APPLICATION: The Homes Harbor Community Partners, LLC is seeking various permit approvals for the proposed repair of an existing bulkhead, access trail, and construction of soft shore protection. Additionally the applicants are seeking approval of the proposed construction of a fixed pier with one 8’ x 160’ float and 8’ x 40’ floats attached perpendicular at each end. The project requires critical areas alteration approval because it is within a Marine Fish and Wildlife Habitat Conservation Area. The proposal also requires shoreline permits and permit approval from the Army Corp of Engineers.

DECISION: The requested Critical Areas Alteration is approved subject to conditions.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing on March 1, 2007.

I.

PRELIMINARY INFORMATION

Applicant: Holmes Harbor Community Partners, LLC

Property Location: 5023 Harbor Hills Road, Freeland, Washington

Applicable Ordinances, Statutes and Regulations: ICC 16.19.040.B. Permit Classifications, ICC 17.02.060 – Alteration of Fish and Wildlife Habitat Conservation Areas, ICC 17.03.260.1 – Mitigation & Monitoring Standards

SEPA: A SEPA Threshold Determination of Non-Significance was issued by Island County on January 16, 2007
Publication: February 21, 2007 – Whidbey News Times/South Whidbey Record

Mailing of Notice to Applicant: February 5, 2007

Sign Posted: November 17, 2004

Mailing of Staff Report: February 20, 2007

Date of Application: October 22, 2004

Hearing Date: March 1, 2007

Exhibit Log:

1. Staff Recommendation of Approval with Conditions Critical Areas Permitted Use
2. Critical Areas Alteration Permit dated 10/22/04
3. Environmental Checklist dated as received 10/22/04
4. Holmes Harbor Community Partners LLC Fixed Pier, Ramp, Float, Bulkhead and Access Road project description and Construction sequence dated as received 10/22/04
5. Holmes Harbor Proposed Community Pier and Bulkhead Project dated as received 10/22/04
6. Coastal Geologic Analysis dated as received 10/22/04
7. Geotechnical Recommendations for Community Pier Path Restoration dated as received 10/22/04
8. Biological Evaluation dated as received 10/22/04
9. Request for Comment dated 10/29/04
10. Parcel Info
11. Account Summary Snapshot
12. Parcel Summary Report
13. Quarter Section Map
15. Memo dated 12/3/04 from Bill Poss, Public Works Development Coordinator, to Joe Burcar
16. Email dated 12/7/04 from Doug Thompson, Department of Fish & Wildlife, to Dave Douglas and Joe Burcar
17. Review comments dated 12/23/04 from Joe Burcar, Island County Planning & Community Development, to Mark Schuster, Applicant, and Dave Douglas, Waterfront Construction, Agent
18. Additional Information request dated 3/23/05 from Joe Burcar, to Mark Schuster and Joe McCarthy, Kantor/Taylor/McCarthy
19. Ltr dated 4/29/05 from Mark Schuster, to Joe Burcar
20. Memo dated 5/11/05 from Bill Poss, to Joe Burcar
II.

Island County Planning & Community Development has recommended approval of the requested Critical Areas Alteration, subject to conditions. Findings of Fact reached by Island County Planning & Community Development are set forth in Exhibit #1 in the Hearing Examiner file a copy of which is attached hereto and incorporated herein by this reference. The applicant has indicated that the findings set forth in Exhibit #1 are accurate and that the applicant has no objection to any of the conditions of approval recommended by staff. There was public comment from residents in the Holmes Harbor community. These residents favored approval of the project with environmental safeguards. The applicant has agreed to provide community access to certain portions of the
Holmes Harbor community. The access issue has been dealt with in the Shoreline permit.

III.

This application also requires a Shoreline Conditional Use permit. On January 16, 2007 Island County approved a Shoreline Conditional Use permit for this project. No appeal of this decision was filed and the County’s decision has been forwarded to the Washington State Department of Ecology for a final determination.

The matter is also being reviewed by the Washington Department of Fish and Wildlife approval who must grant a Hydraulic Project Approval (HPA) permit for the proposal.

Additionally the project must be approved by federal agencies through a permit to be issued by the Army Corp of Engineers.

The Findings of Fact set forth in the staff report are incorporated as Findings of Fact herein by this reference.

IV.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

CONCLUSIONS OF LAW

I.

Subject to the conditions of approval recommended by Island County Planning & Community Development, to the conditions attached to any shoreline permit approved by the Washington State Department of Ecology, any conditions placed on the project by the Washington Department of Fish and Wildlife, and any conditions placed on the comment by federal agencies through a permit to be approved by the Army Corp of Engineers the Hearing Examiner concludes that the proposed project will be consistent with the criteria for a Critical Areas Alteration and should grant critical areas approval subject to the conditions recommended by staff in Exhibit #1.

II.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:
DECISION

Critical Areas Alteration approval is hereby granted to Holmes Harbor Community Partners LLC approving CAA 359/04 subject to the following conditions of approval:

1. Applicant must receive approval from the State Department of Ecology for SDP/CUP 359/04. Approval must be received prior to commencing construction associated with the proposed activities.

2. Applicant shall contact the State Department of Fish and Wildlife and obtain an approved Hydraulic Project Approval (HPA) permit. Contact Doug Thompson at (360) 466-4345 X-251 or thompdst@dfw.wa.gov

3. Applicant shall contact the State Department of Natural Resources to obtain any applicable permit or lease authorization(s) prior to initiating work associated with any State owned aquatic lands.

4. Applicant shall contact and acquire all required permits or approvals from the federal government prior to initiating any work associated with this permit.

5. All required Island County Building Permits shall be obtained prior to the commencement of construction activities. Additional engineering shall be required which supports the proposed design. Any engineering developed for the associated building permit shall be reviewed by the Shoreline Administrator and/or Critical Areas Planner to ensure consistency with the approved shoreline permit.

6. No heavy equipment or construction materials shall be parked, stored or ground out on the beach, seaward of the ordinary high water mark (OHWM).

7. The pier and dock shall be limited to day use only. The facility shall be gated and locked prior to sunset, however the boats may remain moored overnight during the months of operation (May through September).

8. Boats shall be parked parallel to the docks, one boat deep and at no time shall the pier or dock be used for tying boats off to each other or to temporary log booms. The facility shall not be used for temporary or short duration parties or events such as the 4th of July.

9. The pier and dock facility may not be used after sunset, so lighting may only be in the following situations; (1) Low wattage ‘downlighting’ fixtures may be installed on the pier, gangway and floating dock structures, but shall only be used during emergencies or during after hours maintenance.
of the facility; (2) Navigation or emergency lights/beacons (e.g. paton lights) may be installed only if recommended or required by applicable State or Federal Agencies. Lights shall not be used for maintenance more than twice per month (unless authorized by the Planning Director) and shall be extinguished no later than 11:00 p.m.. Lights required or recommended in (2) above may remain on overnight for navigational safety but must be directed away from the adjacent upland area as to not cause any impacts to neighboring residents.

10. The comments, recommendations and requirements of the April 5, 2005, ‘Proposed Eelgrass Monitoring and Contingency Plan’ prepared by Amy Leitman of Marine Surveys and Assessments (attached to this decision), are approved with this decision with the following amendment; (1) Monitoring shall be performed for a period of 5 years from the date of implementation, regardless of percent survival; (2) If mitigation is not determined to be successful at the end of the initial five year period, additional monitoring may be required, as determined by the Planning Director. Any modification or amendments to the mitigation plan required as part of the Hearing Examiners decision for the associated type III Critical Areas Alteration permit, shall be incorporated as conditions of approval for SDP/CUP 359/04.

11. If it is determined during the monitoring process that the facility is having a substantial impact on the critical area or if the proposed mitigation plan is not sufficiently addressing any resulting impacts, additional mitigation to offset those impacts will be required.

12. No portions of the pier or floating dock shall be covered in bright or reflective materials or paints, except as specifically required by State or Federal agencies for safety/navigation aids. Materials used in constructing the pier and floating docks shall be intended to minimize visual impact to the upland residences and environment.

13. Applicant must maintain strict conformity to the submitted plans. Any modifications or revisions to the approved plan must first receive approval by this Department. Minor changes to the structural components of the pier, gangway and floating dock may be authorized in compliance with this approval to facilitate compliance with applicable provisions of the building code.

14. Construction materials and equipment that are to be barged to and from the proposed work location shall not allow any construction debris/materials, oil, grease, or petroleum to enter the waters of the State.
15. In the event that items of possible archaeological or historic significance are uncovered during excavation, the permittee shall cease operation and immediately report such findings to the County.

16. Hours of operation associated with construction activities shall be limited to normal business hours (8:00 a.m. to 6:00 p.m.). If work must take place outside of normal business hours to correspond with the tidal cycle or other environmental factors, please notify the immediately surrounding neighbors and the Island County Shoreline Planner (360) 678-7816.

17. Applicant bears the full responsibility of notifying site crews of the above noted permit conditions and shall be held fully accountable for any activity which results in on- or off-site hazards or damages.

Entered this 7th day of March, 2007, pursuant to authority granted under the laws of the State of Washington and Island County.

________________________________
MICHAEL BOBBINK
Island County Hearing Examiner

APPEAL PROCESS:

CAA

This decision of the Hearing Examiner shall be a final and conclusive decision unless within fourteen (14) days following the mailing of such decision a written statement of appeal is filed with the Island County Board of Commissioners by the applicant, a Department of the County, or Party of Record, who is also an Aggrieved Person. Said statement shall set forth any alleged errors and/or the basis for appeal and shall be accompanied by a fee pursuant to the fee schedule adopted by the Board; provided that such appeal fee shall not be charged to a department of the County or to other than the first appellant ICC 16.13.100.b; ICC 16.19.190.