

WHATCOM COUNTY HEARING EXAMINER

RE: SHORELINE SUBSTANTIAL DEVELOPMENT) SHR2007-0022
SHORELINE VARIANCE) SHV2007-0008
Application for)
)
Richard Westerop) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant requests approval of a Shoreline Substantial Development Permit to construct a new dock for private residential use. In addition, the Applicant requests relief through application of a Shoreline Variance in order to exceed the maximum 60-foot dock length based on water depths and neighboring dock structures.

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: Richard Westerop

Property Location: 3742 South Bay Drive
Sedro Woolley, WA 98284

Legal Description: Section 22 Township 37 North, Range 04 West, W.M.
Parcel(s) No. 370422 047056

Adjacent Water Body: Lake Whatcom

Shoreline Designation: Rural / Aquatic

Shoreline of Statewide Significance: Yes

Applicable Shoreline Program Provisions:

SMP 23.10	Purposes
SMP 23.20	Goals and Objectives
SMP 23.30	Shoreline Area Designations
SMP 23.40	Shorelines of Statewide Significance
SMP 23.50	Applicability
SMP 23.60	Shoreline Permits
SMP 23.70	Administration
SMP 23.80	Legal Provisions
SMP 23.90	General Policies and Regulations
SMP 23.100.100	Dock Policies and Regulations
SMP 23.110	Definitions

SEPA Review: Mitigated Determination of Non-significance (MDNS) issued on November 2, 2007 by Whatcom County Planning and Development Services (WCPDS).

Legal Notices: Published – August 22, 2007 and May 27, 2010
Posted – May 27, 2010
Mailed – August 17, 2007 and May 24, 2010

Hearing Date: June 9, 2010

Parties of Record:

Richard Westerop
112 East Maple Street, No. 101
Bellingham, WA 98225

Chad Yunge
Planning and Development Services

Exhibits:

- 1 Land Use Application
 - 1-1 Supplemental Application
 - 1-2 PDS Guidelines
 - 1-3 Statutory Warranty Deed
 - 1-4 Customer Receipt, dated August 13, 2007
 - 1-5 Letter of Completeness, dated August 15, 2007
- 2 MDNS, dated November 2, 2007; Checklist attached

- 3 Staff Report, dated May 6, 2010
- 4 Aerial Photo
- 5 Site Photo
- 6 Zoning Map
- 7 Proposed Boundary Line Adjustment Site Plan
- 8 Maps showing Water Depth
- 9 Mailing Certification, dated August 17, 2007, with Property Owner Labels attached
- 10 Legal Notice of Application, dated August 22, 2007
- 11 Certification of Mailing Notice of Public Hearing, dated May 24, 2010
- 12 Certificate of Posting, dated May 27, 2010
- 13 Affidavit of Publication Notice of Public Hearing, dated May 27, 2010

II.

The Applicant, Richard Westerop, requests a Shoreline Substantial Development Permit and Shoreline Variance to construct a new dock for private residential use. The proposed dock structure will exceed the maximum 60-foot dock length based on water depths and neighboring dock structures.

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. 3, dated May 6, 2010, 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.

Whatcom County Shoreline Planner has recommended approval of the requested Shoreline Substantial Development Permit and Shoreline Variance Permit for the proposed construction of a new, private-use, residential dock to exceed the maximum 60-foot dock length due to water depths and neighboring dock structures at this location on Lake Whatcom.

Findings of Fact and Conclusions of Law are set forth in the Staff Report, Exhibit No. 3, dated May 6, 2010. Subject to the Conditions of Approval recommended by Staff, the Hearing Examiner also concludes that the proposal is consistent with the Goals, Policies, and Purpose of the Shoreline Management Act, RCW 90.58, and with the Goals and Policies of the Whatcom County Shoreline Management Program. The Conclusions of Law adopted by Staff in the Staff Report are incorporated herein as Conclusions of Law.

II.

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

DECISION

A Shoreline Substantial Development Permit and Shoreline Variance Permit are hereby granted to Richard Westerop to construct a new dock for private residential use, exceeding the maximum 60-foot dock length on property located on Assessor's Parcel No. 370422 047056, at 3742 South Bay Drive, Sedro Woolley, Washington. The permits are granted subject to the following conditions:

1. The proposed dock structure shall consist of a pier on piling walkway limited to four (4)-feet in width with a single accessory float with a maximum dimension of eight-feet by 20-feet or equivalent. The total length of the dock shall not exceed 85-feet as measured from the OHWM (314.5 MSL) of Lake Whatcom. 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 (DOE).
2. The entire dock structure, including the accessory float, shall be located a minimum of ten-feet from side property lines as they extend offshore from the subject property.
3. The Applicant shall obtain a building permit from Whatcom County Planning and Development Services (WCPDS) Building Services Division prior to commencement of construction on the subject property. The building permit shall include engineered building plans and provide sufficient detail such as materials to be utilized and how the structure will connect to the shoreline. The building permit will require review by the

Whatcom County Shoreline Administrator (Administrator) for compliance with this shoreline permit.

4. The Applicant shall contact the Washington State Department of Fish and Wildlife (WDFW) and obtain a Hydraulics Project Approval (HPA) or any other requirements as determined by WDFW. A copy of the issued HPA shall be submitted along with the above required building permit.
5. Dock surfaces shall be constructed of decking that allows light penetration to the maximum extent feasible.
6. Materials utilized in the dock construction shall consist of untreated materials for those portions of the dock structure that will come into contact with surface waters including wave splash, and runoff.
7. If clearing or ground disturbance is required landward of the OHWM of Lake Whatcom, temporary erosion and sediment control measures shall be shown on the building plans for review by the Administrator. No use of heavy machinery shall be allowed on the upland portions of the subject property. Driving of piling and construction of dock components shall be completed via a floating barge unless otherwise reviewed and approved by the Administrator.
8. To avoid impacts to existing aquatic vegetation, the pier on piling walkway shall be elevated three (3) feet above the OWHM (314.5 MSL) of Lake Whatcom.
9. The dock shall be marked with reflectors to prevent hazardous conditions for water surface users during day or night. Exterior finishes shall be generally non-reflective.
10. Authorization to conduct development activities shall terminate five (5) years after the effective date, as defined in 23.60.19.A.3, of this shoreline variance, provided that the Hearing Examiner or Administrator, as appropriate, may authorize a single extension for a period of not more than one (1) year based on a showing of good cause, if a request for extension has been filed with the Hearing Examiner or Administrator, as appropriate, before the expiration date of the shoreline permit and notice of the proposed extension is given to parties of record and the Department of Ecology. Construction shall commence within two years of the effective date of the Shoreline Variance 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.

NOTICE

In addition to incurring civil liability under Shoreline Management Program Section 23.80.20 and RCW 90.58.210, pursuant to RCW 90.58.220 any person found to have willfully

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

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

This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the applicant, any opponent of record, or any County department. Appeal to County Council. Within ten calendar days of the date of the written decision a written notice of appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The appeal notice must state either:

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

Any party of record may request a closed record review of the Hearing Examiner's Decision, issued under SMP 23.60.15.H.4, by the County Council. Such an appeal shall be filed with the County Council on forms supplied by the County within ten (10) calendar days of the written decision. If appeal is made to the County Council, notice of appeal shall be provided to all parties of record at least fifteen (15) days prior to consideration by the County Council. The Council shall meet to review the Hearing Examiner's decision within twenty-one (21) days of transmittal thereof, at which time it may approve or disapprove the application, or remand the matter to the Hearing Examiner.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830 and Section 23.60.15.H. A copy of this document is available for review at the County Council Office. After an appeal has been filed and the Council Office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 9th day of June 2010.

Michael Bobbink, Hearing Examiner



May 6, 2010

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

The application of Richard Westerop for a Shoreline Substantial Development and Shoreline Variance Permit		SHR2007-00022, SHV2007-00008 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Application: The applicant requests approval of a shoreline substantial development permit to construct a new dock for private residential use. In addition, the applicant requests relief through application of a shoreline variance in order to exceed the maximum 60-foot dock length based on water depths and neighboring dock structures.

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

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: Richard Westerop
1031 North State Street, #104
Bellingham, Washington 98225

Property Location: 3742 South Bay Drive

Legal Description: Section 22 Township 37 North, Range 04 West, W.M.
Parcel(s) #: 370422047056

Adjacent Water Body: Lake Whatcom

Shoreline Designation: Rural / Aquatic

Statewide Significance: Yes

B. PROCEDURAL INFORMATION

Applicable Shoreline Program Provisions:

SMP 23.10	Purposes
SMP 23.20	Goals and Objectives
SMP 23.30	Shoreline Area Designations
SMP 23.40	Shorelines of Statewide Significance
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SMP 23.100.100	Dock Policies and Regulations
SMP 23.110	Definitions

SEPA REVIEW: Mitigated Determination of Non-significance (MDNS) issued on November 2, 2007 by Whatcom County Planning and Development Services (WCPDS).

III. FINDINGS

The applicant is requesting approval of a shoreline substantial development permit to construct a new residential dock at 3742 South Bay Drive on Lake Whatcom. The total length of the proposed dock will be 85-feet in length from the ordinary high water mark (OHWM) of Lake Whatcom to the waterward edge of an eight-foot by 20-foot accessory float oriented perpendicular to a four-foot elevated walkway. The length of the dock is necessary in order to access water depths sufficient for moorage at the site due to shallow lake bathymetry and the location of adjacent docks to the east and west. A shoreline variance has been requested by the applicant to relieve the maximum 60-foot length threshold allowed for issuance by the Shoreline Administrator (Administrator).

The subject property consists of a vacant lot located on the southernmost shoreline of Lake Whatcom. Adjacent properties are developed with single-family residences and both have residential docks that extend out as far as the proposed dock on the subject property. The applicant has received approval to construct a single-family residence and appurtenant developments on the upland portion of the subject property.

IV. CONCLUSIONS

Shoreline Substantial Development

Section 23.60.171 states that a substantial development permit shall be required for all proposed use and development of shorelines unless the proposal is specifically exempt from such requirements pursuant to one or more of the listed exemptions outlined in 23.50.31. The proposed dock exceeds the \$10,000.00 threshold to exempt the review from substantial development permitting pursuant to 23.60.32(h).

According to 23.172, in order to be approved, the decision maker must find that the proposal is consistent with the following criteria:

1. All regulations of the SMP appropriate to the shoreline designation and the type of use or development proposed shall be met, except those bulk and dimensional standards that have been modified by approval of a shoreline variance under SMP 23.60.180;
2. All policies of the SMP appropriate to the shoreline area designation and the type of use or development activity proposed shall be considered and substantial compliance demonstrated; and
3. For projects located on shorelines of statewide significance, the policies of Chapter 4 shall be also adhered to.

General and use-specific policies and regulations associated with dock development are found within Sections 23.90 and 23.100.100, respectively. The following policies and regulations are appropriate for the type of use and development being proposed:

Hazardous, Sensitive or Unsuitable Areas

23.90.15 - Natural features or conditions associated with shorelines are often environmentally sensitive or potentially hazardous to development. Such areas and features include natural wetlands, accretion shoreforms, floodways, alluvial fans, steep slopes, unstable soils, ground and surface water, fish and wildlife habitat and shore processes. Many such areas are often unique or scarce, highly productive biologically, visually attractive, valuable for public access, open space or recreation, and in many instances hazardous or otherwise unsuitable for intensive use or development. Such areas should be maintained in a natural condition. In limited instances where alternatives are infeasible, some minimal development activity may be allowed, provide optimum mitigation is achieved. Such development, if properly conducted, should not impair natural features, recreation or aesthetic values or result in hazardous conditions, and should adequately protect resources over the long term.

23.90.43 – Development shall be located, designed, constructed and maintained to prevent hazardous conditions and to substantially conserve wetlands, fish and wildlife habitat, shore processes and other sensitive natural features which are valuable in the region. Professional design of development may be required by the Administrator in order to protect shore features and other users and to ensure such development is not subject to nor creates hazardous conditions unsuitable to development.

23.100.100.15 – Docks should be severely limited in sensitive areas such as accretion shoreforms, natural wetlands, prime shellfish or water fowl habitat or fish spawning areas. Sponsors of such proposals should be required to demonstrate that alternatives are not feasible and that maximum protection of shore features and existing uses will be provided. Landfills for piers or dock development should not be permitted in such areas.

The proposed dock structure is consistent with the above policies and regulations. This permit recommendation has been conditioned that the applicant obtains a Hydraulics Project Approval (HPA) from the Washington State Department of Fish and Wildlife (WDFW) prior to the County issuance of the final building permit to construct the dock. Review of the project by WDFW should address short term impacts to fish and wildlife species via timing restrictions for over-water work. In addition, WDFW generally requires light penetrating decking to be installed which allows a minimum of 60% of light to pass reducing shading impacts to aquatic vegetation.

The shoreline of subject property is currently vegetated with bulrushes within the aquatic zone where the dock is proposed. This vegetation community is relatively rare on the lake and the proposed dock has therefore been conditioned to be constructed three feet above the OHWM of Lake

Whatcom which is the maximum allowed by the SMP. This excludes the float which is located waterward of the bulrush mat.

A small alluvial fan is located to the west of the proposed dock at the mouth of an un-named creek. This accretion shoreform will not be adversely affected by the proposed development.

Site Preparation

23.90.16 – Land clearing, grading, filling, and alteration of natural drainage or other features should be limited to the minimum amount necessary to accommodate approved development. Surfaces cleared of vegetation should be immediately re-vegetated with native or compatible plants. Landscaping projects requiring substantial earth modification and grading should be carefully and professionally designed to prevent maintenance problems or damage to shore features and processes.

23.90.44 – Land clearing, grading, filling, removal of vegetation and alteration of natural features shall be kept to the minimum that is reasonably necessary to accommodate approved development. Disturbed areas shall be re-vegetated as soon as possible.

No upland land clearing is proposed nor approved as part of this project. If footings are proposed landward of OHWM to support the ramp to the fixed walkway, such footings shall be excavated by hand. Such information shall be included within the building permit plans for further review by the Administrator during building permit review.

Geo-Hydraulics

23.90.17 – Development should be located, designed, constructed and maintained so that natural erosion, sediment transport, and water circulation and accretion processes are not significantly disrupted. The physical integrity of the shore process corridor should be maintained in its natural state to the greatest extent feasible. Necessary development should have minimal or no adverse impact upon valuable physical shore features and processes.

23.90.45 – Shoreline use and development activities shall not unnecessarily disrupt natural shore processes. Disturbances from construction, heavy equipment use or removal of driftwood, flood debris, or other materials from the shoreline area shall be kept to a minimum consistent with this SMP.

No impacts to existing geo-hydraulic processes were identified by staff during review of the project proposal.

Water Quality

23.90.18 – Location, construction, operation, and maintenance of all shoreline use and development activities should maintain or enhance the quality of surface and ground water over the long term, and restore water quality if degraded. As a minimum, state water quality and all other applicable standards should be adhered to.

23.90.46 – State water quality and all other applicable standards shall be adhered to. Water quality of ground and surface waters shall not be significantly degraded.

This permit recommendation has been conditioned to address the above-referenced water quality policies and regulations.

Hazardous/Toxic Materials

23.90.19 – When chemical fertilizers, pesticides or other toxic materials are use in shoreline areas, extreme caution should be observed to prevent contamination of water and soils and adverse effects on valuable plant, fish and animal life. There should be no spraying over water bodies or application on land where direct runoff of chemical-laden water to water bodies or aquifer recharge areas will occur. A chemical free buffer strip should be maintained along the OHWM of all wetlands, streams and water bodies.

23.90.47 – Release of hazardous, toxic or acid-forming materials which are likely to degrade surface or ground water quality or damage other resources is prohibited. No airborne release of chemicals shall be permitted over shorelines. Wood or piling treated with pentachlorophenol or other similarly toxic substances shall not be used below the OHWM of streams, lakes or wetlands.

23.100.100.20 – Piers and docks should be constructed of materials which will not adversely affect water quality or aquatic plants and animals in the long term.

This permit recommendation has been conditioned so that the proposed dock structure will be constructed of materials that will not adversely affect water quality. Materials proposed for construction shall be clearly identified on the building permit plans for further review by the Administrator during building permit review.

Fish and Wildlife

23.90.20 – All shoreline use and development activities should be located and operated so as to provide long term protection of fish and wildlife resources, and their various habitats. Maintenance and enhancement of fisheries should be given priority consideration in reviewing shoreline use proposals which might adversely impact fisheries habitat, migratory routes and harvest of significant fish or shellfish species. Alternative locations or designs should be seriously considered for such proposals if such potential adverse impacts are significant. Shoreline having banks, beaches and beds critical to preservation or enhancement of the fisheries resource base should be maintained or restored to a productive natural condition whenever possible.

23.90.48 – Design, location, construction and operation of all shoreline use and development activities shall not unnecessarily impact fish and wildlife resources and their respective habitats over the short or long term. Development in critical wildlife habitat areas identified by the Washington Department of Fish and Wildlife (WDFW) shall not be permitted unless adequate mitigation of impacts can be provided. Development is also subject to the provisions of the critical areas ordinance (CAO).

The proposed dock has been designed and conditioned to limit impacts to fish and wildlife to the greatest extent feasible. An HPA from WDFW is also required prior to construction.

Views and Aesthetics

23.90.21 – Development should not detract from shoreline scenic and aesthetic qualities which are derived from natural or cultural features, such as shoreforms, natural vegetative cover, scenic vistas, diverse landscapes, historic structures, and rural and wilderness-like shores. These and other scarce or valuable features should be conserved or enhanced by development and utilized for open space, fish and wildlife habitat, public access or recreation purposes. Over water construction should be minimized, site restoration should be required, visual compatibility in design of development within its surroundings should be encouraged and scenic views should not be

obstructed. Also, protection of the view of the shoreline from the water surface should be considered.

23.90.49 – Development shall be designed, located, constructed and maintained to avoid obstruction of views or other adverse impacts on shore scenery and aesthetic quality. Where such impacts are unavoidable, development may be approved where significant public access areas or facilities are provided or other means of enhancing the public's enjoyment of visual and aesthetic resources in the area are provided.

The dock will be similar in size and appearance of the adjacent dock structures to the east and west. No adverse view impacts were identified by this Administrator during review of the project.

Public Access

23.90.22 – Physical or visual access to shorelines should be required as a condition of significant development activities, when the proposal would either generate a demand for specific forms of such access, and/or would impair existing, legal access facilities and/or rights.

The proposed dock structure does not represent a significant impact to existing public access nor does it create additional demand for such access as determined by this Administrator. Therefore, the proper nexus for requiring public access is not present.

Setbacks

23.90.60 – Table 23.90.60 establishes the minimum required shore setbacks for development. Shore setbacks shall be measured from the OHWM; provided that, on natural wetlands, such setbacks shall be measured from the edge of the wetland. No shore setback shall exceed the geographic limit of shoreline jurisdiction.

This permit recommendation has been conditioned that the proposed dock structure be located a minimum of 10-feet from side property lines as they extend offshore.

Use Conflicts / Navigation Rights

23.100.100.12 – Piers and docks should be located, designed and maintained in a manner which prevents or minimizes adverse impact on other shore uses, and which keeps navigable and other waters and shorelines as free as possible from unnecessarily obstructing or hazardous development. The idea of cooperative, compatible use of private piers and docks must be given serious consideration, especially where water use conflicts exist or are predictable.

23.100.100.14 – Docks should be spaced from each other and oriented to shore in a manner which minimizes hazard and obstructions to public navigation rights and corollary rights thereto such as but not limited to fishing, swimming and pleasure boating, as well as private riparian rights of adjacent land owners. No person has the right to unreasonably or unnecessarily obstruct water surfaces to which any other person has lawful access.

The proposed dock structure will be located in line with the adjacent docks to the east and west and spaced accordingly as to not represent a significant impact on navigation in the area or use of the adjacent dock structure.

Compatible / Preferred Design

23.100.100.16 – The length, width and height of piers and docks should be no greater than that required for their primary purpose in a safe, practical manner. Offshore structures which are extremely bulky or unnecessarily lengthy should be required to demonstrate that alternatives are not feasible and that maximum protection of shore features and existing uses will be provided. Landfills for piers or dock development should not be permitted in such areas.

23.100.100.17 – Pile supports are preferred over rip-rapped or bulkheaded fills, especially where soil conditions are unstable or are of low bearing capacity, and are suitable for driving piles. Use of piles displaces mostly air space rather than water surfaces and intertidal or aquatic habitat, with much less long term impact on shore features and uses. Piles are removable and thus more flexible in terms of long term use patterns.

Pile spacing and shore orientation should generally be designed so that a “wall” effect is not created which would block or baffle wave patterns, currents, littoral drift, or movement of aquatic life forms, or result in structure damage from driftwood impact or entrapment.

Offshore and foreshore pile structures should allow for continuity of the hydraulic energy patterns, unless specifically designed to reduce wave impact on shores.

The access connection between the pile structure and upland or backshore should span the entire upper foreshore without interfering with littoral drift or wave refraction.

23.100.100.32(c) – Only one private dock with one accessory float and one covered moorage shall be permitted on a shoreline lot owned for residential or private recreational use. Such dock shall be located within required sideyard setbacks for residential development (both onshore and offshore).

23.100.100.32(d) – Private docks with or without a float shall not exceed 40-feet in length nor exceed three feet in height both measured from the OHWM.

Private docks up to 60-feet in length, including floats, may be permitted by the Administrator in shallow areas where existing docks on adjacent properties presently extend out as far as that which is proposed, and where such added length is necessary in order to allow a reasonable use of the dock. Docks which cannot reasonably meet this standard may request a review under the variance provisions of the SMP. A mooring buoy served by a shorter dock or water access point may be allowed in deeper water as needed.

If a dock is provided with a railing, such railing shall not exceed 36-inches in height and shall be an open framework which does not unreasonably interfere with shoreline views of adjoining properties nor lawful use of water surfaces.

Concrete wall dock supports are not permitted waterward of OHWM.

The proposed dock has been designed and modified during permit review to be consistent with all of the above-referenced dock design standards. A building permit is required from WCPDS prior to construction of the dock. Such building permit will receive additional review by the Administrator to determine compliance with the above provisions.

Public Health and Safety

23.100.100.32 – All pier and dock development shall be marked with reflectors, or otherwise identified so as to prevent unnecessarily hazardous conditions for water surface users during day or night. Exterior finish shall be generally non-reflective.

Pier and dock development shall be constructed and maintained so that no part of such development creates hazardous conditions nor damages other shore property or natural features during predictable flood conditions. Floats shall be securely anchored.

No pier, dock, or watercraft or houseboat moored thereto, may be used for a residence.

Piers and docks shall be constructed of materials which will not adversely affect water quality or aquatic plants and animals over the long term. Wood or pilings treated with creosote, pentachlorophenol or other similarly toxic materials shall not be used below the OHWM of streams, lakes or natural wetlands.

Storage of fuel, oils and other toxic materials is prohibited on docks.

The above provisions have been included as conditions of this permit recommendation.

Shoreline Variance

According to 23.60.180, the purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in the SMP where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the SMP would impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020. A variance will be granted in any circumstance where denial would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances, extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

According to 23.60.183, variances may be authorized waterward of the OHWM, provided the applicant/proponent can demonstrate all of the following criteria:

1. That the strict application of the bulk or dimensional criteria set forth in the SMP precludes a reasonable permitted use of the property;
2. That the hardship described in 23.60.181 is specifically related to the property, and is the result of conditions such as irregular lot shape, size, or natural features and not, for example, from the applicants own actions;
3. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects on adjacent properties or the shoreline environment;
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;
5. That the public interest will suffer no substantial detrimental effect;
6. That the public rights of navigation and use of the shorelines will not be materially interfered with by the granting of the variance; and
7. In the granting of all variances, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances 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.

Staff responses are numbered accordingly below:

1. Due to shallow water depths and lengths of adjacent docks to the east and west of the subject property, a dock constructed at 60-feet from OHWM as allowed without a variance request, would result in a dock unsuitable for moorage and use by a typical vessel on Lake Whatcom.
2. The shallow water depths and presence of thick aquatic vegetation, coupled with existing dock development in the area, are related to the property and clearly not a result of the applicant's own actions.
3. Numerous docks exceeding 60-feet in length have been permitted by this Administrator, the Whatcom County Hearing Examiner and the Washington State Department of Ecology (DOE) through approval of a shoreline variance.
4. See 3.
5. No adverse impacts to the public interest were identified during the course of this permit review.
6. The proposed dock structure will not extent out further than the adjacent docks to the east and west and thus does not represent a significant interference with navigation in the area.
7. The design of the proposed dock will include untreated materials, be limited in size to the minimum necessary for vessel moorage and be elevated above existing aquatic vegetation to the maximum extend allowed. The design of the project will also face additional scrutiny by WDFW as an HPA is required. No significant adverse impacts to the shoreline environment are anticipated. Therefore, approval of similar developments is not believed to represent an adverse cumulative impact to the shoreline environment based on information available to the Administrator at this time.

V. PUBLIC COMMENTS

No public comments were received during review of this permit application.

VI. AGENCY COMMENTS

No agency comments were received during review of this permit application.

VII. RECOMMENDATIONS

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

1. *The proposed dock structure shall consist of a pier on piling walkway limited to four (4)-feet in width with a single accessory float with a maximum dimension of eight-feet by 20-feet or equivalent. The total length of the dock shall not exceed 85-feet as measured from the OHWM (314.5 MSL) of Lake Whatcom. 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 (DOE).*
2. *The entire dock structure, including the accessory float, shall be located a minimum of ten-feet from side property lines as they extend offshore from the subject property.*
3. *The applicant shall obtain a building permit from Whatcom County Planning and Development Services (WCPDS) Building Services Division prior to commencement of construction on the subject property. The building permit shall include engineered building plans and provide sufficient detail such as materials to be utilized and how the*

structure will connect to the shoreline. The building permit will require review by the Whatcom County Shoreline Administrator (Administrator) for compliance with this shoreline permit.

- 4. The applicant shall contact the Washington State Department of Fish and Wildlife (WDFW) and obtain a Hydraulics Project Approval (HPA) or any other requirements as determined by WDFW. A copy of the issued HPA shall be submitted along with the above required building permit.*
- 5. Dock surfaces shall be constructed of decking that allows light penetration to the maximum extent feasible. .*
- 6. Materials utilized in the dock construction shall consist of untreated materials for those portions of the dock structure that will come into contact with surface waters including wave splash, and runoff.*
- 7. If clearing or ground disturbance is required landward of the OHWM of Lake Whatcom, temporary erosion and sediment control measures shall be shown on the building plans for review by the Administrator. No use of heavy machinery shall be allowed on the upland portions of the subject property. Driving of piling and construction of dock components shall be completed via a floating barge unless otherwise reviewed and approved by the Administrator.*
- 8. To avoid impacts to existing aquatic vegetation, the pier on piling walkway shall be elevated three (3) feet above the OHWM (314.5 MSL) of Lake Whatcom.*
- 9. The dock shall be marked with reflectors to prevent hazardous conditions for water surface users during day or night. Exterior finishes shall be generally non-reflective.*
- 10. Authorization to conduct development activities shall terminate five (5) years after the effective date, as defined in 23.60.19.A.3, of this shoreline variance, provided that the Hearing Examiner or Administrator, as appropriate, may authorize a single extension for a period of not more than one (1) year based on a showing of good cause, if a request for extension has been filed with the Hearing Examiner or Administrator, as appropriate, before the expiration date of the shoreline permit and notice of the proposed extension is given to parties of record and the Department of Ecology. Construction shall commence within two years of the effective date of the Shoreline Variance 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.*

Report prepared by:

Chad J. Yunge

Whatcom County Shorelines Administrator

Planning and Development Services – Land Use & Natural Resource