

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
5 Shoreline Substantial	OF LAW AND FINAL DECISION.
6 Development and Shoreline	
7 Conditional Use Permit	
(LUP23-023 and LUP23-024)	

8 **INTRODUCTION**

9 Northwest Maritime Center has applied for approval of a shoreline substantial
10 development permit and shoreline conditional use permit to repair the exposed
11 foundation of the concrete pathway and beach stairs at the plaza and to protect the
12 first and second floor deck supports and main building of the Northwest Maritime
Center located at 431 Water Street. The applications are approved subject to
conditions.

13 **TESTIMONY**

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

16 **EXHIBITS**

17 The August 30, 2023 staff report along with its exhibits A-T were admitted into the
18 record during the September 6, 2023 hearing.

19 **FINDINGS OF FACT**

20 **Procedural:**

21 1. Applicant. The Applicant is the Northwest Maritime Center, 431 Water
22 Street, Port Townsend, WA 98368.

23 2. Hearing. A hybrid hearing was held on the application on September 6,
24 2023. The hearing was continued to September 20, 2023 at 1:00 pm because the
SEPA appeal deadline was outstanding as September 19, 2023. No appeal was filed.

25 **Substantive:**

1 3. Site and Proposal Description. Northwest Maritime Center has applied for
2 approval of a shoreline substantial development permit and shoreline conditional use
3 permit to repair the exposed foundation of the concrete pathway and beach stairs at
4 the plaza and to install shoreline stabilization measures to protect the first and second
5 floor deck supports and main building of the Northwest Maritime Center located at
6 431 Water Street. The Maritime Center is a non-profit, maritime related public
7 education facility.

8 To protect against future scour, upper beach sediment will be excavated 1.75 feet
9 below existing grade, a minimum of 1.5 feet cobble-gravel will be introduced, and
10 0.5 feet of excavated beach sediment set atop the newly placed cobble. Large
11 boulders will be placed strategically, to reduce wave and debris impact to deck and
12 pier supports on the uppermost beach.

13 The project site is composed of the maritime heritage and resource center (16,816
14 square feet) and the Maritime Education Building (10,679 square feet), hardscape
15 staging area and concrete stairway to the beach. It is approximately 0.68 acre in size
16 with 2200-feet of waterfront on Port Townsend Bay and 100- feet of waterfront on
17 Point Hudson Marina.

18 Construction is anticipated to take between 30-90 days to complete. Equipment and
19 materials will access the site from the upland side of the project area; a barge will not
20 be used. Work will be conducted within the recommended 25-foot work corridor in
21 the upper intertidal zone. The contractor will complete the concrete work in the dry
22 season and will try to time the work so that it occurs during a low tide series in the
23 summer to ensure wet concrete will not come in contact with seawater for at least
24 seven days. If this is not possible, then plastic sheeting secured with sandbags may be
25 used to keep the wet concrete from coming in contact with seawater while it cures for
seven days. Additional work windows may be required by WDFW in the Hydraulic
Permit Approval. Upon completion, the existing sediment will be placed atop the
cobble/gravel substrate and the elevation of the beach restored. The design includes
planting of 356 square feet of American dune grass (*Elymus mollis*), which staff has
found to be a valuable species for landscape rehabilitation in native beach habitat per
[https://calscape.org/Elymus-mollis-\(American-Dunegrass\)](https://calscape.org/Elymus-mollis-(American-Dunegrass)).

A geotechnical report has been provided that demonstrates that the proposal is
necessary to support/protect a legally established structure and that erosion is not
being caused by upland conditions.

23 4. Characteristics of the Area. Adjacent properties include a City Park, a
24 Marina, and a motel.

25 5. Adverse Impacts of Proposed Use. The proposal will not create any
significant adverse impacts. The SEPA Responsible Official issued a mitigated
determination of non-significance for the project (Exhibit B). Pertinent impacts are
addressed in more detail as follows:

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A. Critical Areas. The project site is mapped as within several critical areas, specifically Aquifer Recharge, Seismic Hazard Zone, Frequently Flooded and Fish and Wildlife Conservation area. Therefore, pursuant to Section 6.1 of the SMP, the development is also subject to 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. The proposal will be connected to city sewer and for that reason no aquifer recharge requirements apply.
- ii. Seismic Hazard Zone. No new structures are proposed so no action is required.
- iii. Frequently Flooded. The proposal will occur within the FEMA Special Flood Hazard Area (SFHA). Staff have found that the proposal complies with Chapter 16.08 PTMC flood damage prevention standards. Those standards are generally oriented towards protecting new construction from flood damage and to prevent loss of flood capacity. See PTMC 16.08160, 16.08.170 and 16.08.200. Since the proposal involves no new structures or utilities and nominal amounts of cut and fill as outlined in the SEPA checklist, the record supports the staff’s finding of compliance.
- iv. Fish and Wildlife Hazard Area. The proposal involves fish and wildlife conservation areas because of potential impacts to fish and wildlife species and associated habitat that are protected under state and/or federal law. The Applicant’s Habitat Assessment, Ex. H and T, identifies numerous such areas as potentially impacted, including kelp and eelgrass beds; herring, smelt, sand lance and forage fish beach spawning areas; and critical habitat for Chinook and Chum salmon and Southern Resident Killer Whale. The proposed work is occurring high in the upper intertidal zone, which is devoid of any attached submerged aquatic vegetation).

Overall, the Assessment concludes that at worst the proposal is “not likely to adversely affect” any protected species or habitat. It also concludes that with conformance to recommended mitigation measures the proposal will result in no net loss of ecological function as follows:

Since this is a repair project as opposed to a new structure, the project will not result in additional loss of habitat or ecological function. Overall, it is a low impact solution to erosion when compared to a hard armor alternative. Short-term impacts from the construction activities on the beach will be minimized through the avoidance and minimization measures described in Section 5. Some net improvement in

1 *ecological function may result from planting of dune grass*
2 *in the upper beach zone and beach nourishment that may*
3 *create more suitable conditions for forage fish spawning.*

4 Ex. H, p. 27.

5 The proposal is conditioned upon conforming to the mitigation
6 measures recommended in the Habitat Assessment.

7 B. Shoreline Access. The proposal will have no significant adverse impacts to
8 shoreline access. The proposal doesn't involve any structures that will
9 impede access to the shoreline. The proposal improves public access by
10 repairing existing public access structures.

11 C. Navigation. No significant impacts to navigation are apparent. The only
12 added impediments to navigation that are proposed are boulders placed within
13 the upper intertidal area of the shoreline.

14 D. Compatibility. The proposal is fully compatible with surrounding uses. It
15 involves minor repairs to an existing facility that will not result in any
16 appreciable change in aesthetics. In keeping with the current natural shoreline
17 aesthetic, the design uses beach nourishment and large boulders in lieu of hard
18 structural armoring. The proposed soft armoring is designed to blend with the
19 surroundings.

20 CONCLUSIONS OF LAW

21 **Procedural:**

22 1. Authority of Hearing Examiner. Shoreline substantial development (SSDP) and
23 shoreline conditional use (SCUP) permit applications are classified as Type III
24 permits which are reviewed and subject to final approval by the hearing examiner,
25 subject to appeal to shoreline hearings board. Shoreline Master Program (SMP)
10.5.2 and 10.6.4

21 **Substantive:**

22 2. Shoreline Designation. The SMP designates the project site as Boat Haven
23 Marina and Marina Trades District with the areas waterward of the ordinary high
24 water mark designated as Aquatic.

25 3. Permit Review Criteria/Adoption of Staff Report SMP Policy Analysis. An SSDP
is required for the proposal because it involves improvements waterward of the
ordinary high water mark as governed by SMP 10.5.1a. A major SCUP is required
because it doesn't qualify as a minor SCUP under SMP 10.6.3 and the work qualifies

1 as a shoreline defense works under SMP Table 5 in the Aquatic shoreline designation.
2 SMP 10.13.1 requires that no permit shall be granted unless the proposed
3 development is consistent with the provisions of this SMP, the Shoreline
4 Management Act of 1971, and the rules and regulations adopted by the Department of
5 Ecology thereunder. SMP 10.6.5 sets the criteria for SCUP approval. The proposal is
6 found to be consistent with all applicable SMP policies for the reasons identified in
7 the staff report, adopted by this reference. All other applicable policies and
8 regulations are quoted below and applied via corresponding conclusions of law.

9 **RCW 90.58.020 Use Preferences**

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

17 4. Criterion met. The criterion is met. As determined in Finding of Fact No. 5, the
18 proposal will not adversely affect navigation, environmental resources or public
19 access and aesthetic enjoyment.

20 **RCW 90.58.020(1)**

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

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

26 **RCW 90.58.020(2)**

27 *Preserve the natural character of the shoreline;*

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

31 **RCW 90.58.020(3)**

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

33 7. Criterion met. The criterion is met. The proposal will improve the ability of the
34 Applicant to provide public maritime education by repairing the facility designed for
35 that purpose.

36 **RCW 90.58.020(4)**

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

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

4 **RCW 90.58.020(5)**

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

6 9. Criterion met. The criterion is met. As determined in Finding of Fact No. 5, the
7 proposal will have no material impact on navigation and will repair existing public
8 access facilities.

8 **RCW 90.58.020(6)**

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

10 10. Criterion met. The criterion is met. Requiring the Applicant to provide
11 recreational opportunities when that action is not necessary to mitigate an impact of
12 the project violates the federal takings rights of the Applicant. *See Nollan v.*
13 *California Coastal Comm'n*, 483 U.S. 825 (1987). Nonetheless, to the extent that
14 public education is used as a recreational activity, the proposal serves to repair a
15 facility designed to enhance public education of the maritime environment.

14 **SMP Chapter 5 Shoreline Environments**

15 **5.13 Point Hudson Marina District – Maritime Heritage Corridor**

16 **DR-5.13.8** *This area allows only water-dependent, water-related and public access*
17 *uses.*

18 11. Criterion met. The criterion is met. SMP 15.7 identifies that “water-related” uses
19 are uses that cannot occur economically without a shoreline location and that one of
20 authorized functions is to “contribute to...maritime educational uses...” The record
21 contains very little information on the functions of the Applicant, except for a
22 notation in the staff report that the Applicant “*is a non-profit, maritime related public*
23 *education facility.*” Given the shoreline educational objectives of the facility, it’s
24 viability likely would be undermined if it could not be located along the shoreline.
25 Even if the facility didn’t mee the definition of a water-related facility, the proposed
repairs would still be permitted as repairs to a nonconforming facility under Chapter
11 SMP.

24 **SMP Chapter 6 Environmental Protection**

25 **6.7 Frequently Flooded Areas and Tsunami Inundation Areas**

1 **DR-6.7.1** *All new development and new uses within the jurisdiction of this Master*
2 *program shall comply with the provisions of Chapter 16.08 Flood Damage*
3 *Prevention, PTMC and the Critical Areas Ordinance (Appendix E).*

4 12. Criterion met. The criterion is met for the reasons identified in Finding of Fact
5 No. 5A.

6 **SMP Chapter 9 Specific Modification Policies and Development Regulations**

7 **9.7 Shoreline Stabilization Measures & Flood Protection Works**

8 **DR- 9.7.1** *Structural stabilization methods shall be permitted when necessary for*
9 *reconfiguration of the shoreline for mitigation or enhancement purposes. In all other*
10 *cases, structural stabilization methods shall only be allowed when all of the following*
11 *criteria are met:*

12 *a. Relocation of existing structures, or implementation of nonstructural measures,*
13 *such as placing the development even further from the shoreline, planting and or*
14 *retaining vegetation, or installing on-site drainage improvements, are not feasible or*
15 *not sufficient.*

16 *b. Structural stabilization has been demonstrated, through a geotechnical report, to*
17 *be necessary to support or protect a legally established, inhabited structure or*
18 *ongoing shoreline use that is in danger of loss or substantial damage.*

19 *c. The erosion is not being caused by upland conditions, such as the loss of*
20 *vegetation and drainage.*

21 *d. The shoreline defense structure will avoid and minimize adverse impacts to the*
22 *extent feasible, and where such impacts cannot be avoided, mitigation shall be*
23 *provided to achieve no net loss.*

24 *e. The least intrusive (i.e., “softest”) method, sufficient to protect the shoreline use,*
25 *has been proposed.*

f. Structural stabilization is required as part of a hazardous substance remediation
plan.

13. Criterion met. The criterion is met. Existing structures and public access
improvements are well established and there is no room on the site to relocate these
improvements. A geotechnical report has been provided that demonstrates that the
proposal is necessary to support/protect a legally established structure and that
erosion is not being caused by upland conditions. The project has been designed in
accordance with mitigation sequencing (Exhibit A, JARPA application Section 8A).
The proposed design is the least intrusive method using soft stabilization techniques
in lieu of hard structural solutions.

The staff report and remainder of the existing record do not address whether the
proposed stabilization is required as part of a hazardous substance remediation plan.

1 It doesn't appear that the proposal has anything to do with a remediation plan¹. Yet
2 DR-9.7.1 requires the proposal to comply with "all" of its listed criteria, which
3 includes the requirement that the stabilization is required as part of a hazardous
4 substance remediation plan. As discussed in detail below, construing the remediation
5 plan as a mandatory element leads to absurd consequences. Thus, supporting a
6 remediation plan is only construed as one of many alternative factors that support the
7 authorization for shoreline stabilization as opposed to serving as a mandatory
8 prerequisite.

9 If a literal interpretation of a statute is absurd, the statute is ambiguous and courts will
10 move on to examine the legislative history and use judicial canons of statutory
11 interpretation. *State v. Taylor*, 97 Wn.2d 724, 729-30, 649 P.2d 633 (1982); *In re Det.*
12 *of Martin*, 163 Wn.2d 501, 509-13, 182 P.3d 951 (2008). The remediation clause in
13 DR-9.7.1 qualifies as absurd because it defies belief that the City Council intended
14 that structures in danger of collapse could only be stabilized if required as part of a
15 remediation plan. Requiring remediation in all instances would put owners of unsafe
16 structures in the unnecessary position of having to apply for a variance to the
17 remediation requirement, which would likely be approved in almost every instance as
18 necessary to stabilize an unsafe structure.

19 With license to treat the remediation clause as an ambiguous provision, it is clear that
20 remediation was never intended to serve as a mandatory element to authorize
21 shoreline stabilization. Shoreline regulations are largely based upon the shoreline
22 master program guidelines adopted by the Washington State Department of Ecology
23 in Chapter 173-26 WAC. WAC 173-26-231(3)aiiiB provides the guidelines for
24 permitting shoreline stabilization. That WAC provision only lists remediation as one
25 of many alternative grounds for authorizing shoreline stabilization. DR-9.7.1 largely
mirrors the guidelines set by WAC 173-26-231(3)aiiiB, except for making
remediation a mandatory element for all shoreline stabilization. Comparing DR-9.7.1
to WAC 173-26-231(3)aiiiB, it is fairly clear that remediation as a mandatory element
was some kind of drafting error in the final adoption of DR-9.7.1.

SMP 2.1 also provides for liberal construction of the City's SMP as necessary to meet
SMP objectives. Legislative intent for DR 9.7.1 is conclusively established by SMP
Policy 9.7.1, which provides that shoreline stabilization should be authorized under
the following circumstances:

a. *After it is demonstrated that nonstructural solutions would
not be able to reduce the potential damage sufficiently, and*

b. *Where it has been demonstrated to be necessary to support*

¹ As demonstrated in Ex. K, the proposal has been subject to a significant hazardous waste clean up operation. However, there is nothing in the record to suggest that the proposed repairs are "required" by a remediation plan or serve to repair structures that were formerly "required" by a remediation plan.

1 *or protect a new use consistent with this Master Program,*
2 *a legally established, inhabited structure or ongoing*
3 *shoreline use that is in danger of loss or substantial*
4 *damage or when necessary for reconfiguration of the*
5 *shoreline for hazardous substance remediation or*
6 *restoration of ecological functions.*

7 (emphasis added)

8 As shown in Policy 9.7.1 as quoted above, the City Council identified several
9 alternative circumstances to justify shoreline stabilization, only one of which is
10 implementation of a remediation plan. Further, as noted in Conclusion of Law No. 3,
11 the SSDP application must be consistent with all provisions of the City's SMP, which
12 would include its shoreline policies. Consequently, even if DR 9.7.1 didn't qualify as
13 ambiguous because of its absurd consequences, it would qualify as ambiguous
14 because it conflicts with Policy 9.7.1. Given the conflict between DR 9.7.1 and Policy
15 9.7.1, the absurd consequences of DR 9.7.1 and the inconsistency of DR 9.7.1 with
16 WAC 173-26-231(3)iiiB, it is concluded that implementation of a remediation plan
17 should be construed as a circumstance that supports authorization of shoreline
18 stabilization under DR 9.7.1 but not a mandatory element for that authorization. The
19 proposal meets the criteria for shoreline stabilization under DR 9.7.1 even though the
20 record does not establish that the stabilization is mandated by a remediation plan.

21 **DR 9.7.2** *The City shall require and utilize the following information during its*
22 *review of shoreline stabilization and flood protection proposals:*

- 23 *a. Purpose of the project;*
24 *b. Documentation (including photos) of existing (pre- construction) shoreline*
25 *characteristics;*
c. Description of physical, geological, and/or soil characteristics of the area
including existing and proposed slope profiles and location of ordinary high-water
mark;
d. Hydraulic characteristics of the water body within one-half (0.5) mile on each
side of the proposed project;
e. Existing shoreline stabilization and flood protection devices within one-half (0.5)
mile on each side of the proposed project;
f. Biological characteristics of the area including vegetation, fish and wildlife
resources, and suitability of site to support forage fish spawning;
g. Construction materials including size, shape, quantity, plant types, and soil
preparations;
h. Construction methods and timing;
i. Predicted impact upon area shore and hydraulic processes, ecological functions
and values, public access, adjacent properties, and shoreline and water uses;
j. Consideration of alternative measures (including non- structural) to achieve the
same purpose;

1 k. *Competent technical assurance that the proposed shore defense structure will perform as designed;*

2 l. *Description of measures incorporated into the design to address aesthetics and public access; and*

3 m. *Evaluation, by a qualified coastal geologist and marine habitat biologist, of the cumulative effects of “hard” stabilization methods within the drift cell; and*

4 n. *A geotechnical report documenting the need for the proposed structure. For existing and new development, the geotechnical report must document the need to protect primary structures from damage due to erosion. Hard armoring solutions should not be authorized except when a report confirms that there is a significant possibility that such a structure will be damaged within three years as a result of shoreline erosion in the absence of such hard armoring measures.*

8 14. Criterion met. The criterion is met. The Applicant has provided all of the required information. The Applicant has submitted a Project Narrative (Exhibit C), Site Plans (Exhibit C) including construction materials, methods and timing (Exhibit A). Characteristics of the site and analysis of potential direct, indirect and cumulative impacts of the project are provided in: Exhibit G Coastal Geologic Report, Exhibit H Habitat Assessment, Exhibit I Biological Evaluation, Exhibit T. Addendum to Habitat Assessment.

12 **DR 9.7.3** *Shoreline stabilization works, including revetments and bulkheads, shall be located, designed and constructed in such a manner that will:*

13 a. *Minimize alterations of the natural shoreline and shoreline processes including sediment feeding of nearby beaches.*

14 b. *Minimize damage to ecological functions including wildlife, fish and shellfish habitats.*

15 c. *Provide for the long-term multiple use of shoreline resources and public access to public shorelines. In the design of publicly financed or subsidized works, consideration should be given to providing pedestrian access to shorelines for low intensity outdoor recreation.*

16 d. *Blend with the surroundings and not distract from the aesthetic qualities of the shoreline.*

17 e. *Achieve the policy of “no net loss” of ecological functions necessary to sustain shoreline resources.*

21 15. Criterion met. The criterion is met. The proposed design is the least intrusive method using soft stabilization techniques in lieu of hard structural solutions. According to the Coastal Geologic Report (Exhibit G), “*beach nourishment would generally be viewed as favorable in this sediment -starved environment.*” The project will not result in additional loss of habitat or ecological function; the no net loss standard is met as outlined in Finding of Fact No. 5A. The goal of the proposal is to repair and protect public access and recreation. Soft armoring is designed to blend with the surroundings.

1 **DR 9.7.4** *Use of scrap building materials, asphalt from street work, or any discarded*
2 *materials, equipment or appliances for the stabilization of shorelines shall be*
3 *prohibited except when the recycled materials are found to be functionally,*
4 *environmentally, and aesthetically equivalent to new materials.*

5 16. Criterion met. The criterion is met. No such materials will be used.

6 **DR 9.7.5** *Upon project completion, all disturbed shoreline areas shall be restored to*
7 *as near pre-project configuration as possible and replanted with appropriate*
8 *vegetation, with preference given to native plantings. All losses in nearshore/riparian*
9 *vegetation or fish or wildlife habitat shall be mitigated at a minimum ratio of 1:1.25*
10 *(habitat lost to habitat replaced).*

11 17. Criterion met. The criterion is met. Upon completion, the existing sediment will
12 be placed atop the cobble/gravel substrate and the elevation of the beach restored.
13 The design includes planting of 356 square feet of American dune grass (*Elymus*
14 *mollis*), which staff has found to be a valuable species for landscape rehabilitation in
15 native beach habitat per [https://calscape.org/Elymus-mollis-\(American-Dunegrass\)](https://calscape.org/Elymus-mollis-(American-Dunegrass)).
16 Mitigation is not required as the project has been inherently designed to avoid and
17 minimize impacts.

18 **DR 9.7.9** *Soft shoreline stabilization measures that provide restoration of shoreline*
19 *ecological functions may be permitted waterward of the ordinary high-water mark.*

20 18. Criterion met. The criterion is met. As determined in Finding of Fact 5Aiv, the
21 Applicant's habitat management plan concluded that the proposed soft armoring may
22 result in a net increase in ecological function.

23 **SMP 10.6.5 Criteria for Granting Shoreline Conditional Use Permits**

24 *Uses classified as conditional uses may be authorized provided that the Applicant can*
25 *demonstrate all of the following:*

a. *That the proposed use will be consistent with the policies of RCW 90.58.020 and*
the policies of the Master Program;

19. Criterion met. The criterion is met. The proposal meets all pertinent SMA and
SMP policies for the reasons identified in the conclusions of law above.

SMP 10.6.5 b: *That the proposed use will not interfere with the normal public use*
of public shorelines;

20. Criterion met. The criterion is met for the reasons identified in Findings of Fact
No. 5B and 5C.

1 **SMP 10.6.5c:** *That the proposed use of the site and design of the project will be*
2 *compatible with other permitted uses within the area and with uses planned for the*
area under the comprehensive plan;

3 21. Criterion met. The criterion is met for the reasons identified in Finding of Fact
4 No. 5D.

5 **SMP 10.6.5d:** *That the proposed use will cause no significant adverse effects to the*
6 *shoreline environment in which it is to be located; and*

7 22. Criterion met. The criterion is met for the reasons identified in Finding of Fact
8 No. 5A.

9 **SMP 10.6.5e:** *That the public interest will suffer no substantial detrimental effect.*

10 23. Criterion met. The criterion is met because the proposal will not create any
11 significant adverse impacts as determined in Finding of Fact No. 5.

12 **SMP 10.6.5f:** *That the decision maker has given consideration to the cumulative*
13 *impact of additional requests for like actions in the area. For example, if Conditional*
14 *Use Permits were granted for other developments in the area where similar*
circumstances exist, the total impacts from the Conditional Uses shall also remain
consistent with the policies of RCW 90.58.020 and shall not produce substantial
adverse effects to the shoreline environment.

15 24. Criterion met. The criterion is met. Cumulative effects have been analyzed in the
16 Coastal Geologic Report (Exhibit G) and Habitat Assessment (Exhibits H and T). The
17 proposal is not anticipated to have an adverse cumulative effect. Given the nominal
18 extent of the project and its absence of adverse impacts, the project is not anticipated
19 to create any cumulative impacts.

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

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

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

26 25. Criterion met. The criterion is met. The proposed development is
27 consistent with the requirements and intent of both the Port Townsend
28 Comprehensive Plan and the Municipal Code. Shoreline Management Program
29 policies are a part of the City's comprehensive plan and are also the most specifically
30 applicable comprehensive plan policies for the proposal. Conformance to the SMP
31 policies, therefore, likely establishes conformance to the Comprehensive Plan overall.

1 As outlined in this Decision, the proposal is consistent with applicable SMP policies.
2 There are also no apparent inconsistencies with any other Comprehensive Plan
3 policies. For these reasons the proposal is found to be consistent with the City's
comprehensive plan. Building permit review will assure conformance to the Port
Townsend Municipal Code.

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

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

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

11 28. Criterion met. The criterion is met. The SEPA Responsible Official issued a
12 MDNS (Exhibit B). For the reasons identified in Finding of Fact No. 5A, the
proposal is consistent with the City's critical areas ordinance, Chapter 19.05 PTMC.

13 DECISION

14 The proposed Port of Port Townsend project is consistent with all the criteria for a
15 shoreline substantial development permit and shoreline conditional use permit for the
reasons identified in the Conclusions of Law above, subject to the following
16 conditions of approval:

17 1. Construction shall be completed in substantial conformance to the plans contained
18 within the submitted application (Exhibit A and D) and the recommendations of the
Habitat Assessment, Ex. H as modified by Ex. T, except where modified by:

- 19 a. This decision
- 20 b. SEPA MDNS Mitigation Measures (Exhibit B)
- 21 c. Conditions of any other city approvals obtained for the project must also
22 be complied with during construction and continue to be in effect once the use is
in operation.
- 23 d. Federal Permits and Authorizations including but not limited to the ACOE
NWP (Exhibit J-4)
- 24 e. State Permits and Authorizations including but not limited to fish windows
of the WDFW HPA.

25 2. If any damage occurs to existing infrastructure (including but not limited to the
outfall) during construction, the contractor and Applicant are responsible to repair the
damages. The method of repair(s) must be approved and inspected by the City.
Contractor shall submit pictures of the condition of public infrastructure prior to start
of construction and again upon completion of construction.

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

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

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

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

17 Dated this 28th day of September, 2023.

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

23 **Appeal and Right of Revaluation**

24 This shoreline substantial development permit decision is final and subject to appeal to
25 the Washington State Shoreline Hearings Board as governed by Chapter 90.58 RCW.
The shoreline conditional use permit is subject to approval by the Washington State
Department of Ecology as governed by Chapter 90.58 RCW.

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