



## Notice of Hearing Examiner Decision

06/03/2019

To: Interested Parties and Parties of Record

RE: Project Name: LEFLER AND CARSTENSEN – Pier/Ramp/Float  
Complete Replacement, Shoreline Substantial  
Development Permit Residential  
Applicant: Dennis Carstensen, [dencarst@gmail.com](mailto:dencarst@gmail.com)  
37649 Teel Ln NE, Hansville WA  
Application: Shoreline Substantial Development Permit -  
Residential (SSDP-RES)  
Permit Number: 16-03549

Enclosed is the Decision issued by the Kitsap County Hearing Examiner for the above project.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at:

<https://spf.kitsapgov.com/dcd/HEDocs/HE-Rules-for-Kitsap-County.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 [Help@Kitsap1.com](mailto:Help@Kitsap1.com) or (360) 337-5777.

CC: Co-Owner/Applicant: LEFLER, GEORGE, [geolorie@comcast.net](mailto:geolorie@comcast.net) &  
CARSTENSEN, DENNIS, [dencarst@gmail.com](mailto:dencarst@gmail.com)  
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Health District  
Public Works  
Navy  
DSE

North Kitsap Fire District  
North Kitsap School District  
Puget Sound Energy  
Water Purveyor  
Point No Point Treaty Council  
WA Dept. of Fish & Wildlife  
WA Dept. of Transportation/Aviation  
WA State Dept. of Ecology-SEPA  
WA State Dept. of Ecology-Shoreline Review  
Interested Parties:

Tom & Mary Nelson, [nelson@usa.net](mailto:nelson@usa.net)

Wendy Hallett & Randall Sprague, [randallsprague@gmail.com](mailto:randallsprague@gmail.com)

Lawrence Edwards, [edwards@memphis.edu](mailto:edwards@memphis.edu)

Bradley & Sylvia Luton, 37267 Teel Ln NE, Hansville WA 98340

Driftwood Key Club, [acc@driftwoodkey.org](mailto:acc@driftwoodkey.org)

Tammy Saccayanan – Dept. of Ecology, [TSAC461@ECY.WA.GOV](mailto:TSAC461@ECY.WA.GOV)

Boughton, Bert 'Dee', [dee@crosssoundlaw.com](mailto:dee@crosssoundlaw.com)

Chuck Mickelson, [president@driftwoodkey.org](mailto:president@driftwoodkey.org)

Adjacent Property Owners within 800' radius

**KITSAP COUNTY HEARING EXAMINER  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

**Shoreline Substantial Development Permit - Residential,  
Lefler and Carstensen, File No. 16-03459**

**May 28, 2019**

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**1. FINDINGS OF FACT**

**1.1 Proposal.** The Applicants wish to replace and elongate their dock inside Coon Bay. Dredged out of estuarine habitat before Shoreline Management Act, Ch. 90.58 RCW, adoption, the Coon Bay shoreline is relatively denuded and vulnerable to erosion. The project will improve biological conditions by bringing the dock into line with current shoreline management practices.

Lengthening the dock will eliminate low tide boat grounding, which is damaging the tidelands, counter to County shoreline regulations. The dock's original creosote pilings will be removed and replaced with non-polluting materials and the structure's 100% over-water shading, which is adverse to salmonid biological needs, will be significantly reduced. New soft-shore armoring and vegetation will stem shoreline erosion and improve habitat conditions.

**Applicants/Owners:** George Lefler, 37645 Teel Lane NE, Hansville, WA 98340; Dennis Carstensen, 37649 Teel Lane NE, Hansville, WA 98370.

**Location:** 37645 Teel Lane NE, Hansville, WA 98340.

**Assessor's Numbers:** 4261-000-011-0003 and 4261-000-012-0002.

**1.2 Administrative Record.** The Hearing Examiner reviewed Exhibits 1-26 before the hearing. At the hearing, the Department of Community Development ("DCD") submitted a Power Point presentation as Exhibit 27, and two comments (one from Driftwood Key Club and the other from the Corps), which were admitted as Exhibits 28 and 29. The record was kept open through May 13. Two additional comments (comment from Mr. Lefler and a voice message transcription, accompanied by a photograph), were admitted as Exhibits 30 and 31. In response to an Examiner clarification request, DCD provided the Compensatory Mitigation Plan, which the Applicant's biologist and DCD addressed at the hearing. It was admitted as Exhibit 32.

**1.3 Project Description.** The dock replacement and extension removes the existing 102 foot long (91' overwater) pier, ramp and float. The current structure includes an un-grated wood pier (6' x 20') supported by two creosote piles; a non-grated aluminum ramp (4' x 36'); and, a non-grated float (8' x 36') which three creosote wood piles support. The 151 foot long replacement structure (140 feet over water), includes:

- 100% grated aluminum pier (6' x 59' with 48 feet overwater) supported by two 10 inch diameter galvanized steel piles;
- 100% grated aluminum ramp (4' x 40', spanning 32'); and,
- 50% grated float (8' x 60') supported by five 10 inch galvanized steel piles.

**1.4 Technical Analysis and Mitigation.** A Technical Memorandum details how the project exceeds no net loss of shoreline ecological functions requirements.<sup>1</sup> A PRF Replacement Mitigation Plan and No Net Loss Report detail the planting of 1,100 square feet of native vegetation,<sup>2</sup> as does the Compensatory Mitigation Plan.<sup>3</sup> The vegetation is coupled with anchored logs to improve shoreline stability. The Navigation Study documents the lack of adverse impacts on Bay navigation<sup>4</sup> and the Geotechnical Report documents the site's geologic suitability for the improvements.<sup>5</sup> The project addresses the requirement that "[f]loats and watercraft shall not ground out at low tide and shall not be permitted to rest landward of MLLW [mean lower low water]."<sup>6</sup> There will be no net loss of ecological functions and processes.

**1.5 SEPA.** DCD issued a Determination of Non-Significance, which was not appealed,<sup>7</sup> and included these conditions:

- The proposal will be conditioned for Stormwater control per KCC Title 12.
- ... [A] Hydraulic Project Approval permit from Washington Department of Fish and Wildlife is required.
- ... [R]e-establishment and restoration of banks and the shoreline by implementation of the habitat restoration plan.
- A building permit is required....
- Grating is required in all sections of the pier, ramp and float.<sup>8</sup>

**1.6 Notice.** Hearing notice was provided through posting, publishing, and mailing, and application notice was provided through mailing and publishing.<sup>9</sup> No notice concerns were raised. Notice requirements were met.

**1.7 Land Use Designations.** The Comprehensive Plan and zoning designations are Rural Residential. Surrounding properties include single-family residences in the same zone. The shoreline designation is Shoreline Residential.

**1.8 Location.** The dock is "within Coon Bay, which has [Hood] Canal access through a narrow, dredged harbor entrance," and was dredged from tidelands in the 1960's.<sup>10</sup> With over 40 private docks, this is one of only two joint-use docks. Homeowner restrictions prohibit swimming, there is little fishing, and due to pollution, the Bay is closed to shellfish harvest. The home owner owned boat launch and marina gates are locked, with no public waterfront access to Coon Bay.<sup>11</sup>

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<sup>1</sup> Exhibit 20, pp. 6-8; KCC 22.600.160.

<sup>2</sup> Exhibit 7; Exhibit 20, Appendix B.

<sup>3</sup> Exhibit 32.

<sup>4</sup> Exhibit 19; KCC 22.600.160(C)(4)(b).

<sup>5</sup> Exhibit 15.

<sup>6</sup> KCC 22.600.160(C)(5)(c); Exhibit 19 (Navigational Study), pg. 4.

<sup>7</sup> Exhibit 22.

<sup>8</sup> See Exhibit 22, Conditions and Mitigation sections.

<sup>9</sup> Exhibits 14, 24 and 25.

<sup>10</sup> Exhibit 19 (Navigational Study), pg. 3.

<sup>11</sup> Exhibit 19 (Navigational Study), pg. 3.

The Navigational Study assesses boat movement through the Bay. The current dock is about 12% of the 750 foot shore-to-shore distance; the replacement dock will be about 19%. The project will not adversely affect boat traffic around the dock, and will improve non-motorized travel under the dock. Also, the site is isolated from normal marine traffic due to the adjacent Bird Sanctuary.<sup>12</sup> The project is illustrated at pg. 5, by superimposing the proposed project onto an aerial photograph.

**1.9 Agency Consultation.** Consultation with the Army Corps of Engineers and WDFW has occurred. WDFW's Hydraulic Project Approval and the Army Corps' 404 permit are both expected to issue this month.<sup>13</sup>

**1.10 Hearing.** The open record public hearing was held on May 9, 2019. DCD, through Mr. Heacock, summarized the proposal and how it meets code requirements. He provided a history of the area and summarized the ecological improvements. As DCD found the proposal consistent with requirements, it recommended approval with conditions. Testimony from the Applicant and public followed.

**1.10.1 Applicant Testimony.** Mr. Lefler described his ownership history, explaining he bought the property in 2002, and moved in around 2014. His biological consultant, Mr. Rehe, addressed project design.

Mr. Rehe is a biologist with North Fork Environmental. He was previously a WDFW habitat biologist and a Port of Tacoma lead biologist. The current dock structure is not compliant with shoreline requirements. This is due to several factors, including the creosote treated wood; 100% shading from the decking; and vessel grounding. The new design addresses these issues. It follows protocol on shading, and the float uses encapsulated material as opposed to the open Styrofoam seen in older docks. Also, the shared structure is preferred.

Mr. Rehe was retained to assist with local, state and federal permitting. An Army Corps Regional General Permit 6 has been applied for. This permit structure relies on an environmental calculator to address impacts and mitigation. This is a conservative model, with credits required for ecological protection. Credits were received for replacing the creosote pilings<sup>14</sup> and using graded material, but additional mitigation was necessary.

This resulted in adding shoreline planting and stabilization. In viewing the site, Mr. Rehe noticed the Bay was almost wholly devoid of large woody material. If it were a natural environment, that would have been everywhere. To address model requirements, the Applicant is installing a few logs, anchored to the shoreline, to mimic the natural environment. Vegetation will also help stabilize the shoreline. Most erosion is due to pleasure craft, with Bay shallowness a factor in grounding, along with sloughing of materials coming into the Bay from upland areas. The shoreline area comprises highly erodible materials due to its creation from dredging the former wetlands. The mitigation will help stabilize the shoreline and avoid hard armoring,<sup>15</sup> and also provides food and shelter for shoreline organisms.

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<sup>12</sup> Exhibit 19 (Navigational Study), pg. 2.

<sup>13</sup> Testimony, Mr. Rehe; Exhibit 29

<sup>14</sup> See also KCC 22.600.160(C)(1)(k) and (C)(3)(a). This is a particular concern as the Bay is relatively stagnant.

<sup>15</sup> See e.g., KCC 22.600.160(C)(1)(q), on avoiding development which will trigger armoring needs.

There are three options for addressing grounding. Do nothing, dredge, or replace and update. Doing nothing means you are left with an out of date structure made with chemicals known to damage shoreline ecological conditions. Dredging is expensive, but aside from that, from a biological perspective, is not favored. Dredging kills benthic organisms, disrupts the water column, creates sediment laden water, which settles out and can smother plants and benthic organisms. It also further weakens the shoreline, exacerbating shoreline sloughing. From an environmental standpoint, the third alternative is the best option.

The Army Corps of Engineers has accepted the project's approach to mitigation, and review by NMFS (National Marine Fisheries Service), a required component of Corps review, is almost complete. Mr. Rehe has been told the project is about two weeks out from approval, and nothing additional so far is being required in terms of added mitigation. As for WDFW's review process, Hydraulic Permit Approval is also a few weeks out.

### **1.10.2 Public Comment.** Several neighbors testified.

Mr. Luton, who lives two homes down from the Leflers, belongs to two home owners associations. One is a six unit home owners association, Driftwood Shores Homeowners Association. The other is the Driftwood Key Homeowners Association, which owns the bottom of the Bay.<sup>16</sup> He questioned how the County can provide a permit to an applicant to build a structure on land they do not own? Mr. Luton addressed the earlier dredging, indicating that home owners had an opportunity to dredge to avoid grounding. The dredging was open to the Bay; some home owners took advantage, some did not. The dock extension will block his harbor views and all Driftwood Shores' members oppose it. Also, it violates the Driftwood Key harbor master plan, which limits docks to a certain distance, or where the existing dock ends.<sup>17</sup>

Mr. Campbell raised concerns over partly obstructed reviews and a question on the cost to rebuild the dock versus dredging. As views from six homes would be impeded, he would like to know the cost; he guesses it would be a third of the cost to dredge.

Mr. Nelson had a question on whether the Applicant could buy new boats to moor at the dock, or if they are limited to existing boats. The Examiner clarified the permit would not prohibit boat replacement. Mr. Nelson stated in the last four or five years, he had only seen Mr. Lefler take his boat out maybe three times. And being moored in the mud, which happens at extreme minus tide, effects every boat in the harbor including his. He understands you can't go out in extreme low tide so he doesn't. If the right to extend out to avoid grounding is given here, everyone will take advantage of this, and soon there will not be a harbor, just docks. This is an issue here at extreme low tide, and getting in and out of the Bay is a problem due to the narrow cut to the Sound. The area was originally a duck hunters Club owned by Bing Crosby and Phil Harris. When they sold it, following litigation, the harbor was dredged, creating one of two private harbors in the state. Would think it would be cheaper to dredge a deeper spot so the Applicants' dock is not compacted by mud than to build a dock. Anyway, he questioned the need for it, as the boat was not properly taken care of and rarely used. Also, the Staff Report at pg. 6, identifies scenic views as to consider. Scenic vistas are addressed at Policy SH1. The project blocks the home owners' scenic vista. If Mr. Lefler wants to take his boat out at minus tide he

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<sup>16</sup> A few lots acquired tidelands ownership before Driftwood Key, so hold these areas.

<sup>17</sup> Facts are disputed on master plan applicability and effect. Exhibit 30 (Applicant comment), pg. 3.

can moor at a private dock. It might cost \$10 a day, but at the rate he uses his boat that's probably \$10 every two years. Yesterday, the Governor signed into law HB 1579 which increases the state's ability to enforce permit requirements related to bulkhead/rock wall construction. He confirmed he has no problem with replacing the existing dock; no problem with stabilizing the shoreline; his concern is the extra fifty feet.

Mr. Mickelson testified on behalf of Driftwood Key Club Homeowner's Association, which he is President of, to highlight key points of the letter he submitted (Exhibit 28) for the Club. He introduced another trustee, Mr. Nielson, who is also a member and is in charge of docks and waterfront. The Club has over 600 members. It is governed by protective covenants, articles of incorporations, bylaws, rules and regulations, and adopted policies and procedures, and operates numerous amenities. A plan was adopted for the inner Bay abutting community property in 1979. DKC takes its rules and regulations seriously. The Club specifically requested that the County either withhold approval or condition approval subject to approval by the Club as the governing documents require. He was disappointed his letter was not attached to the Staff Report, and the requested condition not imposed.<sup>18</sup> He believed DCD had indicated it would be common to include a condition requiring approval by an association such as the Club. The Club has not taken a position on project merits, but requested the Applicants follow the procedures outlined in an e-mail from October 5, 2017. He respectfully requested that the Examiner include a condition that approval be received before a permit issues.

Mr. Nielson addressed the earlier dredging which occurred about 2009/10, with a Corps permit for any home owners who wished to dredge under their docks. The Bay is silted from the surrounding hillside; stormwater comes into Bay; and, in heavy rain there is considerable silting, especially in the back Bay area. He stated that most people in the back Bay requested dredging, given the severe grounding conditions. Mr. Nielson is at the south end, which is where 75% of the water comes in, with considerable silting. All of that area used to go dry; it did not have to be extreme low tide, just low tide. The Bay had been dredged to a minimum eight foot depth; maintenance dredging work is pursuant to the survey/dredging depths completed in the 1970's. A master plan for the harbor was filed with the County in 1978 for the Club. With the master plan, the dock ends line up; they can only extend out so many feet beyond the property line. Home owners paid \$15-20,000 to have their dock areas dredged. So, there was an opportunity to dredge, and it does have to be done continually.

WDFW habitat biologist, Mr. Siu, who is reviewing the Hydraulic Permit Approval, testified. He clarified that he can speak only to biological environmental issues, not other concerns such as use, access, and views. This project will bring the dock structure up to code regarding grading and will remove the creosote materials, replacing them with aluminum. Overall, the extension will move a lot of the structure impacts from the upper shore zone into the lower shore zone. It is a WDFW priority to move impacts farther off shore. That intertidal or upper shore zone serves as an important migratory corridor for juvenile salmon. There are juvenile salmon which use this basin every spring. Hood Canal is home to endangered species, this includes Chinook and Hook Canal summer chum. The fish come into these basins to forage and rear and so migrate through the intertidal zones. They move closer to shore to avoid

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<sup>18</sup> The County received the letter on May 6, 2019, which was after the May 2 Staff Report issuance date, so could not have been attached. However, DCD submitted it at the hearing, and it was admitted. Exhibit 28.

predators. Removing the shading helps with this as the shading pushes salmon further out where there is more risk in the deeper zones. The project provides a net benefit.

**1.10.3 Applicant Response to Comment.** Mr. Rehe relayed his experience with the Port of Tacoma, where he managed dredging operations, so has extensive background regarding dredging cost and ecological impacts. While he cannot provide a specific dollar amount, he provided an example of a 50 yard emergency dredge completed one waterway over which was seven figures. Just to mobilize from Tacoma or Seattle to this location, that is \$50 or \$60k in mobilization fees alone. The other problem is ecological. More dredging causes more shoreline sloughing. This creates a feedback loop, which eventually triggers the need for a bulkhead. The cycle also forces salmon farther out to avoid predation risks and degraded habitat. This is contrary to keeping the shoreline natural to benefit listed species.

**1.10.4 DCD Clarification.** Mr. Heacock clarified that the shoreline code promotes shoreline enjoyment. Boat grounding is prohibited. The boat itself is not a view blockage matter; it is not an appurtenant structure, and is not a boat house. An elevated pier can in certain instances be a view blockage concern. DCD analyzed that and there is no associated view blockage with this project. Dredging is expensive; is a short term fix; and exacerbates sloughing of non-vegetated areas. The least impactful approach is being taken. Salmonids emerging from natal streams and returning to the ocean need these embayments, which are critical for the salmon cycle and their return to saltwater. Moving the dock out is beneficial, particularly given the boat grounding, which damages the fish environment. Shoreline policies and goals support shoreline diversity. They support shoreline enjoyment, and there is a preference for water dependent uses, which boat use is. As for the Club, there is an existing dock; it would have been granted a lease or other permit. If this were DNR tidelands, then there would be a renegotiation of the DNR lease for a dock extension. That would not be unusual. But, he does not believe this a matter County permit requirements cover. There is a nexus with Ecology in reviewing these projects, which focuses on the shoreline environment, and addresses questions such as ecological benefit and whether there will be improved conditions for salmonids. The project is consistent, which is why DCD recommended approval.

There were some audience clarifications regarding when a shoreline photograph was taken (Mr. Luton) and raising concerns that if this dock is approved, then many more extensions will be requested (Mr. Campbell). Mr. Heacock clarified this is a major renovation; providing a modernized, light penetrating PRF. If the structure were not altered by over 5%, that is a \$900 permit; this is \$8,000. Three to four years ago, another dock was extended; he had received a phone call on that during the review process, which could be documented.

### **1.11 Utility and Public Services.**

- **Water:** Kitsap PUD #1
- **Power:** Puget Sound Energy
- **Sewer:** Private septic
- **Police:** Kitsap County Sheriff
- **Fire:** North Kitsap Fire & Rescue
- **Schools:** North Kitsap School District #400

**1.12 Homeowner's Association.** The Driftwood Key Club owns substrate underlying the Bay, including underneath the planned improvements.<sup>19</sup> The complete documents governing Club review authority were not submitted, although comment addressing them was.<sup>20</sup> The present dock structure is authorized. To address dock replacement, the Applicants consulted with the Club. That consultation was documented with DCD early in project review.

**Applicant Summary of Consultation:** Last April, I sent a copy of the PRF proposal to the members of the Board of Trustees responsible for reviewing such proposals. ... Here's a copy of the response I got from Bill Buegel, the DKC Trustee responsible for Docks and Waterfront. The other Trustee addressed (Linda Nielsen) is the head of the Architectural Control Committee who will handle the actual DKC review process. ...

**Club Response:** I see no issues for the club regarding your project, the 60' rule can be waived since the new county requirements are in force. The primary issue is w[h]ether there is any impact on navigation at the bay. I see none. Have ACC bring to the board for approval in May. I would vote in favor.<sup>21</sup>

Despite this early consultation, the Club's current position is that its approval has not been given and is required.<sup>22</sup> In contrast, the Applicant stated that the Club's comment letter includes "significant omissions" on Club requirements, and that as the Applicants had submitted the proposal to the Architectural Control Committee and the Committee had not acted on it within 45 days, under Club rules, the project is deemed approved.<sup>23</sup>

In areas where Club requirements or preferences could be reconciled, DCD addressed same, such as regarding Club preferences on tree eight. DCD ensured landscaping was designed to grow to heights consistent with Club preferences, and also meet KCC requirements.<sup>24</sup> However, as County shoreline regulations now prohibit the boat grounding occurring at the site, there is the potential for a conflict between Club and County requirements.<sup>25</sup>

Club requirements were originally adopted before the SMA, whereas the County's requirements were adopted under the SMA, with its most recent Ecology approved major update in 2014. Given the project's environmental attributes, the County's shoreline regulations and policies support it. Presumably, Club requirements will be construed consistent with County shoreline requirements. As a similar dock improvement directly across the Bay was constructed three to four years ago, and the Applicants consulted early on with the Club, and were told that project approval should not be an issue, the evidence suggests Club requirements can be applied consistently with County and SMA requirements.<sup>26</sup>

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<sup>19</sup> Exhibit 10 (Site Plans); Exhibit 28; Testimony, Mr. Lefler and Mr. Heacock.

<sup>20</sup> Exhibit 28.

<sup>21</sup> Exhibit 16.

<sup>22</sup> Exhibit 28.

<sup>23</sup> Exhibit 30 (Applicant comment), pg. 2.

<sup>24</sup> Testimony, Mr. Heacock.

<sup>25</sup> While irreconcilable conflicts with this Decision are not anticipated, private covenants may be limited to resolve legal or public policy conflicts.

<sup>26</sup> Exhibit 31.

Regardless, the Decision takes no position on whether Club approval is or is not required. The Hearing Examiner must issue a decision within ten business days of record closure, so cannot wait to issue a decision to allow for another approval to issue. Also, the Examiner is concerned with requiring approval from a private association, given the lack of jurisdiction over private covenants. Even if there were not a jurisdictional concern, the full text of those agreements were not submitted, so the Examiner lacks knowledge as to what the Decision would be requiring compliance with. Without these documents, the Examiner cannot determine if approval is even required, and address the Applicants' argument that a de facto approval has issued. This does not mean the Club lacks enforceable covenants which may require project approval. If Club approval is a legal prerequisite, the Applicants will need to secure that approval. However, the Decision takes no position on this question.

**1.13 Incorporation of Staff Report.** Except as this Decision modifies it, the Staff Report is incorporated.

**1.14 Conditions.** DCD proposed conditions to ensure compliance with requirements and its findings. These conditions are necessary to address project consistency with the code and findings above, so are accepted without revision.

## **2. CONCLUSIONS OF LAW**

**2.1 Examiner Review.** The Hearing Examiner reviews SSDP applications.<sup>27</sup> Approval requires consistency with shoreline policies and regulations.

**2.2 Existing Structures.** Lawfully constructed structures may be expanded or redeveloped consistent with mitigation designed to achieve no net loss.<sup>28</sup> The PRF is an existing structure which will be rebuilt and expanded. Consistent with Ch. 22.800 KCC, Appendix B and SMC 22.400.110 mitigation provisions and .115(D) on critical saltwater habitats, mitigation has been carefully designed by qualified professionals to achieve the “no net loss” standard for temporary and permanent impacts.<sup>29</sup>

**2.3 Aquatic Policies, KCC 22.200.135.** The project facilitates the core objective of these policies, which is to support water dependent uses in an ecologically sound manner. The project makes use of shoreline resources, consistent with environmental mitigation requirements.

**2.4 Work Waterward of OHWM.** Water dependent structures are not subject to shoreline buffers, but all work must obtain required permits, in-water work must comply with applicable construction timing restrictions, and the bank and vegetation must be protected.<sup>30</sup> The project has been designed to meet these requirements.

**2.5 Aesthetics and Shoreline Access.** Shoreline aesthetics and access will be improved through landscaping, and will eliminating boat grounding. Boats are not considered view blockage structures and regardless, this is a replacement structure, rather than a new dock, and is not an elevated structure which could trigger "scenic vista" concerns. The project is

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<sup>27</sup> KCC 21.04.100; KCC 22.500.105(E).

<sup>28</sup> SMC 22.400.100(B)(1)(c).

<sup>29</sup> See e.g., Finding 1.4.

<sup>30</sup> SMC 22.400.105(B).

consistent with Ch. 22.300 KK, including Policies SH-1, 2, and 4. The project resolves compliance issues with KCC 22.600.160(C)(5)(c), which states, "[f]loats and watercraft shall not ground out at low tide and shall not be permitted to rest landward of the MLLW [mean lower low water]."<sup>31</sup>

**2.6 Shorelines of Statewide Significance, KCC 22.300.145.** In Kitsap County, areas "seaward from the line of extreme low tide" within Puget Sound and Hood Canal (from the Kitsap-Mason line to Foulweather Bluff) are designated as shorelines of statewide significance. To recognize and protect statewide interests over the local, development proposals with this designation are reviewed for consistency with RCW 90.58.020 and various shoreline policies. Primary considerations are summarized below.

**Recognize and protect state over local interests.** These policies provide for consulting with WDFW, Ecology, affected tribes and other agencies/interest groups on proposals that could affect anadromous fisheries or other priority species or habitats; and, considering state agencies' relevant policies and recommendations. Outreach was conducted, and the project incorporates agency approaches to shoreline mitigation and ecological restoration, thus protecting both state and local interests in encouraging responsible shoreline access.

**Preserve shoreline natural character.** These policies provide for administering regulations to minimize damage to shoreline ecology; to facilitate restoration where natural resources are being diminished; and new intensive development "should upgrade and redevelop those areas where intensive development already occurs, rather than allowing high intensity uses to extend into low intensity use or underdeveloped areas." The project is not an intensive development or high intensity use, and is mitigated to address shoreline ecology issues.

**Protect long-term over short-term benefit.** These policies provide for preserving sufficient areas to accommodate "current and projected demand for economic resources such as shellfish beds and navigable harbors;" strictly limit actions that would convert resources into irreversible uses or detrimentally alter natural conditions; evaluate short term economic gain/convenience over long term and costly environmental impairment; and promote aesthetic considerations. The use would not be detrimental to natural conditions or result in irreversible, adverse shoreline impacts.

**Protect shoreline resources and ecology.** These policies provide for considering "incremental and cumulative impacts while ensuring no net loss of shoreline ecosystem processes and functions;" ensuring "the long-term protection of ecological resources of statewide importance, activities impacting anadromous fish habitats, forage fish spawning and rearing areas, shellfish beds and other unique environments;" and limiting "public access where improvements would result in a loss of shoreline ecological functions, such as in priority or sensitive habitats." The project as proposed and mitigated would not have significant adverse impacts on ecosystem processes and functions.

**Increase public access to publicly owned areas of the shorelines.** These policies provide for preserving/encouraging public access to areas with scenic or cultural qualities; giving priority to paths, trails, and linear shoreline access; and, locating development inland to enhance

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<sup>31</sup> See also Exhibit 19 (Navigational Study), pg. 4.

access. Shoreline access is not impeded and planting native vegetation will improve shoreline conditions.

**Increase recreational opportunities for the public in the shoreline.** These policies provide for accounting for state agencies/citizen interests in visiting public shorelines regarding public access/recreation requirements; and, encouraging "development of facilities for recreational use of the shorelines," while reserving upland areas for lodging, with provisions for nonmotorized shoreline access. The proposal furthers recreational shoreline use.

**Hood Canal Policies.** The project better protects the Canal's "unique and significant marine" environment than the existing structure. By taking measures to protect the fragile shoreline, the statewide over the local interest is served. And, with the extensive consultation which occurred with the project, policies encouraging coordination on resource use are met.

The project is consistent with these policies, and also furthers their underlying objectives to support environmentally responsible utilization of shoreline resources and water dependent uses. The identified location is well suited for the use, which the County's SMP, and the SMA more generally, both support. The project is consistent with the County's shoreline regulations and policies, and the Shoreline Management Act, Ch. 90.58 RCW, and should be approved.

## **DECISION**

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested permit, provided these conditions are adhered to.

### **Planning/Zoning**

1. This is a shared use facility and is exempt from setbacks.

### **Development Engineering**

2. There is no specific concern for stormwater control at this time. Stormwater will be reviewed with the associated PRF building permit.

### **Environmental**

3. Permit is subject to review, approval and conditions guided by the US Army Corps of Engineers RPG-6 and associated NWS16-672 permit, including project timing.
4. Permit is subject to conditions and approval by WDFW and associated HPA.
5. Permit is subject to the recommendations of the Department of Ecology and associated memo, dated August 8, 2017.
6. Permit approval is subject to the recommendations of the Compensatory Mitigation Plan by Bill Rehe, dated January 5, 2019.

### **Traffic and Roads**

7. There are no specific concerns or conditions currently. Review will occur with the building permit.

**Fire Safety**

8. There are no specific concerns or conditions currently. Review will occur with the building permit.

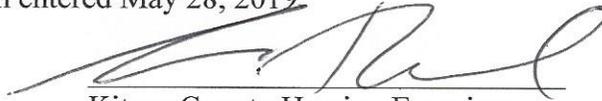
**Solid Waste**

9. There are no specific concerns or conditions currently. Review will occur with the building permit.

**Kitsap Public Health District**

10. There are no specific concerns or conditions currently. Review will occur with the building permit.

Decision entered May 28, 2019



Kitsap County Hearing Examiner  
Susan Elizabeth Drummond