

**STAFF REPORT**  
**TO THE PORT TOWNSEND HEARING EXAMINER**  
**September 6, 2023 Open Record Hearing**

**Date:** August 30, 2023

**File No(s):** LUP23-023 and LUP23-024

**Applicant:** Northwest Maritime Center  
431 Water Street  
Port Townsend, WA 98368

**Agent:** Adam Tullis,  
Coastal Geologic Services Inc.  
1711 Ellis Street, Suite 103  
Bellingham, WA 98225

**PCD Staff Contact:** Judy Surber  
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**SUMMARY OF APPLICATION AND RECOMMENDATION**

**Application:** The applicant, Northwest Maritime Center, seeks approval of a Type III Shoreline Substantial Development and Conditional Use permit to repair the exposed foundation of the concrete pathway and beach stairs at the plaza and to protect the first and second floor deck supports and main building. Work includes concrete foundation repair, excavating the existing beach, introducing cobble-gravel, quarry spall with excavated beach sediment placed on top, and placement of large boulders.

**Location:** The NWMC is located at 431 Water Street between Monroe Street and the Point Hudson Marina within Block 4 of the Original Townsite of Port Townsend, Southwest Quarter, Section I, Township 30 North, Range I West in the City of Port Townsend, Jefferson County, Washington. Assessor's Parcel Numbers: 989700401, 402 and 403

**Staff Contact:** Judy Surber, Planning Manager

**Additional Permits/Approvals Required:**

- City of Port Townsend Grading Permit, Building Permit, Flood Development & Critical Areas Review
- City of Port Townsend/Ecology - Substantial Development and Conditional Use Permit
- U.S. Army Corps of Engineers Section 10 (NWP 3 and NWP 13)
- Washington Department of Fish and Wildlife: Hydraulic Project Approval (HPA)
- Washington State Department of Ecology: Section 401 Water Quality Certification
- FEMA ESA Section 7 Consultation and Magnuson-Stevens Fisheries Conservation and Management Act Essential Fish Habitat Consultation
- FEMA Region X: National Environmental Policy Act (NEPA); Section 106 of the National Historic Preservation Act (NHPA)

- FEMA NEPA review

**Shoreline Designation:** Marine Heritage Corridor, Aquatic, Shorelines of Statewide Significance

**Recommended Decision: Approval with Conditions**

Approval of the SSDP and SCUP subject to conditions. SEPA review of the project was previously completed as noted in the Findings below (LUP23-024). No action by the Hearing Examiner regarding the SEPA MDNS is needed for review of the other applications.

### **PROPOSED FINDINGS, CONCLUSIONS AND RECOMMENDATION**

The following section constitutes Planning and Community Development (PCD) staff's recommended Findings and Conclusions regarding the application's consistency with the City's Comprehensive Plan, Shoreline Master Program, and development regulations. Next are a series of staff recommended conditions to the Hearing Examiner. Any of staff's recommended Findings, Conclusions, and Conditions may be adopted, rejected, or modified by the Hearing Examiner based on testimony or evidence presented during the hearing.

### **FINDINGS OF FACT**

#### **Project Description & Background**

1. The applicant, Northwest Maritime Center, seeks approval of a Shoreline Substantial Development and Conditional Use permit to repair storm damage and protect existing structures from future storm damage. The proposal involves beach nourishment and placement of large boulders in the intertidal area to reduce scour/erosion. As defined in the Shoreline Master Program the proposal constitutes:

“Normal Maintenance” Those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition (WAC [173-27-040](#)(2b)). See also “Normal Repair”.

“Normal Repair” Activities that restore the character, size or scope of a project only to the previously authorized condition within a reasonable period after decay or partial destruction, excepting that repair involving total replacement which is not common practice or causes substantial adverse effects to the shoreline resource or environment shall not be construed as normal repair (WAC [173-27-040](#)(2b) See also “Normal Maintenance”.

“Shoreline Defense Works” Structures or modifications for the purpose of retarding shore erosion from waves or current action, protecting channels and harbors from wave action, encouraging deposition of beach materials, preventing stream bank overflow, and retaining

uplands. They may consist of bulkheads, seawall, dikes, revetments, breakwaters, jetties, groins, or gabions. Defense works are commonly constructed from quarry rock (riprap), treated wood, concrete, steel, and sand and gravel.

2. The proposed project will occur high on the upper beach with a portion of it below the OHWM, within mapped critical areas including the FEMA Special Flood Hazard Area (SFHA)<sup>1</sup>. Review under the City's Critical Areas Ordinance (PTMC 19.05) and Flood Damage Prevention Ordinance (PTMC 16.08) has been included with review of the shoreline permit request; a separate Critical Areas permit is not required. (Exhibit A – *Shoreline Substantial Development Permit and Shoreline Conditional Use Permit application (JARPA)*; Exhibit C *Project Narrative and Permit Plans*, Exhibit D *Flood Development Review Application*, Exhibit E *Critical Areas Permit Application*).
3. As further documented in the permit application and supporting materials, the applicant proposed to repair the exposed foundation of the concrete pathway and beach stairs at the plaza and to protect the first and second floor deck supports and main building. Concrete foundations will be repaired. To protect against future scour, upper beach sediment will be excavated 1.75 feet below existing grade, a minimum of 1.5 feet cobble-gravel will be introduced, and 0.5 feet of excavated beach sediment set atop the newly placed cobble. Large boulders will be placed strategically, to reduce wave and debris impact to deck and pier supports on the uppermost beach.
4. Construction Methods and Timing: Construction is anticipated to take between 30-90 days to complete. Equipment and materials will access the site from the upland side of the project area; a barge will not be used. Work will be conducted within the recommended 25-foot work corridor in the upper intertidal zone<sup>2</sup>. The contractor will complete the concrete work in the dry and will try to time the work so that it occurs during a low tide series in the summer to ensure wet concrete will not come in contact with seawater for at least seven days. If this is not possible, then plastic sheeting secured with sandbags may be 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.
5. Application materials include special reports analyzing the potential impacts of the project:

Exhibit G: Coastal Geologic Report ~~3/15/23~~ rev. 8/21/23 by Coastal Geologic Services, Inc.

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<sup>1</sup> The site is mapped as being located within four (4) identified critical areas – Aquifer Recharge, Geologically Hazardous, Frequently Flooded (FEMA Special Flood Hazard Area) and Fish & Wildlife.

<sup>2</sup> (Exhibit H, Habitat Assessment page 21, Section 4.2.3)

- Exhibit H: Habitat Assessment 9/17/21 by Marine Surveys and Assessments  
Exhibit I: Biological Evaluation 9/17/21 by Marine Surveys and Assessments

6. Due to activities occurring within the intertidal area, the proposal also requires authorization from federal and state agencies. The applicant has provided documentation of ESA Section 7 consultation by federal agencies with jurisdiction (Exhibit J).
7. The project is also within the FEMA “protected area”. Consistent with the FEMA Region X Puget Sound BioOp, the project has been inherently designed to avoid adverse impacts on floodplain functions that support ESA listed species. As further described in the JARPA application (Exhibit A ) and supporting documents (Exhibit G Geologic Report, Exhibit H Habitat Assessment, Exhibit I Biological Evaluation) design measures include:
  - a. Remove rock boulders from the upper beach just NE of the NE end of the concrete stairway near the plaza – move to the eroded low bank immediately adjacent above elevation +11 ft MLLW.
  - ~~b. Remove a portion of the armor rock on the intertidal surrounding the stormwater culvert along the SW end of the site.~~
  - c. Revegetate 356 sf in the upper most beach/backshore with American dune grass (*Elymus mollis*).

**Revision:** During review of the shoreline permit, city staff noted that the stormwater culvert (Item b) is a city-owned facility located within the Monroe Street right-of-way. After discussing conditions of the removal, the applicant elected to eliminate this item from the project scope. The City requested and received documentation from federal agencies with authority that the revised proposal does not change their ESA Section 7 findings (Exhibit S). In addition, the City received confirmation from the consultants that the revision did not change their prior findings Exhibit G Geologic Report 8/21/23; Exhibit T. Addendum to the Habitat Assessment).

#### Existing Conditions

8. The site is located at 431 Water Street between Monroe Street and Point Hudson Marina in Port Townsend. It is approximately 0.68 acre in size with 2200-feet of waterfront on Port Townsend Bay and 100- feet of waterfront on Point Hudson Marina.
9. Formerly the location of the Texaco Bulk Plant Thomas Oil Site (Cleanup site CSID: 2291)(Exhibit K), the site is now home to the Northwest Maritime Center (NWMC). In 2004, a deep draft dock opened to the public. In 2010, the NWMC was constructed consisting of two buildings: the maritime heritage and resource center (16,816 square feet) and the Maritime Education Building (10,679 square feet), hardscape staging area and concrete stairway to the beach.

10. The existing NWMC was permitted as a “Scientific and Educational Facility” (LUP05-067). It was reviewed under the 1994 SMP with structures adhering to a 15-foot minimum setback. It is now considered a legal, non-conforming structure with respect to the current minimum 25’ setback from the OHWM.<sup>3</sup>
11. In December of 2018, the site was damaged by a significant storm event that combined king tides with high winds and wave action as detailed in Exhibit G: Coastal Geologic Report 3/15/23 by Coastal Geologic Services, Inc.

#### Procedural – Notice/SEPA

12. All Shoreline Substantial Development requests are considered Type III applications under Port Townsend Municipal Code (PTMC, Chapter 20.01). PCD staff processes and reviews each Type III shoreline request and prepares a recommendation for consideration by the City’s Hearing Examiner at an open record public hearing. Because the proposal also involves a Shoreline Conditional Use Permit, the Hearings Examiner’s decision is forwarded to the State Department of Ecology (ECY) for final review and decision. Any appeal of Ecology’s decision is heard by the State’s Shorelines Hearings Board.

13. Initial public notice of the project was provided pursuant to Chapter 20.01.160 PTMC, including a 30-day Notice of Application comment period and Notice of Optional DNS Process of PTMC 19.04.125. Said Notice was posted on the site May 9, 2023, published in the local newspaper and mailed to neighbors within 300 feet of the site on May 10, 2023 (Exhibit L – *Notice of Application*). The comment period ended June 9, 2023, and one written comment was received from ECY (Exhibit M).

14. On August 29, 2023, after independent review of a SEPA Checklist and NEPA Categorical Exclusion Documentation, the SEPA Responsible Official issued a Mitigated Determination of NonSignificance (MDNS). Staff response to ECY comments was included in the SEPA decision (Exhibit B, SEPA MDNS).

15. On August 23, 2023, Notice of the September 6, 2023, public hearing was published in the local newspaper and mailed to persons submitting written comments (i.e., ECY) and neighbors within 300 feet of the site. Notice of the hearing was also posted at the site on this same date (Exhibit N – *Public Hearing Notice*).

#### Zoning/Overlay Districts

16. The underlying zoning is C-III Historic Commercial; however, the NWMC is also within several overlay districts. Where a project is within an overlay district, it is subject both to its zone classification regulations and to the additional requirements imposed for the overlay district.

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<sup>3</sup> SMP DR 11.3

In the case of conflicts, the provisions of an overlay district prevail. In any case where the use provisions of the Port Townsend Shoreline Master Program (SMP) conflict with the use provisions of the underlying zone, the use provisions of the SMP shall govern.<sup>4</sup>

17. The proposed construction site also involves several Critical Areas designations as defined by the City’s Critical Areas Ordinance – Chapter 19.05. According to the City’s Critical Area (CA) maps, the site site/immediate vicinity is mapped:

- a. Aquifer Recharge – The proposal is not a regulated development in terms of aquifer recharge; no action is required.
- b. Seismic/Liquefaction susceptibility/Tsunami Inundation – No new structures are proposed; no action is required.
- c. Frequently Flooded Area:

FEMA Special Flood Hazard Area (SFHA):      Zone AE      BFE=13

The project complies with PTMC 16.08 Flood Damage Prevention. The purpose of the NWMC repair project is to repair storm damage and minimize future flood/storm damage. No structures or utilities are proposed. Application materials include proposed pre- and post-development terrain and quantities of cut and fill. A habitat assessment has been prepared in accordance with PTMC 19.05.080 Special Reports. The application includes documentation that the applicant has applied for all necessary permits required by federal, state, or local law (Exhibit A JARPA). The applicant has previously recorded a notice on title that the property is within the FEMA Special Flood Hazard Area (Exhibit P).

- d. Fish and Wildlife Habitat - A Habitat Assessment and Biological Evaluation (Exhibits H and I) have been prepared in accordance with PTMC 19.05.080 D, F, G, J, K, and M and Regional Guidance for Floodplain Habitat Assessment and Mitigation, FEMA Region X, 2010.

The CAO contains general performance standards that apply to all development proposals regardless of the critical area involved. It also has specific performance standards for each critical area type (e.g., wetlands, geologically hazards, etc.). Exhibit R analyzes the project’s compliance with the applicable performance standards. The Director’s analysis in these Exhibit R constitute additional Findings of this Type III decision. In sum, the project as designed has demonstrated compliance with all applicable CA performance standards.

18. Special Height Overlay District. (PTMC 17.28.030). The Special Height Overlay District (SHOD) is not applicable as the building height is not being changed.

19. Historic Design Review (PTMC 17.30.020) - The scope of work does not include exterior building alterations and, thus, the proposal is exempt from HPC review.

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<sup>4</sup> PTMC 17.26.020

### Shoreline Master Program Policies and Performance Standards

20. The current proposal lies within 200 feet of Port Townsend Bay and is therefore subject to the City’s Shoreline Master Program (SMP). All proposed activities will occur landward of the extreme low tide and therefore not in an area designated as “shorelines of statewide significance.”<sup>5</sup> The proposal has been reviewed for compliance with the policies and development regulations (DR) of the following SMP sections:

- 5.6 *Aquatic*
- 5.13 *Point Hudson Marina District – Maritime Heritage Corridor*
- 6.0 *Environmental Protection*
  - 6.3 *Impacts, Mitigation, Bonding, and Monitoring*
  - 6.6 *Critical Saltwater Habitats*
  - 6.7 *Frequently Flooded and Tsunami Inundation Areas*
- 9.7 *Shoreline Stabilization Measures & Flood Protection Works*
- 10.6.5 *Criteria for Granting Shoreline Conditional Use Permits*

21. Project consistency with the above SMP sections, including all applicable Management Principals, Policies and Development Regulations, are provided in the Findings below. The reviewed principals, policies and development regulations are listed in italics, with a PCD analysis following in regular text.

#### 5.6 Aquatic

22. *Policy 5.6.9 Shoreline uses and modifications within the Aquatic environment should be designed and managed consistent with the Environmental Protection policies and regulations of Chapter 6 including but not limited to preservation of water quality, habitat (such as eelgrass, kelp, forage fish spawning beaches, etc.), natural hydrographic conditions, and safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.*

Analysis: The project has been inherently designed to avoid adverse impacts on floodplain functions that support ESA listed species. The Habitat Assessment and Biological Evaluation (Exhibits H and I) conclude that the project will not result in additional loss of habitat or ecological function. Revision: An Addendum to the Habitat Assessment (Exhibit T) has been submitted confirming that “leaving the culvert’s rock armor in place instead of removing it as additional mitigation for the proposed repair project is not anticipated to result in adverse effects to FWHCAs and the project would not require additional/alternative mitigation to ensure there is no net loss of habitat or ecological function.”

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<sup>5</sup> Exhibit G, Coastal Geologic Report

### 23. *Aquatic Shoreline Permitted, Conditional and Prohibited Uses and Developments –*

Analysis: According to Table 5, shoreline defense works are a Conditional Use in the Aquatic Designation. The current proposal includes repair and construction of “shoreline defense works”. Repair alone may have been exempt from a Shoreline Substantial Development Permit<sup>6</sup> however, repair in concert with shoreline defense work constitutes Substantial Development. Given that the work will be waterward of the OHWM, the City’s SMP classifies the work as “major”<sup>7</sup>. In addition, “shoreline defense works” are a conditional use in the Aquatic designation.<sup>8</sup>

#### 5.13 Point Hudson Marina District – Maritime Heritage Corridor

##### 24. Policy 5.13.5 Recognize the unique character of Point Hudson’s sub-districts:

*b. Maritime Heritage Corridor Subdistrict (See Shorelines Designation Map Appendix A). This area, which includes the NWMC site, should continue to support the majority of the marine trades and other water-dependent and water-related uses located in Point Hudson, because of its proximity to the marina and haul-out and because of the buildings’ suitability for small scale marine trades use. Limited water-enjoyment uses are also appropriate uses in this subdistrict. Non-water-oriented uses should be limited to minor portions of development housing a mix of uses.<sup>2</sup>*

*Policy 5.13.7 Increase opportunities for marine-oriented educational, public, and non- profit uses.*

*Policy 5.13.10 Maintain a high degree of public access within the shoreline jurisdiction at Point Hudson (e.g., the beach trail along the shoreline). Keep Point Hudson pedestrian friendly and support development of a water walk/esplanade around the marina and along the northeast shoreline to create new public access and open space. Encourage public access amenities that are designed to respect and preserve ecological functions, native vegetation, and the natural character of the shoreline.*

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

Analysis: The proposal is to repair and protect the NWMC a non-profit, maritime-related public education facility and preferred use in the district. Erosion under the public stairs will be repaired and large boulders will be placed to protect the publicly accessible deck.

#### 6.0 Environmental Protection

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<sup>6</sup> SMP Section 2.4 (2)

<sup>7</sup> SMP Section 10.5.1b

<sup>8</sup> SMP DR 5.6.4 Aquatic, Table 5



25. General Environmental Policies and Regulations

*Policy 6.3.1 Protect the environment through implementation of this Master Program in concert with the City's Critical Areas Ordinance and through the use of the AMRRC mitigation sequence (Avoid, Minimize, Rectify, Reduce, Compensate) (WAC 173-26-201(e)).*

*Policy 6.3.2 Minimize the adverse impacts of shoreline developments and activities on the natural environment during all phases of development (e.g., design, construction, operation, 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.*

Analysis: Compliance with Mitigation Sequencing is documented in Section 8a of the JARPA application (Exhibit A ). The project has been inherently designed to avoid adverse impacts on floodplain functions that support ESA listed species. The Habitat Assessment and Biological Evaluation (Exhibits H, I and T) conclude that the project, as revised, will not result in additional loss of habitat or ecological function. As noted in Finding of Fact No. 2, above, critical areas are also protected under the Critical Areas code.<sup>9</sup> Per Finding No. 17, no action is required to comply with Aquifer Recharge and Seismic Hazard performance standards. Critical area provisions that relate to the FEMA Special Flood Hazard Area designation have been addressed through Flood Development Review (Exhibit Q ).

6.6 Critical Saltwater Habitats (Fish and Wildlife Habitat Conservation Areas)

26. *Policy 6.6.1 Protect critical salt-water habitats in recognition of their importance to the marine ecosystem of the City of Port Townsend and the State of Washington. These habitats provide critical reproduction, rearing and migratory nursery areas for valuable recreational and commercial species. They provide habitat for many marine plants, fish and animals.*

*Policy 6.6.2 Prohibit, with limited exceptions, uses, activities and structures in critical saltwater habitats. Exceptions may be allowed for public or semipublic facilities (e.g., water-dependent recreational or transportation facilities or utilities) where no alternative location is available.*

*Policy 6.6.3 Protect the composition of the beach and bottom substrate. Developments within or adjacent to the shoreline jurisdiction where critical saltwater habitats exist, should not directly or indirectly change the composition of the beach and bottom*

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<sup>9</sup> PTMC 19.05

*substrate. Habitat enhancement and restoration projects should change beach or bottom substrata only when appropriate to restore or enhance these habitats.*

Analysis: Kelp beds, eelgrass beds, herring spawning areas, smelt and sand lance spawning areas and other critical saltwater habitats are classified as fish and wildlife habitat conservation areas and are designated as “critical areas” in WAC 365-190-080(5)(a)(6). Direct, indirect and cumulative effects to these FWHCAs and the species that utilize them are analyzed in the Habitat Assessment (Exhibit H and T). Fringe (patchy) kelp and eelgrass is mapped along the project shoreline (WDNR 2001). The proposed work is occurring high in the upper intertidal zone (which is devoid of any attached submerged aquatic vegetation). This proposed method of shoreline modification to reduce erosion is a preferred method over a hard armoring option, such as a bulkhead. The project will not result in additional loss of habitat or ecological function.

#### 6.7 Frequently Flooded Areas and Tsunami Inundation Areas

*27. Policy 6.7.1 Ensure that new development in areas prone to periodic flooding comply with the City’s Flood Damage Prevention standards (Chapter 16.08, PTMC) to minimize health hazards and property damage due to flooding.*

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

Analysis: The proposal will occur within the FEMA Special Flood Hazard Area (SFHA). The purpose of the NWMC repair project is to repair storm damage and minimize future flood/storm damage. No structures or utilities are proposed. Application materials include proposed pre- and post-development terrain and quantities of cut and fill. A habitat assessment (Exhibits H and T) has been prepared in accordance with PTMC 19.05.080 Special Reports. The application includes documentation that the applicant has applied for all necessary permits required by federal, state, or local law (Exhibit A JARPA). The applicant has previously recorded a notice on title that the property is within the FEMA Special Flood Hazard Area (Exhibit P). The project complies with PTMC 16.08 Flood Damage Prevention.

#### 9.7 Shoreline Stabilization Measures & Flood Protection Works

*28. Policy 9.7.4—Allow structural stabilization methods only:*

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

c. *Structural stabilization will not be permitted for the indirect purpose of creating land by filling.*

Analysis: The proposal includes introducing cobble/gravel and large boulders to protect a use consistent with the SMP (i.e., the NWMC maritime educational facility). The applicant has submitted a Geologic Report (Exhibit G) demonstrating that the actions are necessary and are the least environmentally damaging practicable alternative.

29. *Policy 9.7.5 Encourage soft stabilization and protection works, such as protective berms or vegetative stabilization over “hard” structural means such as concrete bulkheads or extensive revetments. Furthermore, designs that do not interrupt net drift or migration of anadromous fish are preferred (for example, open piling construction is preferable to solid walls, and floating breakwaters are preferable to solid landfills).*

Analysis: The proposal uses “soft” stabilization in lieu of “hard” structural methods. Overall, it is a low impact solution to erosion when compared to a hard armor alternative. The submitted documentation (Exhibit G Coastal geologic report Exhibit H Habitat Assessment, Exhibit T Addendum to the Habitat Assessment) demonstrates that the proposal will not negatively impact net drift or migration of anadromous fish. According to the Coastal geologic report’s cumulative impacts assessment, “The impacts of this would be negligible, and beach nourishment would generally be viewed as favorable in this sediment-starved environment. Boulders theoretically placed in new areas in the drift log zone would likely trap some amount of naturally deposited large logs, again, which would generally not be viewed as a negative impact.”

30. *Policy 9.7.6 Consider the effect that proposed shore defense works have on ecosystem-wide processes (e.g., sand movement) and functions (e.g., habitat). Make provisions to avoid and minimize impacts where feasible. Mitigation must be provided to achieve no net loss.*

Analysis: The project will not result in additional loss of habitat or ecological function (Exhibit H, Habitat Assessment and T. Addendum).

31. *Policy 9.7.7 Give special attention to the effect these structures will have on aesthetic qualities of the shoreline, public access and use of the water.*

Analysis: The purpose of the project is to repair and protect public access and use of the water. In keeping with the current natural shoreline aesthetic, the design uses beach nourishment and large boulders in lieu of hard structural armoring.

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

- a. Relocation of existing structures, or implementation of nonstructural measures, such as placing the development even further from the shoreline, planting and or retaining vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
- b. Structural stabilization has been demonstrated, through a geotechnical report, to be necessary to support or protect a legally established, inhabited structure or ongoing shoreline use that is in danger of loss or substantial damage.
- c. The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.
- d. The shoreline defense structure will avoid and minimize adverse impacts to the extent feasible, and where such impacts cannot be avoided, mitigation shall be provided to achieve no net loss.
- e. The least intrusive (i.e., “softest”) method, sufficient to protect the shoreline use, has been proposed.
- f. Structural stabilization is required as part of a hazardous substance remediation plan.

Analysis: 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.

33. *DR 9.7.2 The City shall require and utilize the following information during its review of shoreline stabilization and flood protection proposals:*
- a. Purpose of the project;*
  - b. Documentation (including photos) of existing (pre- construction) shoreline 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;*
  - k. Competent technical assurance that the proposed shore defense structure will perform as designed;*

- l. Description of measures incorporated into the design to address aesthetics and public access; and*
- m. Evaluation, by a qualified coastal geologist and marine habitat biologist, of the cumulative effects of “hard” stabilization methods within the drift cell; and*
- 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.*

Analysis: 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.

34. *DR 9.7.3 Shoreline stabilization works, including revetments and bulkheads, shall be located, designed and constructed in such a manner that will:*
- a. Minimize alterations of the natural shoreline and shoreline processes including sediment feeding of nearby beaches.*
  - b. Minimize damage to ecological functions including wildlife, fish and shellfish habitats.*
  - 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.*
  - d. Blend with the surroundings and not distract from the aesthetic qualities of the shoreline.*
  - e. Achieve the policy of “no net loss” of ecological functions necessary to sustain shoreline resources.*

Analysis: 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. The goal of the proposal is to repair and protect public access and recreation. Soft armoring is designed to blend with the surroundings.

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

Analysis: No such materials will be used.

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

Analysis: 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*)<sup>10</sup>, considered to be “a valuable species for landscape rehabilitation in native beach habitat”. Mitigation is not required as the project has been inherently designed to avoid and minimize impacts.

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

Analysis: The proposed project will occur high on the upper beach with a portion of it below the OHWM. “This project should help retain sediment on the upper beach through beach nourishment and the strategic placement of large boulders to further help dissipate wave energy and act as debris barriers..... Some net improvement in ecological function may result from planting of dune grass in the upper beach zone and

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<sup>10</sup> [https://calscape.org/Elymus-mollis-\(American-Dunegrass\)](https://calscape.org/Elymus-mollis-(American-Dunegrass))

beach nourishment that may create more suitable conditions for forage fish spawning” (Exhibit H Habitat Assessment).

10.6.5 Criteria for Granting Shoreline Conditional Use Permits

38. *Uses classified as conditional uses may be authorized provided that the applicant can 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;*

Analysis: The analyses contained in the preceding Findings demonstrate that the proposed Shoreline Conditional Use, subject to conditions, is consistent with the City’s local Shoreline Master Program (SMP). RCW 90.58.020 states, in part, that *Permitted uses in the shorelines of the state shall be designed and conducted in a manner 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.*

- b. *That the proposed use will not interfere with the normal public use of public shorelines;*

Analysis: The purpose of the project is to repair storm damage that impedes public use of the shorelines and to protect publicly accessible areas of the NWMC a non-profit maritime educational facility.

- c. *That the proposed use of the site and design of the project will be compatible with other permitted uses within the area and with uses planned for the area under the comprehensive plan;*

Analysis: No change in use is proposed. The design of the project is compatible with existing uses of the site and surrounding area. Overall, it is a low impact solution to erosion when compared to a hard armor alternative.

- d. *That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and*

Analysis: A coastal geologic report and habitat assessment (Exhibits G, H, T) assessed the potential impacts of the project and concluded no significant adverse effects to the shoreline environment. Some net improvement in ecological function may result from planting of dune grass in the upper beach zone and beach nourishment that may create more suitable conditions for forage fish spawning.

- e. *That the public interest will suffer no substantial detrimental effect.*



Analysis: The project benefits the public interest by repairing and protecting public access to the shoreline.

*f. That the decision maker has given consideration to the cumulative impact of additional requests for like actions in the area. For example, if Conditional 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.*

Analysis: Cumulative effects have been analyzed in the Coastal Geologic Report (Exhibit G) and Habitat Assessment (Exhibits H and T). The proposal is not anticipated to have an adverse cumulative effect.

#### **STAFF RECOMMENDED CONCLUSIONS**

1. Located within the Point Hudson Marina District – Maritime Heritage Corridor and Aquatic shoreline designations, the proposal involves repair and construction of “shoreline defense works”. Shoreline defense works are a Conditional Use in the Aquatic Designation. In addition, the proposal meets the definition of a Shoreline Substantial Development under the Port Townsend Shoreline Master Program (SMP) and at RCW 90.58.030(3)(e).
2. The Port Townsend Shoreline Master Program (“SMP”) governs the policies and criteria for shoreline permit review including the shoreline substantial development and conditional use permit that are the subject of this Decision. The application has been processed in accordance with the procedures for a Type III permit subject to public notice, comment and hearing pursuant to PTMC 20.01.
3. Subject to certain conditions, the proposal is consistent with the provisions of the SMP, the Shoreline Management Act of 1971, and the rules and regulations adopted by the Department of Ecology thereunder<sup>11</sup>. The policies of the SMP are considered part of the City’s comprehensive plan. As previously determined, the proposal is consistent with all SMP policies and hence is consistent with the City’s comprehensive plan, as there are no inconsistencies with the more generalized policies of the plan that are not contained with the SMP. The proposal is also consistent with the City’s development standards<sup>12</sup>.
4. As designed and conditioned, the proposal is not detrimental to the public health, safety and welfare<sup>13</sup>. The proposal minimizes impacts and results in no net loss of ecological function. Development is subject to review and approval of a city building permit and will

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<sup>11</sup> SMP 10.13.1 Decision Maker Review Criteria and

<sup>12</sup> PTMC Section 20.01.235(D)(1)

<sup>13</sup> PTMC Section 20.01.235(D)(2)

improve public safety by repairing public access improvements.

5. The development adequately mitigates impacts identified under Chapters 19.04 (SEPA) and 19.05 (Critical Areas Ordinance) PTMC. The SEPA Responsible Official issued a MDNS (Exhibit B). All pertinent provisions of Chapter 19.05 PTMC have been applied in this decision and were found to be met.
6. The proposal is within the FEMA Special Flood Hazard Area. As indicated in Findings #17 and 27, the project complies with PTMC 16.08 Flood Damage Prevention.

### **RECOMMENDED DECISION – APPROVE WITH CONDITIONS**

Based on the foregoing Findings of Facts and Conclusions, the Planning and Community Development Director hereby recommends **APPROVAL** of the requested Shoreline Substantial Development (LUP23-023), subject to the following conditions:

1. Construction shall be completed in substantial conformance to the plans contained within the submitted application (Exhibit A), except where modified by:
  - a. This decision
  - b. SEPA MDNS Mitigation Measures (Exhibit B)
  - c. Conditions of any other city approvals obtained for the project must also be complied with during construction and continue to be in effect once the use is in operation.
  - d. Federal Permits and Authorizations including but not limited to the ACOE NWP (Exhibit J-4)
  - e. State Permits and Authorizations including but not limited to fish windows of the WDFW HPA.
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.

### **REVISIONS**

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

### **DURATION OF PERMITS**

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

of issuance.

5. The City may, at its discretion, with prior notice to parties of record and the Department of Ecology, extend the two-year time period for the demonstration of 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.
6. If construction has not been completed within five (5) years of approval by the City of Port Townsend, the City will review the Permit and, upon showing of good cause, either extend the Permit for one additional year, or terminate the Permit. 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.

### **Exhibits**

- Exhibit A: JARPA Application
- Exhibit B: SEPA MDNS and SEPA Checklist (LUP 23-024)
- Exhibit C: Project Narrative and Permit Plans
- Exhibit D: Flood Development Review Application
- Exhibit E: Critical Areas Permit Application
- Exhibit F: Grading Permit Application
- Exhibit G: Coastal Geologic Report ~~3/15/23~~ 8/21/23 by Coastal Geologic Services, Inc.
- Exhibit H: Habitat Assessment 9/17/21 by Marine Surveys and Assessments
- Exhibit I: Biological Evaluation 9/17/21 by Marine Surveys and Assessments
- Exhibit J: Federal Permit Process and Approval Verification  
 J-1: email from Bill Kerschke, Deputy Environmental Officer, FEMA Region X  
 J-2 NOAA NMFS confirms this action as implementation of FESP consultation  
 J-3: USFW concurrence on ESA determination  
 J-4: Department of the ARMY USACOE Nationwide Permit 3 and 13
- Exhibit K: Cleanup Site Details
- Exhibit L: Notice of Application and Pending SEPA Threshold Determination
- Exhibit M: Public Comment Letter
- Exhibit N: Notice of Public Hearing
- Exhibit O: Letter from Jamestown S’Klallam Tribe to USACOE
- Exhibit P: Hold Harmless Indemnification Covenant – FEMA SFHA – AFN656008
- Exhibit Q: FEMA Region X – Puget Sound BiOp Floodplain Habitat Assessment Worksheet
- Exhibit R: Critical Areas Analysis
- Exhibit S: Federal Permit Process and Approval Verification Addendum on Revised Project
- Exhibit T: Addendum to Habitat Assessment by Marine Surveys and Assessments

### **Approval Process & Appeals**

The Hearing Examiner's decision is preliminary. After the Hearing Examiner has made a final decision on a Conditional Use Permit application, the Administrator shall file the Permit with the Department of Ecology (Ecology) for its approval, approval with conditions, or denial.

Ecology will issue its decision on a Conditional Use Permit within thirty (30) days of filing.

Any appeal of Ecology's decision shall be filed within 21 days of the date of filing of the final permit and shall be heard by the Shorelines Hearings Board pursuant to the procedures and timelines of RCW [90.58.180](#).