

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant: Christopher Kozlowski
5825 Lausanne Drive
Reno, NV 89511-5037

Contact: Waterfront Construction
Attn: Steve Zuvela
205 NE Northlake Way, Suite 230
Seattle, WA 98115

Request: Shoreline Substantial Development Permit and
Shoreline Variance, PL16-0164

Location: Southwest shore of Sinclair Island, with NE1/4 Sec. 16,
T36N, R1E, W.M. Parcel No: P46423

Shoreline Designation: Rural

Summary of Proposal: To install a new private dock, consisting of pier, ramp and float. The structure will extend 90 feet waterward from the Ordinary High Water Mark (OHWM), will include 57% functional grating, and will feature encapsulated foam under the float. Access will be at the top of a rocky bank approximately six feet above the OHWM. A 25-foot buffer will be maintained from eel grass beds.

SEPA Compliance: Mitigated Determination of Non-Significance (MDNS) issued August 6, 2016. No appeals.

Public Hearing: July 26, 2017. Testimony by Staff and Applicant's contractor. No public testimony.

Decision: The application is approved, subject to conditions.

Reconsideration/Appeal: Reconsideration may be requested by filing with Planning and Development Services (PDS) within 5 days of this decision. Appeal is to the County Commissioners by filing with PDS within 5 days of this decision, or decision on reconsideration, if applicable.

Online Text: The entire decision can be viewed at:
www.skagitcounty.net/hearingexaminer

FINDINGS OF FACT

1. Christopher Kozlowski (applicant) seeks to build a new private dock on the southwest shore of Sinclair Island.
2. The location is on the Bellingham Channel within NW1/4 Sec.16, T36N, R1E, W.M. The parcel number is P46423. Associated upland parcels are P123518 and P123515.
3. The proposed dock will be located within an A4 flood zone which is designated as a coastal flood hazard area, indicated on FIRM Community Panel Number 530151 0025C effective January 3, 1985.
4. The shoreline designation of the site is Rural landward of the Ordinary High Water Mark (OHWM) and Aquatic seaward of the OHWM. A small portion of the dock will extend beyond extreme low tide into the area designated Shorelines of Statewide Significance.
5. There are at present no functioning docks on Sinclair Island. A former County dock has deteriorated to the point that it is no longer usable. The ramp and float have been removed.
6. The proposed structure will consist of a pier, ramp and float. Six 8-inch diameter and four 12-inch diameter steel piles will be installed, using either a barge-mounted vibratory driver or drilled into the rock subgrade as appropriate. The pier portion will be 40 feet long and 5 feet 9 inches wide. The ramp will be 44 feet long and 3 feet 9 inches wide. The float will be 30 feet long and 8 feet wide. The dock will extend from a point approximately 15 feet inland to approximately 90 feet waterward of the OHWM.
7. The pier, ramp and float components will be constructed offsite and floated in by barge. The structure will include 57% functional grating. Encapsulated foam will be placed under the float. A winch system will be installed to elevate the float above high tides during storms and when the owners are not onsite.
8. The proposal is for a private dock, but because there are no other docks on the island, the applicants have stated that they will make the dock available for general use during emergency situations. Provision will need to be made for access to the dock should such an emergency occur.
9. A survey of the shoreline by Jen Jay Diving shows that the proposed location for the dock is the best location on the applicant's property, allowing the structure to reach adequate mooring depth while not encroaching into the 25-foot eelgrass setback. The proposed 90-foot length from the OHWM will allow seven feet of depth for moorage at mean low water. The open pile construction should result in minimal impact on geohydraulic processes.
10. The structure, as proposed and conditioned, will meet the requirements of the Department Natural Resources which acts as manager for the tidal and subtidal areas owned by the State.

11. Under the Critical Areas Ordinance (Chapter 14.24 SCC), the site is within a Fish and Wildlife Habitat Conservation Area. Critical areas compliance was demonstrated by submission of professionally prepared reports including a fish and wildlife conservation report, a biological evaluation, a preliminary eelgrass macro algae habitat survey, and a marine mammal monitoring plan. The Staff review of these submission concluded that the dock will have a minimal adverse impact on fish and wildlife, will not significantly degrade water quality, and will fully mitigate any negative effects of intrusion into the critical area.

12. Review of the project was conducted under the State Environmental Policy Act (SEPA). The County issued a Mitigation Determination of Non-Significance (MDNS) on August 4, 2016. The MDNS was not appealed. It imposed the following conditions:

- (1) The proposal shall comply with all policies and regulations of the Skagit County Shoreline Management Master Program and the Shoreline Management Act, RCW 90.58.
- (2) The applicant and/or contractor shall utilize best management practices to ensure that no construction materials enter the waters during construction. All materials shall be disposed of in an approved method and location.
- (3) Any upland areas disturbed during construction shall be replanted with self-sustaining vegetation upon completion of the project.
- (4) The applicant and/or contractor shall strictly adhere to the approved project information and site plan submitted for this proposal. If the applicant proposes any modification of the subject proposal, he/she shall request a permit revision prior to the start of construction.
- (5) The applicant shall adhere to the conditions and the permit requirements of other agencies.
- (6) The applicant shall comply with Washington Department of Fish and Wildlife (WDFW) authorized work times in saltwater areas and the U.S. Army Corps of Engineers approved work windows for marine areas within tidal reference area 9 (Skagit County).
- (7) The new pier, ramp and float shall be prefabricated offsite to minimize onsite construction time.
- (8) The pile installation shall be conducted in a manner to minimize turbidity and impacts to benthic organisms.
- (9) Every effort shall be made to prevent petroleum products, hydraulic fluid, or chemicals from entering surface waters. Spill prevention counter measure control plans shall be in place prior to beginning construction of the dock. Any release to surface waters shall immediately be reported to the Washington Department of

Ecology and the Washington Department of Fish and Wildlife.

(10) In the event of obvious fish distress or fish kill, project activity shall be stopped immediately and reported to the Washington Department of Fish and Wildlife.

(11) Construction shall only occur during high tidal cycles that will minimize the risk of grounding of vessels and minimize substrate propeller wash.

(12) The dock placement and construction activities shall be located no closer than 25 feet from the inner edge of the eel grass beds.

(13) Temporary erosion and sedimentation control measures, and turbidity or drainage control measures may be required at the discretion of Skagit County PDS.

13. The application was circulated to appropriate County departments. They expressed no concerns.

14. The Notice of Application was posted, published and mailed as required by law. No comment letters were received from members of the general public.

15. The State Department of Natural Resources (DNR) sent the applicant a letter granting permission to build the dock and advising that a lease from DNR would not be required, provided that no more than four pleasure boats use the dock at once, there is no commercial use of the dock and the dock is not used to moor floating homes or vessels used as residences. The letter also listed a number of DNS guidelines for docks which are included herein as conditions of approval.

16. The State Department of Ecology expressed no concerns about building the dock, but challenged the accuracy of the applicant's OHWM determination. The applicant modified the site plans to reflect Ecology's determination.

17. In the absence of other nearby docks, the local Shoreline Master Program (SMP) generally limits dock length to 50 feet waterward of the OHWM, but allows for greater length if the applicant provides reasonable justification. Here the 90-foot length was shown to be necessary to obtain enough water depth at extreme low tide for boat moorage. No adverse impacts to navigation or the environment were identified.

18. The proposed dock will require handrails which will cause the structure exceed the standard dock height of three feet above OHWM. This creates a need for a Shoreline Variance. The applicant noted that the handrails are required to provide safe access. This minor variance will interfere with no public rights.

19. Staff review of the application materials concluded that the proposed dock, as conditioned, will be consistent the shoreline variance criteria and will otherwise comply with the

local Shoreline Master Program which allows residential docks in the Rural shoreline environment. The Hearing Examiner concurs with this evaluation and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

20. The extreme waterward end of the proposed dock will lie within an area designated as a Shoreline of Statewide Significance. This minor intrusion will have little or no adverse impact on the statewide interest, on preservation of natural systems or on public recreation.

21. The proposed dock appears to have been located and designed to make a minimal impact on shoreline values. At the same time, it will provide an emergency function which is in the public interest.

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

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over this proceeding. SMP 9.06.

2. The requirements of SEPA have been met.

3. The proposal, as conditioned, meets the criteria for approval of a Shoreline Substantial Development Permit and a Shoreline Variance Permit. SMP 9.02, 10.03.

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

CONDITIONS

1. The project shall be constructed as described in the application materials, except as the same may be modified by these conditions.

2. The applicant shall obtain all other required permits and abide by the conditions of same.

3. The applicant and its contractors shall comply with all applicable local, State and Federal regulations, including but not limited to, Chapters 173-201A and 173-200 WAC (surface and ground water quality), Chapter 173-60 WAC (noise), Chapter 14.24 SCC (critical areas), Chapter 14.26 SCC (shorelines), and Chapter 14.32 SCC (stormwater management).

4. Temporary erosion/sedimentation control measures shall be in place prior to the start of work. The applicant shall maintain all temporary erosion/sedimentation control measures in place until completion of the project.

5. The applicant shall perform all general construction measures as recommended in the Fish and Wildlife site assessment/biological evaluation report/marine mammal monitoring plan prepared by Jen Jay Diving, Inc.

6. Design of the dock shall incorporate the following elements:
 - (a) Use of treated wood or tires shall be avoided;
 - (b) Floatation shall be encapsulated;
 - (c) Pilings shall be made from non-toxic materials – steel or concrete.
 - (d) The dock shall have 50% of the surface grated with 60% of grated free space.
 - (e) Access ramps shall be grated.
 - (f) Skirting of the dock shall be avoided.
 - (g) There shall be at least seven feet of water below the dock at low tide.
 - (h) Stops shall be installed on the floating portion of the dock such that they provide a minimum distance of 1.5 feet between the base of the float and the sea floor.
7. The project shall comply with all conditions of the MDNS. See Finding 12 above.
8. No more than four pleasure boats shall use the dock at one time.
9. Commercial use of the dock is prohibited.
10. The dock shall not be used to moor floating homes or vessels used as residences.
11. The applicant shall submit a procedure for access to and use of the dock during emergencies for the review and approval of Planning and Development Services (PDS).
12. A copy of this permit decision shall be submitted with the building permit application.
13. The project shall be commenced within two years of final approval of the Shoreline Variance and completed within five years thereof.
14. If the applicant proposes any modification of the proposal, he shall notify Planning and Development Services (PDS) prior to the start of construction.
15. Failure to comply with any conditions of approval may result in permit revocation.

DECISION

The subject application (PL16-0164) for a Shoreline Substantial Development Permit and Shoreline Variance Permit is approved, subject to the conditions set forth above.

SO ORDERED, this 7th, day of August, 2017.



Wick Dufford, Hearing Examiner

Transmitted to Applicant, Waterfront Construction and County Staff, August 7, 2017

See Notice of Decision, page 1, for appeal information.