



KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

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LARRY KEETON, Director

STAFF REPORT

RECOMMENDATION TO THE HEARING EXAMINER SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

Date: December 4, 2007

Application Date: March 16, 2007

LIS Number: 07 44383

Project: Kremer and Diefendorf Joint Use Pier, Ramp and Float Project

Type of Application and Description of Proposed Project: The applicants have applied for a Kitsap County Shoreline Substantial Development Permit (SSDP) to construct a new joint-use pier, ramp and float (dock) in Dyes Inlet, north of Bremerton, Washington (Exhibit 8, Figures 1 and 2). The entire structure would begin on a rock bulkhead and extend 150 feet into Dyes Inlet. The stated purpose of the project is for fishing, swimming and recreational moorage of two boats, 20.5 and 19.0 foot long respectively.

The structure would consist of a 6 foot by 94 foot pier, a fully grated 4 foot by 40 foot aluminum ramp and an 8 foot by 24 foot float. The pier would consist of 43 percent functional grating and the new float 50 percent (Exhibit 8, Figure 3). Twelve "Chemonite treated" pilings (ten inch diameter) would be used for this project. The existing 25 foot long dock would be removed.

Project Location: The proposed project is located in Dyes Inlet, Bremerton, WA, Kitsap County, Commissioner District 3, (¼ Section SE, Section 21, Township 25N, Range 01E), in the shoreline and draining to Puget Sound.

Assessor's Account #: 212501-4-059-2003 and 21501-4-060-2000

Applicants: Paul and Victoria Kremer
P.O. Box 1194
8431 Tracyton Blvd. NW
Bremerton, WA 98311

Tom and Julie Diefendorf
P.O. Box 626
8419 Tracyton Blvd. NW
Bremerton, WA 98311

Project Representative: Angela Butts
Marine Floats Corporation
1208 East "D" Street
Tacoma, WA 98421

Owner of Record: Same as applicants.

SEPA Status: The Responsible SEPA Official issued a Mitigated Determination of Nonsignificance (MDNS) on November 19, 2007. The appeal deadline for the project proposal was December 3, 2007. No appeals were received.

Physical Characteristics: The rectangle-shaped lots front Dyes Inlet, an intertidal pocket estuary of Puget Sound. The two adjacent parcels, .59 and .46 acres respectively, gradually slope from Tracyton Blvd. NW downward to the existing single-family residences and the low bank shoreline. The parcels are vegetated with lawn grasses and ornamental shrubs and trees. The applicants' landscaped shoreline is armored with a 6 foot high rock bulkhead. An existing dock is attached to the Kremer portion of the bulkhead and extends out 25 feet into the Deifendorf shoreline. The ordinary high water (OHW) line is approximately 1.81 feet up the rock bulkhead and is benchmarked at 11.74 feet.

Existing Zoning: Urban Low-Density Residential (4 to 9 dwelling units per acre)

Comprehensive Plan Designation: Urban Low-Density Residential

Shoreline Environmental Designation: Rural

Surrounding Land Use and Zoning: The zoning of the property and surrounding area is urban low-density residential and is dominated by single-family residences, none of which have single or joint-use docks similar in size as the proposed dock. There are two smaller docks to the southeast and a number of private boat launches to the northwest (none within 300 ft. of the project site).

Public Utilities:

Water: Water District, Tracyton

Power: Public Utility District Number 1

Sewer: On site septic

Comments Received:

Washington State Department
Of Fish and Wildlife:

A letter of Incomplete Hydraulic Project Application (HPA) Package dated February 28, 2007 stated the requirement of a SEPA Determination prior to WDFW review.

Public:

The County received two letters regarding this proposal, both of which supported the project but did not wish to participate in further discussion.

ANALYSIS

Policies and Regulations Applicable to the Subject Proposal:

Kitsap County Code:

Title 21, Chapter 21.04 - Land Use and Development Procedures

Title 22 Kitsap County Shoreline Management Master Program:

KCC 22.24.010 Shorelines of Statewide Significance – Management Principles and Development Guidance

The Shoreline Management Act of 1971 designated certain shoreline areas as shorelines of statewide significance. Shorelines, thus designated, are important to the entire state.

Staff comment: *The proposed structure would be located on the eastern shore of Dyes Inlet, Puget Sound, and would not extend waterward of Extreme Low Tide (Exhibit 8). The elevation measurement at the end of the proposed dock is 0.4 feet above mean lower low water; thus, the dock would not be located in shoreline waters of statewide significance. However, because Dyes Inlet shorelines are major resources from which all people in the state derive benefit, Kitsap County Shoreline Management Master Program (KC SMP) must give preference to uses which favor public and long-range goals.*

KCC 22.16.070 Rural Shoreline Environmental Designation

Purpose. The proposed project would be located within a Rural shoreline environment designated area. The purpose of the Rural shoreline designation 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.”

Designation Criteria. Rural shoreline environments have low residential densities, limited access to utilities such as sewer and water, open space, and areas modified from their natural vegetative cover and surface drainage patterns but generally supporting low intensity development and areas possessing valuable mineral deposits.

Management Policies. The following management policies are to be applied to any permissible uses occurring in the rural environment:

- (1) New developments in rural environments should reflect the character of the surrounding area by limiting residential density, providing permanent open space, and providing substantial setbacks from shorelines; and
- (2) Public recreation facilities are encouraged, including water access, pedestrian trails and recreational viewing areas with minimal impact to the natural environment.
- (3) Sensitive shorelines should be protected through vegetation management, maintenance and erosion control regulations.
- (4) Developments should be compatible with uses and activities in adjacent environments.

Staff comment: *This section is applicable to the proposed project and further discussed in the analysis below.*

KCC 22.28.190 Piers and Floating Docks.

1. **Definition.** A pier is a rigid structure built over the water attached to the shore used as a landing place for marine transport or for recreational purposes. A floating dock is a structure floating upon the water and attached to the shore used as a landing place for marine transport or for recreational purposes.
2. **Policies.** The cooperative use of piers and docks is preferred.

Staff Comment: *The proposed project is consistent with this policy because the two adjoining properties would jointly use the dock.*

b. Priority should be given to the use of community piers and docks in all residential waterfront development.

Staff Comment: *The Silverdale community dock and boat launch is located 2.1 miles northwest of the proposed structure and the Tracyton boat launch facility is 1.28 miles south of the proposed project area. The applicant's representative states that, "the Silverdale "marina" is a public access dock with a maximum moorage period of three nights." The representative further states that, "...it is unsupervised and originates at a public park. It has been the site of vandalism and crime to the point that cameras were installed to record criminal activity." Staff has considered the applicant's response and feels they have not demonstrated reasons why the two boat launches cannot be used; thus the proposal is not consistent with this policy.*

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.

Staff Comment: *The proposed dock is not consistent with this policy. According to KCC 22.16.070 development within a rural shoreline environment designation area should be compatible with uses and activities in immediate vicinity. Field reviews revealed no docks within 300 feet of the project site. One small dock was located to the north and a couple small docks were identified further south.*

The construction of a 150 foot long dock would also present conflicts with established marine uses, including potential impediments to non-motorized boat navigation at high tide, the potential safety hazard to these boaters and loss of beach access for walking the unobstructed shoreline. The Kitsap County Shoreline Management Master Program (SMP) grants preference to uses which favor public and long range goals due to the major resources which said shorelines provide for all people in the state.

d. Size and length of piers and docks should be the minimum which provides the required service.

Staff Comment: *The proposed dock, designed to reach navigable water at mean lower low water, begins on a rock bulkhead and extends 150 feet into Dyes Inlet. As described, the structures size and length would meet the intent of this policy; however, it would be in opposition to the management policies for rural shoreline environment designated areas.*

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

Staff Comment: *The proposed structure meets the intent of the first portion of this policy. No comments of concern were received from the public or the U.S. Coast Guard regarding potential interference with navigation or uses of the shoreline. However, the addition of this overwater structure would increase conflicts with established marine uses, including potential impediments to non-motorized boat navigation at high tide, the potential safety hazard to these boaters and loss of beach access for walking the unobstructed shoreline.*

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.

Staff Comment: *The project does not meet the intent of this policy. Staff is especially concerned about the location of the proposed dock in regards to sediment drift due to its proposed location on the sediment (alluvial) fan from Barker Creek. The proposed project would alter sediment characteristics, via altered wave action and sediment transport. Disruption of sediment transport would alter substrate composition and present potential barriers to the natural processes that build spits and beaches and provide substrates required for plant propagation, fish and shellfish settlement and rearing, and forage fish spawning. Changes in substrate type could alter the nature of the flora and fauna native to a given site.*

Marsh plants and submerged aquatic vegetation (SAV), such as found at the project location (Exhibit 3), are ecologically critical as a source of food and nursery habitat for fish, shellfish, amphibians, reptiles, birds and mammals that live in coastal waters or the adjacent marsh and uplands (Weigert et al., 1981; Teal, 1962, 1969; Weinstein, 1996). Vegetated areas also stabilize shoreline and bottom sediments against erosion (Kearney et al., 1983; Teal, 1986) and take up contaminants and excess nutrients from the water and sediments (Vernberg, 1996).

Also, the three public recreational beaches near the project site have been closed to shellfish harvest according to the Department of Health map (Exhibit 27). Water quality can be negatively affected by vessel usage, (discussed in detail under policy f, page 9) and the presence of vessels in an area could negatively affect the reopening of the beaches to shellfish harvesting.

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

Staff Comment: *The project does not meet the intent of this policy. Research has shown that overwater structures negatively affect nearshore habitats by altering wave action and sediment transport processes. These impacts reduce primary and secondary productivity and alter sediment characteristics, via altered wave action and sediment transport (Jones and Stokes and Anchor Environmental 2006; Alexander et. al. 2004; Kelty and Bliven 2003, Haas 2002; Nightingale and Simenstad 2001, Blanton et. al. 2001); Burdick and Short 1999; Thom et. al. 1998; Ludwig et. al. 1997; Parametrix and Battelle 1996; Thom et. al. 1996; Fresh et. al. 1995, 2002; 2006). More specifically, the proposed project would potentially cause adverse environmental impacts to the basic geohydraulic processes of the shoreline providing documented smelt and herring spawning areas and near the location where juvenile salmon emerge from natal streams.*

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

Staff Comment: *The proposed joint-use project does meet the intent of this policy; however, it would not be utilized as a community dock for public docking, launching and recreational access.*

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.

Staff Comment: *The dock, subject to HPA requirements, as well as design guidelines and conditions identified in the Biological Evaluation by Marine Surveys and Assessments, would meet the intent of this policy.*

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.

Staff Comment: *The proposed dock is not consistent with this policy. The shoreline waterfront view is currently unobstructed from the north to the south. Docks of this size are absent and the waterward view is not compromised by their presence. Equally determined, with the navigation of the shoreline currently being unobstructed, the addition of a 150 foot long dock would increase conflicts with established marine uses, including potential impediments to non-motorized boat navigation at high tide, the potential safety hazard to boaters and loss of beach access for walking the unobstructed shoreline. The Kitsap County SMP grants preference to uses which favor public and long range goals due to the major resources which said shorelines provide for all people in the state.*

KCC 22.28.190.3. Environments and Permit Requirements.

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

Staff Comment: *The applicants have applied for an SDP; therefore, the proposal is consistent with this environments and permit requirements.*

KCC 22.28.190.3.4. General Regulations.

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.

Staff Comment: *Navigability, most often associated with vessels, also relates to aquatic species. The applicant's properties, located near the mouth of the Barker, Clear and Strawberry Creeks are home to fall Chum and Coho salmon (K. Peters, East Kitsap Lead Entity for Salmon Recovery, personal communications and H. Daubenburger, Suquamish Tribe Habitat Biologist, personal communications). When both species leave their natal freshwater streams soon after emergence from the streambed, they quickly reach the estuary and adjacent shoreline waters which would include the area of the proposed dock. In this early stage, the small fish are particularly vulnerable to predation, and the timing and availability to appropriate prey organisms are critical factors affecting whether an individual fish reaches a sufficient size. It is during this early stage that juvenile chum are particularly dependent on the shallow waters near the marine shoreline where they forage for invertebrates. Studies show that the light regime in shallow waters affects juvenile salmon migration behavior, potentially impairing the ability of fish to avoid predation and capture prey effectively. When migrating juvenile salmon encounter a shade line associated with overwater structures such as docks and piers they have been observed to hesitate, and they may then swim along the edge of the shade line potentially taking them into deeper waters and making them more vulnerable to*

predation. Also, docks serve as a platform for prey birds, such as cormorants, to sit and fish easily for these juvenile salmon.

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.

Staff Comment: *The proposal of a 4 to 8 foot wide structure is consistent with this regulation.*

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.

Staff Comment: *The above-required information has been provided in the permit application. Regarding alternative moorage, the applicants presented no evidence that the existing facilities are not adequate or feasible. The applicants, therefore, have not satisfied said criteria.*

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.

Staff Comment: *As described in the following paragraphs, the proposed project does not meet the intent of this regulation. The Biological Evaluation by Marine Surveys and Assessments addressed potential habitat impacts and provided a list of known species in Dyes Inlet. These include Puget Sound Chinook, listed under the Endangered Species Act (ESA) as threatened species. According to WDFW, Steelhead was just listed as threatened under ESA. On August 12, 2005 NMFS designated critical habitat for 12 Evolutionarily Significant Units (ESU) on the West Coast, including the Puget Sound Chinook salmon and the project site is in the designated area of the Puget Sound Chinook.*

According to NOAA, Dyes Inlet, as well as most of Puget Sound, is also classified as Critical Area Habitat for Southern Resident Killer Whales (Orca). Orca, which was listed on November 15, 2005 by NMFS as endangered under ESU is present within Dyes Inlet. Orcas were named a "state candidate species" by the Washington Department of Fish and Wildlife in June 2000, which qualified them for consideration as endangered, threatened, or sensitive under state law (Washington Administrative Code [WAC] 232-12-011 and 232-12-014). All forms of Orca found in the state (i.e., residents, transients, and offshores) are protected under the law.

The Shared Strategy for Puget Sound, a collaborative initiative built on the foundation of local efforts and supported by leaders from all levels of government, and guided by the Puget Sound Technical Recovery Team's regional recovery criteria have identified conservation measures intended to reduce threats and restore the Orca whale population to long-term sustainability. These include, but are not limited to:

- *Protect the southern resident killer whale population from factors that may be contributing to the decline or reducing ability to recover.*
- *Rebuild depleted populations of salmon and other prey to ensure an adequate food base for recovery of the southern residents.*
- *Support salmon restoration efforts in the region.*
- *Preservation, restoration, and rehabilitation of degraded freshwater, estuarine, and shoreline habitats is a major emphasis of salmon restoration programs and involves numerous activities, such as reforestation of riparian zones, installment of woody debris in stream channels, removal of fish passage barriers and other structures affecting habitat, and land acquisitions.*

Several watershed restoration efforts are underway or planned in the Dyes Inlet watershed. For example, Barker Creek is the focus of several restoration projects since it supports runs of fall chum salmon in the south Puget Sound, as well as Coho salmon, steelhead and cutthroat trout, and occasional Chinook salmon. The goal of these projects is to restore and increase anadromous fish habitat, and facilitate upstream migration in the upper Barker Creek watershed.

A healthy nearshore habitat provides diverse vegetation for foraging, predatory refuge and resting and is critical for the success of current and future salmon recovery efforts. The relationship of these restoration efforts to this project area is that juvenile salmon, and other invertebrates and forage fish, are dependent on healthy and diverse nearshore habitat such as located in this project area. As stated in the Kremer-Diefendorf Biological Evaluation, "There are documented surf smelt spawning beaches at and adjacent to the project site". As stated, the substrate in the upper intertidal area is composed of sand, pea gravel and spawning substrate. The primary physical processes controlling habitat attributes (i.e. plant and animal assemblages) and functions are depth, slope, substrate type, wave energy, light and water quality. According to Williams and Thom 2001, and Nightingale and Simenstad 2001, these are the most important factors influencing the development and distribution of nearshore habitats. With regards to surf smelt, none were documented at the site, yet the ACOE and NMFS assume that spawning activity could take place in the future. The success of watershed restoration projects to "bring back the salmon" is dependent on healthy continuous nearshore habitats such as found at the project site and adjoining shoreline.

Further evidence from Marine and Estuarine Shoreline Modification Issues, Executive Summary WDFW Whitepaper, Ronald M Thom and Gregory D. Williams, Battelle Marine Sciences Laboratory and Pacific Northwest National Laboratory states that, "Washington State's nearshore ecosystem plays a critical role in support of a wide variety of biological resources." Nearshore habitats perform a variety of important functions within the ecosystem and support the life history and ecology of many species. For example, the nearshore foodweb is based upon detritus produced by plants (marine algae, estuarine and saltmarsh vascular plants, and especially eelgrass) that grow in highly productive shallow water habitats.

Furthermore, shallow estuarine and nearshore habitats, such as found at the project site, are structurally complex (e.g., submerged aquatic vegetation and large woody debris) and dynamic. As such, they are nursery areas for juvenile salmonids and other highly visible species (e.g., forage fishes, rockfishes, birds, and invertebrates) because they provide food, refuge from predators, spawning habitats and a transition zone to physiologically adapt to salt water existence. All juvenile salmon move along the shallows of estuaries and nearshore areas during their outmigration to the sea, and may be found in these habitats throughout the year depending on species, stock and life history stage.”

The potential negative impacts of overwater structures on surrounding biota are well documented (Jones and Stokes and Anchor Environmental 2006; Alexander et. al. 2004; Kelty and Bliven 2003, Haas 2002; Nightingale and Simenstad 2001, Blanton et. al. 2001; Burdick and Short 1999; Thom et. al. 1998; Ludwig et. al. 1997; Parametrix and Battelle 1996; Thom et. al. 1996; Fresh et. al.1995, 2002; 2006). Identified impacts include changes to the light regime, introduction of contaminants and new material dissimilar in nature to natural substrate, changes in wave energy and disruption of sediment supply from the backshore. These impacts may be caused by the structure itself, dock construction or by boating activities that can produce prop scour, increase turbidity or introduce contaminants (Kennish 2002). According to Hans Daubenberger, Port Gamble S’Klallam Tribal Habitat Biologist, fish typically will not pass under dock structures. The impacts of recreational boat traffic and docks have been found to be far from a benign influence upon aquatic and marine environments (Crawford et. al. 1998; Eriksson et al. 2004; Sandstrom et. al. 2005). Impacts include propeller scouring when the boat is close to the bottom. The proposed project’s float is 12-inches above the beach, which may retard plant growth and may cause juvenile salmon to slow or stop, which subjects them to greater predation.

Even though no eelgrass was found within the project area, salmon do not rely only on eelgrass. Macroalgae beds composed of species other than eelgrass provide many of the same functions for fishes. They provide habitat complexity and are a major contributor to detritus used in both nearshore and deep-water food webs. Shading from overwater structures can have a negative effect on the growth of eelgrass and macroalgae. In conclusion, and in response to the determinations listed within the marine assessment report the “may effect, not likely to adversely affect” standard provided in the Biological Evaluation by Marine Surveys and Assessments is not the same as “no detriment.”

i. 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.

Staff Comment: Recreational boating and shoreline access are allowed uses under the Kitsap County Shoreline Management Master Program (SMMP) and found in Title 22 of the Kitsap County Code (KCC). The proposed project is within an area classified as Rural Shoreline Environment. A rural shoreline environment has low residential densities, limited access to utilities such as sewer and water, open space, and areas modified from their natural vegetative cover and surface drainage patterns but generally supporting low intensity development and areas possessing valuable mineral deposits. Refer to Chapter 22.16.

Section 22.16.070(a) KCC sets forth the “Purpose” of the Rural Environment, which includes the protection of agricultural land from urban expansion, “restricting development along undeveloped shoreline.” A 150 foot long structure could constitute intense

development, especially considering the lack of lengthy structures along the shoreline, thus would not meet the intent of this regulation.

j. 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.

Staff Comment: *The proposed 150 foot dock has been designed to reach navigable water at mean low water; however, because the proposed structure may limit(s) navigation and other uses, the project does not meet this regulation.*

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

Staff Comment: *The design of the dock is not consistent with this requirement. As stated by the applicant's representative, "The float will be in the water for tides above 0.0, but for negative tide levels it will lie on the mud."*

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

Staff Comment: *The design of the dock would be consistent with this requirement and in compliance with the WDFW HPA.*

CONCLUSIONS

1. The Hearing Examiner has review authority for this Shoreline Substantial Development Permit application under the *Kitsap County Code* (KCC), Sections 21.04.03 and Sections 22.08.070.
2. Staff has reviewed the proposal for consistency with applicable policies and regulations of KCC Title 22 (Shoreline Management Master Program).
3. Based on above analysis and findings, Staff recommends **DENIAL** of the Kremer and Diefendorf Joint-Use dock proposal.

cc: DCD File
DCD Staff Planner, Lisa Lewis
Clerk of Hearing Examiner, Karen Ashcraft
Port Gamble S'Klallam Tribe, Hans Daubenburger
Skokomish Tribe, Marty Ereth
Suquamish Tribe, Alison O'Sullivan
WDFW, Gina Piazza
WDOE, Sandy Lange