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*Via Submittal by Seaborn*

Ryan Harriman, EMPA, AICP  
Planning Manager  
Community Planning & Development  
City of Mercer Island

**Re: File No. SHL 14-031  
Cherberg Dock at 9418 SE 33rd Street  
MINOR MODIFICATION TO ISSUED PERMIT**

Dear Mr. Harriman:

This letter is being submitted on behalf of the applicant James Cherberg and is being submitted along with a modified plan set by Seaborn for the above issued shoreline permit. The modified plan removes the southeasterly finger pier. The Cherbergs are contemplating making this minor modification to the project.

The Cherbergs want to know if the City can approve this modification administratively or whether the City would have to follow a more formal process with additional notice etc. We think the Ecology regulations are clear that this type of minor change can be approved administratively, but we are requesting the City's position in this regard.

In our view, the proposed modification is not a substantive change and does not materially alter the project. The proposed project is a private residential dock and the modification retains the private residential dock in the exact same location, but removes one finger pier. The corner of the retained pier remains the same 36' – 5" separation distance from the Graue dock consistent with the 35-foot requirement of the applicable code. The modification will reduce overwater coverage compared to the project as approved. For these reasons, the proposed modification is consistent with the terms and conditions of the shoreline permit and applicable Shoreline Master Program.

Because the proposed modification is not substantive, we contend that no formal shoreline permit revision is required under WAC 173-27-100.

The introductory provision in that rule states:

A permit revision is required whenever the applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the master program and/or the policies and provisions of chapter 90.58 RCW. Changes which are not substantive in effect do not require approval of a revision.

This provision requires that major modifications that constitute substantive changes require a formal “permit revision,” but that minor modifications not constituting substantive changes can be approved administratively.

We are requesting the City to determine if the proposed modification can be approved administratively as a minor modification to the issued permit or would the City need to follow a different process to authorize this modification. I intend to copy the Graues’ attorney Michael Murphy with this correspondence and the revised plan. To be clear, the Cherbergs have no objection to the City communicating with the Graues about this proposal.

Please contact me if you require any further information or explanation relating to this issue.

Sincerely,

STEPHENS & KLINGE LLP

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cc: Bio Park, City Attorney  
Eileen Keiffer, Outside Counsel  
Michael Murphy, Counsel to the Graues