



Kitsap County Hearing Examiner

ADMINISTRATION BUILDING, 619 DIVISION ST, MS-36
http://www.kitsapgov.com/dcd/lu_env/he/

PORT ORCHARD, WA 98366
(360) 337-5777

NOTICE OF HEARING EXAMINER DECISION

March 24, 2016

To: Interested Parties and Parties of Record

RE: Project Name: Sprague & McNeil Shared Pier, Ramp, Float and Tram Access
Applicant: Scott Sprague & Jeanne McNeil
8295 Fletcher Bay Rd
Bainbridge Island, WA 98110
Application: Shoreline Substantial Development Permit
Permit Number: 15 002338

Enclosed is the Decision issued by the Kitsap County Hearing Examiner in the above-referenced matter.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at: http://www.kitsapgov.com/dcd/lu_env/HE%20Rules%20for%20Kitsap%20County%20-%206-23-09.pdf

The Decision of the Hearing Examiner is final, unless appealed, as provided under Washington law.

Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360-337-5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review at the Department of Community Development, Monday through Thursday, 8:00 AM to 4:00 PM and Friday 9:00 AM to 1:00 PM, except holidays. If you wish to view the case file or have other questions, please contact Constance Blackburn at cblackburn@co.kitsap.wa.us or (360) 337-5777.

Cc Applicant and/or Rep:

Scott Sprague and Jeanne McNeil: sbsnjem@gmail.com
Ross and Ingrid McNeil: 825 Peddie Street Houston, Texas 77008-4553

Cc Interested Parties:

Janette Keiser: jan@keisergroup.com

**BEFORE THE HEARING EXAMINER
FOR KITSAP COUNTY**

In the Matter of the Application of)	No. 15 02338
)	
Scott Sprague)	Sprague & McNeil Shared Tram, Pier, Ramp, & Float
)	
For Approval of a Shoreline Substantial)	FINDINGS, CONCLUSIONS,
<u>Development Permit</u>)	AND DECISION

SUMMARY OF DECISION

The request for a shoreline substantial development permit to construct a shared-use tram, pier, ramp, and float at 15734 and 15748 Virginia Point Road NE in Poulsbo, Washington, is **APPROVED**. Conditions are necessary to mitigate project impacts and to ensure the proposal complies with federal, state, and local statutes, ordinances, and regulations.¹

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on March 10, 2016.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Steve Heacock, County Senior Environmental Planner
Scott Sprague, Applicant
Jeanne McNeil

Exhibits:

The following exhibits were admitted into the record:

1. Project Application–Land Use, Environmental, & Site Development, received June 17, 2015
2. Joint Aquatic Resources Permit Application (JARPA) Form, received June 17, 2015
3. Site Plan Overview, dated June 24, 2013
4. Dock Design Plans, dated June 7, 2015
5. Tram Design Plans, dated March 25, 2015
6. Site Photographs (3 Total), undated
7. Joint Use Agreement, dated September 3, 2013

¹ The County has codified its Shoreline Master Program. *Kitsap County Code (KCC) 22.100.110*. Accordingly, conditions requiring compliance with local ordinances would ensure the project conforms to the County SMP.

8. Army Corps of Engineers Letter of Permission, dated February 12, 2015
9. Geological Assessment Report, EnviroSound Consulting, Inc., dated May 4, 2015
10. Biological Evaluation, Marine Surveys & Assessments, dated November 29, 2013
11. Environmental Checklist, dated June 7, 2015
12. Site Plans (4 Sheets), dated March 15, 2013
13. Notice of Application, dated August 10, 2015
14. Mitigated Determination of Nonsignificance, dated September 29, 2015
15. Notice of Public Hearing, dated January 28, 2016
16. Staff Report, dated February 3, 2016
17. Certification of Public Notice, dated February 3, 2016
18. Notice of Postponed/Rescheduled Hearing, dated February 10, 2016

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Application and Notice

1. Scott Sprague (Applicant) requests a shoreline substantial development permit (SSDP) to build a joint-use beach access tram, pier, ramp, and float (PRF) at 15734 and 15748 Virginia Point Road NE in Poulsbo, Washington.² The proposed aluminum pier would be 8 feet wide and 84 feet long, the proposed aluminum ramp would be 4 feet wide and 41 feet long, and the proposed float would be 8 feet wide and 60 feet long. The Applicant proposes installation of a tram to provide access to the PRF. The tram would be cable supported, which would eliminate the need for construction on the slope, and anchored 16 feet back from the top of the slope and at the toe of the slope. *Exhibit 1; Exhibit 2; Exhibit 11; Exhibit 14; Exhibit 16, Staff Report, page 1.*
2. On June 17, 2015, Kitsap County (County) deemed the application complete. On August 5, 2015, the County published notice of the application in the *Kitsap Sun*. Five days later, the County mailed notice of the application to the Applicant, property owners within 800 feet of the subject property, and various governmental and tribal entities. The County received no comments about the proposed project. The County posted notice of the open record hearing associated with the application, originally scheduled for February 11, 2016, at the property on January 27, 2016. The next day, the County published notice of the open record hearing in the *Kitsap Sun* and mailed notice to the Applicant and property owners within 800 feet. On February 10, 2016, the County postponed the open record hearing until March 10, 2016. That same day, the County mailed notice of the postponement to property owners within 800 feet. County Senior Environmental Planner

² The Tax Assessor Numbers associated with the properties are 352601-1-077-2000 and 352601-1-078-2009. A legal description of the project site is included with the Joint Aquatic Resources Permit Application. *Exhibit 1; Exhibit 2.*

Steve Heacock testified that notice of the postponement was also transmitted to all relevant governmental entities. *Exhibit 16, Staff Report, page 5; Exhibit 17; Exhibit 18; Testimony of Mr. Heacock.*

State Environmental Policy Act

3. The County acted as lead agency and analyzed the environmental impacts of the project, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The County used the optional Determination of Nonsignificance (DNS) process under Washington Administrative Code (WAC) 197-11-355, and the SEPA comment period occurred concurrently with the Notice of Application. The County published notice of the SEPA comment period in the *Kitsap Sun* on August 5, 2015, and mailed notice of the SEPA comment period to the Applicant, property owners within 800 feet, and certain governmental and tribal entities five days later. The County received no comments on the proposed project. The County analyzed the Applicant's SEPA Checklist and other available information and issued a Mitigated Determination of Nonsignificance (MDNS) on September 29, 2015. The MDNS conditions require the Applicant to obtain a Hydraulic Project Approval (HPA) permit from the Washington Department of Fish and Wildlife (WDFW) and a building permit from the County before beginning construction. The MDNS also requires the Applicant to perform mitigation for the project. This mitigation includes removing an existing pier and float, with the accompanying creosote pilings, and removing invasive species from the shoreline of the two properties. The MDNS was not appealed. *Exhibit 14; Exhibit 16, Staff Report, page 3.*

Comprehensive Plan, Zoning and Surrounding Property

4. The property is designated Rural Protection in the County Comprehensive Plan. The County adopted the Rural Protection designation to promote low-density development that is consistent with rural character and that protects environmental features such as significant visual, historical, or natural features, wildlife corridors, steep slopes, wetlands, streams, and adjacent critical areas. *Kitsap County Comprehensive Plan (December 2012), page 3-39. Exhibit 11; Exhibit 16, Staff Report, page 13.*
5. County staff identified as relevant to the proposed project Comprehensive Plan policies that encourage developers to enhance or restore wildlife habitat by transplanting or planting native vegetation in the developed landscape; limit development only to that which serves rural residential or resource needs in rural lands; require that land-use activities within or adjacent to resource lands are sited and designed to minimize conflicts with, and impacts on, resources lands; encourage the use of best management practices for all resource activities; preserve and restore shoreline characteristics; encourage and support shoreline diversity through planned and coordinated development that gives preference to water-dependent uses, traditional and historic use patterns, resource values, and environmental protection; and safeguard shoreline resources by only allowing

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development that is compatible with sensitive shoreline areas.³ *Exhibit 16, Staff Report, pages 5 and 6.*

6. Mr. Heacock testified that the property is zoned Rural Protection. The County adopted the Rural Protection zone to implement the County Comprehensive Plan's Rural Protection designation. *Kitsap County Comprehensive Plan (December 2012), page 3-38; Kitsap County Code (KCC) 17.305.010.* The County has zoned the surrounding properties, which are developed with single-family residences, Rural Residential. *Exhibit 11; Exhibit 16, Staff Report, page 3; Testimony of Mr. Heacock.*

Existing Property

7. The project site consists of two 18,250 square foot parcels located on Liberty Bay. A single-family residence sits on each parcel. Liberty Bay is an estuarine habitat into which several creeks drain. A steep slope divides the upland properties from the shoreline. Invasive ivy and blackberries currently grow on the slopes. A biological survey performed by Marine Surveys & Assessments found no eelgrass colonies growing in the project vicinity and determined that the bay was barren of life at the site. A 398 square foot wood ramp and float, with three associated creosote pilings, sits on the shoreline of the project site. *Exhibit 1; Exhibit 2; Exhibit 3; Exhibit 5; Exhibit 10; Exhibit 11; Exhibit 12; Exhibit 16, Staff Report, pages 1 and 3 through 4.*

Shoreline Management Act

8. The proposal is subject to the State Shoreline Management Act (SMA), Chapter 90.58 RCW, and the County's Shoreline Master Program (SMP). The primary goal of the SMA is to protect the public interest in the state's shorelines through a coordinated development process. The legislature enacted the SMA to protect against adverse effects to public health, the land, vegetation, wildlife, and waters, and to preserve the public's opportunity to enjoy the physical and aesthetic qualities of the natural shoreline. Permitted uses in the shorelines must be designed and conducted in a manner to minimize damage to the ecology and environment of the shoreline area and to minimize any interference with the public's use of the water. *RCW 90.58.020.* Single-family residences and appurtenant structures are priority structures under the SMA. *RCW 90.58.020.*
9. The purpose of the County SMP is to guide the future development of shorelines in Kitsap County in a manner consistent with the SMA. *KCC 22.100.110.* Consistent with the SMA, the County SMP requires the issuance of a shoreline substantial development permit before any substantial development occurs on county shorelines. *KCC 22.500.100.B.* The SMA defines *substantial development* as any development for which

³ Staff specifically identified Comprehensive Plan policies NS-42, RL-4, RL-39, RL-42, SH-1, SH-2, and SH-4 as relevant to the proposed project. *Exhibit 16, Staff Report, pages 5 and 6.*

the total cost or fair market value exceeds \$6,416, adjusted for inflation every five years, or any development that materially interferes with the normal public use of the water or shorelines of the state. *RCW 90.58.030(3)(e)*. Regulations implementing the SMA construe exemptions from the shoreline substantial development permit process narrowly. *Washington Administrative Code (WAC) 173-27-040(1)(a)*. If any part of a development is not eligible for exemption from the shoreline substantial development permit process, then an SSDP is required for the entire development project. *WAC 173-27-040(1)(d)*. The Applicant estimates that the fair market value of the project at approximately \$80,000. *Exhibit 2*.

10. The SMA designates certain shoreline areas as shoreline areas of statewide significance. *RCW 90.58.030*. Such shorelines include those areas of the Puget Sound and adjacent salt waters lying seaward from the line of extreme low tide. *RCW 90.58.030(f)(iii)*. The County must review all development proposals on a shoreline of statewide significance for consistency with the purposes of the SMA and with policies that require it to recognize and protect the statewide interest over local interest, preserve the natural character of the shoreline, favor long-term over short-term benefit, protect the resources and ecology of the shoreline, increase public access to publicly owned areas of the shorelines, and increase recreational opportunities for the public on the shoreline. *KCC 22.300.145.B. Exhibit 16, Staff Report, pages 9 through 13*.
11. The County has included the portion of the property landward of the ordinary high water mark (OHWM) in its Residential shoreline environment. The County adopted the Residential shoreline environment to accommodate residential development and appurtenant structures that are consistent with the County SMP and to provide appropriate public access and recreational uses. *KCC 22.200.115.A*. Mooring structures, such as the PRF proposed by the Applicant, *KCC 22.150.430*, are permitted in the Residential shoreline environment with an SSDP. *KCC 22.600.160.A.2*. The County SMP, at *KCC 22.200.115.C*, prescribes several relevant management policies for the Residential shoreline environment that include:
 - setting standards for buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality to ensure no net loss of shoreline ecological function;
 - requiring multifamily and multi-lot residential and recreational developments to provide, where possible, public access and joint use for community recreational activities;
 - requiring adequate access, utilities, and public services to serve existing needs or planned future development; and
 - limiting commercial development to water-oriented uses.
12. The County applies the Aquatic environmental designation to lands waterward of the OHWM, including tidelands, bedlands, and lands beneath the freshwater shorelines of the

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state. KCC 22.200.135.B. The County adopted the Aquatic environment to protect, restore, and manage the unique characteristics and resources of areas waterward of the OHWM. KCC 22.200.135.A. The County SMP, under KCC 22.200.135.C, prescribes a number of relevant management policies applicable in the Aquatic environment. These include:

- allowing new over-water structures and development on navigable waters and their beds only for water-dependent uses, public access, and ecological restoration, and only when (1) the structure or development does not preclude ecological restoration; (2) the size of the structure or development is the minimum necessary to support the use; (3) multiple use of the over-water facility has been encouraged; (4) the Applicant has designed and located the structure to minimize its impacts on navigation, fish migration, and existing water-dependent uses; and (5) the use or modification is designed to prevent degradation of water quality and alteration of natural hydrographic conditions. KCC 22.200.135.C.1.
 - preferring that new over-water structures proposed for residential development of two or more dwellings be joint-use or community docks rather than single-use facilities. KCC 22.200.135.C.2.
 - preferring development that be compatible with the adjoining upland development. KCC 22.200.135.C.3.
 - preferring that applicants schedule a staff consultation to review the site conditions and potential habitats and species. KCC 22.200.135.C.5.
 - limiting development in or over critical freshwater or saltwater habitats to mitigate impacts according to mitigation sequencing and development standards for that development activity. KCC 22.200.135.C.6.
13. The County SMP lists several standards for work waterward of the OHWM. The standards exempt water-dependent, in-water structures from shoreline buffers; require an applicant to obtain all necessary state and federal permits and approvals; require compliance with timing restrictions set forth by state and federal project approvals; require an applicant to limit disturbance of the bank and vegetation and to restore and protect from erosion any disturbed area; and require an applicant to immediately notify the appropriate agency if water quality problems develop as a result of in-water work. *KCC 22.400.105.B.*
14. The County provided notice of the proposed project to relevant state, federal, and local agencies, but none expressed concern about the proposal. *Exhibit 16, Staff Report, page 8.*
15. Mr. Sprague testified that the proposed PRF would use modern materials and would be largely prefabricated. Mr. Sprague explained that the use of aluminum and fiberglass materials would allow for a PRF design with a minimal number of support pilings and also for significant light penetration through the entire PRF. These materials would also

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allow for a design minimizing the footprint of the PRF. Minimizing the number of pilings would reduce the noise impacts generated by project installation. Prefabrication of the PRF would minimize in-water construction time and any associated increases in turbidity from installation of the PRF. Mr. Sprague also testified that the Applicant would install the PRF in accordance with work windows approved by the Army Corps of Engineers. Those work windows are designed to minimize installation impacts on aquatic species. *Exhibit 8; Exhibit 14; Exhibit 16, Staff Report, pages 9, 12, and 13; Testimony of Mr. Sprague.*

16. Mr. Heacock testified that the County SMP, in effect since December 24, 2014, requires applicants to seek necessary federal permits before applying for an SSDP for a dock project and that the Applicant sought those permits. The National Marine Fisheries Service and the United States Fish and Wildlife Service each reviewed the project and both determined that the project would not likely adversely affect endangered species.⁴ The United States Army Corps of Engineers also reviewed the project for consistency with the Endangered Species Act and the Magnuson-Stevens Fishery Conservation Management Act and determined that it complied. The Corps of Engineers issued a letter of permission for the project, dated February 12, 2015. Mr. Heacock also testified that the Applicant had received hydraulic project approval for the PRF from WDFW. *Exhibit 8; Testimony of Mr. Heacock.*
17. The Applicant proposes mitigating any project impacts in two ways. First, the Applicant would remove an existing PRF. Mr. Heacock testified that PRF was constructed using creosote pilings and pressure treated wood. He explained that, because the existing PRF was constructed with wood decking, it failed WDFW's current light penetration standards. Mr. Heacock further testified that the existing PRF had reached the end of its useful lifespan, and Mr. Sprague confirmed that testimony by stating that the PRF had begun to fall apart and that pieces of wood would eventually break off and drift into the bay. Second, the Applicant would remove invasive species, specifically blackberry and ivy, from the slope of the project site. Mr. Sprague's wife, Jeanne McNeil, who would oversee the removal of the invasive species, testified that she intended to retain vegetation providing wildlife habitat, such as a plum tree, while removing the blackberries and ivy. The Applicant would supplement the retained vegetation by planting native species in accordance with a mitigation and planting plan submitted to the County along with the building permit application for the project. *Exhibit 14; Exhibit 16, Staff Report, page 1; Testimony of Mr. Heacock; Testimony of Mr. Sprague; Testimony of Ms. McNeil.*

⁴ The National Marine Fisheries Service made its determination in NMFS Reference Number WCR-2014-1334, dated October 20, 2014. The United States Fish and Wildlife Service made its determination in USFWS Reference Number 01EWF00-2014-I-6023, dated August 27, 2014. *Exhibit 8.*

18. Mr. Heacock testified that the slopes at the site are quite steep. The Applicant currently uses a stairway to access the existing PRF, but would use the tram after its completion. EnviroSound Consulting, Inc., which prepared a geological assessment for the project, determined that installation of the tram would not significantly impact slope stability. Although not cited by the Applicant as a mitigation measure, Mr. Heacock opined that the proposed tram would greatly reduce the impacts of transit up and down the slopes. *Exhibit 2; Exhibit 9; Exhibit 16, Staff Report, page 1; Testimony of Mr. Heacock.*
19. Mr. Sprague explained that the proposed PRF would be built on the property line dividing the two parcels comprising the project site. He and his wife own one of the parcels, his wife's brother's family owns the other. The two families executed a joint-use agreement governing construction of, and access to, the PRF. *Exhibit 7; Testimony of Mr. Sprague.*
20. Mr. Sprague testified that the current PRF was insufficient to allow moorage of the Applicant's sailboat. County staff determined that the proposed PRF was the minimum necessary to support its intended use, moorage for the Applicant's sailboat. *Exhibit 16, Staff Report, page 12; Testimony of Mr. Sprague.*
21. The height of the PRF allows for public use of the beach below it. The design and placement of the PRF allows for public use of Liberty Bay. *Exhibit 16, Staff Report, pages 11 and 12.*
22. Mr. Heacock testified that the Applicant sought an intake meeting with County staff members. During that meeting, staff advised the Applicant on how to proceed with the project. *Exhibit 16, Staff Report, page 13; Testimony of Mr. Heacock.*

Staff Recommendation

23. County staff recommends approval of the SSDP application, with 22 conditions. These conditions generally require the Applicant to comply with relevant ordinances, statutes, and regulations; limit disturbance of the bank and bank vegetation; restore disturbed areas to minimize erosion; commence PRF construction within 2 years of SSDP approval and finish within 5 years; comply with the setback provisions of the KCC when installing the tram; comply with approved work windows; report any sighting of forage fish spawning; contain and remove any debris generated by installation; minimize visual impacts of the proposed project and its installation; apply best management practices to construction of the PRF; and remove the 4,600 square feet of invasive species required as a mitigation measure by the MDNS before obtaining an occupancy permit. Mr. Sprague testified that the Applicant had no objections to the conditions proposed by the County. *Exhibit 16, Staff Report, pages 16 through 18; Testimony of Mr. Sprague.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide shoreline substantial development permit applications as a Type III permit decision. *KCC 21.04.050.A.3; KCC 21.04.100; KCC 22.500.100.B.2; KCC 22.500.105.*

Criteria for Review

Shoreline Substantial Development Permit

The SMA provides that no substantial development shall be undertaken on the shoreline of the state without first obtaining an SSDP. Regardless of whether a development constitutes a substantial development, a development must comply with the requirements contained in the SMA and the County SMP, and other permits or approvals under the SMP may be required. Permits may be issued with conditions or limitations that ensure consistency with the SMA and the SMP. *KCC 22.500.100.B.4.*

The Applicant has the burden of proof to establish that the development is consistent with the SMA, the SMP, and any other applicable County policies and regulations. Upon consideration of the evidence offered at the public hearing, the Hearing Examiner will issue a decision containing findings of fact and conclusions describing the manner in which the decision is consistent with the SMA and the SMP. *KCC 22.500.105.E.1.*

Shoreline Management Act, Chapter 90.58 RCW

The SMA is codified at RCW 90.58.020. Applicable policies of RCW 90.58.020 include those to foster “all reasonable and appropriate uses”; protect against adverse effects to the public health, the land, vegetation, and wildlife; and give priority to single-family residences and appurtenant structures in authorizing alterations to the natural condition of the shoreline. Permitted shoreline uses must be designed to “minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water.” *RCW 90.58.020.*

Shoreline Management Act Regulations

The Department of Ecology shoreline regulations are located in Chapters 173-26 and 173-27 of the Washington Administrative Code (WAC). Chapter 173-26 WAC sets forth procedures and guidelines for local adoption of shoreline master programs that are not applicable to the Applicant’s permit request. Chapter 173-27 WAC sets forth permitting procedures and permit criteria. The Hearing Examiner reviews the application under the following criteria:

- (1) A substantial development permit shall be granted only when the development proposed is consistent with:
 - (a) The policies and procedures of the act;
 - (b) The provisions of this regulation; and
 - (c) The applicable master program adopted or approved for the area.
Provided, that where no master program has been approved for an

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area, the development shall be reviewed for consistency with the provisions of chapter 173-26 WAC, and to the extent feasible, any draft or approved master program which can be reasonably ascertained as representing the policy of the local government.

- (2) Local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the local master program.

WAC 173-27-150.

Thus, the Hearing Examiner must review the application in light of the goals and policies found in Title 22 KCC.

Kitsap County Comprehensive Plan Goals and Policies

Comprehensive Plan goals and policies protect sensitive shorelines from the negative impacts of development, including risks to ecology, property, and human health. *Comprehensive Plan, Shorelines Element, Section 9.4, page 9-3 (August 2012)*. Comprehensive Plan goals and policies address conservation and resource protection, shoreline use, water quality, economic development, public access, recreation, history and culture, aesthetics, natural systems, and transportation. *Comprehensive Plan, Shorelines Element, Section 9.4, pages 9-3 to 9-8 (August 2012)*.

The criteria for review adopted by the Kitsap County Board of Commissioners are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with County development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040*.

Conclusions Based on Findings

- 1. With conditions, the proposed project would be consistent with the Kitsap County Shoreline Management Master Program (SMP) and other applicable County policies and regulations, including those requiring no net loss of ecological function from the project and preferring joint-use facilities.** The County gave reasonable notice of the application and opportunity to comment. The fair market value of the proposed project makes it a substantial development under the County SMP, necessitating an SSDP. The County SMP permits piers and docks in the Residential shoreline environment with an SSDP. The Applicant seeks to build a PRF, a use that is consistent with the purposes of the Residential shoreline environment with an SSDP. The proposed PRF would use the minimum number of pilings and is designed to meet current standards for light penetration. The Applicant would install the proposed PRF over a barren portion of Liberty Bay, and installation would not disturb any eelgrass colonies. The Applicant would mitigate any project impacts in two ways. First, the Applicant would remove an existing PRF, constructed with creosote pilings and wooden

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decking, that is at the end of its useful life. Second, the Applicant would remove invasive species from the upland slope of the project site and replant the disturbed areas with native species. The Applicant would install a cable-supported tram, reducing impacts from transit to and from the beach. The County determined that, with mitigation measures and conditions, the proposed project would not have a probable significant, adverse environmental impact, and the determination was not appealed. The National Marine Fisheries Service and the U.S. Fish and Wildlife Service both determined that, with conditions, the proposed project would either not affect, or not likely adversely affect, ESA listed species and critical habitat. The Applicant has proposed a PRF of the minimum length necessary to support the proposed use, moorage of the Applicant's sailboat. The Applicant signed a joint-use agreement with the owners of the neighboring parcel. The PRF height would allow public beach use beneath it, and the proposed project's design and location would not interfere with the public's use of the bay.

Conditions are necessary to mitigate specific project impacts and ensure compliance with federal, state, and local statutes, ordinances, and regulations. These conditions generally require the Applicant to comply with relevant County, state, or federal ordinances, statutes, or regulations; limit disturbance of the bank and bank vegetation; restore disturbed areas to minimize erosion; commence PRF construction within 2 years of SSDP approval and finish within 5 years; comply with the setback provisions of the KCC when installing the tram; comply with approved work windows; report any sighting of forage fish spawning; contain and remove any debris generated by installation; minimize visual impacts of the proposed project and its installation; apply best management practices to construction of the PRF; and remove the invasive species before obtaining an occupancy permit. *Findings 1-23.*

2. **With conditions, the proposed project would be consistent with state Shoreline Management Act policies, guidelines, and rules.** The scope and cost of the proposed project require an SSDP under the SMA. The SSDP request is evaluated individually for its compliance with the County SMP, based on facts in the record, and for consistency with SMA policies, purposes, and regulations. As discussed above, the County SMP permits piers and docks in the Residential shoreline environment with a SSDP. With conditions and mitigation measures, the project would not adversely affect the shoreline ecology or environment. The proposed PRF does not impede public use of the shoreline or the waters of the bay. As described above, conditions are necessary to mitigate specific project impacts and ensure compliance with federal, state, and local statutes, ordinances, and regulations. *Findings 1-23.*

DECISION

Based on the preceding findings and conclusions, the request for a shoreline substantial development permit to build a shared-use tram, pier, ramp, and float, at 15734 and 15748 Virginia Point Road NE in Poulsbo, Washington, is **APPROVED**. Conditions are necessary to

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mitigate specific impacts of the proposed development and to ensure compliance with existing County ordinances:

GENERAL

1. Alteration or disturbance of the bank and bank vegetation must be limited to that necessary to perform the in-water work.
2. All disturbed areas must be restored and protected from erosion using vegetation or other means.
3. If, at any time, water quality problems develop as a result of in-water work, immediate notification must be made to any appropriate state or federal agency, e.g., Ecology, WDFW, National Marine Fisheries Service, U.S. Fish and Wildlife Service, etc. Affected tribes shall also be notified.
4. Upon final SSDP issuance, all construction within the shoreline jurisdiction 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.
5. The project shall comply with all state and federal requirements, where applicable.
6. Permit approval subject to conditions in the Hearing's Examiner Decision.

PLANNING/ZONING

7. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
8. The uses of the subject property are limited to the uses proposed by the Applicant and any other uses will be subject to further review pursuant to the requirements of the Kitsap County Code (KCC). Unless in conflict with the conditions stated and/or any regulations, all terms and specifications of the application shall be binding conditions of approval. Approval of this project shall not, and is not, to be construed as approval for more extensive or other use of the subject properties.
9. The decision set forth herein is based upon representations made and exhibits contained in the project application for the Shoreline Substantial Development Permit (SSDP) 15 02338. Any changes or deviations from such plans, proposals, or conditions of approval imposed shall be subject to further review and approval of the County and potentially the Hearing Examiner.
10. The authorization granted herein is subject to all applicable federal, state, and local laws,

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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.

11. Any violation of the conditions of approval shall be grounds to initiate revocation of this Shoreline Substantial Development Permit.
12. The proposed tram structure on tax parcel 352601-1-077-2000 shall comply with the required 5-foot side yard setbacks from both the north and south property lines.

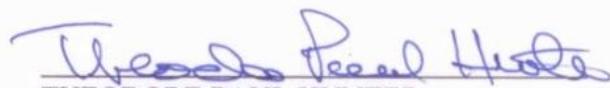
ENVIRONMENTAL

13. Timing of the in-water work shall be as specified in the JARPA, Biological Evaluation, HPA, Corps of Engineers or other authorized regulatory agencies.
14. Where forage fish spawning is documented or reported, additional testing may be requested of WDFW to vary work windows. Site inspection, notification and scheduling shall be per WDFW procedures.
15. Work on projects shall be accomplished per the submitted and approved drawings and specifications.
16. All man made debris involved in the construction process shall be removed from the site and disposed in approved upland site.
17. All required in-water construction shall be conducted within the permitted work window.
18. Over-water construction may need to be completed after the in-water work window due to the very limited time frame of the in-water work window. This work may include installation of the floating structures. Over-water work shall be conducted under the following procedures:
 - a. All materials shall be moved by hand equipment or small barges that shall bring materials to the site but shall not be allowed to ground or in any way be detrimental to the site.
 - b. The floating structures shall be constructed at an upland off-site location and installed as modular units.

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- c. All over-water remaining construction completed with hand tools and small relatively quiet power tools, i.e., skill saw, ½" electric drill, etc.
 - d. Typical construction times to complete a dock will be 7 to 14 days.
19. All possible precautionary measure will be taken to contain material, material wastes or any other foreign material on project site.
20. Over-water structures and/or equipment, and any items stored upon such structures such as materials, garbage, tools, or apparatus, shall be designed and maintained to minimize visual impacts. The maximum height for items stored upon such structures shall be limited to three feet, as measured from the surface of the float or the dock, unless shoreline conditions serve to minimize visual impacts (for example: high bank environments, shorelines without residential development), but in no case shall the height exceed six feet. Height limitations do not apply to materials and apparatus removed from the site on a daily basis. Materials that are not necessary for the immediate and regular operation of the facility shall not be stored waterward of the OHWM.
21. Lastly, the "Best Management Practices for Marinas" produced by the U.S. Environmental Protection Agency (U.S. EPA, 2012) as well as the "Marina Best Management Practice (BMPs)" by Clean Marina Washington (Clean Marina Washington, 2015) are required for in-water work and operation of the proposed floating structures.
22. The Applicant shall remove the 4,600 square feet of invasive blackberries and ivy required as a mitigation measure in the MDNS dated September 29, 2015, from the slopes of the two parcels comprising the project site prior to the issuance of any occupancy permit.

DECIDED this 22nd day of March 2016.



THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center

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