



## Notice of Hearing Examiner Decision

08/02/2022

To: Interested Parties and Parties of Record

RE: Project Name: Lake Tahuyeh (also known as Tahuyeh Lake, Lake Tahuya and Tahuya Lake) Washington State Department of Fish and Wildlife Public Access and Small Craft Launch Project

Applicant: Alexandra Laughtin, WA State Dept of Fish & Wildlife  
600 Capitol Way N  
Olympia, WA 98501

Application: Shoreline Substantial Development and Shoreline Variance Permit (SSDP and SVAR)

Permit Number: 20-06035

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit #20-06035 Lake Tahuyeh (also known as Tahuyeh Lake, Lake Tahuya and Tahuya Lake) Washington State Department of Fish and Wildlife Public Access and Small Craft Launch Project – Shoreline Substantial Development and Shoreline Variance Permit (SSDP and SVAR)**, subject to the conditions outlined in this Notice and included Decision.

**THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS TIMELY APPEALED, AS PROVIDED UNDER WASHINGTON LAW.**

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at:

<https://kitsapgov.com/dcd/HEDocs/HE-Rules-for-Kitsap-County.pdf>

Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360-337-5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review by contacting the Department of Community Development; if you wish to view the case file or have other questions, please contact [help@kitsap1.com](mailto:help@kitsap1.com) or (360) 337-5777. Please note DCD is open Monday to Friday from 8:00am to 12:00pm except holidays.

CC: Applicant/Representative: Alexandra Laughtin, [alexandra.laughtin@dfw.wa.gov](mailto:alexandra.laughtin@dfw.wa.gov)

Owner: State Agency Lands, WA State  
Health District  
Public Works  
Parks  
Navy  
DSE  
Prosecutor  
Assessor  
DCD  
Kitsap Sun  
Kitsap Transit  
Central Kitsap Fire District  
Central Kitsap School District  
Puget Sound Energy  
Point No Point Treaty Council  
Suquamish Tribe  
Port Gamble S'Klallam Tribe  
Squaxin Island Tribe  
Puyallup Tribe  
WA Dept of Fish & Wildlife  
WA State Dept of Ecology-SEPA  
WA State Dept of Ecology-Shoreline  
WA State Dept of Ecology-Wetland Review  
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**BEFORE THE HEARING EXAMINER  
FOR KITSAP COUNTY**

In the Matter of the Application of	)	No. 20-06035
	)	
	)	
<b>Alexandra Laughtin, on behalf of Washington State Department of Fish and Wildlife</b>	)	<b>Lake Tahuyeh Public Access Development Project</b>
	)	
	)	
For a Shoreline Substantial Development Permit and Shoreline Variance	)	FINDINGS, CONCLUSIONS, AND DECISION

**SUMMARY OF DECISION**

The request for a shoreline substantial development permit and shoreline variance to allow development of a public facility—including a parking area, vault toilet restroom facility, and hand-launch ramp for small craft lake access—on a 0.91-acre property owned by the Washington State Department of Fish and Wildlife (WDFW) along the eastern shoreline of Lake Tahuyeh, to the southwest of the intersection of Gold Creek Road NW and Percheron Lane NW, in the Bremerton area of unincorporated Kitsap County, is **APPROVED**. Conditions are necessary to address specific impacts of the proposal.

**SUMMARY OF RECORD**

Hearing Date:

The Hearing Examiner held an open record hearing on the requests on June 23, 2022, utilizing a hybrid approach allowing for live participation or participation by remote access technology. The record was left open until July 1, 2022, to allow for the submission of additional comments and materials on the proposal.

Testimony:

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

Steve Heacock, County Senior Environmental Planner  
Alexandra Laughtin, Applicant Representative  
Kaitlyn Kiehart, WDFW Wetland Scientist  
Oscar R. Myre III  
Ron Flerx  
Art Bruner  
Patrick Lauterbach  
Jill Myre  
Oscar Myre IV  
Earl Jull

*Findings, Conclusions, and Decision  
Kitsap County Hearing Examiner  
Lake Tahuyeh Access Development Project  
SSDP and SVAR, No. 20-06035*

Cathryn Som-Mueller  
Terry Null  
Sharon Esau  
John Boddy  
Phyllis Kanyer  
Jean Bulette  
Rosemary Marsh  
Norman Reinhardt  
Bob Carroza  
Nicholas Jeatran  
Robin Bruins  
Don Genoversa  
James Longmate  
Kristi Keller  
Brad Green  
Donna Logan  
Kathleen Wray  
Brian Calkins, WDFW Regional Wildlife Program Manager  
Sergeant Ken Balazs, WDFW Enforcement Officer  
Amanda Walston, Clerk to the Hearing Examiner

Attorney John Bonin represented the Tahuyeh Lake Community Club at the open record hearing. Attorney Joe Panesko represented the Applicant at the open record hearing.

Exhibits:

A list of the exhibits admitted into the record is provided as Attachment A, appended to this decision.

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

**FINDINGS**

Background

1. Efforts by the Washington State Department of Fish and Wildlife (WDFW or Applicant) to develop the subject property with public access to Lake Tahuyeh<sup>1</sup> have long been the subject of litigation. This eventually resulted in the Kitsap County Superior Court issuing a judgement in favor of WDFW on August 15, 2011, concerning this issue. In an earlier

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<sup>1</sup> The record in this matter also refers to “Lake Tahuyeh” as “Tahyeh Lake,” “Lake Tahuya,” and “Tahuya Lake.” See, e.g., *Exhibit 1, Revised Staff Report, page 1*. For consistency, this decision refers to the lake as “Lake Tahuyeh” except when quoting a document that provides a different name for the lake. Potential legal concerns over properly identifying Lake Tahuyeh are discussed, in detail, later in this decision.

memorandum decision, dated July 15, 2011, the court provides a detailed legal history of Lake Tahuyeh and the property ownership of its surrounding lands, stating in part:

In the late 19th century, Tahuyeh and its surrounds were owned by the United States government. The lands were conveyed from the federal government to two individuals by “patent.” Scarcely one month before Washington was admitted to the Union as the 42nd state, Estus C. Combs received title to a portion of these lands on October 3, 1889; the other area of land at issue in this case was patented to Simon McLeod. . . .

The parcel currently owned by [WDFW] is a portion of the land originally patented to Mr. Combs, government lot 2. [WDFW] acquired its land on July 25, 1939 from Puget Sound Peat Moss, Inc. At that time, Puget Sound Peat Moss owned (as successor in title to Mr. Combs) the land devised to the State, and approximately 133 acres of land surrounding and including Tahuyeh. . . .

In 1963 a predecessor in interest to members of the [Tahuyeh Lake] Community Club, William Hobson, obtained permission from the State to construct a dam, impounding water in Tahuyeh. Approximately half of the Department's [remaining waterfront] lot was flooded as a result.

Through a succession of conveyances, the Community Club came to acquire title to all lands surrounding Tahuyeh, save that owned by [WDFW]. The Community Club is an association of 229 families owning property around the shoreline of Tahuyeh. The Community Club considers Tahuyeh to be a privately owned reservoir, to which its members have exclusive rights of access and use. [WDFW] is the sole property owner along the shoreline of Tahuyeh that is not a member of the Community Club.

...

In Washington, ownership of a riparian lot abutting a nonnavigable lake includes the submerged lakebed extending to the centerline of the lake. “Riparian owners own the beds of nonnavigable lakes and ponds in pie-shaped wedges that extend from their upland lots lines to the center.” [Accordingly,] the State received a riparian lot in 1939. As such, the lot included ownership of a pie-shaped wedge of the bed of Lake Tahuyeh as it then existed...

In reaching this conclusion the Court does not minimize the impact that such a ruling may have on the solitude currently enjoyed by the members

of the Community Club. Yet the Court simply cannot find that the State is categorically ineligible to assert riparian rights to access the entire surface of the lake.

*Exhibit 39, Memorandum Decision (No. 08-2-00728-8) (internal footnotes omitted).*

2. Following issuance of its memorandum decision, the superior court entered final judgment in favor of WDFW and against the Tahuyeh Lake Community Club, which determined in relevant part:

The State of Washington, as owner of the property abutting a non-navigable lake called Lake Tahuyeh and legally described below, and the general public as authorized by the State of Washington Department of Fish and Wildlife, have a right to recreate on the entire surface of Lake Tahuyeh, which rights include the right to boat and fish on and throughout the entire lake.

That part of the North 200 feet of Lot Three, Sec. 17, Township 24 N, Range 1 West, W.M, lying west of the C.C.C., road project #6 and between said road and the meander line of Tahuyeh Lake.

The State of Washington owns a pie-shaped wedge of the bed of Lake Tahuyeh starting from the upland portion of the above described parcel, and running westward to the center of Lake Tahuyeh, and such rights include the right to construct improvements (including a dock or pier) that attach to the lake bed within this pie-shaped area to facilitate recreational use of the lake, as otherwise permitted by law.

*Exhibit 39, Findings of Fact, Conclusions of Law and Judgement (No. 08-2-00728-8).*

#### Application and Notice

3. Alexandra Laughtin, on behalf of WDFW, requests a shoreline substantial development permit (SSDP) and shoreline variance (SVAR) to install public-access improvements to its 0.91-acre undeveloped property, situated along the shoreline of Lake Tahuyeh, that would include a parking area, restroom, and hand-launch ramp for small craft access to Lake Tahuyeh. The proposed parking area would be accessed from a new asphalt paved road apron entrance from Gold Creek Road NW. The entrance would include a gate that could be closed periodically to accommodate site maintenance and/or other WDFW mandated closures. One parking stall would be lined and asphalt-paved to provide ADA-compliant parking and access to the proposed vault toilet restroom facility. The remaining parking area would accommodate eight vehicles and would be constructed of gravel. The Applicant would also construct an eight-foot-wide geo-web trail allowing public users to carry small recreational equipment, such as kayaks, paddle boats, and canoes, from the parking lot to the hand-launch ramp into Lake Tahuyeh. In addition, the

Applicant would construct a stormwater treatment pond to capture pollutants and sediment-laden runoff from the parking area, a fence along the north property line, and signage informing users to stay out of environmentally sensitive areas.

A Category III wetland is located in the northwestern portion of the site, along the Lake Tahuyeh shoreline, with a required 110-foot buffer that extends over nearly the entire property. The Applicant does not propose any direct impacts to the on-site wetland, but a shoreline variance is required to allow the proposed development within the wetland buffer area. As mitigation for the 8,465 square feet of wetland buffer that would be impacted from the proposal, the Applicant would enhance 11,533 square feet of remaining buffer areas through the planting of native vegetation. The currently unaddressed property is located to the southwest of the intersection of Gold Creek Road NW and Percheron Lane NW, in the Bremerton area of unincorporated Kitsap County.<sup>2</sup> *Exhibit 1, Revised Staff Report, pages 1 through 3, and 16 through 19; Exhibits 3 through 5; Exhibits 9 through 12; Exhibit 15; Exhibits 21 through 29.*

4. Kitsap County (County) determined that the application was complete on January 13, 2021. On September 24, 2021, the County provided notice of the application to property owners within 800 feet of the subject property and to reviewing departments and agencies. The County's notice materials stated that comments on the proposal could be submitted up until seven days before the open record hearing associated with the application. The open record hearing associated with the proposal was rescheduled several times: on or around April 27, 2022, the County provided notice of the open record hearing associated with the application by mailing notice to interested parties and property owners within 800 feet of the site, publishing notice in the County's publishing newspaper of record, and posting notice at the subject property; on or around May 6, 2022, the County provided revised notice of the open record hearing in the same manner; and, ultimately, on or around May 24, 2022, the County provided a second revised notice of the open record hearing in the same manner. The second revised notice again provided a new hearing date (of June 23, 2022) and explained that members of the public could participate at the hearing in person or by remote access.

The County received one agency comment on the proposal from the Suquamish Tribe in response to its notice materials, dated September 24, 2021, which requested more information about how the Applicant would mitigate for the project's impacts to the wetland buffer. The County also received numerous comments on the proposal from members of the public in response to its notice materials, which are discussed in detail later in this decision. *Exhibit 1, Revised Staff Report, pages 8 through 12; Exhibit 19; Exhibit 20; Exhibit 31; Exhibit 32; Exhibit 38; Exhibit 41; Exhibit 42; Exhibit 43; Exhibit 46.*

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<sup>2</sup> The property is identified by Kitsap County Assessors Tax Account No. 172401-3-005-1009. *Exhibit 1, Revised Staff Report, page 1.*

### State Environmental Policy Act

5. WDFW acted as lead agency and analyzed the environmental impact of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW).<sup>3</sup> After analyzing the Applicant’s environmental checklist and other available information, WDFW determined that the proposal would not have a probable significant adverse impact on the environment and issued a Determination of Nonsignificance (DNS) on November 9, 2020, with a comment deadline of November 23, 2020. Applicant Representative Alexandra Laughtin testified at the open record hearing that the DNS was not appealed. *Exhibit 2; Testimony of Ms. Laughtin.*

### Comprehensive Plan, Zoning, and Surrounding Properties

6. The property is designated “Rural Residential” by the County Comprehensive Plan. County staff identified the following Comprehensive Plan goals and policies as relevant to the proposal:
- Encourage and support shoreline diversity through planned and coordinated development, which gives preference to water-dependent uses, traditional and historic use patterns, and environmental protection. [Policy SH-1]
  - Uses and activities along shorelines and in the waters of Kitsap County should not have a significant adverse effect on water quality. [Policy SH-3]
  - Land use activities shall be sited and designed to minimize conflicts with and impacts on the shoreline environment. [Policy SH-8]
- Exhibit 1, Revised Staff Report, pages 3 and 5.*

7. The subject property and all adjacent properties are zoned “Rural Residential” (RR). The RR zone “promotes low-density residential development and agricultural activities that are consistent with rural character. It is applied to areas that are relatively unconstrained by environmentally sensitive areas or other significant landscape features. These areas are provided with limited public services.” *Kitsap County Code (KCC) 17.130.020*. The property is bordered to the north and south by properties developed with single-family residences, to the east by Gold Creek Road NW, and to the west by Lake Tahuyeh. There is an existing fence separating the subject property from the residential property to the south, and the Applicant would construct a new fence along the northern property line. *Exhibit 1, Revised Staff Report, pages 3 and 4; Exhibit 4; Exhibit 5; Exhibit 28.*

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<sup>3</sup> The first agency receiving an application for, or initiating, a nonexempt proposal shall determine the lead agency for that proposal, unless the lead agency has been previously determined, or the agency receiving the proposal is aware that another agency is determining the lead agency. The lead agency shall be determined by using the criteria in Washington Administrative Code (WAC) 197-11-926 through 197-11-944. *WAC 197-11-924(1)*. When (as here) an agency initiates a proposal, it is the lead agency for that proposal. *WAC 197-11-926(1)*.

### Existing Site and Critical Areas

8. As noted above, the subject property consists of a 0.91-acre parcel situated on the eastern shoreline of Lake Tahuyeh, which is bounded to the north and south by properties developed with single-family residences and to the east by Gold Creek Road NW. Existing vegetative communities within the parcel consist of a forested wetland, aquatic bed along the Lake Tahuyeh shoreline, and forested upland areas with a canopy of Western red cedar and red alder. The forested upland areas lack understory throughout much of the property due to overcrowding of immature trees and lack of sunlight. An abandoned county dirt road runs north to south approximately through the center of the parcel, parallel to Gold Creek Road NW. The abandoned road is nearly devoid of vegetation and is comprised of hard packed soil that leads to slower infiltration and increased runoff. In addition, impacts from unauthorized public use of the site – including off-road bicycle routes and jumping platforms, small dirt trails, and dumping of trash from Gold Creek Road NW – have caused ongoing disturbance to vegetation within the wetland buffer. Bog clubmoss, a Washington State sensitive plant species, was previously discovered at Lake Tahuyeh in May of 1983. But no bog clubmoss was observed on the property during an inspection of the site on August 19, 2020, by WDFW and a state botanist with the Washington State Department of Natural Resources (DNR) Natural Heritage Program. *Exhibit 1, Revised Staff Report, pages 1 through 3; Exhibit 10.*
  
9. The property contains a Category III wetland in the northwestern portion of the site, along the Lake Tahuyeh shoreline. Washington State Department of Ecology (DOE) Wetland Specialist Neil Molstad conducted a site visit on July 31, 2020, to evaluate the wetland rating provided by a wetland consultant hired by WDFW. Mr. Molstad determined that the on-site wetland did not exhibit any special characteristics and concurred with the wetland consultant’s delineation of the wetland, which included vegetative breaks along the lake shore to the north and south of the on-site wetland area. Mr. Molstad further determined that the on-site wetland is a Category III wetland with a habitat function score of 6, which would require a 110-foot buffer width if the project implements wetland impact minimization measures. The required 110-foot buffer associated with the on-site wetland extends over nearly the entire property. Accordingly, as discussed further below, the Applicant requests approval of a shoreline variance to allow portions of the proposed public-access improvements to be located within the wetland buffer area.

WDFW prepared a Habitat Assessment and Mitigation Plan for the proposed public-access project on December 23, 2020, which it later revised following a coordinated site meeting with County and DOE staff on November 20, 2022. The revised assessment determined that the project area does not contain any designated Fish and Wildlife Habitat Conservation Areas and that the project would have no effect on any Endangered

Species Act listed species. The revised assessment also determined that approximately 16 linear feet of the pervious gravel geo-web trail would extend into a 100-year floodplain but that the project would not impact floodplain connectivity because of the small permeable portion of the project occurring within the floodplain. The revised assessment's evaluation of the project's impacts to the on-site wetland buffer and proposed mitigation for these impacts are discussed in detail later in this decision. *Exhibit 1, Revised Staff Report, pages 2 and 3; Exhibit 3; Exhibit 4; Exhibits 9 through 11; Exhibit 15; Exhibits 21 through 27.*

Shoreline Management Act and County Shoreline Master Program

10. The proposed public-access improvements would be located within 200 feet of the Lake Tahuyeh ordinary high water mark (OHWM). The State Shoreline Management Act (SMA) and the County Shoreline Master Program, Title 22 KCC, govern work within 200 feet of the Lake Tahuyeh OHWM. *RCW 90.58.030(2)(e) and (g); KCC 22.200.100.A.* Any "substantial development" within the shoreline jurisdiction requires approval of an SSDP. *Substantial development* is any development for which the total cost or fair market value exceeds \$7,047, or any development that materially interferes with the normal public use of the water or shorelines of the state. *RCW 90.58.030(3)(e); KCC 22.150.605.*<sup>4</sup> The Applicant's Joint Aquatic Resources Permit Application (JARPA) form lists the fair market value of the project as above this threshold and, therefore, approval of an SSDP is required. *Exhibit 1, Revised Staff Report, pages 13 through 16; Exhibit 14.*
11. The primary goal of the SMA is to protect the public interest in the state's shorelines through a coordinated development process. The SMA contemplates protecting against adverse effects to the public health, the land, the vegetation, the wildlife, and the waters, and preserving the public's opportunity to enjoy the physical and aesthetic qualities of the natural shoreline to the greatest extent feasible. Permitted uses in the shorelines must be designed and conducted in a manner to minimize damage to the ecology and environment of the shoreline area and any interference with the public's use of the water. *RCW 90.58.020.*
12. The purpose of the County Shoreline Master Program (SMP) is to guide the future development of the shorelines in Kitsap County in a manner consistent with the Shoreline Management Act. *KCC 22.100.110.* The SMP establishes six shoreline environment

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<sup>4</sup> *Development* is defined as:

a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level.

*RCW 90.58.030(3)(a).*

designations “based on the existing development pattern, the biophysical capabilities and limitations of the shoreline being considered for development, the provisions of WAC 173-26-211 and the goals and aspirations of the citizens of Kitsap County as expressed in the Comprehensive Plan.” *KCC 22.200.105*. The proposed public-access use would be located within the “Shoreline Residential” environment. The purpose of the Shoreline Residential environment is to “accommodate residential development and appurtenant structures that are consistent with [the SMP], and to provide appropriate public access and recreational uses.” *KCC 22.200.115*. Mooring structures, such as hand-launch ramps, and water-oriented recreation and public-access uses are allowed in the Shoreline Residential environment. *KCC Table 22.600.105. Exhibit 1, Revised Staff Report, pages 13 through 16; Exhibit 28.*

13. *KCC 22.300.125* provides general policies for shoreline use and planning that apply to all use and development activities within the SMP jurisdiction, regardless of the shoreline environment designation. The purpose of the SMP’s general shoreline use and site planning policies is to “[p]reserve and develop shorelines in a manner that allows for an orderly balance of uses by considering the public and private use, along with the development of shorelines and adjacent land areas with respect to the general distribution, location and extent of such uses and development.” *KCC 22.300.125*. *KCC 22.300.130* provides general policies for public access and recreation that apply to all use and development activity within the SMP jurisdiction. The purpose of the SMP’s general public access and recreation policies is to “[p]rovide physical and visual public access opportunities and space for diverse forms of water-oriented recreation in such a way that private property rights, public safety, and shoreline ecological functions and processes are protected in accordance with existing laws and statutes.” *KCC 22.300.130*. County staff reviewed the proposal and determined that it would be consistent with several SMP general policies related to shoreline use and site planning and to public access and recreation.

The applicable policies identified by County staff are listed below, together with County staff’s analysis of how the proposal would be consistent with those policies (in italics):

- Policy SH-20. For shoreline use and development activities, including plats and subdivisions at full build-out, employ innovative development features to achieve no net loss of ecological functions, such as sustainable and low impact development practices where appropriate. *The proposed public hand-launch boat ramp design allows for the transmission of surface and lake water through the feature.*
- Policy SH-21. Give preference to water-dependent uses and single-family residential uses that are consistent with preservation of shoreline ecological functions and processes. Secondary preference should be given to water-related and water-enjoyment uses. Non-water-oriented uses should be limited to those locations where the above-described uses are in appropriate or where non-water-

oriented uses demonstrably contribute to the objectives of the Act. For use preference within shorelines of statewide significance, see Section 22.300.145(B). *The proposed hand-launch ramp is a water-dependent use, and the facility would provide infrastructure, including parking and restroom, to support the water-dependent use.*

- Policy SH-22. Designate and maintain appropriate areas for protecting and restoring shoreline ecological functions and processes to control pollution and prevent damage to the shoreline environment and/or public health. *The proposed project would enhance buffers, while providing water-dependent access. The water quality treatment facility would control sediment and would reduce erosive impacts. Minimization of the parking area and controlling the size of watercraft access with the hand-launch facility would limit the intensity of uses. Native plantings would be installed adjacent to the shoreline per the mitigation design from the Applicant.*
- Policy SH-23. Through appropriate site planning and use of the most current, accurate and complete scientific and technical information available, shoreline use and development should be located and designed to avoid the need for shoreline stabilization or actions that would result in a net loss of shoreline ecological functions. *The proposed hand-launch ramp would not require armoring.*
- Policy SH-32. Protect the public's opportunity to enjoy the physical and visual qualities of the shoreline by balancing shoreline use and development in such a way that minimizes interference with the public's use or enjoyment of the water. This may be achieved through regulatory provisions, incentives or other cooperative agreements. *The proposed water access is a public use of the shoreline by a public agency. The proposed hand-launch ramp is a water-dependent use, and the facility would provide infrastructure, including parking and restroom, to support the water-dependent use. Public access would be limited to the property, and signage would be provided to protect private property rights.*

*Exhibit 1, Revised Staff Report, pages 13 and 14.*

14. KCC 22.600.160 provides application requirements and development standards for mooring structures and activities. County staff reviewed the proposal and determined that it would comply with all applicable requirements and standards for mooring structures and activities within the Shoreline Residential Environment, noting:
  - Mooring structures and activities are allowed in the Shorelines Residential environment with an SSDP.
  - WDFW's ownership of the subject property was adjudicated in the Superior Court in 2011.
  - The proposed public use hand-launch ramp would not include a dock or pier and would be located within the property lines of State lands.
  - Adjacent mooring structures are freshwater piers and are privately owned.

*Findings, Conclusions, and Decision  
Kitsap County Hearing Examiner  
Lake Tahuyeh Access Development Project  
SSDP and SVAR, No. 20-06035*

- The Applicant has submitted a habitat management plan/biological survey and mitigation plan.
- The proposal is for a public access water-dependent use. The proposal is not for an over-water facility.
- The proposal would follow all applicable state and federal requirements for building standards, materials, installation timing, and surveys.
- The proposed hand-launch ramp would meet the intent of the SMP for public access.
- The proposed hand-launch ramp would end at the Lake Tahuyeh ordinary high-water line and would not be located within navigable waters.
- No new bulkheading or armoring of the shoreline is necessary for the proposed use.
- The proposed hand-launch ramp would not conflict with existing water-dependent uses.
- The proposed hand-launch ramp would be located within a freshwater lake shoreline and would not include any pilings, piers, floats, buoys, or anchors.
- The proposed hand-launch ramp would be for only non-motorized small craft, and craft using the facility should follow aquatic weed abatement protocols.

*Exhibit 1, Revised Staff Report, pages 19 through 25; Exhibit 28.*

15. KCC 22.600.165 provides application requirements and development standards for recreation and public access. County staff reviewed the proposal and determined that it would comply with all applicable requirements and standards for recreation and public access within the Shoreline Residential Environment, noting:
- Recreation and public-access uses are allowed in the Shoreline Residential environment with an SSDP.
  - The proposed public access would provide for water-dependent access to Lake Tahuyeh via a new hand-launch boat ramp for non-motorized vessels. Parking for up to nine vehicles would be provided, including one ADA-compliant paved parking space located adjacent to an ADA-accessible public vault toilet. Litter would be managed by required pack-it-in, pack-it-out policies, and signage would be provided to inform users of these policies.
  - The proposed development would conform to requirements that recreational development not result in a net loss of shoreline ecological functions or ecosystem-wide processes. The Applicant has proposed mitigation for the project's unavoidable impacts.
  - The proposed recreation and public-access use would be consistent with the Shoreline Residential environment designation.
  - The removal of on-site native vegetation would be limited to the minimum necessary for the water-oriented recreation development area. The proposed development would not include any campsites. Rules would be posted at a kiosk

and would limit uses to control noise, fire risks, parking, and hours of operation. Fencing, vegetative screening, and private property signs would be installed to reduce impacts to neighboring properties.

- The proposed development would not include any non-water-oriented recreational facilities with extensive impervious surfaces within critical area buffers.
- The proposed development is not a commercial use.
- The proposed development would conform to requirements prohibiting vehicular traffic on beaches, bars, spits, and streambeds.
- The proposed development would conform to the requirement that trail access be provided to link upland facilities to the beach area where feasible and where impacts to ecological functions can be mitigated.
- The proposed development would make adequate provisions for vehicular parking and pedestrian access, proper wastewater and solid waste disposal methods, security and fire protection, prevention of overflow and trespass onto adjacent properties, and screening from adjacent private property to prevent noise and light impacts. Screening for parking lot headlight glare would be provided by slatted-chain link fencing and perimeter plantings. A public vault toilet would provide for sanitation and restrooms for users. Litter would be controlled with a pack-it-in, pack-it-out policy. Roadside and road shoulder parking would not be allowed.
- The proposed access trail would be located, designed, and constructed to protect bank stability.

*Exhibit 1, Revised Staff Report, pages 25 through 28; Exhibit 28.*

#### Shoreline Variance

16. Approval of a shoreline variance is required to allow the proposed public-access improvements to be located within the 110-foot buffer of an on-site wetland associated with Lake Tahuyeh. Under KCC 22.500.100.E.1, the purpose of a shoreline variance is: strictly limited to granting relief from specific bulk, dimensional, or performance standards (not uses) set forth in [the SMP] where there are extraordinary or unique circumstances relating to the property such that the strict implantation of [the SMP] will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

*Exhibit 1, Revised Staff Report, pages 15 through 19; Exhibit 4; Exhibit 28; Exhibit 29.*

17. As noted above, WDFW prepared a revised Habitat Assessment and Mitigation Plan for the proposal following a November 20, 2022, coordinated site meeting with County, WDWF, and DOE staff. The revised Habitat Assessment and Mitigation Plan determined that the proposal would not directly impact the on-site wetland but would result in 8,465 square feet of unavoidable impacts to the 110-foot wetland buffer from construction of the gravel parking area, paved road apron and ADA parking stall, restroom facility, stormwater detention pond, and geo-web trail. The Applicant proposes to minimize impacts from the proposed public-access project by designing the geo-web trail to

accommodate only hand carry equipment, to terminate at the ordinary high-water line of Lake Tahuyeh, and to allow for water percolation; designing and locating the gravel parking lot and stormwater retention pond to minimize new ground disturbance, impacts to mature trees, and vegetation removal; installing signage and planting native thick and thorny shrubs along the boundaries of the developed areas to deter people and pets from entering sensitive areas; and avoiding in-water work. As mitigation for the 8,465 square feet of unavoidable impacts to the wetland buffer, the Applicant would enhance 11,533 square feet of remaining buffer area by planting native vegetation. The Applicant's mitigation plan includes monitoring requirements and a maintenance plan to ensure that the proposal would result in no net loss of shoreline ecological functions. *Exhibit 1, Revised Staff Report, pages 15 through 19; Exhibit 27; Exhibit 28.*

18. The County SMP provides shoreline variance decision criteria specific to development landward of the OHWM. *KCC 22.500.100.E.4.* The Applicant provided a variance justification with its application materials that addresses these criteria, which contends:
- The proposed project is to construct an access area and hand launch on the shore of Lake Tahuyeh. The project would not require dredging or shoreline stabilization. The project has been designed to the minimize impacts to the shoreline and critical areas to the maximum extent practicable. Due to size constraints of the property, the project cannot be constructed outside of the vegetated wetland buffer. Strict adherence to the standard buffer widths would preclude the construction of a public-access site on publicly owned lands.
  - The hardship described above is due to the size limitations of the parcel and the presence of a 110-foot buffer associated with an on-site wetland.
  - The property is classified as Shoreline Residential, which allows for non-motorized, water-oriented uses. The project is proposing no net loss through minimization measures and enhancement of the existing buffer as outlined in the Habitat Assessment and Mitigation Plan submitted with the application. The site is currently undeveloped, and construction of the access site would not conflict with existing water-dependent uses.
  - The variance would not grant a special privilege not enjoyed by other properties in the area as many of the surrounding residences have docks and/or boat access to the shores of Lake Tahuyeh. Construction of this public-access site would foster inclusion and allow the public the opportunities to recreate on Lake Tahuyeh.
  - The project design has been minimized to the extent practicable, and the variance request is the minimum necessary to afford relief from the strict adherence to code.
  - The majority of the shorelines on Lake Tahuyeh are privately owned, many with boat access and private docks. The subject property is the only publicly owned property on this lake. The proposed access site would be the only public-access site on Lake Tahuyeh. The Bremerton Sportsmen's Club is in strong support of

the project to bring public recreation opportunities to Lake Tahuyeh. The public interest would benefit from development of the access site.

*Exhibit 29.*

19. In addition to the criteria addressed above, consideration must be given to the cumulative impact of additional requests for like action in the area. The Applicant submitted a cumulative impacts report, which asserts in relevant part:
- There are no known similar projects on Lake Tahuyeh now or proposed in the near future in proximity to the proposed project.
  - Tahuyeh is mostly developed with single family residences. The north end of the lake is less developed and contains some open space. The subject property is the only public parcel on Lake Tahuyeh.
  - This project is very isolated and limited in scope, and it would not have far ranging effects that would likely result in the creation of additional projects.
  - Potential direct impacts to many environmental, physical, and socioeconomic elements for this project were analyzed through the SEPA process.

*Exhibit 8.*

20. County staff reviewed the proposal and determined that, with conditions, it would satisfy the specific criteria for a shoreline variance. *Exhibit 1, Revised Staff Report, pages 16 through 19, and 29 to 30.*

#### Written Comments

21. As noted above, the County received numerous written comments on the proposal from members of the public in response to its notice materials. These comments generally related to the following topics:
- **Notice of the Open Record Hearing:** Comments on this topic requested additional information about participation at the open record hearing and/or expressed concerns about the notice provided for the hearing. For example, Oscar Myre III, President of the Tahuyeh Lake Community Club, inquired about whether the hearing would be open to the public. Karen Monise, Robin Burns, Sharon and Bert Esau, Shannon Wetmore, Arden Hammers (on behalf of Charlotte Wood), Justin Cruse, Bob Nordnes, Aaron and Heidi Feenstra-Wilson, Jim and Kerri Ferate, Kim and Connie Mayer, Terry Null, James Corvith, Don Genoversa, Melvin Schmittler, Brad Green, and Natalie Meyer expressed concerns about residents of the Lake Tahuyeh community being properly notified about the project and requested additional information about the time and location for the open record hearing. In addition, Attorney John Bonin, on behalf of the Tahuyeh Lake Community Club, and Jean Bulette requested that the hearing be rescheduled and reformatted to accommodate “in person” participation as opposed to being held remotely. The County provided responses to these comments noting that the hearing date was being rescheduled, that the County

would provide the commentors with additional information about the rescheduled hearing, and that the commentors would be added as interested parties for the proposal. As noted above, the open record hearing utilized a hybrid approach to allow for in person participation or participation through use of remote access technology.

- **Maintenance Responsibilities:** Comments on this topic expressed concerns about WDFW's responsibility for the maintenance of Lake Tahuyeh. For example, Brad Green, Arden Hammers (on behalf of Charlotte Wood), Justin Cruse, Jim and Kerri Ferate, Tanner Cupps, Dr. Morgan Sturm, Donna Logan, James Longmate, Melvin Schmittler, Cathryn Som-Mueller, Natalie Meyer, Lisa Mountjoy Gnassi, Robin Bruins, and Sharon Johnson noted that the owners of private residential property surrounding Lake Tahuyeh have contributed to maintenance and upkeep of the lake and its supporting dam, and they raised concerns that WDFW and members of the public utilizing the proposed public access would undercut these efforts and would benefit from this investment without an equitable contribution. Arden Hammers (on behalf of Charlotte Wood), Melvin Schmittler, Cathryn Som-Mueller, Natalie Meyer, Robin Bruins, inquired about whether WDFW would stock the lake with fish.
- **Parking Impacts:** Brad Green, Jim and Kerri Ferate, James Longmate, Melvin Schmittler, Cathryn Som-Mueller, Natalie Meyer, Lisa Mountjoy Gnassi, expressed concerns that the new Lake Tahuyeh public access would result in overflow parking along Gold Creek Road NW.
- **Impacts to the Enjoyment of Lake Tahuyeh:** Comments on this topic raised concerns about the new public access adversely impacting surrounding residents' enjoyment of Lake Tahuyeh. For example, Brad Green, James Longmate expressed concerns that the proposed public access would result in increased crowding and noise on the lake. Arden Hammers (on behalf of Charlotte Wood), Tanner Cupps, Dr. Morgan Sturm, Donna Logan, James Longmate, Natalie Meyer, raised concerns that the proposal would increase crime in the area. Jim and Kerri Ferate, Donna Logan, James Longmate, and Oscar Myre raised concerns about members of the public leaving trash along the lake for surrounding residents to clean up.
- **Enforcement Responsibilities:** Arden Hammers (on behalf of Charlotte Wood), Donna Logan, James Longmate, Melvin Schmittler, Cathryn Som-Mueller, Natalie Meyer, Sharon Johnson, and Oscar Myre inquired about how WDFW would enforce lake rules and prevent criminal activity.
- **Environmental Impacts:** Comments on this topic related to environmental review of the proposal and about the project's potential environmental impacts. For example, Cathryn Som-Mueller raised concerns about the adequacy of the environmental studies and SEPA review for the proposal and about the project's impacts to wildlife, such as eagles and osprey.

- **Public Right of Access to Lake Tahuyeh:** Justin Cruse, James Longmate, Natalie Meyer, Lisa Mountjoy Gnassi, Jean Bulette asserted that Lake Tahuyeh is a private lake and that WDFW does not have a legal right to develop the shoreline property to provide public access to the lake.
- **Support for the Proposal:** Phyllis Kanyer and Ron Flerx, on behalf of the Bremerton Sportsmen’s Club, expressed support for the proposal and inquired about how the permit process could be expedited. Ron and Carmen Flerx also expressed support for the proposal, noting that the public should be granted access to fishing and recreational opportunities provided by the third largest lake in Kitsap County and that WDFW has a fish stocking plan in place that would alleviate stocking costs for the Tahuyeh Lake Community Club. Attorney David Shorett expressed support for the proposal, noting that there is no justification for denying public access to Lake Tahuyeh, that the DNS for the proposal is final and cannot be appealed, that public access would be limited due to site constraints, that WDFW has designed the project to minimize impacts to the wetland buffer to the extent feasible, and that the impacts to the lake from allowing the public to utilize only non-motorized watercraft would be minimal in comparison to the existing impacts from high-speed boating and water skiing uses of the lake from surrounding property owners. Robert Steiner, on behalf of the Long Lake Bass Club, noted that the proposal would benefit children interested in fishing and the outdoors.

*Exhibit 1, Revised Staff Report, pages 8 through 12; Exhibit 20; Exhibit 32; Exhibit 41; Exhibit 46.*

22. In a letter dated May 23, 2022, Attorney John Bonin, on behalf of Tahuyeh Lake Community Club, requested that the Hearing Examiner summarily deny the application, without prejudice, and requested that the SEPA process be reinitiated with a new public comment period due to notice materials referring to Lake Tahuyeh as “Lake Tahuya.” He also asserted that the staff report prepared for the proposal does not address maintenance responsibilities for the lake and associated dam or whether the sheriff’s office has adequate resources to respond to complaints of improper activity occurring at the lake. In an email dated June 16, 2022, Attorney Bonin objected to County staff issuing a revised staff report and requested that the permit process be restarted due to the revised staff report or, in the alternative, that the open record hearing be delayed for a minimum of three months to allow interested parties adequate time to review and respond to the revisions. *Exhibit 1; Exhibit 40; Exhibit 41.e; Exhibit 46.a.*

#### Testimony

23. County Senior Environmental Planner Steve Heacock testified generally about the proposal, the review process that occurred, and how, with conditions, the proposal would be consistent with the County’s Comprehensive Plan, zoning ordinances, critical areas ordinances, and shoreline master program and would meet the requirements for approval

of a shoreline substantial development permit and shoreline variance. He provided a detailed description of the proposed Lake Tahuyeh public-access project, consistent with the findings above. Mr. Heacock explained that critical areas within the County's shoreline jurisdiction are regulated by the County SMP and, therefore, the proposal for development within the buffer associated with an on-site Category III wetland would require approval of a shoreline variance. He stated that the property and all adjacent properties are zoned Rural Residential and that the SMP designates the property as within the Shoreline Residential environment. Mr. Heacock noted that DOE would have final review authority over the proposal. He stressed that the proposed public access has been designed to minimize impacts to the on-site wetland and shoreline environment, noting that users would be able to park and walk small, non-motorized watercraft down a geo-web trail to the Lake Tahuyeh shoreline. Mr. Heacock also summarized the mitigation planting plan for the proposal and explained that the proposed ADA-compliant vault toilet would utilize newer technology designed to minimize odor and would be located at the center of the property to prevent odor impacts to adjacent residential properties. He explained that the project site has been previously disturbed by an abandoned county dirt road and that the proposed parking area would not be located any further toward the shoreline than the existing dirt road. Mr. Heacock explained that signage preventing off-street parking in the vicinity, together with the limited number of parking spaces available on-site, would limit the intensity of the public use of Lake Tahuyeh. He noted that hydraulic project approval from the WDFW would not be required because no in-water work is proposed. Mr. Heacock described County staff's recommended conditions of approval and explained how they would ensure consistency with the requirements for approval of an SSDP and shoreline variance. He explained that the open record hearing had been rescheduled on multiple occasions in response to public concerns about notice and the ability to provide in-person testimony in addition to testimony by remote access technology. *Testimony of Mr. Heacock.*

24. Applicant Representative and WDFW Environmental Planner Alexandra Laughtin testified that she agrees with the analysis of the proposal as presented in the staff report and Mr. Heacock's testimony. She noted that WDFW is committed to working with the community to discuss issues regarding maintenance obligations for Lake Tahuyeh and its associated dam. Ms. Laughtin explained that WDFW reviewed the environmental impacts of the proposal, as required by SEPA, and issued a DNS with a 14-day comment period, which was not appealed. She stated that, although the 14-day comment period had long expired, she would be willing to discuss any issues about the environmental review of the proposal with concerned members of the public. *Testimony of Ms. Laughtin.*
25. WDFW Wetland Scientist Kaitlyn Kiehart testified that the proposed mitigation plan would comply with County code requirements and would achieve no net loss of wetland ecological values and functions. She stated that the mitigation plan includes over 250

plantings on-site, which she explained is a considerable number of plantings for the small mitigation areas. Ms. Kiehart explained that the mitigation planting plan has been designed to restrict public access to the wetland and to provide additional buffer functions. *Testimony of Ms. Kiehart.*

26. Attorney John Bonin, on behalf of the Tahuyeh Lake Community Club, objected to the hearing based on various notice materials identifying Lake Tahuyeh as “Lake Tahuya” and based on revisions to the staff report, and he requested that the permit process be restarted to allow the Applicant to work with the community to address issues such as maintenance obligations for the lake and dam and to allow for adequate time to comment on any resulting project revisions. The Hearing Examiner denied Attorney Bonin’s objection. Attorney Bonin then provided a brief overview of the concerns that would be expressed at the hearing by members of the Community Club, including concerns regarding impacts to Lake Tahuyeh and the surrounding residential community. *Statements and Argument of Attorney Bonin.*
27. Oscar Myre III testified that he has concerns about the environmental review of the proposal and about the tree removal that would be required for the proposed public-access project. He also raised concerns that the revised staff report now indicates that swimming and picnicking uses would not be prohibited at the site. In addition, Mr. Myre expressed concerns about overflow parking, the site being inadequately sized for the proposed public-access use, the maintenance obligations for the dam supporting the lake, and the ability to enforce lake rules and prevent criminal activity at the lake. *Testimony of Mr. Oscar Myre III.*
28. Ron Flerx testified in support of the proposal, both individually and on behalf of the Sportsmen’s Club. He noted that the permit process has been delayed, in part, due to project revisions and revisions to the Habitat Assessment and Mitigation Plan that were made in response to a coordinated review of the proposal from DOE, DNR, WDFW, and the County to ensure that wetland buffer impacts would be adequately addressed. He stated that concerns related to light intrusion, trespass, litter, and interference with existing recreational uses should not have delayed the permit process because these issues exist for all lakes with public access and are adequately addressed by law enforcement. Mr. Flerx also stated that several of the concerns about the proposal raised by members of the public are not related to the criteria for approval of an SSDP and shoreline variance. *Testimony of Mr. Flerx.*
29. Art Bruner testified that he appreciates the substantial amount of work to the lake performed by the Tahuyeh Lake Community Club but stated that the community should work together to provide public access to the lake for younger generations. *Testimony of Mr. Bruner.*

30. Patrick Lauterbach testified that he has concerns about public users of the lake trespassing on private property. He also raised concerns that, as designed, motorized watercraft would be able to access the lake from the proposed public-access site. Mr. Lauterbach also raised concerns about potential impacts to eagle and osprey habitat from increased use of the lake. *Testimony of Mr. Lauterbach.*
31. Jill Myre testified that the role of the government is to protect its citizens and not to provide entertainment. *Testimony of Ms. Myre.*
32. Oscar Myre IV testified that he grew up on the lake and that the community has worked together to maintain the lake and enforce lake rules. He raised concerns about the ability to enforce lake rules and ensure safety for members of the public outside of the existing residential community that would use the lake. *Testimony of Oscar Myre IV.*
33. Earl Jull testified that he has concerns about impacts from the proposed restroom facilities, noting existing issues for vault toilets at other public locations. He explained that existing vault toilets, including newly-designed vault toilets, emit a pervasive sewer odor and could introduce toxic conditions for children on nearby residential properties. He submitted photographs showing the conditions of signs and restrooms in public locations at Panther Lake and Kitsap Lake, which show graffiti on the signs and restrooms. *Testimony of Mr. Jull; Exhibit 47.*
34. Cathryn Som-Mueller testified that she has lived in the Lake Tahuyeh community since 2003 and has paid dues to the Tahuyeh Lake Community Club for maintenance of the lake and associated dam. She raised concerns about the proposal's impacts to the wetland buffer and to the shoreline environment. Ms. Som-Mueller stated that the proposed tree removal would allow for light transmission that could dry up the wetland. She also raised concerns about public users of the lake trespassing on private property and leaving trash at the site. Ms. Som-Mueller also raised concerns about overflow parking, public users not following the rules provided on signage at the site, and impacts to eagle habitat and other wildlife habitat. She submitted several photographs of the site and the surrounding shoreline area, as well as photographs appearing to show vehicles parked at another public location contrary to posted parking rules. *Testimony of Ms. Som-Mueller; Exhibit 48.*
35. Terry Null raised concerns that several trees along the shoulder of Gold Creek Road NW have been marked for removal, noting that the Lake Tahuyeh community has a waterline located in this area. He also raised concerns about the permit process and the ability of the public to comment at various stages of the permit process. Mr. Null submitted photographs of the marked trees and several other site photographs. *Testimony of Mr. Null; Exhibit 49.*

36. Sharon Esau testified that she has concerns about the ability of law enforcement to respond to issues at the lake. She read from a letter provided by Kitsap County Deputy Sheriff Aaron Baker, which described existing resource issues and other constraints inhibiting the ability to respond to calls for service. The letter was admitted into the record. Ms. Esau also raised concerns about vehicles having adequate sight distance to safely enter and exit the site. *Testimony of Ms. Esau; Exhibit 50.*
37. John Boddy testified that he has concerns that the property may contain cultural and archaeological resources and that affected tribes were not provided adequate notice about the proposed development. He also raised concerns that users of the site would not adhere to signage on the property describing lake rules. Mr. Boddy submitted his hearing testimony notes; a March 14, 2007, letter from Skokomish Natural Resources commenting potential environmental impacts from development of the site for public use; and a map providing information about fishing opportunities at other lakes in the vicinity. *Testimony of Mr. Boddy; Exhibit 51.*
38. Phyllis Kanyer testified in support of the proposal, noting that the State acquired the parcel in 1939 for the purpose of creating public access to the lake. She further noted that the proposal would be a benefit for the public and that impacts would be minimal in light of the limited nature of the proposed public access. *Testimony of Ms. Kanyer.*
39. Jean Bulette testified that she has documentation showing that the lake is private. She also raised concerns about impacts to the shoreline environment and nearby residential properties from the proposed vault toilet during a flooding event. *Testimony of Ms. Bulette.*
40. Rosemary Marsh testified that she purchased her property because she understood Lake Tahuyeh to be a private lake, noting that she previously owned lakeshore property next to a public launch and experienced issues with people trespassing, vandalizing portable restroom facilities, partying late into the night, and not following posted lake rules. *Testimony of Ms. Marsh.*
41. Norman Reinhardt testified in support of the proposal, noting that several of the issues raised by Lake Tahuyeh community members were addressed by the superior court and that the County provided a thorough review and opportunity to comment on the proposal. *Testimony of Mr. Reinhardt.*
42. Bob Carroza testified that the lake would not exist but for the dam paid for and maintained by the lakeside residents, and he raised concerns that the State and the general public have not and would not be required to contribute toward these expenses. He also raised concerns about the ability of law enforcement to respond to reports of incidents occurring at the lake. *Testimony of Mr. Carroza.*

43. Nicholas Jeatran testified that he owns the adjacent property to the north of the project site. He raised concerns about impacts to his property from the proposed stormwater retention pond. He also raised concerns about litter at the site, impacts to wildlife habitat, and maintenance of the site. *Testimony of Mr. Jeatran.*
44. Robin Bruins raised concerns that the staff report contains inconsistencies regarding the number of parking spaces that would be provided, the identification of the property as the only publicly owned property on the Lake Tahuyeh shoreline, and other project details. He also raised concerns that the project would not adequately mitigate for the impacts to the wetland buffer. In addition, Mr. Bruins stated that he shares the concerns expressed by other testifying members of the public. *Testimony of Mr. Bruins.*
45. Don Genoversa testified that he has enjoyed the peaceful nature of the lake and the Lake Tahuyeh community and has concerns about impacts to the lake and shoreline environment that could occur by allowing public access. He also raised concerns about the safety impacts of providing a public-access location along a curved and heavily traveled arterial road and about overflow parking along the road. *Testimony of Mr. Genoversa.*
46. James Longmate testified that he has concerns that providing public access could attract criminal and other prohibited activity at the site and the lake. He also raised concerns about the tree removal, fill material, and construction activity that would be required for the proposal. Mr. Longmate noted that several other lakes within the County and surrounding areas provide fishing opportunities for members of the public. *Testimony of Mr. Longmate.*
47. Kristi Keller testified that she shares the concerns raised by other testifying members of the public. She stated that the 121 members of Tahuyeh Lake Community Club each pay \$240 a year, for a total of \$53,000 a year, to maintain the lake and dam. Ms. Keller raised concerns about the environmental review of the proposal and said that questions about the proposal submitted by the public were not adequately addressed by County staff. She also raised concerns that all affected tribes were not properly notified about the proposal. Ms. Keller stated that the benefit of providing a public-access location would not outweigh the conflicts that would likely result. *Testimony of Ms. Keller.*
48. Brad Green testified that he shares the concerns raised by other testifying members of the public, particularly with regard to the maintenance responsibilities for the dam supporting the lake. *Testimony of Mr. Green.*
49. Donna Logan testified that she shares the concerns raised by other testifying members of the public. She stated that the State would be legally obligated to maintain the site, the

lake, and the dam supporting the lake. Ms. Logan noted that the surrounding area contains several other lakes providing fishing opportunities for member of the public. *Testimony of Ms. Logan.*

50. Kathleen Wray testified that she lives across the street from the lake and has concerns about the project's impacts to wildlife habitat, noting that she has observed wildlife walking through her backyard and utilizing the project site as a water source. *Testimony of Ms. Wray.*
51. Attorney Joe Panesko, on behalf of the Applicant, stated that the Washington State Committee on Geographic Names maintains a list of definitive and true spellings of some geographic locations and items within the state, which does not include "Lake Tehuyeh" and, therefore, there is no legally official spelling for the lake. He explained, however, that WDFW has a freshwater fishing rule that covers several waterbodies in the state, which expressly identifies the lake as "Tahuya Lake" in WAC 220-312-040(276). Attorney Panesko therefore argued that the notice documents associated with the proposal were accurate and provided sufficient public notice of the proposal and of the environmental review for the project. In addition, he asserted that any discrepancy in the spelling of the lake on various notice materials is moot because the public received effective notice of the proposal as evinced by the significant number of comments submitted on the proposal and public participation at the open record hearing. With regard to issues about maintenance obligation for the dam, Attorney Panesko stated that the 2011 superior court decision noted that the State had provided permission to construct the dam, and he argued that any request that the State contribute to the maintenance of the dam should have been raised at that time. *Statements and Argument of Attorney Panesko.*
52. Ms. Laughtin responded to several concerns raised at the hearing, noting:
  - WDFW has not marked any trees for removal along the shoulder of Gold Creek Road NW and does not intend to remove any of these trees to facilitate the project proposal. The Applicant intends to retain the trees because they would provide screening for the public-access site. The trees may have been marked by a local utility district.
  - Swimming at public-access sites is not prohibited, but the Applicant is not specifically proposing public access for swimming as part of this project.
  - WDFW is committed to continue working with the community to address concerns.
  - Tribal historic preservation officers and the Washington State Department of Archaeology and Historic Preservation were provided notice of the project as part of the SEPA environmental review process and did not raise any cultural resource concerns.

- A biologist would be on-site during construction to identify any nests or other wildlife habitat that could be affected and to mitigate for those impacts.
- The updated mitigation plan proposes the removal of 24 trees from the site, which would be the minimum necessary to facilitate the proposed public-access project.

*Testimony of Ms. Laughtin.*

53. WDFW Regional Wildlife Program Manager Brian Calkins testified that, although bald eagles are still federally protected, they are no longer listed as an endangered species. He explained that the proposed development has been carefully designed to minimize any impacts to wildlife. *Testimony of Mr. Calkins.*

54. Ms. Kiehart responded to concerns raised at the hearing, noting:

- The shoreline variance is being requested to allow construction within the 110-foot buffer, not to reduce or eliminate the buffer, and would require mitigation for the unavoidable impacts to the buffer.
- The updated mitigation plan shows that the Applicant would avoid buffer impacts to the extent feasible and would mitigate for the 8,465 square feet of unavoidable impacts to the wetland buffer by enhancing 11,533 square feet of remaining buffer areas on-site.
- Of the 24 trees proposed for removal, only 4 exceed 2 feet in diameter at breast height, and of the 251 proposed plantings, 150 would be shrub and tree species, resulting in a 6.25-to-1 woody vegetation replacement ratio.
- The proposed plantings would create new vegetation strata, which would provide additional and improved wetland buffer functions.
- The Applicant would be required to maintain the buffer mitigation areas for 5 years, with specific monitoring and performance standard requirements.

*Testimony of Ms. Kiehart.*

55. Sergeant Ken Balazs, a WDFW enforcement officer, explained that WDFW enforcement officers are dispatched through Washington State Patrol, and, therefore, calling 911 would be the most efficient way to have an officer respond to an immediate need for assistance. He noted that he would also provide a list of resources, including his personal contact number, to the Tahuyeh Lake Community Club to help document and address any ongoing issues at the lake. Sergeant Balazs stated that, following development of the public access, WDFW enforcement officers would take measures to proactively establish their presence in the area of the site. *Testimony of Sergeant Balazs.*

56. Mr. Heacock also responded to concerns raised at the hearing, noting:

- He would look into the marking of trees along the shoulder of Gold Creek Road NW. It is likely that Puget Sound Energy has marked the site for tree trimming because power lines are located in this area.

- Bald eagle habitat restoration efforts have been successful, and the bald eagle is now listed only as a species of concern rather than an endangered species. County staff has not seen any evidence of eagle habitat at the site.
- County staff provided notice of the application to all tribes that are customarily notified about projects in the subject location, including Point No Point Treaty Council, Suquamish Tribe, Port Gamble S'Klallam Tribe, Squaxin Island Tribe, and Puyallup Tribe, as well as applicable reviewing County departments and government agencies. County staff also provided notice of the proposal to all members of the Tahuyeh Lake Community Club, even those residing more than 800 feet from the project site. Mr. Heacock also submitted a tribal areas map used by County staff to determine which tribes should be contacted for project proposals, as well as a list of tribes that were notified about the subject proposal.
- There is no flood risk associated with the proposed parking lot and restroom facility because they would be located 10 feet above the Lake Tahuyeh OHWM, outside of the flood zone.
- County staff determined that the proposed use would not trigger the need for a traffic study.
- County Public Works reviewed the proposed road approach design and determined that it would likely be approved at the road approach and minor grading permit stage.
- The County has a code compliance division able to address any future issues related to illegal parking.
- The only substantive differences between the original staff report and revised staff report are that the revised staff report addresses additional comments received after the original staff report was issued and provided more analysis of the proposal related to SMP policies under Chapter 22.300 KCC.

*Testimony of Mr. Heacock; Exhibit 53.*

57. County Clerk for the Hearing Examiner Amanda Walston testified about how members of the public having difficulty connecting to the hearing could submit written comments. She stated that all persons listed as interested parties would receive a copy of the Hearing Examiner's decision and that any person not already listed as an interested party could contact her to be placed on the list. Ms. Walston also noted that a recording of the hearing, as well as the Hearing Examiner's decision, would be available on the County website. *Testimony of Ms. Walston.*

#### Additional Materials

58. Monica McCorkle provided written comments at the hearing, in lieu of providing live testimony, raising concerns about the ability of law enforcement to prevent people experiencing homelessness from camping at the site, public users of the site not following lake rules and littering the area, and impacts to wildlife. *Exhibit 52.*

59. The record was left open until July 1, 2022, to allow for the submission of additional comments and materials on the proposal, specifically identified by the Hearing Examiner. Mr. Heacock provided a letter, dated June 30, 2022, noting that County staff contacted Puget Sound Energy about the marked trees along the shoulder of Gold Creek Road NW but has not yet received a response. He also provided email communications with County Public Works Traffic Investigator Ron Pierce, dated June 29, 2022, in which Mr. Pierce explains that the Traffic Engineer could establish a no parking zone of up to 100 feet in response to community concerns about overflow parking, noting that the no parking zone would also apply to the existing residents of the Lake Tahuyeh community. *Exhibit 54; Exhibit 56.c.*
60. The Applicant submitted a letter from the Washington State Department of Archaeology and Historic Preservation (DAHP), dated October 5, 2020. The letter stated that DAHP concurs with the determination that the proposal would not have cultural resource impacts. *Exhibit 55.*
61. Bob Carroza submitted post-hearing comments, which reiterated concerns about impacts to Lake Tahuyeh from public use of the lake, impacts to the on-site wetland buffer, the ability to enforce of lake rules, and maintenance obligations for the lake and dam. *Exhibit 56.a.*
62. Attorney Bonin submitted a post-hearing brief, with permission of the Hearing Examiner, in which he asserts:
- There are due process concerns related to the spelling of Lake Tahuyeh in various notice materials and related to the revised staff report.
  - Since the dam was constructed well before the State won its case claiming ownership of the lot, speculative representation of WDFW's council concerning dam maintenance is problematic.
  - The State of Washington is not a good neighbor. While the County is valiantly trying to pound this round peg into a square hole and they have what appears to be good intentions, the entire process shows that the local citizenry were in fact not properly consulted in any meaningful way. Research was not done on the Community Club's concerns prior to various decisions and recommendations being made. Even during the hearing, errors made by County staff kept cropping up.
  - There are remaining issues regarding a waterline running directly through the lot.
  - There are several other lakes in the area that are being stocked with the same fish that the State want to stock in Lake Tahuyeh.
  - There is no true plan to address the additional safety concerns when looking at the adjacent communities of several open and stocked lakes in the relevant community and the issues that have arisen for them.

- The representation that the SEPA issues has already been decided is not reasonable. Several people raised SEPA concerns that would have likely provided comments on the DNS if properly notified.
- The State wants to benefit from the maintenance and upkeep of the lake without providing any contribution.
- In order to claim the new assertion of right to use the amenities (the dam) of the private citizens who own it, the State is asking for a deviation from its own laws and regulations and to go outside of state and county requirements.
- Native American tribes were not given full and fair opportunity to chime in.
- The Hearing Examiner should delay approval of the requested SSDP and shoreline variance and should require that a review committee be formed by interested members, the County, and the State to work together. Alternatively, the Hearing Examiner should require more interactive feedback on the revised staff report, which has caused so much frustration to members of the community who wanted to have the time to investigate and fully formulate counterarguments to the last-minute fix efforts.

*Exhibit 56.b.*

#### Staff Recommendation

63. Mr. Heacock testified that County staff recommends approval of the SSDP and shoreline variance, with conditions. Ms. Laughtin testified that the Applicant understands and would comply with County staff’s recommended conditions. *Exhibit 1, Revised Staff Report, pages 28 through 30; Testimony of Mr. Heacock; Testimony of Ms. Laughtin.*

### CONCLUSIONS

#### Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide applications for a shoreline variance and, through the County’s consolidated permit procedures, applications for a shoreline substantial development permit. *KCC 2.10.070; KCC 21.04.050; KCC 21.04.080; KCC 21.04.180; KCC 22.500.100.*

#### Criteria for Review-Shoreline Substantial Development Permit

##### *Shoreline Management Act*

The Shoreline Management Act is codified at Chapter 90.58 RCW. Applicable policies of RCW 90.58.020 include those to foster “all reasonable and appropriate uses”; protect against adverse effects to the public health, the land, and vegetation and wildlife; and give priority to single-family residences and appurtenant structures in authorizing alternations to the natural condition of the shoreline. Nonetheless, “private property rights are ‘secondary to the SMA’s primary purpose, which is to protect the state shorelines as fully as possible.’” *Samson v. City of Bainbridge Island*, 149 Wn. App. 33, 49, 202 P.3d 334 (2009) (internal quotation marks omitted)

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(quoting *Lund v. Dep't of Ecology*, 93 Wn. App. 329, 336-37, 969 P.2d 1072 (1998)). Permitted shoreline uses must be designed to “minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water.” *RCW 90.58.020*. See also *Buechel v. Dep't of Ecology*, 125 Wn.2d 196, 203, 884 P.2d 910 (1994).

In promulgating the Shoreline Management Act of 1971, the legislature recognized that “ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development” of the state’s shorelines. *RCW 90.58.020*. The legislature also determined that “unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest.” *RCW 90.58.020*. Accordingly, the Shoreline Management Act requires local governments to develop a master program to regulate shoreline uses consistent with its guidelines. *RCW 90.58.080(1)*.

#### *Shoreline Management Act Regulations*

The Department of Ecology shoreline regulations are located in Chapters 173-26 and 173-27 of the Washington Administrative Code (WAC). Chapter 173-26 WAC sets forth procedures and guidelines for local adoption of shoreline master programs that are not applicable to the Applicant’s permit request. Chapter 173-27 WAC sets forth permitting procedures and permit criteria. The Hearing Examiner reviews the Shoreline Substantial Development Permit (SSDP) application under the following criteria:

- (1) A substantial development permit shall be granted only when the development proposed is consistent with:
  - (a) The policies and procedures of the act;
  - (b) The provisions of this regulation; and
  - (c) The applicable master program adopted or approved for the area. Provided, that where no master program has been approved for an area, the development shall be reviewed for consistency with the provisions of chapter 173-26 WAC, and to the extent feasible, any draft or approved master program which can be reasonably ascertained as representing the policy of the local government.
- (2) Local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the local master program.

*WAC 173-27-150*.

Thus, the Hearing Examiner must review the SSDP application against the County SMP policies and regulations. The County SMP contains general development policies and regulations related to mooring structures and activities and recreation and public access, as detailed in the findings. Consistent with the requirements under WAC 173-27-150, the County SMP provides that an SSDP shall be granted only when “the applicant can demonstrate that the proposed development is consistent with the policies and procedures of the [SMA] and the [SMP], as well as criteria in WAC 173-27-150.” *KCC 22.500.100.B.3*

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Under KCC 22.500.100.B.5:

All applications for shoreline substantial development permits or permit revisions shall be submitted to the Department of Ecology upon a final decision by local government pursuant to WAC 173-27-130. "Final decision by local government" shall mean the order of ruling, whether it be an approval or denial, that is established after all local administrative appeals related to the permit have concluded or the opportunity to initiate such appeals has lapsed.

Criteria for Review-Shoreline Variance

*Shoreline Variance Permit*

As noted above, applicable Department of Ecology shoreline regulations are located in Chapter 173-27 WAC. WAC 173-27-170 sets forth permitting procedures and permit criteria for shoreline variances. The Hearing Examiner reviews the application under the following criteria:

- (1) Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.
- (2) Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(c), and/or landward of any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:
  - (a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;
  - (b) That the hardship described in (a) of this subsection 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 the master program, and not, for example, from deed restrictions or the applicant's own actions;
  - (c) That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;
  - (d) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
  - (e) That the variance requested is the minimum necessary to afford relief; and

(f) That the public interest will suffer no substantial detrimental effect.  
WAC 173-27-170.

Consistent with the requirements under WAC 173-27-170, the County SMP provides in relevant part:

1. The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional, or performance standards (not uses) set forth in this program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.
2. Variances shall be classified as a Type III permit under Chapter 21.04. Administrative variances shall be a Type II permit and may be granted where allowed under the use and modifications matrix or applicable permit requirements.
3. Variance permits should be granted in circumstances where denial of the permit 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.
4. Variance permits for development that will be located landward of the OHWM, except within those areas designated as marshes, bogs, or swamps pursuant to Chapter 173-22 WAC, may be authorized provided the applicant can demonstrate all of the following:
  - a. That the strict application of the bulk, dimensional or performance standards set forth in Chapters 22.400 and 22.600 precludes, or significantly interferes with, reasonable use of the property;
  - b. That the hardship described in subsection (E)(1) of this section 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, for example, not from deed restrictions or from the actions of the applicant or a predecessor in title;
  - c. That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Plan and this program, will not cause net loss to shoreline ecological functions and does not conflict with existing water-dependent uses;
  - d. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
  - e. That the variance requested is the minimum necessary to afford relief; and
  - f. That the public interest will suffer no substantial detrimental effect.

5. Variance permits for development and/or uses that will be located waterward of the OHWM, or within any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of the following:
  - a. That the strict application of the bulk, dimensional or performance standards set forth in Chapters 22.400 and 22.600 preclude all reasonable use of the property;
  - b. That the proposal is consistent with the criteria established under subsections (E)(4)(a) and (b) of this section; and
  - c. That the public rights of navigation and use of the shorelines will not be adversely affected.
6. In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments and/or uses in the area where similar circumstances exist, the total of the variances shall remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment. The applicant shall demonstrate such consideration through submittal of a cumulative impacts report, where required (Section 22.700.130).
7. Variances may not be granted to authorize uses different from the shoreline use and modifications matrix in Section 22.600.105.
8. All applications for shoreline variances approved by the county, including administrative variances, shall be forwarded to Ecology pursuant to WAC 173-27-200, for final approval, approval with conditions, or denial. No approval shall be considered final until it has been acted upon by Ecology.

The criteria for review adopted by the Kitsap County Board of County Commissioners are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with County development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

#### Conclusions Based on Findings

##### *Shoreline Substantial Development Permit*

1. **With conditions, the proposed project would be consistent with the policies of the Shoreline Management Act (SMA), the SMA shoreline regulations, the Kitsap County Shoreline Management Master Program (SMP), applicable County SMP policies and regulations, and the specific criteria for approval of an SSDP under KCC 22.500.100.B. and other applicable County policies and regulations.**  
Applicable policies of RCW 90.58.020 include those that “[r]ecognize and protect the

statewide interest over local interest;” result “in long term over short term benefit;” “[p]rotect the resources and ecology of the shoreline;” “[i]ncrease public access to publicly owned areas of the shoreline;” and “[i]ncrease recreational opportunities for the public in the shoreline.” Permitted shoreline uses must be designed to “minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water.” *RCW 90.58.020*. The proposed public-access project would be consistent with these SMA policies by providing public access to and increasing recreational opportunities for the public on Lake Tahuyeh on state owned property, while implementing a mitigation plan ensuring no net loss of shoreline or wetland ecological function.

The County provided reasonable notice and opportunity to comment on the proposal. Attorney John Bonin, on behalf of Tahuyeh Lake Community Club, requested that the Hearing Examiner deny the application, without prejudice, alleging potential due process concerns related to the County’s notice materials referring to “Lake Tahuyeh” as “Lake Tahuya.” Attorney Joe Panesko, on behalf of the Applicant, asserted at the hearing that the notice materials were proper because the Washington State Committee on Geographic Names has not provided an official spelling for “Lake Tahuyeh” and because WAC 220-312-040(276) expressly lists the lake as “Lake Tahuya.” The Hearing Examiner determines that, notwithstanding any issues related to the spelling of the subject lake, the County’s notice materials provided effective public notice of the proposal, as clearly demonstrated by the numerous submitted comments and public participation at the open record hearing. It is well established that due process does not require actual notice but, rather, requires only “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Speelman v. Bellingham/Whatcom Cnty. Hous. Authorities*, 167 Wn. App. 624, 273 P.3d 1035, 1039 (2012) (quoting *Jones v. Flowers*, 547 U.S. 220, 226, 126 S.Ct. 1708, 164 L.Ed.2d 415 (2006) (internal quotation marks omitted)). The County’s notice materials satisfied this minimum requirement and, moreover, the County rescheduled the open record hearing to accommodate “in person” participation and participation by remote access technology in response to requests by several members of the public to implement this format. Issues were also raised at the hearing regarding the County’s notice of the proposal to affected tribes. The County demonstrated at the hearing, however, that it provided notice to all reviewing tribes identified on the County’s tribal areas map as affected by the proposal, including the Point No Point Treaty Council, Suquamish Tribe, Port Gamble S’Klallam Tribe, Squaxin Island Tribe, and Puyallup Tribe. Of these affected tribes, only the Suquamish Tribe provided comments on the proposal, which requested more information about how the Applicant would mitigate for the project’s impacts to the wetland buffer. The Applicant later submitted a revised habitat assessment and mitigation plan, after which the Suquamish Tribe did not provide any additional comments on the proposal.

The County received numerous comments on the proposal in response to its notice materials, and several members of the public testified at the open record hearing. Some interested members of the public expressed support for the proposal, while several others raised concerns generally related to notice, maintenance responsibilities for the lake and associated dam, parking impacts, impacts to the enjoyment of the lake, enforcement responsibilities for the proposed public-access site and the lake, environmental impacts, impacts from the proposed vault toilet restroom, tree removal, and WDFW's legal right to develop the property for public access to the lake. At the outset, it must be noted that community displeasure, alone, cannot be the basis of a permit denial. *Kenart & Assocs. v. Skagit Cy.*, 37 Wn. App. 295, 303, 680 P.2d 439, *review denied*, 101 Wn.2d 1021 (1984). Rather, the Hearing Examiner must review the proposal for compliance with governing regulations, specifically the criteria for approval of an SSDP and a shoreline variance. Issues related to the Applicant's legal right to develop the property for public access to Lake Tahuyeh were resolved by the superior court, and the Hearing Examiner does not have the authority to revisit that decision. Similarly, issues related to the maintenance obligations for the lake and dam are outside the scope of the Hearing Examiner's authority in this matter. The Applicant testified that it would, however, stock the lake with fish, reducing fish stocking costs currently expended by members of the Tehuyeh Lake Community Club, and the Applicant explained at the hearing that it would continue to work with the Lake Tahuyeh residential community to address concerns regarding maintenance obligations for the lake and dam, as well as to address other concerns.

The proposed public-access facility would limit parking to nine spaces, including one ADA-compliant parking space; would limit accessibility to the lake to only small non-motorized watercraft; and would post applicable rules at a kiosk, which would help mitigate for impacts from public users of the lake to the surrounding lakeshore property owners. Although concerns were raised about the Kitsap County Sheriff's Office being able to adequately respond to calls for service to the lake, WDFW would increase its presence in the area following development of the public-access location, and WDFW would provide resources to the community to report and document any ongoing issues at the lake related to public safety. The Applicant and County staff clarified at the hearing and in a later submittal that trees marked along the shoulder of Gold Creek Road NW and near an existing water line serving the Lake Tahuyeh residential community are not proposed for removal and that tree removal on-site would be limited to the extent necessary to facilitate the proposed public-access improvements. Concerns about overflow parking may be addressed by the County's implementation of a no parking zone in the vicinity of the site, and parking or on-site camping violations may be reported to the County's code enforcement division.

WDFW analyzed the environmental impacts of the proposal, as required by SEPA; determined that the proposed public-access project would not have a probable significant

adverse impact on the environment; and issued a DNS that was not appealed. WDFW's determination is final and cannot be revisited by the Hearing Examiner. As addressed in Conclusion 2 below, the proposal would meet the requirements for a shoreline variance to allow development within the 110-foot buffer associated with an on-site Category III wetland.

In addition to the public concerns summarized above, Attorney Bonin raised an objection to the hearing based on the issuance of a revised staff report. County Senior Environmental Planner Steve Heacock testified at the hearing that the only substantive differences between the original staff report and revised staff report are that the revised staff report addresses additional comments received after the original staff report was issued and provided more analysis of the proposal related to SMP policies under Chapter 22.300 KCC. After the open record hearing commenced on June 23, 2022, the record was left open for an additional week to allow for the submission of additional materials, as specified by the Hearing Examiner, including a closing brief by Attorney Bonin. Although Attorney Bonin submitted a post-hearing brief during this additional comment period reiterating his objection to the revised staff report, he did not identify any specific facts or analysis in the staff report for which the public did not have adequate time to review and provide a response. Accordingly, denial of the SSDP and shoreline variance application on the basis of County staff issuing a revised staff report is not warranted.

The County SMP designates the 0.91-acre subject property as within the Shoreline Residential environment, which, with a shoreline substantial development permit, allows mooring structures, such as the proposed hand-launch ramp, as well as water-oriented recreation and public-access uses. The proposed public access and mooring use would be consistent with several SMP general policies related to shoreline use and site planning and to public access and recreation by designing the project to achieve no net loss of ecological functions, providing a hand-launch ramp and related infrastructure to support the water-dependent use, and providing public access to the waters of Lake Tahuyeh. The SMP provides application requirements and development standards for mooring structures and activities and for recreation and public access within the Shoreline Residential Environment. County staff reviewed the proposal and determined that, with conditions, it would comply with these requirements and standards. The Hearing Examiner concurs with County staff's assessment.

Conditions, as detailed below, are necessary to ensure that the Applicant obtains all necessary permits and approvals, conducts shoreline construction activities in a manner minimizing impacts to adjacent properties, follows the recommendations of the revised habitat assessment and mitigation plan, prohibits cleaning of equipment that could pollute the shoreline environment, designs and constructs the mooring facilities to achieve no net loss of shoreline and wetland ecological functions, and completes the project in a timely manner. *Findings 1 – 63.*

*Shoreline Variance*

2. **With conditions, the proposal would be consistent with the specific criteria for a shoreline variance under the SMA and County SMP.** A shoreline variance is required to allow development within the 110-foot buffer associated with a Category III wetland on the site. The 0.91-acre property contains a Category III wetland in the northwestern portion of the site, along the Lake Tahuyeh shoreline, with a required 110-foot protective buffer that extends over nearly the entire site. Because these extraordinary circumstances, which are unique to the site and are not the result of any action of the Applicant, would prevent development of public-access facilities on the WDFW property (the only established publicly owned property along the Lake Tahuyeh shoreline that could provide public access to the lake), strict application of wetland buffer standards would preclude the Applicant's reasonable use of the property and would thwart SMA policies promoting increased public access and recreational opportunities in publicly owned areas of the shoreline.

The proposed public-access project would not directly impact the on-site wetland and has been designed to minimize impacts to the wetland buffer by designing the geo-web trail to accommodate only hand carry equipment, to terminate at the ordinary high-water line of Lake Tahuyeh, and to allow for water percolation; designing and locating the gravel parking lot and stormwater retention pond to minimize new ground disturbance, impacts to mature trees, and vegetation removal; installing signage and planting native thick and thorny shrubs along the boundaries of the developed areas to deter people and pets from entering sensitive areas; and avoiding in-water work. The project would, however, result in unavoidable impacts to 8,465 square feet of wetland buffer on-site. As mitigation for these unavoidable impacts, the Applicant would enhance 11,533 square feet of remaining buffer areas with 251 native plantings. The Applicant's revised habitat assessment and mitigation plan, submitted following a coordinated site meeting with County, WDFW, and DOE staff determined: the project area does not contain any designated Fish and Wildlife Habitat Conservation Areas; the project would have no effect on any Endangered Species Act listed species; the project would not impact floodplain connectivity because of the small permeable portion of the project occurring within the floodplain (16 linear feet of the proposed gravel geo-web trail); and the project would result in no net loss of wetland or shoreline ecological functions.

The requested variance is the minimum necessary to allow the Applicant to develop the property in manner providing for public access and for small non-motorized watercraft recreational opportunities to the public, consistent with uses enjoyed by several residential properties that have watercraft access to the shores of Lake Tahuyeh. Accordingly, approval of the shoreline variance would not constitute a grant of special privilege. Concerns about the proposal's impacts to the existing Lake Tahuyeh residential community have been addressed above in Conclusion 1, and the Hearing

Examiner determines that the proposed public-access project would be in the public interest. Cumulative impacts of additional requests for like actions in the area have been considered. As noted above, the subject property is the only state-owned parcel along the Lake Tahuyeh shoreline that could provide reasonable public access to the lake, and the remaining shorelines of the lake have mostly been developed with single-family residences and associated lake access improvements. Conditions, as detailed below, are necessary to ensure that the proposal meets the specific requirements for approval of a shoreline variance. *Findings 3, 7 – 63.*

### DECISION

Based on the preceding findings and conclusions, the request for a shoreline substantial development permit and shoreline variance to allow development of a public-access parking area, vault toilet restroom facility, and small hand-launch ramp for public small craft access to Lake Tahuyeh, on a 0.91-acre property owned by the WDFW located along the eastern shoreline of Lake Tahuyeh, to the southwest of the intersection of Gold Creek Road NW and Percheron Lane NW, in the Bremerton area of unincorporated Kitsap County, is **APPROVED**, with the following conditions:<sup>5</sup>

1. The proposal must meet the five-foot side yard zoning setback.
2. Per Stormwater Development review, the associated project is exempt from stormwater requirements. Should over-water impervious surfaces be incorporated in the future, a site plan review would be required. A minor grading permit shall be submitted to address on-site improvements and required mitigation.
3. A Hydraulic Project Approval (HPA) permit is not required from the Washington Department of Fish and Wildlife. An HPA may be required for any project revisions.
4. Project work shall be subject to the conditions of the Washington Department of Fish and Wildlife Hydraulics Project Approval (HPA) should an HPA be required.
5. Shoreline construction activities shall be conducted in a manner such that private properties adjacent to the project area are not impacted.
6. All recommendations of the revised Habitat Assessment and Mitigation Plan shall be followed.
7. To prevent scouring of the substrate, power-assisted pressure washing or cleaning of equipment, machinery, or structures in water less than seven feet deep shall be prohibited.

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<sup>5</sup> This decision includes conditions required to reduce project impacts as well as conditions required to meet County Code standards.

In addition, equipment that contains or is covered with petroleum-based products shall not be pressure washed in or over the water.

8. All mooring facilities shall be designed and constructed to avoid, or where avoidance is not feasible, to minimize and mitigate impacts to achieve no net loss of ecological functions, including functions associated with critical saltwater habitats and species, such as eelgrass beds, and fish habitats and processes such as currents and littoral drift.
9. Upon final permit issuance, all construction for the project must commence within two years and be complete within five years. A one-time one-year extension is available but only if requested on or before ninety days of original permit expiration. No exceptions are allowed unless provided for by law.
10. A Kitsap County Public Works Road Approach Permit will be required. This may be reviewed with the associated minor grading permit (grading 1).
11. The vault toilet design shall require approval from the Kitsap County Health District.

Decided this 2<sup>nd</sup> day of August 2022.



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ANDREW M. REEVES  
Hearing Examiner  
Sound Law Center

### Attachment A

The following exhibits were admitted into the record:

1. Revised Staff Report, dated June 16, 2022
2. Determination of Nonsignificance, issued November 9, 2020, with SEPA Environmental Checklist, dated October 20, 2020, and Site Plans (10 Sheets), dated October 14, 2020
3. Required Permit Questionnaire – Shoreline Permits and Shoreline Permit Revisions, received January 13, 2021
4. Project Narrative, received January 13, 2021
5. Five (5) Site Photographs, received January 13, 2021
6. Concurrency Test, received January 13, 2021
7. Stormwater Worksheet, received January 13, 2021
8. Cumulative Impacts Report, received January 13, 2021
9. Wetland Rating Form, dated March 25, 2020
10. Site Visit Memorandum, dated August 19, 2020
11. Washington State Department of Ecology (DOE), Wetland Rating Memorandum, dated August 28, 2020
12. Site Plans (10 Sheets), dated October 14, 2020
13. SEPA Environmental Checklist, dated October 20, 2020
14. Joint Aquatic Resources Permit (JARPA) Form, dated November 2, 2020
15. Habitat Assessment and Mitigation Plan, Washington Department of Fish and Wildlife, dated December 23, 2020
16. Drainage Report, Washington State Department of Fish and Wildlife, dated December 22, 2020
17. Stormwater Plan, Profile and Details, dated January 5, 2021
18. Preliminary Conditions Stormwater Memorandum, dated June 4, 2021
19. Notice of Application, dated September 24, 2021
20. Interested Party Comments (September 2021 – March 2022):
  - a. Comment from Suquamish Tribe, dated September 24, 2021
  - b. Comments from Oscar R. Myre III, dated September 28 and November 18, 2021,
  - c. Comment from Fred Sears, dated October 18, 2021
  - d. Comments from Karen Monise, dated October 20, 2021
  - e. Comment from Robin Bruins, dated October 21, 2021
  - f. Comment from Brad Green, dated October 21, 2021
  - g. Comment from Sharon and Bert Esau, dated October 22, 2021
  - h. Comment from Shannon Wetmore, dated October 22, 2021
  - i. Comment from Arden Hammers, on behalf of Charlotte Wood, dated October 22, 2021
  - j. Comment from Justin Cruse, dated October 23, 2021
  - k. Comment from Bob Nordnes, dated October 24, 2021
  - l. Comment from Aaron and Heidi Feenstra-Wilson, dated October 24, 2021
  - m. Comment from Jim and Kerri Ferate, dated October 24, 2021

- n. Comment from Tanner L. Cupps and Dr. Morgan E. Sturm, dated October 26, 2021
- o. Comment from Kim and Connie Mayer, dated October 25, 2021
- p. Email from Steve Heacock to Samantha Long and Scott Diener re: telephone comments from Terry Null, dated October 25, 2021, with email string
- q. Comment from Oscar Myre, dated October 22, 2021
- r. Comment from James Corvith, received October 27, 2021
- s. Comment from Donna Logan, received November 2, 2021
- t. Comment from Don Genoversa, dated October 28, 2021
- u. Comment from James Longmate, dated October 22, 2021
- v. Comment from Melvin Schmittler, dated November 12, 2021
- w. Comments from Phyllis Kanyer, dated January 4 and 5, 2022
- 21. Comments from Washington State Department of Ecology, dated October 18, 2021
- 22. Site Meeting Notes, received November 18, 2022
- 23. Request for Information Response Letter, dated January 20, 2022
- 24. Updated Site Plans (9 Sheets), dated January 13, 2022
- 25. Information Request Checklist, dated March 9, 2022
- 26. Request for Information Response Letter, dated April 1, 2022
- 27. Revised Habitat Assessment and Mitigation Plan, Washington State Department of Fish and Wildlife, received April 11, 2022
- 28. Revised Site Plans (10 Sheets), dated March 28, 2022
- 29. Variance Justification, received April 11, 2022
- 30. Email from Steve Heacock to Alexandra Laughtin re: Public Access Mitigation Plan, dated April 18, 2022, with email string
- 31. Notice of Public Hearing
- 32. Interested Party Comments (April 2022 – May 2022):
  - a. Comment from Brad Green, dated April 27, 2022
  - b. Comment from Cathryn Som-Mueller, dated April 29, 2022
  - c. Letter from Attorney John R. Bonin, on behalf of Tahuyeh Lake Community Club, dated May 3, 2022; Email from Attorney Bonin to Steve Heacock, dated May 4, 2022
  - d. Comment from Ron and Carmen Flerx, dated May 3, 2022
  - e. Comment from Jean Bulette, dated May 2, 2022
  - f. Comment from Natalie Meyer, dated May 4, 2022
  - g. Comment from Oscar Myre, dated May 4, 2022
  - h. Comment from Lisa Gnassi, dated May 5, 2022
  - i. Comment from Don Genoversa, dated May 9, 2022
  - j. Comment from Attorney John Bonin, on behalf of Tahuyeh Lake Community Club, dated May 11, 2022
  - k. Comment from Cathryn Som-Mueller, dated May 11, 2022
  - l. Comment from Ron Flerx, on behalf of the Bremerton Sportsmen’s Club, dated May 13, 2022, with attachment

- m. Comment from Jean Bulette, received May 17, 2022, with attachments
- 33. Email from David Gecas to John Bonin, dated May 5, 2022, with email string
- 34. Revised Notice of Public Hearing
- 35. Email from Alexandra Laughtin to Steve Heacock re: vault toilets comment from Earl Jull, dated May 10, 2022, with email string and attachment
- 36. Email from Amanda Watson to John Bonin re: Hearing Process, dated May 11, 2022, with email string
- 37. Email from Alexandra Laughtin to Steve Heacock re: SEPA comment from Cathryn Som-Mueller, dated May 13, 2022
- 38. Certification of Public Notice
- 39. Kitsap County Superior Court Judgment (No. 08-2-00728-8), dated August 15, 2011
- 40. Staff Report, dated May 19, 2022
- 41. Interested Party Comments (received after May 19, 2022, staff report):
  - a. Email objecting to hearing from Attorney John Bonin, dated May 18, 2022
  - b. Comment from Robin Bruins, dated May 18, 2022
  - c. Comment from Sharon Johnson, dated May 19, 2022
  - d. Comment from Attorney David L. Shorett, dated May 12, 2022
  - e. Objection and Motion/Request to Deny Application from Attorney John Bonin, dated May 23, 2022
  - f. Comment from Ron Flerx, on behalf of the Bremerton Sportsmen's Club, dated May 24, 2022
  - g. Letter from Robert Steiner, on behalf of Long Lake Bass Club, received May 26, 2022
  - h. Comment from Oscar Myre, dated June 13, 2022
  - i. Comment from Ron Flerx, dated June 13, 2022
- 42. Second Revised Notice of Public Hearing
- 43. Certification of Public Notice – Revised
- 44. Staff Presentation
- 45. Hearing Sign-In Sheet
- 46. Interested Party Comments (received after June 16, 2022, staff report)
  - a. Objection, Motion to Strike, and Motion to Continue from Attorney John Bonin, dated June 16, 2022
  - b. Comments from Oscar Myre, dated June 14, 15, 16, 17, and 20, 2022
- 47. Photographs submitted at hearing by Earl Jull
- 48. Photographs submitted at hearing by Cathryn Som-Mueller
- 49. Photographs submitted at hearing by Terry Null
- 50. Letter from Kitsap County Deputy Sheriff Aaron Baker, submitted at hearing by Sharon Esau
- 51. Written comments from John Boddy; SEPA comment letter from Skokomish Natural Resources, dated March 14, 2007; Annotated map of area lakes, submitted at hearing by John Boddy
- 52. Comment from Monica McCorkle, submitted at hearing

53. Kitsap County Tribal Map Notification Area and List
54. County staff response to comments re: tree removal, dated June 30, 2022
55. Comment from Washington State Department of Archaeology and Historic Preservation, dated October 5, 2020
56. Interested Party Post-Hearing Comments:
  - a. Comment from Bob Carroza, dated June 28, 2022
  - b. Closing comments from John Bonin, dated June 29 and 30, 2022
  - c. Email from County Traffic Investigator Ron Pierce to Steve Heacock re: Parking, dated June 29, 2022, with email string