

**CITY OF BLAINE  
HEARING EXAMINER**

**re:** The application of **Morton** for a Shoreline Substantial Development Permit to repair an existing landslide and mitigate future risk associated with the construction of a single family residence.

**SSD #2021-049**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

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**SUMMARY OF APPLICATION AND DECISION**

**Application:** The Applicant through their agent requests approval for a Shoreline Substantial Development Permit to do fill and grading work to repair an existing landslide adjacent to the old Drayton Harbor Road, which is now a recreational easement. The proposal includes construction of a rock slope buttress and also includes installation of stormwater facilities including a drainage pipe with catch basins and outlets above the ordinary high water mark. This is all associated with construction of a single-family residence.

**Decision:** The requested Conditional Use Permit (SSD) is granted, subject to conditions.

**INTRODUCTION**

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing, in which opportunity was afforded to interested parties to object, comment, or bring information forward.

**FINDINGS OF FACT**

**I. PRELIMINARY INFORMATION**

**Applicant:** Brian Morton

**Agent:** Jesse Stoner, Larry Stoner Land Development Consultants

**Property Owners:** Brian and Cynthia Morton

Property Location: 9100 block of Mallard Road, Blaine, WA.

Assessor's Parcel Number(s):  
 1. 405111053340; and  
 2. 405111058332.

Adjacent Water Body: Drayton Harbor

Shoreline Designation: Natural and Shoreline Residential Environmental Designation

Statewide Significance: Yes.

Notice Information:  
 Application Submitted: 5/22/2021  
 Notice of SEPA determination: 4/28/2022  
 Notice of Hearing:  
 ~Publication: 3/10/2022  
 ~Mailing: 3/7/2022  
 ~Posting: 3/10/2022  
 Comment Period Ending: 4/11/2022

SEPA Review: Determined categorically exempt, April 28, 2022

Zoning: Residential

Geographic Subarea: Semiahmoo Resort

Total Acreage: 1.9 acres

Roads: Mallard Road

Sewage Disposal: Undetermined/Not Applicable to this permit

Fire Protection: North Whatcom Fire and Rescue

Law Enforcement: Blaine Police Department

Public Schools: Blaine School District 503

Topography: The topography slopes from an upper relatively level terrace down (northeast) towards the old Drayton Harbor Road alignment and towards the shoreline,

Vegetation: The subject property is currently undeveloped, most of the current land cover is vegetation including some mature trees and native

undergrowth

Easements: Associated access and utility easements and recreational trail easement.

Authorizing Codes, Policies, Plans, and Programs:

- RCW 36.70A Planning by Selected Counties and Cities
- RCW 36.70B Local Project Review
- RCW 43.21C State Environmental Policy Act (“SEPA”)
- RCW 90.58 Shoreline Management Act (“SMA”)
- WAC 173-27 Shoreline Management Permit and Enforcement Procedures)
- WAC 197-11 State Environmental Policy Act Rules
- BMC 2.54 Unified Code Enforcement
- BMC 2.58 Hearing Examiner
- BMC 17 – Land use & Development, *including but not limited to:*
  - BMC 17.06 Project Review and Approval Procedures
  - BMC 17.80 SEPA Guidelines
  - BMC 17.81 Shoreline Management Permit Procedures
  - BMC 17.82 Critical Areas Management
  - BMC 17.92 Conditional Use Permits
  - BMC 17.94 Non-conforming Uses
  - BMC 17.140 Outdoor Parking and Storage
- City of Blaine Comprehensive Plan (“Comprehensive Plan”), adopted by City Council pursuant to BMC 16.02 on June 27, 2016.
- City of Blaine Shoreline Master Program (“SMP”), adopted by City Council pursuant to BMC 17.81 on July 22, 2019.
- Rules of Procedure for Proceedings Before The Hearing Examiner of The City of Blaine (“RPPBHE”), adopted by City Council pursuant to BMC 2.58.080, on January 10, 2022.

Parties of Record

Stacie Pratchner - Community Development Director  
City of Blaine - Community Development Services Department  
435 Martin St.  
Blaine, WA 98230

Stacy Clauson, Project Planner  
City of Blaine - Community Development Services Department  
435 Martin St.  
Blaine, WA 98230

Allison Tompkins, Community Planner  
City of Blaine - Community Development Services Department

435 Martin St.  
Blaine, WA 98230

Sukhpreet Dhaliwal, Civil Engineer  
City of Blaine - Public Works  
435 Martin St.  
Blaine, WA 98230

Brian Morton  
2642 Alice Way  
Pinole, CA 94564

Jesse Stoner  
Larry Stoner Land Development Consultants  
4340 Pacific Highway, Ste. 202  
Bellingham WA 98226

Kirk Parker  
6131 Venus Place  
Ferndale, WA

Larry Kyle

Robert & Janare Miller  
9126 Mallard Road  
Blaine, WA 98230

Kunle and Diann Ojikutu

Admitted Exhibits:

1. Vicinity Map dated July 1, 2022
2. Shoreline Substantial Development Permit Materials;
  - a. A Shoreline Substantial Development Application Form received February 18, 2022
  - b. Survey, received February 18, 2022
  - c. Civil Construction Drawings, received February 18, 2022
3. Geotechnical Report Materials
  - a. July 29, 2021 Report completed by GeoTest;
  - b. February 15, 2022 Memorandum from GeoTest;
  - c. May 11, 2022 Written Response to Public Comments from GeoTest;
  - d. May 11, 2022 Written Response to City of Blaine from GeoTest;
4. Stormwater Report Materials

- a. Stormwater Site Plan completed by Axe Engineering and Land Use Services, dated January 28, 2022;
  - b. Stormwater Conveyance System Hydraulic Calculations, dated January 28, 2022;
- 5. Fish and Wildlife Habitat Conservation Area Reports
  - a. Biological Mitigation Plan prepared by Northwest Wetlands Consulting, LLC dated November 19, 2021
  - b. May 26, 2022 Written Response to City of Blaine from Northwest Wetlands Consulting LLC
- 6. Landscape Plan, including tree removal plan prepared by Cascade Design Group, received December 29, 2020
- 7. Cultural Resources Reports
  - a. Report completed by Drayton Archaeology dated September 27, 2021
  - b. Report completed by Drayton Archaeology dated May 8, 2022
- 8. Correspondence from Semiahmoo Resident's Association dated March 31, 2022
- 9. Notice of Complete Application dated March 4, 2022
- 10. Notice of Application dated March 10, 2022
- 11. Documentation of Public Noticing
  - a. Affidavit of Publication, dated March 7, 2022
  - b. Certified Mailing Receipts, received March 7, 2022
  - c. Notice Sign, photo dated June 21, 2022
- 12. Notice of Public Hearing
  - a. Affidavit of Publication, dated June 22, 2022
  - b. Mailing List, dated June 22, 2022
  - c. Notice Sign, photo dated June 21, 2022
- 13. Public Comments
  - a. Correspondence from Robert & Janare Miller, dated April 8, 2022;
  - b. Correspondence from Kunle and Diann Ojikutu, dated April 9, 2022;
  - c. Correspondence from Stacy Clauson to JT Miller, dated April 25, 2022
  - d. Correspondence from JT Miller dated April 21, 2022.
  - e. Correspondence from JT Miller, dated April 25, 2022.
- 14. SEPA letter of exemption, dated April 28, 2022
- 15. Correspondence from Stephanie Jolivette, Local Governments Archaeologist, DAHP, dated June 7, 2022
- 16. Correspondence from Tamela S. Smart, M.A., Deputy THPO/Compliance Officer Culture Department, Lummi Nation, dated May 9, 2022
- 17. Memo from Sukhpreet Dhaliwal, Civil Engineer, dated June 15, 2022
- 18. Hydraulic Project Approval (HPA) Permit 2022-4-347+01 from the Washington State Department of Fish and Wildlife, dated June 11, 2022.
- 19. FEMA FIRM Map 53073C0635E, dated July 1, 2022
- 20. Correspondence from Katrina Jackson, Northwest Wetland Consulting LLC, dated July 13, 2022
- 21. Correspondence from Erin Russell, PE, Principal Engineer, AXE Engineering Services, dated July 12, 2022
- 22. Correspondence from Northwest Surveying & GPS, Inc., dated July 7, 2022
- 23. Staff Report and Recommendation to Hearing Examiner ("Staff Report"), dated July

1, 2022

## II.

The applicant is proposing to repair an existing landslide adjacent to the old Drayton Harbor Road, which is now a 20 foot recreational and utility easement. The proposal includes approximately 750 cubic yards of quarry spalls to construct a rock slope buttress at the toe of an existing slope, along the upslope extent of the pedestrian trail system. The proposal also includes installation of drainage pipe with catch basins and outlets above the ordinary high water mark. These developments have been recommended in a Geotechnical Engineering Report and are associated with construction of a single-family residence.

The residence is proposed to be located on the upland area located outside of shoreline jurisdiction, while the rock slope buttress, drainage pipes, and outlets are located in the shoreline jurisdiction.

## III.

Existing drainage issues that are threatening slope stability as the drainage ditch along the pedestrian trail is holding water, which can contribute to slope instability by reducing the slopes shear resistance. Drainage improvements as proposed along the southern margin of the existing pedestrian path would prevent surface water from collecting within that portion of the site. The proposed catch basins and outlets would allow for the interception, capture, and drainage of the ditches at both exterior sides of the site, as well as along the width of the lot. The velocity of outflow can be a concern and contribute to erosion without appropriate design conditions.

This proposal would restore public access to the landslide impeded trail, and reduce further and potential erosion.

## IV.

RPPBHE §26(B) allows the Hearing Examiner to issue subpoenas and compel attendance of witnesses— but in this case no party requested the Hearing Examiner to compel a witness or any public comment provider to appear in person and be cross examined by the parties. There was public comment at the Hearing. Written public comments were not received by the Hearing Examiner.

**V.**

Hearing Examiner Rules §32 grants parties the right to object to evidence and for the Hearing Examiner to rule on such objections. In the case at hand, with full knowledge of the evidence being admitted by the Hearing Examiner, no objection was made by any party to any of the exhibits that were admitted into the record.

Admitted Exhibits and Sub-exhibits 1-23 are deemed to be relevant regarding the facts represented therein.

**VI.**

The City of Blaine's Community Development Services Department ("CDSD") made a written specific recommendation to approve the SSD permit and did also review and reference the applicable facts and laws with proposed necessary conditions, in a report entitled "Staff Report and Recommendation to Hearing Examiner," dated July 1, 2022 (herein "Staff Report").

The Applicant has indicated that the Staff Report is factually correct and agreed with all the recommended conditions put forward by the CDSD.

The findings of fact as set forth in the Staff Report are supported by the record as a whole. Any factual findings set forth in the Staff Report, a copy of which is attached hereto, that are not contradicted by specific findings made in this decision are hereby adopted as findings of fact by the Hearing Examiner and incorporated herein by this reference.

**VII.**

Any Conclusion of Law made below which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

**CONCLUSIONS OF LAW**

**I.**

The proposed Application for a SSD permit is necessary for the development as proposed by the applicant as the developments fall within the shoreline jurisdiction, and should be approved by the Hearing Examiner if it is consistent with the SSD criteria.

**II.**

The proposed Application for the SSD can be approved if consistent with the

standards and criteria for granting SSD permits of BMC 17.81.040. Said criteria is whether the proposal is consistent with the intent of the BMC 17.81, *et. al.*,<sup>1</sup> the Shoreline Management Act, and determined consistent with the Blaine Shoreline Master Program's ("SMP") applicable goals, policies, and regulations.

The SMA outlines and ranks policy preferences, while giving priority for single-family residences and their appurtenant structures:

1. Recognize and protect the statewide interest over local interest;
2. Preserve the natural character of the shoreline;
3. Result in long term over short term benefit;
4. Protect the resources and ecology of the shoreline;
5. Increase public access to publicly owned areas of the shorelines;
6. Increase recreational opportunities for the public in the shoreline;
7. Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.<sup>2</sup>

Generally, the SMP re-incorporates these policies,<sup>3</sup> and outlines a primary goal of using a unique and finite resource while planning for uses with the following considerations:

1. Economic development;
2. Public access;
3. Recreation;
4. Circulation;
5. Shoreline use;
6. Conservation;
7. Historical/cultural resources;
8. Flood damage minimization; and
9. Restoration and Enhancement.

As this shoreline is designated Residential Environment, the following uses are allowed with a permit:

- A. Landfill and excavation in association with an approved development;
- B. Recreational facilities with less than five acres of land disturbance;
- C. Residential development;
- D. Transportation – Roads and parking;
- E. Utilities;
- F. Shoreline stabilization, except as regulated in Sec. 7.8.5 and 7.8.6;
- G. Shoreline restoration;
- H. Boat ramps to facilitate hand launching of small craft if materials and design are

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**1** - See self-referential 17.81.040(B) reincorporating all of 17.81 as a requirement of consistency with the SMP.

**2** - RCW 90.58.020

**3** - See *generally* SMP at §5



- compatible with the site; and
- I. Beach stairs.<sup>4</sup>

### III.

The Hearing Examiner finds that, with appropriate conditions of approval:

1. All regulations appropriate to the shoreline designation and the type of use or development proposed shall be met;
2. All policies appropriate to the shoreline area designation and the type of use or development activity proposed are in substantial compliance;
3. That the proposed use would be consistent with many policies of RCW 90.58.020. Specifically, the record reflects that this use would:
  - a. Preserve the natural character of the shoreline;
  - b. Result in long term over short term benefit;
  - c. Protect the resources and ecology of the shoreline; and
  - d. Increase recreational opportunities for the public in the shoreline;
4. That the proposed use would not interfere with normal public use of public shorelines;
5. That the proposed use of the site and design of the project would be compatible with other permitted uses within the area;
6. That the proposed use would not cause adverse effects to the shoreline environment in which it is to be located; and
7. That the public interest would suffer no substantial detrimental effect as a result of this proposed use.

Consequently, subject to proposed Conditions of Approval, the proposal is consistent with the SSD Criteria.

Subject to the Conditions of Approval attached to the granting of this Permit Decision, the proposal is consistent with the SSD criteria. As such, an SSD Permit should be granted, subject to the Conditions of Approval listed below.

### IV.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

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4 - SMP at §7.8.4

Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

### **DECISION**

***A Shoreline Substantial Development Permit is hereby granted to Brian Morton to, as described in their application: to repair an existing landslide adjacent to the old Drayton Harbor Road and build water control and erosion control developments on a site located at 9100 block of Mallard Road in Blaine, WA on Assessor's Parcel Nos. 405111053340; and 405111058332 as applicable. The permit is granted subject to the following conditions:***

### **CONDITIONS ASSOCIATED WITH PERMIT**

#### **General Conditions**

- 1) Construction pursuant to a substantial development shall not begin and is not authorized until 21 days from the date of filing, or until all review proceedings initiated within the 21 days from the date of such filing have terminated.
- 2) Work must be accomplished per plans and specifications submitted with the application, except as modified by this Shoreline Substantial development Permit or by other required state and federal permit authorizations (e.g., Washington State Department of Fish and Wildlife Hydraulic Project Approval).
- 3) The applicant is responsible for complying with any other federal, state, or local statutes, ordinances, or regulations applicable to this project and obtaining other necessary permits or approvals. The applicant shall provide a copy of state and federal required authorizations to the City of Blaine prior to conducting work on site.
- 4) Works shall be undertaken consistent with the Hydraulic Project Approval (HPA) Permit 2022-4-347+01 from the Washington State Department of Fish and Wildlife dated June 11, 2022.
- 5) The applicant shall obtain a Land Disturbance Permit for the landfill and excavation work not otherwise covered under the Building Permit for the residence.
- 6) Prior to issuance of a land disturbance and/or building permit, the following is required to be submitted and approved:

- i) Provide proof of a contract with a qualified geotechnical professional for geotechnical professional monitoring of the rock buttress mitigation and drainage improvements, as recommended in the reports from GeoTest.
  - ii) Provide a security in the form of a bond, assigned savings account, letter of credit, or other security. The amount of the security shall be sufficient to reimburse the city if it should become necessary for the city to enter the property to correct hazardous conditions relating to soil stability, erosion, or environmental damage caused by failure to complete the work or improper action, including but not limited to mobilization, materials, labor, geotechnical monitoring, and mitigation. The applicant shall submit an estimate from the consultant's engineer to determine the amount of the necessary security.
  - iii) The final stormwater design shall be reviewed and approved by a qualified geologist or geotechnical engineer to ensure that the recommendations from the geologically hazardous area detailed study completed by GeoTest have been incorporated into the final stormwater management plan and site plan.
  - iv) The applicant shall evaluate whether any proposed development is located within the Special Flood Hazard area (e.g., stormwater outfall). If so, the applicant shall obtain a Flood Area Development Permit and demonstrate compliance with the applicable provisions of Chapter 17.86 BMC.
- 7) Work at the site shall not proceed until the Department issues a Notice to Proceed. The following is required to be submitted and approved prior to the Notice to Proceed:
- i) Delineate clearing limits, consistent with the recommendations of the geotechnical reports.
  - ii) Mark property lines in the area of the rock buttress wall construction.
  - iii) Provide temporary erosion and sedimentation control measures in accordance with the stormwater site plan. The measures shall be inspected and approved by the Public Works Department prior to start of construction. BMP's must be maintained throughout the proposed development activity.
  - iv) The consulting geotechnical professional shall observe a "proof roll" of the road alignment and provide recommendations to address instability, if observed. The results and recommendations shall be submitted to the Department and the SRA, and work shall not commence until approved by the Department and SRA.
  - v) Provide correspondence from the consulting geotechnical professional that the

soil conditions are sufficiently dry to allow the proposed construction to commence consistent with the recommendations of the geotechnical reports.

- 8) During construction, the following requirements shall apply:
  - i) All work shall be in accordance with the recommendations and mitigations prepared by GeoTest in their admitted reports.
  - ii) Vegetation and tree removal shall be limited to the areas within the established clearing limits.
  - iii) All work shall be in accordance with the Washington State Department of Ecology Stormwater Management Manual for Western Washington (current edition).
  - iv) Stormwater design per the approved engineered stormwater report shall be followed.
  - v) Contractor is responsible for preventing erosion and discharge of sediment and other pollutants from leaving the site.
  
- 9) The following Inadvertent Discovery Plan (IDP) shall be on-site and followed should archaeological resources or human remains be encountered.
  - i. Inadvertent Discovery of Archaeological Resources: Should archaeological resources (e.g. shell midden, animal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and the area should be secured. The Washington State Department of Archaeology and Historic Preservation (Stephanie Jolivette, Local Government Archaeologist 360-628-2755) and the Lummi Nation Tribal Historic Preservation Office (Lena Tso, THPO 360-961-7752; Tamela Smart, Deputy THPO 360-927-2944) should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.
  
  - ii. Inadvertent Discovery of Human Skeletal Remains on Non-Federal and Non-Tribal Land in the State of Washington (RCWs 68.50.645, 27.44.055, and 68.60.055): If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance until the State provides notice to proceed. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner

possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

- 10) Prior to the issuance of a building permit for the residence, the following are required:
  - i) The applicant shall provide a phasing plan approved by a qualified geotechnical professional to address the sequencing of the required rock buttress and site drainage mitigation that is required in order to proceed with different stages of residential construction (e.g., excavation, foundation, etc.).
  - ii) Provide written correspondence from a qualified geotechnical professional confirming that the building permit plans are consistent with the recommendations from GeoTest in their reports.
  - iii) The residence shall comply with the building setback recommended by GeoTest.
  - iv) Delineate clearing limits, consistent with the recommendations of the geotechnical reports.
  - v) The applicant shall provide proof of a contract with a qualified geotechnical professional for geotechnical professional monitoring as recommended in the reports from GeoTest, including during structural fill placement, compaction activities and subgrade preparation operations to confirm that design subgrade conditions are obtained beneath the areas of improvement.
  - vi) The applicant shall provide proof of a contract for performance of periodic field density testing to verify that the appropriate degree of compaction is obtained.
- 11) Prior to start of construction for the residence, the applicant will provide a temporary erosion and sedimentation control measures in accordance with the stormwater site plan. The measures shall be inspected and approved by the Public Works

Department prior to start of construction. BMP's must be maintained throughout the proposed development activity.

- 12) Prior to final inspection or Certificate of Occupancy for the residence, whichever occurs first, the following is required:
  - i) A final summary report completed by the geotechnical professional shall be submitted to Community Development Services documenting compliance with the recommendations of the geotechnical assessment.
  - ii) The installed stormwater facilities shall be inspected and approved by a qualified geologist or geotechnical engineer to ensure that the recommendations from the geologically hazardous area detailed study completed by GeoTest have been incorporated into the installed improvements. The installed design shall be inspected and approved by the Public Works Department.
  - iii) The proposed mitigation plan prepared by Northwest Wetlands Consulting LLC shall be implemented. The completed mitigation plan shall pass a final inspection by the Department. This shall include submittal of a final as-built drawing of the installed plan.
  - iv) The applicant shall submit a security in the form of a bond, assigned savings account, letter of credit, or other security. The amount of the security shall be sufficient to reimburse the city for the costs of implementing, maintaining, and monitoring the mitigation plan and financial assurance estimate developed by Northwest Wetlands Consulting LLC.
  - v) Record a notice stating that the property is located in a geologically hazardous area. This notice will inform future owners that, at the time of the permit's issuance, the property was located in a geologically hazardous area.
- 13) The applicant shall ensure that the mitigation complies with the performance standards established under the mitigation plan developed by Northwest Wetlands Consulting LLC.
- 14) If performance standards are not met after the year three monitoring report, an assessment by a qualified biologist or landscape architecture will be required to evaluate in-kind plant establishment and/or invasive weed removal to the year three standard.
- 15) Monitoring reports for the mitigation must be submitted on an annual basis for a period of 3 years after the mitigation plan installation is accepted by the Department.

- 16) All onsite storm drainage will be privately owned and maintained. If the site's stormwater discharge enters other private property or the County system, coordination and approval from those parties will be required.

### **MODIFICATION OF SHORELINE PERMITS**

Pursuant to WAC 173-27-100, a permit revision is required whenever the applicant proposes substantive changes to the design, terms, or conditions of a project from that which is approved in the permit. Any change or modification in this project in design or scope shall be immediately routed to City of Blaine Planning and Community Development staff for review. Any change in this project will require another hearing and approval by the Hearing Examiner pursuant to WAC 173-27-100 unless falling into an exception or not substantive in nature in terms of permit issuance as determined by City of Blaine Planning and Community Development.

Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the master program and/or the policies and provisions of RCW 90.58. Changes which are not substantive in effect do not require approval of a revision.

### **NOTICE OF POTENTIAL REVOCATION AND PENALTIES**

This Approval is subject to all the above-stated conditions. Failure to comply with them may be cause for its revocation and enforcement of code violations under BMC 2.54.

Complaints regarding a violation of the conditions of this permit should be filed with City of Blaine Planning and Community Development staff. The Hearing Examiner may not take any action to revoke this approval without further public hearing

### **SPECIFIC SHORELINE WARNINGS**

FURTHER, in addition to incurring civil liability under Shoreline Master Program §8.1 and BMC 17.08, pursuant to RCW 90.58.220 any person found to have willfully engaged in activities on shorelines of the state in violation of the provisions of the act or

the Shoreline Master Program or other regulations adopted pursuant thereto shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than \$25 or more than \$1,000 or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment; provided that the fine for the third and all subsequent violations in any five year period shall not be less than \$500 nor more than \$10,000.

Any person who willfully violates any court order, regulatory order or injunction issued pursuant to the Shoreline Master Program shall be subject to a fine of not more than \$5,000, imprisonment in the county jail for not more than 90 days, or both.

This approval does not release the applicant from any regulations and procedures required of any other public agency, or any City requirements other than the requirement to obtain a Shoreline Substantial Development Permit and/or Shoreline Conditional Use Permit. This permit may be rescinded pursuant to RCW 90.58.140(8) in the event the permittee fails to comply with the terms or conditions thereof.

THIS PERMIT IS NOT VALID (AND NO CONSTRUCTION NOR OPERATION AUTHORIZED BY THIS PERMIT SHALL BEGIN) UNTIL **TWENTY-ONE (21) DAYS AFTER THE DATE OF FILING** AS DEFINED BY RCW 90.58.140(5 & 6) AND WAC 173-27-090, OR UNTIL ALL REVIEW PROCEEDINGS INITIATED WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF SUCH FILING HAVE TERMINATED; EXCEPT AS PROVIDED IN RCW 90.58.140(5)(A)(B)(C).

#### **NOTICE OF EXPIRATION**

Pursuant to BMC 17.81.070(C) this permit shall expire within two years from the effective date of the permit as defined in WAC 173-27-090(4) and shall be completed within five years from the effective date; provided, the city council may authorize a one-year extension to either or both of these timing requirements based on reasonable factors, and if the request for extension has been filed before the expiration date, and notice of the proposed extension is given to parties of record on the permit and to the Department of Ecology.

#### **NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF THE BLAINE HEARING EXAMINER**



This action of the Hearing Examiner is final.

The applicant, any party of record, or any county department may appeal any final decision of the hearing examiner to Whatcom Superior Court within 21 days as authorized by RCW 36.70C, BMC 2.58.160, and BMC 17.06.190; **EXCEPT** for shoreline permit applications and revisions which are subject to appeal to the State Shoreline Hearings Board within 21 days pursuant to BMC 17.18.080, RCW 90.58.180, and WAC 461-08. The date of filing is defined in RCW 90.58.140(6). The procedure for filing a request for review is set forth in RCW 90.58.180.

Dated this 26<sup>th</sup> day of July 2022



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Rajeev Majumdar, Hearing Examiner