



KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

614 DIVISION STREET MS-36, PORT ORCHARD WASHINGTON 98366-4682
(360) 337-7181 FAX (360) 337-4925 HOME PAGE - www.kitsapgov.com/dcd/

Larry Keeton, Director

STAFF REPORT

RECOMMENDATION TO THE HEARING EXAMINER SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

Date: August 17, 2009

Application Date: October 23, 2008

LIS Number: 08 62589

Project: Mead Single-Use Dock and Boatlift

Type of Application and Description of Proposed Project: Eric Mead (applicant) requests a Shoreline Substantial Development Permit (SSDP) to allow construction of a single-use residential dock, including a fixed pier, ramp, float (PRF) and one boatlift, on property located at 8093 Lars Drive NE, Bremerton, Kitsap County, Washington. The 592 square foot "L" shaped structure, extending 106 feet waterward from an existing rock bulkhead, would be composed of a fixed wood pier measuring 4 feet wide by 58 feet long, a fully grated aluminum ramp measuring 3 feet wide by 40 feet long and a moorage float section measuring 8 feet wide and 30 feet long (Figure 4). Both the pier and float would have 50 percent functional grating installed. The structure would be secured with 13 galvanized steel pilings, 10 inch diameter. Feet float stops would suspend the float at least 12 inches above the beach to prevent grounding at low tide. The electric boatlift would be installed on the north side of the pier portion of the dock structure.

Project Location: The project is located on the east shore of Port Orchard Bay (Figure 1), Puget Sound, approximately 500 feet south of University Point, at 8093 Lars Drive NE, Bremerton, Central Kitsap County; Commissioner District 3 (Section 09, Township 26 North, Range 02 East). The nearest road intersection is Lars Drive NE and University Point Circle NE. Under the Kitsap County Shoreline Management Master Program, the shoreline environment designation is Semi-Rural. The property, zoned Urban Low-Density Residential, has a minimum density of 4 to 9 dwelling units per acre.

Assessor's Account #: 192502-4-031-2009

Applicant: ERIC MEAD
400 MELROSE AVENUE EAST, #604
SEATTLE, WA 98102

Representative: LEANN EBE MCDONALD
SHORELINE SOLUTIONS
9784 NE LAFAYETTE AVENUE
BAINBRIDGE ISLAND, WA 98110

Owner of Record: ERIC MEAD

SEPA Status: The Responsible SEPA Official issued a Mitigated Determination of Nonsignificance (MDNS) on August 4, 2009 (Exhibit 23). The mitigation measures are reflected in the recommended staff conditions. The appeal deadline for the project proposal is August 18, 2009. To date, no appeals have been received.

Physical Characteristics: The proposed construction site is located in the Port Orchard Bay at 8093 Lars Drive NE, Bremerton. The 0.38 acre parcel gradually slopes from Lars Drive NE downward to a top of slope measuring approximately 30 feet in height. The parcel then slopes abruptly down an approximately 55 foot tall bluff to a level yard, existing single-family residence and low bank shore. The Mead shoreline parcel (Figure 2) is vegetated with a predominance of deep rooting deciduous and coniferous trees and shrubs on the front side of the home. The shoreline side of the property is less vegetated with sparse shrubs at the shore's edge and short-rooted lawn grasses extending from the home down to the shoreline. The 140 foot wide shoreline parcel is completely armored with a rock bulkhead.



Figure 1. Higher elevation view of property



Figure 2. Mead residence

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

Comprehensive Plan Designation: Urban Low Density Residential

Shoreline Environmental Designation: The Kitsap County Shoreline Management Master Program (SMP) establishes five shoreline environment designations – natural, conservancy, rural, semi-rural and urban – and one sub-environment, conservancy-public lands. The subject property is designated semi-rural shoreline environment. Pursuant to KCC 22.28.190(3)(a), piers and docks are an allowed use within the semi-rural environment with a SSDP.

Surrounding Land Use and Zoning: The parcels are located within the Urban Low Residential (UL) designation. The UL classification authorizes single family residential development at densities of four to nine dwelling units per acre.

Public Utilities:

Water: Water District, North Perry
 Power: Public Utility District Number 1
 Sewer: Kitsap County
 Fire District: Fire and Rescue District 1

Comments received:

Tribe and Public: Comments were received from a citizen expressing concerns related to beach ecology, safety, personal liability, privacy and aesthetics. Comments were submitted by the Suquamish Tribe and Washington Department of Fish and Wildlife (WDFW) regarding forage fish spawning habitat.

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 west shore of Port Orchard Bay, Puget Sound. The elevation measurement at the end of the proposed PRF is 0.0 feet at mean lower low water (MLLW). Extreme low tide is located waterward at tidal elevation -4.5; thus, the PRF would not be located in shoreline waters of statewide significance.

KCC 22.16.080. Semi-Rural Shoreline Environment Designation.

Purpose. The purpose of the semi-rural environment is to promote the utilization of an area by multiple human uses on a scale between that of the rural and urban environments. In conjunction with these uses, however, it is intended that certain aspects of the natural environment be retained (Kitsap County Code (KCC) 22.16.040.1). The subject property is designated semi-rural shoreline environment. Piers and docks are allowed uses within the semi-rural environment with a shoreline substantial development permit.

Designation Criteria. The semi-rural environment is an area where the predominant feature is the modification of the environment by the action of man, but which still possesses some rural character. The semi-rural environment is distinguished from the urban environment by having primarily moderate residential uses.

Management Policies. The following policies should be applied to any permissible uses occurring in the semi-rural environment:

- (1) Modifications to the environment should harmonize, whenever possible, with pre-existing natural conditions.
- (2) Development patterns and specific uses and activities should retain significant existing natural features.
- (3) Active recreational facilities should be encouraged.
- (4) To the maximum extent possible, with respect to human utilization, development within shoreline areas should strive to maintain, preserve or enhance natural shoreline characteristics.

Staff comment: The Kitsap County Shoreline Management Master Program (SMMP) places the applicant's parcel within the semi-rural shoreline environment. The proposed single-use, 106 foot long dock on an approximate 140 foot wide waterfront parcel would serve as an appurtenance to moderate residential uses. 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.**

- a. The cooperative use of piers and docks is preferred.

Staff Comment: The policies prefer the cooperative use of piers and docks and the use of community piers and docks in all residential waterfront development. Joint-use was offered to adjacent property

owners (Exhibits 12 and 13), of which the two neighbors declined. Staff contacted the Brownsville Marina, located approximately 1.3 miles to the south, and found that waiting time for a slip was between one and 1.5 years. Therefore, neither joint nor community piers are available. As such, the proposed project meets the intent of this policy.

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

Staff Comment: No public moorage exists in this area of Port Orchard Bay and the closest marina is Brownsville. Currently, no moorage slips are available at the Brownsville Marina; however, the Bremerton marina does have available slips. The applicant states that keeping his boats there would also require him to keep a car at the marina since he customarily travels across the water from Seattle. The applicant states that the two marinas do not allow long term parking for cars.

- 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: As a pier, ramp and float, the proposed structure includes elements of both docks and piers. Based on the applicant's revision, the float portion will be repositioned to an L-shaped structure resulting in a 14 feet reduction of the overall length, thus reducing the scenic impacts slightly from the original proposal. The float portion of the structure will be at water level and therefore less intrusive. Specifically, the applicant proposes to construct a 4 foot wide by 58 foot long fixed pier leading to a 3 foot wide by 40 foot long ramp and an 8 foot wide by 30 foot long floating dock, for a total length of 106 feet.

Concerning scenic (view) values, PRF structures of this size are absent from this area of Port Orchard Bay; thus, the current waterward view from adjacent shoreline properties is uncompromised by their presence. However, the parcel is located at the base of a steep slope and all adjacent parcels are located above the Mead residence and the proposed PRF; thus, view blockage would not be an issue.

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

Staff Comment: The original site plan proposed a 120 foot long dock (Figure 3); however, the applicant revised the site plan to show the float in an "L" shape position (Figure 4), which resulted in a 14 foot reduction in overall length. As such, the proposed 106 foot length appears the minimum which would provide the required service. The structure would support a 40 foot sailboat and a 20 foot long motorboat.

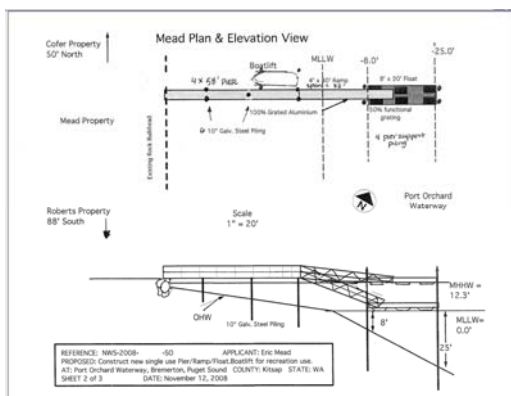


Figure 3. Original site plan.

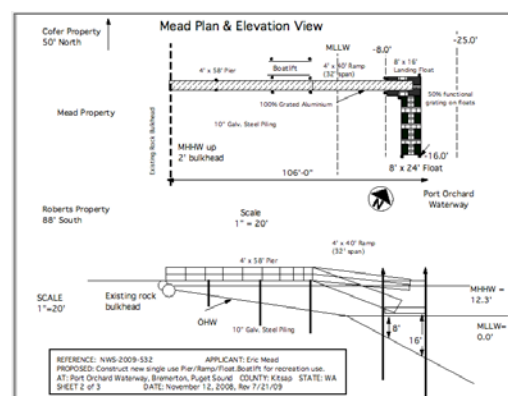


Figure 4. Revised site plan.

- 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 applicant's proposal generally meets the intent of this policy. All piers and docks impact the public's use of the shoreline to some extent; however, the applicant proposes the minimum number of pilings to ensure safety and integrity of the structure, as well as no cross bracing. Such allows the passage of small boats beneath the structure at high tides, and pedestrians can walk beneath the structure at low tides. The raised pier portion will allow walking and small recreational boating underneath that portion of the structure.

- 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: An intensive Macro Algae Habitat Survey (Exhibit 1) was conducted at a 0.0 foot high tide at the proposed construction site on August 4, 2008. Five transects were surveyed, revealing the absence of eelgrass and the presence of sparse macro algae. The dominant macro algae species was *Ulva*.

Shoreline structures can increase the potential for shoreline erosion by interrupting the transport of sediment, through a wave process called longshore transport. Typically, structures that cause this sort of interruption, such as jetties, breakwater and groins, are continuous, extend down to the seafloor and rise up to or above the water surface. Because the pier complex is based on pilings that would be, within 106 feet or more of the shoreline, spaced at intervals of 20 feet and discontinuous, interruption to longshore sediment transport should be insignificant.

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

Staff Comment: The PRF design allows for maximum littoral drift and also minimizes interference with basic geohydraulic processes based upon the number and spacing of pilings. As described under Policy f, potential negative impact to littoral sediment drift is minimal.

- 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: This policy encourages public docking, launching and recreational access in single and joint-use facilities. As described by the applicant, the structure will be used for docking, launching and recreational access by the applicants and their guests only. The general public, however, does not have access to the beach and therefore would have no ability to utilize the PRF. General public use would not be anticipated on a private residential parcel.

- 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 PRF must use non-reflective materials, and construction must comply with the Washington State Department of Fish and Wildlife (WDFW) 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.

Staff Comment: The County received one comment letter opposing the dock proposal (Exhibit 18) stating concerns with the surrounding environment and land and water uses; decreased privacy, increased risk of personal liability and potential negative impacts to the ecology of the area.

Dock structures are absent from this area of Port Orchard Bay; thus, the current waterward view is uncompromised by their presence. Even though there are no docks, the proposed structure is consistent with single family residential homes on a developed shoreline in the urban low density residential zone and semi-rural shoreline environment.

According to the September 17, 2007 decision by the Hearing Examiner regarding Kessler and Cook Joint-Use dock (06-43907), "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 also apply to this application.

KCC 22.28.190.3. Environments and Permit Requirements.

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.

Staff Comment: The applicant has applied for an SSDP; therefore, the proposal is consistent with this environments and permit requirement.

b. Piers and docks are prohibited in the natural environment.

Staff Comment: The development is proposed in a semi-rural shoreline environment and not a natural shoreline environment.

KCC 22.28.190.3.4. General Regulations.

a. Individually owned, single-family residence piers and docks may be permitted where it can be demonstrated that a joint-use moorage facility is not feasible; however, multi-use and expansion of existing piers and docks is encouraged over the addition and/or proliferation of new piers and docks.

Staff Comment: Criteria (a) authorizes single use docks where an applicant can demonstrate the unavailability of joint use moorage. The applicant has made an unsuccessful attempt to utilize abutting neighbors' docks (Exhibits 12 and 13), and staff determined an extensive waiting period for a moorage slip at the Brownsville marina; however, the Bremerton marina does have available moorage slips. The applicant states that keeping his boats at one of the marinas would require him to keep a car at the facility since he customarily travels across the water from Seattle. The applicant states that the two marinas do not allow long term parking for cars.

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.

Staff Comment: The parcel is not located within a subdivision, nor is a subdivision proposed.

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

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: The applicant does not propose a structure that would be located landward of pierhead lines and state harbor lines. According to the Army Corps of Engineers, Harbor Lines are to

be located in the navigable waters of harbors, estuaries, bays and inlets of Washington in front of cities or within one mile of the city boundary on either side. Normally, the Harbor Line Commission establishes both an inner and outer harbor line to create a harbor area. There are currently 28 harbor areas throughout the state. The County understands that Harbor Line designation is not applicable to unincorporated towns or cities. Since this area of Kitsap County is unincorporated, the Harbor Line designation or requirement does not pertain in this case, and is unaffected by the Mead single-use dock project.

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: Information addressing these items has been submitted by the applicant through the permit application process. Regarding item 6, the applicant is currently mooring his motorboat on a buoy/anchor that also secures the existing recreational float.

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: WDFW has documented surf smelt spawning 300 feet to the North and 200 feet to the South from the center of the Mead residence (Exhibit 17). Agency personnel states that the area in the front of the residence is listed as potential forage fish habitat, which means the substrate is appropriate, but no eggs were found when it was inspected. WDFW further states that the closest documented sandlance spawning area is 561 feet to the North on the University Point proper. As such, Staff concludes that the proposed 106 foot long PRF would not cause potential for significant negative cumulative impacts to Port Orchard Bay. In conclusion, it cannot be established conclusively that a PRF of this length will be detrimental to the natural habitat or species of concern.

An intensive Macro Algae Habitat Survey (Exhibit 1) was conducted at a 0.0 foot high tide at the proposed construction site on August 4, 2008. Five transects were surveyed, revealing the absence of eelgrass and the presence of sparse macro algae. The dominant macro algae species was Ulva.

As such, the project complies with this policy.

h. Piers and docks on river shores are prohibited along braided or meandering river channels or where the river channel is subject to change in direction or alignment.

Staff Comment: The project would be located outside of this area of concern.

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 applicant's parcels are located within the semi-rural environment, which designates uses that the County has determined appropriate for the shoreline. Piers and docks are permitted subject to a SSDP in the semi-rural environments.

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: By changing the float configuration to an "L" shape, the overall length of the dock has been reduced from 120 feet to 106 feet, and still meets the required moorage service. The depth at the inshore end of the new float configuration is eight-feet. At an extreme low tide, there is still 4 feet of water, so the in-shore end of the float will reduce potential impacts to the benthic community from potential propeller scour. By changing the configuration of the float to an "L" shape, the 20 foot long motorboat can still access the boatlift, and can moor on the in-shore side of the float when not on the lift. The float helps protect the in-shore side in extreme wind conditions. The off-shore end of the float would allow 30 feet of moorage, which would be adequate for the 40 foot sailboat. The depth would be 16 feet, which is adequate for the draft and keel.

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

Staff Comment: The PRF design includes the installation of stoppers such that the bottom of the floatation device would be one foot above the level of the substrate.

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 applicant must comply with all conditions of the 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. Based on above analysis and findings, Staff recommends **APPROVAL** of the 106-foot long Mead Single-Use Moorage Facility.

Staff Conditions:

1. Pursuant to SEPA substantive authority at KCC 18.04.200(A) and (D)(3)(b), and Shoreline Management Master Program Policies at KCC 22.28.190(2)(e) and (j), the pier, ramp and float shall not extend greater than 106 feet waterward from the bulkhead.
2. The proposal shall comply with all mitigating conditions specified in the Mitigated DNS dated August 4, 2009, incorporated herein via conditions for compliance with applicable local, state

and federal regulations.

3. The pier, ramp and float shall be limited to a maximum 3 to 8 foot width and 106 foot length, and shall not be modified or changed in any way without further review by the Kitsap County Shoreline Administrator.
4. If approved, and once the PRF is constructed, the existing recreational float shall be removed.
5. The applicant shall obtain Washington Department of Fish and Wildlife Hydraulic Project Approval (HPA; RCW 77.20, WAC 220-110) and any other state and federal required permits and/or approvals associated with the proposed project as determined by the Washington State Department of Fish and Wildlife (WDFW) prior to construction.
6. Construction shall comply with applicable regulations established by the U.S. Army Corps of Engineers for work below mean high water.
7. A building permit will be required from Kitsap County Department of Community Development prior to pier, ramp and float construction.
8. The proposed development shall be maintained so that it does not damage shore resources, other properties or otherwise create a public nuisance.
9. All debris and deleterious material will not be disposed of or abandoned waterward of ordinary high water or allowed to enter waters of the state.
10. Construction debris will be wholly removed from the water and shoreline. Disposal will occur in accordance with all applicable agencies' laws and regulations, including Kitsap County Department of Community Development and the Department of Ecology.
11. All pier and dock development will be marked with reflectors, or otherwise identified so as to prevent unnecessarily hazardous conditions for water surface users during day or night. Exterior finish will be generally non-reflective.
12. No pier, dock or watercraft or houseboat moored thereto, may be used for a residence.
13. Piers and docks will be constructed of materials which will not adversely affect water quality or aquatic plants and animals over the long term. Wood or pilings treated with creosote, pentachlorophenol or other similarly toxic materials will not be used.
14. Storage of fuel, oils, and other toxic materials is prohibited on docks.
15. The contractor will have oil-absorbent materials on site to be used in the event of a spill or if any oil product is observed in the water.
16. Upon final permit issuance, construction will commence within two years of the effective date of the Shoreline Variance as defined by WAC 173-27-090 (3), provided that the Kitsap County Hearing Examiner may authorize a single extension for a period not to exceed one year based on reasonable factors if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the Department of Ecology. Permit authorization to construct the dock will terminate five years after the effective date of the Shoreline Variance as defined by WAC 173-27-090 (3), provided that the Kitsap County Hearing Examiner may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and

notice of the proposed extension is given to parties of record and the Department of Ecology.
No exceptions are allowed unless provided for by law.

cc:

Applicants

Applicants Representative

DCD File

DCD Development Engineering

Kitsap County Health District

DCD Staff Planner, Lisa Lewis

Clerk of Hearing Examiner, Karen Ashcraft

Suquamish Tribe, Alison O'Sullivan

Port Gamble S'Klallam Tribe, Hans Daubenburger

WDFW, Chris Waldbillig

WDOE, Joe Burcar

Interested Parties