

# McCULLOUGH HILL LEARY, PS

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June 6, 2017

VIA ELECTRONIC MAIL

Scott Greenberg  
Director, Development Services Group  
City of Mercer Island  
9611 SE 36th Street  
Mercer Island, WA 98040

Re: File No. SHL 14-031, Cherberg Dock at 9418 SE 33rd Street

Dear Scott:

This letter is written on behalf of Hal and Joan Griffith, who own property and a dock immediately adjacent to the proposed Cherberg dock, SHL 14-031. In this letter, I address three recent communications associated with the proposed dock (“Dock Proposal”). The first is a letter from Jeff Layton dated March 31, 2017 (“Layton Letter”). The second is a letter from Charles Klinge dated May 10, 2017 (“Klinge Letter”). The third is a Memorandum for Record from the Corps of Engineers dated March 21, 2017, a copy of which is enclosed (“Corps Memorandum”). As stated below, the Griffiths respectfully ask the City to confirm that it will take no action on the Dock Proposal until the Court of Appeals has issued a final decision on the pending litigation between the Griffiths and the Cherbergs. With that caveat, the Griffiths have no objection to the request set forth in the Klinge Letter for an extension of the Dock Proposal deadline.

This letter also addresses and comments upon the City’s proposed SEPA Determination of Non-Significance for the proposed dock. In sum, the Griffiths ask the City to address fully the environmental impacts of the dock proposal on safety and navigation, as identified in the Corps Memorandum.

## Layton Letter.

The Layton Letter advised the City incorrectly that the shore connection proposed to the City in its dock application “would be acceptable” to the Regulatory Branch of the Seattle District U.S. Army Corps of Engineers. The Layton Letter went on to state that the Corps simply requested that, “prior to construction, [the Cherbergs] notify the Corps which shore connection will be used so that the existing permit can be modified if needed.”

To the contrary. I have enclosed an analysis dated March 21, 2017, by the Corps (“Corps Memorandum”) which concludes that there are serious concerns associated with the Cherberg Dock Proposal involving navigability and marine safety issues. Specifically, the Corps Waterway

Maintenance Unit Chief states in the Memorandum that there are serious adverse impacts on navigation and safety caused by both the “currently approved and proposed revised plans for the Cherberg pier.” These concerns relate to navigation to and from the Griffith dock and the Graue dock. Accordingly, the statement in the Layton Letter that either of the currently proposed docks “would be acceptable” to the Corps is not accurate. Indeed, the Corps has identified real concerns about both the approved and proposed dock plans.

Klinge Letter.

The Klinge Letter accurately reviews the current status of the Superior Court and Court of Appeals litigation. It urges the City to continue to take a position that would keep the City from becoming entangled in the issues between the Cherbergs and the Griffiths during the pendency of the litigation. The Griffiths agree. The Klinge letter asks for an extension of the Dock Proposal expiration to February 13, 2018. The Griffiths have no objection to this request, so long as it is made clear that the City will take no action to issue any Dock Proposal permit during the pendency of the litigation. This is consistent, of course, with the principle set forth in the Klinge Letter that the City should avoid becoming directly entangled in the litigation issues.

The Corps Memorandum.

I have summarized the key findings of the Corps Memorandum above. The Corps Memorandum was obtained by the Griffiths’ litigation counsel pursuant to a FOIA request. The Corps Memorandum is dated March 21, 2017 (less than three months ago, but prior to the Layton Letter). It is signed by Bradford L. Schultz II, Seattle District’s Waterway Maintenance Unit Chief. Mr. Schultz states that he has reviewed the approved and proposed plans for the Cherberg Dock. He states that it is his opinion that because of the minimum distance between the Griffiths’ existing pier and the proposed Cherberg pier, “there could be potential for unsafe navigation and operators may not have enough room to maneuver an average size vessel... transiting to and from the pier, even in calm sea and wind conditions.” He concludes that “Graue [Cherbergs’ neighbor to the north] and Griffith could see impacts to their ability to safely navigate to their respective docks.”

This evaluation supports the request that no action be taken on the Dock Proposal until a final decision has been reached by the Court of Appeals.

State Environmental Policy Act (“SEPA”)

The City issued a public notice of the Dock Proposal on May 8, 2017, which included a statement of the City’s expectation that it will issue a SEPA DNS for the proposal. The public notice invites written comments on the Dock Proposal on or before Wednesday, June 7, 2016. To that end, the Griffiths respectfully ask the City to thoroughly evaluate, in its SEPA review, the navigation and safety issues associated with the Dock Proposal, identified in the Corps Memorandum.

In conclusion, the Griffiths appreciate the City’s consideration of the issues identified in this letter pertaining to the Dock Proposal. The Griffiths ask the City to make it clear that the City will

Scott Greenberg

June 6, 2017

Page 3 of 3

take no action on the Dock Proposal until the Court of Appeals has issued a final decision in the pending litigation. The Griffiths also respectfully ask the City to evaluate the safety and navigation issues associated with the proposal, in connection with the City's SEPA review.

Very truly yours,



G. Richard Hill

Enclosure

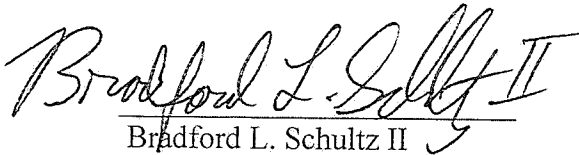
cc: Hal and Joan Griffith  
Kari Sand, Mercer Island City Attorney  
Nicole Gaudette, Mercer Island Senior Planner  
Karen Cobb and Charles A. Klinge, Attorneys for the Cherbergs

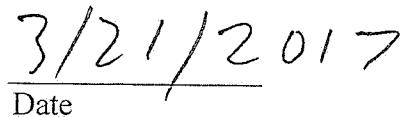
## **EXHIBIT A**

MEMORANDUM FOR RECORD

SUBJECT: CENWS-OD-TS-NS/Letter of Permission, NWS-2013-565

On March 21, 2017 Mr. Bradford L. Schultz II, Seattle District's Waterway Maintenance Unit Chief reviewed the currently approved and proposed revised plans for the Cherberg pier. He holds U.S. Coast Guard 200 Tons upon Oceans and Able Seaman Unlimited documentation, is licensed by the U.S. Army Corps of Engineers, administers licensure classes to prospective operators, and possesses 15 years of operational experience on various vessels, professionally and privately, from small skiffs to vessels 150' in length. Because of the minimum distances, 9' and 15' between the Griffiths's existing pier and the proposed Cherberg pier there could be potential for unsafe navigation and operators may not have enough room to maneuver an average size vessel (14' to 22', common size in Lake Washington boat lifts) transiting to and from the pier, even in calm sea and wind conditions. The distance to Graue's pier is close to 30' which would have some impact on the close quarters maneuvering of small vessels, but could be more impactful based on dock use, number of boats moored and arrangement, operator experience, weather, and vessel size and maneuverability. No impact would be seen by vessels operating in Lake Washington in nearby areas, but Graue and Griffith could see impacts to their ability to safely navigate to their respective docks.

  
Bradford L. Schultz II

  
Date