



Kitsap County Hearing Examiner

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OFFICE OF THE HEARING EXAMINER

KITSAP COUNTY

REPORT AND DECISION

CASE NO.: 080508-036
Bergquist and Harris Joint Moorage Facility
SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

**APPLICANT/
OWNER:** Tom Bergquist and Byron Harris
2615 NE Passage View Lane
Poulsbo, WA 98370

REPRESENTATIVE: Wendell Stroud
Marine Floats Corporation
1208 East D Street
Tacoma, WA 98421

SUMMARY OF REQUEST:

The applicants have applied for a Kitsap County Shoreline Substantial Development Permit to build a 206 foot long dock that would serve as a private moorage facility on the property line between the two parcels. The structure would be located in Dyes Inlet in the Fairview neighborhood, southeast of Silverdale, in Central Kitsap County. The proposal calls for the installation of a 4 foot wide by 114 foot long wood pier supported on eight 10 inch diameter galvanized steel piles, a 3 foot wide by 52 foot long pivoting metal ramp and an 8 foot wide by 40 foot long moorage float with 50 percent functional grating. The moorage float would be stabilized by four 10 inch diameter galvanized steel piles.

PROJECT LOCATION:

The project is located on the east shore of Dyes Inlet, within the Fairview neighborhood, at 1225 and 1235 NW Darling Road, in Central Kitsap County; Commissioner District 3 (Section 34, Township 25N, Range 1E). The structure would be located approximately one tenth of a mile south of the intersection of Darby Road and Tracyton Boulevard NW.

Under the Kitsap County Shoreline Management Master Program, the shoreline environment designation is Rural. This shoreline is developed with residential housing.

SUMMARY OF DECISION:

Approved subject to conditions

PUBLIC HEARING:

After reviewing Department of Community Development Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was conducted in the chambers of the Kitsap County Board of Commissioners on May 14, 2008.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

ITEM NO.	DOC. TYPE/SUBJECT	DATED	DATE REC'D.
1	Owner/Applicant Agreement Marine Floats	7/31/07	No Rec'd Date
2	Site Plan	11/13/07	No Rec'd Date
3	Vicinity Map	11/13/07	No Rec'd Date
4	Pre-Application Meeting Request	No Date	11/15/07
5	KC Assessor's Parcel Map	No Date	N/A
6	Pre-Application Conference Confirmation Letter	11/28/07	N/A
7	Notice of Application – Publication	11/28/07	11/28/07
8	GIS Building Limitations Map	11/29/07	N/A
9	KC Assessor's Property Report	11/29/07	N/A
10	KC Critical Areas Map	11/29/07	N/A
11	GIS Shoreline Master Plan Environments Map	11/29/07	N/A
12	GIS Zoning Map	11/29/07	N/A
13	GIS Critical Areas Aerial Map	11/29/07	N/A
14	Army Corps of Engineers Reference Regional General Permit 6	12/4/07	No Rec'd Date
15	GIS Shoreline Map	12/4/07	N/A

ITEM NO.	DOC. TYPE/SUBJECT	DATED	DATE REC'D.
16	Google Aerial Photo – showing proposed structure	No Date	N/A
17	Aerial Photo Adjacent Docks	No Date	N/A
18	GIS Aerial Critical Areas Topo	12/11/07	N/A
19	Written Summary of Pre-Application Meeting	12/20/07	N/A
20	Piers & Docks Supplemental SSDP Application	No Date	N/A
21	JARPA Application	12/26/07	No Rec'd Date
22	Letter from Wynnae Wright WSNR	1/2/08	No Rec'd Date
23	Environmental (SEPA) Checklist	1/3/08	No Rec'd Date
24	Letter from Lori Snyder Marine Floats	1/3/08	No Rec'd Date
25	Agreement Regarding Joint-Use Dock	1/14/08	1/14/08
26	Notice of Complete Application	2/5/08	N/A
27	Notice of Application	2/21/08	N/A
28	Affidavit of Mailing – NOA	2/21/08	N/A
29	E-mail from Lori Snyder	3/4/08	3/4/08
30	Letter from Donna Burke	No Date	3/5/08
31	Letter from JF Moriarty US Coast Guard	3/24/08	No Rec'd Date
32	Letter from Rozanne Hofstra	3/30/08	4/2/08
33	Mitigated Determination of Non-Significance	4/21/08	N/A
34	Notice of Public Hearing	4/22/08	N/A
35	Affidavit of Mailing – NPH	4/21/08	N/A
36	Affidavit of Posting	4/23/08	N/A
37	Staff Report	5/1/08	N/A
38	Power Point Presentation	5/8/08	5/8/08
39	Letter from Gary & Debra Davis	5/8/08	5/8/08
40	Letter from Richard & Carol Arper	5/6/08	5/8/08
41	E-mail from Merrill & Betty Koster	5/7/08	5/8/08
42	E-mail from Larry Allman	5/7/08	5/8/08
43	Letter from Adjacent Neighbors –Submitted by Angela Butts	5/8/08	5/8/08
44	List of Adjacent Property Owners	5/8/08	5/8/08
45	Map of Opposing Neighbors – Sean Sullivan	5/8/08	5/8/08

ITEM NO.	DOC. TYPE/SUBJECT	DATED	DATE REC'D.
46	Letter from Tim Sullivan	5/8/08	5/8/08
47	Letter from Alan & Noranne Olson	5/7/08	5/8/08
48	Letter from Steve L Stirrett	5/8/08	5/8/08
49	Letter from Steven G Miller	5/7/08	5/8/08
50	Tide Chart with Analysis of Low Tides – Sean Sullivan	5/7/08	5/8/08
51	Photos (11) –CD - Sean Sullivan	4/27/08	5/8/08
52	Photos (2) Tom Black	5/8/08	5/8/08
53	Letter from Byron Harris	5/10/08	5/14/08
54	Letter from Richard Arper	5/14/08	5/15/08
55	Letter from Sean Sullivan with photos	5/15/08	5/15/08

Appearing was LISA LEWIS, Shoreline Administrator for Kitsap County Department of Community Development, who introduced Exhibits 1-37 to the Staff Report, the power point presentation (Exhibit 38) and 4 additional letters (Exhibits 39, 40, 41, 42) which were received after the Staff Report was written. She testified that the proposed project is a 206 foot dock located on the east shore of Dyes Inlet at 1225 and 1235 NW Darling Road. Under the Kitsap County Shoreline management Master Program, the shoreline environment designation is Rural. The parcels are located within the Urban Low Density Residential (UL) designation. The UL classification authorizes single-family residential development at densities of between 4 and 9 dwelling units per acre. A letter was received from the Washington State Department of Natural Resources stating that an aquatic lease will not be required. The U.S. Coast Guard also responded with a letter stating that they had no objection to the placement of the dock and Private Marine Aids to Navigation would not be required. The County received two letters opposing the project. The opposition was that the dock was out of character with the environment. It is a pristine area. They are concerned that Kitsap County's support of this dock would lead to more docks being built. Other concerns were that there would be a loss of access to the shoreline for walking and the dock would be a safety hazard to novice boaters. Two other emails and additional letters were received noting opposition to the project. The proposed project is in a Rural shoreline environment and is permitted with a Shoreline Substantial Development Permit. New developments in rural environments should reflect the character of the surrounding area by maintaining the natural characteristics. Pier and dock projects, including joint-use and community dock projects, are encouraged to provide for public docking, launching and recreational access. This is a joint use dock, which meets all of the policy requirements. The public does not have access to the beach and, therefore, would not the have ability to utilize the dock. There is no public moorage in the area of Dyes Inlet. The closest marina is the Bremerton Yacht Club, which is 2.5 miles from the site and the applicants expressed that they did not wish to join a public moorage facility. There are floats located in the

area and 2 older docks that are already in existence, but are legally established. There are no docks within the small immediate area of the site. Staff previously recommended denial of another joint-use dock (Kessler and Cook) and the Hearing Examiner approved the proposal stating "said reasoning essentially places a moratorium on dock development within a specified area and/or prohibits docks along shorelines where the legislative body has determined through the legislative process that docks are appropriate. If the legislative body approves a shoreline for docks, but no docks presently exist, then according to resident's reasoning, no dock could ever be built. Thus, if the first dock cannot be built because no dock exists, then docks will never have the opportunity to occur. The legislative body did not intend such a result." These comments apply to this application. The applicant has exceeded the minimum safety requirements as to the number of pilings to ensure the integrity of the structure. Small boats may pass beneath the structure at high tide and pedestrians can walk beneath the structure at low tide. The geohydraulic processes are not a concern. There are Gracilaria and Ulva at the site, but no eelgrass. There is documented forage surf smelt spawning beaches at the site. Any environmental impact would not have a long lasting effect because a work window would be implemented to minimize any adverse effects. One hundred fifty feet of grating, which exceeds the Army Corps of Engineers requirements, would be installed to minimize shading impacts to the macroalgae and the applicant must comply with all conditions of the Washington Department of Fish and Wildlife. The excess length of the dock will be addressed by the applicant.

Appearing was ANGELA BUTTS of Marine Floats Corporation, representative for the applicants, who testified that the pier, ramp and float are a total of 200 feet, not 206 feet. The difference is because the ramp overlaps the float 6 feet. She has not seen the comment letters, but the dock does not increase noise pollution more than just mooring a boat there. There are several floats in the vicinity where people moor their boats or use them for swimming or fishing. The noise pollution will not increase by the dock being placed in that location. A marine biologist surveyed the two properties to address the effects the dock may have on the critical habitat. The dock exceeds the Army Corps of Engineers' criteria, therefore, the dock is minimizing the impact to the near shore habitat and marine dependent wildlife. To minimize the impact on forage fish including surf smelt spawning, the applicants have proposed to reduce the size of the first four pilings from 10 to 8 inches. In response to condition number 5 of the Staff Report, the railings of the pier are designed of wood and stainless steel cable. The cables disappear at 20 to 30 feet away. Both materials are consistent with tones of the shoreline environment. The Washington Department of Fish and Wildlife HPA and the Army Corps of Engineers are reviewing the project and the applicants are expecting a permit in the near future. The reason for the length of the dock is the shallowness of the water. Ms. Butts submitted statements into the record (Exhibit 43) of 4 neighbors who support the project.

Appearing was RICHARD ARPER, who is a professional engineer, appeared and testified that he lives at 7686 Chico Way, which is across the water from the proposed dock. He believes that there are criteria that have been glossed over that are

important and need to be addressed. Dyes Inlet is a public, open waterway for the use and enjoyment of the public. This area supports water skiing, tubing, knee boarding, canoeing and other such activities and a 200 foot pier would impact these activities. This side of the inlet is popular when conditions are windy because it is calmer. There are several other public moorage and launch facilities in the area. Alternative moorage is adequate. He has lived on Dyes Inlet for 60 years and the buoys have been adequate. Why now do they need piers and docks?

Appearing was GARY DAVIS who testified that all water activities, including beach walking will be affected by the proposed dock. It would be a navigation hazard especially in the dark. The proposed dock would be an attractive nuisance and a potential drowning hazard particularly for young children. The dock would force sailors to go out and around this structure in order to go either up wind or down wind. He is an avid sailor and he doesn't believe these facts are being realized. In the summer, the rocks on the beaches heat up and create pressure causing light winds close to the shore. That is where he sails. The project extends 200 feet and puts you where there is no wind. Wind surfers can't go under the pier. This structure would be a hazard for all sailing sports and all water sports will be impacted if this dock is approved. The approval would most likely pave the way for other docks of this nature.

Appearing was SEAN SULLIVAN, who testified that he now lives on Hood Canal about 3 miles south of Hood Canal Bridge, but he was born and raised at 1345 NW Darling Road and has his parents and family's interest at heart. His family has used the beach and water for 60 years. He has received unlimited enjoyment from this property and will for many years. He owns a business that employs more than 100 people. He paid \$45,000 in taxes last year. He believes that the public notices were very obscure from the roadway and showed photographs to show his point. He also believes that the form of advertising in the Port Orchard Independent was not a good choice because the circulation is about half of that of the Bremerton Sun. He doesn't know if it was intentional or not, but it seems to indicate that they were trying to fly under the radar. He collected a number of signatures from neighbors objecting to the dock, not only just in the 400 foot radius of the structure, but further out along the shore of Dyes Inlet because this structure will impact everyone on Dyes Inlet. There was a great deal of support for his work in opposing the proposed project. He doesn't believe that 2 residences could outweigh the objections of so many. He read excerpts from some of the letters, which have been made part of the record as Exhibit 44. He showed pictures of people rowing, sailing, tubing and kayaking in the area of the proposed dock. He also showed a picture depicting the pier superimposed where it is proposed. He believes it would definitely obstruct the view of the landscape. He believes the SEPA review had inaccurate answers regarding obstruction of views, mitigation of aesthetic impacts, glare, displacement of recreational uses and the fact that this is not a public recreational dock. He pointed out that the applicants have the burden of proof that alternative moorage is not adequate or feasible. The best moorage is what they already have, which is a buoy and a rowboat. The applicants have stated that they would pull the 26 foot boat in during low tides. He introduced a tide chart that showed, allowing for

2 foot deep water, the boat could only be moored at the dock 4% of the year. The idea that the dock is built for adequate and feasible moorage makes no sense.

Appearing was DONNA BURKE who testified that she has lived on Dyes Inlet for 40 years and raised her children there and now her grandchildren and great grandchildren enjoy the property and activities. She noted that there is a cutthroat trout run in addition to all of the recreational opportunities that will be affected by the pier and dock. She has taken many beautiful pictures of the area and doesn't want a pier in the picture. The tide goes out at least a block and she can't see how a 200 foot pier would benefit anyone.

Appearing was DOUG WEEKS who lives at 7712 Chico Way, which is across the water. He sees the inlet as a whole community. Activities occur on either side, depending on the conditions of the air and water. He is concerned about the wildlife that depend on the shoreline and also believes that sea life will be affected. The pier will create a horizontal band, which will disturb the view. During construction, a barge with a crane and pile drivers will be brought in. The vibrations of the pile drivers may have an impact on the residences in the area that could cause damage.

Appearing was TOM BLACK, who lives on Dyes Inlet. He placed a marker at 200 feet from the shore where the dock would be constructed and photographed the area to show how far out the dock would be. Low tide often goes out far beyond where the dock would end. This is just one dock. How far would future proposed docks want to go. The area is pristine with no interruption of views. There are not many days that there would be at least 2 feet of water under the dock.

Appearing was PHIL BEST, who is an attorney and a resident of Dyes Inlet. He has both a professional and personal interest in this project. He showed a depiction of the Port of Silverdale's public pier and this proposed pier to demonstrate how it would impact the view. There is already a public transient dock for all of Dyes Inlet that has all necessary facilities including a pump station. This dock is a viable alternative. The Dyes Inlet area just became part of Tracyton Port District, which gives them access to their dock. He cited the *Gallagher* case, which states that all navigable waters belong to all of the people. He doesn't believe that the Shoreline Management Act and the Master Program policies have been followed. KCC 22.28.190 sets forth the guidelines for Piers and Docks. Community piers and docks take priority over private piers and docks. This is not a community dock. They already have a boat launch and would not be able to use the proposed dock most of the time. This should be balanced against the eyesore it would cause for everyone else. Docks have priority over piers where scenic values are high. The proposed structure would conflict with established marine uses in the immediate vicinity, which goes against KCC 22.28.190(2)(c). This policy is squarely on point and indicates that this project should not go forward. It would conflict with most established marine uses such as kayaking, fishing, rowing, sailing and beach combing. This pier and dock could not have been designed worse for interference with public use of navigation and shoreline activities. Joint use and community dock projects are

encouraged for public docking, boat launching and recreational access. Tracyton Port Commission is trying to meet this need in a public way. KCC 22.28.190 also states that size and intensity of use should be compatible with the surrounding environment including land and water uses. There has been ample proof introduced by those opposed to the project that the size of the structure and the intensity of the use are not compatible with the surrounding environment. The size of a boat mooring float attached to a pier should be limited to the minimum necessary for boat moorage purposes. A 40 foot float for a 28 foot boat is much larger than necessary. The applicant has the burden of proving his project is consistent with the Master Program and other applicable County policies and regulations and he hasn't met that burden. He must show that existing facilities are not adequate or feasible. A Marine railway is another alternative and the least intrusive for the environment. Policies are in place and need to be followed. The Kessler and Cook decision does not apply here. It involves setting a precedent for other docks. The issue here is that the project is incompatible with the environment. Navigation and beach uses that residents enjoy should be respected and the project should be denied.

Re-appearing was ANGELA BUTTS, who pointed out that a 200 foot dock would protect swimmers and boats drifting in the area because if boaters, skiers, windsurfers etc. are inside the area of the pier, they are too close and pose a danger. Small boats can go under the dock. There is a 5 foot clearance at the mean high, high water mark. If need be the pier could be raised another foot. At a 9 or 10 foot high tide, beach walkers have about 15 feet of beach to walk under the pier. Public domain does not apply at low tide. The water would be beyond the dock at low tide. There is no permanent moorage in Dyes Inlet. KCC 22.28.190 does not say for permanent moorage. The project is not for permanent moorage. The structure is allowed for recreational purposes. The applicant has had back surgery and rowing is difficult for him. A marine railway is not feasible because it is physically demanding and his back injury would not allow it. Dozens of boats cannot moor at this dock. The KCC allows for one moorage spot for each joint use lot so 2 moorage spaces are allowed. This project would not increase boat traffic because the applicant's already have boats moored at buoys. Air and water quality would not be affected. The area is medium to low banked so from their houses, most people would be looking over the pier and there would be no view impairment. Pile driving would take about 6 hours and the Washington Department of Fish and Wildlife issues that permit.

Appearing was AMY LIETMAN, Senior Biologist with Marine Surveys & Assessments, who testified that she was the biologist that performed the review for this project. She described pristine as qualitative. The definition of pristine is outlined in a Mason County Case Number SHR200700023. Dyes Inlet is not pristine. It supports homes, mooring buoys, boats and bulkheads which have a major impact on the environment. She refers to Barbara Nightengale as an expert whom she talks to for advice regarding impacts of over water structures. Docks, if designed properly, do not have an impact on the environment, however boats do. The applicant has back problems that are permanent. Pollution, both noise and water would not be impacted because the number of boats

are not increasing. Mooring buoys cause more pollution when filling the boat with gas while moored. The macro-algae *Ulva* is a trash species and is found where there is pollution. *Gracilaria* is a high quality red algae drift species, which lies flat against the bottom. If you are not on the beach there is no impact to either of these species. Five days out of the summer months is all that the dock would be in water for 24 hour periods so it would not have much impact to marine recreation. When the tide is at the mean high, high water mark, it would be +11.74 and would be up against the bulkheads. At high tide of plus 9 or so, there would be plenty of room to walk under the pier. When the tide is at the mean low, low water mark, it would be at +.5 or for this purpose 0. At 0 tide there are still many opportunities to use the dock during a day. The lowest tide is -4 and doesn't occur every year. There would be only a few tides when you couldn't use the dock sometime during the day. It is easier to take the boat to a buoy and return with the skiff to the dock rather than drag the skiff across the beach. Dragging the skiff across the beach or letting a larger boat rest on the beach would have a much greater impact on the habitat than resting the small skiff on the beach at the dock. There is a rock close to where the dock would be placed. Boats have run into it in the past. The applicants would put a marker where the rock is. Dyes Inlet is not that interesting as it is for a dive site, but when you have pilings and floats, the habitat is much more diverse. Piers attract more wildlife. Boat ramps/launches are not a good alternative to a dock and pier because they can only be used at high tide unless you drag the boat across the beach, which would displace eggs from surf smelt who use this beach as a spawning ground. Aesthetically and recreationally, docks and piers are an individual opinion. Biologically, they are better than boat ramps. The perspective on the drawing of the dock by a previous witness was way off. He said it was 50 feet away, however it looked like about 500 feet away. In the photo where the witness placed a marker at 200 feet, if you look close, there is an existing dock at the top of the picture. It is hard to see. There would be no reflection from this pier because the material used will be wood and galvanized steel. The structure would not have an impact on the cutthroat or salmon runs. Juvenile salmon stay in about 6 inches of water and follow the tied up and down. The pier will have grating on the deck, which allows light under the dock so there would be no impact on juvenile salmon. If anything, fishermen would catch more fish around the pilings. There would be no impact on wildlife that already contend with the urban situation. Noise pollution during construction is why there is a construction window regulation in place by the WDFW and Army Corps of Engineers. These regulations are stringent and thus, will have no permanent impact. The project will use a vibratory hammer instead of a drop hammer to lessen the impact on the habitat.

Re-appearing was ANGELA BUTTS who testified that the Kessler and Cook decision does apply to this case. The applicants have met all of the criteria in the Kitsap County Code as well as any requirements at the state and federal level.

No one spoke further in this matter and so the Examiner took the request under advisement.

NOTE: A complete record of this hearing is available in the office of Kitsap County

FINDINGS, CONCLUSIONS AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, viewed the property, heard testimony, and taken this matter under advisement.
2. Appropriate notice was provided pursuant to the Kitsap County Code.
3. The Responsible SEPA Official issued a Mitigated Determination of Nonsignificance (MDNS) on April 21, 2008. The SEPA comment period previously occurred concurrent with the Notice of Application dated February 21, 2008. No appeals were received.
4. The applicants are requesting a Shoreline Substantial Development Permit to build a 200 foot long dock that would serve as a private moorage facility on the property line between two parcels. The dock would consist of a 4 foot wide by 114 foot long wood pier, a 3 foot wide by 52 foot long metal ramp and a 8 foot wide by 40 foot long moorage float. 6 feet of the ramp will overlap the float making the total length from the shore 200 feet. It would consist of 50 percent functional grating. The pier would be supported by eight 10 inch diameter galvanized steel piles. The project is located on the east shore of Dyes Inlet at 1225 and 1235 NW Darling Road. Both parcels are currently improved with single-family residences. These are low banked shorelines currently improved with vegetation and lawn grasses. The properties currently have private boat ramps.
5. These parcels are located within the Urban Low density residential (UL) designation. The UL classification authorizes single-family residential developments. The purpose of the Rural shoreline designation, as stated in the Kitsap County Code (KCC) 22.16.070, is to protect agricultural land from urban expansion, restrict intensive development along undeveloped shorelines, function as a buffer between urban areas and maintain open spaces and opportunities for recreational uses compatible with agricultural and forestry uses. A dock is an allowed use in a Rural environment as long as a Shoreline Substantial Development Permit is granted.
6. KCC 22.28.190 outlines certain policies for piers and floating docks, which must be satisfied. Findings on these policies are hereby made as follows.
 - A. *The cooperative use of piers and docks is preferred.*

This proposal is for a joint use dock which is consistent with this policy
 - B. *Priority should be given to the use of community piers and docks in all*

residential waterfront development.

The closest marina is the Bremerton Yacht Club, which is located 2.5 miles from these properties. Therefore, no adequate public moorage facility exists.

- C. *Docks should be given priority over piers where scenic values are high and the structure will not increase conflicts with established marine uses in the immediate vicinity.*

There was significant testimony from neighboring property owners about the character of Dyes Inlet. There are no existing docks in this area. Neighboring property owners discussed all of the water related recreational uses. The dock would disrupt some of the marine activities in the area. A pier would be appropriate because it would allow for some structures to go under the pier when the tide is high and beachcombers to go under the pier when the tide is low. Piers are also more environmentally friendly and are less detrimental to the marine habitat and vegetation. There will be some visual effect, but a dock is an allowed use in the Rural shoreline environment. It can be expected that a dock would be constructed on a waterfront lot.

- D. *Size and length of piers and docks should be the minimum which provides the required service.*

There was significant discussion about the length of the dock and whether this length would allow for moorage use. Though it appears that overnight moorage would not occur very often, it is also true that the daytime moorage use could occur a significant amount of time. The maximum depth is approximately 0.5 feet at MLLW. The 200 foot length will allow for reasonable use, while at the same time, not be an excessive length.

- E. *Piers and docks should be designed and located to minimize interference with navigation and the public's use of the shoreline.*

There will be an effect along the shoreline as a result of this dock, but the design of the dock will minimize this effect. Small boats will be able to go under the pier at high tide and at low tide beach walkers will be able to go under the pier.

- F. *Piers and docks should be sited and designed to minimize possible adverse environmental impacts, including cumulative impacts on littoral drift, sand movement, water circulation and quality and fish and wildlife habitat.*

The use of a pier minimizes the effect on habitat along the shoreline. A minimum number of pilings are being used. A Mitigated Determination of

Nonsignificance was issued and no appeals were filed. There also was a Habitat Survey that discussed this issue. All HPA requirements will have to be satisfied.

- G. *Piers and docks should allow for a maximum of littoral drift and should minimize interference with basic geohydraulic processes.*

As noted above, the minimum number of pilings are being used from a structural standpoint. This will minimize interference. The Habitat Survey states that littoral drift will not be greatly affected.

- H. *Pier and dock projects including joint-use and community dock projects are encouraged to provide for public docking, launching and recreational access.*

This is a joint-use dock, which minimizes, at least by one, potential for docks in the area. This will not be a public moorage facility.

- I. *Use of natural non-reflective materials in pier and dock construction should be encouraged. When plastics and other non-biodegradable materials are used, precautions should be taken to ensure their containment. All construction should comply with the current standards set forth by the Washington State Department of Fish and Wildlife regarding design and materials.*

The dock will use non-reflective materials. The railings will consist of a type that will minimize the visual effects. Construction will comply with all current standards.

- J. *The proposed size of the structure and intensity of use or uses of any pier and/or float should be compatible with the surrounding environment and land and water uses.*

A dock is an allowed use within the Rural shoreline environment. It is a natural accessory recreational use. The concerns of the neighbors are certainly legitimate, but the KCC does allow for this type of use in this zone classification and shoreline environment. This is the first dock. It is a proposed joint-use dock and is of a minimum length necessary for reasonable use. The argument that a dock should not be placed in this area because no docks are currently located in the area is faulty reasoning. The language in a previously issued decision, the Kessler and Cook joint-use dock, applies to this proposal. That decision stated "said reasoning essentially places a moratorium on dock development within a specified area and/or prohibits docks along shorelines where the legislative body has determined through the legislative process that docks are appropriate. If the legislative body approves a shoreline for docks, but no docks presently exist,

then according to resident's reasoning, no dock could ever be built. Thus, if the first dock cannot be built because no dock exists, then docks will never have the opportunity to occur. The legislative body did not intend such a result."

7. Additional environmental and permit requirements are outlined in KCC 22.28.190.3. Findings on these requirements are hereby made as follows:

A. *Piers and docks are permitted subject to a Shoreline Substantial Development Permit (SSDP) in the urban, semi-rural, rural, conservancy and conservancy-public lands environments.*

An SSDP has been requested and this project is located within the Rural environment.

B. *For any subdivisions, short subdivisions and other divisions of land approved after the effective date of this document, moorage facilities shall be limited to a single, joint-use community facility.*

This is not a proposed subdivision, rather this is for property owners that currently own single-family residences and the project is located on the lot line.

C. *Piers and docks shall be located landward of pierhead lines and state harbor lines, when applicable.*

The structure will not be located landward of pierhead lines and state harbor lines.

D. *Where state harbor lines and/or construction limit lines have not been designated, piers and docks shall project the minimum distance for their intended use and shall not create a hazard to navigation.*

There was significant testimony about this particular issue. It is clear that even at 200 feet, the dock would not allow for moorage at all hours of the day most of the year. It will allow for moorage for a significant amount of time on any given day. The maximum depth is approximately +0.5 feet at MLLW. The US Coast Guard has submitted a letter confirming that the structure would not need "aids to navigation". There are no existing docks in this area, thus initially boaters and marine users will have to make some adjustments because those users may have been coming within 200 feet of the shoreline prior to this dock being build. There will be some benefits to recreational swimmers because it will deter some boaters from coming close to the shoreline.

- E. *The width of a fixed pier, dock or float shall not exceed eight feet. The size of the boat-mooring float attached to a pier shall be limited to the minimum necessary for boat moorage purposes.*

The width of the structure will not exceed 8 feet. The float is proposed to be 40 feet. The ramp overlaps the float by 6 feet, which means that the effective float length is 34 feet. The boat owned by the applicants is 26 feet, which allows for an excess of 8 feet. This is a reasonable size for the float.

- F. *Proposals for piers or docks shall include at a minimum the following information:*
- (1) Description of the proposed structure, including its size, location, design, and any shoreline stabilization or other modification required by the project;*
 - (2) Ownership of tidelands, shorelands and/or bedlands;*
 - (3) Proposed location of piers, floats, buoys or docks relative to property lines and ordinary high water mark;*
 - (4) Location, width, height and length of piers or docks on adjacent properties within three hundred feet;*
 - (5) The applicant shall demonstrate that existing facilities are not adequate or feasible to accommodate the proposed moorage;*
 - (6) Alternative moorage is not adequate or feasible;*
 - (7) The possibility of a joint-use facility has been thoroughly investigated; and*
 - (8) The applicant shall have the burden of providing the requested information in the manner prescribed by the shoreline administrator.*

The applicants submitted all required information. The applicants currently have a boat launch. They want a dock to be used as a moorage facility. One of the applicants has a physical disability and this will allow this person to use their boat more easily. Using a float with a dingy may not be feasible due to the physical limitations of the property owner. This is a joint-use facility, which is a preferred alternative.

- G. *In areas identified by the Washington Departments of Fish and Wildlife, or Natural Resources as having a high environmental value for shellfish, fish life or wildlife, piers and docks shall not be allowed except where functionally necessary to the propagation, harvesting, testing or experimentation of said marine fisheries or wildlife, unless it can be established conclusively, as determined by the shoreline administrator, that the dock or pier will not be detrimental to the natural habitat or species of concern.*

A MDNS was issued and no appeals were filed. There are Gracilaria and Ulva at the site, but no eelgrass. There are also forage surf smelt spawning beaches at the site. There will be temporary adverse effects during construction, but this will be very limited. There will be 150 square feet of functional grating on the dock, which is significantly more than what would be required. This helps with habitat and wildlife. All conditions outlined in the HPA must be satisfied.

- H. *All piers and docks must be in support of an existing or currently proposed allowable shoreline use that is in conformance with the provisions of the master program.*

As noted above, a dock is an allowed use within the Rural shoreline environment subject to an SSDP being approved.

- I. *Size and length of the facilities should be the minimum that provides the required service and does not interfere with navigation and other uses of the water.*

The size and length of the facility was discussed in a prior finding and found to be satisfied. Small boats could go under the pier at high tide while beachcombers could go under the pier at low tide. There will be some effect on marine use, but it will be minimal.

- J. *All floats shall include stops, which will serve to prevent grounding on the tidelands at low tide or water level.*

There are stoppers proposed to be installed on the float. The boat will be removed at low tide.

- K. *Construction materials shall conform to the current standards of the Washington State Department of Fish and Wildlife regarding the design and materials.*

The applicant has satisfied all standards. The applicant is proposing grating in excess of what is required.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.
2. The applicant has shown that the proposal satisfies the purposes of the Rural shoreline environment, the goals and policies of the Shoreline Master Program, and all of the pier and floating dock regulations and policies outlined in the KCC, thus,

the request is approved subject to the following conditions:

1. A Hydraulic Project Approval will be required from the DFW prior to construction.
2. Dock construction shall be subject to the conditions of the HPA.
3. Float construction shall be subject to the Conservation Measures and Construction Specifications listed within the December 4, 2007 Army Corps of Engineers Regional General Permit 6, and the Habitat Survey within the same report.
4. Construction shall comply with all items described in the Joint Aquatic Resources Permit Application, except as amended through the final conditions of approval.
5. In order to minimize visual impacts, hand-railing materials shall be painted or constructed of material in tones to blend with the background shoreline environment.
6. Final approval of construction shall be subject to a site inspection by Kitsap County DCD shoreline permitting Staff.
7. Upon final permit issuance, all construction must commence within two years and be complete within five years. A one time one-year extension is available but only if requested on or before ninety days of original permit expiration. No exceptions are allowed unless provided for by law.
8. A building permit for the portion of the pier that connects to the land shall be required from Kitsap County DCD.
9. The decision set forth herein is based upon representations made and exhibits, including plans and proposals submitted at the hearing conducted by the hearing examiner. Any substantial change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to the approval of the hearing examiner and may require further and additional hearings.
10. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition precedent to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not

comply with such laws, regulations, or ordinances, the applicant agrees to promptly bring such development or activities into compliance.

DECISION:

The Shoreline Substantial Development Permit to build a 200 foot long dock that would serve as a private moorage facility on the property line between 1225 and 1235 Darling Road, Kitsap County is approved subject to the conditions listed above.

ORDERED this 2nd day of June 2008.

MARK E. HURDELBRINK
Deputy Hearing Examiner

TRANSMITTED this _____ day of _____, 2008, to the following:

APPLICANT/OWNER: Tom Bergquist and Byron Harris
2615 NE Passage View Lane
Poulsbo, WA 98370

REPRESENTATIVE: Wendell Stroud
Marine Floats Corporation
1208 East D Street
Tacoma, WA 98421

OTHERS:

Donna Burke
1175 NW Darling Road NW
Bremerton, WA 98311

Rozanne Hoestra
1145 Darling Road NW
Bremerton, 98311

Dabra Davis
7874 Chico Way NW
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8066 Chico Way NW
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Richard Arper
7686 Chico Way NW
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Sean Sullivan
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Poulsbo, WA 98370

Kitsap County Board of Commissioners
Kitsap County Department of Community Development
Kitsap County Department of Public Works
Kitsap County Prosecutor – Civil Division
Kitsap County Department of Parks and Recreation
Bremerton-Kitsap County Health Department
The Sun Newspaper

Pursuant to Kitsap County Code Section 21.04.120 and the Land Use Hearing Examiner Rules of Procedure, an OBJECTION to the Examiner's Decision may be filed, in this matter, in writing, with the Clerk of the Board of County Commissioners, on or before _____, 2008. Prior to the filing of an Objection, the objector shall pay the sum of FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) to the Department of Community Development.