



Kitsap Transit  
North Kitsap Fire District  
North Kitsap School District  
Point No Point Treaty Council  
Suquamish Tribe  
Port Gamble S'Klallam Tribe  
Squaxin Island Tribe  
Puyallup Tribe  
WA Dept of Fish & Wildlife  
WA State Dept of Ecology-SEPA  
WA State of Dept of Ecology – Misty Blair  
WA State Dept of Transportation  
Interested Parties:  
Doug Johnson, [zcar71@msn.com](mailto:zcar71@msn.com)

**KITSAP COUNTY HEARING EXAMINER  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

**City of Poulsbo's Johnson Parkway Stormwater Outfall Project  
Shoreline Substantial Development Permit 17-03737 and  
Shoreline Conditional Use Permit 17-03738**

**March 29, 2018**

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**1. FINDINGS OF FACT**

**1.1 Proposal.** Reconstruct a stormwater conveyance system and outfall between the Johnson Road and State Route 305 intersection. Originally constructed over 50 years ago, the existing outfall and conveyance system has deteriorated. It is undersized and floods periodically, with untreated stormwater discharges flowing into Liberty Bay. Transportation improvements within the City of Poulsbo have made it necessary to improve this aging infrastructure. After a site visit with the Squamish Tribe and Washington Department of Fish and Wildlife (WDFD), the approach was revised. To enhance habitat, stormwater piping was removed, and the City designed an open conveyance system. The portion of the project within unincorporated Kitsap County includes:

- **200 Feet of Stormwater Ditch Reconstruction.** Reconstruct eroded and incised ditch between Lemolo Shore Drive and the future outfall channel. Establish a stable hydraulic flow line, with round rock channel substrate and large woody debris.
- **Outfall Channel Reconstruction.** Construct boulder and stream cobble lined outfall channel using boulder flow spreader weirs (dams) to dissipate stormwater flows.
- **Habitat Enhancement and Channel Stabilization.** Install woody debris and native vegetation as soft armoring to stabilize the outfall channel side slopes.
- **Removal of Concrete Rubble and Intertidal Habitat Work.** Remove rock and concrete rubble debris from the bulkhead area and restore 1,204 square feet of intertidal habitat.
- **Reconstruct Bulkhead.** Reconstruct 195 lineal feet of deteriorated rock, concrete and asphalt bulkhead with new rock bulkhead.
- **Native Vegetation.** Restore native vegetation within the right of way and the 85-foot shoreline buffer zone, and within 10 feet of each side of the new enhanced ditch channel.

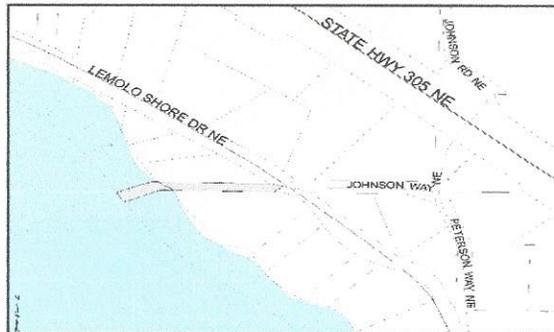
The Applicant, property owner, site location, and assessor's number are as follows:

**Applicant:** City of Poulsbo, 200 NE Moe Street, Poulsbo, WA 98370

**Property Owner:** Kitsap County Public Works, 507 Austin Avenue, Port Orchard, WA 98366.

**Site Location:** County right of way between 17019 and 17029 Lemolo Shore Drive in Poulsbo, WA.

**Assessor's Number:** Because this is within County right-of-way, there is no parcel number.



## 1.2 Acronyms.

<b>MDNS</b>	Mitigated Determination of Non-Significance
<b>SCUP</b>	Shoreline Conditional Use Permit
<b>SEPA</b>	State Environmental Policy Act, Ch. 43.21C RCW
<b>SMA</b>	Shoreline Management Act, Ch. 90.58 RCW
<b>SMP</b>	Kitsap County Shoreline Master Program
<b>SSDP</b>	Shoreline Substantial Development Permit

**1.3 Shoreline Permits Requested.** Local within 200 feet of the shoreline, the project is within SMA jurisdiction. The conveyance system is within the SMP's Shoreline Residential designation, so requires an SSDP. Discharge occurs waterward of ordinary high-water mark, within the SMP's Aquatic designation. If considered a utility in the Aquatic designation, an SCUP would be required,<sup>1</sup> so the City applied for same.<sup>2</sup>

**1.4 Administrative Record.** Before the hearing, the Examiner reviewed Exhibits 1-32, which included the Staff Report. At the hearing, the Department of Community Development (DCD) submitted Exhibit 33, its power point presentation. The Examiner admitted all exhibits.

**1.5 Notice.** The hearing notice was published, posted and mailed, following mailing and publishing of the notice of application.<sup>3</sup> In addition, the proposal was circulated within the County, to several state agencies, utility providers, and tribal entities. This notice was coupled with a site visit and consultation with WDFW and the Squamish Tribe.<sup>4</sup> No concerns on notice were raised.

<sup>1</sup> KCC 22.150.630; KCC 22.600.105.

<sup>2</sup> At the hearing, DCD explained it is questionable whether a shoreline conditional use permit is required. As a precaution, one was applied for.

<sup>3</sup> Exhibit 31.

<sup>4</sup> Exhibit 32 (Staff Report), p. 2 and DCD hearing testimony.

**1.6 SEPA.** DCD issued an MDNS, followed by an Addendum, which addressed the revised open conveyance approach.<sup>5</sup> No comments were received, nor were any appeals filed. The MDNS conditions require compliance with the County's Title 12 stormwater regulations, and three reports (a habitat management plan, cultural resource assessment, and geotechnical report). The SEPA conditions were incorporated into the proposed permit conditions.

**1.7 Hearing.** The Hearing Examiner held an open record public hearing on March 22, 2018. DCD, through Mr. Smith, summarized the proposal. The Applicant also presented, raising no objections to DCD's presentation or Staff Report. No person present wished to provide public comment.

**1.8 Agency Comment.** The project was circulated to various agencies. No unaddressed concerns were identified.

**1.9 Site Land Use Designations.** The SMP shoreline designation is Shoreline Residential above the high water mark, and Aquatic below. The Comprehensive Plan and zoning designations are Rural Residential.

**1.10 Surrounding Area.** The surrounding areas are zoned Rural Residential up to State Highway 305. After the highway, the zoning becomes Residential Low in the Poulsbo Urban Transition Area. This transition area provides for urban development consistent with the City of Poulsbo's development standards, to allow for a smooth transition into City limits through future annexations.

**1.11 Utility and Public Services.**

- **Water:** Public Utility District
- **Power:** Puget Sound Energy
- **Sewer:** Sewer
- **Police:** Kitsap County Sheriff
- **Fire:** North Kitsap Fire District
- **Schools:** North Kitsap School District

**1.12 Access.** Access is off of Lemolo Shore Drive NE and Johnson Way NE.

**1.13 Shoreline Protections.** Project design and mitigation provide for no net loss of shoreline habitat functions or values. By reducing shoreline fill and armoring, removing treated bulkhead wood segments, and enhancing 4,000 square feet of upland buffer by establishing native plants in disturbed upland buffer areas, the project will improve habitat conditions. This is coupled with 1,204 square feet of new intertidal habitat. Construction best management practices and minimization measures, along with complying with work windows, will further address construction impacts.<sup>6</sup> The open conveyance outfall approach improves aesthetics and

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<sup>5</sup> Exhibits 15 and 29.

<sup>6</sup> See e.g., Exhibit 27 (Updated SEPA Checklist), pp. 6-7 and 9-10.

habitat.<sup>7</sup> Project design has been assessed through tribal and agency consultation, and through the Habitat Management Plan and FEMA Biological Evaluation Report.<sup>8</sup>

**1.14 Comprehensive Plan and Development Regulations.** The Comprehensive Plan, with the Rural Residential designation at this site, plans for rural residential uses adequately supported by infrastructure and consistent with rural uses. The utility project protects uses in the area from stormwater runoff and flooding, and does so in a way which improves habitat and aesthetics.<sup>9</sup> KCC development regulations implement the Plan policies, and the project follows the local regulatory structure. No Title 17 or other code provision was identified which would not be complied with.

**1.15 SMP and SMA Policies.** The SMA is designed, in part, to preserve shorelines for water dependent uses, while protecting habitat functions and values, and promoting public, tribal, and inter-agency input into shoreline decision making.<sup>10</sup> The stormwater conveyance and outfall project is a water dependent utility improvement for managing stormwater and protecting against flooding, and was redesigned following tribal and WDFW consultation to maximize environmental protections. The project was designed consistent with local and state shoreline policies.

## 2. CONCLUSIONS OF LAW

**2.1 Authority.** The Hearing Examiner has authority to review SSDP and SCUP applications, with the SCUP subject to Ecology approval.<sup>11</sup> The Examiner may approve, deny, or approve the requested permits with conditions.<sup>12</sup>

**2.2 SSDP Approval Criteria.** As the project is within the Shoreline Residential designation, an SSDP is required. An SSDP is granted only if the applicant demonstrates the project is consistent with SMA and SMP policies and procedures and WAC 173-27-150.<sup>13</sup>

**2.3 SCUP Approval Criteria.** An SCUP is also being requested as stormwater outfall will occur below the high tide mark, and within the Aquatic designation.<sup>14</sup> To obtain an SCUP, the Applicant must demonstrate compliance with WAC 173-27-160, KCC 22.500.100(D)(3), and the County's Title 17 CUP criteria.<sup>15</sup>

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<sup>7</sup> Summarized in Finding 1.1, with details outlined in Exhibit 29 (SEPA Addendum), Exhibit 27 (Updated SEPA Checklist), and Exhibit 9 (Habitat Management Plan and FEMA Biological Evaluation).

<sup>8</sup> Exhibit 9. DCD hearing testimony outlined the project's design history.

<sup>9</sup> See e.g., Comprehensive Plan Environmental Goal 1 and Environmental Policies 2, 3, 11, and 17 and Land Use Goal 13.

<sup>10</sup> See e.g., RCW 90.58.020.

<sup>11</sup> KCC 22.500.105(E), .100(B) and .100(D)(2) and (4); KCC 21.04.080 and .100.

<sup>12</sup> KCC 21.04.080, .100.

<sup>13</sup> KCC 22.500.100(B)(3).

<sup>14</sup> KCC 22.600.185.

<sup>15</sup> KCC 22.500.100(D)(2) and (3).

**2.4 SCUP Consistency with KCC 22.500.100(D)(3)(a-h) and WAC 173-27-160.** The KCC and WAC criteria in these sections are nearly identical.<sup>16</sup> The first criterion requires RCW 90.58.020 and SMP policy consistency, and is addressed in Conclusion 2.5. The project follows the remaining criteria.

The development "will not interfere with the normal public use of public shorelines and does not conflict with existing water-dependent uses."<sup>17</sup> An outfall ditch already exists at the site, and the project enhances the existing system.

The infrastructure is compatible with surrounding existing uses and uses the Comprehensive Plan and SMP plan for.<sup>18</sup> The project is necessary to support transportation infrastructure and protect against flooding, which supports the surrounding residential uses. Also, as the project design will improve habitat functioning and aesthetics, there are no significant adverse environmental impacts or a "net loss to the shoreline ecosystem functions..."<sup>19</sup> Due to these improvements, the project improves compatibility with the surrounding area over and above existing conditions.

There is "no substantial detrimental effect" to the public interest.<sup>20</sup> The existing drainage ditch is under-sized and has deteriorated with age, and stormwater discharges are untreated. The new stormwater facilities will improve capacity, reduce erosion/scour, improve near shore habitat and provide stormwater treatment facilities that meet State Department of Ecology 2012 Enhanced Treatment standards. The project is conditioned to mitigate for construction impacts.

The utility use is not increasing impacts in conjunction with other uses so it was unnecessary for DCD to request a cumulative impact report.<sup>21</sup> The infrastructure improvements address stormwater impacts from other uses reducing impacts. Also, other uses are not proposed with this project, nor are any prohibited uses proposed. Even when considering other such facilities, this is the only location where the project could be constructed. As a system upgrade, the proposed project must be within shoreline jurisdiction as that is where the existing stormwater conveyance system is located, and where the improvements must be made. There are no alternative locations. The proposed upgraded outfall ditch is served by a culvert under Lemolo Shore Drive NE. The two closest culverts that also flow under Lemolo Shore Drive NE are approximately 523 feet to the northwest and approximately 390 feet to the southeast. No other types of facilities are proposed.

The project is mitigated. The Habitat Management Plan and FEMA Biological Evaluation Report, § 5.6, addresses temporary construction mitigation and erosion control measures, which are required. A Geotechnical Report prepared by Landau Associates addresses

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<sup>16</sup> KCC 22.500.100(D)(3)(a-h) are nearly identical to WAC 173-27-160(1)(a-e), 2 and 4.

<sup>17</sup> KCC 22.500.100(D)(3)(b).

<sup>18</sup> KCC 22.500.100(D)(3)(c).

<sup>19</sup> KCC 22.500.100(D)(3)(d).

<sup>20</sup> KCC 22.400.100(D)(3)(e).

<sup>21</sup> KCC 22.500.100(D)(3)(f).

drainage and shoring armoring.<sup>22</sup> The existing location and proposal are within an existing utility right-of-way. WAC and SMP regulatory criteria are met.

**2.5 SDAP and SCUP: RCW 90.58.020 and KCC's 22.300.145's Shorelines of Statewide Significance Policies.** Areas in Puget Sound which lie "seaward from the line of extreme low tide" are designated as shorelines of statewide significance.<sup>23</sup> Stormwater will drain into Puget Sound through the open conveyance system. As the RCW 90.58.020 policies and KCC 22.300.145 policies are the same, both are reviewed.

- **Recognize and protect state over local interests.** These policies provide for consulting with WDFW, Ecology, affected tribes, and other agencies/interest groups on proposals that could affect anadromous fisheries or other priority species or habitats; and, considering state agencies' relevant policies and recommendations. DCD conducted outreach for this proposal. The project incorporates agency/tribal input on shoreline mitigation and ecological restoration, and protects state shoreline interests, and local objectives.
- **Preserve shoreline natural character.** These policies provide for administering regulations to minimize damage to shoreline ecology, facilitate restoration where natural resources are being diminished, and new intensive development should upgrade and redevelop those areas where intensive development already occurs, rather than allowing high intensity uses to extend into low intensity areas. The project is not an intensive development or high intensity use, and enhances shoreline ecology and resources.
- **Protect long-term over short-term benefit.** These policies provide for preserving sufficient areas to accommodate current and projected demand for economic resources; strictly limit actions that would convert resources into irreversible uses or detrimentally alter natural conditions; evaluate short-term economic gain/convenience over long-term and costly environmental impairment; and promote aesthetic considerations. The use would not be detrimental to natural conditions or result in irreversible, adverse shoreline impacts. The project does not impair economic resources. By managing stormwater, the use supports shoreline economic use. And, the use is mitigated to protect ecological resources.
- **Protect the resources and ecology of the shoreline.** These policies provide for considering incremental and cumulative impacts while ensuring no net loss of shoreline ecosystem processes and functions; ensuring long-term protection of ecological resources of statewide importance, activities affecting anadromous fish habitats, forage fish spawning and rearing areas, shellfish beds and other unique environments; and limiting public access where improvements would cause a loss of shoreline ecological functions, such as in priority or sensitive habitats. As designed and mitigated, the project improves on rather than having adverse impacts on ecosystem processes and functions.

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<sup>22</sup> Exhibit 14.

<sup>23</sup> KCC 22.300.145(A)(1); RCW 90.58.030.

- **Increase public access to publicly owned areas of the shorelines.** These policies provide for preserving/encouraging public access to areas with scenic or cultural qualities; giving priority to paths, trails, and linear shoreline access; and, locating development inland to enhance access. Shoreline access is not impeded and mitigation addressing aesthetic concerns was incorporated into the proposal.
- **Increase recreational opportunities for the public in the shoreline.** These policies provide for accounting for state agencies/citizen interests in visiting public shorelines regarding public access/recreation requirements; and encouraging development of facilities for recreational use of the shorelines, while reserving upland areas for lodging, with provisions for nonmotorized shoreline access. The proposal does not impede recreational use of the shoreline.

The project follows these policies and furthers their underlying objectives to support environmentally responsible utilization of shoreline resources. The identified location already hosts conveyance facilities which require repair, and proposal design includes significant mitigation to improve on-site ecological conditions.

**2.6 SCUP: Aquatic Policies, KCC 22.200.135 and KCC 22.400.105(B).** To the extent applicable, the proposal follows the SMP Aquatic policies. There is no over-water work required to implement the project. Most of the Aquatic policies do not apply. But this water-dependent project furthers the core objectives behind these policies, which is to support use of the water in an ecologically sound manner. The use will be developed consistent with required mitigation and has been designed, following tribal and state agency consultation, to protect ecological resources.

Work waterward of the ordinary high water mark, which consists primarily of habitat improvements, follows KCC 22.400.105(B).<sup>24</sup> The project is water dependent, so buffers do not apply. This is a low impact project which improves site ecology. Required permits will be obtained, and should water quality problems result from in-water work, immediate notification will be made to the appropriate agencies. Per KCC 22.400.110(C), mitigation compliance must ensure consistency with SMP policies.

**2.7 SCUP - Shoreline Conditional Use Permit Criteria.** The County's CUP criteria require:

1. The proposal is consistent with the Comprehensive Plan;
2. The proposal complies with applicable requirements of this title [Title 17];
3. The proposal will not be materially detrimental to existing or future uses or property in the immediate vicinity; and

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<sup>24</sup> See Exhibit 27 (Updated SEPA Checklist), p. 6, Table 1.

4. The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing character, appearance, quality or development, and physical characteristics of the subject property and the immediate vicinity.<sup>25</sup>

As detailed in Findings 1.1, and 1.13 - .15, the project is consistent with the Comprehensive Plan and SMP. All regulatory requirements, including those at Title 17, will be met. As an improvement to existing infrastructure, and as detailed in Findings 1.1 and 1.13, the project will not be materially detrimental to existing or future uses or property in the immediate vicinity. And, as a system upgrade, the project provides utility infrastructure to support residential development, so is compatible with surrounding uses. The project also includes mitigation to improve habitat functioning and aesthetics which ensure the project is compatible with the surrounding residential character and causes no material detriment to existing and planned uses. The reconstruction will cause a net ecological and aesthetic benefit so improves the site's overall neighborhood compatibility above existing conditions. The project is consistent with the Title 17 CUP criteria.

**2.8 SSDP Consistency with SMP/SMA and WAC 173-27-150 Policies.** The project is consistent with these policies. Besides project consistency with the policies identified in Conclusion 2.5 above, and consistent with KCC 22.200.115(C)(1), there will be no net loss of shoreline ecological function. Habitat conditions on the site are improved, and deteriorated and inadequate stormwater infrastructure will be improved. Findings 1.1 and 1.13 detail the improved aesthetics and habitat the project brings to the site. "[A]vailable and adequate" utilities are not only authorized, but needed within the Shoreline Residential designation.<sup>26</sup> The project is the type of infrastructure improvement state and local shoreline policies support.

**2.9 Summary.** The proposal follows the shoreline policies and regulations. The proposal will not cause a net loss to shoreline functioning or have significant adverse shoreline environmental impacts. The utility improvements are necessary, and provide an ecological benefit. The proposal follows the policies and procedures of the SMA, and the County's SMP. Consistent with WAC 173-27-150 and -160, both the SSDP and SCUP should be approved.

## DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested Shoreline Substantial Development Permit and Shoreline Conditional Use Permit, provided the following 19 conditions are adhered to.

### Development Engineering

1. Construction plans and profiles for all roads, storm drainage facilities and appurtenances prepared by the developer's engineer shall be submitted to Kitsap County for review and acceptance. No construction shall be started prior to said plan acceptance.

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<sup>25</sup> KCC 17.550.030(A).

<sup>26</sup> KCC 22.200.115(C)(c).

## STORMWATER

2. The information provided demonstrates this proposal is a Large Project as defined in Kitsap County Code (KCC) Title 12, and as such will require a Full Drainage Review Site Development Activity Permit (SDAP) from Development Services and Engineering.
3. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with KCC Title 12 effective at the time the SSDP/SCUP application was deemed complete, September 13, 2017. The submittal documents shall be prepared by a civil engineer licensed in the State of Washington. The fees and submittal requirements shall be in accordance with Kitsap County Ordinances in effect at the time of SDAP application.
4. Any project that includes off-site improvements that create additional impervious surface such as lane widening, sidewalk or shoulder installation or intersection channelization shall provide stormwater mitigation in accordance with KCC Title 12 effective at the time the SSDP/SCUP application was deemed complete, September 13, 2017.
5. WDFW may require a Hydraulic Project Approval for the work required at the proposed outfall.
6. During the construction of the proposed permeable pavement infiltration facilities, the Project Engineer shall provide an inspection to verify that the facilities are installed in accordance with the design documents and that actual soil conditions encountered meet the design assumptions. The Project Engineer shall submit the inspection report properly stamped and sealed with a professional engineer's stamp to Development Services and Engineering.
7. The design of the infiltration facilities will be accordance with Vol. II, Chapter 5.3 of the Kitsap County Stormwater Design Manual.
8. The infiltration facilities shall remain off line until the drainage areas are stabilized and the water quality treatment facility is adequately established. Temporary erosion and sedimentation ponds shall not be located over infiltration facilities. In addition, retention ponds shall not be utilized as temporary erosion and sedimentation control ponds.
9. Upon completion of the storm drainage facilities, the developer will be responsible for operations and maintenance of the storm drainage facilities.
10. Prior to issuance of the SDAP, provide a recorded easement in favor of Kitsap County Public Works, addressing ownership and maintenance of the storm drainage facilities within unincorporated Kitsap County. The Kitsap County Public Works Department will prepare the easement document; recording fees are the Applicant's responsibility.
11. If the project proposal is modified from that shown on the submitted site plan dated September 11, 2017, Development Services and Engineering will require additional review and potentially new conditions.

## TRAFFIC AND ROADS

12. Traffic analysis of the roundabout operations with respect to the intersections of Johnson Way and Peterson Way, Johnson Way and Lemolo Shore Drive, and Peterson Way and Lemolo Shore Drive should be performed to verify if proposed roadway configuration is an acceptable long-term solution. Submit the analysis with the required SDAP.
13. Before SDAP acceptance, the Applicant shall submit a set of drawings to the Washington State Department of Transportation (WSDOT) for review. The Applicant shall notify Development Services and Engineering in writing when the plans have been submitted to WSDOT. Development Services and Engineering shall coordinate with WSDOT to determine if WSDOT has any comments to the submittal, but responsibility for obtaining concurrence from WSDOT lies with the property owner.
14. Prior to completion of the SDAP with DCD, the Applicant shall apply for and satisfy all conditions of a Right-of-Way Permit through the Department of Public Works for any and all work performed in the county Right-of-Way associated with this project. You may contact Kitsap County Public Works, Right-of-Way Division at (360) 337-5777 to obtain a Right-of-Way permit.

### **Environmental**

15. The project shall follow the recommendations of the Geotechnical Report prepared by Landau Associates, Inc. dated January 3, 2018.
16. Recommendations and mitigation shall conform to the Habitat Management Plan and FEMA Biological Evaluation Report prepared by Sealaska Environmental Services dated June, 2017, which shall guide all construction activities.
17. The project shall follow the recommendations of the Cultural Resources report prepared by Margaret Berger, Project Archaeologist, dated March 28, 2016.
18. With the submittal of the SDAP, all updated materials showing the open conveyance system must be received.
19. A United States Army Corps of Engineers permit shall be obtained for all work done below the Mean High-Water Mark.

THIS DECISION is entered this 29th day March, 2018.



Kitsap County Hearing Examiner  
Susan Elizabeth Drummond