

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

In the Matter of the Application of)	No. SDP 100-11
)	
Stephan Yadvish, on behalf of)	
Yachtfish Marine NW Inc.)	FINDINGS, CONCLUSIONS
)	AND DECISION
)	
)	
<u>For a Shoreline Substantial Development Permit</u>)	

SUMMARY OF DECISION

The request for a shoreline substantial development permit to replace an existing, damaged, approximately 5,633 square foot floating dock group, including covered moorage, with a reconfigured, approximately 6,554 square foot floating dock group with covered moorage 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 an existing, damaged, approximately 5,633 square foot floating dock group, including covered moorage, with a reconfigured, approximately 6,554 square foot floating dock group with covered moorage. The subject property is located in Sinclair Inlet off shore of 53 SW Bay Street (SR 122) in Port Orchard, Washington.

Hearing Date:

The Hearing Examiner held an open record hearing on the request on July 28, 2011.

Testimony:

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

Stephanie Andrews, City Planner
Mary Felts
Greg Rogers, SKFR Fire Prevention Manager
Paul Fredrickson, Yachtfish Marina Manager, Applicant Representative

Exhibits:

The following exhibits were admitted into the record:

1. Application submittal, File No. SDP 97-10, dated December 2, 2010, including the following documents:

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- A. Shoreline Exemption request application for Demolition, dated December 2, 2010
- B. Contact information sheet, dated November 24, 2010
- C. Aerial Map showing damaged structures, dated December 2, 2010
- D. Survey drawing showing damaged area, dated December 2, 2010
- E. Photos of damage, dated December 2, 2010
- F. Letter to Army Corps of Engineers from Riley Evans, regarding emergency repair and replacement of storm-damaged moorage, dated November 29, 2010
- G. Proposed moorage cover replacement, dated December 2, 2010
- 2. Shoreline Exemption letter for demolition, by James R. Weaver, Port Orchard Shoreline Administrator, dated December 2, 2010
- 3. HPA issued by WA Dept. of Fish & Wildlife for Demolition & Removal of Storm-damaged covered moorage facility, dated December 15, 2011
- 4. Application submittal, File No. SDP 98-10, dated December 2, 2010, including the following documents:
 - A. Shoreline Exemption request application for covered moorage replacement, dated December 2, 2010
 - B. Contact information sheet (Same as 1.B), dated November 24, 2010. Document not included.
 - C. Aerial Map showing damaged structures (Same as 1.C), dated December 2, 2010. Document not included.
 - D. Survey drawing showing damaged area. (Same as 1.D), dated December 2, 2010. Document not included.
 - E. Photos of damage (Same as 1.E), dated December 2, 2010. Document not included.
 - F. Letter to Army Corps of Engineers from Riley Evans, regarding emergency repair and replacement of storm-damaged moorage (Same as 1.F), dated November 29, 2010. Document not included.
- 5. Response to Shoreline Exemption Request for covered moorage replacement from James R. Weaver, Port Orchard Shoreline Administrator, dated December 2, 2010
- 6. Application submittal, File No. SDP 100-11, dated February 23, 2011, including the following documents:
 - A. Application for Shoreline Substantial Development Permit, dated November 24, 2010
 - B. Contact Information (Same as 1.B), dated November 24, 2010. Document not included.
 - C. Cover letter: Project Narrative, dated February 21, 2011
 - D. Property Owners List Verification and address list, dated February 21, 2011
 - E. HPA for Demolition (Same as Exhibit 3), dated December 15, 2010. Document not included.
 - F. JARPA, dated February 23, 2011
 - G. SEPA Environmental Checklist, dated November 30, 2010
 - H. Aerial Map, dated June 10, 2010
 - I. Proposed Replacement Plan (1 sheet), dated December 20, 2010
 - J. Floating Dock Replacement Plans (3 sheets), dated February 17, 2011

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- K. Survey of Aquatic Lease (1 sheet), dated January 8, 2009
- L. Topographic Survey (1 sheet), dated October 19, 2010
- 7. Application Transmittal Letter, dated February 25, 2011
- 8. Kitsap County records: Property Report & Parcel Map, dated February 25, 2011
- 9. Memo from Greg Rogers, Fire Prevention Manager, dated March 1, 2011
- 10. Notice of Incomplete, Issued by Assistant Planner Stephanie Andrews, dated March 1, 2011
- 11. Comment memo from Assistant City Engineer Andrea Archer, P.E., dated March 8, 2011
- 12. Letter to Riley Evans requesting addendum to Biological Evaluation Report, dated March 9, 2011
- 13. Response letter from Riley Evans, with Aerial Site Map, dated March 10, 2011
- 14. Updated Draft Biological Evaluation, dated March 15, 2011
- 15. Determination of Completeness, issued by Assistant Planner Stephanie Andrews, dated March 17, 2011
- 16. BGE Environmental Inc. work proposal for environmental review, dated January 13, 2011
- 17. Request to BGE Environmental to provide SEPA conditions , dated March 17, 2011
- 18. SEPA Conditions provided by BGE Environmental, dated April 18, 2011
- 19. Notification for terminating plans for moorage and cover expansion, dated April 28, 2011
- 20. Letter to Yachtfish regarding overwater moorage storm damage replacement with photo attachments, from Development Director James Weaver, dated May 10, 2011
- 21. Application for Shoreline Exemption Request submittal, including the following documents:
 - A. Application, dated May 19, 2011
 - B. Letter of request for exemption, dated May 16, 2011
 - C. Floating footprint: old and new (2 sheets), dated May 17, 2011
 - D. Profile Silhouette: old and new (2 sheets) , dated May 17, 2011
- 22. Application Transmittal – Shoreline Exemption Request, dated May 20, 2011
- 23. E-mail response to Shoreline Exemption Request by Assistant Planner Stephanie Andrews, dated May 23, 2011
- 24. Revised Shoreline Substantial Development Permit Application, including the following documents:
 - A. Application, dated June 7, 2011
 - B. SEPA Checklist, dated June 7, 2011
- 25. Letter of Complete Application and Determination of Completeness, dated June 7, 2011
- 26. Notice of Application – SEPA Threshold Determination, dated June 10, 2011
- 27. Distribution list for SEPA Environmental review, with distributed documents: SEPA Checklist, SEPA Threshold Determination, and Site map, dated June 10, 2011
- 28. Affidavit of Posting of Notice of Application-SEPA Threshold Determination, with posted documents, dated June 10, 2011
- 29. Affidavit of Mailing of Notice of Application-SEPA Threshold Determination, with mailing list and mailed documents, dated June 10, 2011

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30. Affidavit of Publication of NOA – SEPA Threshold Determination, dated June 10, 2011
31. MDNS, dated June 10, 2011
32. SEPA Comments from Suquamish Tribe, dated June 24, 2011
33. City response to Suquamish Tribe Comments, dated June 27, 2011
34. Revised Drawings of floating dock and moorage cover, 4 sheets, dated June 24, 2011
35. Application Transmittal for drawings of floating dock and moorage cover, dated June 27, 2011
36. Addendum to MDNS, dated June 28, 2011
37. Affidavit of Posting SEPA MDNS Addendum by Assistant Planner Stephanie Andrews, dated June 28, 2011
38. Revised Drawings, dated July 14, 2011
39. Affidavit of Publication of Hearing Notice with attached notice, dated July 15, 2011
40. Affidavit of Mailing & Posting of Hearing Notice with attached notice and mailing list, dated July 15, 2011
41. Excerpt from Port Orchard Shoreline Master Program: Setbacks and Height Requirements table, dated 1994
42. Staff Report by Assistant Planner Stephanie Andrews, dated July 28, 2011

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, damaged, approximately 5,633 square foot floating dock group, including covered moorage, with a reconfigured, approximately 6,554 square foot floating dock group with covered moorage in Sinclair Inlet, off shore of 53 SW Bay Street (SR 122), Port Orchard, Washington.¹ *Exhibit 24.A; Exhibit 34; Exhibit 35; Exhibit 38.*
2. The City of Port Orchard (City) determined the application was complete on June 7, 2011. *Exhibit 25.* On June 10, 2011, the City posted notice of the application on the subject property, published notice in the *Port Orchard Independent*, and mailed notice to owners of surrounding property in accord with City ordinances. *Exhibit 28; Exhibit 29; Exhibit 30.* Stephanie Andrews, City Planner, testified the Applicant submitted a proposal modified from the initial application, and that the modifications were minor. *Testimony of Ms. Andrews.* Ms. Andrews testified that the City gave notice of the minor modifications through an Addendum to a Mitigated Determination of Nonsignificance (MDNS Addendum) posted on the subject property on June 28, 2011. *Exhibit 37; Testimony of Ms. Andrews.* On July 15, 2011, the City published notice of the open

¹ The subject property is identified by Tax Assessor's Parcel Number 4623-000-001-0008. *Exhibit 6.A.* The legal description of the property is provided as part of the Joint Aquatic Resources Permit Application. *Exhibit 6.F.*

record hearing associated with the application in the *Port Orchard Independent*, posted notice on the subject property, and mailed notice to surrounding property owners in accord with City ordinances. *Exhibit 39; Exhibit 40.*

3. The City acted as lead agency and analyzed the environmental impact of the proposal under the State Environmental Policy Act (SEPA), Ch. 43.21C RCW. The City determined that with one condition requiring the Applicant to: submit a construction schedule to the City; note the staging area for construction debris; and include measures for sediment control, the proposal would not have a probable significant adverse impact on the environment. The City issued a Mitigated Determination of Nonsignificance (MDNS) with one condition on June 10, 2011. The MDNS was not appealed. *Exhibit 31; Exhibit 42, Staff Report, page 3.*
4. The City issued an Addendum to the MDNS on June 28, 2011. The Addendum described the following modification to the initial proposal: expansion of the surface area of proposed docks from approximately 3,382 square feet to approximately 5,708 square feet; and replacing a covered roof section 57 feet wide by 48 feet long with a roof 57 feet wide by 92 feet long. The City did not change its June 10, 2011 MDNS, except for a slight change to the MDNS condition.² Ms. Andrews testified that the City used the Addendum solely as a method of notice of application modifications. *Exhibit 36; Testimony of Ms. Andrews.*
5. The subject property is designated Commercial under the City Comprehensive Plan. As described in the Comprehensive Plan, the Commercial Retail-Office designation, of which the Commercial designation is a part, provides centralized retail, professional office facilities, tourist and related services. Relevant Comprehensive Plan goals and policies³ encourage diverse shoreline uses, giving preference to water-dependent uses, traditional and historic use patterns, resource values, and environmental protection. Relevant goals and policies also encourage commercial uses requiring or depending on shoreline for success; encourage and support water-related and dependent commercial uses environmentally compatible; require siting and design to minimize conflicts with and impacts on shoreline; and encourage maritime dependent services and industry. City staff 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. *City Comprehensive Plan, Land Use Element, page 2-10 (December 2009); City*

² The City changed the one MDNS condition slightly to re-word the last sentence of the condition from “The staging area for construction debris must be noted and measures for sediment control must be included,” to “The staging area for construction materials and debris must be noted and measures for sediment control must be included.” *Exhibit 31; Exhibit 36.*

³ City staff identified Comprehensive Plan Shorelines Element Goal 1, Policy SH-1, Goal 2, Policy SH-2, Policy SH-3, and Policy SH-4 as applicable to the proposal. *Exhibit 42, Staff Report, page 4.*

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Comprehensive Plan, Shorelines Element, page 9-2 (December 2009); Exhibit 42, Staff Report, page 4.

6. Surrounding property to the east and west is also designated “Commercial” under the City Comprehensive Plan, and property to the south is designated “Low Density Residential.” The property is surrounded by commercial uses to the east, single-family residences to the south, and undeveloped property to the west. Port Orchard Bay is located north of the subject property. *Exhibit 14; Exhibit 42, Staff Report, page 3.*
7. 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 42, Staff Report, page 3.*
8. Yachtfish Marine NW Inc. provides covered boat moorage and boat repair facilities on an approximately 0.95 acre parcel. The upland portion of the property is relatively flat and developed. 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 site. A floating dock group is located at the end of the T-pier. Boat houses positioned over the floating dock group provide covered moorage. Covered moorage was damaged in November 2010 storms. *Exhibit 6.H; Exhibit 6.K; Exhibit 8; Exhibit 42, Staff Report, pages 1 - 3.*
9. The Applicant submitted revised plans for the proposed project, received July 14, 2011.⁴ The proposed project would replace an existing approximately 5,633 square foot floating dock group at the end of the T-pier, comprised of solid decking with 100-percent shade coverage, with a reconfigured approximately 6,554 square foot floating dock group at the end of the T-pier, comprised of grated decking with 50-percent shade coverage. The City staff report states that the difference between existing and proposed dock surface area is primarily due to widening some boat dock platforms and reconfiguring boat houses. Implementation of the proposed project would reduce the amount of boat slips available from 13 to nine. Boat houses A, B, and C would be installed to cover boat slips, to provide covered moorage. Installation would result in an exact replacement of one existing boat house, which allowed zero-percent shade permeability, with proposed boat house B over the west end of the T-pier. Boat house A and C would be installed to

⁴ Revised plans differ slightly from the proposed project described in the MDNS Addendum. *Exhibit 34; Exhibit 36; Exhibit 38.* Ms. Andrews added that she considered the modification from the proposal described in the MDNS Addendum to be minor, and the City received no comments on the MDNS Addendum. *Testimony of Ms. Andrews.*

replace one existing boat house, which allowed zero-percent shade permeability, over the north portion of the pier. Boat house A would allow 35-percent shade permeability; boat house B would allow 25-percent shade permeability; and boat house C would allow 25-percent shade permeability. All proposed boatsheds would be 30-feet or less in height. The proposed dock and boatsheds would utilize existing pilings. Ms. Andrews testified that the purpose of the application is to provide a replacement facility, not a new facility. *Exhibit 34; Exhibit 38; Exhibit 42, Staff Report, pages 1 – 3; Testimony of Ms. Andrews.*

10. Ms. Andrews testified that all proposed activity would be located waterward of the ordinary high water (OHW) line. Ms. Andrews added that the City determined the proposal does not qualify for a shoreline exemption under the state Shoreline Management Act (SMA).⁵ *Testimony of Ms. Andrews.*
11. The primary goal of the 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 42, Staff Report, page 2.* 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).⁶ A boat house is an

⁵ The City stated its determination that the proposal cannot be classified as a shoreline exemption and requires a Shoreline Substantial Development Permit (SDP) within an email message to the Applicant dated May 23, 2011. *Exhibit 23.*

⁶ 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

allowed use within the Aquatic Shoreline Designation. *POSMP, Part II, Master Program Element Goals*. 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 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 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. *RCW 90.58.030(3)(e)*.
14. POSMP Section 8.10.1 provides that all covered moorages or boat houses shall be of similar or compatible design, color, length, and height and shall be constructed in contiguous groups or modules, except where a different design is an improvement upon existing design or is required to accommodate a different type of boat. Under the POSMP, all building materials shall be non-reflective. The POSMP use compatibility matrix limits boat houses to 30 feet or less in height in the Aquatic shoreline environment. The Applicant would construct boat houses in white, identical to boat houses that previously existed, and in white with a blue roof to match surroundings. Paul Fredrickson, Applicant Representative, testified that the proposed activity would provide moorage for the larger boats that exist in Puget Sound now, compared to when the existing moorage was first constructed. Mr. Fredrickson testified that the covered moorage would provide fewer slips for larger boats than in the past, so fewer vehicles

high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water.

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would require parking on adjacent land while vehicle owners are using the boats. *Exhibit 41; Exhibit 42, Staff Report, page 7; Testimony of Mr. Fredrickson.*

15. POSMP Section 9.2 Policy 1 provides that the type, design, and location of docks, piers, floats, and boat houses should be compatible with the shoreline area where they are located, with consideration given to shoreline characteristics, tidal action, aesthetics, and adjacent land and water uses. POSMP Section 9.2 Policy 1(5) requires that docks, piers, and floats be designed, located, and operated to minimize interference with adjacent water uses, so that the maximum length of a pier or dock is the minimum necessary to accomplish moorage. The City staff report states that the proposed activity would result in a type, design, and location similar to what existed prior to 2010 storms that damaged the existing facilities, that no public comment on the proposal was received, and that similar boat houses are located at neighboring marinas. According to the staff report, the moorage facilities would be replaced within the same footprint as existing facilities, with docks being rearranged to accommodate proposed boat houses. Mary Felts, neighboring resident, testified to express support for the proposal. *Exhibit 42, Staff Report, page 7; Testimony of Ms. Felts.*
16. An Updated Draft Biological Evaluation prepared by Confluence Environmental Company, dated March 15, 2011, reviewed an earlier proposal by the Applicant to remove, replace, widen, and extend existing piers. Ms. Andrews testified that no biological evaluation was prepared for the current SSDP proposal to replace an existing, damaged, approximately 5,633 square foot floating dock group, including covered moorage, with a reconfigured, approximately 6,554 square foot floating dock group with covered moorage. Ms. Andrews added that City staff used the information from the March 15, 2011 Updated Draft to analyze potential impacts on endangered species. The Updated Draft concluded that the project proposed at the time may affect but was 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 14; Testimony of Ms. Andrews.*
17. A June 27, 2011 email from Stephanie Andrews to Allison O'Sullivan, Suquamish Tribe Biologist, responded to questions from Ms. O'Sullivan. The email states eelgrass is located approximately 200 feet east of the proposed project location. The email also states all proposed modifications would be within the footprint of existing facilities prior to 2010 storms, and existing pilings would be used for the proposed use. *Exhibit 33.*
18. Greg Rogers, Fire Prevention Manager, South Kitsap Fire & Rescue, testified concerning fire control and prevention. Mr. Rogers testified that proposed Conditions 8-14 address compliance with applicable codes and standards, and include a condition to ensure there

tanks from rolling off the pier. *Exhibit 42, Staff Report, page 9; Testimony of Mr. Rogers.*

19. Mr. Fredrickson testified that a Hydraulic Project Approval (HPA) for the proposed activity is currently under review by the Washington Department of Fish and Wildlife (WDFW). Mr. Fredrickson testified that the HPA should be approved because the proposal provides for increased light to the water surface over existing conditions. *Testimony of Mr. Fredrickson.*

20. 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 14 conditions of approval, including the MDNS condition. Ms. Andrews testified to propose the following minor modifications to conditions proposed by staff, with modifications indicated by italics: Condition No. 4 would require the Applicant obtain a City building permit *prior to* construction; Condition No. 5 would require all conditions of the *future* Hydraulic Project Approval (HPA) to be issued by the WDFW shall be followed; Condition No. 7 would require that a City building permit will not be issued, *or will be revoked if issued*, if required state or federal permits are not approved; and Condition No. 12 would require notification of "Fire Equipment Staging Area – Keep Clear" *on the dock. Exhibit 42, Staff Report, pages 8 – 9; Testimony of Ms. Andrews.*

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.*

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*

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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;
 - (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 project is for replacement of a covered moorage facility in Sinclair Inlet, an existing water dependent activity. The proposed project would expand existing dock area slightly to accommodate widening some boat dock platforms and reconfiguring boat houses for covered moorage. The

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replacement covered moorage facility would be constructed of grated deck and shade-permeable boat houses, which would increase light penetration to the water surface over the existing facility. The replacement facility would provide covered boat moorage for the larger-sized boats that are now found on Puget Sound compared to when the facility was first constructed, and would thus provide covered moorage for fewer boats than the existing facility. With 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 the SEPA mitigating condition; obtains all required federal, State, and local permits; and constructs the project in compliance with the fire prevention code. *Findings 1 – 20.*

2. **With conditions, the proposed project is consistent with Chapter 173-27, Washington Administrative Code regulations.** The Department of Ecology shoreline regulations are located in Chapter 173-27, 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 to the City. The City reviewed the Applicant's environmental checklist and other information on file and determined that, with a condition, 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 the SEPA mitigating condition; obtains all required federal, State, and local permits; and constructs the project in compliance with the fire prevention code. *Findings 1 – 20.*

3. **With conditions, the proposed project is consistent with the Port Orchard Shoreline Master Program and Port Orchard Shoreline Management Regulations.** The proposed water-dependent project is located in the Aquatic and Urban Maritime environments as designated by the POSMP. The proposed boat house use is an allowed use in the Aquatic environment. The proposed activity would comply with POSMP regulations for docks, piers, floats, and boat houses. The proposed project would be compatible with the existing shoreline area. The proposal would serve as a replacement facility for an existing facility damaged by 2010 storms. Conditions are necessary to ensure that the Applicant complies with the SEPA mitigating condition; obtains all required federal, State, and local permits; and constructs the project in compliance with

the fire prevention code. *Findings 1 – 20.*

DECISION


Based on the above findings and conclusions, the request for a shoreline substantial development permit to replace an existing, damaged, approximately 5,633 square foot floating dock group, including covered moorage, with a reconfigured, approximately 6,554 square foot floating dock group with covered moorage in Sinclair Inlet, off shore of 53 SW Bay Street (SR 122), Port Orchard, Washington, is **GRANTED**, subject to the following conditions:⁷

1. At least seven days prior to commencing work, a construction schedule shall be submitted to the City. The schedule shall include estimated time frames for haul-in and construction of the new moorage. This schedule should include details for tidal considerations for the duration of anticipated construction actions. The staging area for construction materials and debris must be noted and measures for sediment control must be included.
2. All conditions identified by City Departments and other agencies must be met prior to final inspection.
3. Prior to commencing construction activities the applicant shall receive approval from the Washington State Department of Fish and Wildlife.
4. A City of Port Orchard building permit will be required prior to construction.
5. All conditions of the future Hydraulic Project Approval (HPA), to be issued by the Washington State Department of Fish & Wildlife, shall be followed, including, but not limited to; timing restrictions, installation provisions, habitat features, and water quality.
6. Work shall conform to timing restrictions as identified by Fish & Wildlife in the HPA, for the protection of fish and salmonid species.
7. If required State or Federal permits are not approved, a City building permit will not be issued for construction, or will be revoked if issued.
8. 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.
9. 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.

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

10. Piers and wharves shall be provided with fire apparatus access roads and 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 supply connections.
11. One fire extinguisher rated for Class A, B and C hazards and sized for extra (high) hazard type, shall be provided at each standpipe outlet. Additional fire extinguishers, suitable for the hazards involved, shall be provided and maintained in accordance with IFC Section 906.
12. Space shall be provided on 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 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 on the dock to prevent obstruction.
13. A telephone not requiring a coin to operate or other approved, clearly identified means to notify the fire department shall be provided on the site in a location approved by the fire code official.
14. 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 5th day of August 2011.


THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center