



**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

Southwest Region Office
PO Box 47775, Olympia, WA 98504-7775 • 360-407-6300

May 5, 2023

Michelle Gusta and Ean Joyner
1420 Marvin Rd NE
Suite C #115
Lacey, WA 98516

**Re: City of Lacey Substantial Development Permit, Conditional Use Permit, and Variance
Permit No. 19-0309
Ecology Permit No. 2023-SWRO-6641**

Dear Michelle Gusta and Ean Joyner:

On January 20, 2023, the Department of Ecology (Ecology) received notice that the City of Lacey (City) has approved with conditions your application for a Substantial Development Permit (SDP) and your application for a Conditional Use Permit (CUP) to allow a bulkhead replacement with fill, and denied your application for a Variance Permit (Variance) to allow a patio in the shoreline buffer and a second dock. The project is located at 2603 Carpenter Rd SE within a residential shoreline environment designation along Hicks Lake.

By law, the City of Lacey must review all SDPs for compliance with:

- The Shoreline Management Act (Chapter 90.58 RCW),
- The SDP approval criteria (WAC 173-27-150), and
- The Lacey Shoreline Master Program.

The City of Lacey, after reviewing SDPs for compliance, is required to submit them to Ecology. We have received and filed your SDP.

By law, the City of Lacey must review all VARs for compliance with:

- The Shoreline Management Act (Chapter 90.58 RCW),
- The VAR approval criteria (WAC 173-27-170), and
- The City of Lacey Shoreline Master Program (SMP).

The City of Lacey denied your VAR. We have received and filed the VAR.

By law, Ecology must review CUPs for compliance with:

- The Shoreline Management Act (Chapter 90.58 RCW),
- The CUP approval criteria (WAC 173-27-160), and
- The City of Lacey Shoreline Master Program (SMP).

After reviewing CUPs for compliance, Ecology must decide whether to approve, approve with conditions, or disapprove them.

On February 10, 2023, we sent you a letter to inform you that we did not have enough information in the permit record to support an approval of the CUP for the bulkhead replacement and associated fill behind it. We provided a deadline of April 9, 2023, for you to submit additional information. We received a phone call from your consultant, confirming the letter had been received. We have not received any additional information and so have based our decision on the permit record that the City forwarded to us on January 20, 2023.

Our Decision on Your CUP:

Ecology denies your CUP because we have found the proposal to be inconsistent with the CUP criteria in Washington Administrative Code (WAC) 173-27-160.

This permit record does not contain sufficient information that the proposal is consistent with the Lacey SMP or with WAC 173-27-160(1)(a), (c), (d), and (e). Specifically, the permit record lacks demonstration of consistency with Lacey SMP Chapter 17.45.010 (Shoreline Stabilization Standards), 17.51.010 (Bulkheads – Development Standards), and 17.41.021 (Vegetation Management – Re-vegetation and Mitigation Schedule and Tiers).

The Lacey SMP only allows replacement and expanded bulkheads when “there is a demonstrated need to protect principal uses or structures from erosion caused by currents, tidal action, or waves and provided there is no other more ecologically sound practice that can serve the same purpose” (17.45.010.4). Further, when shoreline stabilization is necessary, that size shall be limited to the minimum necessary. However, the bulkhead proposal significantly expands the size of the bulkhead through the addition of gravel fill. Replacement bulkheads “shall not be located waterward of the ordinary high-water mark” (17.51.010.6) and “the construction of a bulkhead for the primary purpose of retaining or creating dry land is prohibited” (17.51.010.8). Aerial imagery from multiple past years shows high water landward of the existing bulkhead, indicating that the ordinary high water mark was behind the bulkhead prior to the unpermitted work. Therefore, the replacement bulkhead and fill are inconsistent with the SMP requirements.

The Lacey SMP also requires mitigation and re-vegetation for expansion of impervious surfaces. The proposal does not appear to have used the correct mitigation tier and the tier that was used to calculate mitigation requirements does not appear to have been applied correctly. As such, the proposal would not be adequately mitigated and Ecology cannot conclude that no net loss of ecological function would be achieved.



Michelle Gusta and Ean Joyner

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What Happens Next?

The law provides a 21-day appeal period from May 5, 2023, the "date of filing." This appeal period allows anyone (including you) who disagrees with any aspect of this permit to appeal the decision to the state Shorelines Hearings Board (SHB).

The SHB will notify you if they receive an appeal. You may reach them at 360-664-9160, eluho@eluho.wa.gov, or <https://eluho.wa.gov/content/12>.

If you want to appeal this decision, you can find appeal instructions at the SHB website above or on the website of the Washington State Legislature at: <http://apps.leg.wa.gov/wac> (Chapter 461-08 WAC).

Please note, other federal, state, and local permits may be required in addition to these shoreline permits.

If you have any questions about this letter, please contact Lizzie Carp at 564-200-4184 or Lizzie.Carp@ecy.wa.gov.

Sincerely,



Maria Sandercock
Section Manager
Shorelands and Environmental Assistance Program

ec: Samra Seymour, City of Lacey
Lizzie Carp, Ecology

