BEFORE THE HEARING EXAMINER
FOR THE CITY OF PORT ORCHARD

In the Matter of the Application of

Steve Slaton, on behalf of the Port of Bremerton

For a Shoreline Substantial Development Permit
And Shoreline Conditional Use Permit

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No. SDP 115-12/SDP 116-12
Marina Park Extension

FINDINGS, CONCLUSIONS
AND DECISIONS

SUMMARY OF DECISIONS
The request for a Shoreline Substantial Development Permit to remove two houses, impervious surfaces, and associated support piles and derelict piles from Marine Park east to 1021 Bay Street; and to construct a pedestrian pathway from the parking lot west of Marina Park to a viewing platform at 1001 Bay Street and continuing to the site of the proposed removed residence at 1021 Bay Street, within the Urban and Aquatic shoreline environments in Port Orchard, Washington is GRANTED. Conditions of approval are necessary to mitigate specific project impacts.

The request for a Shoreline Conditional Use Permit to construct a view platform within the Aquatic shoreline environment at 1001 Bay Street, in Port Orchard, Washington is GRANTED. Conditions of approval are necessary to mitigate specific project impacts.

SUMMARY OF RECORD
Request:
Steve Slaton, on behalf of the Port of Bremerton, requests a Shoreline Substantial Development Permit to remove two houses, impervious surfaces, and associated support piles and construct a pedestrian pathway from west of Marina Park to 1021 Bay Street; and a Shoreline Conditional Use Permit to construct a view platform in the vicinity of 1001 Bay Street, in Port Orchard, Washington.

Hearing Date:
The Hearing Examiner held an open record hearing on the request on May 10, 2012.

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

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Exhibits:
The following exhibits were admitted into the record:
1. Application submittal, including the following documents
   A. Application for Shoreline Substantial Development Permit, received February 24, 2012
   B. Contact Information sheet, dated February 23, 2012
   C. JARPA form (includes project description), dated January 10, 2012
   D. Property Owners list Verification and surrounding property owner address list, dated February 14, 2012
   E. List of Tax Parcel Numbers and Legal Descriptions, received February 24, 2012
   F. Plan set including:
      i. Vicinity map (Sheet 1 of 5), dated January 11, 2012
      ii. Site detail (Sheet 2 of 5), dated January 11, 2012
      iii. Site detail (Sheet 3 of 5), dated January 11, 2012
      iv. Section 1 detail (Sheet 4 of 5), dated January 11, 2012
      v. Section 2 detail (Sheet 5 of 5), dated January 11, 2012
2. Parcel aerial maps and property reports, printed March 1, 2012
3. Application Transmittal sheet, dated March 1, 2012
5. Comment memo from Greg Rogers, Fire Prevention Manager, South Kitsap Fire & Rescue, dated March 2, 2012
6. Determination of Incompleteness, dated March 16, 2012
7. E-mail from Joe Callahan, GeoEngineers, regarding Conditional Use Permit Criteria, dated March 23, 2012
8. Drawing of project, received March 23, 2012
9. Revised drawing of project, received April 6, 2012
10. Comment memorandum from Andrea Archer, Assistant City Engineer, dated March 13, 2012
11. Letter from Assistant Planner Stephanie Andrews to Tim Thomson, Port of Bremerton, regarding SEPA comments for the Marina Park Extension DNS, undated
12. Letter from Tim Thompson, CEO, Port of Bremerton in response to letter from Stephanie Andrews regarding DNS, dated March 20, 2012
13. Notice of Complete Application, dated April 6, 2012

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17. Public Notice of Application – Notice of Hearing to Rockwell Condos Owners with extended comment deadline, dated April 6, 2012
20. Staff Report prepared by Assistant Planner Stephanie Andrews for hearing on May 10, 2012

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

**FINDINGS**

*Application and Notice*

1. Steve Slaton, on behalf of the Port of Bremerton (Port) (Applicant), requests a Shoreline Substantial Development Permit (SSDP) to remove two houses, impervious surfaces, and associated support piles to construct a pedestrian pathway from west of Marina Park to 1021 Bay Street. The Applicant also requests a Shoreline Conditional Use Permit (SCUP) to construct a view platform in the vicinity of 1001 Bay Street, in Port Orchard, Washington.¹ *Exhibit 1.A; Exhibit 1.C; Exhibit 1.F; Exhibit 20, Staff Report, page 1.*

2. The City of Port Orchard (City) determined the applications were complete on April 6, 2012.² *Exhibit 7; Exhibit 13; Exhibit 20, Staff Report, page 11.* On April 6, 2012, the City posted notice of the application and associated hearing on the subject property and mailed notice to owners of surrounding property in accord with City ordinances. *Exhibit 14; Exhibit 16.* The City extended the comment period on the notice of application for Rockwell Condos owners until April 30, 2012. *Exhibit 17.* On April 27, 2012, the City published notice of the open record hearing associated with the application in the *Kitsap Sun.* *Exhibit 18; Exhibit 19.*

*Environmental Review*

3. The Port acted as lead agency and analyzed the environmental impact of the proposal under the State Environmental Policy Act (SEPA), Ch. 43.21C RCW. After review of the environmental checklist prepared by the Applicant and other information on file, the Port determined that that the proposal would not have a probable significant adverse

¹ The subject properties are identified as owned by the Port of Bremerton and by tax parcel numbers 4053-015-001-0005 (1001 Bay Street); 4053-015-010-0004 (1021 Bay Street); 4053-015-002-0004; 4053-015-003-0003; 4053-015-005-0001; 4053-015-006-0000; 4053-015-007-0009; 4053-015-008-0008. *Exhibit 1.C; Exhibit 2.* A legal description of the property is provided in Exhibit 1.F.

² The City received the Applicant’s SSDP application on February 24, 2012, and the Applicant’s SCUP application on March 23, 2012. *Exhibit 1.A; Exhibit 7.*

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impact on the environment. The Port issued a Notice of Determination of Nonsignificance on March 1, 2012. The DNS was not appealed. *Exhibit 4.*

**Location and Comprehensive Plan**

4. The proposed project site is located on property owned by the Port of Bremerton. The south shoreline of Sinclair Inlet abuts the property for approximately 350 linear feet, along Bay Street. Marina Park lies to the west; Sinclair Inlet (Puget Sound) lies to the north; an apartment building on fill extending into Sinclair Inlet borders the eastern side of the project; and Bay Street (Rt. 166) borders the site on the south. A commercial/retail building and a single-family residence are located beyond Bay Street to the south. *Exhibit 1.C; Exhibit 2; Exhibit 4.*

5. The project area is designated Commercial under the City’s Comprehensive Plan.\(^3\) Chapter 4 of the Comprehensive Plan governs parks within the City. Chapter 4 objectives, goals and policies relevant to the proposal call for increased public access to the marine shoreline; preservation of open space; a coordinated and connected open space system; development and maintenance of recreational facilities in established areas of the City; athletic endeavors and organized sports throughout the City; waterfront preservation and protection to enhance public use; maximized marine shoreline access; a mixture of active and passive open space with residential and commercial developments; open space acquisition and maintenance; existing park facility enhancement and expansion; environmentally sensitive open space preservation and enhancement. Chapter 9 of the Plan governs shorelines within the City. Chapter 9 objectives, goals and policies relevant to the proposal call for diverse shoreline uses; varied water and shoreline related public recreational opportunities; and increased public awareness of historical, cultural, and environmental influences of City shorelines.\(^4\) *City Comprehensive Plan, Chapter 4: Parks, pages 4-8 – 4-13; Chapter 9: Shorelines, pages 9-2 – 9-3; Exhibit 4, page 11.*

**Zoning**

6. The proposed project would be constructed within the City’s Residential (R8) zoning district. *Exhibit 1.H.* The R8 zoning district provides for a mix of single-family detached and attached housing. *Port Orchard Municipal Code (POMC) 16.13.130(2)(a).*

**Existing Site Conditions**

7. The proposed project site contains two over-water residential homes (at 1001 and 1021 Bay Street) supported by 85 piles, with vertical concrete seawalls, and associated

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\(^3\) The City’s Comprehensive Plan is dated December 2008 and was amended in 2009, 2010, and 2011.

\(^4\) City staff identified the following Comprehensive Plan goals and policies as relevant to the proposal: Chapter 4: Parks, Section 4.8, Objectives 1-3, Goals 1, 2, 5-10, and Policies POP-1 to POP-12 and POP-22 to POP-43; and Chapter 9: Shorelines, Section 9.3, Goals 1, 3, and 4, and Policies SH-1 and SH-5 to SH-9. *Exhibit 20, Staff Report, pages 2 to 6.*

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driveways and parking areas. There are also 29 additional derelict piles within Sinclair Inlet. Exhibit 1.C, page 4; Exhibit 13.

Proposed Project

8. The proposed project would remove two houses and associated parking areas at 1001 and 1021 Bay Street, including support piles and derelict piles. Derelict pile removal would be carried out from shore or from a barge during high tides. A tarp or catch net would be used to ensure that demolition debris does not enter the water. The Applicant would carry out the work between 7:00 AM to 9:00 PM Monday-Friday and 8:00 AM to 9:00 PM Saturday-Sunday. The concrete house foundation at 1001 Bay Street would be retained to accommodate a viewing platform. The platform would be 12 feet above the surface elevation and cantilevered eight feet out over the beach area. A 14-foot wide pedestrian pathway would be constructed from a parking lot west of Marina Park to connect to the viewing platform at 2021 Bay Street. The proposed project includes a pathway that would follow designs prepared for the City’s Bay Street Pedestrian Pathway to ensure continuity where these two projects overlap. Stairs from the viewing platform or directly from the path would provide public access to the beach from each home site. Landscape vegetation would be installed throughout the site. The proposed viewing platform would not require any new pilings. Exhibit 1.C; Exhibit 1.F; Exhibit 13; Exhibit 20, Staff Report, page 11; Testimony of Mr. Olson; Testimony of Mr. Slaton.

9. The completed project would provide public opportunities for shoreline recreation and beach access to Sinclair Inlet, as well as expand the existing Marina Park to the west. The proposed development would provide a more appropriate use of this shoreline area than what now exists in that greater public access would be allowed. Exhibit 1.C, page 5.

10. Joe Callaghan, GeoEngineers, testified for the Applicant that Corps of Engineers permits are not required because pile removal is the only proposed in-water work. He testified that the project requires a Hydraulic Project Approval permit from the Washington Department of Fish and Wildlife and that it is not anticipated there will be any problem obtaining it as the project improves the shoreline area. Testimony of Mr. Callaghan.

Stormwater

11. The proposed project would remove 3,052 square feet of overwater structures, with a net reduction of 1,885 square feet of impervious surface. All stormwater would be allowed to sheet flow from the area into Sinclair Inlet or onto adjacent vegetated areas for infiltration and passive treatment prior to entering Puget Sound. The City Public Works Department submitted comments on the SSDP requesting a temporary erosion and sediment control (TESC) plan, a landscape plan; and compliance with the City’s Developers Handbook, Stormwater Manual and 2005 Department of Ecology Stormwater Management Manual for Western Washington. Proposed conditions would address the City Public Works concerns. Exhibit 4, pages 7 and 9; Exhibit 10; Exhibit 20, Staff Report, page 12.

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12. The Applicant identified Endangered Species Act listed Puget Sound Chinook salmon, steelhead and bull trout as known to reside in the adjacent waters of Sinclair Inlet. Designated critical habitat for Chinook salmon and bull trout includes nearshore areas of Puget Sound. The Applicant’s environmental checklist states that the proposed project would not impact habitat associated with these species. *Exhibit 4, page 9.*

*Shoreline Management Act and Regulations*

13. The primary goal of the SMA is to protect the public interest in the State’s shorelines through a coordinated development process. One goal of the SMA is to preserve 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.*

14. The Port Orchard Shoreline Master Program (City SMP, April 1994) includes master program element goals for shoreline uses as well as conservation; recreation; public access, circulation; economic development; and historical/cultural goals. The proposed project would be located within both the Aquatic and Urban shoreline environments. The Aquatic shoreline environment is located waterward of the ordinary high water mark (OHWM), and the Urban shoreline environment is located landward of the OHWM. *City SMP, pages 5 and 6; Exhibit 20, Staff Report, pages 7 and 8.*

15. 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 may allow either multiple water-dependent uses or specific single dominant water-dependent uses in areas of unique conditions. It is designed to promote conservation of natural features and resources of the aquatic area that are substantially different in character from those of adjoining uplands and backshores. *City SMP, Part VI.6, page 31.*

16. The purpose of the Urban shoreline environment is to provide for an area of high intensity land use including residential, commercial, and industrial development. The Urban environment is intended to ensure optimum use of shorelines that are presently urbanized or planned for urbanization. According to the City SMP, development in Urban areas should be managed to enhance and maintain the shorelines for a variety of shoreline uses with priority for water-dependent, water-related, and water-enjoyment uses. *City SMP, Part VI.6, page 30.*

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5 Backshore means the accretion or erosion zone, located landward of the line of ordinary high tide, which is normally wetted only by storm tides. *City SMP, Part III.3, page 8.*

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17. 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; City SMP, Part VII.7, page 32.

18. The City SMP 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 City SMP goals, policies and regulations. City SMP, Sec. 1.6, page 3. Substantial development permits are issued for activities classified as permitted uses by the City SMP. City SMP, 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). The proposed project is a permitted use within the Urban shoreline environment. Under the City SMP Use Compatibility Matrices, Water-dependent and water-enjoyment recreation uses are allowed within the Urban shoreline environment, and allowed within the Aquatic environment with a SCUP. City Planner Jennifer Haro testified that the proposed viewing platform would extend waterward of the OHWM into the Aquatic shoreline environment. It is considered a water enjoyment use under the City SMP and requires a Shoreline Conditional Use Permit. City SMP, Sec. 8.1, page 34; Testimony of Ms. Haro.

Comments and Staff Recommendation

19. A letter from the South Kitsap Fire & Rescue Prevention Office expressed no immediate concerns with the proposal. Exhibit 5. The City Public Works Department provided comments on the SSDP application with a request to consider conditions related to submission of stormwater and landscape plans; submission of as-built blueprints; and a donation of an easement for the City trail segment passing through the property. City Public Works Department concerns would be addressed as permit conditions. Exhibit 5; Exhibit 10; Exhibit 20, Staff Report, page 12.

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A "water dependent use" means a use that cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations. A "water enjoyment use" means a use providing passive and active recreation for large numbers of people along shorelines, and ensures the ability to interact with the shoreline. The use must be open to the public with most, if not all, of the shoreline devoted to fostering shoreline/people interaction. Water enjoyment uses include public waterfront parks. City SMP, Part III.3, pages 15 - 16.

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20. City staff reviewed the applications and determined that the proposal is consistent with the City's Comprehensive Plan, City Codes, and the City SMP. City staff recommended that the SSDP and SCUP be granted subject to conditions proposed by the Planning and Public Works Departments. Mr. Slaton testified that the Applicant agreed with the proposed conditions. *Exhibit 20, Staff Report, pages 2, 8 to 10; Testimony of Mr. Slaton.*

**CONCLUSIONS**

**Jurisdiction**

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

**Criteria for Shoreline Substantial Development Permit 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 alterations to the natural condition of the shoreline. Permitted shoreline uses must be designed to “minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water.” *RCW 90.58.020.*

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:

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(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. City SMP, Sec. 5.3, page 25.

Criteria for Shoreline Conditional Use Permit Review
Uses which are classified or set forth in the City SMP as conditional uses may be authorized by
the Hearing Examiner provided the applicant can demonstrate all of the following:

a. The proposed use will not interfere with the normal public use of public shorelines;
b. The proposed use of the site and the design is compatible with other permitted uses in
the area;
c. The proposed use will cause no significant adverse effects to the shoreline
environment; and
d. The public interest will suffer no substantial detrimental effect.
City SMP, Sec. 4.2, page 19.

The total or cumulative impacts of the conditional use should also remain consistent with RCW
90.58.020 policies and should not produce significant adverse effects on the shoreline
environment. In authorizing a conditional use, special conditions may be attached to the permit
to prevent undesirable effects of the proposed use. City SMP, Sec. 4.2, pages 4 – 5.

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
A. With conditions, the proposed project meets the criteria to obtain a Shoreline
Substantial Development Permit.

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1. **The proposed project would be consistent with state Shoreline Management Act policies and procedures.** The SMA gives priority to single family residences and appurtenant structures in authorizing alterations to the natural condition of the shoreline. This project is a welcome reversal where existing shoreline family residences are being removed to restore the natural condition of the shoreline. A pedestrian trail and shoreline restoration is a reasonable and appropriate use of the shoreline. The proposal is also consistent with policies for development within Shorelines of Statewide Significance. The proposal will protect and restore the resources, ecology and natural character of the shoreline, and increase public access and recreational opportunities for the public. The Applicant prepared an environmental checklist, determined that the proposal would not have a probable significant adverse impact on the environment, and issued a DNS. The Applicant would remove 29 derelict piles. Conditions are necessary to ensure that the Applicant carry out work activities within hours provided by City Code; provide a temporary erosion and sediment control plan; comply with the City’s Developers Handbook and with all stormwater requirements; and donate an easement for the City trail segment passing through the property. *Findings 1-14, 16-20.*

2. **The proposed project would be consistent with Chapter 173-27, Washington Administrative Code 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. 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 the SMA and an approved local Shoreline Master Program. The proposal is consistent with the City SMP, as described in more detail below. Conditions are necessary to ensure that the Applicant carry out work activities within hours provided by City Code; provide a temporary erosion and sediment control plan; comply with the City’s Developers Handbook and with all stormwater requirements; and donate an easement for the City trail segment passing through the property. *Findings 1-14, 16-20.*

3. **The proposed project would be consistent with the Port Orchard Shoreline Master Program and Port Orchard Shoreline Management Regulations.** The proposed trail would provide public recreation access to the Sinclair Inlet shoreline, consistent with City SMP Parks and Recreation policies. Removal of two existing residences would take place within the City’s Urban shoreline environment, as would the proposed pedestrian path. Water-dependent and water-enjoyment uses are allowed within the Urban shoreline environment. The associated viewing platform would extend over the City’s Aquatic shoreline environment, requiring a Shoreline
Conditional Use Permit (SCUP). The Applicant has filed a related request for a SCUP to authorize that part of the project. Conditions are necessary to ensure that the Applicant carry out work activities within hours provided by City Code; provide a temporary erosion and sediment control plan; comply with the City’s Developers Handbook and with all stormwater requirements; and donate an easement for the City trail segment passing through the property. *Findings 1-14, 16-20.*

**B. The portions of the proposed viewing platform within the Aquatic shoreline environment meet the criteria for granting a Shoreline Conditional Use Permit (SCUP).**

1. **The proposed use will not interfere with the normal public use of public shorelines.** The proposed pedestrian path would be constructed above the ordinary high water mark. After removal of the residence at 1001 Bay Street, a viewing platform would be constructed and anchored to the remaining concrete foundation and cantilevered eight feet out over the beach area within the Aquatic shoreline environment. The proposed viewing platform would enhance public use of public shorelines by replacing two shoreline residences with an extension of Marina Park. *Findings 1-15, 17-20.*

2. **The proposed use of the site and the design is compatible with other permitted uses in the area.** The cantilevered platform within the Aquatic environment would provide public viewing within the proposed Marina Park extension and stairs would provide beach access. The proposed project would provide walking and viewing opportunities within the shoreline area for area and neighboring residences. No adjacent properties or properties across Bay Street would be impacted by the proposed project. Conditions are necessary to ensure that the Applicant carry out work activities within hours provided by City Code; provide a temporary erosion and sediment control plan; comply with the City’s Developers Handbook and with all stormwater requirements; and comply with all conditions of an Hydraulic Project Approval. *Findings 1-15, 17-20.*

3. **The proposed use will cause no significant adverse effects to the shoreline environment.** The Applicant prepared an environmental checklist, determined that the proposal would not have a probable significant adverse impact on the environment, and issued a DNS. The DNS was not appealed. Construction of the proposed project will reduce environmental impact as compared to current conditions, through removal of two residences within the shoreline, removal of derelict pilings beyond the OHWM, and shoreline landscaping. The proposed viewing platform would be supported by an existing house foundation and extend eight feet over the Aquatic shoreline environment. No additional piles are required. Conditions are necessary to ensure that the Applicant carry out work activities within hours provided by City Code; provide a temporary erosion and sediment control plan; comply with
the City’s Developers Handbook and with all stormwater requirements; and comply with all conditions of an Hydraulic Project Approval. *Findings 1-15, 17-20.*

4. **The public interest will suffer no substantial detrimental effect.** The City provided adequate notice and opportunity to comment on the proposal. The proposal is consistent with the City Comprehensive Plan. The Applicant acted as lead agency, determined that the proposal would not have a probable significant adverse impact on the environment, and issued a DNS. The DNS was not appealed. The proposed project would provide public benefits by enhancing the shoreline and removal of derelict pilings beyond the OHWM. The proposed project would improve access to the beach area within the expanded Marina Park. Conditions are necessary to ensure that the Applicant carry out work activities within hours provided by City Code; provide a temporary erosion and sediment control plan; comply with the City’s Developers Handbook and with all stormwater requirements; and comply with all conditions of an Hydraulic Project Approval. *Findings 1-15, 17-20.*

**DECISIONS**

Based on the above findings and conclusions, the requests for a Shoreline Substantial Development Permit to construct a pedestrian pathway, and remove two houses, impervious surfaces and associated support piles from west of Marina Park to 1021 Bay Street is **GRANTED, subject to conditions;** and a Shoreline Conditional Use Permit to construct a view platform in the vicinity of 1001 Bay Street, in Port Orchard, Washington is also **GRANTED, subject to Ecology approval and subject to the following conditions:**

1. Construction activities shall be limited to the work hours of 7am to 9pm Mon-Fri and 8am-9pm Sat-Sun as provided for in the Port Orchard Municipal Code.

2. Prior to implementing work, the “Project Area” must be completely delineated with the appropriate sediment and erosion control measures. In addition, an “Upland Staging Area” for each Phase of the project must also be clearly delineated on-site and appropriate containment measures shall be in place.

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, 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.

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

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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. Prior to commencing construction activities the Applicant shall receive approval from the Washington Department of Fish and Wildlife.

6. All conditions of the Hydraulic Project Approval (HPA), to be issued by the Washington Department of Fish & Wildlife, shall be followed, including, but not limited to: timing restrictions, installation provisions, habitat features, and water quality.

7. A City of Port Orchard building permit will be required for portions of the construction.

8. If required State or Federal permits are not approved, a City building permit will not be issued for construction.

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

10. The Applicant shall provide a temporary erosion and sediment control (TESC) plan.

11. The Applicant shall provide a landscape plan showing how removed vegetation shall be replaced.

12. All of the development shall conform to the most recent copy of the City of Port Orchard’s Developers Handbook at the time of complete application.


14. The Applicant shall submit two sets of as-built blueprints and one electronic media copy at the end of the project.

15. Any work within the City right-of-way will require an application to perform work on City right-of-way and possibly a maintenance or performance bond. This application
must be submitted as part of the SDAP process. The need for and scope of bonding will be determined at that time.

16. The Applicant shall donate an easement for the City trail segment passing through this property which is part of the Bay Street Pedestrian Path Project. The trail section being permitted shall be built with local dollars, but must meet Federal Guidelines for construction and be totally federalized upon completion.

Decided this 22nd day of May 2012.

THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center