

**BEFORE THE HEARING EXAMINER  
FOR THE CITY OF PORT ORCHARD**

In the Matter of the Application of	)	No. SDP 95-10
	)	
<b>Stephan Yadvish, on behalf of</b>	)	
<b>Yachtfish Marine NW Inc.</b>	)	
	)	
	)	
	)	
<u>For a Shoreline Substantial Development Permit</u>	)	FINDINGS, CONCLUSIONS AND DECISION

**SUMMARY OF DECISION**

The request for a shoreline substantial development permit to replace two existing 50-foot long piers with two 100-foot long piers to accommodate an 80-ton boat sling crane, and to remove six abandoned wooden pilings in Sinclair Inlet off shore of 53 SW Bay Street (SR 122), Port Orchard, Washington is **GRANTED**. Conditions of approval are necessary to mitigate specific project impacts.

**SUMMARY OF RECORD**

Request:

Stephan Yadvish, on behalf of Yachtfish Marine NW Inc., requests a shoreline substantial development permit to replace two existing 50-foot long piers with two 100-foot long piers, and to remove six abandoned wooden pilings. The subject property is located in Sinclair Inlet and its associated shoreline at 53 SW Bay Street, Port Orchard, Washington,

Hearing Date:

The Hearing Examiner held an open record hearing on the request on May 19, 2011.

Testimony:

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

Tom Bonsell, City Associate Planner  
Andrea Archer, P.E., Assistant City Engineer  
Riley Evans, Alkai Consultants, LLC, for Applicant  
Stephan Yadvish, Applicant Representative

Exhibits:

The following exhibits were admitted into the record:

1. Pre-Application letter, dated November 23, 2009
2. Application submittal, including the following documents:
  - A. Application, dated November 24, 2010
  - B. Contact Information, dated November 24, 2010

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- C. Application cover letter from Stephan Yadvish, Jonothan Saunders, and Riley Evans to City Development Director James Weaver, dated November 24, 2010
- D. Property Owners List verification statement, map, and list, dated November 24, 2010
- E. Set of map and drawings (Aerial Mapping Exhibit, Sheet 1 of 1; Survey of 53 SW Bay St, Sheet 1 of 1; Sheet Index, Sheet S1.0; Sheet S2.0; S3.0; S4.0; S4.1), received November 29, 2010
- F. Draft Biological Evaluation, Confluence Environmental Company, dated November 24, 2010
- G. Geotechnical Engineering Evaluation Report, Alkai Consultants, LCC, dated August 30, 2010
- H. Environmental Checklist, dated November 29, 2010
- I. Structural Calculations, dated November 4, 2010
- J. Joint Aquatic Resources Permit Application Form, dated November 24, 2010
- 3. Kitsap County Parcel Search Map & Property Report, searched November 29, 2010
- 4. Application Transmittal for review of submitted documents, dated December 1, 2010
- 5. Application transmittal, supplemental documents for review, dated December 2, 2010
- 6. Determination of Completeness, Notice to Applicant, dated December 2, 2010
- 7. Email from Port Orchard Public Works Dept., Assistant Engineer Andrea Archer, dated December 7, 2010
- 8. Email from Chris Waldbillig, Dept. of Fish & Wildlife regarding expedited HPA, dated December 13, 2010, with email string
- 9. E-mail from Tom Bonsell, dated December 21, 2010, with attachments
- 10. Expedited Review form, approved by City Development Director James Weaver, dated December 21, 2010, with fax cover sheet
- 11. Notice of incomplete HPA application from Dept. of Fish and Wildlife Chris Waldbillig, dated January 6, 2010
- 12. Staff Report and contract for City Council approval, dated January 11, 2011
- 13. Letter to Jonothan Saunders regarding expedited environmental review from James Weaver, dated January 14, 2011
- 14. Professional Services agreement with BGE Environmental LLC, dated January 11, 2011
- 15. Comments on SEPA Checklist by BGE Environmental, received February 2011
- 16. Technical Review by BGE Environmental, LLC, request for additional information from Robbyn Myers, dated February 10, 2011
- 17. Revised Drawing – Dock support system (Sheet S2.0; Sheet S3.0), dated March 1, 2011
- 18. Transmittal sheet for review of revised drawing Exhibit #17, dated March 4, 2011
- 19. SEPA Conditions for project, submitted by Robbyn Myers, BGE Environmental, dated March 21, 2011
- 20. Distribution list for SEPA Environmental review, with distributed documents: SEPA Checklist, SEPA Threshold Determination, and Site Map, dated April 1, 2011
- 21. Affidavit of Posting of Notice of Application – SEPA Threshold Determination, with posted documents, by John Robinson, City Building Inspector, dated April 1, 2011
- 22. Affidavit of Mailing of Notice of Application – SEPA Threshold Determination, with mailing list and mailed documents, by Associate Planner Tom Bonsell, dated April 1, 2011
- 23. Affidavit of Publication of Notice of Application – SEPA Threshold Determination, by Ellen Ferguson, dated April 1, 2011
- 24. Notice of Application – SEPA Threshold Determination, site plan, dated April 1, 2011
- 25. Comment memo from South Kitsap Fire & Rescue, Greg Rogers, dated December 14, 2010

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26. Application/SEPA Comments from WA Dept. of Ecology, Barbara Nightingale, dated April 12, 2011
27. Application/SEPA Comments from Port Orchard Yacht Club, Georgie Kelley, dated April 15, 2011
28. Mitigated Determination of Nonsignificance (MDNS), dated April 18, 2011
29. Statement of MDNS Distribution by Ellen Ferguson, City of Port Orchard, dated April 18, 2011
30. Excerpt of City of Port Orchard Shoreline Master Program, revised April 1994
31. Affidavit of Publication of Hearing Notice, dated May 6, 2011
32. Affidavit of Mailing and Posting of Hearing Notice, dated May 6, 2011
33. Staff Report, prepared by Associate Planner Tom Bonsell, for May 19, 2011 hearing

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

### FINDINGS

1. Stephan Yadvish, on behalf of Yachtfish Marine NW Inc. (Applicant), requests a shoreline substantial development permit (SSDP) to replace an existing 40-ton boat sling crane and two 50-foot long piers with an 80-ton boat sling crane and two 100-foot long piers, and to remove six abandoned wooden pilings in Sinclair Inlet and its associated shoreline at 53 SW Bay Street (SR 122), Port Orchard, Washington.<sup>1</sup> *Exhibit 33, Staff Report, page 1; Exhibit 2.A; Exhibit 2.D.*
2. The City of Port Orchard (City) determined the SSDP application was complete on December 2, 2010. *Exhibit 6.* Notice of the application and the SEPA threshold determination was mailed to surrounding property owners and posted on the subject property in accord with City ordinances. *Exhibit 21; Exhibit 22.* The City published a notice of application/SEPA threshold determination in the newspaper of record on April 1, 2011. *Exhibit 23; Exhibit 33, Staff Report, page 2.* The City received a comment from the Department of Ecology requesting that the application be processed as a shoreline conditional use permit and a comment from the Port Orchard Yacht Club in opposition to a future section of a City trail. *Exhibit 26; Exhibit 27; Exhibit 33, Staff Report, page 3.* On May 6, 2011, the City Planning Department provided certification of notice of the open record hearing by mail, publication and posting. *Exhibit 31; Exhibit 32.*
3. The City acted as lead agency to analyze the environmental impact of the proposed development as required by the State Environmental Policy Act (SEPA), Chapter 43.21C RCW. The City reviewed the environmental checklist and other information on file with the City and determined that, with conditions, the proposed project would not have a probable significant adverse impact on the environment. The Applicant signed an Expedited Plan Review Request Form on December 21, 2010, agreeing to pay for the

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<sup>1</sup> The subject property is identified by Tax Assessor's Parcel Number 4623-000-001-0008. *Exhibit 28, page 1.* The legal description of the property is provided as part of the Topographic Survey. *Exhibit 2.E, Survey.*

costs incurred for expedited review and processing. On January 11, 2011, the City and BGE Environmental LLC signed a professional services agreement under which BGE Environmental provided environmental consulting and project review services in order to provide expedited review and recommendations for the SSDP review. Robbyn Myers, PWS, BGE Environmental provided technical review comments to the City on February 10, 2011. *Chapter 18.30 WMC; Exhibit 9; Exhibit 10; Exhibit 12; Exhibit 13; Exhibit 14; Exhibit 16.*

4. The City issued a Mitigated Determination of Nonsignificance (MDNS) on April 18, 2011 with 11 mitigation conditions. Mitigation conditions include delineation of the “Project Area” and “Upland Staging Area”;<sup>2</sup> complete removal of pilings proposed for removal; remediation of any disturbance to the armored shoreline and removal of any solid-waste or foreign material; use of clean gravels, sand or large angular rock; planting of shoreline appropriate vegetation; a “no protest” agreement for the City development of a path within the SR 166 Right-of-way;<sup>3</sup> approval from the Washington Department of Fish and Wildlife; approval of a City building permit; compliance with all Hydraulic Project Approval (HPA) conditions; and compliance with the HPA timing restrictions. The City issued the MDNS using the optional process under WAC 197-11-355.<sup>4</sup> No appeal of the MDNS was filed. *Exhibit 2.H; Exhibit 28; Exhibit 33, Staff Report, pages 3 and 7.*
5. The property is designated “Commercial” under the City Comprehensive Plan. Surrounding property to the east and west is also designated “Commercial”; and property to the south is designated “Low Density Residential.” The property is surrounded by commercial uses to the east, a single-family residence to the south, and undeveloped property to the west. The City reviewed the proposal and determined that it was consistent with the Land Use, Economic, Natural Systems and Shoreline goals and policies of the Comprehensive Plan.<sup>5</sup> *Exhibit 33, Staff Report, pages 1 to 4.*

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<sup>2</sup> The “project area” is defined as the intertidal area at the Yachtfish Marine NW property located at 53 SW Bay Street. The “action area” is defined as where construction activities will occur with associated noise. The “action area” extends landward approximately 9,976 feet from the project area or until there is a significant rise in elevation and underwater approximately 3,825 feet under water or until meeting a significant land mass. *The Exhibit 2.F, page 2.*

<sup>3</sup> Trail and bicycle systems are encouraged along the shoreline. *Port Orchard Shoreline Master Program (POSMP), Sec. 8.16, Policy 3, page 76.*

<sup>4</sup> WAC 197-11-355 provides that when a city “is lead agency for a proposal and has a reasonable basis for determining significant adverse environmental impacts are unlikely, it may use a single integrated comment period to obtain comments on the notice of application and the likely threshold determination for the proposal.”

<sup>5</sup> The City staff identified the following Shoreline goals and policies as particularly relevant to the proposed project: Goal 1 (encourage shoreline diversity), Policy SH-1 (give preference to water-dependent uses); Goal 2 (encourage commercial uses and other economic developments when the shoreline can accommodate such development), Policy

6. The subject property lies within the City's Commercial retail and office zoning district (Co Zone). The purpose of the Co Zone is to provide for the broadest mix of retail, service, office, and commercial recreation/cultural uses serving Port Orchard and surrounding market areas and offering significant employment opportunities. Surrounding properties are zoned Co to the east and west, and R 4.5 to the south. Marina – boat repair is a permitted use in the Co zone. *Port Orchard Municipal Code (POMC) 16.13.150(1); POMC Table 16.30.040; Exhibit 33, Staff Report, page 2.*
7. Yachtfish Marine NW Inc. provides yacht repair facilities on a 0.98 acre parcel. Access is from SW Bay Street (SR 166). The western portion of the upland portion of the site contains a parking area and marina office and shop. The eastern portion of the site contains the yacht repair area with asphalt parking areas. A T-pier extends north into Sinclair Inlet from the western portion of the site and two shorter 50-foot piers with a 40-ton boat sling extend north from the eastern portion of the site. *Exhibit 2.C; Exhibit 2.E, Aerial Map; Exhibit 2.G, page 1; Exhibit 28; Exhibit 32; Exhibit 33, Staff Report, page 2.*
8. The environmental checklist describes the “project area” as consisting of modified land and fill, underlain by silty sand, clay, gravel, and sandy gravel. Kerrie McArthur and Scott White of Confluence Environmental Company prepared a Draft Biological Evaluation for the Applicant dated November 24, 2010. According to the Draft Biological Evaluation, the proposed piers would extend north over a gently sloping, intertidal mudflat without macro-algae, eelgrass, or forage fish spawning area. A small eelgrass bed is located over 200 feet east of the “project area.” *Exhibit 2.F, pages 8 and 9; Exhibit 2.H, page 3.*
9. The two existing 50-foot long by 6-foot wide solid wood creosote preserved piers contain 52 pilings and solid plank decking used with a 40 ton boat sling crane. The Applicant proposes to replace these two piers with two new 100-foot long by 6-foot wide galvanized steel piers with 43 new pilings and grated decking. The new piers would be approximately 16-17 feet above Mean Lower Low Water (MLLW). The eastern most pier would be constructed an additional six-feet east of the existing pier to accommodate a larger 80-ton boat sling crane. The Hoist Pier Framing Plan shows 22 feet 7 inch clearance between the two proposed piers. The proposed project would increase overwater coverage by 600 square feet. New grated decking with 86.7 percent penetration would replace the existing solid wood decking. An existing 50-foot long floating dock rests on the substrate during low tides. This floating dock would be removed during construction and reattached approximately 50 feet to the north after

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SH-2 (encourage environmentally compatible water related and water dependent commercial uses), Policy SH-3 (minimize conflicts when siting land use activities), Policy SH-4 (encourage maritime dependent services and industry to remain and improve services). *Exhibit 33, Staff Report, pages 3 and 4.*

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construction. In addition, the Applicant would remove six non-structural creosote preserved pilings at the eastern edge of the property. *Exhibit 2.E, Sheet S2.0; Exhibit 2.F, page 9; Exhibit 2.H, pages 5 and 8; Exhibit 33, Staff Report, page 1.*

10. The existing wood creosote piling pier and decking would be removed and crane hoisted onto a barge and then to shore for disposal at a licensed facility. Over water work would include a suspended safety drop area barge, netting or catch tarps. New piling would be installed by vibratory method using barge mounted vibratory piling equipment. Noise generated during permitted construction hours would comply with the City's noise standards. ALKAI Consultants, LLC, would have spill response equipment, absorption methods and environmental testing supplies on site. *Exhibit 2.H, page 9; Exhibit 2.J, page 6.*
11. The primary goal of the State Shoreline Management Act (SMA) is to protect the public interest in the State's shorelines through a coordinated development process. The SMA contemplates protecting against adverse effects to the public health, the land, the vegetation, the wildlife, and the waters, and preserving the public's opportunity to enjoy the physical and aesthetic qualities of the natural shoreline to the greatest extent feasible. 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 any interference with the public's use of the water. *Revised Code of Washington (RCW) 90.58.020.*
12. The Port Orchard Shoreline Master Program (revised April 1994) (POSMP) includes master program element goals for shoreline uses as well as conservation; recreation; public access, circulation; economic development; and historical/cultural goals. *POSMP, pages 5 and 6.* The proposed project is located adjacent to and in Sinclair Inlet, within the POSMP Aquatic shoreline environment and an upland Urban Maritime environment designation. *Exhibit 33, Staff Report, page 1.* The purpose of the Aquatic environment is to protect the unique characteristics of this environment by managing use activities to ensure compatibility between upland and aquatic uses. The Aquatic environment is located waterward of the ordinary high water mark (OHWM).<sup>6</sup> The purpose of the Urban Maritime environment is to recognize water-dependent uses along the shoreline and provide protection to heavy industrial shoreline uses and activities from encroaching

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<sup>6</sup> POMC 18.02.176 provides:

"Ordinary high water mark" means that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department; provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water.

residential or non-water dependent uses. *POSMP, Part VI.6, pages 30 and 31*. Sinclair Inlet is designated a shoreline of statewide significance. All development within shorelines of statewide significance must adhere to the following policies:

- (1) Recognize and protect the statewide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long term over short term benefit;
- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline.

*RCW 90.58.020; POSMP, Part VII.7, page 32.*

13. The POSMP provides a use compatibility matrix. The City identified the proposed use as Industrial Water-Dependent in the Urban Maritime environment. The use may be allowed over-water in the Aquatic environment if allowed in the adjacent upland environment. *POSMP, Sec. 8.1, page 34; Exhibit 30*. The City's Staff Report notes that the City Planning Department and Washington Department of Ecology agree that the proposed project should be processed as a shoreline substantial development permit application. *Exhibit 33, Staff Report, page 3*. The POSMP provides regulations for marinas including public access along beaches or shorelines. Although industrial water-dependent uses are exempt from shoreline public access requirements, the Applicant agreed to sign a "no protest" agreement for a shoreline trail adjacent to SW Bay Street in front of the Applicant's property. *POSMP, Sec. 8.10 and Sec. 8.10.1.3, pages 63 and 64*.
14. The POSMP provides that no substantial development shall be undertaken on the shorelines of the city except those consistent with the policies of the State Shoreline Management Act of 1971 and the POSMP goals, policies and regulations. *POSMP, Sec. 1.6, page 3*. Substantial development permits are issued for activities classified as permitted uses by the POSMP. *POSMP, Sec. 4.1, page 18*. State law defines "substantial development" as any development of which the total cost or fair market value exceeds \$5,718, 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. The estimated fair market value of the proposed project is \$250,000. *RCW 90.58.030(3)(e); Exhibit 2.J, page 7*.
15. The Draft Biological Evaluation concluded that the proposed project is not likely to adversely affect Puget Sound Chinook salmon or critical habitat; Puget Sound steelhead trout; Puget Sound bull trout or critical habitat; and marbled murrelet or critical habitat. There would be no effect on Steller sea lions, southern resident killer whales or critical habitat and no effect on humpback whales. *Exhibit 2.F, page 19*. No buffers are required for development within the Urban Maritime environment under the City's critical areas ordinance. *POMC Table 18.06.030*.

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16. Riley Evans of Alkai Consultants, LLC, prepared a Geotechnical Engineering Evaluation Report, dated August 30, 2010. Section 3.0 includes conclusions and recommendations relating to erosion control; drainage; foundation support; and earthwork considerations including site preparation, groundwater concerns, structural fill and utility trench fill. *Exhibit 2.G, pages 3 to 6.*
17. Greg Rogers, Fire Prevention Manager, South Kitsap Fire & Rescue provided comments related to fire control and prevention. Proposed Conditions 13-19 address compliance with applicable codes and standards. *Exhibit 25; Exhibit 33, Staff Report, page 9.*
18. Tom Bonsell, City Associate Planner, testified that the City did not identify any eelgrass within the proposed project area, but that the City would monitor for eelgrass during construction. He testified that the Washington Department of Ecology's initial concern for a shoreline conditional use permit (Exhibit 26) was based on a project within the Downtown Marine environment. The project is within the Urban Maritime environment. He testified that the proposed pedestrian path along the south edge of the Applicant's parcel in the SW Bay Street/SR 166 right-of-way is part of the City's Comprehensive Plan. *Exhibit 27; Testimony of Mr. Bonsell.*
19. Andrea Archer, P.E., Assistant City Engineer, testified that it has been determined that the project meets the definition of redevelopment under the City's 2005 Stormwater Manual, so that proposed Condition 20 could be deleted. She also testified that no work would be carried out within the adjacent SW Bay Street/SR 166 right-of-way, so that proposed Condition 21 could be deleted. *Testimony of Ms. Archer.*
20. Riley Evans of Alkai Consultants, LLC, testified that neither a Washington State Fish and Wildlife Hydraulic Project Approval (HPA) permit nor an Army Corps of Engineers permit has yet been issued. He testified that construction would take place in July and August. Piling would be put in place using a vibrating driver unless hammer piling was needed to get through dense fill areas. The HPA process will review and address timing of construction to protect aquatic species. The new piers and boat sling crane would provide more secure lifting for damaged ships in need of repair. Staging and work areas would utilize existing asphalt pavement on site. He noted that a survey shows the six non-structural creosote preserved pilings along the eastern edge of the property to be on adjacent property. The pilings will be removed unless there is an objection from the adjacent property owner. He testified that the Applicant accepts the conditions proposed by the City. *Testimony of Mr. Evans.*
21. Steven Yadvish, owner of Yachtfish Marine NW Inc., testified that the new boat sling crane would lift boats over 50 feet in length up to 95 feet. The new piers and boat sling crane would also increase safety for his workers. *Testimony of Mr. Yadvish.*

22. City staff reviewed the application and determined that the proposal was consistent with the City's Comprehensive Plan, City Codes, and the POSMP. City staff recommended approval of the SSDP, with conditions including the MDNS conditions. *Exhibit 33, Staff Report, pages 3 to 8.*

## CONCLUSIONS

### Jurisdiction

The City of Port Orchard Hearing Examiner is authorized to hold a hearing on the shoreline substantial development permit application. Based on the evidence in the record, the Hearing Examiner may grant, modify and grant, or deny the application. *Port Orchard Municipal Code (POMC) 2.76.080; POMC 2.76.100; POMC 2.76.110; POMC 16.01.021(3).*

### Criteria for Review

#### *Shoreline Management Act*

The Shoreline Management Act 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 and its vegetation and wildlife; and give priority to single family residences and appurtenant structures in authorizing alternations 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. See Buechel v. Dep't of Ecology, 125 Wn.2d 196, 203 (1994).*

In promulgating the Shoreline Management Act of 1971, the legislature recognized that "ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development" of the state's shorelines. *RCW 90.58.020.* The legislature also determined that "unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest." *RCW 90.58.020.* Accordingly, the Shoreline Management Act requires local governments to develop a master program to regulate shoreline uses consistent with its guidelines. *RCW 90.58.080(1).*

#### *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 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 sets forth permitting procedures and permit criteria. The Hearing Examiner reviews the application using 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:

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- (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 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.*

The Hearing Examiner must review the relevant Port Orchard shoreline master program goals and policies to determine whether the proposal complies with the Shoreline Management Act regulations. All development activity in identified shoreline areas must be consistent with the policies of the Shoreline Management Act (RCW 90.58) and the Port Orchard Shoreline Master Program. *POSMP, Sec. 5.3, page 25.*

The criteria for review adopted by the Port Orchard City Council 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 City development regulations considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

#### Conclusions

1. **With conditions, the proposed project is consistent with state Shoreline Management Act policies and procedures.** The proposed piers and boat sling crane are a replacement and expansion of a current water dependent activity. The Applicant provides boat repair services that require lifting boats out of the water. The proposed project would replace the existing piers with piers double the length and a boat sling crane that would double the tonnage that could be lifted. This would allow the Applicant to service and repair larger boats. Although the new longer piers would increase water coverage, the new piers would include metal grating allowing over 85 percent light penetration. This would reduce the shading effect from the current piers. The Applicant would sign a “no protest” agreement to facilitate increased public access along the shoreline through the eventually City construction of a pedestrian trail within the SW Bay Street/SR 166 right-of-way. With the proposed conditions the project is an acceptable use within a shoreline of statewide significance. The proposed project is designed to minimize damage to the ecology and environment of the shoreline and protect the public’s continued use of the waterfront area. Conditions are necessary to ensure that the Applicant complies with SEPA mitigating conditions; obtains all required federal, State, and local permits; and constructs the project in compliance with the fire prevention code.  
*Findings 1 – 22.*

2. **With conditions, the proposed project is consistent with the Washington Administrative Code 173-27 regulations.** The Department of Ecology shoreline regulations are located in Chapter 173-27 of the Washington Administrative Code (WAC). Chapter 173-27 sets forth permitting procedures and permit criteria. This proposal is being reviewed under the criteria set forth in WAC 173-27-150. These criteria are intended to implement the policies of the SMA, which requires that all shoreline projects be consistent with an approved local Shoreline Master Program. The Applicant submitted a complete SSDP application. The City reviewed the Applicant's environmental checklist and other information on file and determined that, with conditions, the proposed project would not have a probable significant adverse impact on the environment. The City provided public notice of the SSDP application and SEPA review, as well as the open record hearing. Conditions are necessary to ensure that the Applicant complies with SEPA mitigating conditions; obtains all required federal, State, and local permits; and constructs the project in compliance with the fire prevention code. *Findings 1 – 22.*
  
3. **With conditions, the proposed project is consistent with the Port Orchard Shoreline Master Program and Port Orchard Shoreline Management Regulations.** The proposed industrial water-dependent project is located in the Aquatic and Urban Maritime environments as designated by the POSMP. Industrial Water-Dependent uses are a permitted use in the Urban Maritime environment and allowed over water in the Aquatic environment if allowed in an adjacent upland environment. Although industrial water-dependent uses are exempt from shoreline public access requirements, the Applicant would sign a "no protest" agreement for a shoreline trail within the SW Bay Street right-of-way in front of the Applicant's property. The POSMP provides regulations for docks, piers and floats. The proposed project would be compatible with the existing shoreline area. While the length of the piers would double, no adverse aesthetic impacts were brought forward by any adjacent land owner. The proposal would replace the existing creosote pilings with galvanized steel pilings. The proposed length of the piers would be the minimum necessary to accommodate the larger boat sling crane. Conditions are necessary to ensure that the Applicant complies with SEPA mitigating conditions; obtains all required federal, State, and local permits; and constructs the project in compliance with the fire prevention code. *Findings 1 – 22.*

## **DECISION**

Based on the above findings and conclusions, a shoreline substantial development permit to replace two existing 50-foot long piers with two 100-foot long piers to accommodate an 80 ton boat sling crane, and to remove six abandoned wooden pilings in Sinclair Inlet off of 53 SW Bay

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Street (SR 122), Port Orchard, Washington is **GRANTED**, subject to the following conditions:<sup>7</sup>

SEPA Conditions

1. Prior to implementing work, the “Project Area” must be completely delineated with the appropriate sediment and erosion control measures. In addition, the “Upland Staging Area” must also be clearly delineated on-site and installation of appropriate containment instrument shall be in place.
2. All pilings currently proposed for removal shall be removed completely from the substrate. Where removal is resistant, appropriate actions shall be taken. For instance, cable pulling and water jetting shall be implemented to insure the full removal of the creosote pilings is achieved.
3. As disturbance to the armored shoreline is anticipated the following actions shall be taken to remediate the shoreline:
  - a. Angular rock removed from the action area shall be assessed for size and integrity for re-use in remediation of the shoreline frontage.
  - b. Rogue, or disturbed angular rock, which has been washed away from the armoring or disturbed by the construction activities shall either be removed from the site completely or reinserted into the armored shore.
  - c. In the event that solid-waste or foreign material is encountered within the project area, this material shall be removed in its entirety from the site. Corrective actions for the removal must be approved by the City and appropriate agencies prior to the removal process. Disposal of the material shall be within an approved upland site, specific to the nature of the waste.
4. Any new material such as gravels, sand or large angular rock must be clean and received from a respectable source and appropriate for the use within shoreline interfaces. Sands and fines shall be consistent in nature with the surrounding parent materials of the shoreline and intertidal zone.
5. An improvement to toxicity levels due to the presence of creosote pilings is expected with the removal of said piers and replacement with less hazardous materials. To facilitate a net gain in the shoreline environment we request the installation of shoreline appropriate vegetation where much is currently absent. The vegetation shall consist of a shrub complex directed into the armored shoreline along with intertidal emergents. The target area for the addition of planting shall compliment the working area of the facility, not to intrude on operating procedures. Therefore we recommend the northern shoreline be assessed for accommodation mitigation recovery, specifically behind the storage facility. Additional emergent vegetation may benefit the area immediately adjacent to the

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<sup>7</sup> This decision includes conditions required to reduce project impacts as well as conditions required to meet City Code standards.

newly placed pier facility. Prior to completion and approval of the construction, these mitigating options shall be fully investigated and remediation action proposed for final approval of the project.

6. Applicant shall provide the City with a “no protest” agreement for the City development and construction of a minimum 10-foot wide pedestrian path at the south edge of the parcel adjacent to and within the SR 166 Right of Way.
7. Prior to commencing construction activities the Applicant shall receive approval from the Washington State Department of Fish and Wildlife.
8. A City of Port Orchard building permit will be required for the construction.
9. All conditions of the Hydraulic Project Approval (HPA), to be issued by the Washington State Department of Fish and Wildlife, shall be followed, including, but not limited to timing restrictions, installation provisions, habitat features, and water quality.
10. Work shall conform to timing restrictions as identified by Fish and Wildlife in the HPA, for the protection of fish and salmonid species.
11. If required State or Federal permits are not approved, a City building permit will not be issued for construction.

#### Zoning Conditions

12. All conditions identified by City Departments and other agencies must be met prior to final inspection.

#### Fire Prevention Code

13. Marinas shall be equipped throughout with Class I manual, dry standpipe systems in accordance with NFPA 303. Systems shall be provided with outlets located such that no point on the marina pier or float system exceeds 150 feet from a standpipe outlet.
14. Standpipe outlet locations shall be clearly identified by a flag or other approved means designed to be readily visible from the pier accessing the float system.
15. Piers and wharves shall be provided with fire apparatus access roads with water-supply systems with on-site fire hydrants when required and approved by the fire code official. At least one fire hydrant capable of providing the required fire flow shall be provided within 50 feet of standpipe connections.
16. One fire extinguisher rated for class A, B, or C hazards and sized for extra (High) hazard type, shall be provided at each standpipe outlet. Additional fire extinguishers, suitable

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for the hazards involved, shall be provided and maintained in accordance with IFC Section 906.

17. Space shall be provided for all float systems for the staging of emergency equipment. Staging areas shall provide a minimum of 4 feet wide by 10 feet long clear area exclusive of walkways and shall be located at each standpipe outlet. Staging areas shall be provided with barriers having a minimum height of 4" and a maximum space between the bottom barrier edge and surface of the staging area of 2" on the outboard sides to prevent loss of equipment overboard. A sign reading "Fire Equipment Staging Area – Keep Clear" shall be provided at each staging area to prevent obstruction.
18. A telephone not requiring a coin to operate or other approved, clearly identified means to notify the fire department shall be provided on-site in a location approved by the fire code official.
19. Plans for the standpipe system must be approved South Kitsap Fire & Rescue prior to installation. Separate permits are required for each installation. Submittals for review must include specifications on all devices to be installed.

Decided this 2<sup>nd</sup> day of June 2011.



THEODORE PAUL HUNTER  
Hearing Examiner  
Sound Law Center