



Kitsap County Hearing Examiner

COUNTY COURTHOUSE, 614 DIVISION STREET MS-36
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NOTICE OF HEARING EXAMINER DECISION

May 26, 2009

To: Interested Parties and Parties of Record

RE: Project Name: **White and Conrad Joint Use Dock**
Applicant: **Rick & Melissa White**
6788 NE Wood Bay Lane
Poulsbo, WA 98370
Terry & Lisa Conrad
6790 NE Wood Bay Lane
Poulsbo, WA 98370
North Kitsap County, Commissioner District #1
Application: **Shoreline Substantial Development Permit**
Case Number: **090212-005 (092602-3-003-2008; 004-2005) LIS#**
07 50437

Enclosed is the Decision issued by the Kitsap County Hearing Examiner in the above-referenced matter.

THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS APPEALED TO THE KITSAP COUNTY BOARD OF COMMISSIONERS, AS PROVIDED BY SECTION 120 OF THE KITSAP COUNTY LAND USE AND DEVELOPMENT PROCEDURES. **ANY APPEAL MUST BE FILED ON OR BEFORE THE CLOSE OF BUSINESS ON JUNE 9, 2009. PLEASE NOTE: THE COURTHOUSE WILL BE CLOSED ON MONDAY, MAY 25, 2009.**

Pursuant to the Kitsap County Land Use and Development Procedures, (KCC 21.04.120) an appeal may be filed objecting to the Hearing Examiner's Decision. An appeal must be made in writing, and filed with both the Department of Community Development (DCD) and the Board of County Commissioners (BCC) offices. At the time of filing the appeal, the appellant shall pay the sum of **five hundred dollars (\$500.00)**. This fee is non-refundable and subject to change. Make check payable to Kitsap County Department of Community Development (DCD).

The written appeal shall be made on or attached to an appeal form provided by DCD, and shall contain the following information.

1. The project name, project applicant, application type, and case number designated by the County:
2. The name, address, and signature of each appellant. If multiple parties file a

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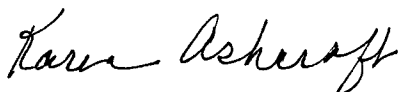
single appeal, the appeal document shall designate, in writing, one party as the contract representative for all contact with the DCD Director and BCC. All contact between the County and the appellants regarding the appeal, including notices, shall be through this contact representative; and

3. A written statement of the specific aspects(s) of the Decision and/or SEPA determination being appealed, the reasons why each is in error as a matter of fact or law, and the evidence relied upon to prove the error.

The complete case file will be available for review at the Department of Community Development, Monday through Thursday, except holidays, 10:00 a.m. to 3:45 p.m. by calling me at (360) 337-4487 for an appointment.

If you have questions, please contact me at (360) 337-4487. If you have procedural questions regarding the appeal hearing before the Board of County Commissioners, please contact the Clerk of the Board at (360) 337-7146.

Sincerely,



Karen Ashcraft
Clerk of the Examiner

C: Rick & Melissa White, 6788 NE Wood Bay LN, Poulsbo, WA 98370
Terry & Lisa Conrad, 6790 NE Wood Bay LN, Poulsbo, WA 98370
Leann Ebe McDonald, Shoreline Solutions, 9784 NE Lafayette AVE, Bainbridge Island, WA 98110

Interested Parties:

Patricia Small, 3722 29th AVE W, Seattle, WA 98199
Rosemary & Patrick Burns, 7713 N Via de Fonda, Scottsdale, AZ 85258
Margaret Bomber, magsbomber@comcast.net
Maureen P Small, 1019 Giles AVE NW, Olympia, WA 98502
David Holden, PO Box 11675, Bainbridge Island, WA 98110
Betsy Cooper betsycooper@centurytel.net
Rose Burns roseburns@yahoo.com
Nancy D'Archangel, 21391 Miller Bay NE, Poulsbo, WA 98370
Friends of Miller Bay, PO Box 37, Suquamish, WA 98392
Becky Hall, 21605 Seacrest AVE NE, Poulsbo, WA 98370
Carol Haskins, 6794 Wood Bay LN NE, Poulsbo, WA 98370

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DOCK – SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT**

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Interested Parties:

David Holden, PO Box 11675, Bainbridge Island, WA 98110
Dave & Maggie Kunesh, 21675 Seacrest AVE NE, Poulsbo, WA 98370
Bill & Aurelia Lindsay, PO Box 602, Indianola, WA 98342
Jeff & Kay Mellum, 21655 Seacrest AVE NE, Poulsbo, WA 98370
Patricia C Small, 3722 29th W, Seattle, WA 98199
Maureen P Small, 1019 Giles AVE NW, Olympia, WA 98502
Stafford & Barbara Smith, [smith.stafford@gmail](mailto:smith.stafford@gmail.com) Poulsbo, WA 98370

BEFORE THE HEARING EXAMINER
FOR KITSAP COUNTY

RECEIVED

In the Matter of the Appeal of) NO. 090212-005
)
Richard White)
)
Terry Conrad)
)
Of a Determination of Nonsignificance) **White/Conrad Dock**
)
In the Matter of the Application of)
)
Richard White & Melissa White) FINDINGS, CONCLUSIONS,
) AND DECISIONS
Terry Conrad & Lisa Conrad)
)
For Approval of a)
Shoreline Substantial Development Permit)

MAY 21 2009

KITSAP COUNTY DEPT. OF
COMMUNITY DEVELOPMENT

SUMMARY OF DECISION

The Appellants' State Environmental Policy Act appeal of the County's Mitigated Determination of Nonsignificance is **DENIED**.

The request for a Shoreline Substantial Development Permit to allow construction of a residential dock, including pier, ramp, float and two boat lifts, located at 6788 NE Wood Bay Lane, in Kitsap County, Washington, is **GRANTED, subject to conditions**. Conditions of approval are necessary to address specific impacts of the proposed development.

SUMMARY OF RECORD

Request:

Richard White and Terry Conrad request a Shoreline Substantial Development Permit for construction of a joint-use residential dock, including fixed pier, ramp, float, and two boat lifts, on property located at 6788 NE Wood Bay Lane, in Kitsap County, Washington. Richard White and Terry Conrad appealed the County's Mitigated Determination of Nonsignificance.

*Findings, Conclusions, and Decisions
Kitsap County Hearing Examiner
White and Conrad MDNS APPEAL and
White/Conrad SSDP, No. 090212-005*

Hearing Date:

The appeal of the SEPA Mitigated Determination of Nonsignificance was consolidated with a hearing on the permit application in a single open record hearing on April 23, 2009.¹ The appeal portion of the hearing was held first to receive testimony from the Appellants/Applicants and the County, followed by the hearing on the permit application.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Mitigated Determination of Nonsignificance Appeal

Terry Conrad, Appellant/Applicant
LeAnn Ebe McDonald, Appellant witness
David Greetham, County SEPA Responsible Official

Richard White represented the Appellants at the appeal hearing.

Permit Application

David Greetham, County SEPA Responsible Official
Richard White, Appellant/Applicant
Terry Conrad, Appellant/Applicant
Shawn Alire, County Development Engineering
Patricia Small
Stafford Smith
Becky Hall
Barbara Smith
Nancy Baran
Dick D'Archangel
Paul Dorn
Maggie Kunesh

Exhibits:

The following exhibits were admitted into the record:

1. Email message from Barbara Nightingale, sent April 6, 2007
2. Pre-Application Meeting Request, received October 25, 2007
3. Request to Waive Pre-Application Meeting, dated September 21, 2007
4. Affidavit of Publication – Notice of Application, dated September 28, 2007

¹ Kitsap County Code (KCC) 21.04.105.B states: "SEPA and the review of project permit applications shall be combined and integrated in all project permits that are not categorically exempt from SEPA or for which environmental review has not already been completed [in accord with KCC 21.04.105.B]." *KCC 21.04.105.B*. Similarly, RCW 43.21C.075(2)(a) provides "Appeals [under SEPA, Chapter 43.21C RCW, shall be of the governmental action together with its accompanying environmental determinations." *RCW 43.21C.075(2)(a)*.

5. Aerial Site Photographs from Applicant, received October 25, 2007
6. Site Plan – See Revised, received October 25, 2007
7. Environmental (SEPA) Checklist – See Revised, received October 25, 2007
8. JARPA Application, dated October 22, 2007
9. GIS Shoreline Master Plan Environments Map, dated October 30, 2007
10. GIS Zoning Map, dated October 30, 2007
11. GIS Building Limitations Map, dated October 30, 2007
12. GIS Critical Areas Topographic Map, dated October 30, 2007
13. Notice of Incomplete Application, dated December 17, 2007
14. Letter from Patty Charnas – 30 day letter, dated June 17, 2008
15. Aerial Photographs Overwater/Overhanging Structures in Miller Bay, undated, with handwritten notes dated September 24, 2008
16. Macro Algae Habitat Survey, dated July 2008
17. Revised Site Plan, received July 15, 2008
18. Notice of Complete Application, dated August 8, 2008
19. Notice of Application, dated August 8, 2008
20. Revised Environmental (SEPA) Checklist, dated October 21, 2007
21. Revised JARPA Application, dated October 22, 2007
22. Adjacent Properties to Proposal (2007), received October 25, 2007
23. Affidavit of Mailing – Notice of Application, dated August 14, 2008
24. Memorandum from Nathan D. Holburn, KCHD, dated August 19, 2008
25. Notice of Application – Publication, dated August 23, 2008
26. Memorandum from Shawn Aire, Development Engineering, dated September 2, 2008
27. Letter from Patricia C. Small, dated September 16, 2008
28. Email message from Lisa Lewis, sent September 18, 2008
29. Email message from Lisa Lewis, sent September 18, 2008
30. Letter from Margaret Bomber, dated September 19, 2008
31. Email message from Margaret Bomber, sent September 18, 2008
32. Request to Waive Pre-Application Meeting, dated September 21, 2007 (same as Exhibit 3)
33. Email message from Lisa Lewis, sent September 19, 2008
34. Email message from Lisa Lewis, sent September 19, 2008
35. Email message from Leann Ebe McDonald, sent September 23, 2008
36. Letter from Maureen P. Small, dated September 23, 2008
37. Letter from White/Conrad, dated October 20, 2008
38. Email message from Lisa Lewis, sent September 24, 2008
39. Email message from Lisa Lewis, sent September 24, 2008
40. Hydrogeologist Report - E3RA, dated November 5, 2008
41. Mitigated Determination of Nonsignificance, dated January 22, 2009
42. Affidavit of Mailing – MDNS, dated January 23, 2009
43. Affidavit of Publication – Notice of Public Hearing, dated January 23, 2009
44. Email message from Leann Ebe McDonald, sent January 23, 2009
45. Notice of Public Hearing, dated January 26, 2009
46. Affidavit of Mailing – Notice of Public Hearing, dated January 26, 2009

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47. Email message from Carol Haskins, sent January 29, 2009
48. Email message from Lisa Lewis, with letter attached, sent January 30, 2009
49. Email message with letter attached, sent January 30, 2009
50. Email message from Dick & Nancy D'Archangel, sent January 30, 2009
51. Affidavit of Posting, dated January 28, 2009
52. Email message from Lisa Lewis – Betsy Cooper, sent January 30, 2009
53. Email message from Lisa Lewis – Stafford Smith, sent January 30, 2009
54. Email message from Lisa Lewis – Betsy Cooper, sent January 30, 2009
55. Email message from Leann Ebe McDonald – Lisa Lewis, sent February 3, 2009
56. Notice of Postponement, dated February 3, 2009
57. Affidavit of Mailing – Notice of Public Hearing, dated February 3, 2009
58. Appeal of SEPA Determination, dated February 5, 2009
59. Email message from Leann Ebe McDonald, sent February 6, 2009
60. Email message from Lisa Lewis, sent February 10, 2009
61. Letter from Patricia C. Small, dated February 11, 2009
62. Email message from Rose Burns – Margaret Bomber, sent February 28, 2009
63. Email message from Lisa Lewis – Margaret Bomber, sent March 2, 2009
64. Letter from Becky & Mike Hall, dated March 9, 2009
65. Letter from David & Maggie Kunesh, dated March 13, 2009
66. Letter from Stafford L. Smith, dated March 24, 2009
67. Email message from Rose Burns, sent January 23, 2009
68. Revised Site Plan & Elevation View, dated March 17, 2009
69. Revised JARPA Application, dated March 18, 2009
70. Notice of Public Hearing, dated April 8, 2009
71. Affidavit of Mailing – Notice of Public Hearing, dated April 6, 2009
72. Affidavit of Posting, dated April 8, 2009
73. Miller Bay Species/Habitats, prepared by Chris Waldbillig, WDFW, dated April 7, 2009
74. Staff Report, dated April 9, 2009
75. Pre-Hearing Order, April 9, 2009
76. Email message from Carol Haskins, sent April 15, 2009
77. Letter from Friends of Miller Bay, dated February 16, 2009
78. Memorandum from David Greetham, dated April 16, 2009
79. Staff Response to SEPA Determination, dated April 16, 2009
80. Email message from Leann Ebe McDonald, sent April 16, 2009
81. Calculations for Pier Length, dated April 15, 2009
82. Proposed Aerial Photograph (with dock sketched in), dated April 15, 2009
83. White/Conrad Proposed Pier/Ramp/Float, received April 16, 2009
84. PowerPoint Slides, White and Conrad Pier, Ramp, and Float, dated April 23, 2009
85. Letter from Leann Ebe McDonald, dated July 7, 2008, with attached two letters from the Department of the Army Seattle District Corps of Engineers, dated July 10, 2008 and October 24, 2008
86. Aerial photograph, received April 23, 2009, with handwritten notes
87. Aerial photograph depicting docks in Miller Bay, received April 23, 2009

*Findings, Conclusions, and Decisions
Kitsap County Hearing Examiner
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For purposes of the SEPA appeal, the Appellants/Applicants submitted Exhibits 41, 49, 69, and 80 – 83. For purposes of the SEPA appeal, the County submitted Exhibits 1 – 41, 68, 69, and 78 – 83. Exhibits 1 – 87 were submitted for purposes of SSDP application review.

The Hearing Examiner enters the following Findings and Conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Application and Notice

1. Richard and Melissa White and Terry and Lisa Conrad (Appellants/Applicants) request a Shoreline Substantial Development Permit (SSDP) to allow construction of a joint-use residential dock, including fixed pier, ramp, float, and two boat lifts, on property located at 6788 NE Wood Bay Lane, Kitsap County, Washington.² The Appellants/Applicants would jointly use the proposed dock. The property located at 6790 NE Wood Bay Lane, Kitsap County, Washington, is located adjacent to the north of the proposed construction site, and is owned by Terry and Lisa Conrad. *Exhibit 22; Exhibit 69.*
2. Kitsap County (County) determined the SSDP application was complete on August 8, 2008. *Exhibit 18.* On August 14, 2008, the County mailed notice of the application to owners of property along Miller Bay to the north and south of the subject property. *Exhibit 22.* The County published notice of the application in the *Port Orchard Independent* on August 23, 2008. *Exhibit 25.* The County published notice of the open record hearing associated with the application in the *Port Orchard Independent* on January 23, 2009, and mailed notice to owners of property within 400 feet of the subject property, Appellants/Applicants, interested parties, and appropriate agencies on January 26, 2009. *Exhibit 43; Exhibit 45; Exhibit 46.* The County postponed the hearing on February 12, 2009, and rescheduled the hearing for April 23, 2009. *Exhibit 56; Exhibit 71.* On April 6, 2009, the County mailed notice of the rescheduled hearing to owners of property within 400 feet of the subject property, Appellants/Applicants, interested parties, and appropriate agencies. *Exhibit 71.* On April 8, 2009, the County posted notice of the hearing on the subject property. *Exhibit 72.*

² The property is identified as tax parcel 092602-3-003-2006. *Exhibit 69.* David Greetham, County SEPA Responsible Official, testified that the proposed joint-use dock would be located entirely on the Richard White's property, located at 6788 NE Wood Bay Lane, Kitsap County, Washington. *Testimony of Mr. Greetham.* The property owned by Terry Conrad is adjacent to the north of the White property, at 6790 NE Wood Bay Lane, Kitsap County, Washington, and is identified by tax parcel 092602-3-004-2005. *Exhibit 22; Exhibit 69.* The Hearing Examiner conducted a virtual site visit to the White and Conrad property through use of GoogleEarth technology prior to the open record hearing.

Property Location and Description

3. The property subject to the application is located on the northwest shore of Miller Bay in Puget Sound. Several streams empty into Miller Bay, including Grover's Creek at the north end of the bay. Miller Bay is an intertidal pocket estuary of Puget Sound. According to the County staff report, Miller Bay is divided into the Northern Inner Bay (Inner Bay) and Southern Outer Bay (Outer Bay).³ A sand spit partially separates the Inner Bay portion from the Outer Bay portion at the southern edge of the Inner Bay portion. An outlet located adjacent to the spit allows water to circulate between the Inner and Outer Bay portions. The Outer Bay portion was dredged along the north side of the sand spit, and is wide and deep compared to the Inner Bay portion. The Outer Bay portion contains water in its center at low tide. The Inner Bay portion is long, shallow, and narrow compared to the Outer Bay portion. The Inner Bay portion drains out completely at low tide. The subject property is located along the Inner Bay portion of Miller Bay. *Exhibit 22; Exhibit 74, Staff Report, pages 1 and 3.*

4. The Inner Bay portion of Miller Bay extends approximately 4,000 linear feet at its widest point along the south shore of the bay, then narrows to approximately 800 linear feet before emptying into Outer Bay portion of Miller Bay. North of the point where the Inner Bay empties into the Outer Bay, the Inner Bay portion of Miller Bay gradually narrows to approximately 200 feet wide before reaching the head of Miller bay, where Grover's Creek empties into the bay. According to the scale provided on aerial maps, the Inner Bay extends approximately 800 linear feet wide adjacent to the proposed dock location. Sediment deposits in the perimeter areas of the Inner Bay are visible in an undated aerial photograph of the bay labeled "Overwater/Overhanging Structures in Miller Bay". Another undated aerial photograph labeled "Docks in Miller Bay" depicts approximately 49 docks extending into the Inner Bay portion of Miller Bay from all shores of the bay.⁴ The majority of the docks are located south of the subject property. Two docks are located north of the subject property on the west shore of the bay. One dock, located approximately 250 yards north of the subject property, extends 104 linear feet into the bay. The other dock, located approximately 750 yards north of the subject property, extends 99 linear feet into the bay. Typewritten notes within the aerial photograph labeled "Docks in Miller Bay" state the length of a subset of the docks extending into Miller Bay. The docks of this subset range from 40 feet long to 248 feet

³ Terry Conrad, one of the Appellants/Applicants, testified that in the time he has spent living on Miller Bay, he has not heard Miller Bay described as two bodies of water, or as divided into the "inner bay" and the "outer bay." David Greetham testified that Miller Bay is a single body of water. *Testimony of Mr. Conrad ; Testimony of Mr. Greetham.*

⁴ The undated aerial photograph labeled "Overwater/Overhanging Structures in Miller Bay" depicts approximately 59 "overwater structures". The aerial photograph separately depicts approximately 13 "overhanging structures" in Miller Bay, and approximately 81 "pier/dock/floats". An "overwater structure" is depicted approximately 100 feet north of the proposed dock site along the west shore of the bay. An overhanging structure is depicted approximately 100 feet south of the proposed dock site along the west shore of the bay. The photograph depicts no "overwater structures", "overhanging structures", or "pier/dock/floats" directly across the bay from the proposed dock site. *Exhibit 15; Exhibit 86.*