



## Notice of Hearing Examiner Decision

04/06/2021

To: Interested Parties and Parties of Record

RE: Project Name: Minor Marine Rail Project  
Applicant: Roger & Cathy Minor  
1167 Colchester Dr SE  
Port Orchard, WA 98366  
Application: Shoreline Substantial Development Permit (SSDP)  
Permit Number: 20-03299

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit # 20-03299: Minor Marine Rail Project**– Shoreline Substantial Development Permit (SSDP), **subject to the conditions outlined in this Notice and included Decision.**

**THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS TIMELY APPEALED, AS PROVIDED UNDER WASHINGTON LAW.**

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>

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: Owner/Applicant: Roger & Cathy Minor, [rcmarinet1@aol.com](mailto:rcmarinet1@aol.com)  
Authorized Agent: Wayne Wright – Stantec, [wayne.wright@stantec.com](mailto:wayne.wright@stantec.com)  
Health District  
Public Works  
Parks  
Navy  
DSE  
South Kitsap Fire District

Point No Point Treaty Council  
Suquamish Tribe  
Port Gamble S'Klallam Tribe  
Squaxin Island Tribe  
Puyallup Tribe  
WA Dept of Fish & Wildlife  
WA State Dept of Ecology-SEPA  
WA State Dept of Ecology-Shoreline Review  
Interested Parties: None

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

**Shoreline Substantial Development Permit  
Minor Marine Rail Project, File No. 20-03299**

**April 2, 2021**

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**1. FINDINGS OF FACT**

**1.1 Proposal.** Replace a derelict marine railway with a modernized elevated marine rail launch for a recreational boat.

**Applicant/Property Owner.** Cathy and Roger Minor, 1167 Colchester Drive SE, Port Orchard, WA.

**Location.** 1167 Colchester Drive SE, Port Orchard, WA. Assessor Parcel No. 4516-002-013-0000.<sup>1</sup>

**1.2 Hearing.** An open record public hearing was held March 25, 2021. Due to COVID-19 restrictions, the hearing was conducted remotely, with the Examiner, Kitsap County Department of Community Development (“DCD”), and Applicant calling in. Access information was provided to the public to allow citizens to join via either video link or telephone call-in. There were no reported technical difficulties during the call or afterwards. However, in case any citizens who wished to comment had difficulty calling in, the record was kept open for a week, through April 1.<sup>2</sup> Following the hearing, clarifying materials from the Applicant and DCD were submitted, but no public comment was received. At the hearing, DCD, through Mr. Heacock, described the project. DCD found it consistent with requirements, and recommended approval with conditions. The Applicant, through Mr. Minor and Mr. Wright, provided additional detail and identified no concerns with DCD's proposed conditions. No member of the public indicated a wish to speak.

**1.3 Administrative Record.** The Hearing Examiner admitted Exhibits 1-17, which included the Staff Report, application materials, documentation of agency consultation, public notice documents, and a DCD Power Point presentation.

**1.4 SEPA.** DCD issued an unappealed Determination of Non-Significance, which besides requiring KCC Title 22 compliance, required this mitigation:

1. Construction activity shall be subject to Washington Department of Fish and Wildlife requirements to limit habitat impacts, as established through the Hydraulic Project Approval process.
2. Shoreline construction activity shall be conducted in a manner such that private properties adjacent to the project area are not impacted.

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<sup>1</sup> The Staff Report contains the legal description.

<sup>2</sup> Temporary Emergency Rule to Address COVID-19 Situation (April 1, 2020).

3. Mitigation of the shoreline is required to enhance and restore portions of the project area, as outlined in the Shoreline Habitat Assessment report by Stantec.<sup>3</sup>

**1.5 Agency Consultation.** The proposal was circulated within the County. As long as requirements are met, there were no objections to approval. Washington State Department of Fish and Wildlife, with County staff and the Suquamish Tribal Biologist, conducted a site visit. Removal of metal and wooden piling from an older residential marine float is proposed and is a condition of approval. The Applicant has consulted with the U.S. Army Corps of Engineers and Federal project review is pending.

**1.6 Notice.** Hearing and application notice was provided consistent with KCC requirements.<sup>4</sup>

**1.7 Land Use Designations.** The Comprehensive Plan designation is Limited Area of More Intense Rural Development (LAMIRD), and the zoning is Manchester Village Low Residential (MVLRL). Surrounding properties include single family residences and MVLRL zoning, with Yukon Harbor (Puget Sound) to the east. The shoreline designation is Shoreline Residential.

**1.8 Utility and Public Services.**

- **Water:** Manchester Water District
- **Power:** Puget Sound Energy
- **Sewer:** Kitsap County Public Works
- **Police:** Kitsap County Sheriff
- **Fire:** South Kitsap Fire & Rescue
- **Schools:** South Kitsap School District

**1.9 Access.** Colchester Avenue SE to the property driveway. The driveway is paved with a residential turnaround near the residence. Access to the marine rail is via footpath on the north side of the residence.

**1.10 Site Physical Characteristics.** The project area is on stable shoreline beach sediments and substrate. The upland portion of the project where the boat will be located will be on the upper beach above the Ordinary High Water line, on a gently sloping marine shoreline. The boat cradle system will rest on top of the rails. The rail system will be elevated and above the mean-lower low water line. The tidal sediments consist of sand gravel, cobble and shell debris. Red and green macroalgae were present at deeper extents. There was no eelgrass (*Z. Marina*) identified in the marine study.

**1.11 Project Description.** The proposal is to build an elevated rail launch for a recreational boat owned by the property owners. The existing rail launch, built in the 1960s, has been buried by sediment transport along the beach. The new launch minimizes sediment transport disruption by elevating the structure above the beach surface to the extent possible. This will minimize the footprint of the structure and largely avoid impacts to the beach flora,

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<sup>3</sup> Exhibit 11.

<sup>4</sup> Exhibits 8, 12, and 13; KCC 21.04.080, .210.

epifauna, and infauna. The proposal includes beach restoration by removing piling, rail, and foundation remnants of the old marine float system where feasible. The 150 foot long launch will extend offshore from the existing bulkhead about 120 feet. Use of public moorage in downtown Port Orchard was considered, but would increase travel by land and marine vehicles, increasing beach substrate impacts, and requiring additional fossil fuels.

**1.12 Conditions/Staff Report.** The Applicant accepted the proposed conditions, which are incorporated without substantive revision, and with the minor corrections in Exhibit 17. Except as the Decision revises it, the Staff Report is incorporated.

## 2. CONCLUSIONS OF LAW

**2.1 Examiner Review.** The Hearing Examiner reviews SSDP applications.<sup>5</sup> An SSDP is "granted only when the applicant can demonstrate that the proposed development is consistent with the policies and procedures of the Act and this program, as well as criteria in WAC 173-27-150."<sup>6</sup>

**2.2 Mooring Structures and Activities.** Private marine railway systems proposed in the aquatic designation adjacent to the Shoreline Residential zone are authorized,<sup>7</sup> and "are preferred over private boat launch ramps."<sup>8</sup> The project follows KCC 22.600.160 criteria. The use is water dependent, legal requirements are followed, the project is not within critical saltwater habitat, and steel pilings will be used. A marine survey and habitat assessment consistent with KCC 22.700.145 was prepared. The project minimizes and mitigates impacts to achieve no net loss of ecological functions.

**2.3 Existing Structures.** Lawfully constructed structures may be expanded or redeveloped consistent with mitigation designed to achieve no net loss.<sup>9</sup> The railway is an existing structure which will be rebuilt and expanded. Consistent with Ch. 22.800 KCC, Appendix B and SMC 22.400.110 professionals have designed mitigation to achieve the "no net loss" standard for temporary and permanent impacts.

**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>10</sup> The project meets these requirements.

**2.5 Aesthetics and Shoreline Access.** With the replacement, shoreline aesthetics and access will be improved. The project is consistent with Ch. 22.300 KCC.

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<sup>5</sup> KCC 21.04.100; KCC 22.500.105(E).

<sup>6</sup> KCC 22.500.100(B)(3).

<sup>7</sup> KCC 22.600.160(C)(6); KCC 22.600.160(A)(2).

<sup>8</sup> KCC 22.600.160(C)(6)(c).

<sup>9</sup> SMC 22.400.100(B)(1)(c); Exhibit 6

<sup>10</sup> SMC 22.400.105(B).

**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 shorelines of statewide significance. The project is not within such an area.

**2.7 SMP Consistency.** The project follows KCC shoreline policies, and also furthers their underlying objectives to support environmentally responsible utilization of shoreline resources and water dependent uses, consistent with KCC Title 22 and WAC 173-27-150. The location is well suited for this water dependent use, which the County's SMP supports. Consistent with the Shoreline Management Act, Ch. 90.58 RCW, the project improves public shoreline enjoyment, and promotes accessibility, with no net loss of shoreline ecological functions. The project 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. The proposal must meet the 5-foot side yard zoning setback.

#### **Development Engineering**

2. Per Stormwater Development review, the associated project is exempt from stormwater requirements. Should over water impervious surfaces be incorporated in the future, a site plan review is required.

#### **Environmental**

3. A Hydraulic Project Approval permit is required from the Washington Department of Fish and Wildlife.
4. Project work shall be subject to the conditions of the Washington Department of Fish and Wildlife Hydraulics Project Approval (HPA).
5. Shoreline construction activities shall be conducted in a manner such that private properties adjacent to the project area are not impacted.
6. All recommendations of the December 2019 Habitat Management Plan and Site Assessment Report by Wayne Wright, Stantec Consulting shall be followed (Exhibit 6).
7. To prevent scouring of the substrate, power-assisted pressure washing or cleaning of equipment, machinery, or structures in water less than seven feet deep shall be prohibited. In addition, equipment that contains or is covered with petroleum based products should not be pressure washed in or over the water.

8. All mooring facilities shall be designed and constructed to avoid, or where avoidance is not feasible, to minimize and mitigate impacts to achieve no net loss of ecological functions, including functions associated with critical saltwater habitats and species, such as eelgrass beds, and fish habitats and processes such as currents and littoral drift.

9. Upon final permit issuance, all construction for the project 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.

10. Mitigation shall conform to the requirements of the Hydraulic Project Approval, and per the HMP by Stantec.

Absent a timely appeal, this Decision is final.<sup>11</sup>

DECISION entered April 2, 2021.



Kitsap County Hearing Examiner  
Susan Elizabeth Drummond

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<sup>11</sup> RCW 90.58.140(6) and RCW 90.58.180 (21 days to appeal to Shorelines Hearings Board); Ch. 36.70C RCW (for issues outside SHB jurisdiction, appeal to superior court must be made within 21 days).