

**DECISION OF THE HEARING EXAMINER
CITY OF BAINBRIDGE ISLAND**

In the Matter of the Application for
Conditional Use Permits by

SEATTLE YACHT CLUB

SCUP/CUP13042

and the Appeal of the Director's
Threshold Determination (MDNS) by

MALLUM/FRANZ, et al.

BACKGROUND

The Seattle Yacht Club seeks a Conditional Use Permit (CUP) and a Shoreline Conditional Use Permit (SCUP) for construction of several improvements on its property within the shoreline. The Director's SEPA threshold determination (MDNS) was appealed by several neighbors.

The SEPA appeal hearing and the public hearing required for the CUP and SCUP decisions were consolidated. A prehearing conference was held on May 25, 2006, and the hearing began on June 1, 2006, continuing on June 2, 2006, June 23, 2006, and July 14, 2006. Parties represented at the hearing were the Director, Planning and Community Development Department (PCD or Department), by Joshua Machen, Senior Planner; the Applicant, Seattle Yacht Club (SYC), by its attorney Keith Moxon; and, the appellant group Mallum/Franz, *et al.*, by attorneys Hillary Franz and Claudia Newman. The record was closed on August 8, 2006 following receipt of post-hearing submittals.

After due consideration of all the evidence in the record, the following shall constitute the findings of fact, conclusions of law, and decisions of the Hearing Examiner on this application and the Director's SEPA threshold determination. All evidence admitted in to the record was considered in making this decision. References to exhibits and testimony that are shown in brackets denote some of the evidence relied upon; these references are not intended as exclusive or exhaustive. (Note: Exhibit 92 contains over 100 photographs used in a PowerPoint presentation given at the hearing. Each photo has an individual identification number preceded by "PP".)

FINDINGS

SITE DESCRIPTION

1. The Port Madison Outstation, or FO'C'SLE, is one of the nine private recreational boating moorages operated in the region by the Seattle Yacht Club (SYC) for

its members. Addressed as 8750 Spargur Loop Road NE, the Yacht Club is located at the northern end of the island, on the southern shore of Port Madison Bay [see Figure 1, Exhibit 31]. The seven acre site consists of two parcels (each about 3½ acres): the original outstation site and the adjacent “Springer” property. The Tax Assessor parcel numbers are 342602-3-048-2005 and 342602-3-045-2005, 8750 Spargur Loop Road and Springer property, respectively. See “Site Plan” [Exhibit 104] for location of existing and built and natural features. [Exhibits 3; 15; 71, pages 1, 7-8; 129; Testimony Machen]

2. The Port Madison Outstation (Yacht Club or Club) has been in operation at the subject site since 1945. In 1944 SYC members were asked to donate money to purchase waterfront property that included an old building and dilapidated wharf. In 1945 the property was purchased, the building decorated and dock repaired. In 1963, several parcels (originally purchased from Grace Spargur by a SYC Past Commodore) were conveyed to SYC. During the early 1960’s improvements were made to the restrooms, bulkhead, and landscaping. Clubhouse construction was completed in 1967. In the early 1990’s the City and the SYC settled a dispute so that the northern parking area became officially SYC property. In 1997, SYC purchased the Springer property immediately to the west and the subject application includes the proposal to operate a small boat sailing program there. [Exhibit 24, Attachment; Ovens]

3. From the rock bulkhead the subject site slopes fairly steeply [Exhibit 92: PP 31, Exhibit 149] to gently sloping, well-forested uplands. The existing floating docks (“dock” and “float” are used interchangeably in this decision), which are generally parallel to the northwesterly-facing shoreline [see Exhibit 92: PP 58-60; Sheet 2, Exhibit 113; in red circle page 19, Exhibit 31], can provide moorage for 26 boats [Exhibit 31, page 1]. (The Yacht Club owns the tidelands extending waterward approximately 320 ft. See also tidelands lease, Exhibit 108.) Development on the Springer property [see also Findings 34 and 35] consists of a single-family house (“Springer house”) residence and a dock (“Springer dock”) [see Exhibit 92: PP 12, 15-16, 98-100]. [Exhibits 15; 56; Exhibit 71, page 7; 113]

4. There are several existing upland structures on the subject site including the clubhouse (with meeting/dining area, kitchen and restroom/shower facilities) [Exhibit 92: PP 65-67], restroom facilities at the head of the dock [Exhibit 92: PP 63], pavilion [PP 45-46, Exhibit 92], caretaker’s residence [Exhibit 92: PP 51-52 82], carport and shed [PP 3-5, Exhibit 92] at the north end of the property, west of Spargur Loop Road. There is lawn and landscaping between the structures and mature trees throughout the site [see *e.g.*, PP 1-6, 45, 50-55, 97, Exhibit 92; also see Finding 5]. There is parking area for eleven cars by the Clubhouse [Exhibit 3, Section 3; Exhibit 92: PP 65-70, 79] and an area south of the Caretaker’s residence that is used for overflow parking. [Exhibits 15; 56; 71, page 7; and 113]

5. The northern part of the site, where the existing structures are located, slopes down to the water from the southeast to northwest, becoming relatively steep near the shore [see topography, Exhibit 105; Exhibit 92: PP 31, 55, 56, 98; Exhibit 149]. The undeveloped southern portion of site includes some steep slopes. A Category III wetland of approximately one acre has been identified in the southwest portion of the site [see wetland boundaries, Exhibit 107]. Vegetation includes a thick canopy of red alder and

western red cedar, with an understory dominated by salmonberry with red elderberry, holly, and Indian plum, and a sparse groundcover of skunk cabbage, lady fern and English ivy. [Exhibits 32; 56; 71, page 7,]

6. The Yacht Club grounds and structures are attractive and well-maintained [e.g., Exhibit 92: PP 51-52 (Caretaker's house), 73 & 86 (Club on right), 66 & 79 (Clubhouse), 89-92 (parking area), 93 and 95 (either side of Spargur Loop Road), 57 (walkway to gangway/main dock)]. In this respect, the Club is compatible with this characteristic Island neighborhood of attractive homes and wooded roadsides [see e.g., Exhibit 92: PP 75, 81; Exhibits 136F-I, K-L]. The temporary garage and shed structures [see Exhibit 92: PP 4, 5, and 87] are exceptions and they would be replaced by the proposed garage. The large, brightly colored play equipment set near the road [Exhibit 92: PP 83, 88] may also be considered an exception as it is located in what otherwise might be a scenic westerly view across the lawn. [Testimony Otorowski; Haugan]

7. The site is zoned residential (R-2), two units per acre. (This designation would allow for 14 dwelling units on the subject site.) The Director considers the Yacht Club to be an existing non-conforming use. [PCD Staff Report, Exhibit 71, pages 10 12]

8. The Comprehensive Plan designation is OSR-2, Open Space Residential and the Shoreline Master Program environment designations are "Semi-Rural" upland and "Aquatic" over water. [Exhibit 71, Staff Report, page 8,]

YACHT CLUB OPERATIONS

Events

9. The Yacht Club's outstations provide transient moorage for visiting SYC members (most stay overnight, weekend, or several days and there is a two-week maximum). Most days in October through May, there are only a few (less than 10) boats moored here, and there are many days in each month with no boats at all. During these off-season months only Yacht Club "events" (e.g., New Year's holiday in January, Chile Cook-off in February, Garlic Festival in March, and occasional mini-cruise or holiday gathering) generate 20 or more boats. In 2004 there were 122 days with 10 or more boats and/or 20 or more persons and in 2005, there were 124 days like that. At this rate, indicate there is little or no noticeable activity two-thirds of the year. [Exhibits 126; 130-132; 134; 166; Testimony Haugen; Otorowski; Woodard]

10. Summer (May through September) non-"event" weekdays see relatively few visitors with at least several days each month having only a handful of boats visiting. Summer weekends are popular and it is not unusual for there to be 10 or more boats. [Exhibits 24, 130-132, 134]

11. During large SYC summer "events", the dock is full and boats raft up [see e.g., Exhibit 161]. Summer holidays and Yacht Club events (e.g., Memorial Day in May; Power Boat Rendezvous, Golf Rendezvous, and Potlatch, generally in June; Fourth of July; Labor Day, Stimson Trophy Race in September; and, Halloween Cruise in October) can draw several dozen or more boats. The 3-4 major annual events, each lasting for several days (including a weekend) include the Power Boat Rendezvous, Potlatch, and Stimson Race. [Exhibits 24, 130-132, 134, 166; Testimony Otorowski]

12. In recent years (2003-2005), the number of boats moored each day during the Power Boat Rendezvous and Potlatch averaged around 50 boats and visitors over 250 for Potlatch and in the 130-165 range for the Power Boat Rendezvous. The Stimson Trophy Race is generally a smaller event, with fewer than 50 boats. Most SYC members arrive by boat and parking on-site for more than a few cars is typically needed only during some summer weekends and major events. The large annual events have a notable and atypically large demand for parking. During these events, the number of cars parked on-site routinely reaches 20 or more; car counts have been in the high 30's with maximum around 40. Except for those large summer events, it was relatively rare for there to be 10 or more cars parked on-site on any day during 2003-2005. [Exhibits 130-132, 134, 166; Testimony Otorowski]

13. Other than the events noted above, there are few occasions each year attended by 50-100+ visitors. Attendees have sometimes relied heavily on cars rather than boats for transportation (*e.g.*, in 2005 "Ladies Lunch", 152 attended, 14 cars, 9 boats; Committee Meeting, 50 attended, 15 cars, 0 boats; 2004 "Ladies Lunch", 139 attended, 5 cars, 9 boats; Yacht Club Employee Picnic, 80 attended, 12 cars, 7 boats; Fishing Derby, 77 attended, 12 cars, 18 boats. [Exhibits 130, 132, 134]

14. The claim of some neighbors that there has been an increasing amount of activity at the Yacht Club in recent years is not borne out by the records of usage. The years 2001 through 2005 had fewer boats and fewer visitors (2564 boats and 9280 visitors) than was the annual average for the 11 year period from 1994 through 2005. The year 1997-1998 saw the highest number of both boats (3696) and visitors (10,535); 1995-1996 and 1996-1997 were the next highest. [Exhibit 126]

Rules

15. The SYC has general rules for all its outstations and rules specifically for the Port Madison Outstation [Exhibit 129]. Abuse of facilities or violation of the rules can result in suspension or loss of outstation privileges. Some of the Spargur Loop neighbors noted that they have found SYC unresponsive to their complaints. Resident managers are "required, as a provision of their employment, to call members' attention to these rules as necessary and to report violations to the outstation committee chairmen for appropriate action." The current resident managers (or "Caretakers") at the Port Madison Outstation are, by all accounts in this record, capable and competent and have good relations with both SYC members and neighbors. However, it would not be surprising if "policing" their vacationing employers could be a difficult and, at least some times, futile task for the caretakers [see public comments].

16. Both sets of SYC rules stress the importance of being a "good neighbor": to respect the rights and privacy of others [see also PP 72, Exhibit 92]. Private parties, fireworks, camping on outstation grounds and sleeping overnight in the clubhouse, and discharge of marine toilets are prohibited. However, there are no rules limiting hours (*e.g.*, a curfew on outdoor gatherings, *etc.*). Generators are not to be operated before 7 a.m. or after 10 p.m. Members are not to use "Loud hailers" except in emergencies, but they have been used for announcing organized races/games. [Exhibit 129; Testimony Grant; Woodard].

VICINITY

17. The surrounding neighborhood is dominated by single-family residential use (there are 19 existing residences on Spargur Loop Road [Testimony Franz]), but there are also recreational uses in addition to the Yacht Club. The undeveloped parcel immediately adjacent to the northeast is a small (.34 acre), undeveloped City park (T'Chookwap Park) [see Exhibit 127], and the new six acre Spargur Park is to the southwest. Spargur Park is not open yet, but the existing dock is expected to have public use (see dock in lower left in Exhibit 162, Springer dock in the center and boats moored at the Yacht Club upper center]. Nearby to the south is the Port Madison Yacht Club with permanent (year-round) moorage for club members, a clubhouse, small boat storage and launch facilities, and parking areas [see Exhibit 92: left side photo 106.]. To the east are single-family homes developed on large lots. [Exhibit 71, Staff Report, page 8; Exhibit 164; Testimony Lande; Testimony Otorowski]

18. In the northeast, south of Port Madison Bay, NE Hidden Cove Road runs east from the western side of the Island, west of Manzanita Drive, across SR 305, and terminates at Phelps Road in the vicinity of the subject site. Spargur Loop Road extends directly north from Hidden Cove Road, then turns east in front of the Yacht Club, running west to east to Phelps Road NE [see Exhibit 152].

19. Spargur Loop Road [see Exhibit 136], classified as “Residential Suburban”, has an estimated pavement width varying between approximately 10 ft. to 15 ft. [Testimony Tilghman; Franz]. The initial segment of Spargur Loop Road, from Hidden Cove Road north to the Yacht Club, has no curves and is wide enough for safe two way travel [136A-D]. Between the turn to the east in front of the subject site [136T] and intersection with Phelps Road, Spargur Loop has two “blind” curves [136M-R] and some segments are too narrow (with roadside constraints *e.g.*, adjacent to ditch or slope) to allow two cars to pass [136M]. Other segments of the road have sufficient width (including unpaved “shoulders”) and visibility for two cars to safely pass each [136L; 137]. There are no formal traffic counts on Spargur Loop Road, but volumes appear to be quite low. Appellants’ traffic consultant estimated it might be less than 400/day. (At the ITE standard of 10 trips/day/single-family residence, the 19 existing residences on Spargur Loop Road would be expected to generate approximately 190 trips/day.)

20. The vicinity is zoned R-2 along the waterfront (OSR-2 Comprehensive Plan designation) and, further to the south, across Hidden Cove Road, zoning is R-0.4 (OSR-0.4 Comprehensive Plan designation). [Exhibit 71, Staff Report, page 8]

21. Similar to much (*i.e.*, 82%) of the Island, the shore of Port Madison Bay is developed. Also similar to the rest of the Bainbridge Island, the development is primarily single-family residences. The sheltered bay is popular for boating and structures for accessing boats (piers, docks, buoys, *etc.*) are numerous; one estimate is 70 docks [Testimony Cheney]. There are eight marinas (*i.e.*, piers and floats with more than five moorings) and many single-family residences have docks [see page 3, Exhibit 31] for personal use [see aerial photos page 19, Exhibit 31 or Exhibit 110]. The “density” of

such structures (referred to as “modifications”) is the highest on the Island with 14 modifications per 1,000 linear feet. [Exhibit 118A, Nearshore Assessment, pages 37-44]

22. The Biological Evaluation prepared as a part of the Corps of Engineers permitting process [Exhibit 31], describes the Port Madison Bay (or “Hidden Cove”) as a “small shallow inlet” about 1 mile in length and ¼ mile wide, offering “protected moorage”, with water depths ranging from 6 to 20 feet MLLW. Hidden Cove has suitable habitat for both migratory and resident marine fish with a variety of adult and juvenile salmon, trout and char. There are no salmon-bearing streams in the immediate area, but adult salmon would be expected to be present April through October during migration to other areas. This area has no commercial shellfish grounds, but is a well-documented spawning and holding area for Pacific herring. [Exhibits 31, pages 3-8, Figure 3; 118A, Figures B17 –B27]

PROPOSAL

23. The major elements of the proposal are to reconfigure the existing dock and to convert the Springer house and dock for use in a small boat sailing program. The proposal has been revised since the original submittal, with an appreciable reduction in the length of both proposed docks [see Findings 25, 26, 36 and 37]. The individual elements of the proposal are listed here [see locations numbered on site plan, Exhibit 105] and discussed in subsequent Findings. [Exhibit 71, Staff Report, page 1; Exhibit 3, Application, Section 1; Exhibit 56 (site plan); Exhibit 57 (landscape plan); Exhibit 66; Exhibit 106 (Springer house); Exhibits 113 and 66 (moorage/pier renovation); Testimony of Machen; Layton; Haugan]

- (1) Refurbish and convert (Springer) house (2 meeting rooms, bathrooms, support areas, boat storage and maintenance area) for small boat sailing class use.
- (2) Rebuild (Springer) dock (replace old float) for small boat sailing class dock.
- (3) Reconfigure and add slips to existing main dock to accommodate wider boats.
- (4) Replace the existing septic system.
- (5) Formalize parking areas.
- (6) Build a deck adjacent to the BBQ pavilion.
- (7) Construct garage (for the caretaker).
- (8) Relocate playground equipment to create view corridor from the street.
- (9) Plant vegetation buffers.
- (10) Upgrade outdoor lighting.
- (11) Upgrade existing restrooms.

24. As required mitigation [see Findings 24 and 66] 46 creosote piles, a grounded float, and a tidal grid adjacent to easterly fixed pier, would be removed.

Reconfigure Existing Moorage (#3 on Exhibit 105)

25. Reconfiguration of the existing 12 slip moorage [Exhibit 92: PP 57-60] is proposed in order to have slips that can accommodate wider boats (*i.e.*, two large boats in each slip) and two slips would be added. The existing dock was designed in 1967 and, as boats have gotten “beamier” (wider) since that time, it is not uncommon for two modern (large) boats to not fit inside the existing (31-34-ft. wide) “U” shaped slips. The modular docks are to be reorganized: relocating some existing finger floats and reconfiguring the

slips. A new walkway (7-ft. wide and 91.5 ft. long) would be added, creating two new slips. The number of slips would still be 12 slips, but the widths would be increased (31-ft. wide slips increased to 34 ft. and 34-ft. wide slips increased to 40 ft). The overall length of the moorage would extend westerly beyond the end of the existing dock by an additional 91.5 ft. The existing 4 ft. X 34 ft. wood gangway [Exhibit 92: PP 57-59; Exhibit 152, PP 147] would be replaced with a fully grated 4 ft. X 50 ft. aluminum gangway with a new landing built on steel piles. [Exhibit 113; Testimony Otorowski; Haugan; Layton]

26. In the original submittal the reconfigured floats were proposed to extend about 100 ft. farther west than the existing structure, with finger piers 50 ft. long. With those proposed alterations, and those originally proposed for the Springer dock [see Finding 37], the ends of the two structures would have been approximately 85 ft. from one another. The revised (current) plans have the ends of the structures approximately 155 ft. apart. [Measurements scaled from Exhibit 3, Section 5 and Exhibit 113, Sheet 5]

27. With the moorage “reconfiguration” project, old creosote piles and stubs would be removed [see *e.g.*, piles and stubs see Exhibit 153, PP 151; Exhibit 152, PP 135]. Approximately 46 creosote piles (including those to be removed from Springer property) would be removed and disposed of in an approved upland site. No creosote treated plies would be used in the new construction. The new piles would be steel and new floats would be concrete with encapsulated foam. [Exhibits 31; 113; Testimony Cheney]

Convert Springer House & Dock (#1 and #2 on Exhibit 105)

Sailing Program:

28. The overwater location (with the deck and shop on the lower level of the building) provides unusual and very important direct water access [Exhibit 92: PP 30, 39; Exhibit 35, page 3]. The Springer house would be renovated and the dock replaced for use in a small boat sailing program [Exhibit 35, page 3]. The Club would provide organized small boat sailing classes (possibly in concert with the Parks Department and/or the Port Madison Yacht Club) with a dedicated sailing program manager. They are intending to use “420’s” (a two-handed sailboat 13-ft. 9 in. long, 5-ft. 5 in. wide and weighing 230 lbs.). SYC currently has eight of these boats. It is anticipated that sailing classes would have two students per boat and one instructor. As the dock would hold as many as 12 small boats, the maximum class size would be 24. [Exhibits 113; 120; Testimony of Otorowski; Testimony Leadbetter; Testimony of Haugan]

29. The SYC’s main facility at Portage Bay in Seattle has an extensive small boat sailing program (including a year-round director, a head coach for the sailing team, and 12-15 summer instructors). There are over 25 sailing classes for kids 7-18 that are open to SYC members and non-members on a first-come-first-serve basis (about half the enrollees are non-members). Classes are of 1-2 week duration with different size boats and different age groups. The Portage Bay sailing program, with a total of over 360 enrollees, is much larger than that envisioned here. [Exhibits 115; 118F; Testimony of Otorowski; Leadbetter]

30. It is SYC's intention that the Port Madison Outstation program would start with a two-week, five days per week class held during daylight hours. The Club's spokesperson credibly testified at hearing that they won't know more about the number of classes until they get started and can gauge the demand, but would like to begin with a two-week class similar to that of the Port Madison Yacht Club [see Finding 33]. Class sessions would be held between 10 a.m. and 4 p.m. and might be half-day or whole, [Exhibits 35, page 3; 113, Sheet 6; 115; 118F; 120, page 3; Testimony Otorowski]

31. Classes would not be held when they could conflict with scheduled Yacht Club events. The classes would be open to non-members (SYC anticipates reserving 50% class space for non-members and the Director recommends a Condition to require it.) The Club would also like to host or co-host regattas or other small boat sailing events (e.g., the "John Adams Cup" held by Port Madison Yacht Club, sailing seminars, guest speakers. [Exhibits 35, page 3; 42; 71, page 5; 116; 118F; Testimony Leadbetter; Testimony Haugan]

32. Sailing skills are taught with a combination of on-the-water practice and lessons off the water. The initial description [Exhibit 3, Section 3], indicated a classroom on the first floor and "a general meeting room" on the upper floor. The tentative floor plan now shows two "meeting" rooms which could serve as the "classrooms" for teaching skills and theory (e.g., steering, sail trim, docking, rigging, knot tying, water safety, etc.) that the students would practice/apply on-the-water. (The on-the-water lessons could include launching, retrieving, and storing small boats.) [Exhibits 35, page 3; 115; Testimony Otorowski]

33. Small boat sailing classes are offered at many locations throughout Puget Sound. On Bainbridge Island, the nearby Port Madison Yacht Club (PMYC) has a popular small boat sailing program for kids. PMYC has two-week, Monday through Friday "bring your own boat" classes, run by volunteers, involve 60+ kids and are usually full (with a waiting list). The Park District also offers classes (mid-June to mid-August; minimum enrollment 3, maximum 8-12; held in 3-4 hour daily sessions, Monday through Friday). Students enrolled number between 300 and 400 and some classes are fully subscribed [Exhibits 42; 116; 118D; 167; Testimony Otorowski; Testimony Llewellyn]

Structures:

34. The Springer house is an unusual overwater structure. The original structure, built in 1955, was a shop with high, open ceilings, with a deck connected to the pier extending into Port Madison Bay [Exhibit 92: PP 18-22]. The large shop space (approximately 26 ft. by 40 ft.) would be used to store the boats used in the proposed small boat sailing program. This large open room has enough space for a dozen small sailboats, as well as room for a sail loft and work area. [Exhibit 3, Section 3; Exhibit 106]

35. Living quarters were added on top of the original shop to create a residence. This upper level has several bedrooms, a kitchen, bathrooms, and living room. Plans show the space converted into two "meeting rooms" (approximately 26' by 23'9" and on the order of 20' by 35'), a large storage room (approximately 20' by 14'), reconfigured restrooms, and the kitchen retained in its present location. The windows

and upper deck, overlooking the dock and water, would provide observation areas. [Exhibit 3, Section 3; Exhibit 106]

36. The floating dock, which is in extremely deteriorated condition [see Exhibit 92: PP 25-26, 47; Exhibit 92, PP 131; Exhibit 154; Testimony Machen; Haugan], would be replaced [Exhibit 3, Section 3]. The pier has relatively new decking [Exhibit 92: PP 21, 30, 34], but the old wood float and gangway are extremely dilapidated [see Exhibit 154; Exhibit 92: PP 25-26, 47, 131]. The gangway (4 ft. by 34 ft.) and float (1372 sq. ft., see Exhibit 145; Testimony Grant) are proposed to be replaced with a fully grated aluminum gangway (6 ft wide by 55 ft long) and a rectangular concrete float (20 ft. wide by 110 ft. long) with steel pile guides [Exhibit 31, page 1; Exhibit 113, Sheets 5-6]. Half of the floating pier surface would have light-permeable grating at least 60% open. A hand-operated crane would be fixed on the float to move boats into and out of the water. The dock would have capacity for twelve “420 Class” sailboats (six on either side), and one “chase boat” (up to 20-ft. long) at the end of the dock. The project would include removal of existing creosote piles. Steel or ACZA-treated piles are proposed as replacement piles. [Exhibit 113; Testimony Cheney; Haugan; Layton; Grant]

37. The original submittal [Exhibit 3, Section 5; Testimony Layton] proposed an 80 ft. long gangway and a 30 ft. by 130 ft. floating pier with four slips on the west side, each 31 ft. (extending approximately 50 ft. farther into the Bay than the current proposal).

Other Components

38. Septic System: A new drainfield is proposed in the southeastern part of the site, south of the driveway and west of the road [see outline drawn on Exhibit 107; location shown on Exhibit 15 is the existing drainfield]. The new drainfield would serve the old Springer house. Although little or no use would occur there in winter, the drainfield would be sized for daily peak use of 20 to 40 persons. The drainfield would be located outside the wetland, wetland buffer, and 100 ft. well setbacks. [Exhibits 3, Section 10; 34; 157; Testimony Ostby]

39. The drainfield system design and location must be approved by the Kitsap County Health District [see Finding 48]. A building site application was filed with the District in April 2006 [Exhibit 70].

40. Parking (#5 on Exhibit 105): The proposal includes “formal” parking areas to accommodate parking demand associated with large events [see Finding 12]. Fifty parking spaces are enumerated in the site plan [Exhibit 107]: eight in existing parking area adjacent to Clubhouse; 26 spaces east of the Caretaker’s residence next to the road; and 13 “overflow” spaces west of the Caretaker’s residence. (A space at the end of the driveway at the Springer house is designated for handicapped parking, but is not numbered.) The three spaces noted in the proposed caretaker’s garage [see in Exhibit 105] should not be counted as available to meet visitor parking demand. The maximum number of visitors’ vehicles that could be accommodated on-site by the proposed parking areas would be 47 (48 if the handicapped-designated space at the end of the driveway is counted).

41. The parking area west of the road would be graveled and the “overflow parking” area west of the Caretaker’s residence would be covered with “grasscrete” or similar, pervious material. The driveway to the Springer house [see *e.g.*, Exhibit 92: PP 39, 40 42, 43] would be a one-way loop around the overflow parking area, with a wider, two-way section extending to the house where trailered boats could be launched from the small boat dock. [Exhibit 57; Testimony Haugan]

42. BBQ Deck (#6 on Exhibit 105): A deck would be added immediately adjacent to the barbecue/pavilion [see PP 46 Exhibit 92] providing an additional location overlooking the water. [Exhibit 3, Section 3; Testimony Haugan]

43. Garage (#7 on Exhibit 105) The Yacht Club has a fulltime resident caretaker. The caretaker has for many years used a makeshift, tarp covered structure as a garage [PP 4 Exhibit 92]. The proposal includes removing this structure and replacing it with a permanent residential garage (approximately 900 sq. ft), providing covered parking, workshop space, and lawn equipment storage for the caretaker. [Exhibit 3, Section 3; Testimony Haugan]

44. Play Equipment (#8 on Exhibit 105): The existing “playground” (play equipment and sport court; see Exhibit 92: PP 52, 80, 82-84] is located near the Clubhouse, close to the road just south of where Spargur Loop Road turns east. The brightly colored play equipment is quite noticeable when traveling west on the road and making the left turn where the road changes direction in front of the Yacht Club [see *e.g.*, Exhibit 136S]. The playground would be relocated and the current location would be reseeded as lawn. The plans [Exhibit 56] note this as an “Improved View Corridor”. [Exhibit 3, Section 3; Testimony Haugan]

45. Vegetative Buffer (#9 on Exhibit 105): A 25-ft. wide buffer adjacent to the road would be landscaped to the “Partial Screen” standards of BIMC 18.85.070. The plans include retaining existing mature trees, the entry garden, and the rock garden [see *e.g.*, Exhibit 92: 88, 89, 95]. Until the new landscaping matures, the laurel and Photina currently planted along the street frontage [see behind split-rail fence Exhibit 92: PP 73-74, 78, 79, 83, 88, 90] would also remain. The roadside buffer and the shrub buffer between the street side parking lot and the Caretaker’s residence, would be landscaped with native plants (including 41 trees, 138 shrubs, and 1600 ground cover plants). [Landscape Plans, Exhibit 57; Testimony Haugan]

46. Upgrade Lighting and Restrooms (#11 on Exhibit 105): The restrooms at the top of the gangway to the main docks would be upgraded (convert to low-flush toilets, *etc.*). The outdoor lighting would also be upgraded and there has been City architectural review to assist with designing it. [Testimony Haugan]

DIRECTOR’S REVIEW AND RECOMMENDATION

47. PCD received the subject application on March 8, 2005 [Exhibits 3, 7, 8; Exhibit 71, page 8]. On March 28, 2006, the application was determined to be technically complete [Exhibit 11], but the Yacht Club was required to provide additional information. Notice of the application and of the SEPA comment period was published on April 9, 2005 [Exhibits 15 and 16].

48. The Director distributed the application and related documents (including environmental checklist and other studies) to City departments and other agencies [Exhibits 4, 12, 37, 46, 47, and 58]. The comments received are summarized below. [See also PCD summary of comments, Exhibit 71, pages 9-10].

- **B. I. Public Works Department** [Exhibits 35, 43, 59, 63]: Certificate of Concurrency regarding adequacy of affected intersections is not required. [See also Finding 81.] The proposal, as revised, incorporates sufficient low impact development techniques to make storm filter device not required. (Stormwater management plans must meet City standards and be approved by Public Works.)
- **B. I. Fire Department** [Exhibits 20, 39, 48]: Standpipe system must be extended to the new portion of the main dock; improve driveway to accommodate emergency vehicles; install fire extinguishers in the Springer building.
- **Kitsap County Health District** [Exhibits 10, 44, 70] Septic system design conditionally approved; building site application must be filed and approved [see Finding 39]; must show all existing facilities and identify all uses and daily flows.
- **WA Department Fish & Wildlife** [Exhibits 30, 50] WDFW concerned about impact of over-water structures. Size of floats should be minimized to avoid or mitigate shading; floats and piers over 6 ft. wide should be grated with 60% open area; should have in-kind mitigation (or small structure with shading impacts mitigated) and/or compensatory mitigation [see Finding 67. No work is allowed waterward of ordinary high water line during fish closures for juvenile salmon and spawning of surf smelt and Pacific herring [see HPA, Exhibit 74]. Use concrete, steel, plastic pilings rather than arsenic treated wood. A mitigation plan should be required.
- **WA Department Natural Resources** [Exhibit 17] DNR will need survey of new float configuration and amendment of tideland lease [see Exhibit 108]; questioned emergency spill preparations [see Exhibit 54] and provision for public access; referred to Health District concerns [see above]; and, requested measures to protect eelgrass beds in the vicinity.
- **Suquamish Tribe** [Exhibit 25] Concerned about development impact on habitat, stormwater, and cultural resources. Impacts on aquatic resources originating in uplands should be avoided or minimized; recommends several measures that are included in the proposal (*e.g.*, retaining native vegetation, using permeable pavers, minimizing impervious area, and having trees included in vegetative enhancement). Requests cultural resources survey if native soils are to be disturbed by construction.

49. During the Director's review of the subject application, several public comments were received [Whitlow and Clayton, Exhibit 19; Robertson, Exhibit 21; Mahlum and Franz [Exhibit 22]. These concerned neighbors oppose the proposal because of anticipated increases in traffic and noise. They consider the small boat sailing program as representing a change in use from water-based to land-based (because sailing class attendees would come by car rather than by boat), with associated adverse impacts

on the immediate neighborhood. Some specific concerns and suggestions in the public comments include the following. [See also PCD summary of comments, Exhibit 71, pages 9-10].

- Traffic analysis is not an accurate assessment of impact from daily sailing classes. There would be more impact than assessment indicates.
- Too many parking spaces are proposed relative to those needed for sailing classes.
- Driveway entrance should be moved (south) closer to Hidden Cove Road to lessen potential for conflicts with residential traffic.
- With “increased dock space” there will be increased disturbance from more attendees at noisy boating parties and SYC events.
- Public access should be increased (make parking areas available for those using T’Chookwap Park; require public participation in sailing classes; provide public boat launch or viewpoint).
- Club should (re)pave entrance, have limited or no signs, make better effort to enforce rules, and “compensate” neighbors by granting access to outstation facilities.
- Some support the vegetative buffer, replacing tent-structure with garage, and moving play equipment (to improve view from the street).

50. The Director evaluated the proposal's compliance with applicable regulations [Exhibit 71, pages 11-17]. Pertaining to the SCUP these sections of the Code were considered: BIMC 16.12.050, Archaeological and historic resources; BIMC 16.12.060, Clearing and grading; BIMC 16.12.070, Environmental impacts; BIMC 16.12.080, Environmentally sensitive areas; BIMC 16.12.090, Native Vegetation Zone; BIMC 16.12.110, Public access; BIMC 16.12.140, Environmental; designations; BIMC 16.12.180, Boating facilities; BIMC 16.12.340, Piers, docks, recreational floats; and, BIMC 16.12.380, Shoreline Conditional Use Permit decision criteria. Pertaining to the CUP, consideration included: BIMC 18.30, R-2 zone uses; BIMC 18.81, Parking and access; BIMC Landscape requirements; and BIMC 18.108, Conditional Use Permits. Compliance with the Critical Areas Ordinance, BIMC 16.20.090 Wetlands and streams, was also reviewed. The Director’s analyses are, unless contradicted by specific Findings in this document, hereby adopted as Findings by reference.

51. The Director determined that the proposal would comply with the applicable provisions of the Shoreline Master Program and the provisions of the R-2 zoning and concluded that, if conditioned as recommended [see pages 3-6, Exhibit 71], the application would meet the criteria for granting both a CUP and a SCUP. The Director has recommended approval with conditions [Exhibit 71, page 18].

52. The Director also concluded that the proposal, as conditioned, was not likely have significant unavoidable adverse environmental impact, and issued a Mitigated Determination of Nonsignificance. This determination included 20 conditions that the Director found necessary to mitigate potential impacts [Exhibit 71, pages 3-6]. Those conditions include requiring: in-water construction limited to the appropriate “fish windows” to protect Chinook salmon and Pacific Herring; appropriate erosion and

stormwater controls; revegetation; design of septic system to meet all Health District standards; all exterior lights to be shielded/hooded to prevent off-site glare; protection of wetland and its buffer; removal and proper disposal of creosote piles and other debris; use of non-polluting pilings; inclusion of grating on floats; spill prevention and containment measures; and, other actions to avoid pollution.

53. The Director's revised SEPA threshold determination [Mitigated Determination of Non-Significance, MDNS] was issued on April 3, 2006 [Exhibit 62]. The MDNS was appealed on April 18, 2006 by Edward Mahlum and Hillary Franz, Dan and Priscilla Lavry, Carol Corbus, Gary Quitsland and Linda Whitehead, William and Sandra Shopes, Tom Fehsenfeld and Janet Knox, and Thomas Herrick Robertson and Johanna Vanderlee [Exhibit 72]. PCD Staff Report [Exhibit 71] was issued April 18, 2006.

PUBLIC HEARING REGARDING PERMIT APPLICATIONS

54. Notice of the public hearing on the CUP and SCUP applications was properly given with posting, mailing, and publication completed by April 12, 2006 [Exhibit 67].

55. The SEPA threshold determination appeal and the public hearing on the conditional use applications were consolidated. The consolidated hearing began on June 1, 2006. During the public comment portions of the proceedings, 20 citizens gave comment and testimony. The hearing continued on June 2, 2006, June 23, 2006, and concluded on July 14, 2006. The record, with testimony from 17 witnesses and more than 170 exhibits, was closed on August 8, 2006 with receipt of post-hearing submittals.

56. At the hearing, the Director's representative provided a summary of the Staff Report [Exhibit 71] and the Director's recommendation, including conditions. The Yacht Club's representatives concurred with the Director's recommendation and did not object to the Director's recommended conditions. [Testimony Machen; Otorowski; Haugan]

57. Written comments were received from a number of individuals during the time this matter was pending before the Hearing Examiner and during the public hearing many individuals also gave oral testimony. All comments, written and oral are included in the record and were considered in the preparation of the conditional use permit decisions. Concerns and comments are summarized below.

Positive comments: Several residents on Spargur Loop Road [Dimmick, Exhibit 79; Powel, Exhibit 85; Thompson and Paine, Exhibit 90] wrote that they do not object to the proposal and advised that they believe the Yacht Club is a good neighbor: "always been cooperative and responsive...a very good neighbor...plans will benefit our bay and...the kids who...learn to sail"; "have lived on Spargur Loop Rd since 1957-8 ... a good neighbor"; "have never had a problem with S.Y.C. ... don't expect any if...permit is granted". Another neighbor (on Spargur Loop Road since 1972) wrote that "...while traffic due to club activities has increased on a limited number of occasions each year it has not been an inconvenience nor a bother..." [Grant, Exhibit 80] A resident of Port Madison and member of the Yacht Club [Hammon, Exhibit 158] wrote in favor of the

proposal and noted about Spargur Loop Road that: “The approach to the Y.C. is straight and short from Hidden Cove Rd.” Similar comments were made at hearing, including the observations that use of the bay and open-water moorage has generally increased and SYC should not be blamed for it. [Testimony Roth; Hammer] Jim Llewellyn, Commodore of the nearby Port Madison Yacht Club, noted that Port Madison’s program is full and spoke in favor of the proposed sailing program, as did resident and Yacht Club member J. B. Gifford.

Negative comments: The majority of written comments came from those who anticipate adverse impacts and oppose the proposal [Compton, Exhibit 24; Martof, Exhibit 86; Ciamon, Exhibit 87; Upton, Exhibit 93; Frahm, Exhibit 94; Quitsland, Exhibit 97; S. Shopes, Exhibit 102; W. Shopes, 103; Whitehead, 121; Savett, Exhibit 124]. One writer from across the Bay [West, Exhibit 100], opposes the proposal because he believes the SYC intends a “resort type facility”, but would not object if expansion were limited to “active sailing uses”. Testimony at hearing included similar concerns [Testimony Jaffe; Upton; Lavry; LaSof; Quitsland; Gibbons, Carr; West; Patterson; Bremmer; Franz]. Issues raised in comments included:

- Proposal (“commercial expansion”) is inconsistent with residential character of the Spargur Loop neighborhood.
- As it is a “Conditional Use”, it shouldn’t be allowed to expand.
- Spargur Loop Road is a “one lane country road” unable to safely handle traffic associated with the proposal. Increased traffic also would disrupt the quiet neighborhood.
- Yacht Club vehicle traffic around large events affects safety and quality of life in the immediate neighborhood.
- There is increased traffic congestion on the water; new floats would decrease open space area and increased dock space means more (and bigger) boats in the bay.
- Extending floats would partially block public access to dock in the new Spargur Park.
- Yacht Club boaters have been responsible for fuel and oil spills; more and larger boats would mean more pollution.
- Yacht Club large events can be very noisy and disrupt the quiet of the neighborhood.
- Concerned about water quality effects including increased run-off (from parking areas) and adequacy of water supply and waste water treatment.
- Algae blooms in Bay are increasing in frequency and severity; blames “transient boats” for water quality problems.
- Current parking is inadequate for many SYC functions.
- Existing exterior lights, with glare reaching ¼ mile, are inconsistent with residential neighborhood and should be replaced.

- Club expansion would lower residential property values.
- Yacht Club will not enforce measures imposed to mitigate impacts.

58. Several written comments focused criticism on the assessment of environmental impact relative to natural resources. Janet Knox, a geologist, was critical of the lack of specific design for the proposed new septic system and noted impacts she thinks could occur if the system is not adequate [Exhibit 88]. Joth Davis focused on the need for mitigation to address: runoff from parking and landscape areas; debris removal; cumulative effects (new structures parallel to shoreline and increased shading); and, dock lighting [Exhibit 98]. Jim Brennan, a professional marine biologist, advocated that the proposal should be denied because the impacts related to overwater structures have not been adequately mitigated and cumulative impacts have not been identified [Exhibit 99].

59. One of the representatives of the SEPA appellant group, submitted a lengthy and detailed written comment, including legal argument, opposed to approval of the conditional use permits. [Exhibit 118, Franz]

60. Some comments, both written and given in person at the public hearing, suggest a considerable distrust of the Yacht Club and/or misunderstanding about the size and/or nature of the current proposal. Comments reflecting distrust and/or misunderstanding included statements that: SYC “actually has in mind a significant expansion to create a more resort type facility”; “changing a single family residence into a resort type recreational facility”; “expand it to be an event center”; “an entertainment complex on the water to which no sewage system is available”;; “conference rooms that presumably will double as dining rooms” Exhibit 97; proposal includes a “new parking garage”. [See *e.g.*, Exhibits 86; 93; 94; 100; 121; Testimony West; Corbus]

61. Other comments reflected an antipathy apparently sourced in past unpleasant experiences and/or conflicts with SYC or some of its members: “The club adds nothing to the neighborhood except traffic, trespassers, and noise...no intrinsic value of any kind”; “the club has historically been unfriendly”; members are “elite city folk”; “...use of bull horns, loud music and overall drunken revelry well into the night”. [See *e.g.*, Exhibits 97, 124 Testimony of LaSof; Lavry; Quitsland]

ENVIRONMENTAL IMPACTS AND MITIGATION

Marine Environment

62. Construction activities in and over the water can adversely affect marine habitat and wildlife. Overwater structures reduce ambient light conditions (shading) which can have negative impacts for both vegetation and animals. The proposed dock changes have the potential for both construction and shading impacts. [Exhibits 50; 118B; 118L]

63. The Biological Evaluation (BE) [Exhibit 31] for this project was prepared by a qualified and experienced Marine Biologist [Exhibit 147], in conformance with the Army Corps of Engineers guidelines, to assist the Corps in conjunction with Endangered Species Act (ESA) review of the proposal. The BE included an underwater survey, review of appropriate literature, and analyses of existing site conditions and potential impacts. The surveyed area has homogenous conditions, very low plant density and little

species diversity. No eelgrass was observed within the project site, but some “patchy” distribution of eelgrass has been reported outside the project area [see also page 39 and Figure B-24]. There is a “moderate quantity” of typical organisms for shallow waters and intertidal areas. [Testimony of Cheney] The Corps has deemed the BE complete except for receipt of copies of the HPA and shoreline permit and information as to the size of the piles and if they would be coated [Exhibit 150.]

64. The revised BE [Exhibit 31, dated September 2005] identifies “listed species” and prey of listed species and impacts associated with the construction involved in the relocation and replacement of piers and floats. The BE has “determination of effect” for the listed species. The determinations include: Puget Sound Chinook: “may affect, not likely to adversely affect” and the Puget Sound Chinook habitat: “no destruction or adverse modification”. The BE [pages 13-14] summarizes “net effects” as follows:

...baseline conditions within the action area should not be altered...There are no interrelated or interdependent activities associated with this construction. Short-term and long-term effects on listed species are high unlikely. Construction should have no adverse effects on listed species. With the minor exception of the area of driven piles, shallow subtidal habitats will be physically unmodified. There will be a minor increase (437 sq ft) in overwater coverage. Potential primary production beneath the proposed floats should not be significantly altered by shading...Removal and replacement of existing creosote-treated piling and timbers will remove a significant bio-hazard...

65. The Essential Fish Habitat (EFH) Assessment [Attachment A to the BE, Exhibit 31] concludes that the project, taking place in shallow subtidal habitat at elevations of approximately -6 to -14 MLLW, would have: “a minor temporary adverse effect” on salmon and ground fish habitat and no significant effect on coastal pelagics (e.g., anchovy, sardine) would be likely. Adverse effects would be limited to “displacement or removal of non-motile invertebrate fauna beneath the areas of driven piles.”

66. The Washington Department of Fish and Wildlife (WDFW) has issued a Hydraulic Project Approval (HPA) for the proposed gangway, pier and float construction projects [Exhibit 74]. The approval includes a number of conditions including restricting work below the ordinary high water line to avoid juvenile salmon migration and to protect herring spawning beds (*i.e.*, no in water work allowed between January 15 and June 14). Other conditions include: erosion control; preservation and protection of fish and habitat; grating required (60% open) on floating docks (50%) and gangways (100%); and no storage allowed on the grated areas. The HPA also approves and requires, as mitigation measures, the proposed removal of the creosote piles, grounded floats, a tidal grid adjacent to easterly fixed pier, and the existing Springer dock. (The removal of a dry dock platform from the Spargur Park dock is also required in the HPA, but removal has already been completed by the Park District.) [See also Conditions 6, 12-17, 22-23.]

67. Shallow subtidal habitats are impacted by overwater structures. Potential impacts include “shading, propeller wash, bioturbation from sea stars...and...changes in macrofaunal assemblages...sediment composition, and benthic vegetation.” Piers and

floats cause shading and WDFW recommends that impacts be avoided or mitigated by minimizing the width and length of piers and floats and requiring those over 4-ft. wide to have grating on at least 50% of the surface area with at least 60% open area. WDFW noted that shortening of the small boat dock would reduce shading impact and would be appropriate mitigation. (WDFW also noted that with shading impacts significantly minimized, compensatory mitigation (*e.g.*, removal of piling) could “mitigate for the loss of benthic habitat.” [Exhibit 50]

68. Potential change in the amount of overwater surface area coverage was disputed. Original estimates (in the Biological Evaluation and Site Plan drawings) indicated a net increase in coverage on the order of 437-440 sq. ft. [Exhibits 31, page 2; 113, Sheet 3]. At hearing, the Appellant presented calculations indicating a net increase in overwater coverage of 2,142 sq. ft. (*i.e.*, 10,819 sq. ft. existing, to 12,961 sq. ft. proposed) [Exhibit 140; Testimony Michak]. The Applicant’s “corrections” to Appellant’s calculations (*i.e.*, correcting for actual size of the existing Springer float, not counting sailboats as coverage, and grating at 100% “credit”) produced an estimate of a net decrease in coverage of 135 sq. ft. (from 10,819 sq. ft. existing, to 10,684 sq. ft. proposed) [Exhibit 146; Testimony Cheney].

69. Taking into consideration the information and explanations presented at hearing [including Exhibits 50; 31; 113, Sheet 3; 118A and B; 140; 142; 144; 145; 146; Testimony Grant; Michak; Cheney], the calculation of net overwater surface area coverage should include the following factors:

- (a) Existing surface coverage of 10,819 sq. ft. (includes 116 sq. ft. for submerged float, but not 240 sq. ft. for City dry dock);
- (b) 772 sq. ft. adjustment for actual size of the existing Springer dock coverage (*i.e.*, 1,372 sq. ft.);
- (c) Light permeability: new pier calculated at 50% of surface grated and 60% of that as permeable/open, and fully grated gangway considered 100% open (*i.e.*, the gangway total is 443 sq. ft. as per Exhibit 113, Sheet 4);
- (e) Area of sailboats tied-off at the moorage (*i.e.*, 1,031 sq. ft.) is not considered “coverage”;

70. The proposal represents a net increase in overwater surface coverage totaling 339 sq. ft. The calculation of this change, based upon the factors noted in Finding 69, is:

11,930 sq. ft. Proposed (“c” & “d”= 12,961; 1,031 subtracted for “e”)
-11,591 sq. ft. Existing coverage “a” above, adjusted for “b”
339 sq. ft. Increase in overwater coverage

71. As indicated in Exhibit 120, small sailboats are often stored on floats at right angles. If this was done on the small boat dock, some of the light permeability provided by the grating would be lost. To ensure the mitigating effects of grating are maximized, when classes are not in session the boats should be stored inside the building. It would help minimize shading impact for boats to not be stored on the float during the

off season or during breaks between classes. When they are left on the float, the boats should be centered on the solid, non-grated sections of the float. [See Condition 31]

72. Removal and proper disposal of 46 creosote piles and stubs, and a tidal grid by the eastern pier is mitigation required by the HPA [Exhibit 74] and Condition 12 of this decision. [See also Exhibits 31, page 2; 74, page 2; 113, Sheet 3]

73. Eelgrass beds should not be affected as none are present in the project area where pilings would be removed and/or replaced, nor would any eelgrass beds be subject to coverage by the proposed location or replacement of piers or floats. [Testimony Cheney]

74. The most effective means of avoiding and/or mitigating impacts associated with overwater coverage is to reduce the amount of that coverage [Exhibit 50; 141]. **The length of the proposed docks should be reduced and the structures properly grated to accomplish a substantial net decrease in overwater coverage** [Finding 70], avoiding adverse impact expected from the docks as proposed and reducing the outstation's total overwater coverage.

a. To avoid impacts associated with increased (and cumulative) overwater coverage, **the length of the small boat dock should be reduced from the proposed 110 ft., to 90 ft.** [Condition 1]. This reduction would result in this dock having overwater surface area of 360 sq. ft. (*i.e.*, 90 ft. long by 20 ft. wide = 1,800 sq. ft.; @ 50% grated = 900 sq. ft.; @ 40% solid = 360 sq. ft.). This would be a substantial decrease in net overwater coverage from the existing conditions (*i.e.*, old Springer dock coverage is 1,372 sq. ft. and reduced dock length would result in 360 sq. ft. coverage = 1,012 sq. ft. less coverage than existing). The decrease in dock length would also **mitigate the potential for this dock interfering with access to and from the Spargur Park public dock** [see Finding 86]. At the reduced length of 90 ft., the small boat dock could accommodate ten boats (five on each side) rather than 12 boats as proposed. This would mean **maximum size of sailing classes reduced from 24 to 20 and provide a commensurate decrease in the likely number of vehicle trips** [Conditions 1 and 31].

b. **Reducing the proposed extension of the main dock from 91.5 ft. to 46 ft. would mitigate (reduce) construction impacts, total overwater surface area coverage, and operational impacts** associated with increased moorage capacity [Condition 1].

Water Quality and Wetlands

75. The proposed drainfields (primary and reserve to serve the "sailing school building"), would be located outside the required wetland and well setbacks. A Building Site Application for this on-site septic system must obtain approval from the Kitsap County Health District before building permits would be issued. No significant adverse impacts have been shown to be likely. [Exhibits 70; 107; Testimony Ostby; Bergan]. There is no evidence that circumstances here require other than the **Health District's**

standard process for review of on-site septic system design [Condition 3] to provide all necessary provision for avoidance and/or mitigation of potential adverse impacts

76. The wetland is properly designated a Category III wetland. The consultant made mistakes in completing the requisite rating form [Exhibit 32, Appendix E], but the cumulative effect of the appropriate corrections made at hearing [Testimony Bergan; Carr], results in a total score (16), well short of that (22+) needed for classification as Category II. (Even if the Appellant's view had prevailed regarding the "scrub-shrub class" question, the resultant additional 3 points would not change the classification.)

77. The 50-ft. wide wetland buffer is proper as proposed. The Critical Areas Ordinance [BIMC 16.20.090] provides adequate and appropriate protections [see Conditions 4 and 8].

Traffic and Parking

78. The 47 parking spaces [see Finding 40] proposed would meet the "worst-case" parking demand situation that occurs during large events. The **parking areas would mitigate or avoid the potential impact from on-street parking** along Spargur Loop Road.

79. The City Engineer determined that a Certificate of Concurrency [BIMC 15.32] was not required for review of the subject application. The function of the concurrency review is to ensure that affected transportation facilities (generally, intersections) have sufficient capacity (level of service) to serve the development seeking permit(s). Projects anticipated to have fewer than 50 trips per day, are exempt from the certificate requirement. Here, based upon annualized daily trip data indicating about 40 trips per day [Traffic Memo, Exhibit 3, Section 8], the proposal was found to be exempt. [Exhibit 43; Testimony Hathaway; Bishop]

80. The traffic report prepared for submittal with the application [Exhibit 3, Section 8] estimated travel demand based upon assumed ITE (Institute of Traffic Engineers) trip generation rates. The ITE rate manual does not have a trip generation rate for "sailing class", so the traffic consultant used an "assembly" category (church) and the size (sq. ft.) of the Springer house to estimate trips to be generated by the sailing classes. Estimating likely future trips often must rely on less than optimal predictive factors. Here, however, information about intended classes and reasonable assumptions about driving practices that were adduced at hearing (*i.e.*, 20-24 students/class; one instructor; only summer weekdays, between 10 a.m. and 4 p.m.; no overlap with other scheduled events; carpooling at an average of two students/vehicle, *etc.*), provides more credible bases for estimating trips associated with the sailing class program. The likely number of trips to and from the subject site generated by the sailing classes (and not adjusted for students traveling by boat or other alternate mode), would be on the order of 42-48 trips per day as indicated by expert testimony at hearing. [Testimony Bishop; Leadbetter; Llewellyn]

81. Vehicle trips dropping off and picking up sailing class students would be grouped around the start of class and the end of class (anticipated to be around 10 a.m. and 4 p.m. respectively). Impact would be mitigated by these arrival and departure times

not concurring within the normal AM and PM “Peak Hours” for weekday travel. But comings and goings grouped like this could have an adverse impact at places on Spargur Loop Road where two-way travel can be risky [see Finding 19].

82. **Having the trips associated with the sailing classes occur on Spargur Loop Road between the Yacht Club and Hidden Cove Road, would reduce the potential for two-way travel conflicts.** Mitigation would be provided by: **encouraging arrival via Hidden Cove Road then north on Spargur Loop Road, and limiting departures to southbound on Spargur Loop Road** (toward Hidden Cove Road) [Conditions 25 and 30]. Keeping the trips where cars can pass by one another safely would help mitigate for the new trips associated with the sailing classes. An unpaved, unobstructed area (an informal “shoulder”) alongside the paved travel surface makes an important contribution toward safe travel where pavement width is narrow. **Maintaining an informal "shoulder" along the SYC frontage** (which extends to within 210 ft. of the Spargur Loop/Hidden Cove intersection [see attachment, Exhibit 55]), **would facilitate safer two-way travel and help mitigate traffic impact** [Condition 20].

83. By dictating a smaller class size (*i.e.*, dock for 10 boats maximum = 20 students maximum), the number of trips and associated traffic impact would be **mitigated by reducing the size of the small boat dock** [Conditions 1, 31, 34].

84. Large events can add noticeably to traffic in the neighborhood. **Ensuring a serviceable “shoulder” on the west side of Spargur Loop Road to provide for safer two-way travel** [Condition 20] and directing **travel on Spargur Loop Road southbound from the Club** [Condition 25] would mitigate for some large event traffic impacts, as would **reducing the length of the extension to the main dock** [Condition 1] and **prohibiting events and sailing classes from overlapping** [Condition 31].

Parks and Public Access

85. In May 2006, after the issuance of the Director’s MDNS, the Bainbridge Island Metropolitan Park and Recreation District, expressed concerns that SYC’s “proposal to extend its dock” could have a negative impact on the public’s use of Spargur Park and T’Chookway Park. The major concerns were that there would be increased boat traffic that could: cause congestion and conflict between public and private use; increase noise levels unacceptably; reduce the “passive use elements expected from both parks”; obscure sight lines and view; and, obstruct local public access to the waterfront. While the Park District acknowledges potential benefits from “some public/private endeavors”, the District urged that the length of the dock be reduced. [Exhibit 84]

86. At the SEPA hearing, Terry Lande, representing the Park District, testified that the District has concerns regarding the potential that the length of the proposed small boat dock could interfere with the public’s use of the Spargur Park dock. The planning for Spargur Park is not complete, but the District is intending that the dock would be used for launch and retrieval of small boats, kayaks, and canoes. If the public boaters have to go around, or come too close to the SYC dock, conflicts could arise that could discourage use of the public dock.

87. At the length proposed (110 ft.), the small boat dock would make the Spargur Park dock difficult to use as boaters traveling a direct route out into the bay or back, would come very close to the small boat dock and could have to do additional maneuvering to pass it safely. The impact of making use of the public dock more difficult could be effectively **mitigated by requiring that the length of small boat dock be reduced to 90 ft.** [Condition 1] so as to provide additional distance between the end of that dock and the likely route between the public dock and the center of the bay.

88. The assertions as to adverse impacts to “visual access” have not been substantiated. No change in the view from T'Chookwap was established and the view from Spargur Park would be of boats on the water, docks, and boats moored at docks. **No adverse impact to “visual access” is established in this record.**

89. **Requiring inclusion of non-members in the sailing classes would increase the public’s access to the water** over existing conditions [Condition 31].

Aesthetics and Views

90. The “view corridor” created with the relocation of the play equipment would be an improvement. The garage would be an improvement over the existing structures. The upland projects (garage, buffer, moving play equipment) would all contribute to the Club’s residential appearance and neighborhood compatibility.

91. The 25-ft. wide landscape buffer along the eastern property boundary would effectively screen views of the Club from the road. This buffer of native vegetation and mature trees would present an outward appearance very similar to that of the residential neighbors [Condition 19].

92. From the water the views would be of a marina; not shown to be an adverse impact. The removal of the dilapidated Springer dock would be an aesthetic improvement, as would the renovation of the exterior of the Springer house (compare photos of the existing appearance with artist’s rendering of future: Exhibits 92, PP 29, 30, and 98; 106)].

93. **No adverse impacts with regard to aesthetics and/or views have been established;** no additional mitigation is warranted.

Noise

94. Noise from Club activities, particularly noise from the large events, is noticeable and nearby neighbors and (as noise travels particularly well over water) some residents across the Bay, have been disturbed by this noise. **The proposed sailing classes, required to be kept small and limited to weekdays, would not add to this impact** [Condition 31]. New moorage facilities could result in more attendees at large events and aggravation of the noise impacts. **The extension of the main dock should be reduced to mitigate** for potential noise impact associated with large events. [Condition 1].

SEPA APPEAL

95. The appellant sought to show that the Director’s MDNS was issued in error and asserted that the proposal would probably result in significant unavoidable

adverse impacts relative to marine animals and habitat, water quality, wetlands, traffic, parks, view and aesthetics, and noise. Appellant's argument fails as the proposal would either not have significant effect or the imposition of conditions would provide satisfactory mitigation.

96. Impacts to the **marine environment** from in-water construction would be **avoided or mitigated by reducing the size of the proposed overwater structures, seasonal construction limits, removal of creosote piles, and other requirements** [Conditions 1, 2, 6, 12, 13, 14, 15, 16, 22, and 23]. The adverse **impacts due to shading** caused by over-water structures would be avoided by **reducing the size of both the proposed floats** [see Finding 74] and mitigated by **inclusion of appropriate grating in floats and gangways** [Condition 17] and the **removal of creosote piles and other debris** [Conditions 12 and 13]. The combination of these mitigating conditions is necessary to reasonably ensure no net loss and no significant adverse impact.

97. Measures required to **minimize erosion during construction, to manage stormwater runoff, and ensure adequate on-site sewage disposal provide mitigation for potential water quality impacts** [Conditions 2, 4, 3, 19, 21, 24]. The on-site **wetland would be protected** by compliance with the provisions of the Critical Areas Ordinance [see Condition 8].

98. Potential **traffic impacts due to the operation of the small boat sailing program would be mitigated by limiting sailing class size and timing, restricting use of the meeting rooms, and facilitating safe two-way travel** on Spargur Loop Road [Conditions 1, 20, 25, and 31]. Additional mitigation (*i.e.*, further reduction in the number of vehicle trips associated with sailing class) could be achieved with **discounting class fees for carpooling or alternate modes of transportation** (*e.g.*, walking, bicycle, boat) [Condition 30].

99. Potential interference with **public access to/from the Spargur Park dock** would be avoided or satisfactorily **mitigated by reducing the length of the small boat dock** [Conditions 1 and 33].

100. **No adverse impacts with regard to aesthetics and/or views were identified.** The required 25-ft. wide native plant buffer would screen the site and present a street-side appearance compatible with the residential neighborhood [Conditions 10 and 19]. No additional mitigation is warranted.

101. With mitigation provided by **limiting class size, timing, and duration** [see Condition 31], the small boat sailing program would not be expected to produce significant noise impacts. Extension of the **main dock should be reduced** to mitigate increased noise associated with increasing moorage capacity [Condition 1].

PERMIT APPLICATIONS

Shoreline Conditional Use Permit (SCUP)

102. As required by BIMC 16.12.380.C.1 [see Finding 108], the application, revised application materials, other documents in the record, and presentations at hearing, including the information and analysis provided by the Director [Exhibit 71; Testimony

of Machen], demonstrate that the criteria for granting a Shoreline Conditional Use Permit have been met:

- a. The proposal, as conditioned, is consistent with the policies of the Shoreline Management Act and with the City's Shoreline Master Program, including that: water-dependent recreational opportunities and access to the shoreline would be increased and impacts to marine habitat and natural resources avoided or mitigated.
- b. There would not be interference with the normal public use of the shoreline because the site is privately owned and, as conditioned, the small boat dock would avoid the potential interference with use of the public dock at Spargur Park.
- c. This area has a mix of residential and recreational uses and Port Madison Bay has many piers and docks. Boating and marina activities, including the proposal as conditioned, are compatible with the permitted uses
- d. As conditioned, adverse impacts of the proposal that would not be avoided would be mitigated.
- e. There would be no substantial detriment to the public interest. Shortening the length of the small boat dock would avoid or satisfactorily mitigate the potential for interference with future public access to or from the Spargur Park dock. Aspects of the proposal that would benefit the public interest include: the 25-ft. wide native plant buffer along the Spargur Loop Road frontage; protection of the on-site wetland; removal of existing creosote piles and use of non-polluting materials in new construction; and, a net decrease in the surface area of overwater structures.
- f. The proposal is consistent with the R-2 zoning which allows "marinas" as a conditional use. Also, the uses allowed in the Semi-Rural shoreline environment include "boating facilities" as a conditional use and "water-oriented recreational development" as a permitted use in the Semi-Rural and Aquatic environments. See Conditional Use Permit regarding consistency with the Comprehensive Plan.

Conditional Use Permit (CUP)

103. The Conditional Use Permit approval criteria of BIMC 18.108.040.A [see Finding 109] are met as follows [see also Staff Report, Exhibit 71].

- a. Is harmonious and appropriate in design, character and appearance. As conditioned, the size and design of the new facilities would be compatible with development in the vicinity: moving the play equipment would provide a view corridor from the road; renovation of the Springer house would eliminate its current rundown appearance; retaining mature trees and adding a 25-ft. wide buffer of native plants (including trees), would be in keeping with roadside character of the neighborhood, as does keeping the majority the site as a wooded open space. With the proposal, as conditioned, the appearance of the subject property would be harmonious with the neighborhood. [See also "c", "f", and "g".]
- b. Will be served by adequate public facilities. Potable water is provided by private wells and the requirements of the Health District [see Finding 75 and Condition 3] would ensure the adequacy of on-site sewage disposal. The Fire Department requirements [Condition 5] would be met and storm water drainage plans must be approved by the Public Works Department as meeting City standards [Condition 21].

- c. Will not be materially detrimental. As conditioned, construction and operation of the proposal should not be “materially detrimental” to uses or property in the immediate vicinity. Mitigation measures would avoid or reduce potential traffic impacts and ensure attractive, compatible appearance of grounds and structures [Conditions 1, 19, 20, 25, 30, and 31]. Reducing the length of the dock replacing the existing Springer dock [Condition 1] would ensure that there would not be detriment to the public’s use of the Spargur Park dock. [See also “a”, “f” and “g”.]
- d. Is in accord with the Comprehensive Plan. As conditioned to avoid or mitigate impacts, the proposal would meet this criterion. Protecting the wetland, reducing overwater construction and coverage, and the removal of creosote piles and other debris, are examples of ways that the goals of the Environmental Element would be met. Preserving mature trees, providing the buffer, removing play equipment, limiting sailing class size, restricting signs and controlling exterior lights are in accord with Land Use Element. Water Resources Element goals would be met by meeting City requirements for stormwater management and upgrading the on-site septic system.
- e. Complies with all other provisions of this Code. The proposal, as conditioned, complies with all applicable provisions of this Code, including zoning standards regarding lot area and coverage, setbacks, parking, and landscaping. [See also SEPA and SCUP analyses.]
- f. Will not adversely affect the area's residential nature. The Yacht Club has been in this location for over 60 years and it has grown and changed (as has the neighborhood). Most of each year, the Club is relatively unobtrusive; not inappropriate in appearance or activity for a residential area. The appearance of the site is compatible with the residential nature of the of the area and the required landscape buffer, regulation of exterior lighting, and limit on signs [Conditions 11, 19, 29] would maintain the residential character of the neighborhood. As conditioned, the operation of the proposed small boat sailing classes (limited in size and duration) would be compatible with this residential setting [Conditions 1 and 31], as is facilitating safe two-way travel on Spargur Loop Road Conditions 20, 25, 30. [See also “a”, “c” and “f”.]
- g. All necessary measures have been taken. Operational impacts can that affect the neighborhood are linked to size: more moorage means more attendees at large events, which means potentially more noise and traffic conflicts with neighbors. Reducing the length of the docks [Condition 1] is a fundamental and necessary measure as it reduces size-related impacts. Measures like controlling exterior lighting [Condition 11], prohibiting camping in RVs [Condition 26], limiting signs visible outside the grounds [Condition 29], and facilitating safe two-way travel on Spargur Loop Road are also “necessary measures”. Condition 27 is an unusual, but “necessary” measure requiring SYC to take specific steps to become more a part of the neighborhood and better manage its “presence” in the neighborhood. This could not be a SEPA condition, but conditional use criteria are broader. Without this requirement for SYC to open up communications and improve relations with its neighbors, it could not be found that all necessary measures have been taken. Two specific actions are required by Condition 27: to provide contact information for the neighbors to use when they have complaints or concerns and to hold an annual neighborhood meeting to let the neighbors know the SYC schedule for large events and to hear the neighbors’ concerns (this could be a mediation if/when conditions warrant formal dispute resolution). Further, to become a part of the neighborhood, rather than apart from it,

Condition 27 encourages (not requires) SYC to invite its Spargur Loop Road neighbors to Potlatch, the Club's largest event.

BAINBRIDGE ISLAND MUNICIPAL CODE (BIMC)

SEPA Appeal

104. BIMC 16.04.170 provides that any person may appeal the issuance of a determination of nonsignificance.

105. The City has adopted SEPA rules, Chapter 197-11 WAC, to be used in conjunction with the environmental policies and procedures found in BIMC 16.04. WAC provisions pertinent to this decision include: WAC 197-11-055; WAC 197-11-330; WAC 197-11-797: "Threshold determination"; WAC 197-11-784: "Proposal"; WAC 197-11-734: "Determination of nonsignificance" (DNS); WAC 197-11-782: "Probable"; WAC 197-11-794: "Significant". The policy regarding cumulative impacts is defined at BIMC 16.08.200.B.

Shoreline Conditional Use Permit (SCUP)

106. The Shoreline Master Program, BIMC Chapter 16.12, regulates development in the shoreline.

107. BIMC 16.12.380.C.1 *"applies to all applications for shoreline ...conditional use permits"* and provides, in pertinent part, that a SCUP may be granted if the following are demonstrated:

- a. *The proposed use would be consistent with the policies of RCW 90.58.020 or its successor and the policies of the master program.*
- b. *The proposed use would not interfere with the normal public use of the public shorelines.*
- c. *The proposed use of the site and design of the project would be compatible with other permitted uses within the area.*
- d. *The proposed use would cause no unreasonably adverse effects to the shoreline environment designation in which it is located.*
- e. *The public interest suffers no substantial detrimental effect.*
- f. *The proposed use is consistent with the provisions of the zoning ordinance...and the comprehensive plan...*

Conditional Use Permit (CUP)

108. The decision criteria for Conditional Use Permits, at BIMC 18.108.040, instruct that:

- A. *A conditional use may be approved or approved with modifications if:*
1. *The conditional use is harmonious and appropriate in design, character and appearance with the existing or intended character and quality of development in the immediate vicinity of the subject property and with the physical characteristics of the subject property;*
 2. *The conditional use will be served by adequate public facilities including roads, water, fire protection, sewage disposal facilities and storm drainage facilities;*
 3. *The conditional use will not be materially detrimental to uses or property in the immediate vicinity of the subject property;*

4. *The conditional use is in accord with the comprehensive plan;*
5. *The conditional use complies with all other provisions of this code;*
6. *The conditional use will not adversely affect the area or alter the area's predominantly residential nature; and*

7. *All necessary measures have been taken to eliminate the impacts that the proposed use may have on the surrounding area.*

B. A conditional use may be approved with conditions. If no reasonable conditions can be imposed that ensure the application meets the decision criteria of this chapter, then the application shall be denied.

Permit and Appeal Procedures

109. Under the provisions of BIMC 16.04.170, SEPA appeals are to be heard by the Hearing Examiner who, after holding a public hearing, is to render decision on the appeal “*giving substantial weight to the decision of the responsible official.*”

110. For Shoreline Conditional Use Permit (SCUP) decisions, BIMC 16.12.350.B.1.a authorizes the Hearing Examiner to:

Approve, approve with conditions, or deny...shoreline conditional use permit applications after a public hearing and after considering the findings and recommendations of the director, which shall be given substantial weight....

111. BIMC 18.108.020.D provides that regular conditional use permits shall be processed using the procedures of BIMC 2.16.100. The procedures of BIMC 2.16.100 require a decision by the Hearing Examiner, after public hearing. In making such decisions, the Hearing Examiner “*shall consider the applicable decision criteria of this code, all other applicable laws...and any necessary documents and approvals*” and may “*approve, approve with modifications, deny or remand*” the application.

CONCLUSIONS

1. The Hearing Examiner has jurisdiction to hear and decide the subject conditional use permit questions and the SEPA appeal. In making the SCUP decision and deciding the SEPA appeal, the Examiner is required to give the Director substantial weight. [BIMC 16.12.350.B.1.a and BIMC 16.04.170]

2. To overcome the substantial weight accorded the Director, it has to be shown that the Director was clearly erroneous. Under this standard of review, the Hearing Examiner must be left with the definite and firm conviction that a mistake has been made.

3. Appropriate notices were given, the hearing was properly convened, and all comments, testimony, and other admissible evidence considered.

4. The Yacht Club explains its plans as a proposal to: 1) rearrange the existing moorage slips so that (more modern) large boats can be accommodated; 2) have a modest small boat sailing program for kids; and, 3) make several upgrades to the upland portion of the property (garage for caretaker, increase landscaping along the road, *etc.*). However, except for the upgrades to the upland portion of the property, what was

originally proposed was, not illogically, perceived by some as a substantial expansion with undesirable effects.

5. The application originally proposed much larger dock projects [main dock, see Finding 26; small boat dock, see Finding 37]. The original Springer dock replacement proposal (a float 130 ft. long, 30 ft. wide, with four slips on the west side, each about 30 ft. wide and 40 ft. long) seemed particularly overdone. Given that the maximum length of a “small boat” is about 24 ft. [Testimony Otorowski], that original size and configuration looked like a sizeable increase in moorage capacity rather than a dock for use in a kids’ small boat sailing program. The inclusion of undefined “meeting rooms” and references to speakers and general uses, got neighborhood critics to speculating about banquets, ballrooms, and a myriad of added activities attended by people traveling to the Club by car. For some, the proposal produced a vision of a “resort-type” facility with more events, more people, more traffic and more noise, more of the time; not a home base for teaching kids how to sail. The current plans, a float 110 ft. long by 20 ft. wide with no slips, has clarified that no “resort” is intended. However, reducing the length of the dock another 20 feet is an important and necessary mitigation measure. A dock of this size could still be appropriate for a sailing program and the smaller size would accomplish a net decrease (instead of an increase) in overwater coverage, decrease or eliminate the potential for interfering with use of the public dock, and dictate a smaller class size that, in turn, would help reduce traffic impact.

6. The proposed “reconfiguration” of the main dock would not be just moving around its existing parts in order to have the slips wide enough for two large boats. The dock would also be extended over 90 feet and would have substantially increased moorage capacity for large boats. Although the number of slips would remain the same, the number of large boats that could be accommodated would double (*i.e.*, today there are 12 slips that can each hold one large boat; with the proposed dock extension, there would still be 12 slips, but each could hold two large boats, for a total of 24). This increased moorage capacity is what concerns the neighbors: they anticipate that such new capacity would also mean increasingly larger, large events. Reducing the length of the proposed extension by half would provide the SYC what it says it wants (*i.e.*, slips wide enough for two large boats), while reducing (mitigating for) the potential impacts to the neighborhood associated with increased moorage capacity.

7. SEPA mitigation measures (*e.g.*, reducing the size of the proposed docks, restrictions on the use of the Springer house and the use of the replacement dock, facilitating safe two-travel on Spargur Loop Road, *etc.*) are necessary for compliance with the conditional use permit conditions as well as for mitigation of environmental impacts. However, conditional use approval here requires more than the SEPA mitigation measures. While the pattern of use, with levels of activity unnoticeable two thirds of the year [see Finding 9], is not likely to change due to the proposal, the intensification of use made possible by the proposed facilities could not be permitted without requiring SYC to take reasonable measures [Condition 27] to manage its “presence” in the neighborhood. With its policies, rules, elected officials and organizational structure, SYC has the means to successful implement these “necessary

measures” so that the operation of the Port Madison Outstation fits as well in the neighborhood as does its physical appearance.

8. As conditioned, the proposal would have no significant adverse impacts, an environmental impact statement is not required, and no additional mitigation is warranted. The Director’s Mitigated Determination of Nonsignificance should be affirmed.

9. As conditioned, the proposal would be consistent with the applicable provisions of the Shoreline Master Program for granting a Shoreline Conditional Use Permit [see BIMC 16.12.380.C.1] and the application should be approved.

10. As conditioned, the proposal would be consistent with the applicable provisions of BIMC 18.108.040 for granting a Conditional Use Permit and the application should be approved.

DECISION

SEPA APPEAL

The Director’s Mitigated Determination of Non-significance (MDNS) regarding application CUP/SCUP13042 is **AFFIRMED AS MODIFIED BY CONDITIONS** by conditions in Appendix A.

CONDITIONAL USE PERMIT APPLICATION

The application of the Seattle Yacht Club for a (CUP) and a Shoreline Conditional Use Permit (SCUP) for a new boat ramp and other improvements within the shoreline Semi-rural environment is hereby **APPROVED AS MODIFIED BY CONDITIONS** in Appendix A.

SHORELINE CONDITIONAL USE PERMIT APPLICATION

The application of the Seattle Yacht Club for a Shoreline Conditional Use Permit (SCUP) for a new boat ramp and other improvements within the shoreline Semi-rural environment is hereby **APPROVED AS MODIFIED BY CONDITIONS** in Appendix A.

Entered this 18th day of September 2006.

signed in original

Meredith A. Getches

Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner is the City’s final decision in this matter. Appeal is to the Washington State Shorelines Hearings Board as provided by RCW 90.58.180 (or its successor) and Chapter 461-08 WAC (or its successor). To be timely, petition for review must be filed within the 21-day appeal period [see BIMC 16.12.370].

**Seattle Yacht Club
SCUP/CUP 13042**

CONDITIONS OF APPROVAL

Construction pursuant to this permit shall not begin and is not authorized until 21 days from the date of filing with the Department of Ecology as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within 21 days from the date of such filing have been terminated; except as provided in RCW 90.58.140 (5)(a) and (b).

All Hydraulic Project Approval conditions and any Army Corp of Engineers Permit conditions are also conditions of approval for the SCUP, whether specifically included in the enumerated conditions or not.

Conditions required for SEPA mitigation are designated with an asterisk (*); some SEPA conditions are also required as conditional use permit conditions.

1. The **plans and cross-section drawings** [Exhibit 113, Proposed Moorage Reconfiguration and Pier/Gangway Renovation; Exhibit 57, Landscape Plans] **shall be revised** as necessary to be consistent with the conditions of this decision (including “a” and “b” that follow) and submitted to the City for approval. All work shall be completed in accordance with the approved revised plans and cross section drawings and the conditions of this decision.
 - a. **Reduce the length of the westerly extension to the main dock from 91.5 ft. to 46.5 ft.** The existing elements of the main dock (piers, floats, *etc.*) may remain, be relocated, reconfigured, replaced, or reused as proposed [see Sheets 4 and 5 and associated cross sections] or be relocated, reconfigured, replaced, or reused in some different/revised configuration; the dimensions of those elements are not to be increased and the length of the westerly extension shall not exceed 46.5 ft.
 - b. **Reduce the length of the small boat dock from 110 ft. to 90 ft.**
2. *Prior to the issuance of building, clearing or grading permits, a Temporary **Erosion and Sedimentation Control Plan** meeting the requirements in BIMC 15.20 and 15.21 shall be submitted for review and approved by the City Engineer. The approved plan shall indicate the location and type of erosion control measures and these measures shall be implemented throughout construction.
3. *Prior to the issuance of any building permits or the use of the Springer house, **approval from the Kitsap County Health District must be obtained for an on-site septic system design** outside of the wetlands and wetland buffers. (The lower portion of the structure may be used for storage/maintenance prior to the final septic approval, but no use of restrooms or plumbing shall be permitted until an on-site septic system approved by the Health District is completed.)
4. ***All construction and construction staging areas shall be outside critical areas and their buffers.** Construction fencing or silt fencing shall be installed along critical area buffer boundaries prior to any adjacent clearing.
5. A City of Bainbridge Island **building permit must be approved prior to construction work** on any of the docks or garage. The renovation of the Springer dock shall include a new standpipe as required by the Fire Department [see Exhibit 20]. Any work in the Spargur Loop Road right-of-way must have an appropriate permit from the Public Works Department.

6. ***WDFW Hydraulic Project Approval and Army Corps of Engineers Permit will be required** prior to beginning any overwater work on this project. Copies of approvals must also be submitted to the City prior to beginning any work on the site. A copy of all public agency approvals and approved drawings shall be given to contractors performing work at the site prior to their beginning any construction work.
7. A **boundary line adjustment** placing all of the Seattle Yacht Club structures and facilities on one lot shall be approved by the City and recorded prior to the issuance of any building permits.
8. ***The wetland buffers shall be separated from the access road by a two-rail fence and permanent signs** at no less than 100-foot intervals shall be installed on the fence. The signs shall identify the area as a wetland and wildlife habitat that should be protected. The fencing and signs shall be installed prior to clearing and grading for the new parking areas.
9. ***A Bald Eagle Management Plan may be required.** The applicant shall consult with Shelly Ament, (360) 681-4276, at WDFW, to determine if a bald eagle management plan is necessary prior to commencement of any work.
10. **Performance assurance device(s)** for all landscape plantings required for this conditional use permit **must be submitted and accepted by the City** prior to the issuance of any building, grading or clearing permits or prior to any construction activities. Maintenance assurance devices shall be submitted and accepted prior to the release of the performance assurance device and held for three years following the completion of the planting.
11. ***All exterior lights (overwater and upland) shall be hooded or shielded so as not to emit direct light or glare that is visible from adjacent properties, public rights-of-way, or Port Madison Bay.** All exterior lighting must conform to the City Regulations [BIMC 15.34] and parking lot lighting shall be less than 20 feet high from grade. Lights on floats, piers, and gangways shall be located to the extent possible over solid, rather than grated, sections and where this is not possible the light shall be so shielded as to prevent light from directly shining onto the water.
12. ***The following mitigation measures shall be completed prior to final inspection of the docks:**
 - a. **Observe fish closures as required by WDFW** to avoid impact to juvenile salmon migration and to protect herring spawning beds, no work allowed below the ordinary high water line **between January 15 and June 14.** See also HPA conditions.
 - b. **Remove and properly dispose of 46 creosote-treated timber piles, tidal grid located adjacent to the easterly fixed pier, grounded float adjacent to the Springer building, and ramp and floats that constitute the current Springer dock.**
13. ***All construction and demolition debris shall be properly disposed of** on land in such a manner that it cannot enter into the waterway or cause adverse water quality impacts. All creosote piles must be cut into lengths of 10 feet or less and disposed of at approved upland site; the applicant shall provide **documentation of proper upland disposal.**
14. ***Extreme care shall be taken to prevent petroleum products, chemicals, or other toxic or deleterious materials from entering the water and degrading water quality.** If a spill does occur, or if oil sheen or any distressed or dying fish are observed in the project vicinity, work shall cease immediately and the Washington Department of Ecology shall be notified of such conditions. Contact: Northwest Regional Spill Response Section at (206) 649-7000.

15. * **Steel piles** shall be used for new and replacement piles, except that ACZA treated pile may be used under the Springer house if the piles are wrapped with an impermeable textile and high density plastic that will prevent the leaching of arsenic and zinc into the waters of Port Madison Bay. **ACZA piles must be sealed and wrapped prior to placement in water.**
16. ***Floatation for the structures shall be fully enclosed and contained** to prevent the breakup or loss of the floatation material into the water.
17. *All new **floats wider than four feet shall contain at least 50% functional grating with grating 60% open. All new gangways shall be fully grated.**
18. *Contractor(s) is required to **stop work and immediately notify** the Department of Planning and Community Development and the Washington State Office of Archaeology and Historic Preservation **if any historical or archaeological artifacts are uncovered** during excavation or construction.
19. In accordance with BIMC Chapter 18.85, a **25-ft. wide “partial screen” landscape buffer shall be established and maintained on the subject property** along the entire length of the north/south Spargur Loop Road frontage. This buffer shall be **planted with native plants** in accordance with the Landscape Plans [Exhibit 57 revised; see Condition 1]; the buffer area not slated for landscaping (*i.e.*, south of the southern driveway) shall be maintained in its existing condition except that diseased or hazard trees and invasive non-native plants may be removed as maintenance. The **Landscape Plans shall be revised to specify paved driveway “approaches”** (consistent with the City’s design standards) for the entrances to the two parking areas proposed east and southeast of the Caretaker’s residence. Each driveway approach must be wide enough to simultaneously accommodate an entering vehicle and an exiting vehicle; in the right-of-way, pavement shall be added as necessary so that these driveway approaches **connect to and match the grade of the existing roadway pavement**, and do not disrupt/aggravate the flow of stormwater runoff. (See also Condition 5.)
20. The applicant shall do the following to help facilitate safe two-way vehicular travel on Spargur Loop Road adjacent to the frontage of the subject property:
 - a. Through a survey prepared by a certified/licensed land surveyor, or by other means acceptable to the City, SYC shall, prior to beginning work on the 25-ft. wide buffer [see Condition 19], **identify the location of the subject property’s eastern boundary** and, with form and content acceptable to the City, **provide a right-of-way dedication as needed** along the entire SYC frontage, establishing and/or clarifying the limits of the subject property relative to the location and extent of the Spargur Loop Road right-of-way.
 - b. **All SYC improvements proposed and/or currently existing must be located on the subject property** and outside the Spargur Loop Road right-of-way. This includes, but is not limited to, the area of the proposed 25-ft. vegetative buffer. The buffer is to be 25-ft. wide as measured from the eastern property line as established in the survey (see “a” above).
 - c. In coordination with the Public Works Department (and with a right-of-way permit if/as required), SYC shall **cut back vegetation to clear the area of the right-of-way from the eastern SYC property line to the western edge of the existing roadway pavement, in order to ensure an informal roadway “shoulder”** (see *e.g.*, grassy area between fence and pavement, PP 73 Exhibit 92) east of the paved surface along the entire SYC frontage. Except for existing trees that meet the BIMC definition for “significant”, grass, low growing weeds or groundcover, vegetation shall be cut down

and cut back and structures (except utility poles, guide wires, and other public facilities) removed. This informal “shoulder” shall be leveled/graded and graveled if and/or as necessary except where it would necessitate grading/cutting/filling in the wetland, wetland buffer, steep slope or other critical area south of the SYC’s southern driveway.

NOTE: Condition 20 does not require SYC to provide comprehensive “half-street” improvements matching the City’s design and specifications standards for a street of this classification.

21. *The proposed **parking areas** east and southeast of the Caretaker’s residence shall be **grasscrete or other similar permeable surface**. If any parking area is paved, then the engineered stormwater management plan submitted with the application (or a revised version of it, acceptable to the Public Works Department), shall be implemented. The driveway to the renovated Springer house must be improved as required by the Fire Department to **accommodate emergency fire apparatus**.
22. *Prior to final inspection of the docks, the applicant shall **post procedures for containment, recovery, and mitigation of spilled petroleum, sewage and toxic products**.
23. *Failure to properly control the discharge of waste or hazardous materials may result in the revocation of the conditional use permit(s). Prior to final inspection of the docks, the applicant shall **post signs describing regulations** on the subject property regarding the following. (These signs are not to be included in the total sign size limitation of Condition 29.)
 - Handling and disposal of waste, wastewater, toxic materials, and recycling;
 - Prohibiting the use of marine toilets (*i.e.*, no untreated sewage discharge);
 - Prohibiting the disposal of fish and shellfish cleaning wastes; and,
 - Best management practices (BMPs) for boat maintenance and repairs on site.
24. *Upon completion of construction, all **cleared areas within 200 feet of the shoreline shall be landscaped** within the first planting season.
25. *The parking spaces shall be properly dimensioned and striped or shall provide wheel stops to designate parking spaces. **Signs shall be posted on SYC property at each driveway instructing exiting drivers that only travel south on Spargur Loop Road is permitted** (*e.g.*, “right turn only” leaving new parking areas). (These signs are not to be included in the total sign size limitation of Condition 29.) This direction shall be included in sailing class brochures and information sheets and in SYC announcements regarding Port Madison Outstation events.
26. SYC’s Port Madison-specific rule prohibiting camping on the grounds [Rule #9; see Exhibit 129] should be amended to **extend the camping prohibition to RVs**.
27. The SYC shall: 1) **provide each household with a Spargur Loop Road address** an annually updated **list (names and phone numbers) of SYC contacts**, including the Resident Caretaker, present Commodore, and a representative of the Port Madison Committee; 2) through the Port Madison Committee or other SYC representative group or individual, **host an neighborhood meeting** with Spargur Loop Road residents at the Outstation each year before June 1st where SYC shall advise neighbors of the dates of SYC-sponsored events and hear and discuss neighborhood concerns about Outstation operations; and, 3) give serious consideration to regularly **inviting Spargur Loop Road residents** to some or all Potlatch activities.

28. *The proposed development shall **comply with the City's noise ordinance**; specifically, BIMC 16.16.020 regarding maximum environmental noise levels and 16.16.025 regarding the limitations on construction hours and activities.
29. Outstation signs that are visible from adjacent properties, Spargur Loop Road, or the bay, shall be limited to a **cumulative total of 12 sq. ft.** (Signs referred to in Conditions 22 and 24 are interior-oriented and are not to be included in this cumulative total.)
30. Sailing class information, registration, and other materials provided to students or prospective students shall **include directions showing/describing approach to the site only from Hidden Cove Road and advising that departing trips must go south on Spargur Loop Road** to Hidden Cove Road. Students who **carpool or use alternate modes** of transportation (*i.e.*, walk, bike, boat) shall **receive a discount on class fees.**
31. The small boat **sailing classes shall:**
 - a. Be open to the public and, until the class orientation meeting or the first day of class (which ever comes first), **50% of class space shall be reserved for non-members.**
 - b. Have a **maximum limit of 16 students** per class.
 - c. Not have class sessions that start before **9:30 a.m.** or an end after **4:00 p.m.**
 - d. Be **limited to one class per day.**
 - e. Be held only **between June 1 and September 1.**
 - f. Be held only on weekdays, but **not on any weekday that is part of a SYC large event.**
 - g. **Store boats inside** on weekends and between classes. The boats used for class may be left on the float overnight, centered on the solid portions (overlapping the grating as little as possible), during consecutive weekdays of class.
 - h. The Springer building shall **not be used for sleeping accommodations**, except by class participants or instructors in connection with sailing class attendance or activities.
32. The **small boat dock** (modified Springer dock) **shall be equipped with adequate lifesaving equipment** such as life rings, hooks and ropes. If used for motor boat moorage, it shall also be **equipped with containment booms for petroleum and other toxic materials.**
33. When sailing classes are not in session, the **small boat dock may be used for sailboats that are not longer than 24 ft.** The small boat dock may be used for **moorage only when no space is available at the main dock; no rafting shall be permitted from the north end of the small boat dock.**
34. Use of the **meeting rooms** in the renovated Springer house must be ancillary to the small sailboat sailing program (*e.g.*, lessons for sailing classes, parents' meeting on first day of class, speakers/presentations regarding small boat sailing, SYC committee planning sailing classes, *etc.*), or for meetings of regular SYC committees. No meetings shall be held in the meeting rooms while any sailing class is in session or when arrival or departure times could overlap. The Springer building **shall not be rented out, or be available to the general public, or be used for private or non-SYC activities or general meetings.**
35. Failure to satisfactorily implement these conditions could result in revocation of the conditional use permit(s).