

1 **BEFORE THE HEARING EXAMINER FOR THE CITY**
2 **OF PORT TOWNSEND**

3 Phil Olbrechts, Hearing Examiner

4 RE: Port of Port Townsend	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION.
5 Shoreline Substantial	
6 Development	
6 (LUP24-039 & LUP24-040)	

7 **INTRODUCTION**

8 The Port of Port Townsend seeks approval of a Type III shoreline substantial
9 development permit to relocate and upgrade an existing stormwater treatment facility
10 in the Boat Haven Boat Yard located at 2740 Jefferson Street along the shoreline of
11 Port Townsend Bay. The application is approved subject to conditions.

12 **TESTIMONY**

13 A computer-generated transcript accompanies this decision as Appendix A. The
14 transcript is provided for informational purposes only.

15 **EXHIBITS**

16 The exhibits list identified on page 14 of the staff report dated December 5, 2024 were
17 admitted into the record during the December 17, 2024 hearing on the proposal.

18 **FINDINGS OF FACT**

19 **Procedural:**

- 20 1. Applicant. The applicant is the Port of Port Townsend.
- 21 2. Hearing. The Hearing Examiner conducted a hybrid virtual/in-person
22 hearing on the subject application on December 17, 2024 at 1:00 PM. The in-person
23 component of the hearing was held in the City of Port Townend City Council chambers.

24 **Substantive:**

- 25 3. Site and Proposal Description. The Port of Port Townsend seeks approval
of a shoreline substantial development permit to relocate and upgrade an existing
stormwater treatment facility in the Boat Haven Boat Yard located at 2740 Jefferson
Street along the shoreline of Port Townsend Bay. The new location is located near the

1 existing facility, generally described as north of the Larry Scott Trail, east of the coastal
2 wetland lagoon, and south of the intersection of 8th Street and Haines Place.

3 Consistent with Policy 5.12.2 and 5.12.15, the Port of Port Townsend proposes to make
4 significant, proactive improvements to its stormwater conveyance and treatment
5 system to treat runoff from the entire Boatyard, help the Port maintain compliance with
6 new and probable future National Pollutant Discharge Elimination System (NPDES)
7 permit requirements, and voluntarily reduce pollutant loading to Port Townsend Bay
8 in Puget Sound. Accessory utilities within the Boat Haven District are a permitted use.
9 The expanded stormwater treatment structures are located generally in the same
10 location as the existing structures. The expanded stormwater pipe is located to the east
11 of the treatment structures. The proposed location of the stormwater treatment
12 structures is approximately 39 feet from the OHWM, and the proposed stormwater pipe
13 is on average 26 feet from OHWM.

14 4. Characteristics of the Area. The boat yard is located roughly south of Sims
15 Way with commercial uses located to the north and east and residential uses to the
16 northwest.

17 5. Adverse Impacts of Proposed Use. The proposal will not create any
18 significant adverse impacts. The City PCD Director, acting as SEPA Responsible
19 Official, issued a Determination of Nonsignificance on November 4, 2024 (Exhibit H).
20 Pertinent impacts are addressed in more detail as follows:

21 A. Critical Areas. Critical Areas. The project site is mapped as within several
22 identified critical areas, specifically Aquifer Recharge, Seismic, Preliminary
23 Tsunami Inundation Zone, frequently flooded areas and wetlands. Therefore,
24 pursuant to Section 6.1 of the SMP, the development is also subject to
25 provisions of the Port Townsend Critical Areas Ordinance (PTMC 19.05). Staff
have determined that the proposal will satisfy the requirements of PTMC
19.505 as follows:

i. Aquifer Recharge. Under the City's critical areas ordinance City
staff have found no further action or mitigation required.

ii. Seismic and Tsunami hazard areas. Standards for development of
structures and improvements in seismic and Tsunami hazard areas
shall be in accordance with the provisions of building and
construction codes as currently adopted by the city. No additional
setback or other requirements are necessary to regulate structural
design. See PTMC 19.05.100 D, E Consistent with the
performance standards for tsunami hazard areas, staff has placed a
note on the pending building permit indicating the plans are being
made in a tsunami hazard/liquefaction prone area. PTMC
19.05.100 E (1)(c).

1 iii. Wetlands. City staff have found two wetlands in the project vicinity
2 (Exhibit I):

3 a. Wetland A is a Category II wetland directly west of the
4 boatyard. Standards for development within a Category II
5 wetland allow for regional retention/detention facilities
6 when all requirements of the Engineering Design Standards
7 (EDS) manual are met per PTMC 19.05.110.D.6.a.
8 Consistent with 19.05.110.G.7, the submitted Wetland
9 Investigation and Delineation Report, dated July 2024
10 (Exhibit I), determined that the wetland buffer has been
11 reduced by the presence of substantial development existing
12 within the project site, including the existing stormwater
13 facility. These existing facilities effectively eliminated the
14 function and value of a portion of the buffer. No impacts to
15 the wetland or remaining functional buffer are anticipated.
16 The application includes measures to compensate for
17 impacts to shoreline vegetation.

18 b. Potential Wetland – A potential wetland exists to the north
19 of the site. The original Wetland Investigation and
20 Delineation Report (Exhibit I), concludes that the Port
21 stormwater facility is an artificial wetland resulting from
22 intentionally created stormwater drainage and detention
23 facilities and would not be regulated under PTMC
24 19.05.110.

25 City staff accepted Exhibit I with the exception of the
 conclusion that the stormwater facility is an artificial
 wetland. The Department of Ecology, in collaboration with
 the Planning and Community Development Department, has
 authorized the Port to temporarily divert stormwater runoff
 from the detention facility in order to assess whether it
 qualifies as an artificial wetland. Once the temporary
 diversion yields sufficient data to evaluate the potential for
 wetland qualification, the City will address this aspect of the
 report. The potential wetland will not be impacted by this
 proposal.

 iv. Frequently Flooded Area. The location site is located partially
 within the Special Flood Hazard Area (SFHA) adopted by the
 Federal Emergency Management Agency (FEMA) (Exhibit F– City
 Critical Area Map). Flood Development Review and Habitat
 Assessment are required pursuant to PTMC 19.05.080.J. The
 Applicant submitted a Flood Development Permit application

1 (Exhibit G) and Programmatic Biological Assessment (Exhibit E).
2 On October 23, 2024, after 100% engineering design was
3 completed, the project area was adjusted and an updated
4 Programmatic Biological Assessment and Habitat Assessment,
5 dated November 2024 were submitted (Exhibit E-1). Review under
6 the City's Flood Damage Prevention Ordinance (PTMC 16.08) has
7 been included with review of the shoreline permit request; a separate
8 flood development permit is not required.

9
10 B. Net Loss. The proposal will result in no net loss of ecological function.

11 There is no analysis in the record on net loss, but the preponderance and
12 substantial evidence establishes no net loss of ecological function. Staff have
13 determined that all critical areas are fully mitigated as required by City code.
14 The proposed stormwater treatment facility upgrade is strictly upgrading the
15 existing stormwater treatment system to improve water quality. Given these
16 factors and the modest nature of the proposal, no significant impact to
17 ecological function is reasonably anticipated and it is concluded there will be
18 no net loss of ecological function.

19 C. Aesthetic/Shoreline Access. The proposal will have no significant adverse
20 impacts to shoreline access or aesthetics. The proposal constitutes a
21 replacement of an existing utility that doesn't appear to involve any significant
22 change in visible dimensions or visual encroachment into the shoreline.

23 The stormwater upgrade is within the boatyard and adjacent to the Larry Scott
24 Trail which provides access to pedestrians and bicyclists including those with
25 disabilities. The stormwater treatment structures would not block the public's
visual or physical access to the water. The proposal will not increase demand
for public access nor interfere with existing public access, thus no public access
improvements are required.

D. Navigation. The proposal will have no impact on navigation, as none of it
extends overwater. CONCLUSIONS OF LAW

21 **Procedural:**

22 1. Authority of Hearing Examiner. Major Shoreline Substantial Development
23 applications are classified as Type III permits which are reviewed and subject to final
24 approval by the hearing examiner, subject to appeal to shoreline hearings board. PTMC
25 20.10.040, Tables 1 and 2. The shoreline permit qualifies as "major" because it does
not qualify for minor shoreline substantial development permit review as outlined in
Shoreline Master Program Section (SMP) 10.5.1.

Substantive:

1 2. Shoreline Designation. According to the Shoreline Master Program (SMP) the
2 property is designated Boat Haven Marina and Marina Trades District.

3 3. Permit Review Criteria. The Port Townsend Shoreline Master Program (“SMP”)
4 governs the policies and criteria for shoreline permit review including the shoreline
5 substantial development permit that is the subject of this Decision. Section 10.13.1 of
6 the Master Program requires that no Permit shall be granted unless the proposed
7 development is consistent with the provisions of this Master Program, the Shoreline
Management Act of 1971, and the rules and regulations adopted by the Department of
Ecology thereunder. Applicable policies and regulations are quoted below and applied
via corresponding conclusions of law.

8 **RCW 90.58.020 Use Preferences**

9 *This policy (Shoreline Management Act policy) is designed to insure the development*
10 *of these shorelines (of the state) in a manner which, while allowing for limited*
11 *reduction of rights of the public in the navigable waters, will promote and enhance the*
12 *public interest. This policy contemplates protecting against adverse effects to the*
public health, the land and its vegetation and wildlife, and the waters of the state and
their aquatic life, while protecting generally public rights of navigation and corollary
rights incidental thereto.

13 4. The criterion is met. As determined in Finding of Fact No. 5, the proposal will not
14 adversely affect navigation, environmental resources or the shoreline enjoyment of
adjoining uses or the public at large.

15 **RCW 90.58.020(1)**

16 *Recognize and protect the statewide interest over local interest;*

17 5. The criterion is met. The project has been thoroughly mitigated to address all
18 adverse impacts and as such the statewide interest in the preservation of the shoreline
19 and surrounding habitats is protected, in addition to the local interest of ensuring
productive, aesthetic and economic use of shoreline areas.

20 **RCW 90.58.020(2)**

21 *Preserve the natural character of the shoreline;*

22 6. The criterion is met. As determined in Finding of Fact No. 5, the proposal will not
23 adversely affect critical areas, will result in no net loss of ecological function and will
not adversely impact shoreline aesthetics.

24 **RCW 90.58.020(3)**

25 *Result in long term over short term benefit;*

1 7. The criterion is met. The proposal will improve the ability of the port to provide
2 public services at minimal environmental cost by repurposing an existing structure of
3 historical significance.

4 **RCW 90.58.020(4)**

5 *Protect the resources and ecology of the shoreline;*

6 8. The criterion is met. As determined in Finding of Fact No. 5, the proposal will not
7 adversely affect critical areas and will result in no net loss of ecological function.

8 **RCW 90.58.020(5)**

9 *Increase public access to publicly owned areas of the shorelines;*

10 9. The criterion is met insofar as the Applicant's constitutional rights must be
11 observed. Requiring the Applicant to provide public access when that access is not
12 necessary to mitigate an impact of the project violates the federal takings rights of the
13 Applicant. See *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987).

14 **RCW 90.58.020(6)**

15 *Increase recreational opportunities for the public in the shoreline;*

16 10. The criterion is met. For the reasons identified in Conclusion of Law No. 9, the
17 Applicant cannot be compelled to provide additional recreational opportunities.
18 However, the Applicant's activities include facilitating recreational boating activities
19 and the proposal will help it improve upon those functions.

20 **SMP Chapter 5 Shoreline Environments**

21 **5.12 Boat Haven Marina & Marine Trades District**

22 *Policy 5.12.1 In regulating uses in the Boat Haven District, distinguish between the
23 main boat basin and the northeast boat basin areas as follows:*

- 24 a. *Prohibit water-enjoyment and non-water-oriented uses within the main
25 boat basin. First priority should be given to water-dependent uses,
second priority to water-related uses, and third priority to public access
uses (i.e., including associated facilities such as public restrooms,
benches and signage).*

11. The criterion is met. The proposal supports port activities, which are water
dependent, and thus should at the least qualify as a water related use under the SMP
15.7 definition. As a priority use, the proposal should be considered as furthering the
policy quoted above.

*Policy 5.12.2 Provide for high-intensity water-dependent and water-related
commercial and industrial uses within the Boat Haven District, while protecting
existing ecological functions. Non-water-dependent industrial uses should be*

1 *located outside the shoreline jurisdiction.*

2 12. The criterion is met. The proposal qualifies as water related as outlined in
3 Conclusion of Law No. 11 while also creating no net loss of ecological function as
determined in Finding of Fact No. 5.

4 ***Policy 5.12.3*** *Preserve and protect existing water-dependent and water-related uses,*
5 *especially marine trades, as critical elements of the traditional and current economy*
6 *of the city, as well as elements that define the character of the community.*

7 13. The criterion is well met. The proposal serves and thereby enhances existing port
8 facilities, which qualify as water-dependent and water-related.

9 ***Policy 5.12.6*** *Maintain the existing, and expand the future, base of water-dependent*
10 *and water-related industrial activities within the Boat Haven District, particularly in*
11 *those areas lying in the main basin sub-district.*

12 14. The criterion is met. The proposal will meet the stormwater control requirements
13 for existing and future Boat Haven development.

14 ***Policy 5.12.9*** *Locate, design, construct and operate industrial and port facilities to*
15 *minimize unnecessary conflicts with and impacts to adjacent, nonindustrial land or*
16 *water uses to the extent practicable, given the intended use and zoning as a Port*
17 *industrial facility.*

18 15. The criterion is met. The proposal creates no conflicts with surrounding uses.

19 ***Policy 5.12.10*** *Preserve water-dependent and water-related uses, enhance publicly*
20 *oriented recreational uses along the shoreline, and foster compatible marine-related*
21 *uses in adjacent upland areas of the Boat Haven.*

22 16. The criterion is met as the proposal enhances the water-dependent and related uses
23 of the area by further mitigating their water quality impacts.

24 ***Policy 5.12.11*** *Require new development to provide physical and visual access to*
25 *shorelines whenever possible and consistent with constitutional and statutory*
limitations, provided such access does not interfere with industrial operations or
endanger public health and safety. In lieu of onsite improvements, the Shoreline
Administrator may allow for off-site improvements if said improvements would provide
a greater public benefit (WAC 173-26-221 (4)(c) and (d)).

17. The criterion is met for the reasons identified in Finding of Fact No. 5C and
Conclusions of Law No. 9 and 10.

Policy 5.12.12 *Maximize efficient use of areas within the Boat Haven District for water*
dependent and water-related uses before contemplating expansions to the district.

1 *Ensure that any future expansions to the district are subject to adequate environmental*
2 *review, and that identified impacts are fully mitigated to achieve "no net loss" of*
3 *environmental functions and values.*

4 18. The criterion is met. The proposed relocation is close to the current location and
5 all impacts have been fully assessed and mitigated as outlined in Finding of Fact No.
6 5.

7 ***Policy 5.12.15*** *Work with the Port to identify opportunities for restoration and*
8 *encourage conservation in the Boat Haven Marine Trades environment, such as*
9 *preservation of water quality and enhancement of public access.*

10 19. The criterion is met. The proposal will reduce water quality impacts and will
11 otherwise not create any significant impacts as outlined in Finding of Fact No. 5.

12 ***Policy 5.12.18*** *Design and manage shoreline uses and modifications within the Boat*
13 *Haven designation consistent with the Environmental Protection policies and*
14 *regulations of Chapter 6 including, but not limited to, preservation of water quality,*
15 *natural hydrographic conditions, and safe, unobstructed passage of fish and wildlife,*
16 *particularly those species dependent on migration.*

17 20. The criterion is met. The proposal does not involve any over-water construction
18 and is not otherwise anticipated to create any impacts to fish and wildlife migration.
19 The proposal will not adversely affect environmental resources or result in a net loss of
20 ecological function for the reasons identified in Finding of Fact No. 5. The proposal is
21 consistent with Chapter 6 policies and regulations as outlined in the conclusions of law
22 below that address Chapter 6 policies and regulations.

23 ***DR- 5.12.2*** *Recognize the different characters of the Boat Haven's two sub-districts:*
24 *a. Main Boat Basin Sub-District (See Shorelines Designation Map Appendix A). This*
25 *area includes the areas within the shoreline jurisdiction from 75 feet west of the*
Benedict Street right-of-way west to the end of the developed portion of the Port
property, and encompasses the approximately 15-acre main boat basin that provides
moorage primarily for recreational boaters. This area also encompasses the majority
of the water-dependent and water-related commercial and industrial uses and activities
occurring at the Boat Haven. Uses are prohibited, permitted, or may be conditionally
permitted within the main boat basin sub-district as follows:

...

ii. *The following uses are permitted:*

...

2.) *Water-related uses*

...

1 21. The criterion is met. As determined in Conclusion of Law No. 11, the
2 proposal qualifies as water-related and thus is permitted in the Boat Haven Main Boat
3 Basin Sub-District.

4 ***DR- 5.12.3*** *No new or expanded building or structure shall exceed a building height*
5 *of thirty-five (35) feet.*

6 22. The criterion is met. The proposal is less than 35 feet in height.

7 ***DR- 5.12.4*** *There is no specific setback from the ordinary high water mark (OHWM)*
8 *of the marina. From the OHWM of Port Townsend Bay, the setback shall be a minimum*
9 *of twenty-five (25) feet for non-water-dependent uses or, as needed to preserve/provide*
10 *public access whichever is greater.*

11 23. The criterion is met. According to the staff report, the proposal will be
12 located an average of 33 feet from the OHWM of Port Townsend Bay. The outfall of
13 the stormwater facility is presumably within the 25 foot setback. However, the SMP
14 definition of setback only applies to “buildings,” which are defined as structures with
15 roofs supported by walls or columns. Given these definitions, the proposed facility
16 doesn’t appear to be subject to the DR-5.12.4 setback requirement.

17 **Policy 6.3.1**

18 *Protect the environment through implementation of this Master Program in concert*
19 *with the City’s Critical Areas Ordinance and through the use of the AMRRC*
20 *mitigation sequence (Avoid, Minimize, Rectify, Reduce, Compensate) (WAC 173-26-*
21 *201(e)).*

22 **Policy 6.3.2**

23 *Minimize the adverse impacts of shoreline developments and activities on the natural*
24 *environment during all phases of development (e.g., design, construction, operation,*
25 *and management).*

Policy 6.3.3

Assure, at a minimum, that development and use within the shoreline’s jurisdiction
result in no net loss of ecological functions necessary to sustain shoreline natural
resources. Development activities shall protect existing ecological functions and
ecosystem wide processes.

Policy 6.3.4

Encourage shoreline developments or activities that serve to enhance ecological
functions and/or values and those that protect and/or contribute to the long-term

1 *restoration of properly functioning conditions for proposed, threatened and*
2 *endangered species consistent with the fundamental goals of this Master Program.*

3 **Policy 6.3.5**

4 *Ensure, through appropriate monitoring and enforcement measures, that all required*
5 *conditions are met, improvements installed, and properly maintained.*

6 24. The Chapter 6 policies outlined above are all met by the proposal. As
7 identified in Finding of Fact No. 5, as conditioned the proposal has been made to
8 conform to the City’s critical areas ordinance and the proposal will result in no net loss
9 of ecological function. Policy 6.3.4 only “encourages” the enhancement of ecological
10 functions and values and for the reasons identified in Conclusion of Law No. 9 the
11 Applicant cannot be compelled to provide mitigation beyond that necessary to mitigate
12 project impacts. The City’s building permit and code enforcement regulations and
13 procedures ensure that all conditions of approval are implemented.

14 **DR-6.3.1**

15 *All shoreline development and activity shall be located, designed, constructed, and*
16 *managed in a manner that avoids, minimizes and/or mitigates adverse impacts to the*
17 *environment. The preferred mitigation sequence (avoid, minimize, rectify, reduce, or*
18 *compensate for the environmental impact) shall follow that listed in WAC 173-26-*
19 *0201((2)(e), see also definition of “Mitigation,” listed in this Master Program).*

20 **DR-6.3.2**

21 *In approving shoreline developments, the City of Port Townsend shall ensure that*
22 *shoreline development, use, and/or activities will result in no net loss of ecological*
23 *functions necessary to sustain shoreline resources, including loss that may result from*
24 *the cumulative impacts of similar developments over time to the extent consistent with*
25 *constitutional and statutory limitations on the regulation of private property. To this*
end, the City may require modifications to the site plan and/or adjust or prescribe
project dimensions, intensity of use, and screening as deemed appropriate. If impacts
cannot be avoided through design modifications, the City shall require mitigation
commensurate with the project’s adverse impacts.

26 25. The criteria are met. The only mitigation required is that listed in the staff
27 report to ensure that the proposal does not result in a net loss of ecological function and
28 conforms to the City’s critical areas ordinance as outlined in Finding of Fact No. 5.
29 The proposal largely satisfies mitigation standards by minimizing impacts, i.e. keeping
30 the new facilities close to existing facilities and having a low profile along the
31 shoreline.

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6.5 Critical Areas - General

Policy 6.5.1 Protect unique, rare, and fragile environments, including wetlands and fish and wildlife habitat conservation areas from impacts associated with development.

26. The criterion is met. The City’s critical areas ordinance protects all areas that could be considered “*unique, rare and fragile environments*” under the standard quoted above. City staff have applied the critical areas ordinance to determine what critical areas are present and recommended conditions, adopted by this Decision, that are required and necessary to protect them.

Policy 6.5.3 Provide a level of protection to critical areas that is equal to or greater than the level of protection provided by the adopted Port Townsend critical areas regulations. Recognizing this, the City explicitly elects to make its critical areas regulations as adopted by Ordinance 3198, May 21, 2018, and codified in Chapter 19.05 PTMC applicable to critical areas within shoreline jurisdiction. It should be noted that while activities in shorelines jurisdiction are subject to compliance with critical areas regulations, critical area permits (19.05.040) are not issued in shoreline jurisdiction, and that reasonable uses exceptions (19.05.050(D)) within shoreline jurisdiction will require a shoreline variance. Furthermore, in cases where definitions, procedures, or standards of this Shoreline Master Program are inconsistent with related provisions in Chapter 19.05, provisions of the Port Townsend Shoreline Master Program shall prevail. Additional limitations to how the Critical Areas Ordinance (CAO) wetland provisions (19.05.110) apply within shoreline jurisdiction are detailed in Section 6.9 below. (Note: A Shoreline Master Program amendment will be required for any future amendments to critical areas provisions incorporated by reference into the PTSMP.)

DR-6.5.1 Development and uses proposed within the shoreline shall meet the requirements of the City’s Critical Areas Ordinance 3198, May 21, 2018, and codified in Chapter 19.05 PTMC, Critical Areas in addition to the requirements of this Master Program (Appendix E)..

27. The criterion is met. City staff has applied the required critical areas ordinance to assess for the presence of critical areas and what is necessary to protect them under Ordinance No. 3198. The recommendations found necessary by staff to achieve conformance to the ordinance have been adopted by this Decision.

SMP Chapter 7 Shoreline Public Access

1 **Policy 7.3.6** *Incorporate public access provisions into the review and approval of all*
2 *public and private development projects including land divisions. Exceptions may be*
3 *considered for the following:*

- 4 a. *Single-family dwelling units;*
5 b. *Where deemed inappropriate due to health, safety and environmental*
6 *concerns; and*
7 c. *Restoration projects.*

8 **Policy 7.3.7** *Require new development that impacts public access to mitigate through*
9 *the provision of on-site visual and physical public access, unless such access is shown*
10 *to be incompatible due to reasons of safety, security, or impact to the shoreline. In lieu*
11 *of on-site improvements, the Shoreline Administrator may allow for off-site*
12 *improvements if said improvements would provide a greater public benefit (WAC 173-*
13 *26-221 (4)(c) and (d)).*

14 **Policy 7.3.8** *Preserve and enhance public views from the shoreline upland areas.*
15 *Enhancement of views should not be construed to mean excessive removal of native*
16 *vegetation that partially impairs views.*

17 28. The criterion is met. The policies quoted above are only a modest portion of
18 numerous public access policies adopted into the City's SMP. They are the most
19 strongly worded and directly applicable so conformance with them assures
20 conformance with the others listed in Chapter 7 of the SMP. As noted in Conclusion
21 of Law No. 9, the City is constitutionally barred from requiring access if such a
22 condition is not necessary to mitigate an impact created by the proposal. Under the
23 standards of the *Nollan* case, the City has no basis to require any physical shoreline
24 access for the project. SMP 15.5 defines "public access" to include visual access.
25 Consequently, the policies above can be construed as met in the sense that the proposal
maintains visual access to the shoreline by not materially reducing the visual access of
the project site. In this regard, public access has been incorporated into this review as
contemplated by Policy 7.3.6. No mitigation is necessary since there are no view
impacts, so Policy 7.3.7 is construed as inapplicable. As previously noted, visual
access is unaffected, so public access is deemed preserved as required by Policy 7.3.8.

DR-7.4.1 *Developments, uses, and activities shall be designed and operated to avoid*
blocking, reducing, or adversely interfering with the public's visual or physical access
to the water and the shorelines.

DR-7.4.2 *Except as provided in regulations 7.4.4 and 7.4.5, shoreline substantial*
developments or conditional uses shall provide public access where any of the
following conditions are present:

- a. *Where a development or use will create increased demand for public access to the*
shoreline, the development or use shall provide public access to mitigate this impact.

1 b. Where a development or use will interfere with an existing public access way, the
2 development or use shall provide public access to mitigate this impact. Developments
3 may interfere with accesses on their development site by blocking access or by
discouraging use of existing on-site or nearby access.

4 c. Where this Master Program permits a use that is not a priority shoreline use under
5 the Shoreline Management Act (see definition of "Priority Use") on a shoreline of the
6 state, public access provisions may be required in exchange for flexible use standards.

7 d. Where a use or development will interfere with a public use of lands or waters
8 subject to the public trust doctrine, the development shall provide public access to
mitigate this impact.

9 29. The criterion is met. The public access shoreline regulations quoted above
10 incorporate the restrictions of *Nollan* into the shoreline policies that encourage public
11 access. The criteria are clearly met. As determined in Finding of Fact No. 5, the
12 proposal does not block or reduce visual access to the shoreline. Further, the relocation
13 site is close to the existing stormwater facility site, where it serves as no impediment
14 to existing physical access. Currently, the site is used for boat storage. The proposal
will not increase demand for public access nor interfere with existing public access,
thus no public access improvements are required.

15 **SMP Chapter 8 Specific Use Policies**

16 ***DR-8.7.1*** Only water-dependent industry and water-related industry shall be permitted
17 in the shoreline jurisdiction.

18 30. The criterion is met. The proposal is water-related as determined in Conclusion of
19 Law No. 11,

20 ***DR-8.7.5*** Industrial and port facilities shall be located, designed, constructed, and
21 operated so as to minimize impacts to shoreline resources and unnecessary
22 interference with the right of adjacent property owners, as well as adjacent shoreline
or water uses. To this end, applications for industrial/port facilities must demonstrate
conformance with the following criteria. The proposal shall: (a-k)

23 a. Comply with all federal, state, regional, and local requirements regarding air and
24 water quality including but not limited to those contained in Chapter 6, Environmental
25 Protection. No pollution of air by fly-ash, dust, vapors, odors, smoke, or other
substances shall be permitted that are harmful to health, animals, vegetation, or other
property, or that can cause excessive soiling.

1 *b. Incorporate adequate buffers or greenbelts to protect adjacent non-industrial uses.*
2 *All new or expanded industrial development shall be set back and buffered from*
3 *adjacent shoreline properties that are used for or zoned for non-industrial purposes.*
4 *As set forth in Section 5.13.19, such buffering or greenbelt at Point Hudson shall*
5 *include landscaping, shrubs, trees and native vegetation as found to be appropriate*
6 *depending on the impact, and shall be planted along the common boundary and grow*
7 *to not more than 12 feet or less than 8 feet in height, nor less than 10 feet in width,*
8 *within five years, unless an alternate landscaping plan that better meets the goal of*
9 *Section 5.13 of this SMP is approved by the Shoreline Administrator that better meets*
10 *the goal of Section 5.13 of this SMP. In all other instances, buffering shall be consistent*
11 *with the provisions of PTMC Section 17.22.020(C). Buffers shall not be used for*
12 *storage of industrial equipment or materials, or for waste disposal. Buffers may be*
13 *used for outdoor recreation if consistent with public access provisions.*

14
15 *c. Maximize joint use of accessory facilities -industrial/port facilities shall be*
16 *designed and operated to promote joint use of over-water and accessory facilities such*
17 *as piers, docks, storage, and parking whenever practicable.*

18
19 *d. Protect public views of harbor areas and other recognized or officially delineated*
20 *vistas. Private views of the shoreline, although considered during the review process,*
21 *are not expressly protected. Property owners concerned with the protection of views*
22 *from private property are encouraged to obtain view easements, purchase intervening*
23 *property and/or seek other similar private means of minimizing view obstruction.*

24
25 *...
j. Exterior lighting shall not be used in such a manner that produces glare on public*
areas or water bodies. Arc welding, acetylene torch cutting or similar processes shall
be performed so as not to be seen from any point beyond the property.

31. The criterion is met. Adverse air emissions do not appear to be associated with the proposal. Water quality impacts will be improved by the proposal as that it its primary purpose and what it is designed to accomplish. No buffering is necessary for the proposal since its impacts are fully mitigated, including aesthetic impacts as identified in Finding of Fact No. 5. PTMC 17.22.020(C) only requires buffering for adjoining residentially zoned property. The proposal does not adjoin any residentially zoned property. Joint use is construed as only encouraged as opposed to required since such a mandatory requirement would likely not be constitutional as outlined in Conclusion of Law No. 9. Views are preserved as determined in Finding of Fact No. 5C. The proposal creates no light impacts.

DR-8.7.6 Port and industrial facilities shall provide public access to shoreline areas in accordance with Chapter 7, Public Access, taking into consideration constitutional and statutory limitations, public safety, health, and security...

32. The criterion is met for the reasons identified in Conclusions of Law No. 28 and 29.

1 **PTMC Title 20.01.235(D) HEARING EXAMINER REQUIRED FINDINGS**

2 *In addition to the approval criteria listed in PTMC Title 17, the hearing examiner shall*
3 *not approve a proposed development unless the examiner first makes the following*
4 *findings and conclusions:*

5 **PTMC Section 20.01.235(D)(1):** *The development is consistent with the Port*
6 *Townsend comprehensive plan and meets the requirements and intent of the Port*
7 *Townsend Municipal Code.*

8 33. The criterion is met. The proposed development is consistent with the
9 requirements and intent of both the Port Townsend Comprehensive Plan and the
10 Municipal Code. Shoreline Management Program policies are a part of the City's
11 comprehensive plan and are also the most specifically applicable comprehensive plan
12 policies for the proposal. Conformance to the SMP policies, therefore, likely
13 establishes conformance to the Comprehensive Plan overall. As outlined in this
14 Decision, the proposal is consistent with applicable SMP policies. There are also no
15 apparent inconsistencies with any other Comprehensive Plan policies. No
16 inconsistencies with other Comprehensive Plan policies are apparent from the record.
17 For these reasons the proposal is found to be consistent with the City's comprehensive
18 plan. Building permit review will assure conformance to the Port Townsend Municipal
19 Code.

20 **PTMC Section 20.01.235(D)(2):** *The development is not detrimental to the public*
21 *health, safety and welfare.*

22 34, The criterion is met for the reasons identified in Finding of Fact No. 5.
23 Since no significant adverse impacts are associated with the proposal, it is not
24 detrimental to public health, safety and welfare.

25 **PTMC Section 20.01.235(D)(3):** *The development adequately mitigates impacts*
identified under Chapters 19.04 (SEPA) and 19.05 (Environmentally sensitive areas)
PTMC.

35. The criterion is met. The City's SEPA responsible official has conducted
the requisite SEPA review by issuing a determination of non-significance. Since that
determination has not been appealed, the SEPA review is outside the scope of this
permit review as outlined in *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 410-11
(2005)(merits of prior approved special use permit cannot be addressed in subsequent
clearing and grading permit application).

DECISION

The proposed Port of Port Townsend project is consistent with all the criteria for a
shoreline substantial development permit. The proposal is approved subject to the

1 following conditions of approval:

- 2 1. Construction shall be completed in substantial conformance to the plans contained
3 within the submitted application (Exhibit A), except where modified by this
4 decision. Conditions of any other City approvals obtained for the project must also
5 be complied with during construction and continue to be in effect once the use is in
6 operation. Any necessary revisions shall be processed in accordance with SMP
7 Section 10.18 Permit Revisions.
- 8 2. Consistent with the performance standards for tsunami hazard areas, building plans
9 shall include a note indicating the plans are being made in a tsunami
10 hazard/liquefaction prone area.
- 11 3. The applicant shall obtain approval of a city building permit (BLD24-237) and
12 comply with any conditions thereof.
- 13 4. Pursuant to WAC 173-27-190, construction pursuant to the permit shall not begin
14 and is not authorized until twenty-one (21) days from the date of filing as defined
15 in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings
16 initiated within twenty-one days from the date of such filing have been terminated;
17 except as provided in RCW 90.58.140(5)(a) and (b).

18 DURING CONSTRUCTION

- 19 5. The applicant shall implement the solid waste management and toxics cleanup
20 recommendations as detailed in the letter from the Washington State Department
21 of Ecology (Exhibit B-1).
- 22 6. The applicant shall implement the dust management and requirements for an
23 emergency generator as detailed in the letter from the Olympic Region Clean Air
24 Agency (Exhibit B-2).
- 25 7. Development shall be in compliance with the City of Port Townsend's Engineering
Design Standards Manual.

Care shall be taken to minimize vegetation disturbance during the construction
process. Vegetation not proposed for removal will be protected during construction
with high visibility fencing. Revegetation is proposed in the Shoreline Inventory
and Site Mitigation Plan (Exhibit K).

PRIOR TO FINAL INSPECTION

8. The applicant shall revegetate the site in substantial conformance with Exhibit K.
Planting shall be installed within 45 days of completion of the project unless an
extension is granted by the PCD Director. The building permit shall not be finalized
until the plantings have passed inspection by PCD staff.

1 REVISIONS

2 9. Any necessary revisions shall be processed in accordance with SMP Section 10.18
3 Permit Revisions.

4 DURATION OF PERMITS

5 10. Pursuant to SMP chapter 10.17, the construction authorized under this permit is
6 valid for a period of five (5) years from the date of issuance. Construction, or
7 substantial progress toward completion, must begin with two (2) years after the date
of issuance.

8 11. The City may, at its discretion, with prior notice to parties of record and the
9 Department of Ecology, extend the two-year time period for the demonstration of
10 substantial progress for a reasonable time, up to one year, based on factors including
the inability to expeditiously obtain other governmental permits which are required
prior to the commencement of construction.

11 12. If construction has not been completed within five (5) years of approval by the City
12 of Port Townsend, the City will review the Permit and, upon showing of good
13 cause, either extend the Permit for one additional year, or terminate the Permit.
14 Prior to the City authorizing any Permit extensions, it shall notify any parties of
record and the Department of Ecology. Note: Only one single extension is
permitted.

15
16 Dated this 30th day of December, 2024.

17 *Phil Olbrechts*

18 _____
19 Phil Olbrechts
20 City of Port Townsend Hearing
21 Examiner

22 **Appeal and Right of Revaluation**

23 This shoreline substantial development permit decision is final and subject to appeal to
24 the Washington State Shoreline Hearings Board as governed by Chapter 90.58 RCW.
Appeal deadlines are short and procedures strictly construed. Anyone wishing to file an
appeal of this decision should consult with an attorney to ensure that all procedural
requirements are satisfied.

25 Affected property owners may request a change in valuation for property tax purposes
notwithstanding any program of revaluation.

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