

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant; Douglas and Linda MacGregor
4132 Point Williams Place
Bow, WA 98232

Agent: Steve Zuvela
Waterfront Construction, Inc.
205 NE Northlake Way, Suite 230
Seattle, WA 98105

Request/File No: PL12-0438 Modification of Shoreline Substantial Development Permit (SDP)

Location: 4132 Point Williams Place, on the shore of Samish/Padilla Bay, within NE1/4 Sec. 28, T36N, R2E, W.M.

Shoreline Designation: Conservancy, landward of Ordinary High Water Mark
Aquatic, seaward of Ordinary High Water Mark

Summary of Proposal: To modify SDP PL08-0144 to allow electric power, lights and water supply to permitted dock.

SEPA Compliance: Addendum to original Mitigated Determination of Non-Significance (MDNS) issued on March 1, 2013

Public Hearing: April 24, 2013. Testimony by applicant and water purveyor. Planning and Development Services (PDS) recommended approval

Reconsideration/Appeal: A person with standing may appeal to the State Shorelines Hearings Board within 15 days of the mailing of this decision by the County to the Department of Ecology. See Skagit County Shoreline Master Program 9.13(d)

Online Text: The entire decision can be viewed at:
[www.skagitcounty.net/hearing examiner](http://www.skagitcounty.net/hearing_examiner)

FINDINGS OF FACT

1. Douglas and Linda MacGregor (applicants) seek the modification of a Shoreline Substantial Development Permit for a residential dock (PL12-0438).
2. The site is at 4132 Point Williams Place on the west side of Samish Island on the shore of Samish and Padilla Bay, located within NE1/4 Sec. 28, T36N, R2E, W. M.
3. The property is developed with a substantial home above a rugged shore. The dock is a private boat moorage, designed to be 155 feet long and six feet wide, consisting of a 95-foot elevated fixed pier, a 52-foot grated ramp and a 40' x 8' float.
4. At the time of application and subsequent permitting, the applicants did not include a proposal for utility installation on the dock. PDS recommended and the Hearing Examiner included Condition No. 10 to the Substantial Development Permit, stating, "No utilities shall be located on the dock."
5. The applicants now propose to install both water and electrical utilities on the dock and have asked that Condition 10 be removed from the permit. The failure to request utility installation earlier was an oversight.
6. The dock is designed so that the floating portion may be lifted out of the water when not needed or when weather dictates. Electricity is necessary for this function which has always been a part of the dock design. Electricity will also allow moored vessels to be connected to shore power while at the dock.
7. Water service is desired in order to have it available for cleaning the dock and for boat maintenance. However, neither the water nor the electricity is proposed to be used for mechanical repairs. The applicant has provided assurances that no mechanical work will be performed at the dock.
8. The utilities will be attached to the underside of the dock. Four light locations along the fixed portion and two navigation lights on the float are proposed. Electricity will also be available to a winch controller box on the fixed dock and a power pedestal on the float.
9. The applicants have stated that, except for the navigation lights, dock lighting will be turned on only when someone is on the dock. After-dark use of the dock is not expected to be frequent.
10. The dock contractor/designer stated that the dock lighting proposed is solely for personal safety. The proposed fixtures are of a type which directs the light down to the deck and not outward to the water's surface. Shields are added to block any light from shining outward. The lights will stick up just 4 inches above the deck surface. Low wattage bulbs will be used.

11. At the hearing, a representative of the Samish Farm Water System testified that the System provides the only water supply to the property. He said that approval for the requested water service will be needed from the System.

12. There was no public testimony. However, six letters of opposition were received. Much of this opposition focused on matters that were raised and decided in the initial permit proceeding on the dock. Reservations continue about the propriety of building a dock along a currently undeveloped stretch of shore within a Conservancy shoreline environment. Absent denial, the opponents asked that a condition be added requiring the permittees to repair any damage done by future storms.

13. The opponents also expressed a concern for the effects of light on the biology of the area and as a source of light pollution in a currently natural night-time setting. Correspondence from the Washington State Department of Fish and Wildlife (DFW) said that no known studies of the effects of night lighting on marine life provide conclusive results. DFW advised, that if lights are allowed, they be of low intensity and turned on only when the dock is in use.

14. One letter in support of the application was received.

15. The County's Shoreline Administrator determined that the proposed permit modification is "insignificant", a term meaning in this context that the changes are "within the scope and intent" of the original permit and consistent with the local Shoreline Master Program (SMP).

16. "Within the scope and intent of the original permit" is defined at WAC 173-27-100 -- a definition primarily concerned changes which do not increase the size of the development, but also calling for "no adverse environmental impact." On the record here, there is insufficient evidence for overturning the County's determination of "insignificant."

17. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding. SMP 9.13.
2. The requirements of SEPA have been met.
3. As a matter of law, "insignificant" modifications must be approved. SMP 9.13(c).
4. The Examiner is without jurisdiction to add conditions unrelated to the modification requested.
5. Any finding herein which may be deemed a conclusion is hereby adopted as such.

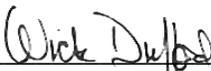
CONDITIONS

1. Except for Condition 10, the original conditions of approval for SDP PL08-0144 shall remain in effect.
2. The proposed modifications to the permit shall be carried out as described in the application materials. In particular,
 - a. The lighting on the dock will be of low wattage and of a type designed to shine downward and shielded from shining outward.
 - b. The dock lights shall be turned on only when the dock is in use.
 - b. No mechanical repairs shall be performed at the dock.
3. Permission for providing water to the dock shall be obtained from the relevant water purveyor.

DECISION

The requested modification is approved, subject to the conditions set forth above. Condition 10 to the original permit approval is hereby deleted.

DONE, this 13th day of May 2013.



Wick Dufford, Hearing Examiner

Transmitted to Applicant and interested parties on May 13, 2013.

See Notice of Decision, Page 1, for Appeal information.