" pursuant to the definition contained in the SMP. Pursuant to 23.30.10.4.A, associated restroom facilities are identified as a permitted use in the Natural Shoreline Designation. The subject fishing pier meets the definition of recreational development outlined in the SMP. The proposed vault toilet will meet the required HCA buffer requirements as outlined in 16.16.740. The applicant submitted documentation required by 23.100.15.B.2 and the responses are listed below.

- a. *The applicant indicates that locating all elements of the project out of shoreline jurisdiction would not result in a viable project. The key feature of the proposal is the fishing pier and wildlife viewing opportunities. All other components support the key elements and must be situated reasonable close to the pier to provide their intended function. Specifically, the vault toilet must be close to the pier to allow pier users to reach the toilet within a reasonable amount of time, especially ADA users and children. If the vault toilet and the parking area components of the Lake Terrell project are moved outside of shoreline jurisdiction, more extensive land clearing and road grading activities would be required. The applicant recognizes the value of this shoreline area and has designed the project to occur within a previously cleared area to protect and preserve valuable undisturbed habitat and to avoid wetlands in this specific area.*
- b. *The proposed vault toilet will meet the required Habitat Conservation Area Setback as outlined in 16.16.740. This walkway to access the vault toilet will result in unavoidable impacts and will require mitigation as outlined in 23.90.03. This recommendation of approval has been conditioned to require appropriate mitigation at time of development permit.*
- c. *The applicant is proposing mitigation for the walkway. As stated earlier this recommendation of approval has been conditioned to require appropriate mitigation at time of development permit. The mitigation will ensure that no net loss of shoreline ecological functions or processes.*
- d. *This facility cannot avoid public recreation areas because Lake Terrell is a public recreation area and the project is intended to enhance and protect public recreation. The archeological Department at Eastern Washington University was contracted to perform a historic, archaeological, and cultural resources assessment. This survey was completed and no resources were identified. The Lummi Indian Business Council (LIBC) submitted a request that an inadvertent archeology discovery condition be added to the approval. This recommendation of approval has been conditioned accordingly at the request of LIBC.*
- e. *The applicant has indicated that periodic vault toilet maintenance (i.e. cleaning and pumping) will occur outside of the critical area setback. Excessive spills will be identified and contained on site by WDFW wildlife area personnel. The site is inspected almost daily during usage periods. Any spills will be reported to Department of Ecology. Any habitat loss or degradation will be identified by WDFW habitat biologists and mitigated for through necessary means.*

SHORELINE CONDITIONAL USE:

The applicant has requested approval of a shoreline conditional use permit to replace, relocate and reconfigure and existing non-conforming fishing pier. The existing fishing pier has been in the same

configuration and location since 1975 according to aerial photographs available from the Whatcom County Engineering Services Division. The existing pier length is approximately 193 feet in length and is approximately 4.5 feet in width. The accessory float measures approximately 85 feet in length and varies from 4.5 feet in width to 8.5 feet in width. The existing dock is in need of repair due to its age and the applicant desires to provide ADA accessibility to promote public access.

Section 23.50.07.D of the SMP states that a non-conforming development that is moved any distance must be brought into full compliance with the SMP; provided that as a conditional use a non-conforming dock may be modified, reoriented or altered within the same general location to be more consistent with the provisions of the SMP. The subject development is consistent with the above provision. The new pier will be 150 feet in length with a 10 x 40 float perpendicular to the pier. The design and materials to be utilized in the new dock are consistent with the current SMP regulations. No treated materials will be used and the dock surface will be fully grated to allow greater light penetration than that of the existing dock.

Section 23.60.04.B states that uses specifically classified or set forth in the SMP as conditional 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 the SMP.
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.

The proposed project is consistent with the above criteria. The new fishing pier will be consistent with all of the dock provisions outlined within the SMP. The new dock will not result in additional interference with the general public's right to navigation. The new structure will be constructed of untreated materials, be shorter in length than the existing pier and will be constructed with light penetrating decking. The new dock will lessen adverse impacts as a result of the existing non-conforming pier. The proposed use is consistent with the policy of RCW 90.58.020 and the SMP. The proposed fishing pier will be ADA accessible to allow greater public access to public shorelines. No adverse effects to the shoreline environment were identified through review of the proposal. No substantial detrimental effects to the public interest were identified during the review of the proposal.

SHORELINE VARIANCE:

Section 23.30.10.4 in the Natural Shoreline Designation identifies the following as a permitted use subject to the applicable policies and regulations "Low intensity water-oriented recreation, provided that facilities do not require substantive alterations to topography, such as public forest preserves, wildlife reserves, natural systems education, and/or interpretive areas, trails, trailheads, with associated restroom facilities and **parking areas for no more than ten (10) vehicles**, and buildings for interpretive facilities not exceeding 500 square feet, subject to the criteria in SMP 23.100.10." The applicant is proposing an approximate 9,245 square foot parking area with twenty-two parking spots including one ADA accessible parking spot.

The purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in this Program and any associated standards appended to this Program such as critical areas buffer requirements where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this Program would impose unnecessary hardships on the applicant/proponent or thwart the policy set forth in RCW 90.58.020.

The applicant is proposing to exceed the bulk parking standards set forth in 23.30.10.4; therefore the proposal requires the approval of a Shoreline Variance pursuant to 23.60.03. For a Shoreline Variance to be approved, the proposal must satisfy the criteria of section 23.60.03.D of the Program. These criteria are set forth and addressed below.

23.60.03.D.1 That the strict application of the bulk or dimensional criteria in this Program precludes or significantly interferes with a reasonable permitted use of the property.

The applicant is requesting a variance to the bulk restriction limiting the parking area to a maximum of ten vehicles as outlined in 23.30.10.4. The applicant is proposing a 9,245 square foot parking area for a total of twenty-two vehicles (one ADA parking spot and twenty-one standard spots) to serve an approved recreational development. The proposed parking area meets the required HCA buffer requirements as required in WCC 16.16.740. The proposed parking area has been located and designed to support the relocated fishing pier and must be situated reasonably close to the pier to provide the intended accessibility for ADA restricted users, the elderly, and children with fishing equipment.. The applicant has indicated the variance is necessary due to the location of an existing gravel road and the fact that the proposed location does not require removal of any vegetation. Locating the parking area outside of shoreline jurisdiction would result in new clearing activity that would result in vegetation removal and wetland impacts. Relocating the parking area outside of shoreline jurisdiction would significantly interfere with the public's ability to access the fishing pier and therefore interfere with the permitted use of the property. The strict application of the standards contained within the Natural Shoreline Designation significantly interferes with the reasonable permitted recreational development proposed on site.

23.60.03.D.2 That the hardship described in 20.60.03.A above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of this Program, and not, for example, from deed restrictions or the applicant's own actions.

The proposed parking area will be located within an existing cleared area. The applicant has indicated the variance is necessary due to the location of an existing gravel road and the fact that the proposed location does not require removal of any vegetation. Locating the parking area outside of shoreline jurisdiction would result in new clearing activity that would result in vegetation removal and wetland impacts. The site is currently developed with an existing 193 foot fishing pier that is accessed by a primitive trail with no available parking on site. Users must walk approximately 1,000 feet to access the fishing pier. A larger parking area will allow room for larger vehicles (i.e. school busses) to turn around. In this specific scenario, the strict application of the standards contained within the Natural Shoreline Designation significantly restricts the recreational development that will promote public access within an area that is designated for public access. It is the opinion of staff that restricting the parking area to accommodate ten vehicles would impose an unnecessary hardship on the applicant and thwart the policy set forth in RCW 90.58.020.

23.60.03.D.3 That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment.

The proposed project area is located within the 1,500-acre Lake Terrell unit is ten miles northwest of Bellingham and five miles west of Ferndale. It includes Lake Terrell, a 500-acre man-made, shallow lake with two peat bog marshes on its south and southwest sides, and Terrell Creek. The subject Lake Terrell game reserve is largely undeveloped with the exception of a single family residence, two existing fishing piers and associated developments, two boat launches with associated parking, primitive trails, and a gravel road to access the subject site. The proposed fishing pier developments are compatible with the other permitted activities associated with the Lake Terrell Game Reserve and will not cause adverse effects to adjacent properties or the shoreline environment.

23.60.03.D.4. That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief.

The applicant is requesting a variance to the bulk restriction limiting the parking area to a maximum of ten vehicles as outlined in 23.30.10.4. The applicant is proposing a parking area for twenty-two vehicles total

(one ADA parking spot and twenty-one standard spots) The proposed parking area does not constitute a grant of special privilege not enjoyed by others as the area is a wildlife reserve that currently contains two fishing piers. This subject proposal is located approximately 1,200 feet to the north of the fishing pier located at the terminus of Lake Terrell Road which has a parking area that can accommodate approximately thirty vehicles. Therefore the variance does not constitute a grant of special privilege.

23.60.03.D.5 That the public interest will suffer no substantial detrimental effect.

No substantial detrimental effects to the public interest were identified by staff during review of the project.

23.60.03.D.6 That the public rights of Navigation and use of the shorelines will not be materially interfered with by the granting of the variance

The proposed transportation development has no impact on rights of navigation or other use of Lake Terrell.

23.60.03.D.7 Mitigation is provided to offset unavoidable adverse impacts caused by the proposed development or use.

No mitigation has been proposed for the construction of the parking area as it complies with the Habitat Conservation Area buffer requirements as outlined in 16.16.740.

Cumulative Impact Analysis

Section 23.60.185 states that in the granting of all shoreline permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if shoreline permits were granted to other developments in the area where similar circumstances exist, the total of the shoreline permits should also remain consistent with the policies of RCW 90.58.020 and should not produce significant adverse effects to the shoreline environment or other users.

Comment:

The proposed developments meet the required Habitat Conservation Area (HCA) setback/buffer requirement as required by the Whatcom County Critical Areas Ordinance (16.16.740). The proposed ADA walkway to access the fishing pier will result in unavoidable critical area impacts. This recommendation of approval has been conditioned to require mitigation for the unavoidable impacts for the ADA walkway. The applicant has demonstrated avoidance to the greatest extent possible. No new road development is proposed as an existing road will be utilized to gain access to the proposed fishing area. No vegetation removal is proposed as part of the proposal. A SEPA threshold of determination of nonsignificance was issued by WDFW on October 25, 2010. Stormwater generated from the developments will be handled in accordance with applicable regulations. The proposed developments will increase the ability for the general public to gain access to the shoreline which is consistent with the policies of RCW.58.020. No significant adverse effect to the shoreline ecological functions and processes are anticipated nor are impacts to other users probable. As such, approval of additional projects were similar circumstances exist should not result in cumulative environmental impacts to the shoreline environment.

V. PUBLIC COMMENTS

No written adverse public comment was received during the time of this permit review.

VI. AGENCY COMMENTS

The Whatcom County **Department of Engineering Services** submitted the following comments regarding the proposal on April 20, 2011:

All development shall comply with WC Development Standards.

1. *The proposed development is subject to storm water review. Engineered Stormwater Report and TESC Plan shall address all clearing activities associated with a fill and grade permit or building permit.*
2. *The proposed development may require a transportation concurrency evaluation, based on Preliminary Traffic Information.*

The above comments have been incorporated as conditions of this approval recommendation.

The Whatcom County **Watershed Technical Administrator** submitted the following comments regarding the proposal on March 28, 2011:

An Erosion and Sedimentation Control (ESC) Inspection shall be required at the beginning and at the end of the project. The ESC inspection at the beginning shall be performed prior to the commencement of any land disturbance activities. The ESC inspection at the end of the project shall be performed after all permanent ESC measures have been installed.

The above comments have been incorporated as conditions of this approval recommendation.

The Whatcom County **Critical Areas Technical Administrator** submitted the following comments regarding the proposal on March 9, 2011:

Critical areas staff have received and reviewed a wetland delineation provided by Washington Dept of Fish and Wildlife. Critical areas staff concur with the determination in the delineation.

In order to comply with the requirements in WCC16.16 260, mitigation sequence, the applicants have avoided critical area impacts by relocating the parking area and the toilet outside of the 100' habitat conservation area (HCA) buffer. Eliminating the sidewalk to the new pier is impractical given the purpose of the project which is to provide access to the new pier. For the unavoidable impacts within the HCA buffer, mitigation has been provided in the form of native vegetation planting adjacent to the new sidewalk. The proposed mitigation has also been approved by critical areas staff.

The mitigation must be installed and an as-built submitted to critical areas staff within 30 days of the completion of the sidewalk.

The above comments have been incorporated as conditions of this approval recommendation.

VII. RECOMMENDATIONS

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

1. The proposed shoreline developments shall be consistent with the scope and site plans approved by this shoreline substantial development permit, shoreline conditional use permit, and shoreline variance. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner.
2. Construction and/or demolition debris shall be wholly removed from the shoreline. Disposal shall occur in accordance with all applicable agency laws and regulations, including but not limited to Whatcom County Planning and Development Services, DOE and Northwest Air Pollution Authority. Offsite deposition of excavation spoils, concrete debris, etc within unincorporated Whatcom County will require a Land Disturbance Permit from Whatcom County Planning and Development Services.

3. If archaeological materials (shell midden, faunal remains, stone tools) or human remains are observed during project activities, all work in the immediate vicinity shall stop, and the area shall be secured. Whatcom County SEPA Administrator (676-6907) LNTHPO (384-2280) and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all other applicable laws pertaining to archaeological resources is required.
4. The applicant shall obtain a Building Permit from the Whatcom County Planning & Development Services – Building Services Division prior to start of construction on the subject property. Such Building Permit shall require development review by the Shoreline Administrator pursuant to 23.60.02.2.B. The building permit submittal shall include site plans consistent with the plans approved by this permit and provide an engineered design as determined by Building Services. A demolition permit to remove the existing dock may also be required as determined by Building Services.
5. The applicant/proponent shall contact the Washington State Department of Fish and Wildlife (WDFW) to obtain a Hydraulics Project Approval (HPA) or any other necessary approvals as determined by the WDFW. A copy of the issued HPA shall be included with the above-required building permit application for review by the Shoreline Administrator.
6. The applicant shall submit a Temporary Erosion and Sedimentation Control Plan for review by the shoreline administrator prior to issuance of future development permits.
7. The applicant shall comply with all of the requirements of the the Whatcom County Critical Areas Technical Administrator prior to any development approvals as outlined in the March 9, 2011 memorandum unless modified by PDS or appealed to the appropriate agency.
8. The applicant shall comply with all of the requirements of the Whatcom County Engineering Department prior to any development approvals as outlined in the April 11, 2011 memorandum unless modified by the Engineering Department or appealed to the appropriate agency.
9. The applicant shall comply with all of the requirements of the Whatcom County Watershed Technical Administrator prior to any development approvals as outlined in the March 28, 2011 memorandum unless modified by PDS or appealed to the appropriate agency
10. Impervious surfacing for parking 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.
11. If construction of the proposed dock requires upland land disturbance or operation of equipment directly upon the bedlands of Lake Terrell below the ordinary high water mark (OHWM), additional review and approval is required by the Shoreline Administrator.
12. Construction shall be commenced within two years, and authorization to conduct the construction shall terminate five years after the effective date of this shoreline permit as defined in 23.60.160.

Report prepared by:

Sam McDaniel
Whatcom County Shoreline Administrator
Whatcom County Planning and Development Services