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# CITY OF MERCER ISLAND

## COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

PHONE: 206.275.7605 | [www.mercergov.org](http://www.mercergov.org)



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## STAFF REPORT

### SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

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<b>Project No.:</b>	SHL18-017
<b>Description:</b>	Shoreline Substantial Development Permit for the expansion of an existing residential pier.
<b>Applicant / Owner:</b>	Evan Wehr (Ecco Design Inc.) / Richard Fallquist
<b>Site Address:</b>	5067 84 <sup>th</sup> Ave SE, Mercer Island, WA 98040; Identified by King County Assessor tax parcel number 407600-0080.
<b>Zoning District:</b>	Single Family Residential (R-15)
<b>Staff Contact:</b>	Andrew Leon, Planner
<b>Exhibits:</b>	<ol style="list-style-type: none"><li>1. Development Application, dated September 2, 2021</li><li>2. Development Plan Set, dated January 13, 2023</li><li>3. Applicant Comment Response Letter, dated July 22, 2020</li><li>4. Ecological No Net Loss Assessment Report, dated April 2020</li><li>5. Duren v. Burke Findings of Fact and Conclusions of Law, issued by the King County Superior Court on June 27, 1969</li><li>6. Aerial Imagery, dated March 1978</li><li>7. SEPA Checklist, dated March 30, 2020</li><li>8. SEPA Determination of Nonsignificance Issued by the City of Mercer Island on September 21, 2020</li><li>9. Hydraulic Project Approval issued by the Washington Department of Fish and Wildlife on June 24, 2021</li><li>10. Letter of Permission issued by the U.S. Army Corps of Engineers on July 21, 2021</li></ol>

## INTRODUCTION

### I. Project Description

The applicant has requested approval of a Shoreline Substantial Development Permit for the expansion of an existing residential pier used by several upland property owners. The expansion will consist of an approximately 32-foot-long by six-foot-wide extension to the end of the existing pier. A 15-foot by six-foot “T” is proposed to be added to the end of the pier. The pier is also proposed to be widened from four feet to five feet within the first 30 feet waterward of the ordinary high water mark (OHWM)

to comply with Americans with Disabilities Act (ADA) requirements. Six new piles are proposed to be driven for the pier expansion.

Applications for development involving moorage facilities are subject to the development standards of Mercer Island City Code (MICC) 19.07.110(E)(6).

## II. Site Description and Context

1. The proposed activity is to occur at 5067 84<sup>th</sup> Ave SE, Mercer Island, WA 98040. The subject property is designated Single Family Residential (zoned R-15) in an Urban Residential Environment Shoreline zone on Mercer Island in Lake Washington pursuant to Appendix F of Title 19 of the Mercer Island City Code, and described in MICC 19.07.110(C)(2). Adjacent properties are also within the R-15 zone and contain residential uses.

The subject property currently has two piers. The property owner has a pier for their personal use. The pier to be extended in this proposal is located on an easement on the subject property and is operated as a community pier by the upland neighbors as described in the findings of fact and conclusions of law issued by the King County Superior Court for Duren v. Burke in 1969 (**Exhibit 5**). The City of Mercer Island does not have the authority to enforce the decision of the King County Superior Court as it involves a private dispute between the property owners.

Aerial imagery (**Exhibit 6**) shows that both piers on the subject property have existed since 1978, which predates the adoption of the City of Mercer Island's Shoreline Master Program in 1981. As such, both piers are legally nonconforming. MICC 19.07.110(B)(3) states that expansions of legal nonconforming overwater structures are permitted; provided, that the expanded structure is constructed in compliance with this section and all other standards and provisions of the Mercer Island development regulations. The proposal's compliance with current code standards is discussed in **Section V** of this staff report below.

## Findings of Fact & Conclusions of Law

### III. Application Procedure

1. The application for a Shoreline Substantial Development Permit was received by the City of Mercer Island on August 9, 2018. The application was determined to be complete on August 29, 2018.
2. Under MICC 19.15.010, applications for Shoreline Substantial Development Permits must undergo administrative review. Administrative reviews require notice of application (discussed below). A notice of decision is issued once the project review is complete.
3. The City of Mercer Island provided public notice of application for this Shoreline Substantial Development Permit. The comment period for the public notice period lasted for 30 days, from September 4, 2018 to October 4, 2018. The following methods were used for the public notice of application:
  - 1) A mailing sent to neighboring property owners within 300 feet of the subject parcel.
  - 2) A sign posted on the subject parcel.
  - 3) A posting in the City of Mercer Island's weekly permit bulletin.

#### IV. State Environmental Policy Act (SEPA)

A Determination of Non-significance (DNS) was issued for this project on September 21, 2020 following the optional DNS process per Washington Administrative Code (WAC) 197-11-355 (**Exhibit 8**). The SEPA application is identified by City of Mercer Island project number SEP18-016.

#### V. Consistency with the Shoreline Master Program and Land Development Code

1. MICC 19.07.110(E)(4), Table D lists requirements for moorage facilities and development located waterward from the OHWM:

- i. Setbacks for all moorage facilities, covered moorage, and floating platforms shall be 10 feet from the lateral line, except where the moorage facility is built pursuant to the agreement between adjoining property owners.

**Staff Analysis:** As shown in **Exhibit 2**, all parts of the proposed pier are at least 10 feet, 1 inch away from the nearest lateral line. This standard is met.

- ii. Setbacks for boat ramps and other facilities for launching boats by auto or hand, including parking and maneuvering space, shall be 25 feet from any adjacent private property line.

**Staff Analysis:** The subject property does not contain a boat ramp or other facility for launching boats. This standard does not apply.

- iii. The length or maximum distance from the OHWM for moorage facilities, covered moorage, boatlifts and floating platforms shall be a maximum of 100 feet. In cases where water depth is less than 11.85 feet below the OHWM, length may extend up to 150 feet or to the point where water depth is 11.85 feet at OHWM, whichever is less.

**Staff Analysis:** **Exhibit 2** shows that the pier is proposed to be expanded to extend 150 feet waterward of the OHWM. The Pier Elevation on Sheet 4 of **Exhibit 2** shows that the water depth at the furthest extent of the pier is 10 feet, 1 inch, which is less than 11.85 feet. The proposed pier will not extend waterward from the point where the depth of the water is greater than 11.85 feet, so this standard is met.

**Exhibit 5** states that the holders of the easement are entitled to construct a permanent dock or pier 100 feet in length or a length equal to the docks or piers upon adjacent properties in the general area surrounding the easement. The piers on adjacent properties measure in length from approximately 60 to 155 feet. The proposed extension to the pier is consistent with those on adjacent properties.

- iv. The width of moorage facilities within 30 feet waterward from the OHWM shall be a maximum of four feet. This maximum width may increase to five feet if one of the following is met:

- Water depth is 4.85 feet or more, as measured from the OHWM.
- A moorage facility is required to comply with Americans with Disabilities Act (ADA) requirements.

- A resident of the property has a documented permanent state disability as defined in WAC 308-96B-010(5).
- The proposed project includes mitigation option A, B or C listed in Table E; and for replacement actions, there is either a net reduction in overwater coverage within 30 feet waterward from the OHWM, or a site-specific report is prepared by a qualified professional demonstrating no net loss of ecological function of the shorelands. Moorage facility width shall not include pilings, boat ramps and lift stations.

**Staff Analysis:** **Exhibit 2** shows that the proposed pier has a width of five feet within 30 feet waterward of the OHWM. **Exhibit 3** indicates that one of the owners of the pier has a permanent disability and requires to pier to be five feet in width. This standard is met.

- v. The width of moorage facilities more than 30 feet waterward from the OHWM shall be a maximum of six feet. Moorage facility width shall not include pilings, boat ramps and lift stations.

**Staff Analysis:** **Exhibit 2** shows that all portions of the proposed pier more than 30 feet waterward from the OHWM will be six feet or less in width. This standard is met.

- vi. The maximum height limits for walls, handrails and storage containers located on piers shall be 3.5 feet above the surface of a dock or pier. Ramps and gangways designed to span the area between 0 and 30 feet from the OHWM may be four feet above the surface of the dock or pier.

**Staff Analysis:** The Pier Elevation on Sheet 4 of **Exhibit 2** shows that the pier does not include walls, rails, or storage containers. This standard is met.

- vii. The height limit for mooring piles, diving boards and diving platforms shall be 10 feet above the elevation of the OHWM.

**Staff Analysis:** This moorage facility does not contain mooring piles, diving boards, or diving piles. This standard does not apply.

- viii. The minimum water frontage for a dock for a single-family lot shall be 40 feet.

**Staff Analysis:** The subject property has a water frontage of approximately 92 feet, which is large enough for a dock to be permitted. This standard is met.

3. MICC 19.07.110(E)(6)(c) lists the alternative development standards for moorage facilities. The code official shall approve moorage facilities not in compliance with the development standards in subsections MICC 19.07.110(E)(6)(a) or (b) subject to both U.S. Army Corps of Engineers and Washington Department of Fish and Wildlife approval to an alternate project design. The following requirements and all other applicable provisions in this chapter shall be met:
  - a. The dock must be no larger than authorized through state and federal approval.

**Staff Analysis:** The applicant has provided approvals for the project from the Washington Department of Fish and Wildlife (WDFW) (**Exhibit 9**) and the U.S. Army Corps of Engineers

(**Exhibit 10**). As such, the pier is not larger than authorized through state and federal approval. This standard is met.

- b. The maximum width must comply with the width of moorage facilities standards specified in subsection MICC 19.07.110(E)(4), Table D.

**Staff Analysis:** As proposed, the width of the pier is proposed to be five feet within 30 feet of the OHWM, and no more than six feet further than 30 feet waterward of the OHWM. **Exhibit 3** states that one of the owners of the pier has a permanent disability, which allows the applicant to increase the width of the moorage facility from four feet to five feet within 30 feet of the OHWM under MICC 19.07.110(E)(4), Table D. This complies with the moorage facility width standards of MICC 19.13.050(D), Table D. This standard is met.

- c. The minimum water depth must be no shallower than authorized through state and federal approval.

**Staff Analysis:** The applicant has provided approvals for the project from the WDFW (**Exhibit 9**) and the U.S. Army Corps of Engineers (**Exhibit 10**). As such, the minimum water depth is no shallower than authorized through state and federal approval. This standard is met.

- d. The applicant must demonstrate to the code official's satisfaction that the proposed project will not create a net loss in ecological function of the shorelands.

**Staff Analysis:** The applicant provided an Ecological No Net Loss Report prepared by Northwest Environmental Consulting, LLC (**Exhibit 4**) that demonstrates that the proposed pier extension will not have a negative impact on the ecological functions of the lake. This standard is met.

- e. The applicant must provide the city with documentation of approval of the moorage facilities by both the U.S. Army Corps of Engineers and the Washington Department of Fish and Wildlife.

**Staff Analysis:** The applicant has provided approvals for the project from the WDFW (**Exhibit 9**) and the U.S. Army Corps of Engineers (**Exhibit 10**). This standard is met.

## CONDITIONS OF APPROVAL

1. The project proposal shall be in substantial conformance with **Exhibit 2** and all applicable development standards contained within Mercer Island City Code (MICC) 19.07.110.
2. The applicant is responsible for documenting any required changes in the project proposal due to conditions imposed by any applicable local, state, and federal government agencies.
3. Construction shall not be authorized, nor may begin within twenty-one days of the date of filing of the decision as defined in RCW 90.58.140(6).
4. A City of Mercer Island Building Permit may be required for construction of this project proposal. The Building Official may require an appropriate performance bond in an amount to be determined prior to

Building Permit issuance to ensure all required vegetation installation is completed in compliance with applicable code requirements.

5. Construction of this project proposal shall only occur during approved fish windows by local, state, and/or federal government agencies. The applicant is responsible for obtaining permit approvals from all state and federal agencies.
6. Construction of this project proposal shall only occur during approved construction hours by the City of Mercer Island and/or as otherwise restricted by the Building Official.
7. The applicant shall provide the City with documentation of approval of the project from the U.S. Army Corps of Engineers and the Washington Department of Fish and Wildlife. This documentation shall be received by the City prior to issuance of building permits for this project.
8. The applicant shall provide the City with an affidavit prior to **permit issuance**. The affidavit shall state that the applicant has field located the sewer lake line and the location on the site plan (as revised) is the actual location within Lake Washington. The affidavit shall acknowledge that the applicant is responsible for any damages to the sewer lake line caused by the construction. **Please note:** Damage can occur from pile driving, grounding the barge or securing it with vertical steel shafts (spuds), and other possible impacts from the project.
9. The applicant shall provide the City with development plans that reflect the field verified location of the sewer lake line pre-construction prior to **permit issuance**. If the lake bed is being disturbed, please contact Fish and Wildlife and the U.S. Army Corps of Engineers, as a permit may be required. **Please note:** Field verification should be performed with due care as the sewer lake line is pressurized in some locations and the pipe material could be prone to damage.

The applicant shall provide development plans based upon a pre-construction field survey locating the sewer lake line, and shall deliver the results to the City in one of the formats listed below, ranked from top to bottom, (a) being the top preferred method:

- a. A hand-drawn or plotted as-built of the lake line location with accurate distance measurements to multiple visible and permanent reference points. Reference points can include dock corners, utilities, structures, stairs, etc.
- b. A CAD file including the lake line and surveyed area in WGS-1984 or Washington State Plane North coordinate systems.
- c. A CAD file including the lake line and surveyed area in an assumed coordinate system, including multiple visible and permanent reference points.
- d. A list of coordinates denoting the lake line location, in WGS-1984 or Washington State Plane North coordinate systems.
- e. If none of the above options are viable, the City will consider reasonable efforts to provide field verification of the sewer lake line. Possible constraints that may make field verification nonviable includes, but is not limited to, the following: if the sewer pipe is too deep to locate or if there are fish window constraints.

If a coordinate system is used, the survey must be performed using high accuracy GPS or total station (half-foot accuracy). This **excludes** cellphone or handheld GPS surveys.

10. The applicant shall inform the Mercer Island Maintenance Department at (206) 275-7608 of the anticipated start date of in-water work prior to commencement of construction.
11. Piles, floats or other structures in direct contact with water shall not be treated or coated with toxic substances harmful to the aquatic environment. Chemical treatment of structures shall comply with all applicable state and federal regulations. Any pollutants entering Lake Washington shall be reported immediately to the Department of Ecology. N.W. Regional Office: (425) 649-7000 and the City of Mercer Island (206) 275-7605.
12. Construction or substantial progress toward construction of a development for which a permit has been granted must be undertaken within two years after the approval of the permit or the permit shall terminate. The code official shall determine if substantial progress has been made. A single extension before the end of the time limit, with prior notice to parties of record, for up to one year, based on reasonable factors may be granted.

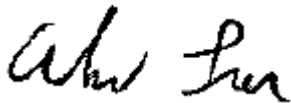
#### DEVELOPMENT REGULATION COMPLIANCE – DISCLOSURE

1. The applicant is responsible for obtaining any required permits or approvals from the appropriate Local, State, and Federal Agencies. The applicant is responsible for meeting the conditions are required by the agencies pursuant to MICC 19.07.020(E), 19.07.110(A)(5), and 19.07.110(E)(6)(c).
2. All required permits must be obtained prior to the commencement of construction.

#### DECISION

Based upon the above noted Findings of Fact and Conclusions of Law, Shoreline Substantial Development Permit application SHL18-017, as depicted in **Exhibit 2**, is hereby preliminarily **APPROVED WITH CONDITIONS**. This decision is final, unless appealed in writing consistent with adopted appeal procedures, MICC 19.15.130(A), and all other applicable appeal regulations.

Approved this 3<sup>rd</sup> day of April, 2023



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**Andrew Leon**  
**Planner**  
**Community Planning & Development**  
**City of Mercer Island**

*If you desire to file an appeal, you must submit the appropriate form, available from the department of Community Planning and Development, and file it with the City Clerk within fourteen (14) days from the date after the notice of decision is made available to the public and applicant pursuant to MICC 19.15.120. Upon receipt of a timely complete appeal application and appeal fee, an appeal hearing will be scheduled. To reverse, modify or remand this decision, the appeal hearing body must find that there has been substantial error, the proceedings were materially affected by irregularities in procedure, the decision was unsupported by material and substantial evidence in view of the entire record, or the decision is in conflict with the city's applicable decision criteria.*

*Please note that the City will provide notice of this decision to the King County Department of Assessment, as required by State Law (RCW 36.70B.130). Pursuant to RCW 84.41.030(1), affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation by contacting the King County Department of Assessment at (206) 296-7300.*



# CITY OF MERCER ISLAND

## COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

PHONE: 206.275.7605 | [www.mercergov.org](http://www.mercergov.org)



### CITY USE ONLY

PROJECT#	RECEIPT #	FEE

Date Received:

Received By:

### DEVELOPMENT APPLICATION

STREET ADDRESS/LOCATION		ZONE
COUNTY ASSESSOR PARCEL #'S		PARCEL SIZE (SQ. FT.)
PROPERTY OWNER <i>(required)</i>	ADDRESS <i>(required)</i>	CELL/OFFICE <i>(required)</i> E-MAIL <i>(required)</i>
PROJECT CONTACT NAME	ADDRESS	CELL/OFFICE E-MAIL
TENANT NAME	ADDRESS	CELL PHONE E-MAIL

**DECLARATION:** I HEREBY STATE THAT I AM THE OWNER OF THE SUBJECT PROPERTY OR I HAVE BEEN AUTHORIZED BY THE OWNER(S) OF THE SUBJECT PROPERTY TO REPRESENT THIS APPLICATION, AND THAT THE INFORMATION FURNISHED BY ME IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

**PROPOSED APPLICATION(S) AND CLEAR DESCRIPTION OF PROPOSAL** (PLEASE USE ADDITIONAL PAPER IF NEEDED):

\_\_\_\_\_

\_\_\_\_\_

ATTACH RESPONSE TO DECISION CRITERIA IF APPLICABLE

**CHECK TYPE OF LAND USE APPROVAL REQUESTED:**

APPEALS	DEVIATIONS	SUBDIVISION SHORT PLAT
<input type="checkbox"/> Building	<input type="checkbox"/> Changes to Antenna requirements	<input type="checkbox"/> Short Plat- Two Lots
<input type="checkbox"/> Code Interpretation	<input type="checkbox"/> Changes to Open Space	<input type="checkbox"/> Short Plat- Three Lots
<input type="checkbox"/> Land use	<input type="checkbox"/> Shoreline	<input type="checkbox"/> Short Plat- Four Lots
<input type="checkbox"/> Right-of-Way Use	<input type="checkbox"/> Seasonal Development Limitation Waiver	<input type="checkbox"/> Short Plat- Deviation of Acreage Limitation
CRITICAL AREAS	ENVIRONMENTAL REVIEW (SEPA)	<input type="checkbox"/> Short Plat- Amendment
<input type="checkbox"/> Critical Area Review 1 (Hourly Rate 2hr Min)	<input type="checkbox"/> SEPA Review (checklist)- Minor	<input type="checkbox"/> Short Plat- Final Plat
<input type="checkbox"/> Critical Area Review 2 (Determination)	<input type="checkbox"/> SEPA review (checklist)- Major	OTHER LAND USE
<input type="checkbox"/> Reasonable Use Exception	<input type="checkbox"/> Environmental Impact Statement	<input type="checkbox"/> Accessory Dwelling Unit
DESIGN REVIEW	SHORELINE MANAGEMENT	<input type="checkbox"/> Code Interpretation Request
<input type="checkbox"/> Pre Design Meeting	<input type="checkbox"/> Exemption	<input type="checkbox"/> Comprehensive Plan Amendment (CPA)
<input type="checkbox"/> Design Review (Code Official)	<input type="checkbox"/> Permit Revision	<input type="checkbox"/> Conditional Use (CUP)
<input type="checkbox"/> Design Commission Study Session	<input type="checkbox"/> Shoreline Variance	<input type="checkbox"/> Lot Line Revision
<input type="checkbox"/> Design Review- Design Commission- Exterior Alteration	<input type="checkbox"/> Shoreline Conditional Use Permit	<input type="checkbox"/> Noise Exception
<input type="checkbox"/> Design Review- Design Commission- New Building	<input type="checkbox"/> Substantial Development Permit	<input type="checkbox"/> Reclassification of Property (Rezoning)
WIRELESS COMMUNICATION FACILITIES	SUBDIVISION LONG PLAT	<input type="checkbox"/> Transportation Concurrency (see supplemental application form)
<input type="checkbox"/> Wireless Communications Facilities- 6409 Exemption	<input type="checkbox"/> Long Plat- Preliminary	<input type="checkbox"/> Planning Services (not associated with a permit or review)
<input type="checkbox"/> New Wireless Communication Facility	<input type="checkbox"/> Long Plat- Alteration	<input type="checkbox"/> Zoning Code Text Amendment
	<input type="checkbox"/> Long Plat- Final Plat	<input type="checkbox"/> Request for letter
	VARIANCES (Plus Hearing Examiner Fee)	
	<input type="checkbox"/> Variance	

# PROJECT INFORMATION

**APPLICANT:**  
RICHARD FALLQUIST

**DRAWINGS BY:**  
ECCO DESIGN INC.  
203 N 36TH ST SUITE 201  
SEATTLE, WA 98103  
206-706-3937

**SITE ADDRESS:**  
5067 84TH AVE SE  
MERCER ISLAND, WA 98040

**PARCEL NUMBER:**  
4076000080

**BODY OF WATER:**  
LAKE WASHINGTON

**LEGAL DESCRIPTION:**  
LAKE SHORES  
PLAT BLOCK:  
PLAT LOT: 8

**PROJECT DESCRIPTION:**  
RECONFIGURE THE EXISTING PIER BY  
EXTENDING THE EXISTING PIER AND ADDING A  
"T" TO THE END. WIDEN THE WALKWAY NEAR  
SHORE TO GRANT ADA ACCESS. PLANT NATIVE  
VEGETATION PER THE PLANTING PLAN.

# VICINITY MAP



**REFERENCE:**

**DATUM:** C.O.E. Locks Datum

**ADJACENT PROPERTY OWNERS:**

- 1. Gordon & Patricia Cohen
- 2. Donald Gorski

**APPLICANT:** Richard Fallquist

**LOCATION:** Mercer Island, WA 98040

**LAT/LONG:** 47.5570°/-122.2315°

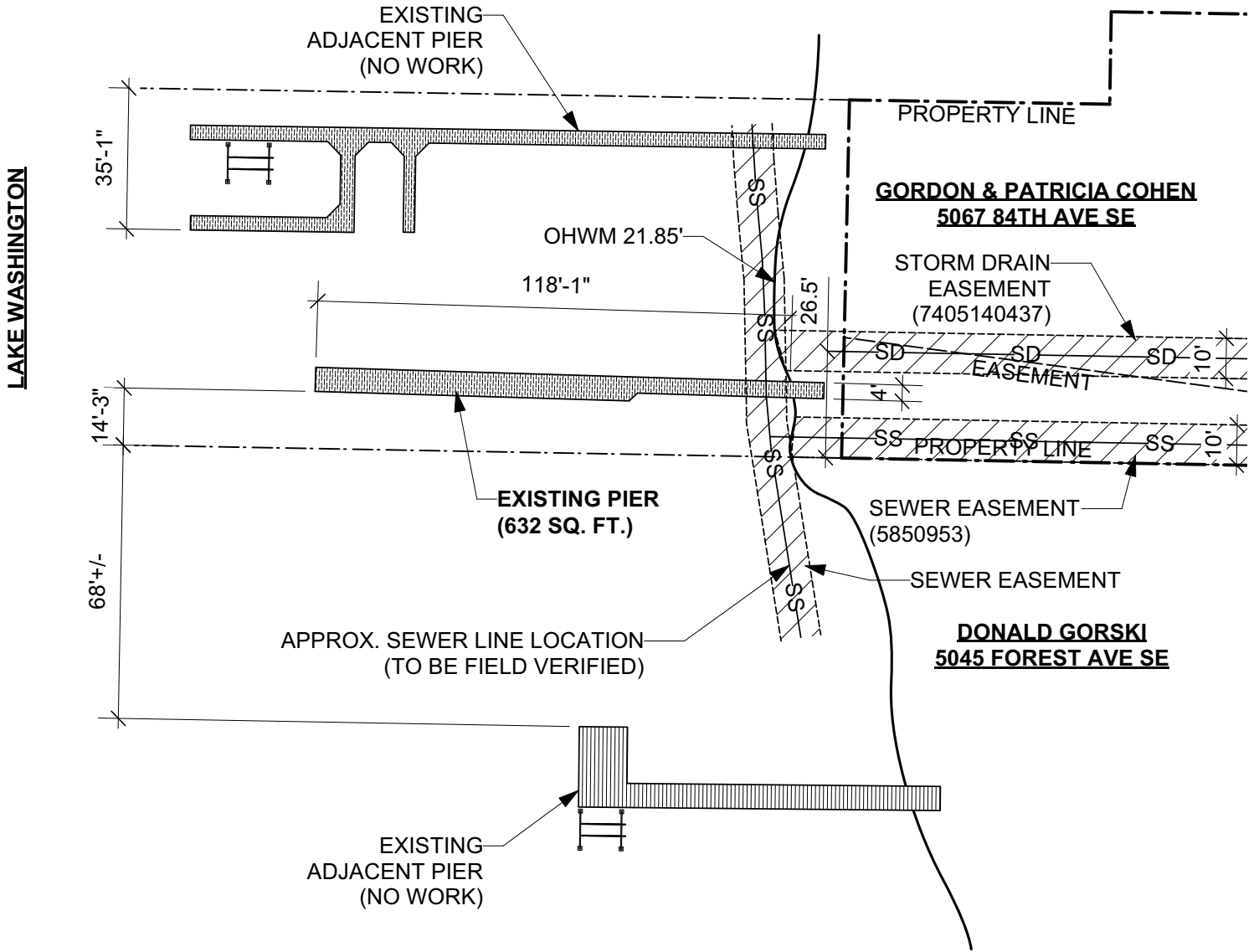
**PROPOSED PROJECT:**

Pier Extension  
**IN:** Lake Washington  
**NEAR/AT:** Mercer Island  
**COUNTY:** King     **STATE:** WA

**SHEET** 1 of 7

**DATE:** January 13, 2022

PLEASE NOTE THAT THE SHORELINE CONFIGURATION AND PROPERTY LINE LOCATIONS ARE APPROXIMATE ONLY. THE PROPERTY LINES ARE BASED ON SURVEY DATED 4/9/2020 BY TRUE NORTH LAND SURVEYING, INC.



**SITE PLAN**  
**(EXISTING)**

SCALE 1" = 40'-0"

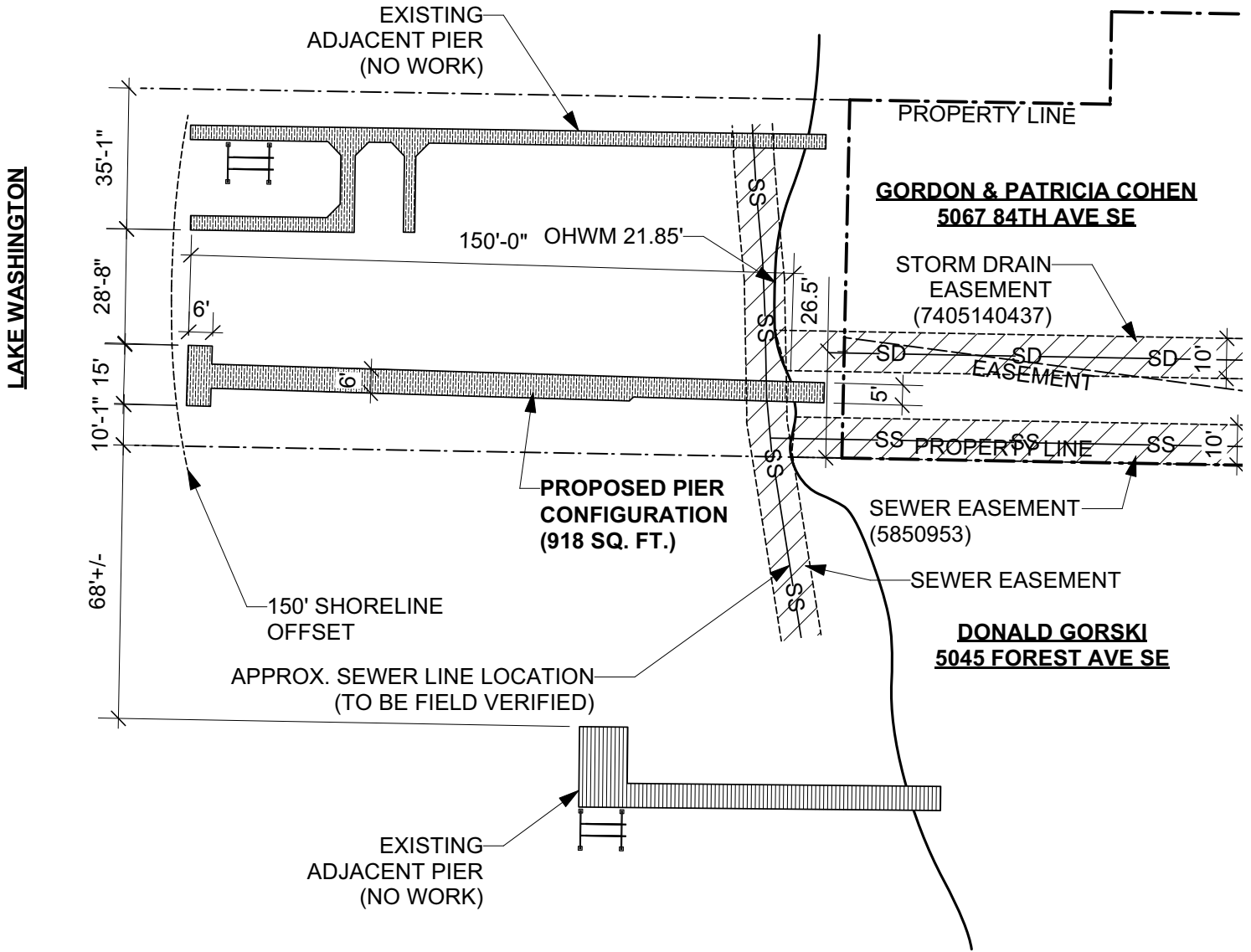


**Reference:**  
**Applicant:** Richard Fallquist  
**Proposed:** Pier Extension

**Location:** Mercer Island, WA

**Sheet 2 of 7**    **Date:** 1/13/2023

PLEASE NOTE THAT THE SHORELINE CONFIGURATION AND PROPERTY LINE LOCATIONS ARE APPROXIMATE ONLY. THE PROPERTY LINES ARE BASED ON SURVEY DATED 4/9/2020 BY TRUE NORTH LAND SURVEYING, INC.



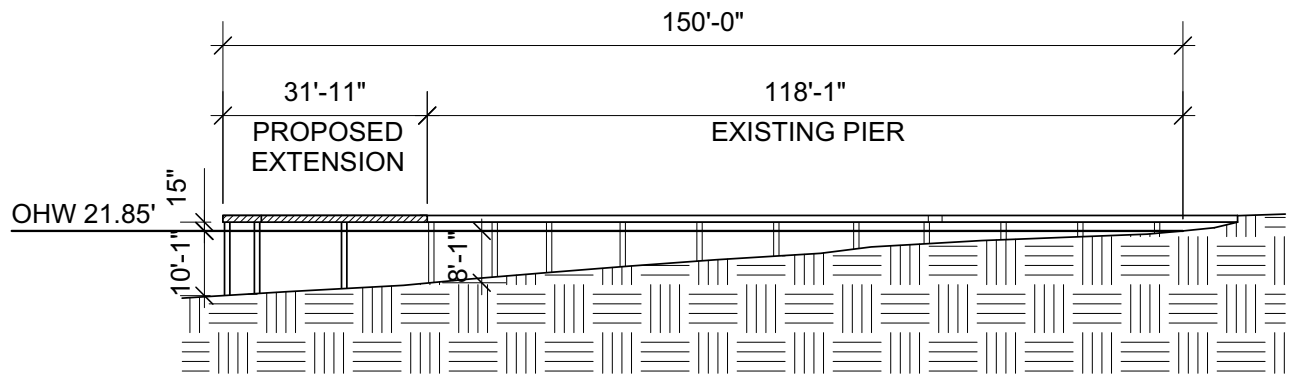
**SITE PLAN**  
**(PROPOSED)**  
 SCALE 1" = 40'-0"



**Reference:**  
**Applicant:** Richard Fallquist  
**Proposed:** Pier Extension

**Location:** Mercer Island, WA

**Sheet 3 of 7**    **Date:** 1/13/2023



## **PIER ELEVATION**

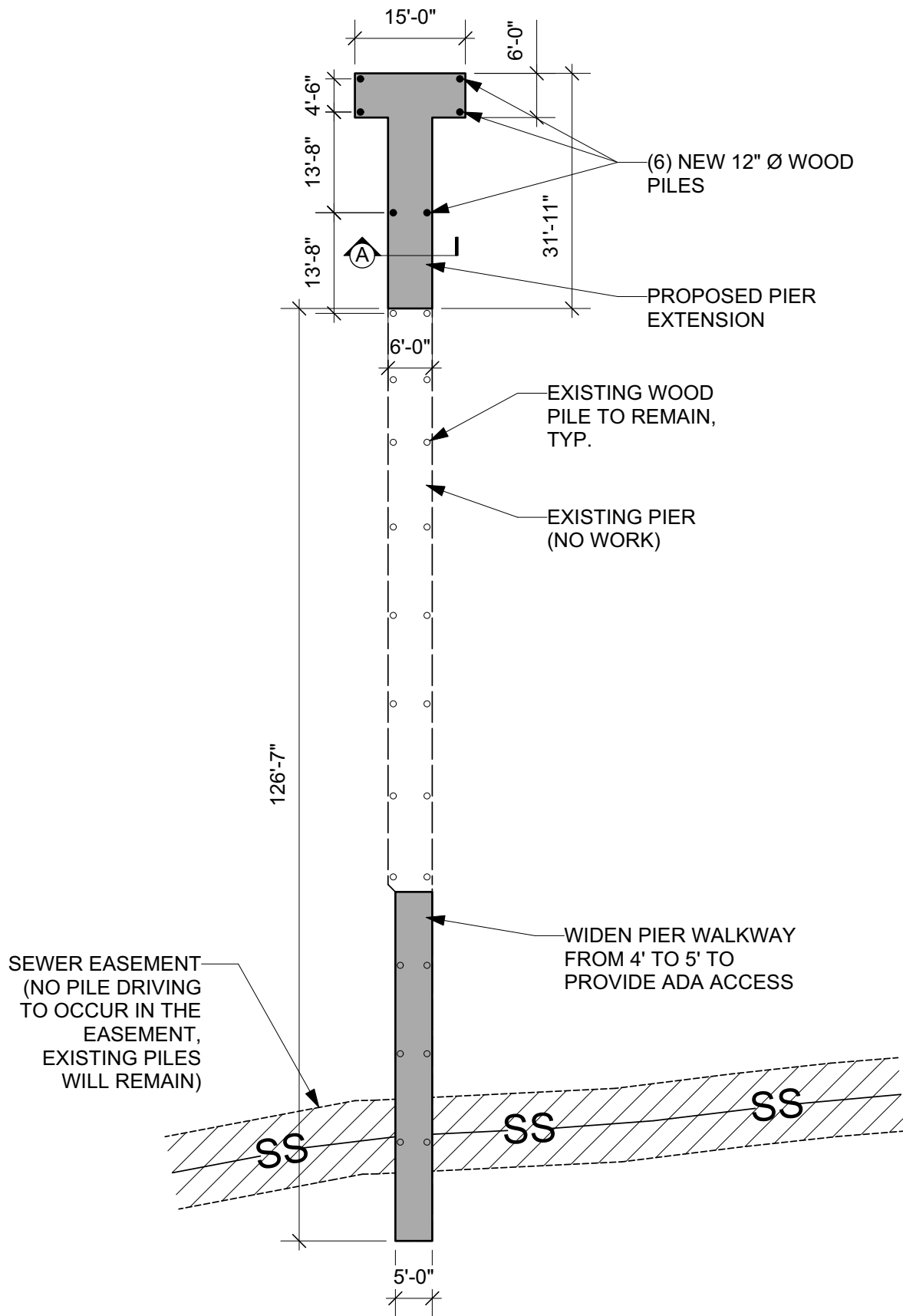
SCALE 1" = 30'-0"



**Reference:**  
**Applicant:** Richard Fallquist  
**Proposed:** Pier Extension

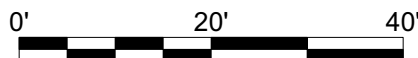
**Location:** Mercer Island, WA

**Sheet 4 of 7    Date:** 1/13/2023



# PILE LAYOUT

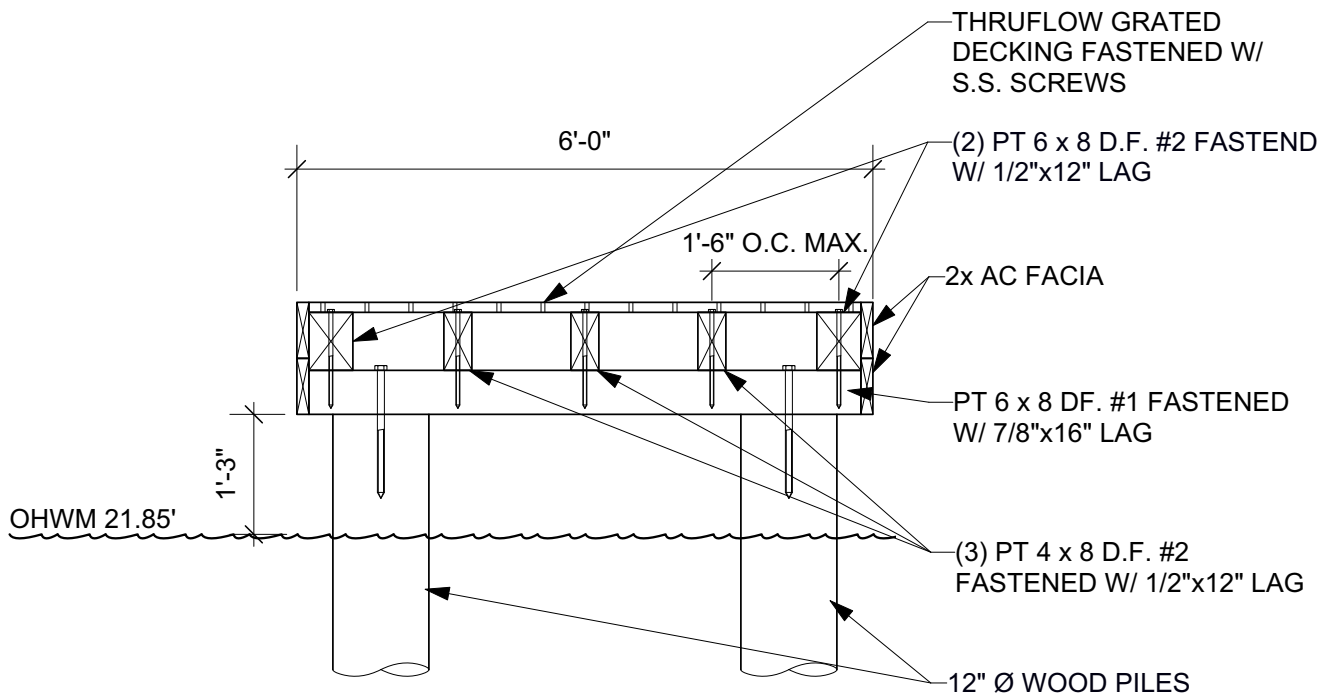
SCALE 1" = 20'-0"



Reference:  
 Applicant: Richard Fallquist  
 Proposed: Pier Extension

Location: Mercer Island, WA

Sheet 5 of 7 Date: 1/13/2023



## **SECTION DETAIL A**

SCALE 1/2" = 1'-0"



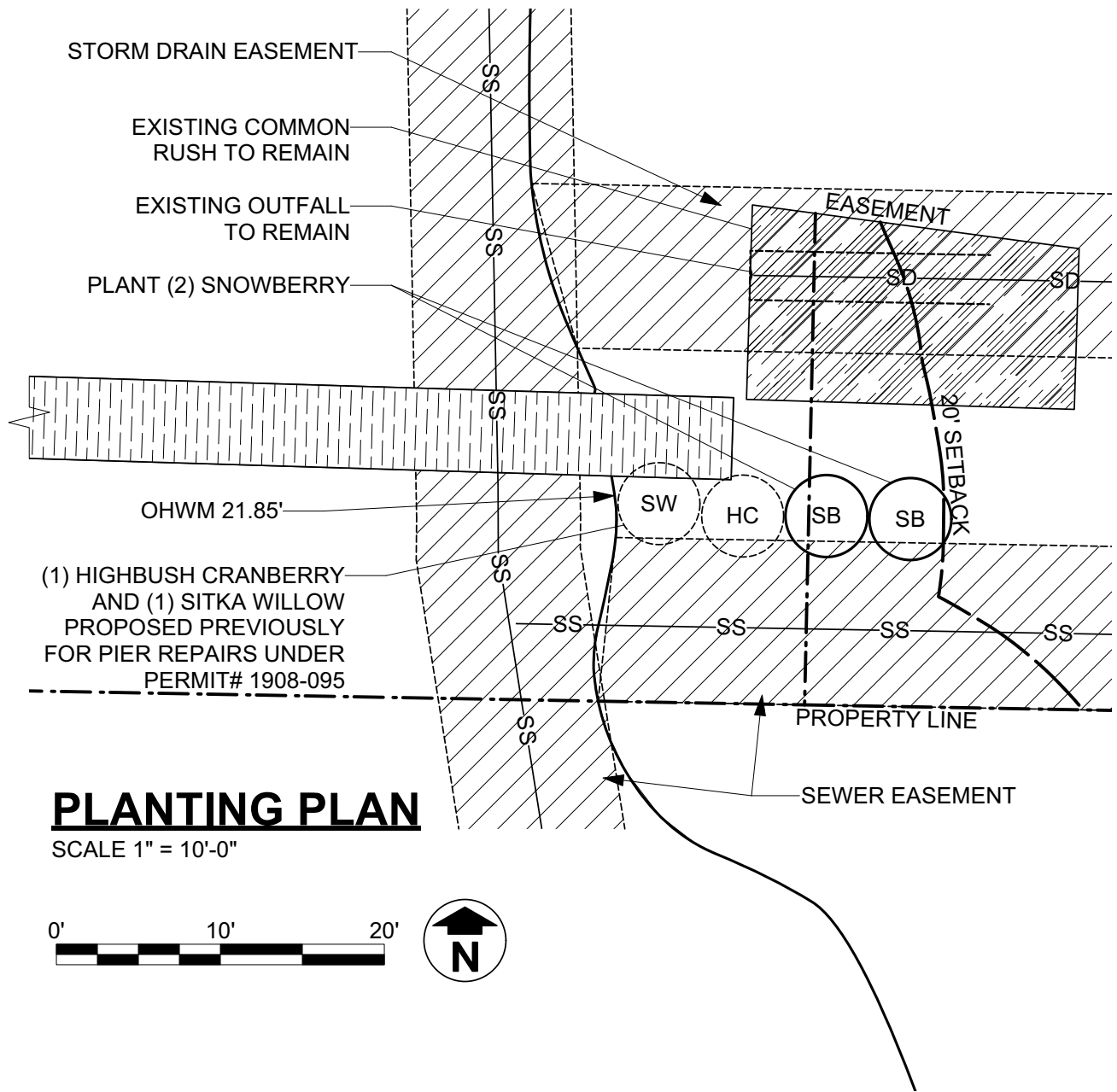
**Reference:**

**Applicant:** Richard Fallquist

**Proposed:** Pier Extension

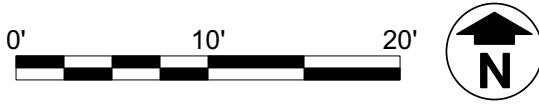
**Location:** Mercer Island, WA

**Sheet 6 of 7    Date:** 1/13/2023



# PLANTING PLAN

SCALE 1" = 10'-0"



**Reference:**  
**Applicant:** Richard Fallquist  
**Proposed:** Pier Extension

**Location:** Mercer Island, WA

**Sheet 7 of 7**    **Date:** 1/13/2023





ECCO

July 22, 2020

**Re: Permit #** SHL18-017  
**Project Name** Fallquist Community Dock  
**Project Address** 5067 84<sup>th</sup> Ave SE (parcel # 407600-0800)  
**Reviewer** Nicole Guadette, Senior Planner  
**Department** Planning & Development  
  
**Contact:** Evan Wehr  
**Contact Phone** (206) 706-3937  
**Contact Email** [evan@eccodesigninc.com](mailto:evan@eccodesigninc.com)

Nicole,

Below are our responses to the corrections in your letter dated April 27, 2020. Your original comments are in **bold italics** followed by our response in plain text.

#### **Corrections**

##### **1. On page 1 of the No Net Loss Report it states:**

***“A shoreline planting plan will be completed using the following native species of trees and shrubs: 1 Western red cedar and 1 mock orange. In addition, 2 Sitka willows and 3 highbush cranberry shrubs will be planted to mitigate previous repairs under permit # 1908-095 (see Appendix A – Sheet 6 of 6).”***

**Plantings in addition to those mitigating the repairs authorized via permit #1908-095 will be required to mitigate the impacts of the dock extension.**

In addition to the plantings authorized via permit #1908-95, seven native shrubs will be planted for the project. The shrubs will be less than 8 feet in height as required by the settlement agreement. The planting plan on sheet 7 of the drawings has been revised with these plantings.

##### **2. Pursuant to MICC 19.07.110(E)(6)(c)(v), please provide documentation of approval of the moorage facility by U.S. Army Corps of Engineers and Washington Department of Fish and Wildlife.**

The U.S. Army Corps of Engineers permit application is still under review. We can not apply to WDFW until the SEPA determination is issued. Please issue the SEPA decision at this time so that we can apply to WDFW.

Also please note that the pier walkway width for the first 30' from shore will be widened from 4' to 5' to grant ADA access to the pier. The plans have been revised with this change. One of the owners of the dock, Marlene Fallquist, is disabled and needs the additional width for wheelchair access. Her Washington State disability placard number is Z782346.



ECCO

Please feel free to contact me if you have any questions regarding these changes or if you require any additional information.

Regards,

Evan Wehr

**Ecological No Net Loss Assessment Report  
for  
5067 84<sup>th</sup> Ave SE Mercer Island, WA**

Prepared for

**Richard Fallquist  
5067 84<sup>th</sup> Avenue SE  
Mercer Island, WA 98040**

Prepared by



**Northwest Environmental Consulting, LLC  
3639 Palatine Avenue North  
Seattle, WA 98103  
206-234-2520**

**April 2020**

## **Purpose**

The purpose of this report is to fulfill the requirements of City of Mercer Island Municipal Code (MICC) 19.07.110 Shoreline Master Program by assessing overall project impacts and proposed mitigation to determine if the project meets the “No Net Loss” General Regulation of the Shoreline Master Program.

MICC Chapter 19.16 defines No Net Loss as “An ecological concept whereby conservation losses in one geographic or otherwise defined area are equaled by conservation gains in function in another area.”

## **Location**

The subject property is located at 5067 84th Ave SE in the City of Mercer Island, Washington (Figure 1). The parcel is on the waterfront of Lake Washington, which contains several endangered fish species listed under the Endangered Species Act and Washington State designated priority fish species. Permits are being applied for a pier extension (see Appendix A – Sheet 2 of 6).

## **Project Description**

The proposed work is for an extension of an existing pier. The 246-square-foot pier extension will have grated decking and there will be a “T” included at the end of the pier. There will be 6 new 12-inch wood piles installed to support the extension. The overall area of the pier will change from 635 square feet to 881 square feet.

A shoreline planting plan will be completed using the following native species of trees and shrubs: 1 Western red cedar and 1 mock orange. In addition, 2 Sitka willows and 3 highbush cranberry shrubs will be planted to mitigate previous repairs under permit # 1908-095 (see Appendix A – Sheet 6 of 6).

Project drawings are included in Appendix A.

## **Approach**

Northwest Environmental Consulting LLC (NVEC) biologist Courtney Straight conducted a site visit on March 20, 2020 to evaluate conditions on site and adjacent to the site. NVEC also consulted the following sources for information on potential critical fish and wildlife habitat along this shoreline:

- Washington Department of Fish and Wildlife (WDFW): Priority Habitats and Species online database
- WDFW SalmonScape online database of fish distribution and federal Endangered Species Act (ESA) listing units

## Site Description

The subject property is in a residential neighborhood on the western shoreline of Mercer Island. The parcel is on private property but contains a strip of land along the southern boundary that provides community access to the shoreline. The parcel is surrounded to the north, south and east by single-family houses. Pictures of the site are included in Appendix B.

The parcel contains a single-family residence with a private pier, and the community pier along the southern portion of the shoreline; the southern portion is separated from the northern portion by a hedge of *Arborvitae* trees and fenced such that it can provide community access to the lake and the subject pier. The pier is about 117 feet long and 6 feet wide, with the landward 38 feet narrowed to 4 feet wide, and sits on 22 wood piles that vary from 8 to 12 inches in diameter (see Sheet 3 of 6). The pier is in water up to 8 feet deep.

The shoreline on the property (both private portion and community beach portion) is a sand and gravel beach, with shrubs and mowed lawn above the OHWM. An unnamed creek discharges into Lake Washington through a pipe approximately 5 feet north of the pier. Vegetation close to the shoreline includes a hedge of red-osier dogwood, non-native rose, and grasses; decorative rushes, strawberry groundcover, and reed canarygrass. Farther upslope is a mix of native and nonnative plants including snowberry, dogwood, vine maple, Oregon grape, and sword fern.

The adjacent parcels to the north and south also have gravel or gravel/cobble beaches. The parcel to the south has a low rock bulkhead above the beach. The parcel to the north has a cement bulkhead well above the beach and OHWM. These adjacent parcels do not have any vegetation overhanging the water.

Substrates below the OHWM consist of sand, gravel and cobble on the beach, with mostly sand on the lake bottom. Aquatic plants are present in places, with milfoil present, starting at 50 feet from shore.

## Habitat for Listed or Priority Species

WDFW's PHS mapping and SalmonScape mapping tools show the following salmonid species using Lake Washington for migration and/or rearing: residential coastal cutthroat (*Oncorhynchus clarki*), winter steelhead (*O. mykiss*), Dolly Varden/bull trout (*Salvelinus malma*), sockeye salmon (*O. nerka*), fall Chinook (*O. tshawytscha*), coho salmon (*O. kisutch*), and kokanee (*O. nerka*). Of these species, Chinook, steelhead and bull trout are listed under the ESA as Threatened. The others are Washington State priority species.

The Salmonscape database maps the site as accessible to the Endangered Species Units (ESU) of Threatened Chinook and steelhead. The project site is accessible to any fish migrating or rearing in the lake, but specific critical habitat for these species is not present at the subject parcel.

There are no priority species directly associated with the project site. The nearest mapped priority habitat, according to WDFW PHS data, is a biodiversity area is mapped about a third of a mile to the southeast along SE 53<sup>rd</sup> Place.

The National Wetlands Inventory (NWI) database and King County iMap databases do not any wetlands on the site.

The subject property's shoreline is not within 100 feet of areas the Washington Department of Fish and Wildlife has mapped as potential sockeye spawning habitat (which would trigger a separate work window).

## **Project Impacts and Conservation Measurements**

### ***Direct Impacts:***

**Sediments:** Impacts to sediments will occur when the work barge is moved into place to perform the work, and when pilings are driven. The work and resulting turbidity will be short in duration and localized.

**Shoreline:** The project will not adversely affect the shoreline. Planting native vegetation will increase the habitat functions of the shoreline by creating shade along the shoreline and allochthonous food sources, which will be an improvement from the existing baseline habitat conditions at the project site.

**Lakebed:** The addition of 6 new 12-inch piles will increase coverage of the lake bottom by approximately 5 square feet.

**Noise:** Construction equipment will create construction noise audible to neighbors and in-water. Noise disturbance will be short-term and should have negligible effects on fish and wildlife in the area.

**Potential spills:** Short-term risks include the potential for petroleum spills that can occur with any equipment operation. The level of potential impact to the aquatic environment is expected to be minor because of the small amount of petroleum products available for spillage during typical construction activities, and because of spill containment measures that will be employed should a spill occur.

### ***Indirect Impacts:***

**Shading:** The pier extension will be covered in grated decking that allows some light to pass through. This will allow light to reach the lake bottom.

Salmonid predators are known to use shadowing by docks to ambush juvenile salmonids. The ability of the predators to ambush juvenile salmonids will be limited by using grated decking on the pier extension.

In addition, all new overwater coverage will be over 117 feet from shore and in water over 8 feet deep. This configuration minimizes impacts to juvenile salmonid migration and keeps boats in deeper water which will reduce potential propwash from boat activity.

**Work window:** The project will be completed during the prescribed inwater work windows for this area of Lake Washington (July 16-December 31). Operating within this time frame helps protect Chinook salmon, steelhead, bull trout and other salmonid fish species.

**Best management practices:** Applicable BMPs will be used such as a floating boom around the inwater work area will contain any floating debris that may escape during demolition and construction. The barge will contain a perimeter containment sock to absorb oil and grease that may wash from the barge during construction. Erosion BMPs will be used on shore during planting to prevent loose soils from washing into the lake during rain events.

## Conclusion

Juvenile Chinook salmon and other salmonids rear and migrate along the Lake Washington shoreline, and thus may be present in waters around the subject pier. The proposed work will increase the pier's coverage by 246 square feet, but the use of grated decking will decrease the effective overwater coverage to 140 square feet of new overwater coverage. This will allow light to reach the lake bottom, and limit hard shadows that would provide habitat for salmonid predators. The new overwater coverage will be approximately 117 feet from shoreline in water 8 to 10 feet deep. Juvenile salmon tend to stay in shallower water, so this configuration will minimize impacts to the aquatic environment. A shoreline planting plan will be implemented, adding native trees and shrubs. The project will follow the prescribed fish windows and use applicable BMPs to prevent construction spills and turbidity from occurring.

This project has been designed to meet current residential dock standards and will use best management practices to reduce project impacts. The conservation measures are designed to improve ecological functions or prevent further degradation of habitat and **will result in No Net Loss of ecological functions** at the site.

## REFERENCES

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- US Army Corps of Engineers (USACE). 2004. Final Biological Evaluation, Regional General Permit: Construction of New or Expansion of Existing Residential Overwater Structures and Driving of Moorage Piling. Lake Washington, Lake Sammamish, the Sammamish River and Lake Union, Including the Lake Washington Ship Canal, in the State of Washington.
- Washington Department of Fish and Wildlife (WDFW). 2020. Priority Habitats and Species. Online database. Accessed March 2020 at <http://apps.wdfw.wa.gov/phsontheweb/>
- WDFW. 2020. SalmonScape. Online database. Accessed March 2020 at <http://apps.wdfw.wa.gov/salmonscape/>



# **Appendix A: Figures and Project Drawings**

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## PROJECT INFORMATION

**APPLICANT:**  
RICHARD FALLQUIST

**DRAWINGS BY:**  
ECCO DESIGN INC.  
203 N 36TH ST SUITE 201  
SEATTLE, WA 98103  
206-706-3937

**SITE ADDRESS:**  
5067 84TH AVE SE  
MERCER ISLAND, WA 98040

**PARCEL NUMBER:**  
4076000080

**BODY OF WATER:**  
LAKE WASHINGTON

**LEGAL DESCRIPTION:**  
LAKE SHORES  
PLAT BLOCK:  
PLAT LOT: 8

**PROJECT DESCRIPTION:**  
EXTEND THE EXISTING PIER 31'-11" FEET AND  
ADD A "T" TO THE END. PLANT NATIVE  
VEGETATION PER THE PLANTING PLAN.

## VICINITY MAP



### REFERENCE:

**DATUM:** C.O.E. Locks Datum

### ADJACENT PROPERTY OWNERS:

1. Gordon & Patricia Cohen
2. Donald Gorski

**APPLICANT:** Richard Fallquist

**LOCATION:** Mercer Island, WA 98040

**LAT/LONG:** 47.5570°/-122.2315°

### PROPOSED PROJECT:

Pier Extension

**IN:** Lake Washington

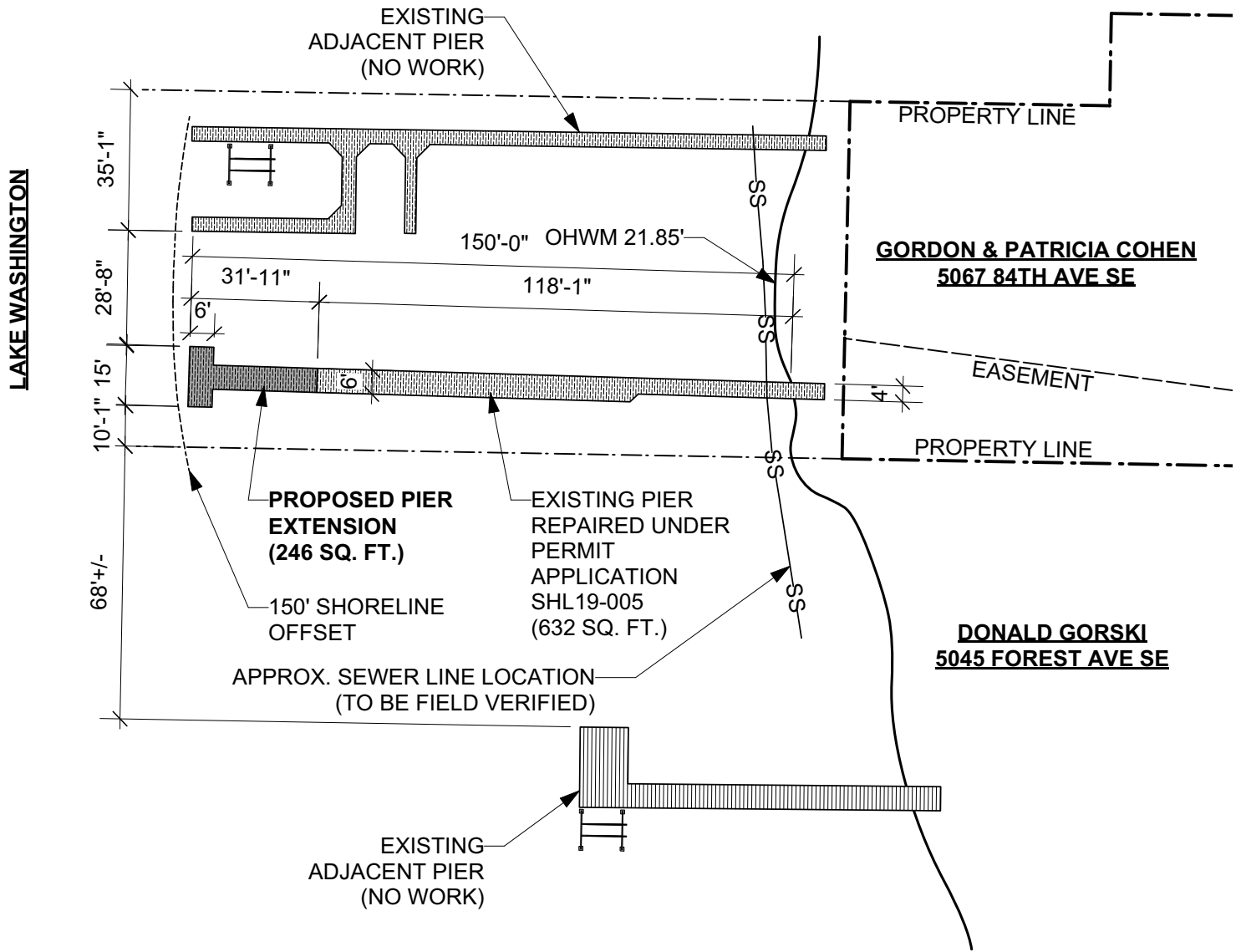
**NEAR/AT:** Mercer Island

**COUNTY:** King **STATE:** WA

**SHEET** 1 of 6

**DATE:** April 9, 2020

PLEASE NOTE THAT THE SHORELINE CONFIGURATION AND PROPERTY LINE LOCATIONS ARE APPROXIMATE ONLY. THE PROPERTY LINES ARE BASED ON SURVEY DATED 4/9/2020 BY TRUE NORTH LAND SURVEYING, INC.



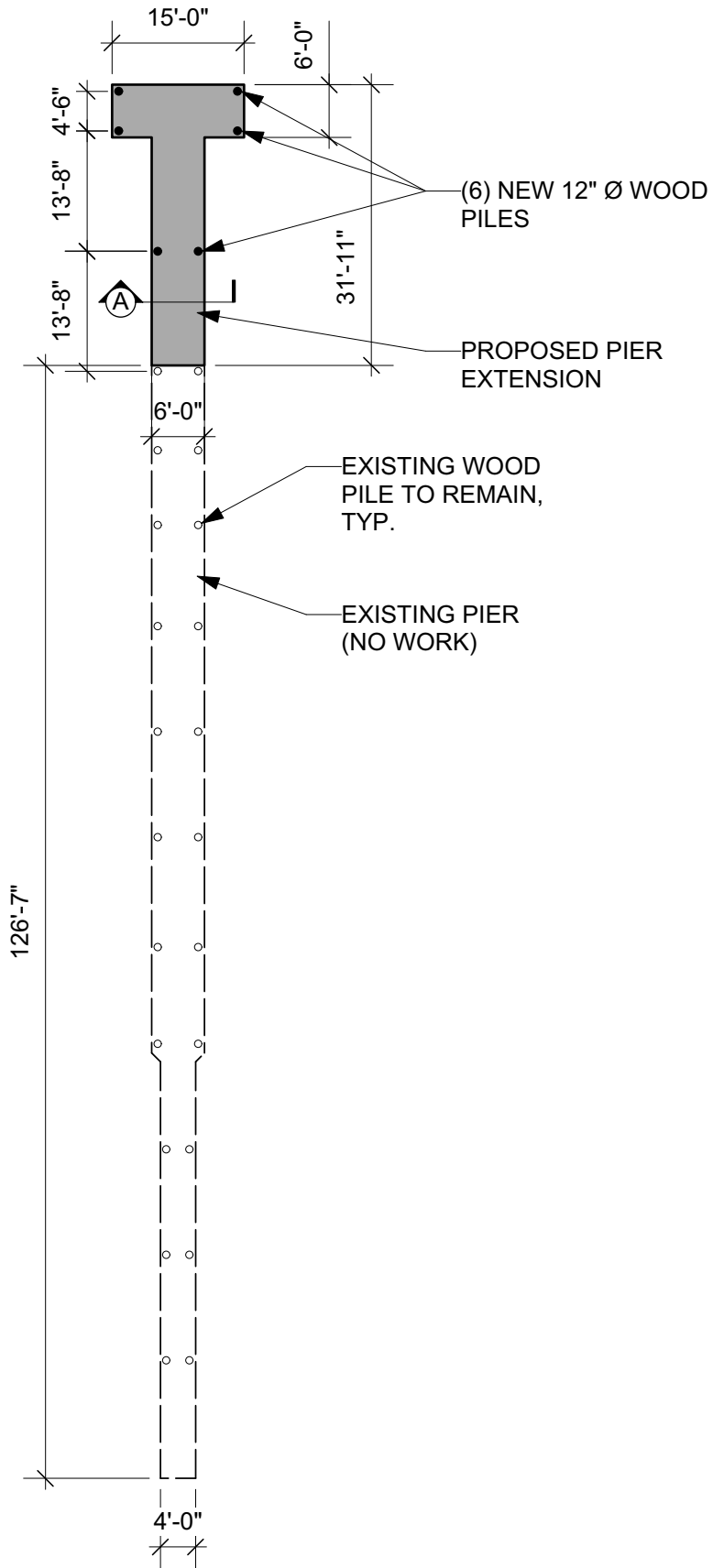
**SITE PLAN**  
SCALE 1" = 40'-0"



**Reference:**  
**Applicant:** Richard Fallquist  
**Proposed:** Pier Extension

**Location:** Mercer Island, WA

**Sheet 2 of 6**    **Date:** 4/9/2020



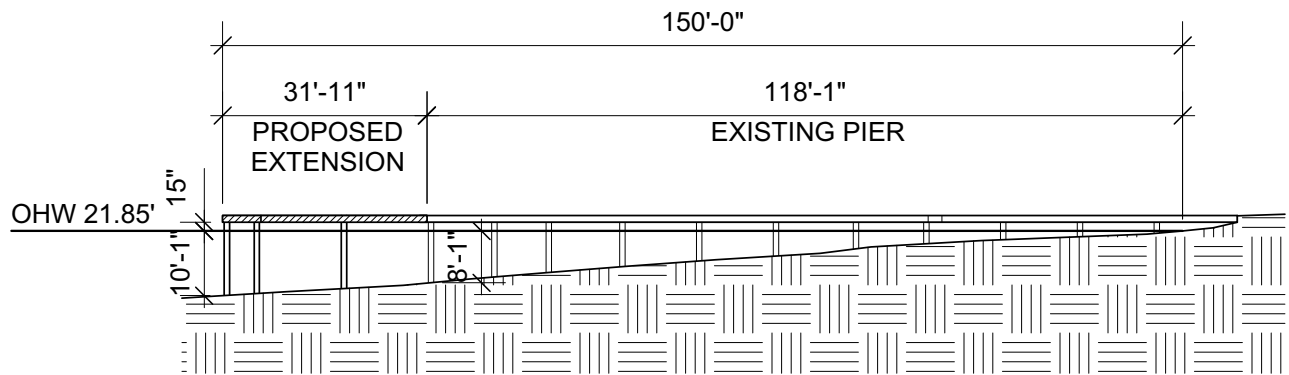
**PILE LAYOUT**  
SCALE 1" = 20'-0"



**Reference:**  
**Applicant:** Richard Fallquist  
**Proposed:** Pier Extension

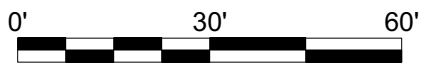
**Location:** Mercer Island, WA

**Sheet 3 of 6**    **Date:** 4/9/2020



## **PIER ELEVATION**

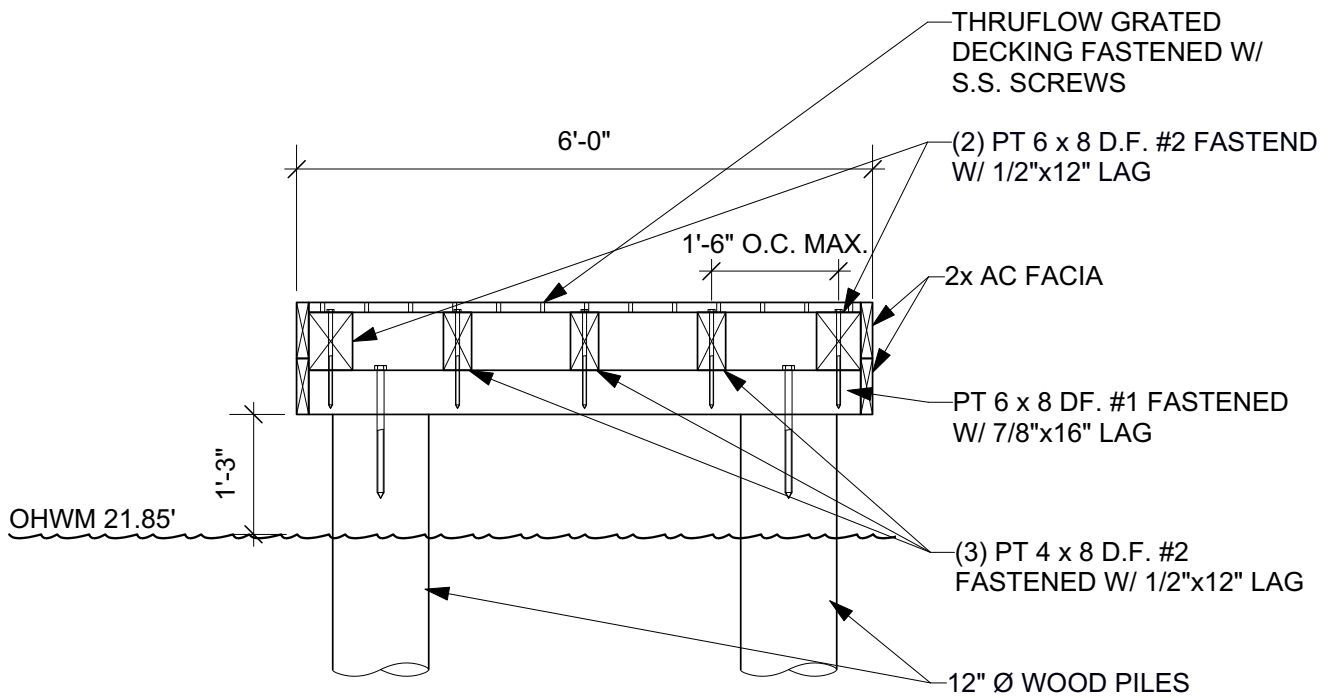
SCALE 1" = 30'-0"



**Reference:**  
**Applicant:** Richard Fallquist  
**Proposed:** Pier Extension

**Location:** Mercer Island, WA

**Sheet 4 of 6    Date:** 4/9/2020



## **SECTION DETAIL A**

SCALE 1/2" = 1'-0"



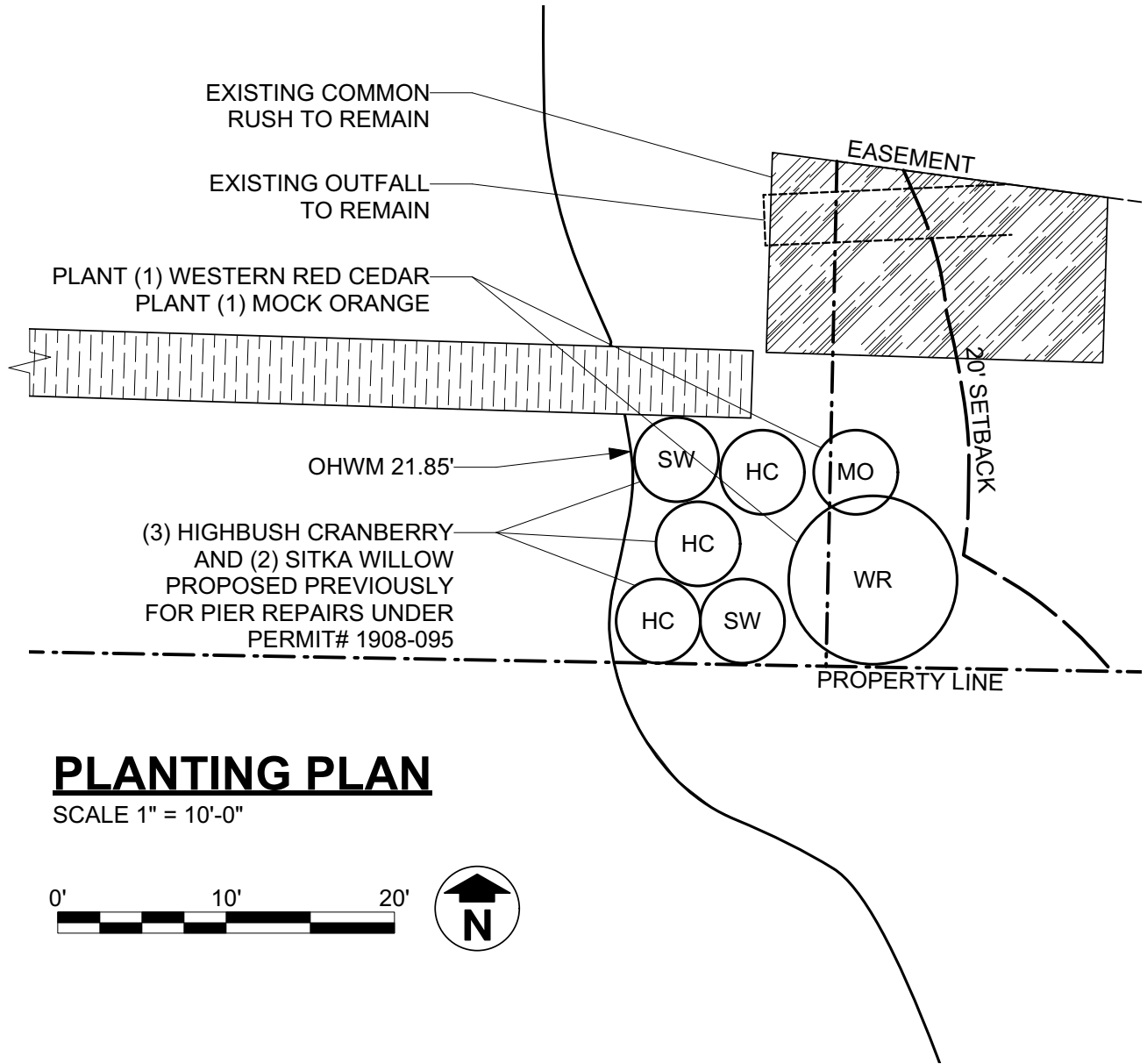
**Reference:**

**Applicant:** Richard Fallquist

**Proposed:** Pier Extension

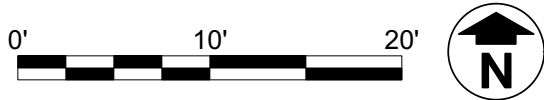
**Location:** Mercer Island, WA

**Sheet 5 of 6**    **Date:** 4/9/2020



# **PLANTING PLAN**

SCALE 1" = 10'-0"



**Reference:**  
**Applicant:** Richard Fallquist  
**Proposed:** Pier Extension

**Location:** Mercer Island, WA

**Sheet 6 of 6**    **Date:** 4/9/2020

## **Appendix B: Site Photographs**

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Photo 1. View of pier from shore looking west.



Photo 2. View of pier from end looking east.



Photo 3. View of north shoreline from pier looking east.



Photo 4. View of south shoreline from pier looking east.



Photo 5. View of north adjacent shoreline (on subject property) from pier looking northeast.



Photo 6. View of south adjacent shoreline from pier looking southeast.

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WALTER W. BENSONLER  
CLERK KING COUNTY  
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

GAYLORD DUREN and VIRGINIA L. DUREN, his wife; JACK P. KORNFELD and MARION E. KORNFELD, his wife; ROBERT J. NIXON and MARYALICE NIXON, his wife,  
Plaintiffs,  
vs.  
ENID BURKE, a single woman,  
Defendant,  
and  
DEAN E. KENWORTHY and GENEVA W. KENWORTHY, his wife, and ROY A. MAYS and MARJORIE M. MAYS, his wife,  
Additional Defendants.)

NO. 680150  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

This matter having come on to be heard before the undersigned Judge of the above-entitled court on the 18th, 19th and 31st days of March, 1969, the court sitting without a jury, and the plaintiffs, Gaylord Duren and Virginia L. Duren, his wife; Jack P. Kornfeld and Marion E. Kornfeld, his wife; Robert J. Nixon and Maryalice Nixon, his wife, being represented by their attorneys Charles E. Peery and Larry M. Carter and the defendant, Enid Burke, a single woman, being represented by her attorney, Thomas G. Holcomb and the additional defendants, Dean E. Kenworthy and Geneva W. Kenworthy, his wife, and Roy A. Mays and Marjorie M. Mays, his wife, being represented by their attorney, Martin Godsil, and the

PAGE 1

FIND. OF FACT &  
CONCL. OF LAW

PRESTON, THORGRIMSON, HOROWITZ,  
STARIN & ELLIS  
2000 I.B.M. BUILDING  
SEATTLE, WASHINGTON 98101  
MAIN 3-7500

1 court having heard the testimony and having considered the evidence  
2 of the parties to the action, and having considered the briefs of  
3 counsel herein, and being fully and duly advised in the premises,  
4 NOW, THEREFORE, makes the following

5 FINDINGS OF FACT

6 I.

7 That Gaylord Duren and Virginia L. Duren are husband and  
8 wife, constituting a marital community under the laws of the State  
9 of Washington; that they are the owners of the following described  
10 property:

11 Lot 5, Lake Shores, according to Plat recorded in  
12 Volume 66 of Plats, Page 84, in King County, Washington;  
13 TOGETHER with an easement for access to Lake Washington  
over and across that portion of Lot 8, in said plat,  
described as follows:

14 Beginning at a point on the easterly line of said Lot  
15 8, which point is 15 feet northerly of the southeast  
16 corner thereof; thence south 1°12'57" west 15 feet  
17 to the southeast corner of said Lot 8; thence north  
18 88°47'03" west along the southerly line of said Lot  
8, a distance of 129.88 feet; thence north 1°12'57"  
east 30.00 feet; thence southeasterly to point of  
beginning; AND

19 TOGETHER WITH an easement for access over that portion  
20 of the second class shorelands, situate in front of,  
adjacent to or abutting upon the southerly 30 feet  
of said Lot 8.

21 II.

22 That Jack P. Kornfeld and Marion E. Kornfeld are husband  
23 and wife, constituting a marital community under the laws of the  
24 State of Washington; that they are the owners of the following  
25 described property:

26 Lot 6, Lake Shores, according to plat recorded in  
27 Volume 66 of plats, Page 84, in King County, Washington;  
28 TOGETHER WITH an easement for access to Lake Washington  
over and across that portion of Lot 8 in said plat,  
described as follows:

29 Beginning at a point on the easterly line of said Lot  
30 8, which point is 15 feet northerly of the southeast  
31 corner thereof; thence south 1°12'57" west 15 feet  
32 to the southeast corner of said Lot 8; thence north  
88°47'03" west along the southerly line of said Lot  
8, a distance of 129.88 feet; thence north 1°12'57"

1 east 30.00 feet; thence southeasterly to point of  
2 beginning; AND

3 TOGETHER WITH an easement for access over that portion  
4 of the second class shore lands, situate in front of,  
5 adjacent to or abutting upon the southerly 30 feet  
6 of said Lot 8.

7 III.

8 That Robert J. Nixon and Maryalice Nixon are husband and  
9 wife, constituting a marital community under the laws of the State  
10 of Washington; that they are the owners of the following described  
11 property:

12 Lot 2, Lake Shores, according to plat recorded in  
13 Volume 66 of plats, Page 84, in King County, Washington;  
14 TOGETHER WITH an easement for access to Lake Washington  
15 over and across that portion of Lot 8 in said plat,  
16 described as follows:

17 Beginning at a point on the easterly line of said Lot  
18 8, which point is 15 feet northerly of the southeast  
19 corner thereof; thence south 1°12'57" west 15 feet  
20 to the southeast corner of said Lot 8; thence north  
21 88°47'03" west along the southerly line of said Lot  
22 8, a distance of 129.88 feet; thence north 1°12'57"  
23 east 30.00 feet; thence southeasterly to point of  
24 beginning; AND

25 TOGETHER WITH an easement for access over that portion  
26 of the second class shore lands, situate in front of,  
27 adjacent to or abutting upon the southerly 30 feet  
28 of said Lot 8.

29 IV.

30 That the defendant herein, Enid Burke, is a divorced woman,  
31 a resident of the State of Washington, County of King; that  
32 defendant is the owner of the following described property:

33 Lot 8, Lake Shores, according to plat recorded in  
34 Volume 66 of plats, Page 84, in King County, Washington;  
35 TOGETHER WITH the second class shorelands situate in  
36 front of, adjacent to or abutting upon said Lot 8.

37 V.

38 That the additional defendants, Dean E. Kenworthy and Geneva  
39 W. Kenworthy, his wife, and Roy A. Mays and Marjorie M. Mays, his  
40 wife, constitute marital communities under the laws of the State  
41 of Washington; that they are the joint owners of the following  
42 described property:

43 Lots 1, 3 and 4, Lake Shores, according to plat  
44 recorded in Volume 66 of plats, Page 84, in King

1 County, Washington; TOGETHER WITH an easement for  
2 access to Lake Washington over and across that  
portion of Lot 8 in said plat, described as follows:

3 Beginning at a point on the easterly line of said Lot  
4 8, which point is 15 feet northerly of the southeast  
5 corner thereof; thence south 1°12'57" west 15 feet  
6 to the southeast corner of said Lot 8; thence north  
88°47'03" west along the southerly line of said Lot  
8, a distance of 129.88 feet; thence north 1°12'57"  
east 30.00 feet; thence southeasterly to point of  
beginning; AND

7 TOGETHER WITH an easement for access over that portion  
8 of the second class shore lands, situate in front of,  
9 adjacent to or abutting upon the southerly 30 feet  
of said Lot 8.

10 That said additional defendants are the platters and subdividers  
11 of the said Lake Shores plat, recorded in Volume 66 of plats,  
12 Page 84, in King County, Washington.

13 VI.

14 That the properties owned by each of the plaintiffs and by  
15 the additional defendants herein include an easement for access  
16 to and from Lake Washington over and across a portion of defendant  
17 Burke's property described as follows:

18 TOGETHER WITH an easement for access to Lake Washington  
19 over and across that portion of Lot 8 in said plat,  
described as follows:

20 Beginning at a point on the easterly line of said Lot  
21 8, which point is 15 feet northerly of the southeast  
22 corner thereof; thence south 1°12'57" west 15 feet  
23 to the southeast corner of said Lot 8; thence north  
88°47'03" west along the southerly line of said Lot  
8, a distance of 129.88 feet; thence north 1°12'57"  
east 30.00 feet; thence southeasterly to point of  
beginning; AND

24 TOGETHER WITH an easement for access over that portion  
25 of the second class shore lands, situate in front of,  
26 adjacent to or abutting upon the southerly 30 feet  
of said Lot 8.

27 That said easement was filed and recorded under King County Auditor's  
28 Receiving Nos. 5300744 and 5300743.

29 VII.

30 That the said easement for the benefit of Lots 1 through 6  
31 across Lot 8 of said plat was granted in general and unlimited  
32 terms without definition of or limitation upon the scope, extent

1 and uses of said easement; that to determine the scope, extent  
2 and uses of said easement it is necessary to consider the following:  
3 The intent of the parties to the subdivision and sale and purchase  
4 of the properties in question; the uses heretofore made of the  
5 easement area in question by the easement holders; the uses of the  
6 easement area acquiesced in and approved by the owner of Lot 8,  
7 the servient property; the uses of other waterfront properties in  
8 the general area in question; and the physical and geographic con-  
9 ditions of the area in question.

10 VIII.

11 That additional defendants Mays and Kenworthy platted, sub-  
12 divided and sold to the plaintiffs or their predecessors in interest  
13 and to defendant Burke and her ex-husband, the properties which  
14 they now own, described in paragraphs I, II, III and IV, above;  
15 that additional defendants Mays and Kenworthy intended the  
16 plaintiffs and other owners of Lots 1 through 6 to have complete  
17 and unrestricted use of the easement across Lot number 8 and the  
18 shorelands, defendant Burke's property, for all normal and unre-  
19 stricted uses of the waterfront as if Lots 1 through 6 were in  
20 fact adjacent to the water; that defendant Burke and her ex-husband  
21 purchased their property with knowledge that Lots 1 through 6, the  
22 six upland lots in said plat, would be sold to, owned and used by  
23 separate and individual owners and families and that each would  
24 have the benefits of the said easement across defendant Burke's  
25 property; that defendant Burke and her ex-husband purchased Lot 8  
26 with knowledge that Lots 2 and 6, together with easements across  
27 Lot 8 and the shorelands, had previously been sold by the addition-  
28 al defendants, Mays and Kenworthy.

29 IX.

30 That since 1962 the plaintiffs and their predecessors in  
31 interest have used the said easement over and across Lot 8 and the  
32 shorelands regularly for the purposes of reaching Lake Washington



1 from plaintiffs' properties and have engaged in swimming, sunbath-  
2 ing, boating, water skiing and all other normal uses of the water-  
3 front and the lake, including the installation and maintenance of  
4 a floating dock and the anchoring and moorage of boats at said  
5 dock and in said waters.

6 X.

7 That defendant Burke and her ex-husband agreed to and par-  
8 ticipated in the cost and actual construction of the floating  
9 dock which was placed upon the waters on and adjacent to the ease-  
10 ment area in 1964 and which has been maintained and used by plain-  
11 tiffs in that location to the present time; that defendant Burke  
12 and her ex-husband acquiesced in the use by plaintiffs of the ease-  
13 ment area for access to Lake Washington and for the purposes of  
14 engaging in swimming, sunbathing, boating, water skiing and all  
15 other normal activities and uses of the lake, including the anchor-  
16 ing and moorage of boats thereon.

17 XI.

18 That other waterfront properties in the general area of the  
19 properties of the parties hereto are commonly and regularly used  
20 for all general waterfront and water oriented activities, and  
21 permanent docks or piers on pilings are commonly installed and  
22 maintained upon those properties for access to the water of Lake  
23 Washington and to engage in the normal waterfront and water-oriented  
24 activities of the area.

25 XII.

26 That in the area in question the water adjacent to the  
27 easement area is shallow for a distance of 80 to 100 feet from the  
28 shoreline; that because of the shallow water the docks or piers  
29 upon the adjacent properties extend for a distance of 80 to 100  
30 feet from the shoreline to reach a safe and suitable depth for  
31 swimming, diving, water skiing, boating and other water-oriented  
32 activities.

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XIII.

That a permanent dock or pier on pilings of a length of 100 feet or a length equal to the docks or piers upon the adjacent properties in the general area is a reasonable and necessary use of the said easement area for the purpose of enabling the easement holders to safely and reasonably obtain access to the waters of Lake Washington and to engage in all of the usual water-oriented activities of the waterfront and Lake Washington.

XIV.

That the defendant Burke and her guests have on occasion obstructed the said easement area and have unreasonably interfered with the access to and passage across the said easement by the plaintiffs and have unreasonably demanded that plaintiffs remove the existing floating dock from the waters adjacent to the easement area and have unreasonably demanded that plaintiffs refrain from anchoring plaintiffs' boats in the waters of Lake Washington offshore from the said easement area.

XV.

That the construction and placement of moveable storage lockers or sheds upon the easement area, of a reasonable size and appearance, for the storage of light gear and equipment is a reasonable, proper and necessary use of the easement area; that one such storage locker or shed should be allowed for each lot owner of Lots 1 through 6 and Lot 8; that each such locker or shed should be installed by and at the expense of the individual lot owner.

XVI.

That a storage area or facility for storage of small boats or prams close to the water at the edge of the easement, of reasonable size and appearance, is a reasonable, proper and necessary use of the said easement area.

XVII.

That the installation and maintenance of permanent mooring

1 buoys upon the shorelands or in the waters adjacent thereto is a  
2 reasonable and necessary use of the easement area by the owners of  
3 Lots 1 through 6.

4 XVIII.

5 That the plaintiffs, their families and guests, have not  
6 unreasonably nor improperly used the easement across Lot 8 and  
7 the shorelands; that the plaintiffs, their families and guests  
8 have not violated the rights of the defendant and have not  
9 threatened any improper uses of the easement across Lot 8 and  
10 the shorelands.

11 XIX.

12 That the additional defendants, Dean E. Kenworthy and  
13 Geneva W. Kenworthy, his wife, and Roy A. Mays and Marjorie M.  
14 Mays, his wife, intended to grant to Thomas Burke and Enid Burke,  
15 his wife, and defendant herein, title to the second class shore-  
16 lands situate in front of, adjacent to or abutting upon Lot 8 of  
17 Lakeshores, according to plat recorded in Volume 66 of plats, Page  
18 84, in King County, Washington; that the said additional defendants  
19 further intended to create and convey an easement for access to  
20 Lake Washington over the said shorelands in favor of Lots 1,2,3,4,5  
21 and 6 of the said lakeshores plat as further described in Paragraph  
22 X above.

23 XX.

24 That there has been no evidence presented to the Court to  
25 show that other waterfront properties in the general area of the  
26 properties of the parties hereto are used for boat launching ramps  
27 or for the launching of large boats.

28 FROM THE FOREGOING FINDINGS OF FACT, THE COURT NOW MAKES  
29 AND ENTERS THE FOLLOWING:

30 CONCLUSIONS OF LAW

31 I.

32 That the plaintiffs and the additional defendants, or their

1 successors, as owners of Lots 1 through 6, their families and  
2 guests in reasonable numbers, are entitled to have free and unob-  
3 structed access to and across the easement over Lot 8 and the  
4 shorelands, the defendant Burke's property, from the common road-  
5 way to Lake Washington for the purposes of engaging in all normal  
6 and usual waterfront and water-oriented uses and activities; that  
7 those uses and activities include, but are not limited to, the  
8 following: swimming; diving, sunbathing; picknicking; water skiing;  
9 boating; launching and retrieving of boats; installation and  
10 maintenance of a permanent dock or pier on pilings; moorage of  
11 boats at the dock or pier or at mooring buoys located in waters over  
12 the shorelands or adjacent water; anchoring of boats over the  
13 shorelands or in adjacent waters.

14 II.

15 That the plaintiffs and additional defendants, or their  
16 successors, as owners of Lots 1 through 6, are entitled to build,  
17 install and maintain a permanent dock or pier on pilings of a  
18 length of 100 feet or a length equal to the docks or piers upon  
19 the adjacent properties in the general area surrounding the  
20 easement.

21 III.

22 That the plaintiffs and additional defendants, and their  
23 successors, as owners of Lots 1 through 6, should be allowed to  
24 jointly determine and control the location, size, nature, construc-  
25 tion and maintenance of the access to and way across the easement  
26 area from the common roadway to the waters of Lake Washington  
27 without control or interference by the defendant or her successors.

28 IV.

29 That the parties hereto, and their successors, as owners  
30 of Lots 1 through 6 and Lot 8, should be allowed to construct,  
31 place and maintain moveable storage lockers or sheds upon the  
32 easement area, for the storage of light gear and equipment; that

1 one such storage locker or shed should be allowed for each lot  
2 owner of Lots 1 through 6 and Lot 8; that each such locker or shed  
3 should be installed by and at the expense of the individual lot  
4 owner; that each such locker or shed should be of a reasonable  
5 and uniform size and appearance, constructed in accordance with  
6 the plans and specifications attached hereto.

7 V.

8 That the uses of the present floating dock or of any future  
9 dock to be constructed upon the said easement should be determined  
10 solely by the owners of Lots 1 through 6, collectively, without  
11 control or interference by the defendant, or her successors; that  
12 the use of the said dock and easement should, however, be limited  
13 to the owners of Lots 1 through 6, their families and guests in  
14 reasonable numbers; that said use should be without interference  
15 with defendant Burke's use of her property.

16 VI.

17 That the owners of Lots 1 through 6 should be allowed to  
18 install and maintain permanent mooring buoys upon the shorelands  
19 or in the waters adjacent thereto; that the use of said permanent  
20 mooring buoys should be limited to the owners of Lots 1 through 6,  
21 their families and guests.

22 VII.

23 That the defendant, Burke, should be enjoined from using  
24 the easement area or the facilities thereon and should be enjoined  
25 from obstructing or otherwise interfering in any manner with  
26 access to, passage across, or use of the said easement across Lot  
27 8 and the shorelands by the plaintiffs and additional defendants,  
28 and their successors, as owners of Lots 1 through 6, and their  
29 families and guests.

30 VIII.

31 That the reformation of the Deed of the Thomas Burke and  
32 Enid Burke, his wife, and defendant herein should be granted to

1 include the shorelands in front of Lot 8 of Lakeshores plat, sub-  
2 ject to the easement hereinafter set forth, in favor of Lots 1, 2,  
3 3, 4, 5 and 6 of said Lakeshores plat:

4 TOGETHER WITH an easement for access over that  
5 portion of the second class shorelands, situate  
6 in front of, adjacent to or abutting upon the  
7 southerly 30 feet of said Lot 8; easement filed  
8 and recorded under King County Auditor's Receiving  
9 Nos. 5300744 and 5300743.

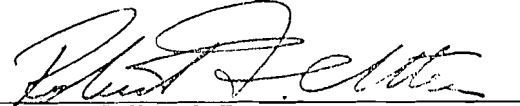
IX.

10 That the plaintiffs and additional defendants should not  
11 be permitted to construct a boat launching ramp upon the said  
12 easement area or to launch large boats therefrom.

X.

13 Plaintiffs, having prevailed in this action, are entitled  
14 to judgment against defendant, Enid Burke, for their taxable costs  
15 incurred.

16 DONE IN OPEN COURT this 27th day of June, 1969.

17  
18   
19 JUDGE

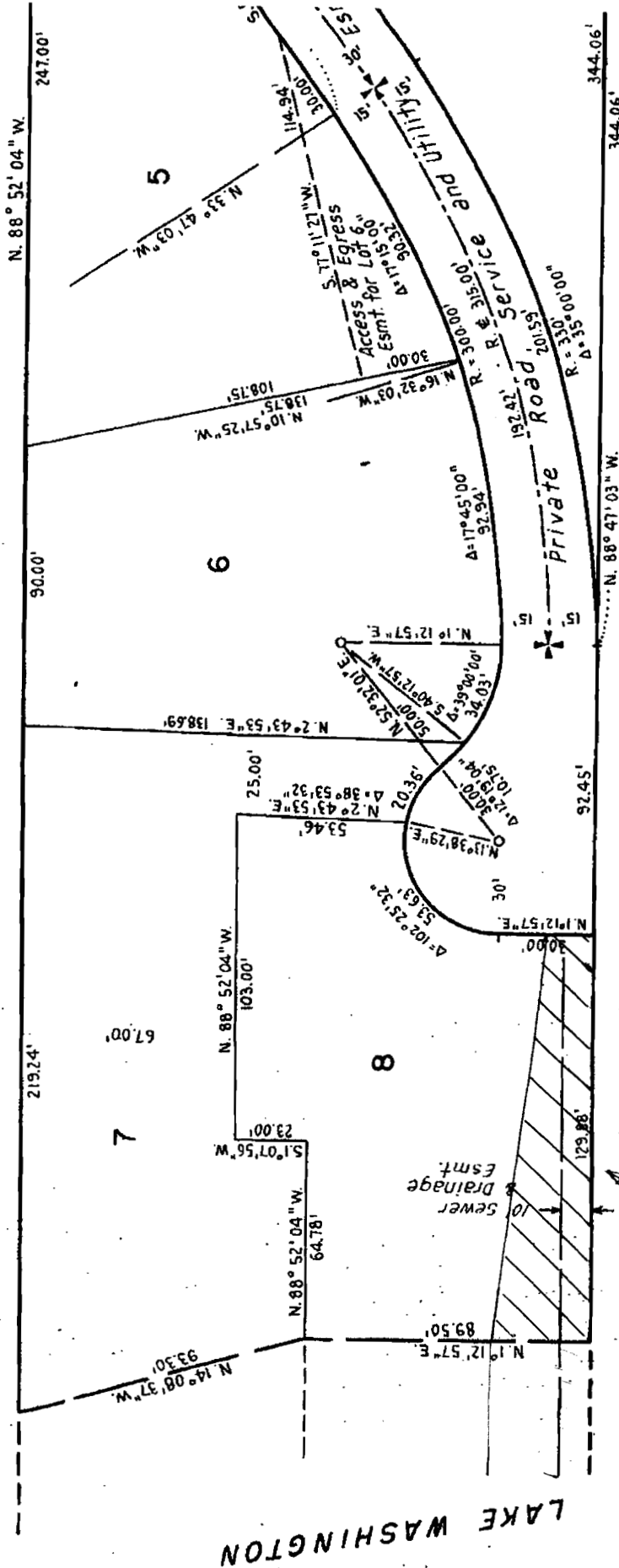
20 Presented by:

21 

22 CHARLES E. PEERY of  
23 PRESTON, THORGRIMSON, HOROWITZ,  
24 STARIN & ELLIS  
25 Attorneys for Plaintiffs

26 *Approved by the  
27 Honorable Helen  
28 City for Dept.*

UNI



UNPLATTED

As described in "Finding of Fact" but less acreage in "Judgment & Verdict"

**DESCRIPTION**

This plat of "LAKE SHORES" embraces the following described property: Beginning at a point on the east line of Government Lot 7, Section 24, Township 24 north, range 4 east, W. M., in King County, Washington, distant north 0° 01' 59" east 180.98 feet from the southeast corner of said Government Lot 7, said point of beginning being marked by an iron pipe set by Gardner, Gardner, and Fischer, Inc., Engineers, and running thence north 0° 01' 59" east 180.98 feet to an iron pipe set by said engineers; thence south 89° 51' 29" west 1040 feet, more or less, to the shore line of Lake Washington; thence southerly along the said shore line 180.5 feet, more or less, to a point which bears

LAKE WASHINGTON

## Council attempts settlement of City's 'stickiest wicket'

On the record, the City Council upheld appeal by J.D. Black, et al, against denial by the Planning Commission of his application for a variance.

But the case could be the most complex on the city's records.

Black and two other property owners of the Lake Shores Addition, Robert Roman and Donald Sekits, had applied for a variance from a required 50 feet to 30 feet for a proposed semi-private waterfront recreation area.

Generally, city policy is to discourage too many families from using a single waterfront tract, although the concept of community waterfront is generally encouraged. Ordinance No. 215, passed in March of 1969, requires for semi-private waterfront recreational tracts 30 feet for the first two families, and an additional 5 feet for each additional family from 3 through 10.

**BACKGROUND OF** Black's case antedated Ordinance 215.

The Lake Shores plat was approved by the then-new City of Mercer Island Planning Commission and City Council in May, 1961. It included lots 7 and 8 on the waterfront at about the 500 level halfway down Mercer Island's west shore, and lots 1 through 6 upland. Zoning is R15, requiring 15,000 square feet per lot.

Afterwards, developers Mays and Kenworthy filed with King County, but not with the City of Mercer Island, an easement with 20 feet of water frontage across the southerly end of lot 8, for all six upland lots. According to the zoning, this made lot 8 nonconforming, as minus the easement it did not have 15,000 square feet.

Today's city officials do not think that city planning authorities knew of the easement until 1969, when the owners of lots 2, 5 and 6 applied to the city for permit to build a dock on the easement.

Mrs. Enid Burke, who by then owned lot 8, contacted city planners and was told that the easement must be illegal.

The city denied the building permit

**THE OWNERS OF LOTS 2, 5 and 6** . . . Robert Nixon, Gaylord Duren, and John Corriveau . . . then brought suit in King County Superior

Court against Mrs. Burke and the developers.

The developers still owned upland lots 1 and 3, but Roman had by then purchased lot 4. Roman did not join in the suit, and Mays and Kenworthy declined to participate as plaintiffs and then were sued as defendants.

Judge Robert Utter in June, 1969, ruled that as between the six upland lot-owners, each had a valid one-sixth easement across lot 8.

Utter also said, however, that he was commenting on relationship between the six parties and the owner of lot 8, and not upon the right of government to regulate by zoning the use of the easement.

**NIXON, DUREN AND CORRIVEAU** then applied again to the city for a permit to build a dock on the easement. Permit was denied, and appeals to the Planning Commission and thence to the Council were both denied on the basis that the property involved could not meet the frontage requirements of the zoning code for a non-commercial waterfront recreational area.

Nixon, Duren and Corriveau then took their appeal to Superior Court, where Judge Warren Chan in January, 1970, overturned the city. Judge Chan ruled that the three were private parties with the right to build and use a dock, and such development did not constitute a "non-commercial waterfront recreation area" which Chan interpreted as being owned by businesses or institutions.

The three built a dock on the easement.

**IN MARCH, 1969**, the city passed Ordinance 215, which regulates multi-family use of a waterfront tract.

Since then, the city's position has been that while the owners of lots 2, 5 and 6 had applied for a building permit before Ordinance 215 was passed, the restrictions did not apply to them.

The owners of lots 1, 3, and 4, however, had not been participants.

Therefore, their application

for recreational use of the easement has been denied.

As City Attorney Ron Dickinson put it, the owners of lots 1, 3 and 4 "are entitled to be there but not to enjoy themselves!"

While no opposition as such has been voiced by the dock's owners, Dickinson said the general attitude does not appear to be one of "welcome."

Corriveau indicated Monday night he would welcome clarification of the status, however.

Mrs. Betty Moscafer, who lives on lot 7 just north of Mrs. Burke, told the Council to "bite the bullet."

**THE TONE OF** the unanimous Council decision was set by Aubrey Davis, Jr., who said he thought that the planning staff and planning commission "probably are technically right, but the letter of the law puts us in a situation that is ridiculous."

"The easement was there before Ordinance 215 was passed. Common sense should apply. I support the variance application."

Davis cautioned, however, that "our action in upholding the variance must not be construed to rule on use of the dock. That is for the six lot-owners to settle among themselves."

Councilmembers agreed unanimously. Present besides Davis were Mayor Ben Werner and Jim Radcliffe, Jim Horn, and Grant Beck.

Werner said the Lake Shores problem was one of "the stickiest wickets" he faced when he came on the Council. Werner was the single dissenting vote in the 6-1 decision which in 1969 denied the dock permit.

The controversy might not be over. Dickinson said that the appellants still have to go through the planning commission to obtain right to use the easement as a non-commercial recreation area.

And Dickinson has received indications that an intra-party settlement on use of the dock might not be easily achieved.



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FILED

JUN 27 1 32 PM '69

WALTER W. BENSCHLER  
CLERK KING COUNTY  
WASH.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

GAYLORD DUREN and VIRGINIA L. )  
DUREN, his wife; JACK P. )  
KORNFELD and MARION E. KORNFELD, )  
his wife; ROBERT J. NIXON and )  
MARYALICE NIXON, his wife, )  
Plaintiffs, )  
vs. )  
ENID BURKE, a single woman, )  
Defendant, )  
and )  
DEAN E. KENWORTHY and GENEVA )  
W. KENWORTHY, his wife, and )  
ROY A. MAYS, and MARJORIE M. )  
MAYS, his wife, )  
Additional Defendants. )

NO. 680150  
JUDGMENT AND DECREE

This matter having come on to be heard before the under-  
signed Judge of the above-entitled court on the 18th, 19th and 31st  
days of March, 1969, the court sitting without a jury, and the  
plaintiffs, Gaylord Duren and Virginia L. Duren, his wife; Jack P.  
Kornfeld and Marion E. Kornfeld, his wife; Robert J. Nixon and  
Maryalice Nixon, his wife, being represented by their attorneys  
Charles E. Peery and Larry M. Carter and the defendant, Enid Burke,  
a single woman, being represented by her attorney, Thomas G. Holcomb  
and the additional defendants, Dean E. Kenworthy and Geneva W.  
Kenworthy, his wife, and Roy A. Mays and Marjorie M. Mays, his  
wife, being represented by their attorneys, Martin Godsil, and

PAGE 1

JUDGMENT AND DECREE

PRESTON, THORGRIMSON, HODGWITZ,  
STARIN & ELLIS  
2000 1<sup>st</sup> B.M. BUILDING  
SEATTLE, WASHINGTON 98101  
MAIN 3-7680

RECORDED FILE

Ex. 18

1 the court having heretofore made and entered its Findings of Fact  
2 and Conclusions of Law and being fully advised in the premises,  
3 NOW THEREFORE,

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

5 I

6 Plaintiffs and additional defendants, as owners of Lots 1  
7 through 6, Lake Shores, according to plat recorded in Volume 66  
8 of plats, Page 84, in King County, Washington, each have a valid  
9 and continuing easement for access to Lake Washington from the  
10 common roadway over and across that portion of Lot 8 in said  
11 plat, owned by defendants, described as follows:

12 Lot 8, Lake Shores, according to plat recorded in  
13 Volume 66 of plats, Page 84, in King County, Washington;  
14 TOGETHER WITH the second class shorelands situate in  
15 front of, adjacent to or abutting upon said Lot 8.

16 That the said easement also runs over and across that por-  
17 tion of the second class shorelands, situate in front of, adjacent  
18 to or abutting upon the southerly 30 feet of said Lot 8;

19 That said easement is in general and unrestricted terms and  
20 runs with the land.

21 II.

22 That the plaintiffs and the additional defendants, or  
23 their successors, as owners of Lots 1 through 6, their families and  
24 guests in reasonable numbers, have a right to free and unobstructed  
25 access to and across the easement over Lot 8 and the shorelands,  
26 the defendant Burke's property, from the common roadway to Lake  
27 Washington for the purposes of engaging in all normal and usual  
28 waterfront and water-oriented uses and activities; that those uses  
29 and activities include, but are not limited to, the following:  
30 swimming; diving; sunbathing; picnicking; water skiing; boating;  
31 launching and retrieving of boats; installation and maintenance of  
32 a permanent dock or pier on pilings; moorage of boats at the dock  
or pier or at mooring buoys located in waters over the shorelands

1 or adjacent water; anchoring of boats over the shorelands or in  
2 adjacent waters.

3 III.

4 That the plaintiffs and additional defendants, or their  
5 successors, as owners of Lots 1 through 6, are entitled to build,  
6 install and maintain upon the easement area a permanent dock or  
7 pier on pilings of a length of 100 feet or a length equal to the  
8 docks or piers upon the adjacent properties in the general area  
9 surrounding the easement.

10 IV.

11 That the plaintiffs and additional defendants, and their  
12 successors, as owners of Lots 1 through 6, have the right to  
13 jointly determine and control the location, size, nature, construc-  
14 tion and maintenance of the access to and way across the easement  
15 area from the common roadway to the waters of Lake Washington  
16 without control or interference by the defendant or her successors.

17 V.

18 That each of the parties hereto and their successors, as  
19 owners of Lots 1 through 6 and Lot 8, have the right to construct,  
20 place and maintain moveable storage lockers or sheds upon the  
21 easement area, for the storage of light gear and equipment; that  
22 one such storage locker or shed should be allowed for each lot  
23 owner of Lots 1 through 6 and Lot 8; that each such locker or shed  
24 should be installed by and at the expense of the individual lot  
25 owner; that each such locker or shed should be of a reasonable  
26 and uniform size and appearance and constructed in accordance with  
27 the plans and specifications attached to the Findings and Conclusions  
28 herein.

29 VI.

30 That the uses of the present floating dock or of any future  
31 dock to be constructed upon the said easement shall be determined  
32 solely by the owners of Lots 1 through 6, collectively, without  
control or interference by the defendant, or her successors; that

1 the use of the said dock and easement shall, however, be limited  
2 to the owners of Lots 1 through 6, their families and guests in  
3 reasonable numbers; that said use shall be without interference  
4 with defendant Burke's use of her property.

5 VII.

6 That the owners of Lots 1 through 6 shall be allowed to  
7 install and maintain permanent mooring buoys upon the shorelands  
8 or in the waters adjacent thereto; that the use of said permanent  
9 mooring buoys shall be limited to the owners of Lots 1 through 6,  
10 their families and guests.

11 VIII.

12 That the defendant, Enid Burke, is hereby enjoined from  
13 preventing, obstructing or interfering in any manner with free  
14 access to, passage across, or use of the said easement over and  
15 across Lot 8, and the shorelands by the plaintiffs and additional  
16 defendants, and their successors, as owners of Lots 1 through 6,  
17 and their families and friends;

18 That the defendant, Enid Burke, is further enjoined from  
19 using the said easement area and the dock or pier or other  
20 facilities thereon for herself, her family and guests.

21 IX.

22 That the Deed of Thomas Burke and Enid Burke, his wife and  
23 defendant herein, is hereby ordered to be reformed to include the  
24 shorelands in front of Lot 8 of Lake Shores plat, subject to the  
25 easement, as set forth below, in favor of Lots 1, 2, 3, 4, 5 and 6  
26 of said Lake Shores plat.

27 TOGETHER WITH an easement for access over that  
28 portion of the second class shorelands, situate  
29 in front of, adjacent to or abutting upon the  
30 southerly 30 feet of said Lot 8; said easement  
31 filed and recorded under King County Auditor's  
32 Receiving Nos. 5300744 and 5300743.

33 That plaintiffs, GAYLORD DUREN and VIRGINIA L. DUREN, his  
34 wife; JACK P. KORNFELD and MARION E. KORNFELD, his wife; ROBERT J.  
35 NIXON and MARYALICE NIXON, his wife, be and they are hereby awarded

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Judgment against the defendant, Enid Burke, for their taxable costs incurred herein.

DONE IN OPEN COURT this 27<sup>th</sup> day of June, 1969.

*[Signature]*  
J U D G E

Presented by:

*Charles E. Peery*  
CHARLES E. PEERY of  
PRESTON, THORGRIMSON, HOROWITZ,  
STARIN & ELLIS  
Attorneys for Plaintiffs

*Attorney with form:  
Shannon & Telebank  
Atty for def.*



# City of Mercer Island



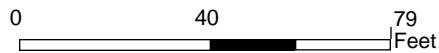
**Legend**

- Address
- Parcels
- Major Roads
- Street Centerline
- Parks

March 1978

- High : 254
- Low : 0

**Notes**



1 inch = 79.338843 feet



Disclaimer: These maps were developed by the City of Mercer Island and are intended to be a general purpose digital reference tool. These maps are not an accepted legal instrument for describing, establishing, recording or maintaining descriptions for property concerns or boundaries. The City makes no representation or warranty with respect to the accuracy or currency of these data sets, especially in regard to labeling of surveyed dimensions, or agreement with official sources such as records of survey, or mapped locations of features.

**CITY OF MERCER ISLAND  
COMMUNITY PLANNING & DEVELOPMENT**

9611 SE 36TH STREET | MERCER ISLAND, WA 98040  
PHONE: 206.275.7605 | [www.mercergov.org](http://www.mercergov.org)



CITY USE ONLY	
Date Received	
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**ENVIRONMENTAL CHECKLIST**

**PURPOSE OF CHECKLIST**

The State Environmental Policy Act (SEPA), chapter 43.21C RCW, requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. An environmental impact statement (EIS) must be prepared for all proposals with probable significant adverse impacts on the quality of the environment. The purpose of this checklist is to provide information to help you and the agency identify impacts from your proposal (and to reduce or avoid impacts from the proposal, if it can be done) and to help the agency decide whether an EIS is required.

**PRE-APPLICATION MEETING**

A pre-application meeting is used to determine whether a land use project is ready for review, to review the land use application process, and to provide an opportunity for initial feedback on a proposed application. Some land use applications require a pre-application – in particular: short and long subdivisions, lot line revisions, shoreline permits, variances, and critical area determinations. The City strongly recommends that all land use applications use the pre-application process to allow for feedback by City staff.

**Please note:** pre-application meetings are held on Tuesdays, by appointment. To schedule a meeting, submit the meeting request form and the pre-application meeting fee (see fee schedule). Meetings must be scheduled at least one week in advance. Applicants are required to upload a project narrative, a list of questions/discussion points, and preliminary plans to the Mercer Island File Transfer Site one week ahead of the scheduled meeting date.

**SUBMITTAL REQUIREMENTS**

In addition to the items listed below, the code official may require the submission of any documentation reasonably necessary for review and approval of the land use application. An applicant for a land use approval and/or development proposal shall demonstrate that the proposed development complies with the applicable regulations and decision criteria.

- A. **Completed pre-application.**
- B. **Development Application Sheet.** Application form must be fully filled out and signed.
- C. **Development Plan Set.** Please refer to the Land Use Application- Plan Set Guide in preparing plans.
- D. **Title Report.** Less than 30 days old.
- E. **SEPA checklist.**

**INSTRUCTIONS FOR APPLICANTS**

This environmental checklist asks you to describe some basic information about your proposal. Governmental agencies use this checklist to determine whether the environmental impacts of your proposal are significant, requiring preparation of an EIS. Answer the questions briefly, with the most precise information known, or give the best description you can.

You must answer each question accurately and carefully, to the best of your knowledge. In most cases, you should be able to answer the questions from your own observations or project plans without the need to hire experts. If you really do not know the answer, or if a question does not apply to your proposal, write "do not know" or "does not apply." Complete answers to the questions now may avoid unnecessary delays later. Some questions ask about governmental regulations, such as zoning, shoreline, and landmark designations. Answer these questions if you can. If you have problems, the governmental agencies can assist you. The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

**USE OF CHECKLIST FOR NONPROJECT PROPOSALS**

For nonproject proposals complete this checklist and the supplemental sheet for nonproject actions (Part D). The lead agency may exclude any question for the environmental elements (Part B) which they determine do not contribute meaningfully to the analysis of the proposal. For nonproject actions, the references in the checklist to the words "project," "applicant," and "property or site" should be read as "proposal," "proposer," and "affected geographic area," respectively.

**A. BACKGROUND**

1. Name of proposed project, if applicable:

Fallquist Community Dock Extension

2. Name of applicant:

Richard Fallquist

3. Address and phone number of applicant and contact person:

5061 84th Ave SE	206-817-1872	203 N 36th St. Suite 201	206-706-3937
Mercer Island, WA 98040		Seattle, WA 98103	

4. Date checklist prepared:

3/30/2020

5. Agency requesting checklist:

City of Mercer Island

6. Proposed timing or schedule (including phasing, if applicable):

Summer 2020



7. Do you have any plans for future additions, expansions, or further activity related to or connected with this proposal? If yes, explain:

No

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal:

No Net Loss Report for Mercer Island

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain:

None Known

10. List any government approvals or permits that will be needed for your proposal, if known:

Shoreline Substantial Development, Building Permit, HPA from WDFW, and LOP from Army Corps.

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

Extend the existing pier 31'11" and add a "T" to the end of the pier.

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

5067 84th Ave SE

Section: NE 1/4 24

Mercer Island, WA 98040

Township: 24 N

Range: 4 E

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**B. ENVIRONMENTAL ELEMENTS**

**1. Earth**

a. General description of the site (check one):

Flat  Rolling  Hilly  Steep slopes  Mountainous  Other

b. What is the steepest slope on the site (approximate percent slope)?

Approximately 20%

c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any agricultural land of long-term commercial significance and whether the proposal results in removing any of these soils.

Silt, sand, and gravel.

d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.

None know.

e. Describe the purpose, type, total area, and approximate quantities and total affected area of any filling, excavation, and grading proposed. Indicate source of fill.

Not applicable.

f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.

No

g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?

No change.

h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

None

**2. Air**

---

a. What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, and industrial wood smoke) during construction, operation, and maintenance when the project is completed? If any, generally describe and give approximate quantities if known.

Low levels of emissions from construction.

---

---

b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.

None known.

---

---

c. Proposed measures to reduce or control emissions or other impacts to air, if any:

None

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---

### 3. Water

a. Surface:

i. Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.

Yes, Lake Washington

---

---

ii. Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.

Yes, work will occur in Lake Washington.

---

---

iii. Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.

None

---

---

iv. Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.

No

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v. Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.

No

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- vi. Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.

No

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b. Ground

- i. Will groundwater be withdrawn from a well for drinking water or other purposes? If so, give a general description of the well, proposed uses and approximate quantities withdrawn from the well? Will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known.

No

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- ii. Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, [containing the following chemicals...]; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

None

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c. Water runoff (including stormwater):

- i. Describe the source of runoff (including stormwater) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.

No change to water runoff

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- ii. Could waste materials enter ground or surface waters? If so, generally describe.

Construction will occur on the lake so debris may enter the water.

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- d. Proposed measures to reduce or control surface, ground, runoff water, and drainage pattern impacts, if any:

A floating containment boom will be used to contain any debris that enters the water.

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#### 4. Plants

- a. Check types of vegetation found on the site
- Deciduous tree: Alder, Maple, Aspen, other
  - Evergreen tree: Fir, Cedar, Pine, other
  - Shrubs
  - Grass

- Pasture
- Crop or grain
- Wet soil plants: Cattail, buttercup, bulrush, skunk cabbage, other
- Water plants: Water lily, eelgrass, milfoil, other
- Other types of vegetation

b. What kind and amount of vegetation will be removed or altered?

None

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c. List threatened or endangered species known to be on or near the site.

None known.

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d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

Native shoreline vegetation will be planting per the planting plan.

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e. List all noxious weeds and invasive species known to be on or near the site.

Eurasian milfoil.

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## 5. Animals

a. State any birds and animals which have been observed on or near the site or are known to be on or near the site. Examples include:

Birds: hawk, heron, eagle, songbirds, other:

Mammals: deer, bear, elk, beaver, other:

Fish: bass, salmon, trout, herring, shellfish, other:

Bald eagle, blue heron, sockeye salmon, chinook salmon, coho salmon, and steelhead.

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b. List any threatened or endangered species known to be on or near the site.

Bald eagle, blue heron, sockeye salmon, chinook salmon, coho salmon, and steelhead.

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c. Is the site part of a migration route? If so, explain.

Yes, salmon migrate through Lake Washington.

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d. Proposed measure to preserve or enhance wildlife, if any:

Native shoreline vegetation will be planted.

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e. List any invasive animal species known to be on or near the site.

None known.

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**6. Energy and natural resources**

a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

None

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b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.

No

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c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:

None

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**7. Environmental health**

a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste that could occur as a result of this proposal? If so, describe.

No

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i. Describe any known or possible contamination at the site from present or past uses.

None known

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ii. Describe existing hazardous chemicals/conditions that might affect project development and design. This includes underground hazardous liquid and gas transmission pipelines located within the project area and in the vicinity.

None known

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iii. Describe any toxic or hazardous chemicals that might be stored, used, or produced during the project's development or construction, or at any time during the operating life of the project.

None known

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iv. Describe special emergency services that might be required.  
None anticipated

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v. Proposed measures to reduce or control environmental health hazards, if any:  
None

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b. Noise

i. What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?  
None

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ii. What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)?  
Indicate what hours noise would come from the site.

Elevated levels of noise from construction.

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iii. Proposed measures to reduce or control noise impacts, if any:  
Construction will only take place during allowed work hours.

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**8. Land and shoreline use**

a. What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe.  
Single family residential.

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b. Has the project site been used as working farmlands or working forest lands? If so, describe. How much agricultural or forest land of long-term commercial significance will be converted to other uses as a result of the proposal, if any? If resource lands have not been designated, how many acres in farmland or forest land tax status will be converted to nonfarm or nonforest use?

No

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c. Describe any structures on the site.  
Single family house.

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d. Will any structures be demolished? If so, what?

No

e. What is the current zoning classification of the site?

R - 15

f. What is the current comprehensive plan designation of the site?

R - 15

g. If applicable, what is the current shoreline master program designation of the site?

Urban Residential

h. Has any part of the site been classified as an "environmentally sensitive" area? If so, specify.

Yes, Lake Washington

i. Approximately how many people would reside or work in the completed project?

Not applicable

j. Approximately how many people would the completed project displace?

None

k. Proposed measures to avoid or reduce displacement impacts, if any:

None

l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

None

## 9. Housing

a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.

Not applicable



- b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.

None

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- c. Proposed measures to reduce or control housing impacts, if any:

None

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#### 10. Aesthetics

- a. What is the tallest height of any proposed structure(s), not including antennas? What is the principal exterior material(s) proposed?

Approximately 2' above ordinary high water.

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- b. What views in the immediate vicinity would be altered or obstructed?

None

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- c. Proposed measures to reduce or control aesthetics impacts, if any:

None

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#### 11. Light and glare

- a. What type of light or glare will the proposal produce? What time of day would it mainly occur?

None

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- b. Could light or glare from the finished project be a safety hazard or interfere with views?

No

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- c. What existing off-site sources of light or glare may affect your proposal?

None

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- d. Proposed measures to reduce or control light and glare impacts, if any:

None

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#### 12. Recreation

- a. What designated and informal recreational opportunities are in the immediate vicinity?

Boating and fishing.

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b. Would the proposed project displace any existing recreational uses? If so, describe.

No

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c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

None

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**13. Historic and cultural preservation**

a. Are there any buildings, structures, or sites, located on or near the site that are over 45 years old listed in or eligible for listing in national, state, or local preservation registers? If so, specifically describe.

No

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b. Are there any landmarks, features, or other evidence of Indian or historic use or occupation? This may include human burials or old cemeteries. Are there any material evidence, artifacts, or areas of cultural importance on or near the site? Please list any professional studies conducted at the site to identify such resources.

None known

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c. Describe the methods used to assess the potential impacts to cultural and historic resources on or near the project site. Examples include consultation with tribes and the department of archeology and historic preservation, archaeological surveys, historic maps, GIS data, etc.

None

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d. Proposed measures to avoid, minimize, or compensate for loss, changes to, and disturbance to resources. Please include plans for the above and any permits that may be required.

None

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**14. Transportation**

a. Identify public streets and highways serving the site or affected geographic area and describe proposed access to the existing street system. Show on site plans, if any.

SE 51st St.

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- b. Is the site or affected geographic area currently served by public transit? If so, generally describe. If not, what is the approximate distance to the nearest transit stop?

Yes, approximately 1/4 mile.

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- c. How many additional parking spaces would the completed project or nonproject proposal have? How many would the project or proposal eliminate?

No change

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- d. Will the proposal require any new or improvements to existing roads, streets, pedestrian, bicycle or state transportation facilities, not including driveways? If so, generally describe (indicate whether public or private).

No

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- e. Will the project or proposal use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

No

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- f. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks (such as commercial and non-passenger vehicles). What data or transportation models were used to make these estimates?

No Change

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- g. Will the proposal interfere with, affect or be affected by the movement of agricultural and forest products on roads or streets in the area? If so, generally describe.

No

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- h. Proposed measures to reduce or control transportation impacts, if any:

None

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## 15. Public services

- a. Would the project result in an increased need for public services (for example; fire protection, police protection, health care, schools, other)? If so, generally describe.

No

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- b. Proposed measures to reduce or control direct impacts on public services, if any.

None  
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\_\_\_\_\_

**16. Utilities**

a. Check utilities currently available at the site:

- |   |  |   |  |
|---|--|---|--|
| Electricity <input checked="" type="checkbox"/> | Natural Gas <input checked="" type="checkbox"/>    | Water <input checked="" type="checkbox"/> | Refuse Service <input checked="" type="checkbox"/> |
| Telephone <input checked="" type="checkbox"/>   | Sanitary sewer <input checked="" type="checkbox"/> | Septic system <input type="checkbox"/>    | Other <input type="checkbox"/>                     |

b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

None  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**C. SIGNATURE**

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the answers to the attached SEPA Checklist are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: \_\_\_\_\_

Date Submitted: 4/13/2019

**SEPA RULES**

**SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS**

(do not use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1. How would the proposal be likely to increase discharge to water; emissions to air; productions, storage, or release of toxic or hazardous substances; or production of noise?

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Proposed measures to avoid or reduce increases are:

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2. How would the proposal be likely to affect plants, animals, fish, or marine life?

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Proposed measures to protect or conserve plants, animals, fish, or marine life are:

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3. How would the proposal be likely to deplete energy or natural resources?

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Proposed measures to protect or conserve energy and natural resources are:

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4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?

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Proposed measures to protect such resources or to avoid or reduce impacts are:

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5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

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Proposed measures to avoid or reduce shoreline and land use impacts are:

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6. How would the proposal be likely to increase demands on transportation or public services and utilities?

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Proposed measures to reduce or respond to such demand(s) are:

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7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

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[Statutory Authority: RCW [43.21C.110](#), WSR 16-13-012 (Order 15-09), § 197-11-960, filed 6/2/16, effective 7/3/16. Statutory Authority: RCW [43.21C.110](#) and [43.21C.100](#) [43.21C.170]. WSR 14-09-026 (Order 13-01), § 197-11-960, filed 4/9/14, effective 5/10/14. Statutory Authority: RCW [43.21C.110](#), WSR 13-02-065 (Order 12-01), § 197-11-960, filed 12/28/12, effective 1/28/13; WSR 84-05-020 (Order DE 83-39), § 197-11-960, filed 2/10/84, effective 4/4/84.]



## DETERMINATION OF NON-SIGNIFICANCE (DNS)

Application No.: **SEP18-016**

Description of proposal: **Review under the State Environmental Policy Act (SEPA) for the repair and expansion of an existing shared dock. The scope of work includes replacing existing solid wood decking with grated decking and driving six (6) new wood piles and constructing a 31' 11" long by 6' extension with a grated deck. The proposal also includes a shoreline planting plan.**

Proponent: **Evan Wehr (Ecco Design Inc.)**

Owner: **Richard Fallquist (Lakeshores Group)**

Location of proposal: **Southern dock at 5067 84<sup>th</sup> Ave SE, Mercer Island WA 98040; Identified by King County Assessor tax parcel number 407600-0080**

Lead agency: **City of Mercer Island**

Project Documents: **Please follow this file path to access the associated documents for this project: <https://mieplan.mercergov.org/public/SHL18-017> and [SEP18-016](https://mieplan.mercergov.org/public/SEP18-016)**

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist. This information is available to the public on request.

\_\_\_\_\_ There is no comment period for this DNS.

✓  
\_\_\_\_\_ This DNS is issued after using the optional DNS process in WAC 197-11-355. There is no further comment period on the DNS.

\_\_\_\_\_ This DNS is issued under WAC 197-11-340(2); the lead agency will not act on this proposal for 14 days from the date below. Comments must be submitted by N/A at 5:00pm.

Responsible Official: Andrew Leon, Planner  
City of Mercer Island  
9611 SE 36<sup>th</sup> Street  
Mercer Island, WA 98040  
Phone: (206) 275-7720  
Email: [andrew.leon@mercergov.org](mailto:andrew.leon@mercergov.org)

Date: **September 21, 2020**

Signature:

### APPEAL INFORMATION

This decision to issue a Determination of Non-significance (DNS) rather than to require an EIS may be appealed pursuant to Section 19.21 of the Mercer Island Unified Land Development Code, Environmental procedures.



Any party of record may appeal this determination to the City Clerk at 9611 SE 36<sup>th</sup> Street Mercer Island, WA 98040 no later than **5:00 PM on Monday, October 5, 2020** by filing a timely and complete appeal application and paying the appeal fee. You should be prepared to make specific factual objections. Contact the City Clerk to read or ask about the procedures for SEPA appeals. To reverse, modify or remand this decision, the appeal hearing body must find that there has been substantial error, the proceedings were materially affected by irregularities in procedure, the decision was unsupported by material and substantial evidence in view of the entire record, or the decision is in conflict with the city's applicable decision criteria.

There is no agency appeal.





# HYDRAULIC PROJECT APPROVAL

Washington Department of  
Fish & Wildlife  
PO Box 43234  
Olympia, WA 98504-3234  
(360) 902-2200

Issued Date: June 24, 2021  
Project End Date: June 23, 2026

Permit Number: 2021-4-425+01  
FPA/Public Notice Number: N/A  
Application ID: 25288

PERMITTEE	AUTHORIZED AGENT OR CONTRACTOR
Lakeshores Group Community Pier ATTENTION: Richard Fallquist 5061 84th Ave NE Mercer Island, WA 98040	ecco design inc. ATTENTION: Evan Wehr 7413 Greenwood Ave N Seattle, WA 98103-8610

**Project Name:** Lakeshores Group Community Pier  
**Project Description:** Extend an existing community pier by 31'-11" and install a 15' by 6' T at end. Widen an existing pier walkway for ADA access.

## PROVISIONS

### TIMING - PLANS - INVASIVE SPECIES CONTROL

- 1. TIMING LIMITATION:** You may begin the project immediately and you must complete the project by June 23rd, 2026, provided all work below the OHWM occur only between July 16th and December 31st.
- 2. APPROVED PLANS:** You must accomplish the work per plans and specifications submitted with the application and approved by the Washington Department of Fish and Wildlife, on site during all phases of the project construction.
- 3. INVASIVE SPECIES CONTROL:** Follow Method 1 for low risk locations (i.e. clean/drain/dry). Thoroughly remove visible dirt and debris from all equipment and gear (including drive mechanisms, wheels, tires, tracks, buckets, and undercarriage) before arriving and leaving the job site to prevent the transport and introduction of invasive species. For contaminated or high risk sites please refer to the Method 2 Decontamination protocol. Properly dispose of any water and chemicals used to clean gear and equipment. You can find this and additional information in the Washington Department of Fish and Wildlife's "Invasive Species Management Protocols", available online at <https://wdfw.wa.gov/species-habitats/invasive/prevention>.

### NOTIFICATION REQUIREMENTS

- 4. NOTIFICATION:** You, your agent, or contractor must contact the Washington Department of Fish and Wildlife by e-mail at [HPAapplications@dfw.wa.gov](mailto:HPAapplications@dfw.wa.gov); mail to Post Office Box 43234, Olympia, Washington 98504-3234; or fax to (360) 902-2946 at least three business days before starting work. The notification must include the permittee's name, project location, starting date, and the Hydraulic Project Approval permit number.
- 5. FISH KILL/ WATER QUALITY PROBLEM NOTIFICATION:** If a fish kill occurs or fish are observed in distress at the job site, immediately stop all activities causing harm. Immediately notify the Washington Department of Fish and Wildlife of the problem. If the likely cause of the fish kill or fish distress is related to water quality, also notify the Washington Military Department Emergency Management Division at 1-800-258-5990. Activities related to the fish kill or fish distress must not resume until the Washington Department of Fish and Wildlife gives approval. The Washington Department of Fish and Wildlife may require additional measures to mitigate impacts.

### STAGING, JOB SITE ACCESS, AND EQUIPMENT

- 6. Establish staging areas** (used for equipment storage, vehicle storage, fueling, servicing, and hazardous material storage) in a location and manner that will prevent contaminants such as petroleum products, hydraulic fluid, fresh concrete, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials from entering waters of the state.



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7. Use existing roadways or travel paths.
8. Clearly mark boundaries to establish the limit of work associated with site access and construction.
9. Retain all natural habitat features on the bed or banks including large woody material and boulders. You may move these natural habitat features during construction but you must place them near the preproject location before leaving the job site.
10. Confine the use of equipment to the specific access and work corridor shown in the approved plans.
11. Check equipment daily for leaks and complete any required repairs in an upland location before using the equipment in or near the water.
12. Use environmentally acceptable lubricants composed of biodegradable base oils such as vegetable oils, synthetic esters, and polyalkylene glycols in equipment operated in or near the water.

## CONSTRUCTION-RELATED SEDIMENT, EROSION AND POLLUTION CONTAINMENT

13. Stop all hydraulic project activities except those needed to control erosion and siltation, if flow conditions arise that will result in erosion or siltation of waters of the state.
14. Prevent project contaminants, such as petroleum products, hydraulic fluid, fresh concrete, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials, from entering or leaching into waters of the state.
15. Use tarps or other methods to prevent treated wood, sawdust, trimmings, drill shavings and other debris from contacting the bed or waters of the state.
16. Deposit waste material from the project, such as construction debris, silt, excess dirt, or overburden, in an upland area above the limits of anticipated floodwater unless the material is approved by the Washington Department of Fish and Wildlife for reuse in the project.
17. Deposit all trash from the project at an appropriate upland disposal location.

## CONSTRUCTION MATERIALS

18. Store all construction and deconstruction material in a location and manner that will prevent contaminants such as petroleum products, hydraulic fluid, fresh cement, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials from entering waters of the state.
19. Do not stockpile construction material waterward of the ordinary high water line.
20. Do not use wood treated with oil-type preservatives (creosote, pentachlorophenol) in any hydraulic project. You may use wood treated with waterborne preservatives (ACZA, ACQ) provided the wood is approved by the Western Wood Preservers Institute for use in the aquatic environment. Any use of treated wood in the aquatic environment must follow guidelines and best management practices available at [www.wwpinstitute.org](http://www.wwpinstitute.org).
21. You may use products made from recycled tires that are specifically manufactured for use in the aquatic environment.

## PIER, RAMP, AND FLOAT

22. Remove the existing pier, ramp and float and associated materials from waters of the state. Do not relocate the structure within waters of the state without written authorization from Washington Department of Fish and Wildlife.
23. Prior to construction, reestablish the pier, ramp, and float or dock structure(s) centerline using the same methodology used to establish the centerline on the construction drawings to avoid shading native aquatic vegetation.
24. The pier, ramp, and float or dock structure must not exceed a total length of 150 feet.
25. The structure must not exceed the dimensions shown in the approved plans.
26. The structure must include functional grating. The grating material's open area must be at least forty percent.



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27. Do not construct skirting, including batter fencing, around piers, docks or floats.

28. Use of treated wood for decking is not authorized, but may be used for structural elements. Treated wood subject to abrasion by vessels, floats, or other objects must incorporate approved design features such as rub strips to minimize abrasion of the wood.

### PILE REMOVAL, DRIVING

29. Do not use wood treated with oil-type preservative (creosote, pentachlorophenol) in any hydraulic project. Wood treated with waterborne preservative chemicals (ACZA, ACQ) may be used if approved by the Western Wood Preservers Institute for use in the aquatic environment. Any use of treated wood in the aquatic environment must follow guidelines and best management practices available at [www.wwpinstitute.org](http://www.wwpinstitute.org).

30. Incorporate features, such as steel, plastic or rubber collars, fendering or other systems to prevent or minimize the abrasion of the treated wood by floats, ramps or vessels. Do not use rubber tires for the fender system.

31. Attach rubbing strips made of ultra high molecular weight (UHMW) type plastic, or high density polyethylene (HDPE) type plastic to the replacement fender system. Do not use rubber tires for the fender system.

32. Fit all pilings with devices to prevent perching by fish-eating birds.

33. The use of a vibratory and/or an impact hammer, or a water jet, is authorized for piling installation under this Hydraulic Project Approval, however a vibratory driver is preferred.

34. Sound attenuation methods are required for the driving or proofing of steel piles with an impact hammer below the ordinary high water line. For impact driving of steel piles that exceed the following criteria, a bubble curtain or other Washington Department of Fish and Wildlife approved sound attenuation device must be used. The specific criteria include sound pressure levels of:

- a. Greater than or equal to 206 dB (one micropascal squared per second) peak,
- b. Greater than or equal to 187 dB (one micropascal squared per second) accumulated sound exposure level (SEL) for fish greater than or equal to 2 grams, and
- c. Greater than or equal to 183 dB (one micropascal squared per second) (SEL) for fish less than 2 grams.
- d. Install a bubble curtain around the pile during all driving operations to ensure proper sound attenuation. The bubble curtain must distribute air bubbles around 100 percent of the perimeter of the piling over the full length of the pile in the water column.

35. Use appropriate sound attenuation when driving or proofing steel piling with an impact hammer.

- a. For driving or proofing steel piling, 10 inches in diameter or less, install a 6 inch thick wood block, plastic or rubber between the piling and the impact hammer during impact pile driving operations or install a pile sleeve or bubble curtain around the piling during impact pile driving operations that distributes air bubbles around 100% of the perimeter of the piling over the full depth of the water column.
- b. For driving or proofing steel piling greater than 10 inches in diameter, install a bubble curtain around the pile during piling impact driving operations that distributes air bubbles around 100% of the perimeter of the piling over the full depth of the water column.

36. To avoid attracting fish to artificial light at night, limit impact pile driving to daylight hours whenever feasible.

37. Piling removal:

- a. Vibratory or direct pull extraction is the preferred method of pile removal.
- b. Place the piling on a construction barge or other dry storage site after the piling is removed. The piling must not be shaken, hosed off, left hanging to dry or any other action intended to clean or remove adhering material from the piling near waters of the state.
- c. If a treated wood piling breaks during extraction, remove the stump from the water column by fully extracting. If the stump cannot be fully extracted, remove the remainder of the stump with a clamshell bucket, chain, or similar means, or cut it off three feet below the mudline. Cap all buried cut stumps and fill holes left by piling extraction with clean sediment that matches the native material.
- d. When removing creosote piling, containment booms and absorbent booms (or other oil absorbent fabric) must be



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placed around the perimeter of the work area to capture wood debris, oil, and other materials released into marine waters as a result of construction activities to remove creosote pilings. All debris on the bed and accumulated in containments structures must be collected and disposed upland at an approved disposal site.

e. Submit post-project surveys (e.g., underwater video, photos at low-tide) along transects within the project area to Washington Department of Fish and Wildlife within two weeks of pile removal to verify debris removal.

38. Spliced piles must be the same diameter or smaller than the original piles.

### DEMOBILIZATION AND CLEANUP

39. Do not relocate removed or replaced structures within waters of the state. Remove and dispose of these structures in an upland area above the limits of anticipated floodwater.

40. Restore bed and bank elevations and contours to preproject condition.

41. Seed areas disturbed by construction activities with a native seed mix suitable for the site that has at least one quick-establishing plant species.

42. Replace native riparian zone and aquatic vegetation, and wetland vascular plants (except noxious weeds) damaged or destroyed by construction using a proven methodology.

43. Replant the job site with the plant species composition and planting densities approved by the Washington Department of Fish and Wildlife.

44. Complete replanting of riparian vegetation during the first dormant season (late fall through late winter) after project completion per the approved plan. Maintain plantings for at least three years to ensure at least eighty percent of the plantings survive. Failure to achieve the eighty percent survival in year three will require you to submit a plan with follow-up measures to achieve requirements or reasons to modify requirements.

45. Upon completion of the project, remove all materials or equipment from the site and dispose of all excess spoils and waste materials in an upland area above the limits of anticipated floodwater.

46. Remove temporary erosion and sediment control methods after job site is stabilized or within three months of project completion, whichever is sooner.

LOCATION #1:		Site Name: Lakeshores Group Community Pier 5067 84th Ave SE, Mercer Island, WA 98040				
WORK START:					WORK END:	June 23, 2026
<u>WRIA</u>		<u>Waterbody:</u>			<u>Tributary to:</u>	
08 - Cedar - Sammamish		Lake Washington			Ship Canal	
<u>1/4 SEC:</u>	<u>Section:</u>	<u>Township:</u>	<u>Range:</u>	<u>Latitude:</u>	<u>Longitude:</u>	<u>County:</u>
NE 1/4	24	24 N	04 E	47.5570	-122.2315	King
<u>Location #1 Driving Directions</u>						
See Plans						

APPLY TO ALL HYDRAULIC PROJECT APPROVALS



# HYDRAULIC PROJECT APPROVAL

Washington Department of  
Fish & Wildlife  
PO Box 43234  
Olympia, WA 98504-3234  
(360) 902-2200

Issued Date: June 24, 2021

Permit Number: 2021-4-425+01

Project End Date: June 23, 2026

FPA/Public Notice Number: N/A

Application ID: 25288

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This Hydraulic Project Approval pertains only to those requirements of the Washington State Hydraulic Code, specifically Chapter 77.55 RCW. Additional authorization from other public agencies may be necessary for this project. The person(s) to whom this Hydraulic Project Approval is issued is responsible for applying for and obtaining any additional authorization from other public agencies (local, state and/or federal) that may be necessary for this project.

This Hydraulic Project Approval shall be available on the job site at all times and all its provisions followed by the person(s) to whom this Hydraulic Project Approval is issued and operator(s) performing the work.

This Hydraulic Project Approval does not authorize trespass.

The person(s) to whom this Hydraulic Project Approval is issued and operator(s) performing the work may be held liable for any loss or damage to fish life or fish habitat that results from failure to comply with the provisions of this Hydraulic Project Approval.

Failure to comply with the provisions of this Hydraulic Project Approval could result in civil action against you, including, but not limited to, a stop work order or notice to comply, and/or a gross misdemeanor criminal charge, possibly punishable by fine and/or imprisonment.

All Hydraulic Project Approvals issued under RCW 77.55.021 are subject to additional restrictions, conditions, or revocation if the Department of Fish and Wildlife determines that changed conditions require such action. The person(s) to whom this Hydraulic Project Approval is issued has the right to appeal those decisions. Procedures for filing appeals are listed below.

**MINOR MODIFICATIONS TO THIS HPA:** You may request approval of minor modifications to the required work timing or to the plans and specifications approved in this HPA unless this is a General HPA. If this is a General HPA you must use the Major Modification process described below. Any approved minor modification will require issuance of a letter documenting the approval. A minor modification to the required work timing means any change to the work start or end dates of the current work season to enable project or work phase completion. Minor modifications will be approved only if spawning or incubating fish are not present within the vicinity of the project. You may request subsequent minor modifications to the required work timing. A minor modification of the plans and specifications means any changes in the materials, characteristics or construction of your project that does not alter the project's impact to fish life or habitat and does not require a change in the provisions of the HPA to mitigate the impacts of the modification. If you originally applied for your HPA through the online Aquatic Protection Permitting System (APPS), you may request a minor modification through APPS. A link to APPS is at <http://wdfw.wa.gov/licensing/hpa/>. If you did not use APPS you must submit a written request that clearly indicates you are seeking a minor modification to an existing HPA. Written requests must include the name of the applicant, the name of the authorized agent if one is acting for the applicant, the APP ID number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA, the reason for the requested change, the date of the request, and the requestor's signature. Send by mail to: Washington Department of Fish and Wildlife, PO Box 43234, Olympia, Washington 98504-3234, or by email to [HPAapplications@dfw.wa.gov](mailto:HPAapplications@dfw.wa.gov). You should allow up to 45 days for the department to process your request.



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**MAJOR MODIFICATIONS TO THIS HPA:** You may request approval of major modifications to any aspect of your HPA. Any approved change other than a minor modification to your HPA will require issuance of a new HPA. If you originally applied for your HPA through the online Aquatic Protection Permitting System (APPS), you may request a major modification through APPS. A link to APPS is at <http://wdfw.wa.gov/licensing/hpa/>. If you did not use APPS you must submit a written request that clearly indicates you are requesting a major modification to an existing HPA. Written requests must include the name of the applicant, the name of the authorized agent if one is acting for the applicant, the APP ID number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA, the reason for the requested change, the date of the request, and the requestor's signature. Send your written request by mail to: Washington Department of Fish and Wildlife, PO Box 43234, Olympia, Washington 98504-3234. You may email your request for a major modification to [HPAapplications@dfw.wa.gov](mailto:HPAapplications@dfw.wa.gov). You should allow up to 45 days for the department to process your request.

## APPEALS INFORMATION

If you wish to appeal the issuance, denial, conditioning, or modification of a Hydraulic Project Approval (HPA), Washington Department of Fish and Wildlife (WDFW) recommends that you first contact the department employee who issued or denied the HPA to discuss your concerns. Such a discussion may resolve your concerns without the need for further appeal action. If you proceed with an appeal, you may request an informal or formal appeal. WDFW encourages you to take advantage of the informal appeal process before initiating a formal appeal. The informal appeal process includes a review by department management of the HPA or denial and often resolves issues faster and with less legal complexity than the formal appeal process. If the informal appeal process does not resolve your concerns, you may advance your appeal to the formal process. You may contact the HPA Appeals Coordinator at (360) 902-2534 for more information.

**A. INFORMAL APPEALS:** WAC 220-660-460 is the rule describing how to request an informal appeal of WDFW actions taken under Chapter 77.55 RCW. Please refer to that rule for complete informal appeal procedures. The following information summarizes that rule.

A person who is aggrieved by the issuance, denial, conditioning, or modification of an HPA may request an informal appeal of that action. You must send your request to WDFW by mail to the HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat Program, PO Box 43234, Olympia, Washington 98504-3234; e-mail to [HPAapplications@dfw.wa.gov](mailto:HPAapplications@dfw.wa.gov); fax to (360) 902-2946; or hand-delivery to the Natural Resources Building, 1111 Washington St SE, Habitat Program, Fifth floor. WDFW must receive your request within 30 days from the date you receive notice of the decision. If you agree, and you applied for the HPA, resolution of the appeal may be facilitated through an informal conference with the WDFW employee responsible for the decision and a supervisor. If a resolution is not reached through the informal conference, or you are not the person who applied for the HPA, the HPA Appeals Coordinator or designee may conduct an informal hearing or review and recommend a decision to the Director or designee. If you are not satisfied with the results of the informal appeal, you may file a request for a formal appeal.

**B. FORMAL APPEALS:** WAC 220-660-470 is the rule describing how to request a formal appeal of WDFW actions taken under Chapter 77.55 RCW. Please refer to that rule for complete formal appeal procedures. The following information summarizes that rule.



# HYDRAULIC PROJECT APPROVAL

Washington Department of  
Fish & Wildlife  
PO Box 43234  
Olympia, WA 98504-3234  
(360) 902-2200

Issued Date: June 24, 2021  
Project End Date: June 23, 2026

Permit Number: 2021-4-425+01  
FPA/Public Notice Number: N/A  
Application ID: 25288

A person who is aggrieved by the issuance, denial, conditioning, or modification of an HPA may request a formal appeal of that action. You must send your request for a formal appeal to the clerk of the Pollution Control Hearings Boards and serve a copy on WDFW within 30 days from the date you receive notice of the decision. You may serve WDFW by mail to the HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat Program, PO Box 43234, Olympia, Washington 98504-3234; e-mail to [HPAapplications@dfw.wa.gov](mailto:HPAapplications@dfw.wa.gov); fax to (360) 902-2946; or hand-delivery to the Natural Resources Building, 1111 Washington St SE, Habitat Program, Fifth floor. The time period for requesting a formal appeal is suspended during consideration of a timely informal appeal. If there has been an informal appeal, you may request a formal appeal within 30 days from the date you receive the Director's or designee's written decision in response to the informal appeal.

C. FAILURE TO APPEAL WITHIN THE REQUIRED TIME PERIODS: If there is no timely request for an appeal, the WDFW action shall be final and unappealable.

Habitat Biologist                      Ezekiel.Rohloff@dfw.wa.gov  
Ezekiel Rohloff                        425-420-0601

for Director  
WDFW



DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, SEATTLE DISTRICT  
P.O. BOX 3755  
SEATTLE, WASHINGTON 98124-3755

Regulatory Branch

July 21, 2021

Mr. Richard Fallquist  
Lakeshores Group  
5061 84<sup>th</sup> Avenue Northeast  
Mercer Island, Washington 98040

Reference: NWS-2018-800  
Lakeshores Group  
(Pier Repair and Extension)

Dear Mr. Fallquist:

We have reviewed your application to repair up to 672 square feet of existing pier decking, repair up to three piling, install up to 246 square feet of a pier extension, and install up to six piles to support the pier extension in Lake Washington at Mercer Island, Washington. Based on the information you provided to us, this "Letter of Permission" (LOP) permit authorizes your proposal as depicted on the enclosed drawings dated April 28, 2020, which are made part of this permit. In order for this LOP authorization to be valid, you must ensure that the work is performed in accordance with the enclosed *Letter of Permission General Conditions* and the following special conditions:

a. In order to meet the requirements of the Endangered Species Act and protect Puget Sound Chinook, Puget Sound steelhead, and Coastal-Puget Sound bull trout, the authorized in-water activities may be conducted from July 16 through December 31 in any year this permit is valid. The in-water activities authorized by this permit may not be conducted from January 1 through July 15 in any year.

b. In order to meet the requirements of the Endangered Species Act (ESA) and Magnuson-Stevens Fishery Conservation and Management Act (MSA) *Restoration and Permitting* (RAP) programmatic consultation (National Marine Fisheries Service (NMFS) Reference Number WCRO-2016-00008), you must implement and abide by the ESA requirements and/or agreements set forth in the Biological Opinion (BO) dated February 17, 2017, the enclosed NMFS' *RAP Implementation Guide* dated July 25, 2019, the enclosed RAP Calculator, Sheet 7 of 7 of the project drawings dated April 28, 2020, and the enclosed RAP form for your individual project (NMFS Reference Number WCRO-2016-00008-2090). The BO is available on the U.S. Army Corps of Engineers (Corps) website (Permit Guidebook, Endangered Species, Programmatic Consultations, Activities on Lakes Washington and Sammamish). Upon



completion of the permitted work, you must submit an As-Built Report (see RAP Implementation Guide, Appendix E) to the Corps (NWS.Compliance@usace.army.mil) and the NMFS (rap-reports.wcr@noaa.gov). You must visually monitor the work area during construction when the substrate is disturbed and ensure that observable turbidity increases do not extend beyond a 150-foot radius around the work area. If turbidity increases occur beyond this area, you must include it in your As-Built Report. You must comply with any required RAP planting plan (see RAP Implementation Guide, Appendices C and D) requirements and submit annual monitoring reports for five years to the Corps (NWS.Compliance@usace.army.mil) and the NMFS (rap-reports.wcr@noaa.gov). All reports must prominently display the reference number NWS-2018-800. Failure to comply with these requirements constitutes non-compliance with the ESA and your Corps permit. The NMFS is the appropriate authority to determine compliance with the terms and conditions of its BO and with the ESA. If you cannot comply with the terms and conditions of this programmatic consultation, you must, prior to commencing construction, contact the Corps, Seattle District, Regulatory Branch for an individual consultation in accordance with the requirements of the ESA and/or the MSA

c. In order to meet the requirements of the Endangered Species Act (ESA) programmatic letter of concurrence for selected activities in the Lake Washington/Lake Sammamish Basins (U.S. Fish and Wildlife Service (USFWS) Reference Number 13410-2009-I-0386-R001) you must comply with the relevant conservation measures in the document titled, *Conservation Measures for Activities Covered under the Lake Washington Programmatic Consultation Letter of Concurrence* available on the U.S. Army Corps of Engineers (Corps) website (Permit Guidebook, Endangered Species, Programmatic Consultations, Activities on Lakes Washington and Sammamish). If you cannot comply with these conservation measures, you must, prior to commencing construction, contact the Corps, Seattle District, Regulatory Branch for an individual consultation in accordance with the requirements of the ESA. The USFWS is the appropriate authority to determine compliance with the ESA.

d. You must implement and abide by the shoreline planting plan, as detailed on sheet 7 of 7 of the project drawings dated April 28, 2020. The plants shall be installed before or concurrent with the work authorized by this permit. A report, as-built drawing, and photographs demonstrating the trees/plants have been installed or a report on the status of project construction must be submitted to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch, within 12 months from the date of project construction. You can meet this reporting requirement by completing and submitting the enclosed *Report for Mitigation Work Completion* form.

e. You must maintain and monitor the survival of installed shoreline plantings for five years after the U.S. Army Corps of Engineers accepts the as-built report. Installed plants shall achieve 100% survival during monitoring Years 1 and 2. Installed trees/plants shall achieve at least 80%

survival during monitoring Years 3, 4 and 5. Percent survival is based on the total number of plants installed in accordance with the approved shoreline planting plan. Individual plants that die must be replaced with native riparian species in order to meet the survival performance standards.

f. You must submit annual monitoring reports for five years (Monitoring Years 1-5). Each annual monitoring report shall include written and photographic documentation on plant mortality and replanting efforts and must document whether the performance standards are being met. Photos must be taken from established points used for each monitoring year. In addition to photos at designated points, photo documentation must include a panoramic view of the entire planting area. Submitted photos must be formatted on standard 8 ½” x 11” paper, dated with the date the photo was taken, and clearly labeled with the direction from which the photo was taken. The photo location points must be identified on an appropriate drawing. Annual shoreline planting monitoring reports must be submitted to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch, by November 31 of each monitoring year (NWS.Compliance@usace.army.mil). You can meet this reporting requirement by completing and submitting the enclosed *Mitigation Planting Monitoring Report* form.

g. To ensure the long-term protection of the mitigation site, you shall record on the mitigation site property deed a copy of this Department of the Army permit and a description of the mitigation area identified in the final mitigation plan. These documents shall be recorded with the Registrar of Deeds or other appropriate official charged with maintaining records on real property. Proof of this recorded documentation must be submitted to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch within 60 days from the date of construction.

h. To insure that light transmission is not impacted, grating must not be covered with or blocked by any objects, such as, but not limited to, buildings, planters, storage sheds or boxes, nets, carpets, boards, tables, lawn furniture, or utility conduits or boxes.

We have reviewed your project pursuant to the requirements of the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act in regards to Essential Fish Habitat. The U.S. Army Corps of Engineers has determined that this project will comply with the requirements of the above laws provided you comply with special conditions “a” through “c” listed above.

Please be reminded that Special Condition “b” of your permit requires that you implement and abide by the Endangered Species Act (ESA) requirements set forth in the programmatic Biological Opinion (BO) for this project. In particular, you must provide an As-Built Report,

implement the approved planting plan, and submit annual monitoring and maintenance reports, as described in the BO.

Lake Washington is a water of the U.S. The Section 10 jurisdictional boundaries are shown on the enclosed permit drawings. If you believe these boundaries are inaccurate, you may request a preliminary or approved jurisdictional determination (JD). If one is requested, please be aware that we may require the submittal of additional information to complete the JD and work authorized in this letter may not occur until the JD has been completed.


An individual Coastal Zone Management Act consistency decision was not required by the Washington Department of Ecology. Any change in the plans for this work will require that you submit revised drawings to this office and receive our written approval of those changes prior to conducting the work. If you object to any terms or conditions of this LOP or the JD, you may request an administrative appeal under our regulations (33 CFR Part 331) as described in the enclosed *Notification of Administrative Appeal Options and Process and Request for Appeal* form.

Your authorization to conduct the proposed work under this permit expires 3 years from the date of this letter. Within 30 days of completing the authorized work, you must fill out and return the enclosed *Certificate of Compliance with Department of the Army Permit*. Your signature on this form is our assurance you have conducted the work and any required mitigation in accordance with the terms and conditions of this LOP, including all special conditions. All compliance reports should be submitted to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch at [nws.compliance@usace.army.mil](mailto:nws.compliance@usace.army.mil). Please remember that failure to comply with the terms and conditions of this LOP, including any special conditions, will invalidate your authorization and could result in a violation of Federal law.

Thank you for your cooperation during the permitting process. We are interested in your experience with our Regulatory Program and encourage you to complete a customer service survey form. This form and information about our program is available on our website at: [www.nws.usace.army.mil](http://www.nws.usace.army.mil) (select "Regulatory Branch, Permit Information").

While this project will not require further authorization from us, please note that it must comply with all local, State, and other Federal requirements that may apply. An electronic copy of this letter with enclosures will be furnished to you by email at [rfallquist@msn.com](mailto:rfallquist@msn.com), and to Mr. Evan Wehr, of Ecco Design Inc., by email at [evan@eccodesigninc.com](mailto:evan@eccodesigninc.com). If you have any questions about this letter or our regulatory program, please contact Ms. Daisy Douglass at [daisy.p.douglass@usace.army.mil](mailto:daisy.p.douglass@usace.army.mil) or by phone at (206) 764-6903.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

  
*for* Alexander "Xander" L. Bullock  
Colonel, Corps of Engineers  
District Engineer

Enclosures

cc:  
USFWS ([wfwoctap@fws.gov](mailto:wfwoctap@fws.gov));  
Ecology ([ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov));  
NMFS ([rap-wa.wcr@noaa.gov](mailto:rap-wa.wcr@noaa.gov))