

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between James W. Cherberg and Nan Chot Cherberg (the Cherbergs), James Thomas Graue III and Shannon E. Graue, Trustees For The Shannon E. Graue Qualified Personal Residence Trust and The James Thomas Graue III Qualified Personal Residence Trust (the Graues), and the City of Mercer Island (“City”) (each a “Party” and collectively “the Parties”).

I. RECITALS

a. The Cherbergs are the owners of waterfront property on Lake Washington located at 9418 SE 33rd Street, Mercer Island, King County Tax Parcel No. 413930-0405. The Cherbergs desire to construct a dock for their use and for that purpose submitted a shoreline substantial development application to the City of Mercer Island (SHL14-031). Ultimately, a revised plan set dated October 12, 2022, was submitted to the City, and approved. The Cherbergs also submitted a building permit application (1501-218) which is still pending at the City.

b. The City is the municipal authority that has jurisdiction over permitting within its boundaries, including jurisdiction over activities under the Shoreline Management Act and the City’s adopted Shoreline Master Program. The City processed the Cherbergs’ application and issued a Decision approving the shoreline substantial development permit on December 27, 2022.

c. The Graues own the property adjacent to, and east of, the Cherbergs at 9422 SE 33rd Street, Mercer Island, King County Tax Parcel No. 413930-0390. During the application process, the Graues submitted objections to the City regarding the Cherbergs’ proposed dock. The Graues objected to the Cherbergs’ proposed dock allegedly interfering with navigation access to the Graues’ dock among other grounds. The Graues filed a Petition for Review with the State of Washington Shorelines Hearings Board (the Board) on January 13, 2023 (Case No. 23-001).

d. The Cherbergs and the City filed motions for summary judgment and partial summary judgment with the Board. The Graues opposed those motions. Before the Board ruled on the motions, the Parties held settlement discussions which led to a tentative settlement that is now formalized in this Agreement. The Cherbergs agree to revise the dock to remove the southeasterly finger pier. The Graues accept that compromise and will withdraw objections to the dock that the Graues submitted to the City and U.S. Army Corps of Engineers and will communicate do not object to the Cherbergs’ revised dock with the southeasterly finger pier removed.

e. The Cherbergs are willing to remove the southeasterly finger pier as long as the Graues commit to withdraw their objections to clear the way for the Cherbergs to obtain permits and have the opportunity to construct the dock. The Graues are willing to accept the Cherbergs dock as long as the southeasterly finger pier is removed and based on that the Graues will withdraw their objections. This Agreement seeks to accomplish these key points.

f. The Parties submitted to the Board a Stipulated Motion and Order for Stay to Pursue Settlement on 6/16/23, and the Board subsequently granted a continuance until October 16, 2023.

g. The City has indicated that in order to approve the removal of the finger pier, the City must process a shoreline permit revision application under WAC 173-27-100.

h. The Cherbergs and Graues desire to fully and finally resolve their disputes related to the above-described facts on the terms described in this Settlement Agreement. The Cherbergs and Graues will cooperate as necessary to accomplish the purposes of this Agreement.

i. In consideration of the foregoing and the mutual promises and conditions set forth below, the Parties agree as follows:

II. TERMS BETWEEN THE CHERBERGS AND THE CITY

1. Cherbergs' Revised Application to City. Within ten (10) business days after the execution of this Agreement by the Parties, the Cherbergs will apply to the City for a shoreline permit revision to remove the southeasterly finger pier as shown on the attached revised plan set (dated 7/27/23), Exhibit 1.

2. City Review. The City agrees to follow applicable law in reviewing, processing, and making a determination regarding the Cherbergs' shoreline permit revision application. A City approval shall become final by operation of law upon expiration of the appeal period if no appeal is filed – 22 days after receipt by DOE. WAC 173-27-100(8). The City may process the corresponding building permit application, but that permit cannot be issued by the City until the shoreline revision permit is final and an approval is received from the Army Corps of Engineers. The City will cooperate as necessary for dismissal or stay of the Shorelines Hearings Board case (Case No. 23-001) as appropriate pursuant to Sections 5 and 6, below.

III. TERMS BETWEEN THE CHERBERGS AND THE GRAUES

3. Recitals. The foregoing Recitals are incorporated by reference and made a part of this agreement.

4. Graue Concurrence with Cherberg Revised Application to City and Waiver of Appeal Rights. Within three (3) business days of application submittal of the Cherbergs' above mentioned shoreline permit revision application, the Graues will communicate with the City that for purposes of the permit revision application only, the Graues withdraw their prior objections and concur with the permit revision application to remove the southeasterly finger. The Graues further waive any right to appeal or otherwise challenge the Cherbergs' shoreline permit revision approval or the corresponding building permit, provided that the southeasterly finger pier is removed and the permitted or approved dock design is not dimensionally or locationally materially different from the design depicted on Exhibit 1.

5. Dismissal of Board Case by the Graues. Within five (5) business days after the shoreline permit revision approval becomes final per Section 2 above, the Graues shall file the Stipulated Joint Motion for Dismissal with prejudice of the Shorelines Hearings Board case (Case No. 23-001) in the form attached as Exhibit 2. The Cherbergs and the Graues will cooperate as necessary to obtain dismissal of the Board matter.

6. Appeal Contingency. If DOE or a third-party files a timely appeal of the shoreline permit revision approval, then the Graues shall not be required to voluntarily dismiss the existing Board Case No. 23-001 as set forth in Section 5. Instead, the Cherbergs and Graues will seek to continue the existing Board Case No. 23-001 until the second appeal is resolved. Within five (5) business days after the appeal is resolved in any manner upholding the City's shoreline permit revision removing the southeasterly finger pier and becomes final (including the expiration of any appeal period with no appeal having been filed), the Graues shall file the Stipulated Joint Motion for Dismissal with prejudice of the Shorelines Hearings Board case (Case No. 23-001) in the form attached as Exhibit 2.

7. Cherbergs' Revised Application to Corps. Within ten (10) business days after the execution of this Agreement, the Cherbergs will submit a request to the Army Corps of Engineers advising it of the pending settlement and proposed design change and requesting that it stay consideration of their permit request pending approval of the shoreline permit revision by the City and DOE. Within ten (10) business days after the shoreline permit revision approval becomes final per Section 2, above, the Cherbergs will submit an application amendment to the Army Corps of Engineers to remove the southeasterly finger pier as shown on the attached revised plan set (dated 7/27/23),

Exhibit 1. Within three (3) business days of application amendment submittal, the Graues will submit the letter attached as Exhibit 3 to the Corps withdrawing the Graues' prior objections (set forth in Michael J. Murphy's letter dated 1/12/23 and otherwise) and indicating that the Graues concur with the application amendment to remove the southeasterly finger. The Graues waive any right to appeal or otherwise challenge the Corps' issuance of permits to the Cherbergs, provided that the southeasterly finger pier is removed and the permitted or approved dock design is not dimensionally or locationally materially different from the design depicted on Exhibit 1.

8. General Waiver by the Graues. The Graues agree not to file an appeal, or other legal challenge, whether administrative or in court, against any permit or approval from the City of Mercer Island or any other governmental agency related to the Cherbergs' revised dock, provided that the southeasterly finger pier is removed and the permitted or approved dock design is not dimensionally or locationally materially different from the design depicted on Exhibit 1.

IV. TERMS BETWEEN ALL PARTIES

9. Authority to Execute; Binding on Successors and Assigns. Each Party who executes this agreement warrants that the Party has full power and actual authority to enter into this agreement and to carry out all actions required of the Party by this agreement. This agreement is binding upon and inures to the benefit of the successors, assigns, owners, co-owners, and affiliates of the Parties, as well as all other persons or entities claiming through them. Without limiting this provision, the Graues agree that James Thomas Graue III and Shannon E. Graue, as individuals, are also bound hereby and waive any right to appeal or otherwise challenge the referenced permits to be issued to the Cherbergs.

10. Entire Agreement. This agreement sets forth the entire understanding among the Parties with respect to the subject matter hereof and is intended to be a substitute for and supersedes all prior and contemporaneous understandings, communications, and agreements, whether written or oral, regarding its subject matter.

ACKNOWLEDGED AND AGREED TO BY:

THE CHERBERGS

Dated: _____

James W. Cherberg

Nan Chot Cherberg

Dated: _____

**THE SHANNON E. GRAUE QUALIFIED PERSONAL RESIDENCE TRUST AND
THE JAMES THOMAS GRAUE III QUALIFIED PERSONAL RESIDENCE TRUST**

James Thomas Graue III, as Trustee and Individually

Dated: _____

Shannon E. Graue, as Trustee and Individually

Dated: _____

CITY OF MERCER ISLAND

/s/ Jeff Thomas

Dated: 08-30-2023

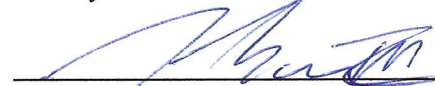
By: Jeff Thomas Its: CPD Director

James W. Cherberg

Nan Chot Cherberg

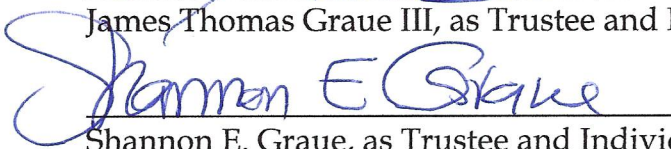
Dated: _____

**THE SHANNON E. GRAUE QUALIFIED PERSONAL RESIDENCE TRUST AND
THE JAMES THOMAS GRAUE III QUALIFIED PERSONAL RESIDENCE TRUST**



James Thomas Graue III, as Trustee and Individually

Dated: 8-30-2023



Shannon E. Graue, as Trustee and Individually

Dated: 8-30-2023

CITY OF MERCER ISLAND

Dated: _____

By: _____ Its: _____

ACKNOWLEDGED AND AGREED TO BY:

THE CHERBERGS

James W. Cherberg
James W. Cherberg

Dated: 8/30/2023

Nan Chot Cherberg
Nan Chot Cherberg

Dated: 8/30/2023

**THE SHANNON E. GRAUE QUALIFIED PERSONAL RESIDENCE TRUST AND
THE JAMES THOMAS GRAUE III QUALIFIED PERSONAL RESIDENCE TRUST**

_____ Dated: _____
James Thomas Graue III, as Trustee and Individually

_____ Dated: _____
Shannon E. Graue, as Trustee and Individually

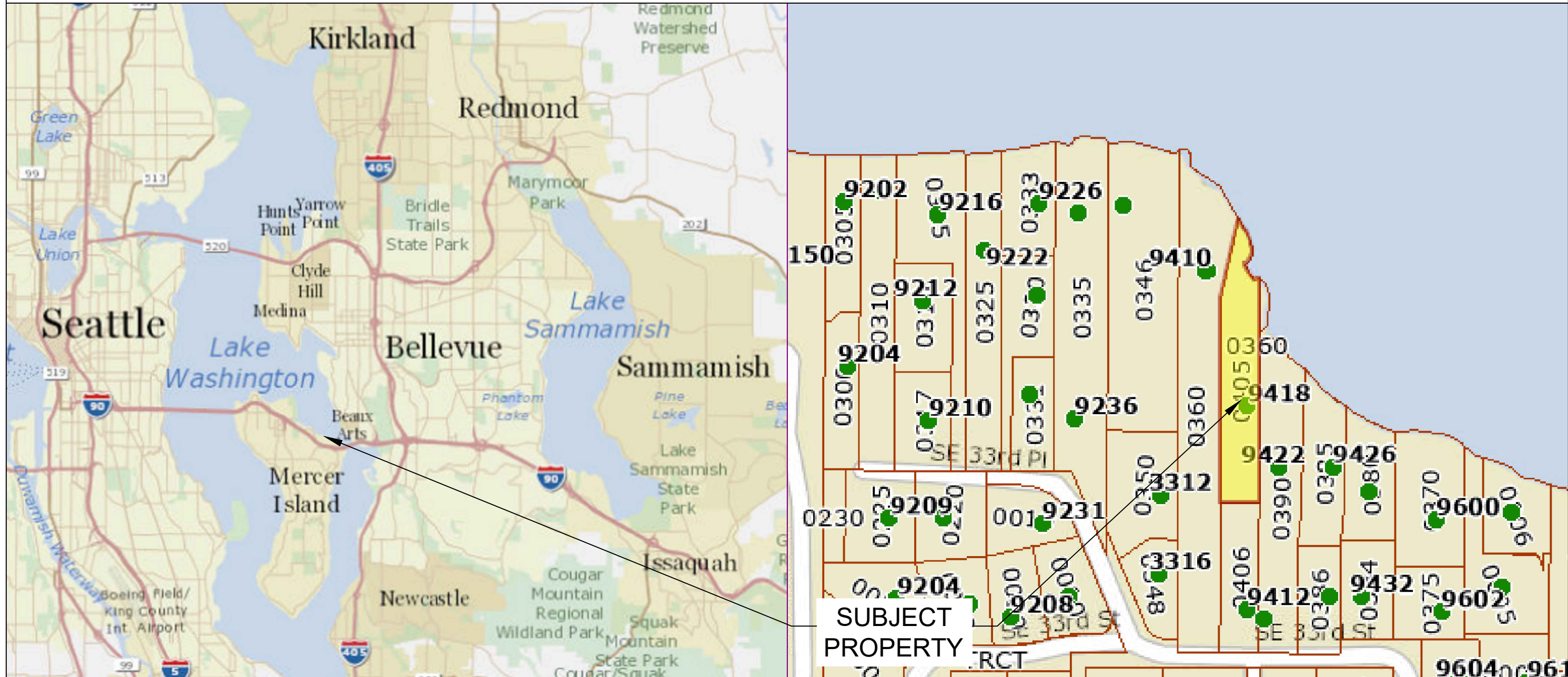
CITY OF MERCER ISLAND

_____ Dated: _____

By: _____ Its: _____

SITE PLAN

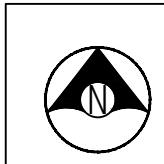
EXHIBIT 1



Pin: 4139300405

Legal Description: LAKEMONT ADD UNREC POR GL 4 SEC 7-24-5 DAF - BAAP 834 FT N & 211 FT W OF SE COR SD GL 4 TH W 65 FT TH N TO SH OF LAKE WASH TH SELY ON SD SH LN 150 FT M/L TAP N OF POB TH S TO POB LESS S 212.60 FT LESS POR LY WITHIN FOLG BAAP 834 FT N & 276 FT W OF SE COR SD GL 4 TH N TAP 100 FT S OF SH LAKE WASH & TPOB TH CONTG N 100 FT TO SH LAKE WASH TH ON SD SH LN SELY 50 FT TH SWLY TAP 10 FT E OF TPOB TH S TO LN 834 FT N OF S LN SD GL 4 TH W ON SD LN 10 FT TH N TO TPOB TGW 2ND CL SH LDS ADJ REMAINDER TH OF LY NWLY OF LN DAF - BAAP 834 FT N & 211 FT W OF SE COR SD GL 4 TH N 528.31 TO ORDINARY HIGH WATER LN & POB SD LN TH N 36-04-18 E TO OUTER LIMITS OF 2ND CL SH LDS & TERM SD LN PER LATERAL LN AGREEMENT REC# 20160408000136 & SURV REC# 20160408900001

Plat Block:
 Plat Lot: D
 PARCEL:
 LAT: 47.58148
 LONG: -122.21175
 DOCK:
 LAT: 47.582071
 LONG: -122.211743



Seaborn Pile Driving
 1080 W Ewing St
 Seattle, WA 98119
 Office: 206-236-1700 ext. 3
 www.seabornpiledriving.com

Scope of Work: We propose to drive (16) 8" steel piles and construct a new dock with grated decking material. We also propose to install (1) new boat lift and (1) new PWC lift.

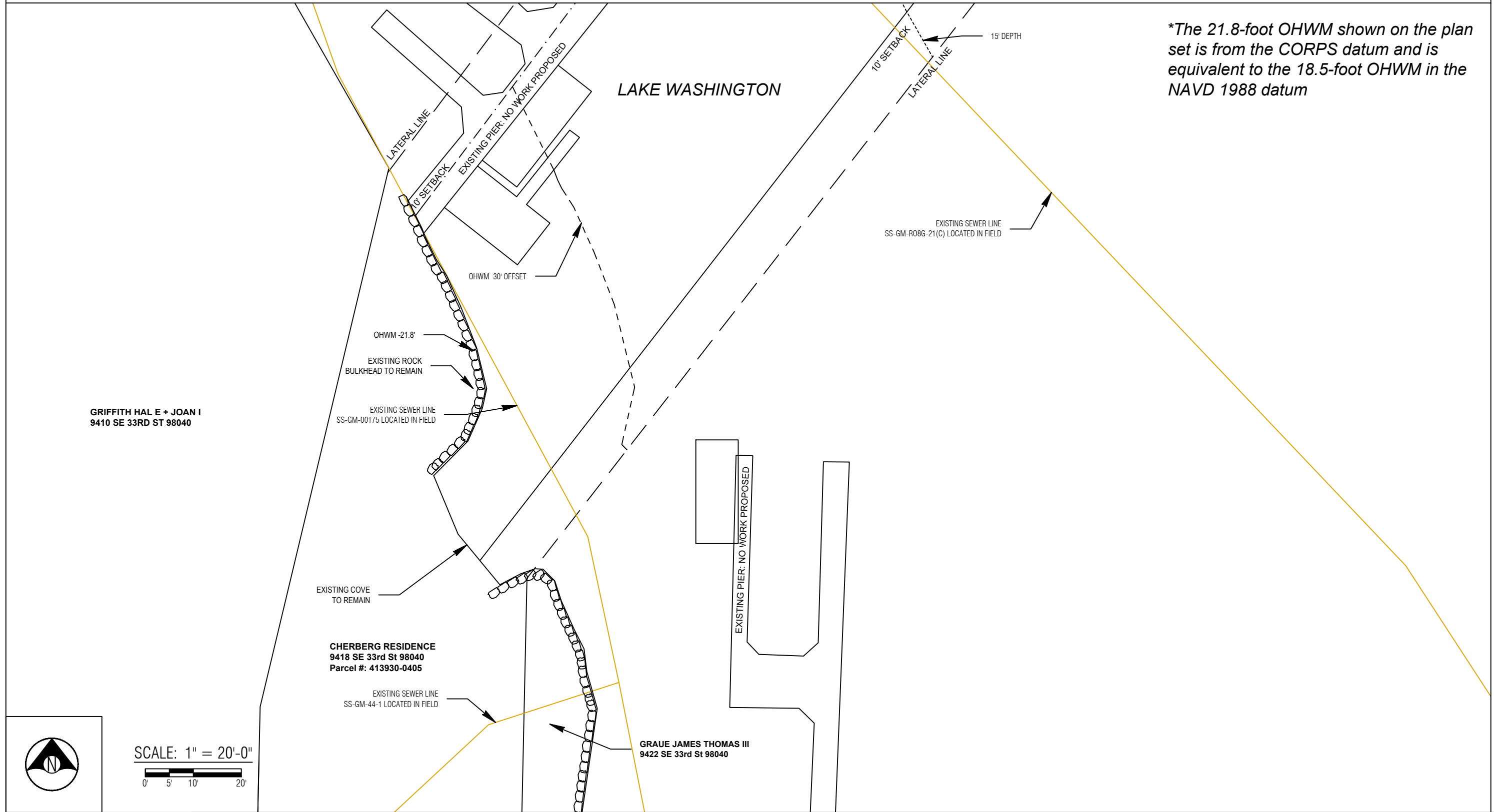
County: King County	
Location: Lake Washington	
Applicant: Cherberg Residence	Applicant: Cherberg Residence
9418 SE 33rd Street	9418 SE 33rd Street
Mercer Island, WA 98040	Mercer Island, WA 98040
Datum: CORPS OF ENGINEERS 1919	Datum: CORPS OF ENGINEERS 1919
SE Quarter Of Section 07, Township 24, Range 05	SE Quarter Of Section 07, Township 24, Range 05
Adjacent Owners: GRIFFITH HAL E+JOANI 9410 SE 33RD ST 98040	Adjacent Owners: GRAUE JAMES THOMAS III 9422 SE 33RD ST 98040
SHEET A1.0	SHEET A1.0
NWS-2013-565 PAGE 1 OF 9	NWS-2013-565 PAGE 1 OF 9

Last Updated: 6/30/2023 4:21 PM Shop

Created:

EXISTING CONDITIONS

****CLEAN UP LAKE AROUND PROJECT****



**The 21.8-foot OHWM shown on the plan set is from the CORPS datum and is equivalent to the 18.5-foot OHWM in the NAVD 1988 datum*

GRIFFITH HAL E + JOAN I
9410 SE 33RD ST 98040

CHERBERG RESIDENCE
9418 SE 33rd St 98040
Parcel #: 413930-0405

GRAUE JAMES THOMAS III
9422 SE 33rd St 98040



SCALE: 1" = 20'-0"
0' 5' 10' 20'



Seaborn Pile Driving
1080 W Ewing St
Seattle, WA 98119

Office: 206-236-1700 ext. 3
www.seabornpiledriving.com

Scope of Work: We propose to drive (16) 8" steel piles and construct a new dock with grated decking material. We also propose to install (1) new boat lift and (1) new PWC lift.

County: King County
Location: Lake Washington

Applicant: Cherberg Residence
9418 SE 33rd Street
Mercer Island, WA 98040

Datum: CORPS OF ENGINEERS 1919
SE Quarter Of Section 07, Township 24, Range 05

Adjacent Owners:
GRIFFITH HAL E+JOAN I
9410 SE 33RD ST 98040

Created:

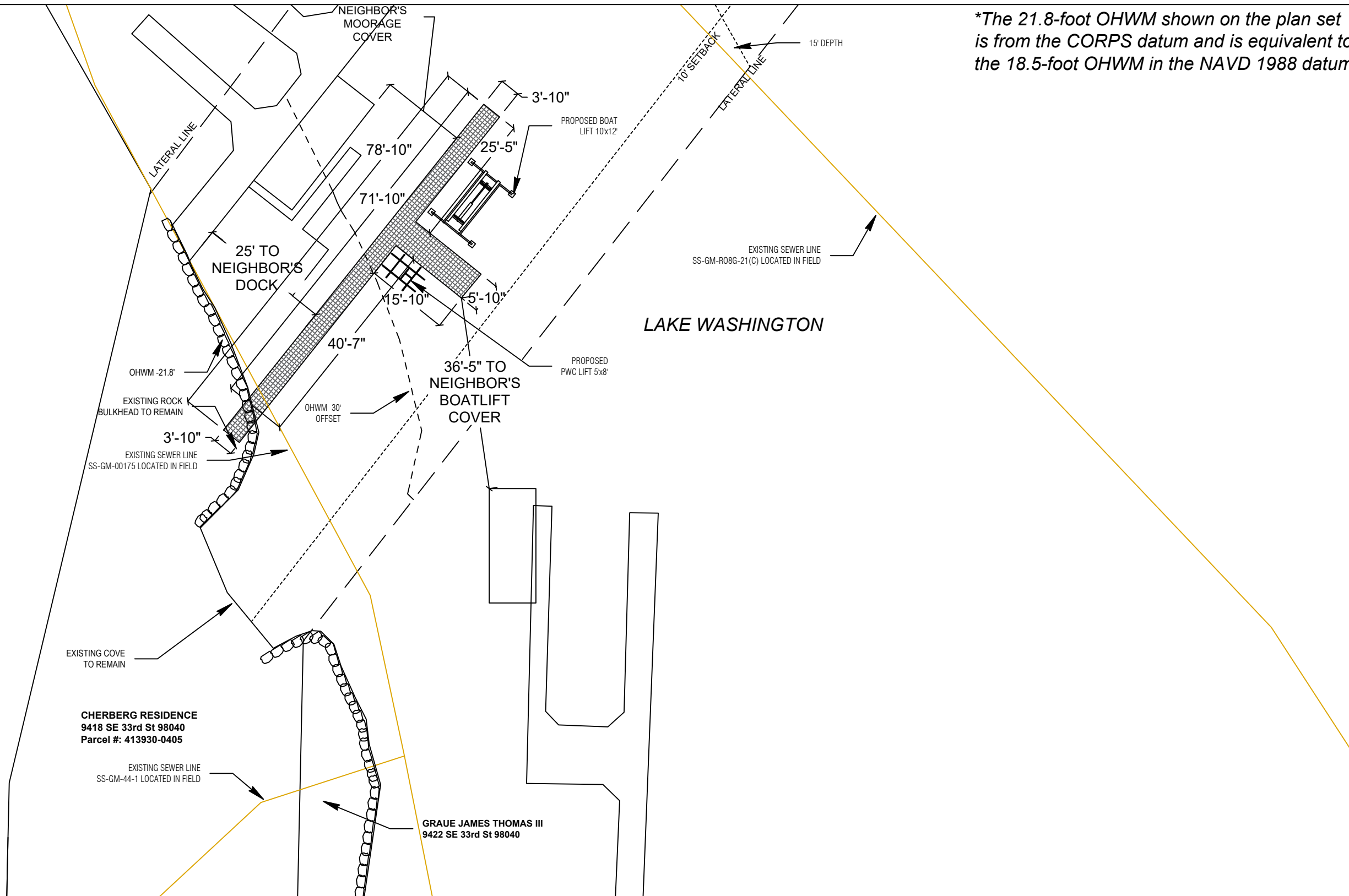
Last Updated: 6/30/2023 4:21 PM Shop

**SHEET
A2.0**

PROPOSED

CLEAN UP LAKE AROUND PROJECT

**The 21.8-foot OHWM shown on the plan set is from the CORPS datum and is equivalent to the 18.5-foot OHWM in the NAVD 1988 datum*



GRIFFITH HAL E + JOAN I
9410 SE 33RD ST 98040

CHERBERG RESIDENCE
9418 SE 33rd St 98040
Parcel #: 413930-0405

GRAUE JAMES THOMAS III
9422 SE 33rd St 98040



SCALE: 1" = 20'-0"
0' 5' 10' 20'



Seaborn Pile Driving
1080 W Ewing St
Seattle, WA 98119

Office: 206-236-1700 ext. 3
www.seabornpiledriving.com

Scope of Work: We propose to drive (16) 8" steel piles and construct a new dock with grated decking material. We also propose to install (1) new boat lift and (1) new PWC lift.

County: King County
Location: Lake Washington

Applicant: Cherberg Residence
9418 SE 33rd Street
Mercer Island, WA 98040

Datum: CORPS OF ENGINEERS 1919
SE Quarter Of Section 07, Township 24, Range 05

Adjacent Owners:
GRIFFITH HAL E+JOAN I
9410 SE 33RD ST 98040
GRAUE JAMES THOMAS III
9422 SE 33RD ST 98040

**SHEET
A3.0**

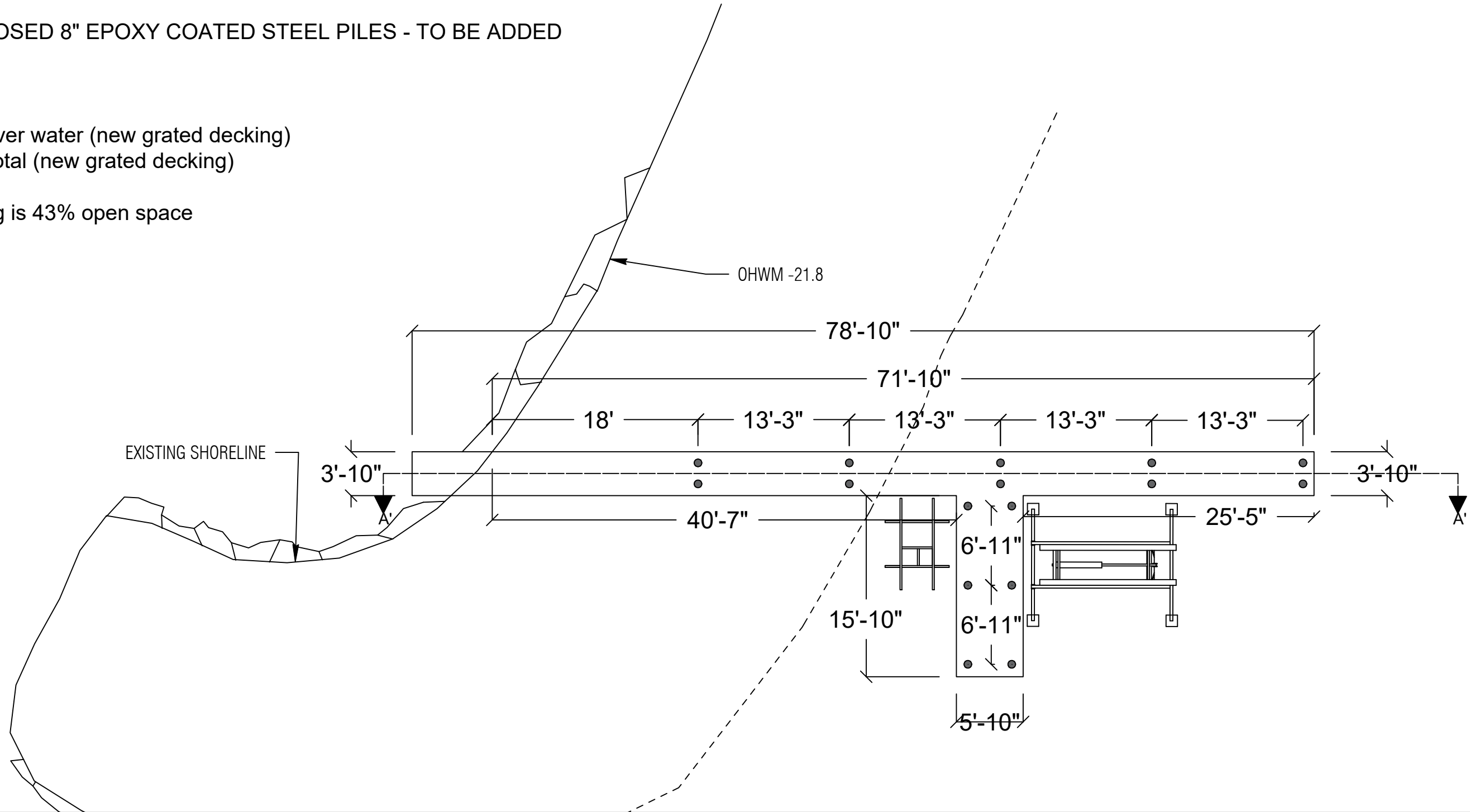
PIER DETAILS - EXISTING/PROPOSED

LEGEND

● (16) PROPOSED 8" EPOXY COATED STEEL PILES - TO BE ADDED

Area: 374 sqft over water (new grated decking)
394 sqft total (new grated decking)

**Grated decking is 43% open space



PLAN VIEW



Seaborn Pile Driving
1080 W Ewing St
Seattle, WA 98119

Office: 206-236-1700 ext. 3
www.seabornpiledriving.com

Scope of Work: We propose to drive (16) 8" steel piles and construct a new dock with grated decking material. We also propose to install (1) new boat lift and (1) new PWC lift.

County: King County
Location: Lake Washington

Applicant: Cherberg Residence
9418 SE 33rd Street
Mercer Island, WA 98040

Datum: CORPS OF ENGINEERS 1919
SE Quarter Of Section 07, Township 24, Range 05

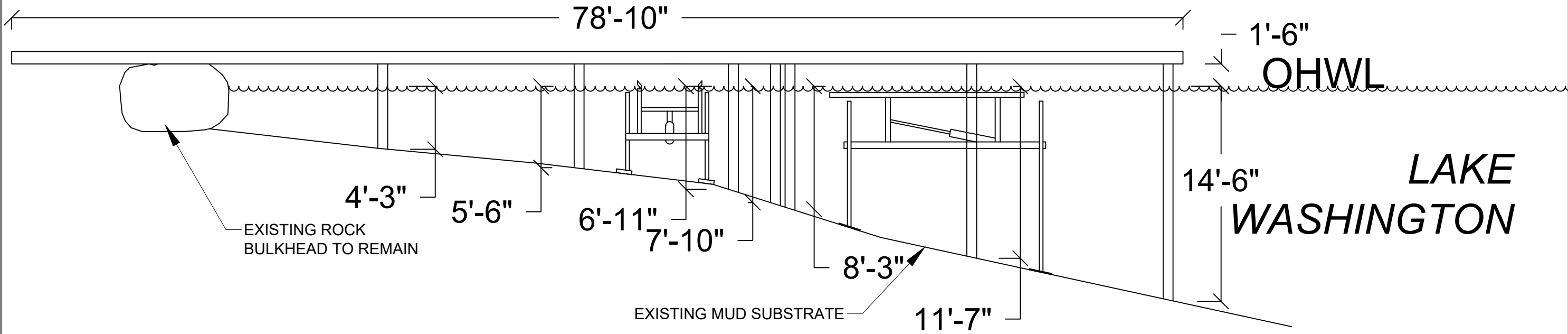
Adjacent Owners:
GRIFFITH HAL E+JOAN I
9410 SE 33RD ST 98040
GRAUE JAMES THOMAS III
9422 SE 33RD ST 98040

**SHEET
A4.0**

Created:

Last Updated: 6/30/2023 4:21 PM Shop

PIER DETAILS PROPOSED



SECTION VIEW: A'-A'



Seaborn Pile Driving
1080 W Ewing St
Seattle, WA 98119

Office: 206-236-1700 ext. 3
www.seabornpiledriving.com

Scope of Work: We propose to drive (16) 8" steel piles and construct a new dock with grated decking material. We also propose to install (1) new boat lift and (1) new PWC lift.

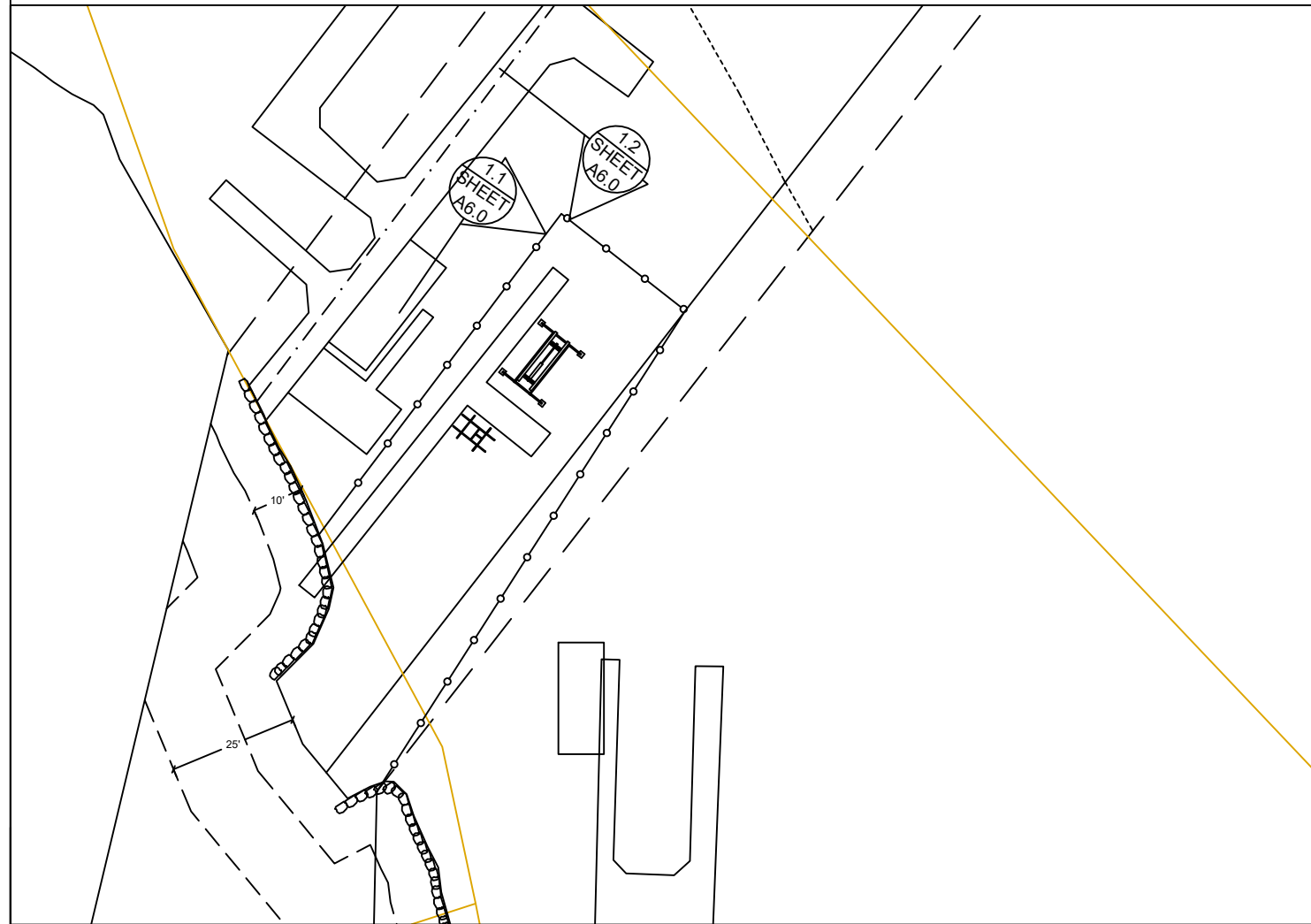
County: King County
Location: Lake Washington

Applicant: Cherberg Residence
9418 SE 33rd Street
Mercer Island, WA 98040

Datum: CORPS OF ENGINEERS 1919
SE Quarter Of Section 07, Township 24, Range 05
Adjacent Owners:
GRIFFITH HAL E+JOAN I
9410 SE 33RD ST 98040
GRAUE JAMES THOMAS III
9422 SE 33RD ST 98040

SHEET
A5.0

BMP INFORMATION

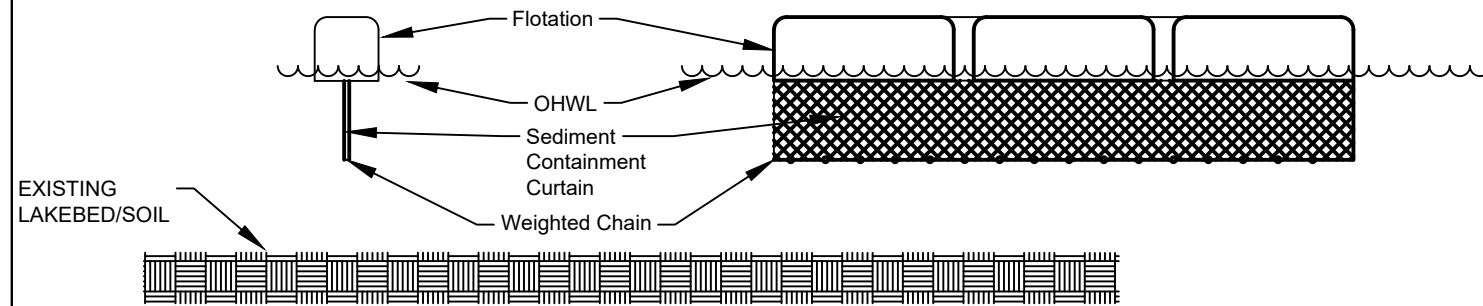


BMP NOTES:

- A. Constant vigilance shall be kept for the presence of protected fish species during all aspects of the proposed action, particularly during in-water activities such as vessel movement, deployment of anchors & spuds, pile driving, dredging, and placement of gravels and other fill.
1. The project manager shall designate an appropriate number of competent observers to survey the project site and adjacent areas for protected species, including the presence of fish as conditions allow.
 2. Visual surveys shall be made prior to the start of work each day, and prior to resumption of work following any break of more than an hour. Periodic additional visual surveys throughout the work day are strongly recommended.
 3. All in-water work shall be done during the in-water work window for the waterbody. Where there is a difference between the USCOE and WDFW work windows, the overlap of the two shall apply.
 4. All pile driving and extraction shall be postponed or halted when obvious aggregations or schooling of fish are observed within 50 yards of that work, and shall only begin/resume after the animals have voluntarily departed the area.
 5. When piloting vessels, vessel operators shall operate at speeds and power settings to avoid grounding vessels, and minimize substrate scour and mobilization of bottom sediments.
- B. No contamination of the marine environment shall result from project-related activities.
1. Appropriate materials to contain and clean potential spills shall be stored and readily available at the work site and/or aboard project-related vessels.
 2. The project manager and heavy equipment operators shall perform daily pre-work equipment inspections for cleanliness and leaks. All heavy equipment operations shall be postponed or halted should a leak be detected, and shall not proceed until the leak is repaired and the equipment is cleaned.
 3. To the greatest extent practicable, utilize biodegradable oils for equipment that would be operated in or near water.
 4. Fueling of land-based vehicles and equipment shall take place at least 50 feet away from the water, preferably over an impervious surface. Fueling of vessels shall be done at approved fueling facilities.
 5. Turbidity and siltation from project-related work shall be minimized and contained through the appropriate use of erosion control practices, effective silt containment devices, and the curtailment of work during adverse weather and tidal/flow conditions.
 6. All wastes shall be collected and contained for proper disposal at approved upland disposal sites appropriate for the material(s).
 7. When removing piles and other similarly treated wood, containment booms must fully enclose the work area. Wood debris, oils, and any other materials released into lake waters must be collected, removed, and properly disposed of at approved disposal sites.
 8. All in- and over-water wood cutting would be limited to the minimum required to remove the subject wood component, and all cutting work should be enclosed within floating containment booms.
 9. When removing piles, no actions shall be taken that would cause adhering sediments to return to lake waters.
 10. Above-water containment shall be installed around removed piles to prevent sediment laden waters from returning to lake waters.
 11. Construction staging (including stocking of materials, etc.) will occur on the supply barge.
 12. All Exposed wood to be used on the project will be treated with a cheminite treatment.

DETAIL 1.1

DETAIL 1.2



DETAIL 1.1 & 1.2

Scope of Work: We propose to drive (16) 8" steel piles and construct a new dock with grated decking material. We also propose to install (1) new boat lift and (1) new PWC lift.



Seaborn Pile Driving
1080 W Ewing St
Seattle, WA 98119

Office: 206-236-1700 ext. 3
www.seabornpiledriving.com

County: King County
Location: Lake Washington

Applicant: Cherberg Residence
9418 SE 33rd Street
Mercer Island, WA 98040

Datum: CORPS OF ENGINEERS 1919
SE Quarter Of Section 07, Township 24, Range 05

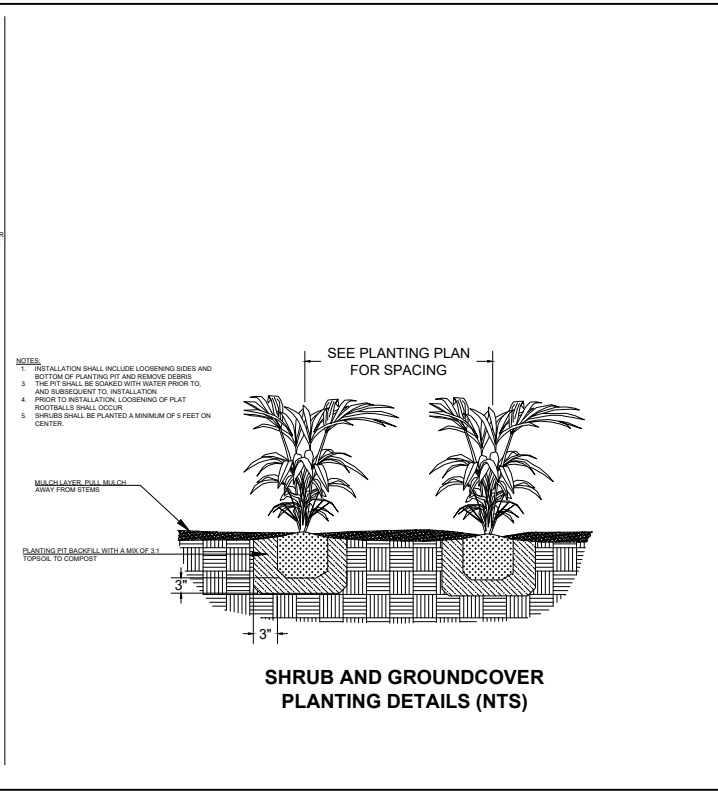
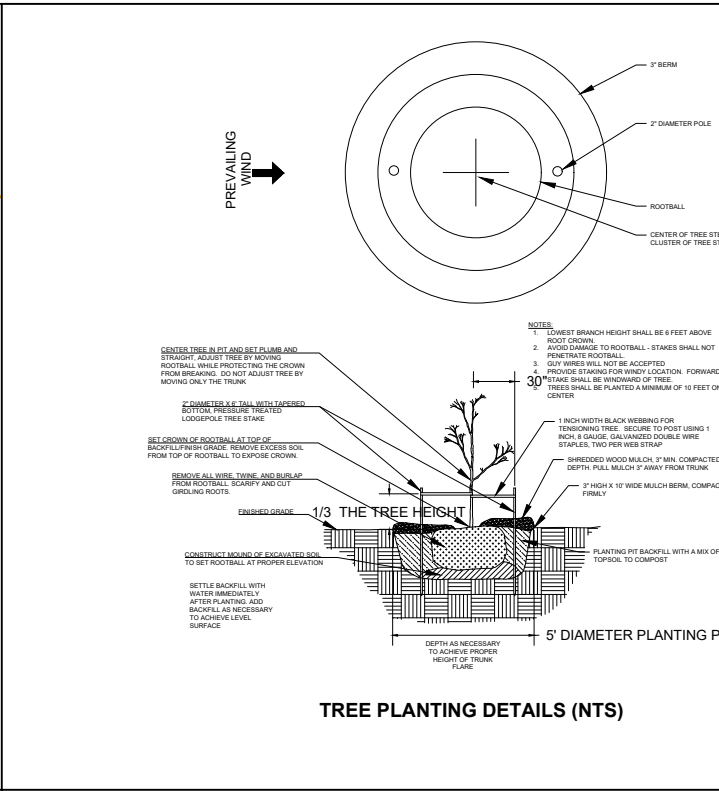
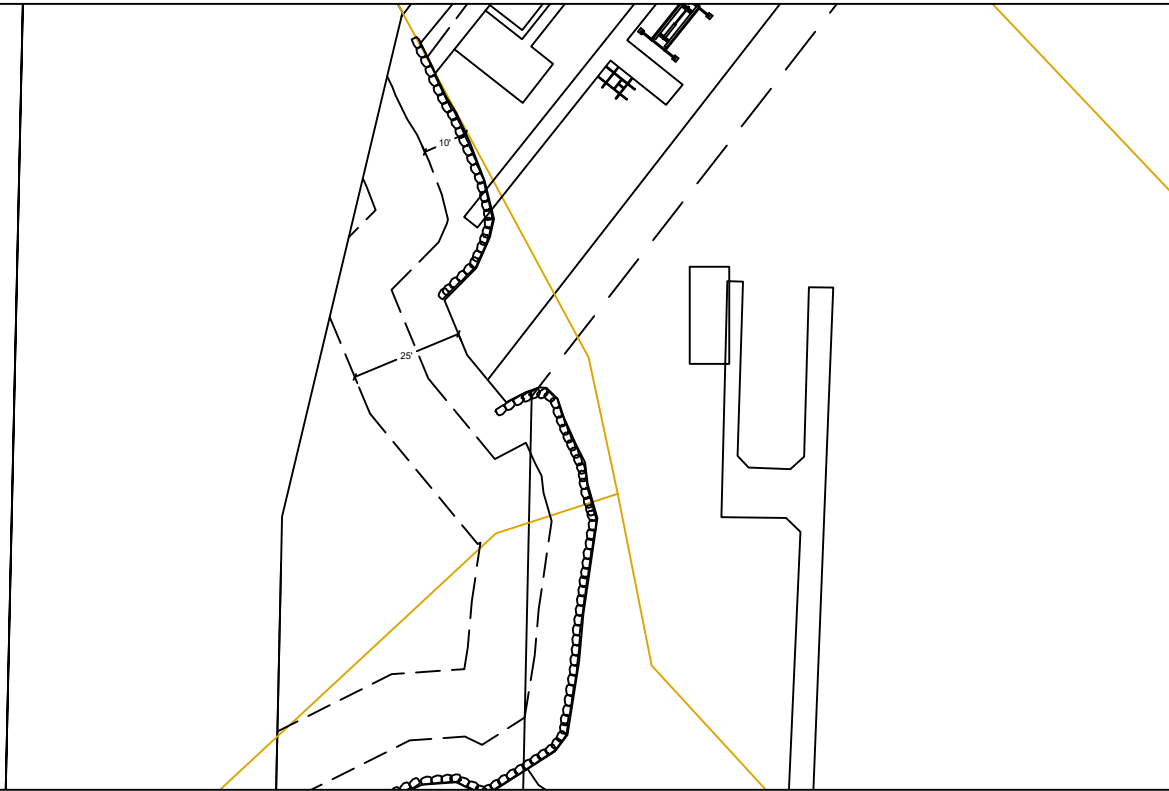
Adjacent Owners:
GRIFFITH HAL E+JOAN I
9410 SE 33RD ST 98040

Last Updated: 6/30/2023 4:21 PM Shop

Created:

SHEET
A6.0

MITIGATION PLAN



Notes:

1. Shrubs are show, and shall be planted, at least five feet on center. Trees are show, and shall be planted, at least ten feet to center.
2. The property owner will implement and abide by the shoreline planting plan. The plants shall be installed before or concurrent with the work authorized by this permit. A report, as-built drawing and photographs demonstrating the plants have been installed or a report on the status of project construction will be submitted to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch, within 12 months from the date of permit issuance. This reporting requirement may be met by completing and submitting a U.S. Army Corps of Engineers approved Report for Mitigation Work Completion form.
3. The property owner will 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 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 riparian planting plan. Individual plants that die will be replaced with native riparian species in order to meet the survival performance standards.
4. The property owner will provide annual monitoring reports for five years (Monitoring Years 1-5). Each annual monitoring report will include written and photographic documentation on plant mortality and replanting efforts and will document whether the performance standards are being met. Photos will be taken from established points and used repeatedly for each monitoring year. In addition to photos at designated points, photo documentation will include a panoramic view of the entire planting area. Submitted photos will be formatted on standard 8 1/2 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 will be identified on an appropriate drawing. Annual shoreline planting monitoring reports will be submitted to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch, by November 31 of each monitoring year. This reporting requirement may be met by completing and submitting a U.S. Army Corps of Engineers approved Mitigation Planting Monitoring Report form.

SEE LANDSCAPE PLAN BY OTHERS

County: King County
 Location: Lake Washington
 Applicant: Cherberg Residence
 9418 SE 33rd Street
 Mercer Island, WA 98040
 Datum: CORPS OF ENGINEERS 1919
 SE Quarter Of Section 07, Township 24, Range 05
 Adjacent Owners:
 GRIFFITH HAL E+JOAN I
 9410 SE 33RD ST 98040
 GRAUE JAMES THOMAS III
 9422 SE 33RD ST 98040
 Created:
 Last Updated: 6/30/2023 4:21 PM Shop

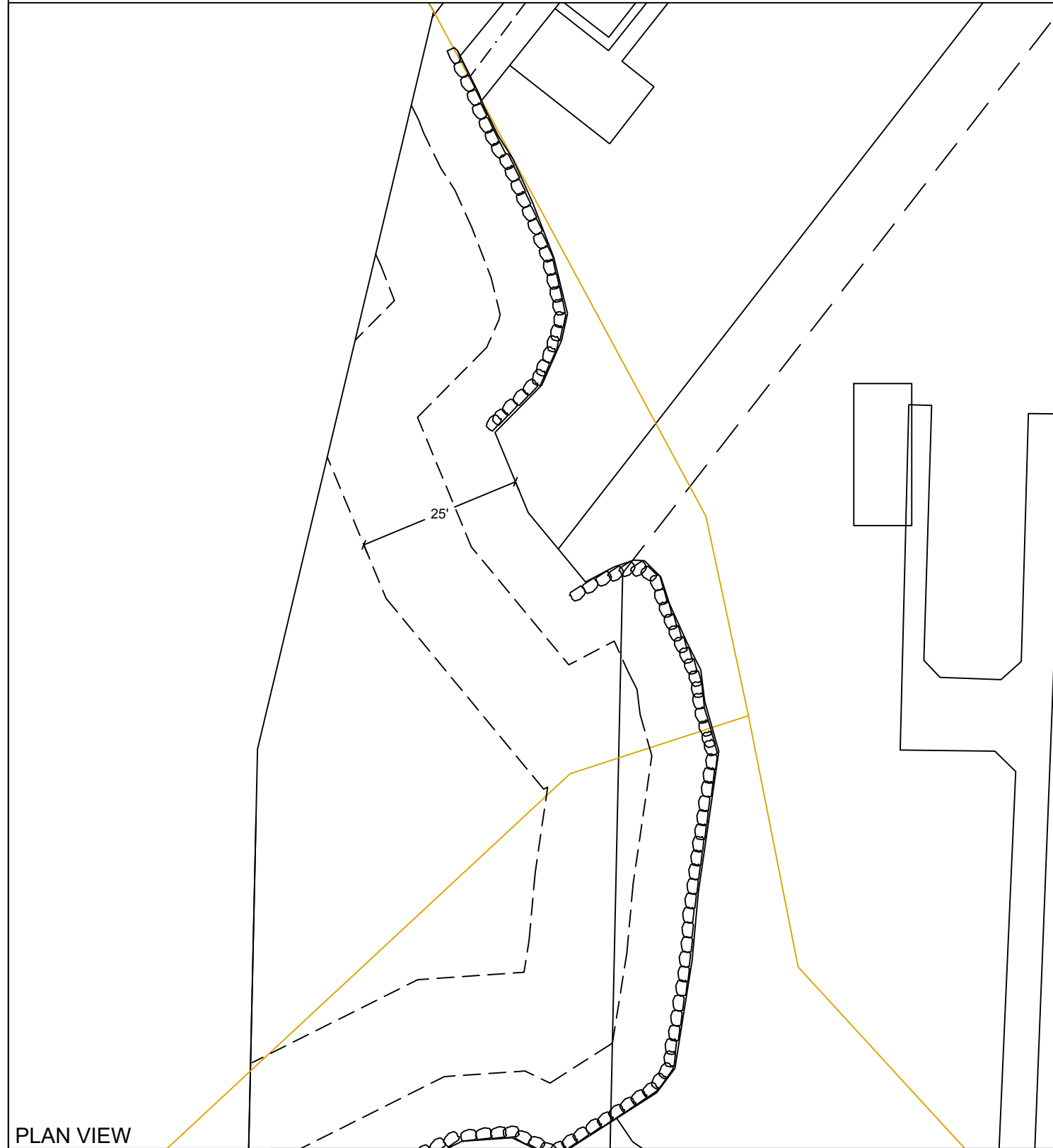


Seaborn Pile Driving
 1080 W Ewing St
 Seattle, WA 98119
 Office: 206-236-1700 ext. 3
 www.seabornpiledriving.com

Scope of Work: We propose to drive (16) 8" steel piles and construct a new dock with grated decking material. We also propose to install (1) new boat lift and (1) new PWC lift.

**SHEET
 A7.0**

EXISTING PLANT PLAN



**SEE LANDSCAPE PLAN
BY OWNER**

PLAN VIEW



Seaborn Pile Driving
1080 W Ewing St
Seattle, WA 98119

Office: 206-236-1700 ext. 3
www.seabornpiledriving.com

Scope of Work: We propose to drive (16) 8" steel piles and construct a new dock with grated decking material. We also propose to install (1) new boat lift and (1) new PWC lift.

County: King County
Location: Lake Washington

Applicant: Cherberg Residence
9418 SE 33rd Street
Mercer Island, WA 98040

Datum: CORPS OF ENGINEERS 1919
SE Quarter Of Section 07, Township 24, Range 05

Adjacent Owners:
GRIFFITH HAL E+JOAN I
9410 SE 33RD ST 98040

GRAUE JAMES THOMAS III
9422 SE 33RD ST 98040

Created:

Last Updated: 6/30/2023 4:21 PM Shop

**SHEET
A8.0**

NWS-2013-565
PAGE 8 OF 9

GENERAL NOTES:

MATERIALS SPEC LIST:

Lifts: Aluminum

- * Boat Lift - 10'x12'
- * PWC Lift - 5'x8'

Decking Material: FRPP - Fiberglass reinforced polypropylene

Open space percentage:

- * Surface - 43%
- * 18" Dock Height - 61%

SEWER:

- * All sewer is field verified by probing the lake bed manually during the allowed work windows for the area.

PILES:

- * All new piles are epoxy coated steel piles

CODE REFERENCES: Mercer Island

We are applying for the permit to be reviewed under the:

“Development Standards for New and Expanded Moorage Facilities” per MIMC 19.07.110(6)(a).

Last permit issued for property:

Dock established/constructed: date



Seaborn Pile Driving
1080 W Ewing St
Seattle, WA 98119

Office: 206-236-1700 ext. 3
www.seabornpiledriving.com

Scope of Work: We propose to drive (16) 8" steel piles and construct a new dock with grated decking material. We also propose to install (1) new boat lift and (1) new PWC lift.

County: King County
Location: Lake Washington

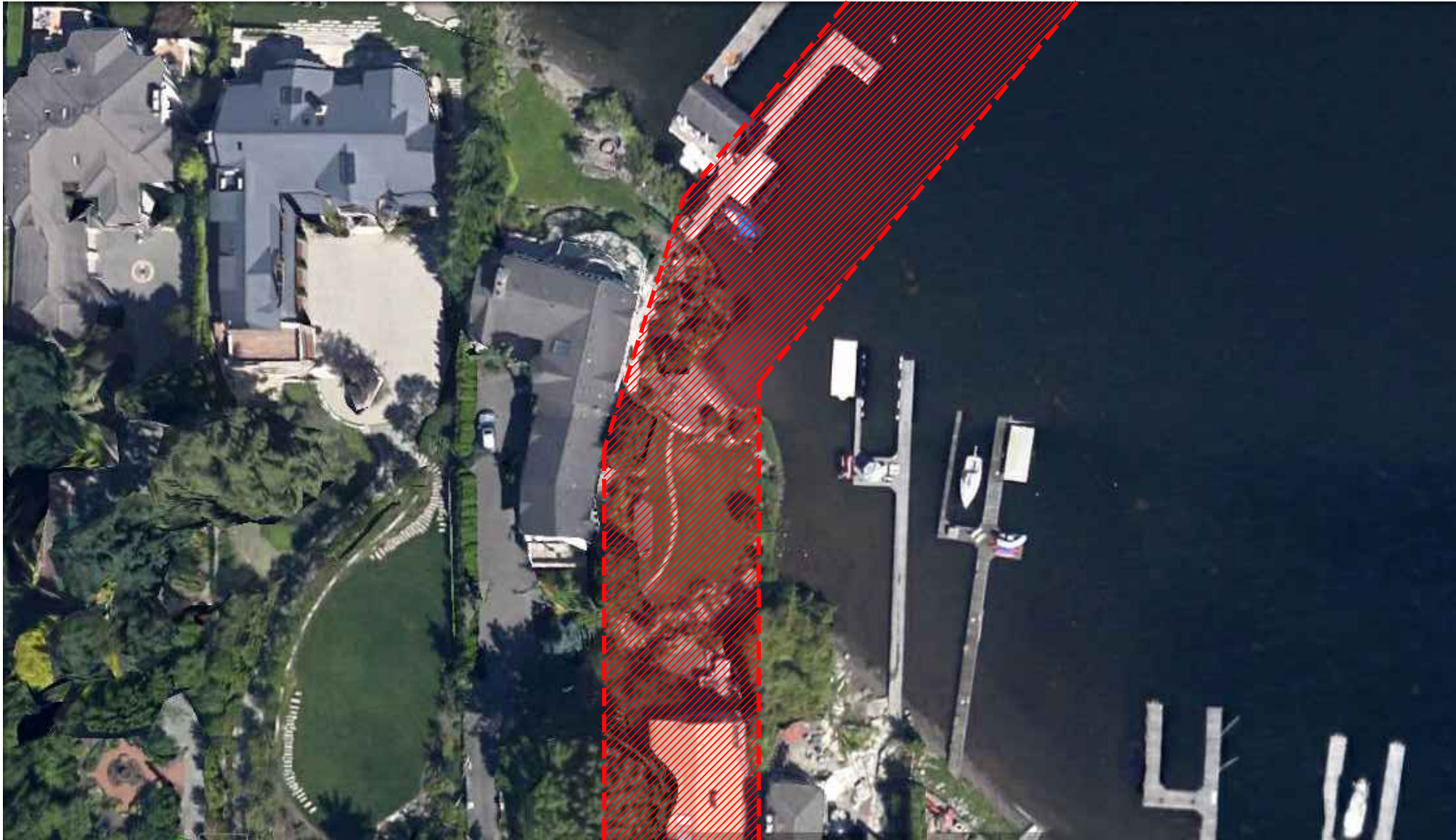
Applicant: Cherberg Residence
9418 SE 33rd Street
Mercer Island, WA 98040

Datum: CORPS OF ENGINEERS 1919
SE Quarter Of Section 07, Township 24, Range 05
Adjacent Owners:
GRIFFITH HAL E+JOAN I
9410 SE 33RD ST 98040
GRAUE JAMES THOMAS III
9422 SE 33RD ST 98040

**SHEET
A9.0**

Created:

Last Updated: 6/30/2023 4:21 PM Shop

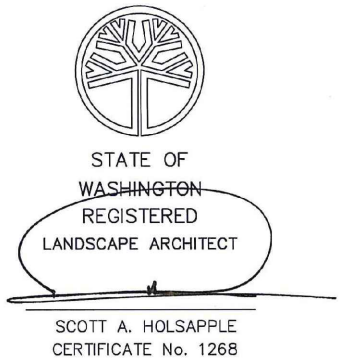


PROJECT #: NWS-2013-0565
OCTOBER 10, 2022

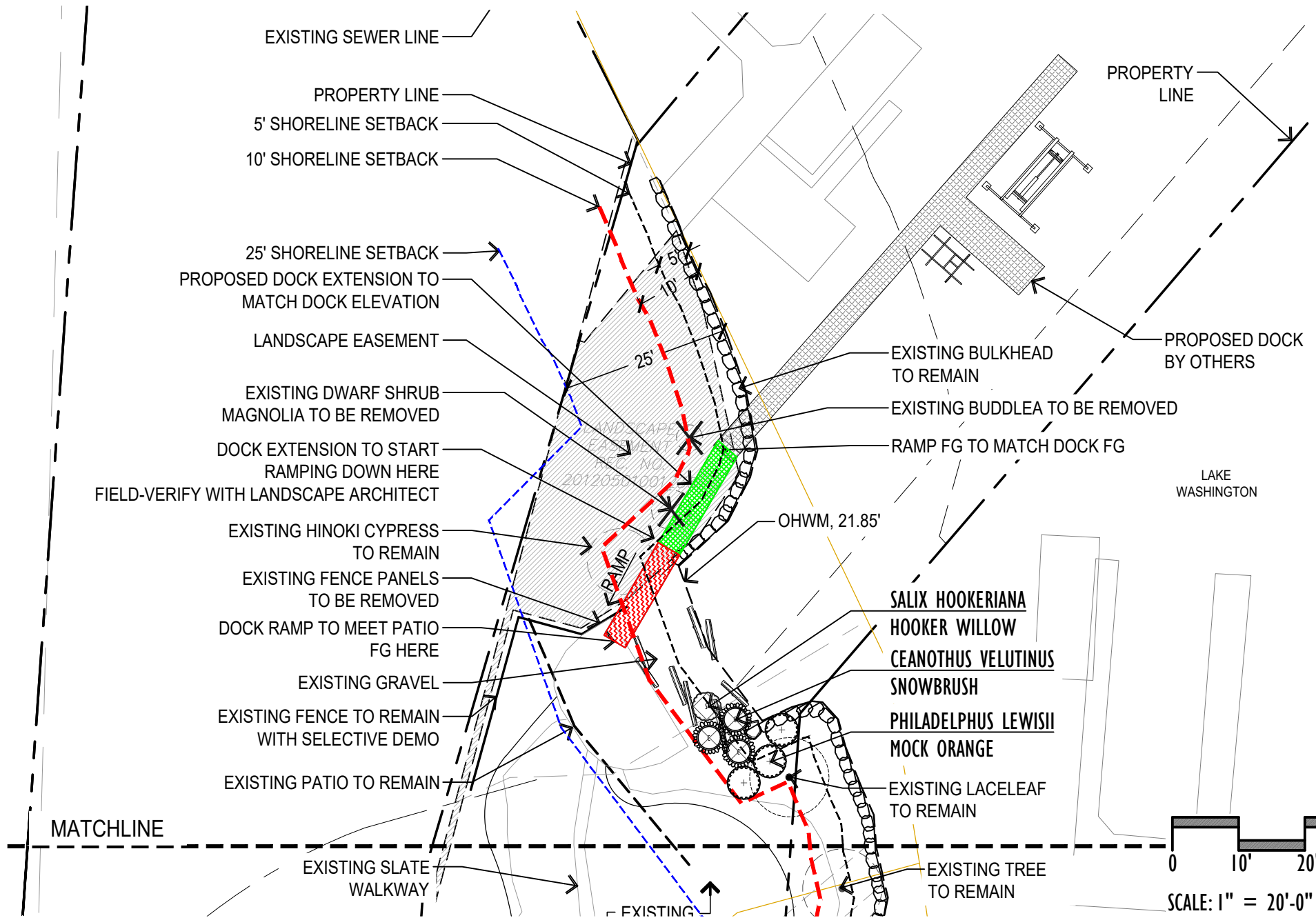
CHERBERG
PIER
9418 SE 33RD STREET
MERCER ISLAND, WA

MITIGATION PLANTING PLAN

SHEET 9 OF 12

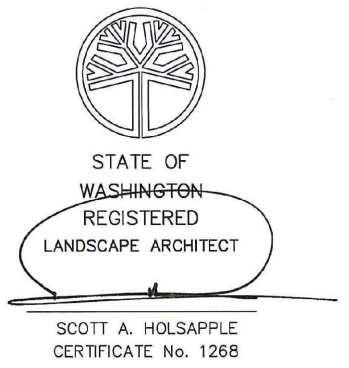
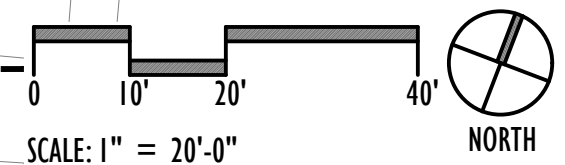


SHD LANDSCAPE
ARCHITECTURE
SCOTT HOLSAPPLE
DESIGN
4303 STONE WAY N SEATTLE WA 98103
(206) 745-5822 www.shd-la.com



REQUIRED PLANTING IN SHORELINE SETBACK
 MIN. NUMBER OF TREES REQUIRED: 7
 NUMBER OF TREES PROVIDED: 5
 MIN. NUMBER OF SHRUBS REQUIRED: 5
 NUMBER OF SHRUBS PROVIDED: 7

- LEGEND**
- EXISTING TREES TO REMAIN
 - PROPERTY LINE
 - EXISTING BULKHEAD
 - EXISTING LAWN
 - EXISTING TIMBER EDGING
 - OHWM (ORDINARY HIGH WATER MARK)
 - LOGS
 - 5' SHORELINE SETBACK
 - 10' SHORELINE SETBACK
 - 25' SHORELINE SETBACK



CHERBERG PIER
 9418 SE 33RD STREET
 MERCER ISLAND, WA

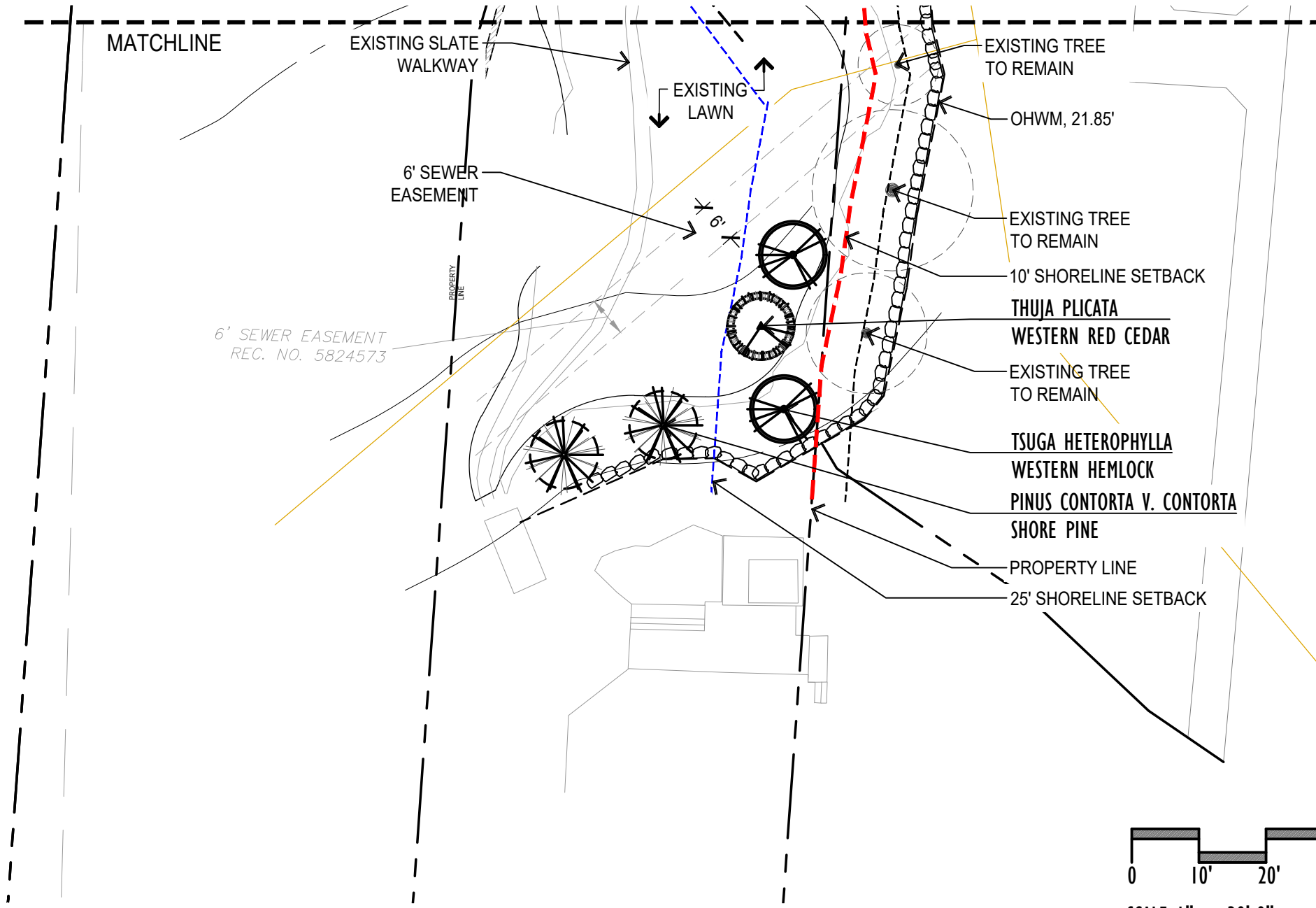
MITIGATION PLANTING PLAN

project #: NWS-2013-0565

Date	Issue
Feb 25, 2022	PERMIT REVISION
Apr 20, 2022	PERMIT REVISION
June 15, 2022	PERMIT REVISION
October 10, 2022	PERMIT REVISION

L1.0
 9 OF 11

SHD LANDSCAPE ARCHITECTURE
 SCOTT HOLSAPPLE DESIGN
 4303 STONE WAY N SEATTLE WA 98103
 (206) 745-5822 www.shd-la.com



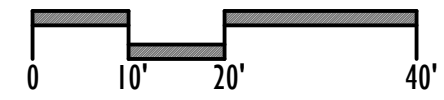
REQUIRED PLANTING IN SHORELINE SETBACK

MIN. NUMBER OF TREES REQUIRED: 7
 NUMBER OF TREES PROVIDED: 5
 MIN. NUMBER OF SHRUBS REQUIRED: 5
 NUMBER OF SHRUBS PROVIDED: 7

LEGEND

- EXISTING TREES TO REMAIN
- PROPERTY LINE
- EXISTING BULKHEAD
- EXISTING LAWN
- EXISTING TIMBER EDGING
- OHWM (ORDINARY HIGH WATER MARK)
- LOGS
- 5' SHORELINE SETBACK
- 10' SHORELINE SETBACK
- 25' SHORELINE SETBACK

- EXISTING TREE TO REMAIN
- OHWM, 21.85'
- EXISTING TREE TO REMAIN
- 10' SHORELINE SETBACK
- THUJA PLICATA**
- WESTERN RED CEDAR**
- EXISTING TREE TO REMAIN
- TSUGA HETEROPHYLLA**
- WESTERN HEMLOCK**
- PINUS CONTORTA V. CONTORTA**
- SHORE PINE**



SCALE: 1" = 20'-0"



NORTH



STATE OF WASHINGTON
 REGISTERED
 LANDSCAPE ARCHITECT

SCOTT A. HOLSAPPLE
 CERTIFICATE No. 1268

**CHERBERG
 PIER**
 9418 SE 33RD STREET
 MERCER ISLAND, WA

**MITIGATION
 PLANTING PLAN**

project #: NWS-2013-0565

Date	Feb 25, 2022	Issue	PERMIT REVISION
	Apr 20, 2022		PERMIT REVISION
	June 15, 2022		PERMIT REVISION
	October 10, 2022		PERMIT REVISION

L1.1

10 OF 11

**SHD LANDSCAPE
 ARCHITECTURE**
 SCOTT HOLSAPPLE
 D E S I G N
 4303 STONE WAY N SEATTLE WA 98103
 (206) 745-5822 www.shd-la.com

CHERBERG PLANT SCHEDULE

QTY	BOTANICAL NAME	COMMON NAME	SIZE	NOTES
-----	----------------	-------------	------	-------

TREES



2	PINUS CONTORTA V. CONTORTA	SHORE PINE	6' HT.	FULL AND WELL ROOTED
---	----------------------------	------------	--------	----------------------



1	THUJA PLICATA	WESTERN RED CEDAR	6' HT.	FULL AND WELL ROOTED
---	---------------	-------------------	--------	----------------------



2	TSUGA HETEROPHYLLA	WESTERN HEMLOCK	6' HT.	FULL AND WELL ROOTED
---	--------------------	-----------------	--------	----------------------

SHRUBS



3	CEANOTHUS VELUTINUS	SNOWBRUSH	2 GAL., 5' HT. 5' O.C., FULL & WELL ROOTED
---	---------------------	-----------	--



3	PHILADELPHUS LEWISII	MOCK ORANGE	2 GAL., 5' HT. 5' O.C., FULL & WELL ROOTED
---	----------------------	-------------	--



1	SALIX HOOKERIANA	HOOKER WILLOW	2 GAL., 5' HT. FULL AND WELL ROOTED
---	------------------	---------------	-------------------------------------



STATE OF
WASHINGTON
REGISTERED
LANDSCAPE ARCHITECT

SCOTT A. HOLSAPPLE
CERTIFICATE No. 1268

CHERBERG
PIER
9418 SE 33RD STREET
MERCER ISLAND, WA

MITIGATION
PLANTING SCHEDULE
project #: NWS-2013-0565

Date	Issue
Feb 25, 2022	PERMIT REVISION
Apr 20, 2022	PERMIT REVISION
June 15, 2022	PERMIT REVISION
October 10, 2022	PERMIT REVISION

L2.0
11 OF 11

SHD LANDSCAPE
ARCHITECTURE
SCOTT HOLSAPPLE
DESIGN
4303 STONE WAY N SEATTLE WA 98103
(206) 745-5822 www.shd-la.com

SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

JAMES THOMAS GRAUE III and SHANNON E. GRAUE, TRUSTEES FOR THE SHANNON E. GRAUE QUALIFIED PERSONAL RESIDENCE TRUST and THE JAMES THOMAS GRAUE III QUALIFIED PERSONAL RESIDENCE TRUST

SHB Case No. 23-001

STIPULATED JOINT MOTION FOR DISMISSAL; PROPOSED ORDER

Petitioners,

vs.

THE CITY OF MERCER ISLAND; JAMES W. CHERBERG AND NAN CHOT CHERBERG,

Respondents.

STIPULATED JOINT MOTION FOR DISMISSAL

Petitioners James Thomas Graue III and Shannon E. Graue, Trustees For The Shannon E. Graue Qualified Personal Residence Trust and The James Thomas Graue III Qualified Personal Residence Trust, Respondent City of Mercer Island, and Respondents James W. Cherberg and Nan Chot Cherberg (collectively “the Parties”) hereby stipulate to, and jointly move the Board for, dismissal of this matter with prejudice.

The Board issued an Order Granting Continuance on July 14, 2023, based upon the Parties’ Stipulated Request for Stay to Pursue Settlement. The Parties reached a settlement and have completed the settlement terms necessary to dismiss this proceeding. Pursuant to WAC 461-08-

1 465(1), the Settlement Agreement is attached as Exhibit 1. Therefore, the Parties jointly stipulate
2 to dismissal with prejudice, and seek the Board's issuance of an order of dismissal with prejudice
3 of the above captioned proceeding.

4 SO STIPULATED BY THE PARTIES this ____ day of _____, 2023.

6 LAW OFFICE OF MICHAEL J. MURPHY

7 By: /s/ Michael J. Murphy
8 Michael J. Murphy, WSBA #11132
9 2711 64th Ave. SE
10 Mercer Island, WA 98040
11 T: (206) 618-7200
12 E. mmurphy@MJMLAW.org
13 *Attorney for Graue Petitioners*

11 MADRONA LAW GROUP, PLLC

12 By: /s/ Eileen M. Keiffer
13 Eileen M. Keiffer, WSBA No. 51598
14 14205 SE 36th Street
15 Suite 100, PMB 440
16 Bellevue, WA 98006
17 Telephone: (425) 201-5111
18 Email: eileen@madronalaw.com
19 *Attorneys for City of Mercer Island*

17 CITY OF MERCER ISLAND
OFFICE OF CITY ATTORNEY

18 By: /s/ Bio Park
19 Bio Park, WSBA No. 36994
20 9611 SE 36th Street
21 Mercer Island, WA 98040
22 Telephone: (206) 275-7652
23 Email: bio.park@mercerisland.gov
Attorneys for City of Mercer Island

STEPHENS & KLINGE LLP

By: /Charles A. Klinge

STEPHENS & KLINGE LLP
10900 NE 4th Street, Suite 2300
Bellevue, WA 98004
(425) 453-6206

1 Charles A. Klinge, WSBA #26093
2 10900 NE 4th Street, Suite 2300
3 Bellevue, WA 98004
4 (425) 453-6206
5 Email: klinge@sklegal.pro
6 *Attorneys for Cherberg Respondents*

7 **ORDER**

8 Pursuant to WAC 461-08-465(1), the Parties having reached settlement and having stipulated
9 to dismissal with prejudice, the Board hereby dismisses the above captioned proceeding with
10 prejudice.

11 DATED this ____ day of _____, 2023.

12
13
14 _____
15 Michelle Gonzalez, Presiding
16 Shoreline Hearings Board

17 Presented by:

18 LAW OFFICE OF MICHAEL J. MURPHY

19 By: /s/ Michael J. Murphy
20 Michael J. Murphy, WSBA #11132
21 Attorney for Graue Petitioners

22 MADRONA LAW GROUP, PLLC

23 By: /s/ Eileen M. Keiffer
Eileen M. Keiffer, WSBA No. 51598
Attorneys for City of Mercer Island

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

CITY OF MERCER ISLAND
OFFICE OF CITY ATTORNEY

By: /s/ Bio Park
Bio Park, WSBA No. 36994
Attorneys for City of Mercer Island

STEPHENS & KLINGE LLP

By: /s/Charles A. Klinge
Charles A. Klinge, WSBA #26093
Attorneys for Cherberg Respondents

DRAFT

**Law Office of
Michael J. Murphy**

EXHIBIT 3

Michael J. Murphy
Direct Dial: (206) 618-7200
E-Mail: mmurphy@mjlmlaw.org

August 24, 2023

VIA EMAIL

Colleen Anderson
Mathew Bennett, Section Chief
Via Email: colleen.c.anderson@usace.army.mil
Mathew.J.Bennett@usace.army.mil

Re: NWS-2013-565-A James Cherberg Dock

Dear Colleen and Mathew:

As you know, I represent Tom Graue III and Shannon Graue, the owners of the property immediately to the east of the Cherberg property. By letters dated August 28, 2022 and January 12, 2023 I submitted objections to the requested ACOE permit. The Graues had previously communicated objections to the proposed dock design. Pursuant to the terms of the Settlement Agreement between the Graues and the Cherbergs, the Cherbergs have revised their proposed dock design to remove the southeasterly finger pier. That revised design has been approved by the City of Mercer Island and the Washington State Department of Ecology and those decisions are final. Accordingly, the Graues withdraw their objections to the revised Cherberg dock design with the southeasterly finger pier removed and further provided that any ACOE permitted or approved dock design is not dimensionally or locationally materially different from the design depicted on **Exhibit 1**, which is the revised design that the Cherbergs have submitted to the ACOE.

Please contact me if you have any questions. Please note my new email address:
mmurphy@mjlmlaw.org.

Very truly yours,

DRAFT
Michael J. Murphy

cc: Client (via email)