



Mission Statement: Meeting the challenge of protecting the environment and providing quality sewer service to the community.

**DRAFT AGENDA
COMMISSIONER MEETING
MARCH 24, 2022 at 9:00 AM**

IN PERSON /VIRTUAL MEETING:

Please join our meeting at 1106 Vernon Rd, James B Mitchell Conference Room or join virtually via **Go To Meeting:** (You will be asked to identify yourself for our sign in sheet)

<https://global.gotomeeting.com/join/646704685>

You can dial in using your phone:

United States (Toll Free): [1 877 309 2073](tel:18773092073)

United States: [+1 \(312\) 757-3129](tel:+13127573129)

Access Code: 646-704-685

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **AGENDA APPROVAL**
4. **CONSENT ITEMS** (The Commissioners have previously reviewed these in detail):

	AMOUNT	CHECK #'s
A. Minutes: Mar 10, 15 & 22		
B. Lien Placements (0)		
Lien Releases (0)		
Lien Foreclosure Lawsuit (0)		
C. Investments	\$434,477.91	
Withdrawals	\$66,818.42	
Transfers	\$7,087.99	
D. Payroll	N/A	
E. 40 – Maintenance	\$122,786.95	9623 – 9662, EFT157
F. 48 – SRF Principle & Interest Payment	N/A	
G. 50 – City of Lake Stevens Bond Payment	N/A	
H. 58 – Capital Expenditures	\$68,413.42	9663 - 9664
I. 60 – PWTF Principle & Interest Payment	N/A	
J. Housekeeping Items:	N/A	

5. **PUBLIC FORUM – Non-action Items** (please limit comments to 3 minutes)
6. **OLD BUSINESS**
 - A. WWTP Permeate Pipe Replacement Contract – Authorization for GM to Execute Signing
 - B.
7. **NEW BUSINESS**
 - A. 915 S. Lake Stevens Rd Variance Request
 - B. Resolution 1024 – Adopting an interim GFC
 - C. Resolution 1025 – Increasing rates for 2022
 - D. Resolution 1026 – Revising Reduced Rate Program

8. MANAGERS' REPORTS

- A. General Manager
- B. Assistant General Manager

9. CITY REPORT

10. COMMISSIONERS' REPORT

11. EXECUTIVE SESSION

12. CONCLUDE

NOTICE: All proceedings of this meeting are audio recorded, except Executive Sessions

****PLEASE NOTE:** The Lake Stevens Sewer District will accept verbal citizen comments during the regular meetings in-person or virtually. Citizen comments submitted prior to the meeting to management@lkssd.org will be addressed during the public comment period.



Mission Statement: Meeting the challenge of protecting the environment and providing quality sewer service to the community.

**MINUTES OF
COMMISSIONER MEETING
MARCH 10, 2022 at 9:00 AM**

Attendees: Commissioners Dan Lorentzen, Andrea Wright and Kevin Kosche, District Staff: Mariah Low, Johnathan Dix, and Melonie Grieser. District Engineers: Leigh Nelson, G&O. Legal Counsel: Jordan Stephens, City Councilman Gary Petershagen

1. **CALL TO ORDER** – At 9:01 AM Commissioner Lorentzen called the meeting to order and read a prepared statement regarding our virtual meeting and public comment.
2. **PLEDGE OF ALLEGIANCE** – Commissioner Lorentzen led those present in the Flag Salute.
3. **AGENDA APPROVAL** – Commissioner Kosche moved to approve the agenda. Commissioner Wright seconded the Motion. The Motion passed.
4. **CONSENT ITEMS** (The Commissioners have previously reviewed these in detail) – Commissioner Kosche moved to approve Consent Items A through I. Commissioner Lorentzen seconded the Motion. The Motion passed. Commissioner Lorentzen explained item J and that no motion was needed but they may be listed on future agendas this way.

	AMOUNT	CHECK #'s
A. Minutes: Feb 10, 17, 22 &24, March 8		
B. Lien Placements (29)	NA	
Lien Releases (40)	NA	
Lien Foreclosure Lawsuit (0)	NA	
C. Investments	\$610,400.00	
Withdrawals	\$11,639.37	
Transfers	NA	
D. Payroll	\$221,166.27	
E. 40 – Maintenance	\$151,437.43	9579-9620
F. 48 – SRF Principle & Interest Payment	NA	
G. 50 – City of Lake Stevens Bond Payment	NA	
H. 58 – Capital Expenditures	\$11,739.37	9621-9622
I. 60 – PWTF Principle & Interest Payment	NA	
J. Housekeeping Items – Voided Checks	\$600	From 9111 to 9542
	\$8,867.95	From 8501 to 9575
	\$8,671.95	From 8867 to 9576
	\$17,343.90	From 9275 to 9577
	\$150.00	From 9305 to 9578

5. **PUBLIC FORUM – Non-action Items** (please limit comments to 3 minutes) Commissioner Lorentzen asked if there were any public comments or questions submitted. No questions submitted and no one in attendance had questions.

6. OLD BUSINESS –

- A. G&O Contract Amendment No. 32 – Phased District Office Improvements Generator and Electrical Upgrade, \$8,930 – Mariah Low stated that this contract was previously approved by the Board. The project has been split into two different phases due to tenant resigning lease for the VBC second floor. This phase adds some additional costs in the amount of \$8,930. Commissioner Kosche made a Motion to approve the item. Commissioner Wright seconded the Motion. The Motion passed.

- B. Resolution No. 1022 – Finalization of Hisey Annexation – Johnathan Dix stated that this resolution finalizes the Hisey Annexation. Snohomish County did not oppose the annexation and they did not invoke the Boundary Review Board. There were no comments during the comment period. Legal has reviewed and staff recommends Resolution No. 1022 for approval. Commissioner Kosche made a Motion to approve Resolution No. 1022. Commissioner Wright seconded the Motion. The Motion passed.

- C. Resolution No. 1023 – Fagerlie Annexation Petition Resolution Setting a Public Hearing Date – Johnathan Dix stated that this resolution confirms that the District is willing to entertain the annexation of the Fagerlie property. This also sets the mandatory review period, and the public hearing date will be held on April 14th. District engineers have reviewed and verified, legal has reviewed, and staff recommends for approval. Commissioner Kosche made a Motion to approve Resolution No. 1023. Commissioner Wright seconded the Motion. The Motion passed.

- D. Fagerlie Plan Review Reimbursement Agreement – Johnathan Dix stated that this annexation will require a lift station. There is no DEA for this project. This agreement will allow the District to review the plans and receive reimbursement for costs. This has been reviewed by legal and engineering and staff recommends for approval. Commissioner Kosche made a Motion to approve this Agreement and to allow the GM or AGM to sign the agreement. Commissioner Wright seconded the Motion. The Motion passed.

7. NEW BUSINESS -

- A. Contract for Filtrate Disposal with Tenelco Inc. – Johnathan Dix stated that this contract between the District and Tenelco sets the terms and conditions for discharge into our sewer system. Tenelco has their own treatment facility where they pretreat before discharging to the District. This contract sets the rates and guidelines for that discharge. Legal has reviewed the contract and staff recommends approval. Commissioner Kosche made a Motion to approve the contract and allow the GM or AGM to sign on behalf of the District. Commissioner Wright seconded the Motion. The Motion passed.

- B. Award Accord Contractors Contract for WWTP Permeate Pipe Repair – Johnathan Dix stated that a bid went out to repair a leaking pipe at the plant. We received two bids and the lowest

responsible bidder was Accord Contractors for \$54,017.15. This contract has been reviewed by legal and engineers. Staff recommends approval. Commissioner Kosche made a Motion to award the contract to Accord. Commissioner Wright seconded the Motion. The Motion passed.

8. MANAGERS' REPORTS

A. General Manager – Mariah Low stated that the Caring by Sharing program has \$998.79, enough to help 11 families. Total inorganic nitrogen is at 15% of yearly limit, so we are on track. Plant flows are 3.3 MGD and a new operator in training started at the plant this week.

B. Assistant General Manager – Johnathan Dix stated that the District has collected 36 connection fees and 64 permits have been paid year to date. Johnathan recently received an incredible review for Keishon Cunningham and Paul Knight for going above and beyond for a customer. Their great work is appreciated.

9. CITY REPORT – Councilman Gary Petershagen would like to add that he appreciates the letter received on March 9th from the District to the City. The City did approve the 10% petition for the Fagerlie Annexation at the City council meeting on Tuesday.

10. COMMISSIONERS' REPORT – Commissioner Kosche stated that he is pleased with the letter received for District employees, Paul and Keishon, and very happy to have a new employee at the plant. Attorney costs for District regarding the city litigation currently exceeds all other category of legal expenses since 2015. In 2021, the legal fees for the litigation cost each rate payer \$2.67 per month every month through 2021, including the amount that the City has spent in legal fees. It's a waste of ratepayer and constituents' money. Commissioner Wright attended a staff meeting and tour of the plant and is very impressed with employees and the great work they do. Commissioner Lorentzen agreed with Commissioner Kosche regarding the cost of legal with the City and would like to focus on looking for a resolution to the differences and come to an agreement.

11. EXECUTIVE SESSION – Jordan Stephens stated the Commission will now recess into Executive Session at 9:30AM and excused the General Public; it is estimated the executive session will last until 9:50AM. The purpose of the Executive Session, under RCW 42.31.10(1) (i), is to discuss pending litigation and potential litigation. At the conclusion of the Executive Session, there will be no action taken by the Board of Commissioners and there will be an announcement made. At 9:50AM the executive session ended.

12. CONCLUDE –Commissioner Wright moved to adjourn the Board Meeting. Commissioner Kosche seconded the Motion. The Motion passed at 9:51AM.

Signed at a regular open public meeting this 24th day of March 2022

Dan Lorentzen, President and Commissioner

Andrea Wright, Commissioner

Kevin Kosche, Secretary and Commissioner



**LAKE STEVENS
SEWER DISTRICT**
Serving You Since 1957

1106 Vernon Road · Suite A,
Lake Stevens, WA 98258
(425) 334-8588 · Fax (425) 335-5947
Web Address: lkstevenssewer.org

Mission Statement: Meeting the challenge of protecting the environment and providing quality sewer service to the community.

**MINUTES OF SPECIAL
COMMISSIONER WORKSHOP ON
March 15, 2022**

**Location: 1106 Vernon Rd, Suite A, Lake Stevens WA 98258 or
Remotely via GoToMeeting virtually**

Attendees: Commissioners Kevin Kosche, Dan Lorentzen, and Andrea Wright. District: Mariah Low, Johnathan Dix, Michelle Bauman and Melonie Grieser.

1. Call to Order at 9:00AM Commissioner Dan Lorentzen called the meeting to order.

Agenda - Commissioner Workshop to discuss rates and finances: Mariah Low stated that the purpose of this meeting is for Commissioners to give staff direction on a possible rate and GFC increase. Mariah presented a slide that showed possible rate strategies. Possible strategies discussed include a Steady \$90 for 2022, increasing every 2 years. This would include new debt of \$38.4 million. Moderate \$99 for 2022, with one more rate increase in 2027 to \$110, and new debt of \$21.4 million. Aggressive \$112 for 2022, no additional rate increases and no new debt service. The most significant cause of this shortage is the comp plan and limited growth due to zoning changes. The upkeep to existing pipe and infrastructure is a major factor. The current board would like to hand the Sewer District over debt free to the City in 2033. Commissioner Kosche added that developers will still pay as much as the District is legally allowed to charge and he would like to eliminate the debt portion in any of the scenarios. The aggressive option would allow for no other adjustments to rates until the District is turned over to the City. Commissioner Wright would like the aggressive option off the table due to the timing of the financial climate right now. There's a large population of the City that is already spread thin financially and this much of an increase would hurt them even more. She mentioned that the City is possibly waiting for this increase to include a utility tax, furthering the fiscal strain. Commissioner Lorentzen mentioned that the City has been very adamant in not signing off on any new debt that would last past 2033 for the District. Any option for increasing debt could be a moot point if they don't agree to it. Commissioner Lorentzen also added that he's concerned that the moderate option might end up being a larger increase in 2027 due to inflation. Commissioner Kosche suggested that the District should look at raising the threshold of the poverty level to help capture a larger portion of citizens who could participate in the District's Rate Reduction Program. He also stated that the City would have to approve of the District taking on debt, in-order-to keep the Hartford area project in the Comp Plan. That project is a large portion of the reason the District would need to take on debt which will cost approximately \$13 million. Repurposing that amount for Ecology adjustments due to the permit changes could be possible. The District should know by 2027 how the new General Permit will affect the District financially. Hartford should not be included in the debt under the moderate strategy. Commissioner Wright stated that the aggressive strategy is concerning because there's no way you can guarantee there will be no more increases. It's

the District's best estimate but it's not set in stone. The moderate option which would increase the rate to \$99 this year and then to \$110 or more in 2027, would cover all that's needed except for Hartford or the General Permit/Ecology changes. Mariah Low stated that we wouldn't know until 2025 exactly how we'll have to adjust for Ecology demands under the new permit. There will be a Utility meeting next week and the District should discuss these options with the City at that time. Commissioner Kosche would like to have a decision made soon and a start date of June 1st for the new rate. The Commissioners asked staff for a revised Moderate option which would exclude the Hartford project. Commissioner Wright made a Motion to conclude the meeting. Commissioner Kosche seconded the Motion. The Motion passed.

2. Concluded at 09:58AM with no action taken.

Signed in a regular open public meeting this 24th day of March 2022

Dan Lorentzen, President and Commissioner

Andrea Wright, Commissioner

Kevin Kosche, Secretary and Commissioner



**LAKE STEVENS
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Website: www.lkstevenssewer.org

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**MINUTES
OF SPECIAL MEETING
BOARD OF COMMISSIONERS**

March 22, 2022

Utility Committee

**By Remote Participation via GoToMeeting.com and in person at
1106 Vernon Rd, Lake Stevens, WA 98258**

Attendees: Commissioners Dan Lorentzen, Andrea Wright and Kevin Kosche; Staff: Mariah Low and Johnathan Dix.

Guests from the City of Lake Stevens: Councilmembers Gary Petershagen and Marcus Tageant; City Staff: Gene Brazel.

1. **Called to Order** at 4:00 pm by Commissioner Lorentzen. He moved into the meeting agenda item "Utility Committee Meeting".
2. **Utility Committee Meeting** – The Committee discussed mutual projects and District rate increase discussion.
3. **Conclude** – There being no further business, the meeting was concluded at 4:57 pm.

Signed at a regular open public meeting this 24th day of March 2022

Dan Lorentzen, President and Commissioner

Andrea Wright, Commissioner

Kevin Kosche, Secretary and Commissioner



Submit to:
Lake Stevens Sewer District
1106 Vernon Road, Suite A
Lake Stevens, WA 98258
(425)334-8588 Fax (425)335-5947

DEVELOPER STANDARDS VARIANCE REQUEST

Project Name: _____

Property Tax Account Number(s)

Project Address _____

Applicant _____ Phone (____) _____ Email _____

Description of the variance request

Applicable section of standards or code

Justification (Attach additional information as necessary)

District Approval Signatures (For Office Use Only)

Staff Recommendation:	<input type="checkbox"/> Approved <input type="checkbox"/> Denied	Signature: Date:
Conditions of Approval:		



202104280566

COVENANTS

Rec: \$106.50

4/28/2021 2:15 PM 1 of 4

SNOHOMISH COUNTY, WA

Electronically Recorded

After recording, return document to:

Brian Donnelly
915 S. Lake Stevens Road
Lake Stevens, WA 98258

Document Title or Title(s): Declaration of Covenant

Reference Nos. of Documents Assigned or Released: None

Name of Grantor: Brian J. Donnelly, an individual

Name of Grantee: Brian J. Donnelly, an individual

Pages Referencing Additional Names: None

Abbreviated Legal Description: PTN NE CORNER, SEC 19-29-6E

Legal Description: See Exhibit A

Assessor's Property Tax Parcel Number: 29061900103500

DECLARATION OF COVENANT

THIS DECLARATION OF COVENANT ("Declaration") is made this 21th day of April, 2021 by BRIAN J. DONNELLY, an individual ("Grantor").

RECITALS

- A. Grantor is the fee owner of the real property legally described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").
- B. Grantor desires to establish certain conditions regarding the overwater structure on the Property.

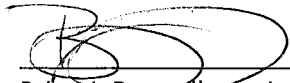
NOW THEREFORE, Grantor hereby establishes the following covenant for the Property:

- 1. Grantor prohibits the overwater structure from being used as a dwelling unit as defined by the International Residential Code and the Lake Stevens Municipal Code, now and into the future, for the current owner and any future successor or assigns of the Property.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Grantor has executed this Declaration as of the day and year first written above.

GRANTOR:



Brian J. Donnelly, an individual

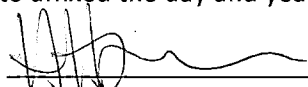
STATE OF ARIZONA)
) ss.
COUNTY OF Maricopa)

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

On this 27th day of April, 2021, before me personally appeared BRIAN J. DONNELLY, the individual that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary at and deed of said person, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.





Notary Public in and for the State of Arizona,
Residing at 3120 W Carefree hwy Ste 1
My commission expires: 10/25/2024
Hannah Hoelzen

[Type or Print Notary Name]

EXHIBIT A

Legal Description

THE FOLLOWING DESCRIBED REAL ESTATE, SITUATED IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON

THE SOUTH 50 FEET OF THE FOLLOWING DESCRIBED TRACT:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 19, TOWNSHIP 29 NORTH, RANGE 6 EAST OF THE WILLAMETTE MERIDIAN;
THENCE SOUTH 0°44' WEST ALONG THE EAST LINE OR SAID SECTION A DISTANCE OF 1496.3 FEET TO THE POINT OF BEGINNING;
THENCE CONTINUE SOUTH 0°44' WEST 226.1 FEET TO THE NORTHEAST CORNER OF THE TRACT OF LAND HERETOFORE CONVEYED TO PASHLEY;
THENCE NORTH 89°19' WEST 195.3 FEET, MORE OR LESS, TO THE EAST LINE OF THE COUNTY ROAD;
THENCE NORTHEASTERLY ALONG SAID EAST LINE OF THE COUNTY ROAD TO A POINT NORTH 89°16' WEST OF THE POINT OF BEGINNING;
THENCE NORTH 89°16' EAST 157.9 FEET, MORE OR LESS, TO THE POINT OF BEGINNING;

TOGETHER WITH SHORELANDS OF THE SECOND CLASS, AS CONVEYED BY THE STATE OF WASHINGTON, LYING IN FRONT OF THE ABOVE DESCRIBED TRACT;

EXCEPT THAT PORTION THEREOF LYING WITHIN SOUTH LAKE STEVENS ROAD;

AND EXCEPT THAT PORTION THEREOF CONVEYED TO SNOHOMISH COUNTY BY DEED RECORDED UNDER RECORDING NO. 9310080628 RECORDS OF SNOHOMISH COUNTY, WASHINGTON.

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF LAKE STEVENS**

In the Matter of the Application of)	Nos. LUA2020-0186 and -0187
)	
)	
Brian Donnelly)	Donnelly Cabana Proposal
)	
)	
For Approval of a Shoreline Substantial)	
Development Permit and Shoreline)	FINDINGS, CONCLUSIONS,
Conditional Use Permit)	AND DECISION

SUMMARY OF DECISION

The request for an after-the-fact Shoreline Substantial Development Permit to retroactively permit improvements made to an existing overwater structure and pier, and for an after-the-fact Shoreline Conditional Use Permit to change the use of the structure, at 915 S. Lake Stevens Road, is **APPROVED**. Conditions are necessary to mitigate specific impacts of the development.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on April 5, 2021, using remote hearing technology.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Melissa Place, City Senior Planner
Patrick McCourt, Applicant Representative
Peter Anderson
Ryan Mumma, City Building Official

Exhibits:

The following exhibits were admitted into the record:

1. Shoreline Substantial Development Permit Application, received December 3, 2020; Shoreline Conditional Use Permit Application, received December 3, 2020
2. Determination of Completeness (SCUP), dated December 17, 2021; Determination of Completeness (SSDP), dated December 21, 2020
3. Application Materials:
 - a. Project Narrative, LandPro Group, Inc., dated December 1, 2020

*Findings, Conclusions, and Decision
City of Lake Stevens Hearing Examiner
Donnelly Cabana, No. LUA2020-0186 and -0187
SSDP and SCUP*

- b. Detailed Summary of Proposal, Toyer Strategic Advisors, Inc., undated
- c. Project Plans:
 - i. General Notes (Sheet A0.1), dated February 16, 2021
 - ii. Site Plan (Sheet A1.1), dated February 16, 2021
 - iii. Vicinity Plan (Sheet A1.1A), dated February 16, 2021
 - iv. Existing Main Floor Plan (Sheet A2.1), dated February 16, 2021
 - v. North and South Elevations (Sheet A3.1), dated February 16, 2021
 - vi. Section A-A and Section B-B Plans (Sheet A3.3), dated February 16, 2021
 - vii. Concrete Pier Layout (Sheet SKA-01 S1.1), dated December 1, 2020
- b. Site Plan, with Base Flood Elevation Information, dated November 2, 2020
- c. Letter from Lake Stevens Sewer District to Brian Donnelly, dated November 4, 2020
- d. Analysis of Conditional Use Permit Criteria, Toyer Strategic Advisors, Inc., undated
- e. Shoreline Conditional Use Supplement, undated
- f. Letter from Toyer Strategic Advisors, Inc., RE: Permanent Cabana Structure, dated October 29, 2020
- g. Letter from Toyer Strategic Advisors, Inc., RE: Legally Non-Conforming Use Status, dated October 29, 2020
- h. Site Photographs, dated January 29, 2021
- i. Letter from LandPro Group, Inc., RE: Information Regarding Piling Improvements, dated March 4, 2021
- j. Letter from LandPro Group, Inc., RE: Information Regarding Water and Sewer Connections, dated March 4, 2021
- 2. Building Permit Submittal Package:
 - a. Architectural Plans, MJ Neal & Associates, dated February 16, 2021
 - b. Structural Plans, DCI Engineers, dated November 24, 2020
 - c. RGC Marine, Boat Lift Specifications
 - d. Receipt, Boat Lifts International, dated February 8, 2017
- 3. City and Applicant Correspondence:
 - a. Letter from Russ Wright to Brian Donnelly, dated September 11, 2020
 - b. Additional Materials:
 - i. City Project Review Letter, dated February 8, 2021
 - ii. Email from Melissa Place to Patrick McCourt, dated January 28, 2021
 - iii. Letter from LandPro Group, Inc., dated January 29, 2021
 - iv. Letter from LandPro Group, Inc., dated February 3, 2021
 - v. Letter from LandPro Group, Inc., dated February 18, 2021
 - vi. City Project Review Letter, dated March 4, 2021
 - vii. Letter from LandPro Group, Inc., dated March 9, 2021
- 4. Aerial Imagery & Property Photographs, dated February 1, 2021
- 5. Notice Materials:
 - a. Notice of Land Use Applications & SEPA Review, dated December 30, 2020

- b. Notice of Public Hearing, undated
- c. Affidavit of Notice (Application), dated December 30, 2020; Affidavit of Notice (Hearing), dated March 24, 2021
- d. Comment from Washington State Department of Fish and Wildlife, dated January 28, 2021, with email string
- 6. SEPA Categorical Exemption Determination, dated March 22, 2021; SEPA Checklist, dated December 21, 2020
- 7. Shoreline Designation Map, amended 2019
- 8. Staff Report, dated March 29, 2021
- 9. Staff PowerPoint Presentation, dated April 5, 2021

The Hearing Examiner enters the following findings and conclusions based upon the testimony and admitted exhibits:

FINDINGS

Applications and Notice

1. Brian Donnelly (Applicant) requests an after-the-fact Shoreline Substantial Development Permit (SSDP) to retroactively permit improvements made to an existing overwater structure and pier on the shoreline of Lake Stevens, and an after-the-fact Shoreline Conditional Use Permit (SCUP) to change the use of the structure. The existing structure was historically used as a float plane hangar and, more recently, as covered boat moorage. After acquiring the property, the Applicant made internal improvements to the overwater structure, including adding kitchen and bedroom facilities, and made external improvements to the structure and pier, including adding a floating dock and boat lift. The SSDP would address the improvements made without benefit of permits, and the SCUP would address changing the use of the structure from a float plane hangar/covered boat moorage (legally nonconforming uses) to a “cabana,” as defined by the Applicant.¹ The property is located at 915 S. Lake Stevens Road.² *Exhibit 1; Exhibit 3; Exhibit 10, Staff Report, page 1.*
2. The City of Lake Stevens (City) determined the SCUP application was complete on December 17, 2020 and that the SSDP application was complete on December 21, 2020. On December 30, 2020, the City mailed or emailed notice of the applications to property owners within 300 feet of the subject property and to reviewing government departments, agencies, and tribal entities. The same day, the City posted notice at City Hall, the Planning Department, and on the City’s website, and published noticed in the *Everett*

¹ The Applicant has also applied for retroactive floodplain and building permits. These permits have been or will be addressed through the City of Lake Stevens’ administrative review (Type I) process and are beyond the scope of the Hearing Examiner’s review. *Exhibit 10, Staff Report, page 1.*

² The property is identified by tax parcel No. 29061900103500. A legal description is provided with the applications. *Exhibit 1; Exhibit 10, Staff Report, page 1.*

Herald. Notice materials provided for a 30-day comment deadline of February 1, 2021, consistent with Lake Stevens Municipal Code (LSMC) 14.16B.320(3). On March 24, 2021, the City mailed or emailed notice of the open record hearing associated with the applications to property owners within 300 feet of the property and to reviewing government departments, agencies, and tribal entities. The same day, the City posted notice of the hearing on the subject property, at City Hall, at the Planning Department, and on the City’s website, and published notice in the *Everett Herald*. The notice materials related to the hearing noted that written comments on the proposal would be accepted up until the commencement of the hearing. *Exhibit 2; Exhibit 7; Exhibit 10, Staff Report, pages 3 and 4.*

3. The City received no comments from members of the public in response to its notice materials. The Washington State Department of Fish and Wildlife (WDFW) commented that it does not issue retroactive Hydraulic Project Approval (HPA) permits and, accordingly, an HPA would not be necessary for the work the Applicant already performed on the overwater structure. WDFW, however, noted that an HPA would be required for any further in-water work on the property. *Exhibit 7.d; Exhibit 10, Staff Report, page 4.*

State Environmental Policy Act

4. City staff determined that the proposal is categorically exempt from review under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). Specifically, the County determined that, under Washington Administrative Code (WAC) 197-11-800(3), the proposal would involve the normal repair or maintenance of an existing overwater structure, including the repair and/or replacement of pilings.³ *Exhibit 8; Exhibit 10, Staff Report, page 14.*

Comprehensive Plan, Zoning, and Surrounding Property

5. The City Comprehensive Plan designates the subject property as “Waterfront Residential.” Single-family residential uses with a density of up to four dwelling units per acre are allowed on property designated Waterfront Residential, as are recreational uses. *Lake Stevens Comprehensive Plan, Page LU-14.* City staff identified the following Comprehensive Plan policies as relevant to the proposal:
 - Ensuring that new development within the shoreline jurisdiction meets the procedural, building, and development requirements as consistent with the adopted Shoreline Master Program. [Policy 4.2.1]
 - Promoting development of convenient recreational opportunities, activities and public access to public shorelines as consistent with the adopted Shoreline Master Program. [Policy 4.2.2]

³ Lake Stevens Municipal Code (LSMC) 16.04.050 adopts by reference the categorical exemptions of WAC 197-11-800.

- Recognizing the vast majority of shoreline property is in private ownership and encouraging the creation of easements to allow public access through donation or purchase, particularly in areas adjacent to publicly owned shorelines. [Policy 4.2.6]
- Considering potential shoreline impacts from cumulative development actions of upland properties. [Policy 4.2.9]

Exhibit 10, Staff Report, page 7.

6. The subject property is located within the City’s Waterfront Residential (WR-4) zoning district. The district is intended to accommodate “single-family detached residential uses at medium densities in areas adjacent to Lake Stevens and served by public water and sewer facilities.” *LSMC 14.36.010(2)*. Single-family detached residential uses as well as privately owned overwater structures are allowed uses within the WR-4 zoning district. *LSMC Table 14.40-I*.
7. Property to the north, south, and east of the proposal is designated Waterfront Residential under the Comprehensive Plan, is zoned WR-4, and is developed with single-family residential uses. Lake Stevens borders the property to the west. *Exhibit 10, Staff Report, page 2.*

Project Background

8. The Applicant purchased the property in August 2016, including the existing overwater structure variously used as a float plane hangar or as covered boat moorage, prior to the City’s annexation of the property from Snohomish County (County) in 2018. He then applied for a building permit with the County to construct a new single-family residence on the upland portion of the property, east of Lake Stevens Road. The Applicant obtained all necessary permits for the residence (No. 16-120672RK), along with a retaining wall (No. 17-103191AB), from the County. He also completed maintenance work and made improvements to the overwater structure and existing pier without benefit of permits. These improvements included: sleeving 17 of 22 existing wood piles supporting the structure, and filling them with concrete; installing a floating dock system and removable boatlift; replacing the existing water and sewer lines serving the overwater structure; installing hardy plank siding on the structure and painting it; extending the apron on the waterward side of the pier by approximately 2.5 feet; and converting the structure into an overwater dwelling unit, with two bedrooms, a bathroom, and a kitchen. *Exhibit 3; Exhibit 5; Exhibit 10, Staff Report, pages 4 and 5.*
9. After completion of the work, the Applicant decided to sell the property and, in September 2020, an appraiser contacted the City to confirm that all required permitting for the property was in order. On September 11, 2020, the City wrote to the Applicant informing him that the recent improvements to the overwater structure and pier were

made without benefit of permits and, in addition, that overwater dwelling units⁴ are not permitted under the City's Shoreline Master Program (SMP), as explained in more detail below. *Exhibit 5; Exhibit 10, Staff Report, pages 1 through 6.*

Proposed Use

10. As detailed above, the substantive work associated with the proposal already occurred without benefit of permits. The Applicant now seeks an SSDP and SCUP to bring the property into compliance with requirements of the City's SMP and municipal code. Specifically, the Applicant seeks approval to use the overwater structure as a "cabana," noting that this would entail "a fully enclosed, permanent free standing structure (on piers)" that "can be used in conjunction with the Applicant's use of the lake for water related and water dependent recreational and entertainment purposes." *Exhibit 3.h.*
11. The term "cabana," as envisioned by the Applicant, is not defined in the City's municipal code or SMP.⁵ City staff reviewed the proposal and the history of the property and determined that the Applicant changed the use from a legal, nonconforming "float plane hangar to that of an over water dwelling unit." Specifically, the existing structure was "nonconforming with respect to the setbacks from the side property lines," and it was "covered moorage with sides." Staff determined that, without accounting for the added residential amenities, the present use is most similar to a boathouse or boat shelter.⁶ *Exhibit 10, Staff Report, page 5.*
12. Regardless of how the structure or use is defined, the administrative provisions of the SMP (Chapter 7.G and 7.H), clearly provide:
 - Structures that were lawfully constructed prior to the effective date of the Shoreline Management Act or City's SMP, but which are not consistent with present regulations and standards, are considered legal nonconforming structures.
 - Existing structures being used for a legal use but that do not meet the regulations for setbacks or buffers may be maintained and repaired and may even be enlarged or expanded provided that the enlargement does not increase the extent of noncompliance with the regulations by further encroaching upon or extending into

⁴ LSMC 14.08.010 defines a *dwelling unit* as a "single unit providing complete, independent living facilities for one family, including permanent provisions for living, sleeping, eating, cooking and sanitation."

⁵ The term *temporary cabana*, however, is defined in the SMP as a "temporary fabric covered shelter that is less than 10' x 10'." *SMP, Chapter 6 (page 112).*

⁶ A *boathouse* or *boat shelter* is defined in Chapter 6 of the SMP (page 99) as:

An over-water structure specifically designed or used for storage of boats with permanent walls and/or roofs. Boathouses have a roof and three solid walls and may include a large door on the waterward side to fully enclose the boathouse. Boat shelters have a roof and possibly one or two walls, but are not fully enclosed on three sides.

areas where construction or use would not be allowed for new development or uses.

- If an existing structure is damaged, it may be reconstructed/replaced to those configurations existing immediately prior to the time the structure was damaged so long as necessary permits are obtained.
- Uses that were legally established and are now nonconforming may continue as legal nonconforming uses.
- A use that existed prior to adoption of the SMP shall be considered a legal nonconforming use, and a structure that is being or has been used for a nonconforming use may be used for a different nonconforming use with approval of a SCUP, so long as no reasonable alternative conforming use is practical and the propose use will be at least as consistent with the policies and provisions of the SMA and SMP and as compatible with the uses in the area as the preexisting use.

Exhibit 10, Staff Report, pages 12 through 14.

13. City staff reviewed the proposal and determined that (with conditions) it would comply with the nonconforming structure and use provisions of the SMP. Specifically, staff determined: the structure has existed since at least 1966, which predates adoption of the Shoreline Management Act in 1972 and the City's initial adoption of an SMP; the existing structure was legally established and, if used as a boathouse, would be a legal use, although it would not meet current side setback requirements; the structure has been repaired and enlarged through the addition of decking on the waterward side of the structure and the addition of a boat lift and floating dock; these improvements do not substantially increase the extent of noncompliance with setback requirements; no additional space was added to the interior of the overwater structure; unidentified uses (such as the Applicant's suggestion of treating the structure as a "cabana") may be allowed under the SMP with a SCUP; and use of the structure as a boathouse for water-oriented enjoyment is reasonable so long as the boathouse/cabana is not used as a residential dwelling. *Exhibit 10, Staff Report, pages 12 through 14.*

Shoreline Management Act

14. Lake Stevens is an urban lake with mainly single-family residential shoreline uses. *SMP, Chapter 1.* The State Shoreline Management Act (SMA) and the City's SMP govern work within Lake Stevens and within 200 feet of the ordinary high water mark (OHWM) of the lake.⁷ *SMP, Chapter 1.D.; RCW 90.58.030(2)(f).* The primary goal of the SMA is

⁷ The ordinary high water mark "will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter," provided that, "in any area where the ordinary high water mark cannot be found, the ordinary high water mark shall be the line of mean high water." *RCW 90.58.030(2)(c); SMP, Chapter 6.*

to protect the public interest in the state's shorelines through a coordinated development process. The SMA contemplates protecting against adverse effects to public health, land, vegetation, wildlife, and waters, and preserving the public's opportunity to enjoy the physical and aesthetic qualities of the natural shoreline to the greatest extent feasible. Permitted uses in the shoreline must be designed and conducted in a manner to minimize any damage to the ecology and environment of the shoreline area and any interference with the public's use of the water. *RCW 90.58.020*.

Shoreline Master Program

15. The City's SMP designates the property as a "Shoreline Residential" environment. The purpose of the Shoreline Residential environment is to accommodate residential development and associated structures that are consistent with the City's SMP, as well as to provide appropriate community access and recreational uses. Single-family residential uses are allowed in the Shoreline Residential environment. *SMP, Sections 2.C.4 and 5.B*

Shoreline Conditional Use Permit

16. Chapter 7.D of the SMP establishes the criteria and requirements for approval of a SCUP. Specifically, the SMP requires that the proposed use is consistent with the policies of RCW 90.58.020 (in the SMA) and the SMP, will not interfere with the normal public use of the shoreline, is compatible with other authorized uses within the area and with uses planned for the area, and will cause no significant adverse effects to the shoreline environment, and that the public interest suffers no substantial detrimental effects from the proposal. *SMP, Section 7.D*.
17. The Applicant submitted an analysis of the SCUP criteria, prepared by Toyer Strategic Advisors, Inc., that contends:
 - The use is consistent with the policies of RCW 90.58.020 because steps have been taken to ensure that all pollution would be controlled and no damage to the natural environment would occur. Specifically, the use would result in permanent sanitary facilities next to the water, which would discourage accidental sewerage spills caused either by temporary, portable facilities or individual humans; the use would not further develop, alter, or disturb the shoreline; and the use would eliminate any future use of the facility for float planes, which have a greater likelihood of introducing chemicals and fuel into the lake.
 - The proposed use is consistent with the priority given to single-family residences and their appurtenant structures.
 - The proposed use allows for the Applicant's private recreation, entertainment, and enjoyment of the lake, without any additional or resultant damage to the ecology and environment of the shoreline or interference with the public's use of the water because: the use will be within the footprint of an existing, legally nonconforming structure, and use of the structure as a cabana will eliminate the need for the owner/resident to install screening, fencing, or other privacy features

that would reduce the public's view of the lake from the public road (S. Lake Stevens Road).

- The use would not interfere with the normal public use of the shoreline because it entails repurposing of an existing structure's footprint.
- Other residential accessory uses that are along the shoreline exist in the immediate vicinity.
- There are no other reasonable, alternative conforming uses for the preexisting structure and pier that would be practical for the Applicant to pursue.
- Use of the existing overwater structure and pier for a "cabana" is at least as consistent with the policies and provisions of the SMA the SMP, and as compatible with the uses in the area, as the former preexisting uses of the site.
- The proposed use of the structure as a cabana would further the owner's enjoyment of water-related and water-dependent activities without causing significant adverse effects to the shoreline environment.
- The public interest would suffer no substantial detrimental effects from the use because the use would not alter the natural shoreline, result in additional development, or modify or impact the public's use, views, access, or enjoyment of the shoreline.

Exhibit 3.f.

18. City staff assessed the proposal for the after-the-fact SCUP and determined:

- Under the SMA, in those limited instances when alterations of the natural condition of shorelines of the state are authorized, priority should be given to single-family residences and their appurtenant structures. Here, the existing structure is legally nonconforming and appurtenant to the main residence across S. Lake Stevens Road. So long as the overwater structure does not contain components that would allow it to be used as an independent dwelling unit, it would be consistent with the policies of the SMA and City's SMP.
- The overwater structure is on private property and has been since it was first constructed in 1966. Because the property is not public and has no public components, the proposed use will not interfere with the normal public use of the shoreline.
- The purpose of the Shoreline Residential environment is to accommodate residential development and appurtenant structures consistent with the SMP. Under Chapter 2.C of the SMP, water-oriented recreational uses should be allowed; maintenance or repair of existing development should be allowed where no substantial adverse effects to shoreline resources would occur; and replacement or development is comparable to the original structure.
- The proposal would be consistent with the goals and policies of the City's Comprehensive Plan.
- The proposed use of the site as a boathouse (but not a dwelling unit) for enjoyment of water-oriented recreational uses by the property owner is

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compatible with other authorized uses in the area. There are several similar nonconforming structures on Lake Stevens, as well as a large number of accessory structures used for water-oriented enjoyment, including covered moorage and covered docks. The proposed use would be compatible with these other uses.

- The float plane hangar was an existing covered moorage, with sides. The owner made structural repairs, non-material alterations, added a boat lift and floating dock, and extended the deck. The structure is also connected to water, sewer, and electrical systems, reducing potential detrimental impacts on the environment resulting from water and sewer waste impacting the lake or shoreline. In addition, the Applicant has submitted materials through the building permit review process addressing the methodology used in sleeving and filling the existing piles, and addressing specifications on the new boat lift and floating dock that City staff is reviewing. The Applicant has also submitted materials to ensure that the materials used underneath the overwater structure are leach-resistant and do not cause water pollution.
- So long as the overwater structure is not used as a dwelling (permanently or temporarily), the public interest would suffer no substantial detrimental effects.

Exhibit 10, Staff Report, pages 5 through 8, and 15.

Shoreline Substantial Development Permit

19. Any “substantial development” within the shoreline requires approval of a shoreline substantial development permit (SSDP). *Substantial development* is any development in which the total cost or fair market value exceeds \$7,047, or any development that materially interferes with the normal public use of the water or shorelines of the state. *RCW 90.58.030(3)(e)*.⁸ The work that occurred on the overwater structure and pier far exceeds the threshold requirement and, accordingly, the Applicant now seeks an after-the-fact SSDP. *Exhibit 1; Exhibit 3; Exhibit 11.*
20. Chapter 4.C of the SMP has specific requirements related to overwater structures. City staff analyzed the proposal and determined:
- Moorage and other water-dependent structures should be constructed of materials that will not adversely affect water quality or aquatic plants and animals. Here, the Applicant provided information on the piling, boat lift, and floating dock showing that the materials used in those amenities/repairs do not adversely affect these aquatic resources. The Applicant has provided additional information about

⁸ *Development* includes

construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals, bulkheading; driving of pilings; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level.

RCW 90.58.030(3)(a).

whether materials used underneath the overwater structure are leach-resistant and will not cause water pollution that the City will verify through the building permit review process.

- All repaired or modified overwater structures shall be allowed only in support of allowed water-dependent uses and must comply with all other regulations. The repaired overwater structure is proposed for the water-dependent use of a boathouse and for recreational enjoyment of the lake as an accessory use to the single-family residence across S. Lake Stevens Road.
- Docks, piers, and other developments shall be located at least 10 feet from the extended side property lines. Where not feasible, a 5-foot setback may be permitted so long as over-water structures are configured to minimize interference with rights of navigation. Here, the floating dock has been attached to existing piles that were repaired and are located approximately seven feet from the side property line. The City's Shoreline Administrator is "agreeable to allowing the dock to remain at the seven-foot setback in order to not create new environmental impacts" that might occur from the driving of new piles. There are no known navigation rights that would be impacted by the proposal.
- No residential uses may occur over the water, including houseboats, live-aboards, or other single or multi-family dwelling units. The Applicant would remove the range that was installed within the structure as well as portions of the interior walls that create bedrooms so that the structure will clearly not be used as a temporary or permanent dwelling. Notice on the title will be recorded so that it is clear that the structure is not permitted for use as a dwelling.
- All floats must be at least 30 feet waterward of the OHWM. The floating deck meets this requirement.
- All materials used must be leach-resistant and meet or exceed required standards. As noted, the Applicant provided information on the piling, boat lift, and floating dock showing that the materials used in those amenities/repairs satisfy this requirement, and the Applicant has provided additional information about whether materials used underneath the overwater structure are leach-resistant and will not cause water pollution that the City will verify through the building permit review process.
- New boathouses or other walled covered moorage are prohibited. The proposal does not constitute a new covered boathouse as it was a prior existing covered moorage, meeting the nonconforming structure and use provisions of Chapter 7 of the SMP. The new boat lift is covered and has no sides and the boat lift canopy meets all SMP requirements.
- New floating docks located within the first 30 feet of the shoreline are prohibited. The new floating dock is more than 30 feet from the OHWM, in water approximately six feet deep, satisfying this requirement.
- Additional decking was installed off the overwater structure but is beyond 30 feet of the OHWM and thus does not require open space decking. The existing piles

that were sleeved were repaired and encased as required by the SMP. The dock is not wider than six feet and not within 30 feet of the OHWM, consistent with SMP requirements.

- Boat lifts are allowed only as an accessory to a dock and not as a separate structure. The Applicant would relocate the boatlift onto the floating dock during the fish window and using appropriate best management practices (BMPs) to minimize water turbidity.

Exhibit 10, Staff Report, pages 8 through 12.

21. Any development within the shoreline environment must also comply with the City's Critical Areas Regulations. The City's Critical Areas Atlas shows an unclassified wetland that extends along the entire perimeter of Lake Stevens. The buffer associated with the unclassified wetland, however, overlaps with and is superseded by the City's SMP setback requirements and other SMP regulations for single-family residential development, which have already been discussed. *LSMC 14.88.200*. City staff reviewed the Applicant's submitted materials and determined that a resource report and mitigation plan were not needed for the work that occurred without benefit of permits. Specifically, staff "does not believe any adverse effects to the shoreline environment occurred or will occur as a result of the proposal." Staff also determined that the proposal "will not create a loss of critical area and functions or pose a significant threat to water quality." Finally, the Applicant has separately applied for a floodplain development permit and the City is reviewing that permit independently to ensure all requirements of Chapter 14.64 LSMC, related to frequently flooded areas, are met. *Exhibit 10, Staff Report, page 15.*

Testimony

22. City Senior Planner Melissa Place testified generally about the history of the project site, the after-the-fact permit applications, and the review process that occurred, including the decision to consolidate the various municipal permits (some to be heard by the Hearing Examiner, and others to be decided administratively by City staff) that would be required for the proposal. She detailed the City's nonconforming use/structure provisions under the SMP and explained that, although use of the existing overwater structure for recreational purposes and water-dependent enjoyment of Lake Stevens is appropriate, use of the structure as a temporary or permanent dwelling unit is prohibited. Because of this, City staff worked with the Applicant to determine which amenities within the structure should be eliminated to ensure it is not used as a dwelling, and the parties agreed it would be appropriate to have the range removed and to remove portions of the bedroom walls (through widening of the entryways to the two rooms) to reduce privacy and discourage use of the rooms as bedrooms. Notice of the restriction against use of the structure as a dwelling would also be recorded on the title. Ms. Place stated that City staff determined the use most similar to a use defined in the SMP would be as a boathouse, as opposed to cabana, but that change of use to any non-defined use would require a SCUP. Finally, Ms. Place noted that, unlike in many jurisdictions, the SMP does not require nonconforming structures to be removed if repairs would meet a certain threshold

percentage of the structure's value. In fact, the City's SMP allows for nonconforming structures to be repaired, rebuilt, and (in some circumstances) enlarged so long as specific requirements are met, as occurred here. *Testimony of Ms. Place.*

23. Applicant Representative Patrick McCourt testified that the Applicant worked with the City through the extensive review process to ensure that the repairs and alterations to the existing pier and overwater structure would meet the City's municipal code and SMP requirements. He stressed, in particular, that—through the building permit process—the Applicant submitted extensive materials including a structural engineering analysis and analysis of the existing pier configuration. Mr. McCourt stated that the Applicant agrees with City staff's review of the proposal and its recommended approval conditions. *Testimony of Mr. McCourt.*
24. Area resident Peter Anderson testified that he would appreciate additional information about what inspections occurred related to the utilities serving the overwater structure, to ensure that no detrimental impacts to the lake would occur. In response, Mr. McCourt explained that the Applicant contacted the Lake Stevens Sewer District when work on the overwater structure occurred, paid all necessary connection fees and charges, and obtained required sewer connection inspections. He stated that the water line was not inspected but the connection fees were collected and paid, and the water line is above the flood elevation level. Finally, Mr. McCourt explained that detailed information about the pilings and other underwater portions of the pier and structures were provided to the City for review as part of the building permit inspection process. *Testimony of Mr. Anderson; Testimony of Mr. McCourt.*
25. City Building Official Ryan Mumma testified that the City is in the process of reviewing the additional materials provided by the Applicant as part of the floodplain and building permit review process to ensure that the development has had, and will have, no detrimental impacts on the lake. Additional inspections related to the water line will occur as well as review of the electrical service. *Testimony of Mr. Mumma.*

Staff Recommendation

26. Ms. Place testified that City staff determined the proposed applications, with conditions, would meet the requirements for an SSDP and SCUP. Conditions include requiring that the Applicant comply with the submitted site plan; remove certain interior amenities to ensure the overwater structure is not used as a dwelling; record notice on title about the prohibition of using the structure as a dwelling; incorporate any changes and perform any remediation deemed necessary after conclusion of the building permit and floodplain permit processes; relocate the boat lift to the floating dock during the fish window using appropriate BMPs; and obtain all required local, state, or federal permits. *Exhibit 10, Staff Report, page 16; Exhibit 11; Testimony of Ms. Place.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is authorized to hear and decide applications for SCUPs. *Chapter 2.48 LSM; LSM Table 14.16A-I; LSM 14.16B.305*. City staff determined that the Type I FDP and Type II SSDP permits, normally issued by the Planning and Community Development Director, should be consolidated with the SCUP and heard by the Hearing Examiner.

Criteria for Review

Shoreline Management Act

The Shoreline Management Act is codified at Chapter 90.58 RCW. Applicable policies of RCW 90.58.020 include those to foster “all reasonable and appropriate uses”; protect against adverse effects to the public health, the land and its vegetation and wildlife; and give priority to single-family residences and appurtenant structures in authorizing alternations to the natural condition of the shoreline. Nonetheless, “private property rights are ‘secondary to the SMA’s primary purpose, which is to protect the state shorelines as fully as possible.’” *Samson v. City of Bainbridge Island*, 149 Wn. App. 33, 49 (2009) (original quotation marks omitted) (quoting *Lund v. Dep’t of Ecology*, 93 Wn. App. 329, 336-37 (1998)). Permitted shoreline uses must be designed to “minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water.” RCW 90.58.020. See *Buechel v. Dep’t of Ecology*, 125 Wn.2d 196, 203, 884 P.2d 910 (1994).

In promulgating the Shoreline Management Act of 1971, the legislature recognized that “ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development” of the state’s shorelines. RCW 90.58.020. The legislature also determined that “unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest.” RCW 90.58.020. Accordingly, the Shoreline Management Act requires local governments to develop a master program to regulate shoreline uses consistent with its guidelines. RCW 90.58.080(1).

Shoreline Management Act Regulations

The Department of Ecology shoreline regulations are located in Chapters 173-26 and 173-27 of the Washington Administrative Code (WAC). Chapter 173-26 WAC sets forth procedures and guidelines for local adoption of shoreline master programs that are not applicable to the Applicant’s permit request. Chapter 173-27 WAC sets forth permitting procedures and permit criteria. The Hearing Examiner reviews the application under the following SSDP criteria:

- (1) A substantial development permit shall be granted only when the development proposed is consistent with:
 - (a) The policies and procedures of the act;
 - (b) The provisions of this regulation; and
 - (c) The applicable master program adopted or approved for the area.Provided, that where no master program has been approved for an

area, the development shall be reviewed for consistency with the provisions of Chapter 173-26 WAC, and to the extent feasible, any draft or approved master program which can be reasonably ascertained as representing the policy of the local government.

- (2) Local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the local master program.

WAC 173-27-150.

The SMP provides that shoreline substantial development permit applications shall be reviewed pursuant to WAC 173-27-150 and the following shoreline policies:

- a. A permit shall be granted only when the proposed development is consistent with the Lake Stevens Shoreline Master Program.
- b. A permit shall be granted only when the proposed development is consistent with the policy of RCW 90.58.020.
- ...
- d. A permit shall be denied if the proposed development is not consistent with the above enumerated policies.
- e. The granting of any shoreline substantial development permit by the City shall be subject to the conditions imposed by the Shorelines Hearings Board.

SMP, Chapter 7.C.3.

The Hearing Examiner also reviews the application under the following SCUP criteria:

- (1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:
 - (a) That the proposed use is consistent with the policies of RCW 90.58.020 the master program;
 - (b) That the proposed use will not interfere with the normal public use of public shorelines;
 - (c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;
 - (d) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
 - (e) That the public interest suffers no substantial detrimental effect.
- (2) In the granting of all conditional use permits, consideration shall be given

to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

WAC 173-27-160.⁹

The Hearing Examiner must also review the relevant City of Lake Stevens Shoreline Master Program goals and policies.

City Shoreline Master Program

The SMP designates five shoreline environments that are consistent with, and implement the SMA and SMA guidelines, and the City's Comprehensive Plan: "Natural" (N) Environment; "High-Intensity" (H-I) Environment; "Urban Conservancy" (UC) Environment; "Shoreline Residential" (SR) Environment; and "Aquatic" Environment. *SMP Chapter 2.C*. The SMP establishes universally applicable policies and regulations, as well as general shoreline goals and regulations for archaeological and historic resources; critical areas;¹⁰ environmental impacts; flood hazard reduction and river corridor management; parking (accessory); public access; shorelines of state-wide significance; signage; utilities (accessory); vegetation conservation; and water quality and quantity. *SMP Chapter 3.B.1 through 12*.

The criteria for review adopted by the City Council implements the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed developments to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040*.

Conclusions Based on Findings

Shoreline Substantial Development Permit

- 1. With conditions, the proposed development would be consistent with the City's Shoreline Master Program, the policies of the Shoreline Management Act, the Department of Ecology's applicable regulations, and the requirements for approval of a Shoreline Substantial Development Permit.** The Applicant seeks an after-the-fact SSDP related to improvements made to an existing overwater structure and pier on property located within the City's Shoreline Residential environment. The purpose of the Shoreline Residential environment is to accommodate residential development and

⁹ Chapter 7.D.2 of the SMP provides for identical SCUP criteria as found in the WAC.

¹⁰ Critical areas in shoreline jurisdiction are regulated by Appendix B of the SMP. The purpose and intent of Appendix B is to ensure that there is no net loss of the acreage or functions and values of shoreline jurisdictional critical areas. *SMP Appendix B, 1.A*.

associated or appurtenant structures that are consistent with the City's SMP, as well as to provide appropriate community access and recreational uses. *SMP, Sections 2.C.4 and 5.B.* Although the City and Applicant have struggled with how to categorize or define the structure in question, it is clear that—with removal of certain residential amenities, including the kitchen range and portions of interior walls—the structure would be a water-dependent, appurtenant structure that would allow the property owner to enjoy the lake and shoreline, consistent with the SMP. The City's SMP, in Chapter 4.C, has specific requirements related to overwater structures. City staff conducted a thorough review of these requirements and determined that (with conditions) the development would be consistent with these requirements. The Hearing Examiner concurs with City staff's assessment.

The proposed development is a reasonable and appropriate use that involves converting a longstanding nonconforming structure, previously used as a float plane hangar and covered boat moorage, to a use most similar to a boathouse. This would allow for the Applicant to have continued recreational access to Lake Stevens while also reducing detrimental impacts to the lake from potential fuel or chemical leaks that could occur with continued use of the structure for storage of a seaplane. The proposed development would not require additional modification beyond what may be required from further review during the building and floodplain permitting processes. The City gave adequate notice and opportunity to comment on the proposal, and no comments from interested members of the public were received. City staff determined that the proposal is categorically exempt from review under the State Environmental Policy Act and that, under WAC 197-11-800(3), the proposal would involve the normal repair or maintenance of an existing overwater structure, including the repair and/or replacement of pilings.

The Department of Ecology shoreline regulations are located in Chapters 173-26 and 173-27 of the Washington Administrative Code (WAC). Chapter 173-26 WAC sets forth procedures and guidelines for local adoption of shoreline master programs that are not applicable to the Applicant's permit request. Chapter 173-27 WAC sets forth permitting procedures and permit criteria. This proposal would be consistent with the criteria set forth in WAC 173-27-150 for approval of an SSDP, which are intended to implement the policies of the SMA, which requires that all shoreline projects be consistent with an approved local Shoreline Master Program.

Conditions, as detailed below, are necessary to ensure the proposal complies with all local, state, and federal requirements, as well as requirements for approval of an SSDP.
Findings 1 – 26.

Shoreline Conditional Use Permit

- 2. With conditions, the proposal would be consistent with the policies of RCW 90.58.020, requirements for a SCUP under WAC 173-27-160, and all provisions of the City SMP.** The Applicant seeks an after-the-fact SCUP to change the use of an

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SSDP and SCUP

existing structure (modified without benefit of permits) from use as a float plane hangar and covered boat moorage, to use as a “cabana,” a water-dependent use similar to a boathouse. The proposed use would meet the SMP general policies and regulations, as well as the SMP regulations and policies for use of overwater structures. Uses that existed prior to adoption of the SMP are considered legal nonconforming uses, and a structure that is being or has been used for nonconforming uses may be used for a different nonconforming use with approval of a SCUP, so long as no reasonable alternative conforming use is practical, and the proposed use will be at least as consistent with the policies and provisions of the SMA and SMP, and as compatible with the uses in the area, as the preexisting use. City staff reviewed the proposal and determined that it would be consistent with the nonconforming structure and use provisions of the SMP. The Hearing Examiner concurs with this assessment.

Under the SMA, in those limited instances when alterations of the natural condition of shorelines of the state are authorized, priority should be given to single-family residences and their appurtenant structures. Here, the existing structure is legally nonconforming and appurtenant to the main residence across S. Lake Stevens Road. So long as the overwater structure does not contain components that would allow it to be used as an independent dwelling unit, it would be consistent with the policies of the SMA and City’s SMP.

The overwater structure is on private property, and has been since it was first constructed in 1966. Because the property is not public and has no public components, the proposed use will not interfere with the normal public use of the shoreline.

The proposed use of the site as a boathouse (but not a dwelling unit) for enjoyment of water-oriented recreational uses by the property owner is compatible with other authorized uses in the area. There are several similar nonconforming structures on Lake Stevens as well as a large number of accessory structures used for water-oriented enjoyment, including covered moorage and covered docks. The proposed use would be compatible with these other uses.

The float plane hangar was an existing covered moorage, with sides. The owner made structural repairs, non-material alterations, added a boat lift and floating dock, and extended the deck. The structure is also connected to water, sewer, and electrical systems, reducing potential detrimental impacts on the environment resulting from water and sewer waste impacting the lake or shoreline. In addition, the Applicant has submitted materials through the building permit review process addressing the methodology used in sleeving and filling the existing piles, and addressing specifications on the new boat lift and floating dock that City staff is reviewing. The Applicant has also submitted materials to ensure that the materials used underneath the overwater structure are leach-resistant and will not cause water pollution. Accordingly, as long as the overwater structure is not

used as a dwelling (permanently or temporarily), neither the shoreline environment nor the public interest would suffer detrimental effects from the proposal.

Consideration has been given to the cumulative impact of additional requests for similar actions in the area. There are no additional requests for similar actions in the area, but any such similar future requests would go through the same thorough and detailed review process prior to approval and, hopefully, prior to development.

Conditions, as detailed below, are necessary to ensure the proposal complies with all local, state, and federal requirements, as well as requirements for approval of an SCUP.
Findings 1 – 26.

DECISION

Based on the preceding findings and conclusions, the request for an after-the-fact Shoreline Substantial Development Permit to retroactively permit improvements made to an existing overwater structure and pier, and for an after-the-fact Shoreline Conditional Use Permit to change the use of the structure, at 915 S. Lake Stevens Road, is **APPROVED**, with the following conditions:¹¹

1. The site plan, dated February 16, 2021, is the official site plan for LUA2020-0186 and LUA2020-0187 (Exhibit 3.c). All development shall generally conform to the site plan, absent any modifications required by this decision or through further review by the City through the building permit review process.
2. The Applicant shall revise the building plans to reflect the removal of a portion of the bedroom walls and removal of the kitchen range from the overwater structure and such changes shall be reflected on the revised building plans prior to the issuance of a building permit.
3. The Applicant shall record notice on the title prohibiting the overwater structure from being used as a dwelling unit as defined by the International Residential Code and the LSMC, now and into the future, for the current owner and any future successor or assigns. This notice shall be recorded prior to issuance of the building permits (BLD2020-1959 and BLD2020-0961).
4. After the Department of Ecology's decision, all floodplain and building permit review comments from the City shall be addressed by the Applicant and any conditions of approval resulting from either or both shall be implemented by the Applicant.

¹¹ This decision includes conditions designed to mitigate impacts of this proposed project as well as conditions required by City code.

5. The Applicant shall verify whether materials used underneath the overwater structure are leach-resistant and do not cause water pollution, as per Section 4.C.3.c.13 of the SMP, as part of the building permit and floodplain permit process and remediate any issues, as required.
6. The boat lift shall be relocated to the floating dock during the fish window and any appropriate BMPs shall be implemented by the Applicant to minimize water turbidity during that time.
7. The Applicant shall obtain all other local, state, or federal permits, as applicable.
8. Construction pursuant to this permit is not authorized until twenty-one (21) days from the date the SCUP decision is filed with the Department of Ecology under RCW 90.58.140(6), except as provided for in RCW 90.58.140(5).

DECIDED this 21st day of April 2021.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center

RESOLUTION NO. 1024

A RESOLUTION OF THE BOARD OF SEWER COMMISSIONERS OF LAKE STEVENS SEWER DISTRICT, SNOHOMISH COUNTY, WASHINGTON, ADOPTING AN INTERIM GENERAL FACILITIES CHARGE.

WHEREAS, the Lake Stevens Sewer District (the “District”) operates a sewerage system in the vicinity of Lake Stevens, Snohomish County, Washington; and

WHEREAS, the District is preparing its 2022 Comprehensive Plan, including updated population projections, operations and maintenance costs, and an updated Capital Improvement Plan (CIP) list incorporating revisions to specific projects and their associated costs as well as adjusting the funding sources and schedule for planned project completion timelines; and

WHEREAS, in conjunction with the work for the 2022 Comprehensive Plan the Board of Sewer Commissioners of the District have considered information prepared by the District’s staff, engineers and financial advisors relating to the calculation of the District’s General Facilities Charge (GFC) pursuant to RCW 57.08.005; and

WHEREAS, the Commissioners have determined, upon due consideration of the available information and in their reasonable discretion, that an interim Connection Fee as stated herein, is required to charge customers for the pro rata share of the cost to the District’s system, together with improvements planned for construction immediately and through the next ten years and shall be contained in the District’s adopted comprehensive plan amendment;

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE BOARD OF SEWER COMMISSIONERS OF LAKE STEVENS SEWER DISTRICT, SNOHOMISH COUNTY, WASHINGTON AS FOLLOWS:

Section 1: In accordance with the District's 2022 Comprehensive Plan work and the GFC analysis, attached hereto as Exhibit "A" incorporated herein by this reference, the Lake Stevens Sewer District shall hereby adopt an interim connection fee of \$13,500.00 commencing effective April 1, 2022.

Section 2: The interim connection fee of \$13,500.00 shall remain in effect until such time as the complete 2022 Comprehensive Plan is approved by the District's Board of Sewer Commissioners.

Section 3: Any prior Resolutions or portions thereof to the extent they are inconsistent with this Resolution are hereby repealed.

ADOPTED by the Board of Sewer Commissions, Lake Stevens Sewer District, Snohomish County, Washington at an open public meeting held on the 24th day of March 2022, the following Commissioners being present and voting.

LAKE STEVENS SEWER DISTRICT:

Dan Lorentzen, Commissioner and President

Andrea Wright, Commissioner

Kevin Kosche, Commissioner and Secretary

EXHIBIT "A"

**Lake Stevens Sewer District
Comprehensive Sewer Plan Financial Chapter
General Facilities Charge Calculation**

Existing Facilities Cost Basis (\$000s)	
Capital Assets as of 12/31/2020	\$230,824
Plus: Construction Work in Progress	1,158
Less: Funding from Grants/Contributions	(59,393)
Less: ULID Assessments	(19)
Less: Latecomer Payments	(2,032)
Less: Provision for Asset Retirements from CIP	(11,884)
Plus: Interest Accrued on Utility-Funded Assets	63,301
Less: Net Outstanding Debt Principal	(42,624)
Net Cost of Existing Facilities	<u>\$179,331</u>
Future Facilities Cost Basis (\$000s)	
10-Year Capital Program	\$ 79,185
Less: Funding from Grants/Contributions	(11,537)
Less: Non-Capitalizable Projects	(893)
Net Cost of Future Facilities	<u>\$ 66,755</u>
Total Allocable Cost (\$000s)	\$246,086
System Capacity in Equivalent Residential Units (ERUs)	17,980
Calculated General Facilities Charge per ERU	\$13,687
Proposed General Facilities Charge per ERU	\$13,500

RESOLUTION NO. 1025

A RESOLUTION OF THE BOARD OF SEWER COMMISSIONERS OF LAKE STEVENS SEWER DISTRICT, SNOHOMISH COUNTY, WASHINGTON, ADOPTING A REVISED MONTHLY SEWER SERVICE RATE FOR 2022 IN ACCORDANCE WITH THE 2022 COMPREHENSIVE PLAN.

WHEREAS, the Lake Stevens Sewer District operates a sewerage system in the vicinity of Lake Stevens, Snohomish County, Washington; and

WHEREAS, the District is preparing its 2022 Comprehensive Plan, including updated population projections, operations and maintenance costs, and updated Capital Improvement Plan (CIP) list incorporating revisions to specific projects and their associated costs; and

WHEREAS, in conjunction with the 2022 Comprehensive Plan the Board of Sewer Commissioners of the District have considered information prepared by the District's Staff, engineers and financial advisors relating to the calculation of the District's monthly sewer service rate pursuant to RCW 57.08.005(11) and RCW 57.08.081; and

WHEREAS, the Sewer District passed Resolution No. 921 on November 10, 2016 which approved a monthly sewer rate of \$86.00 per equivalent residential unit (ERU) of use; and

WHEREAS, the Commissioners have determined, in their discretion and based upon the increase in District costs and expenses over recent years and based upon the recommendation of their consulting engineers and financial advisors, that a revised monthly sewer service rate as stated herein is necessary for the proper operation of the District and is consistent with the District's 2022 Comprehensive Plan.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Board of Sewer Commissioners of the Lake Stevens Sewer District, Snohomish County, Washington, as follows:

Section 1: Commencing June 1, 2022, the District's standard customer sewer service rate shall be increased by Thirteen and No/100 Dollars (\$13.00) per Equivalent Residential Unit ("ERU") per month to Ninety-nine and No/100 Dollars (\$99.00). The effective monthly sewer

service rate schedule shall be as specified on Appendix A attached hereto commencing effective June 1, 2022.

Section 2: Prior Resolutions or portions thereof inconsistent with this Resolution are hereby repealed.

ADOPTED by the Board of Sewer Commissions, Lake Stevens Sewer District, Snohomish County, Washington at an open public meeting held on the 24th day of March 2022, the following Commissioners being present and voting.

LAKE STEVENS SEWER DISTRICT:

Dan Lorentzen, Commissioner and President

Andrea Wright, Commissioner

Kevin Kosche, Commissioner and Secretary

APPENDIX A

Monthly Rate effective June 1, 2022

Class	Monthly Rate
Single Family Residence	\$99.00
Duplex, Triplex, Condominium, Accessory Dwelling Unit (ADU), or other Multiple Dwelling within the same tax parcel	\$99.00 for each unit
Trailer or Mobile Home Court, Park or Development	\$99.00 for each lot, pad or space determined to be occupied by a trailer or mobile home on the first day of a given month; or for which a sewer permit application has been made
Commercial Properties, Hotel/Motel, and Schools	\$99.00 for each unit up to 750 cubic feet of water consumption and \$0.132 per cubic foot of water consumption over 750 cubic feet per unit
Mixed use residential	Either \$99.00 for each unit or water consumption commercial billing (above), whichever is higher

RESOLUTION NO. 1026

A RESOLUTION OF THE BOARD OF SEWER COMMISSIONERS OF LAKE STEVENS SEWER DISTRICT, SNOHOMISH COUNTY, WASHINGTON, ADOPTING A REVISED RATE REDUCTION PROGRAM.

WHEREAS, the Lake Stevens Sewer District operates a sewerage system in the vicinity of Lake Stevens, Snohomish County, Washington; and

WHEREAS, the District is authorized to establish rates and charges for categories of customers, including adjusting rates and charges for low-income persons, within the District pursuant to RCW 57.08.014 and RCW 57.08.081; and

WHEREAS, the District adopted Resolution No. 821 on May 14, 2009 which established a reduced rate program for monthly sewer service to low-income customers; and

WHEREAS, in recognition of rate increases that have occurred since the adoption of Resolution No. 821, the Commissioners have determined that it is appropriate to update and revise the reduced rate program for monthly sewer service as described herein.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Board of Sewer Commissioners of the Lake Stevens Sewer District, Snohomish County, Washington, as follows:

Section 1: Definitions. For the purposes of implementing sewer rate reductions under the provisions of this resolution, the following words shall have the following definitions:

- A. "Residence," "principal place of residence," "total disposable income," "combined disposable income," and other such undefined terms used in this resolution shall be given those meanings established by RCW 84.36.383 as the same exists or is hereafter amended.
- B. "Senior citizen" means a person who is 62 years or older.

- C. “Disabled citizen” means a person who qualifies for special parking privileges under RCW 46.19.010, or a blind person as defined in RCW 74.18.020(4), or a person who qualifies for supplemental social security benefits due to a disability.
- D. “Low-income citizen” is defined as follows:
 - 1. Every single person whose combined disposable income is less than the qualifying amount set forth as “income threshold 1” in RCW 84.36.383(7)(b), as it now exists or is hereafter amended.
 - 2. Every married couple, constituting a marital community, and whose combined disposable income is less than the qualifying amount set forth as “income threshold 2” in RCW 84.36.383(8)(b), as it now exists or is hereafter amended.

Section 2. Rate Reduction.

- A. Commencing June 1, 2022, sewer rate reduction shall be applied to the residential monthly utility bills of qualified low-income senior citizens and low-income disabled citizens, in accordance with the terms of this Resolution.
- B. The sewer rate reduction shall be twenty-five percent (25%) reduction in the individual’s monthly billing. This rate may be changed by the Board of Commissioners at any time by resolution.
- C. No rate reduction shall be afforded to any person shown as a dependent on the income tax return of any other individual, whether or not such person resides at the location for which the rate reduction is sought, unless the total combined income of the applicant, along with their spouse, cotenant and all family members shown on the income tax return in which the applicant is shown as a dependent, meets the standards established by this section.
- D. No rate reduction shall be afforded to any person that is not the owner of the tax parcel for which the reduction is being sought.
- E. No more than one property for any individual shall be afforded a sewer rate reduction.
- F. No rate reduction shall be afforded to any person for an account that is not the principal place of residence.

Section 3. Application for Reduced Rate.

- A. The District's General Manager or his/her designee is authorized to establish an application for low-income senior and low-income disabled reduced rate.
- B. Applications for sewer reduced rates under this section shall be obtained from and filed with the District at no cost, and shall contain information necessary to evaluate the applicant's qualification for reduced rates. In order to verify income, the applicant shall provide income tax returns, social security statements or other financial information as required by the District.
- C. Submission of an application for a sewer discount shall constitute verification by the applicant that all information provided in such application is true and correct to the best of the applicant's knowledge.
- D. Once the application is approved, the reduced rates shall become effective on the next billing cycle following 30 days after approval of the application. Reduced rates shall not apply retroactively.
- E. Each application shall be effective for 12 months commencing the first month the reduced rate becomes effective for the applicant. It shall be the sole responsibility of the applicant to re-apply for successive 12 monthly periods of eligibility for reduced sewer rates.
- F. It shall be the duty and responsibly of the person receiving a reduced rate to report any changes in their financial status or disability status that would affect their ineligibility for the reduced rates.
- G. Any individual willfully providing false information to the District in an application for reduced sewer rates shall forfeit the low-income senior or disabled citizen eligibility for rate reductions in sewer rates and shall be guilty of a criminal offense of making a false statement, and/or any other applicable criminal offense. Additionally, the low-income senior or disabled citizen making such a false statement to obtain benefits under this chapter shall be required to repay the amount of any utility discount received based upon such false information, together with interest at the rate of the District bank's prime lending rate plus 4 percentage points per annum until repaid in full.

Section 4: Prior Resolutions or portions thereof inconsistent with this Resolution are hereby repealed.

ADOPTED by the Board of Sewer Commissions, Lake Stevens Sewer District, Snohomish County, Washington at an open public meeting held on the 24th day of March 2022, the following Commissioners being present and voting.

LAKE STEVENS SEWER DISTRICT:

Dan Lorentzen, Commissioner and President

Andrea Wright, Commissioner

Kevin Kosche, Commissioner and Secretary