

FILED  
Court of Appeals  
Division II  
State of Washington  
5/30/2019 4:19 PM

NO. 52658-1-II

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

ERIC and KENDRA NIESZ,

Appellants,

v.

PIERCE COUNTY; JOHN WEST; CHRISTINE WEST; WILLIAM  
REETZ; ERIN REETZ; and STATE OF WASHINGTON SHORELINES  
HEARINGS BOARD,

Respondents.

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**APPELLANTS' REPLY BRIEF**

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## I. INTRODUCTION

Postured by Respondents as a typical case involving facts and the exercise of sound discretion, this appeal in actuality presents fundamental questions regarding how to review a land use application for a favored use on state owned aquatic lands.<sup>1</sup> These questions go to the core of Growth Management Act fair and predictable permit processing and approval requirements set out in RCW 36.70A.020(7) and State Legislature permission to construct private docks on public aquatic lands.

For instance, a major focus of the Shoreline Hearings Board was a concern regarding beach walking if the proposed dock is constructed. Permission to construct the dock is provided by state law, RCW 79.105.430. This law balances rights; but its implementation does not ignore beach walkers. WAC 332-30-144(4)(d), adopted by the Department of Natural Resources ("DNR") which administers RCW 79.105.430, unequivocally states:

Owners of docks located on state-owned tidelands or shorelines must provide a safe, convenient, and clearly available means of pedestrian access over, around, or under the dock at all tide levels.

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<sup>1</sup>The Niesz property is located in the Conservancy Shoreline Environment designation. The Pierce County Code, PCC § 20.56.030(D), specifically *allows* private docks in the Conservancy Environment, in the same manner as allowed in the Urban (and Rural-Residential and Rural) Environment.

The Pierce County Master Program provides that any proposal must comply with all applicable laws. *See* Staff Report, p. 13 (Condition No. 3, 000615). Implementation of this local requirement has nothing to do with discretion because applicable law must be followed. Swayed by the opposing neighbors, however, the Board erroneously ruled that compliance with existing law is somehow a discretionary “change to the application” and WAC 332-30-144 could not be considered.<sup>2</sup> The opposition speaks of the duties of the Board to review the application before it (Reetz Resp., p. 24) but a corresponding duty is to impose the law.

The DNR enforces its requirements and has the expertise to determine compliance with its own regulations. It is logical to look at compliance with the DNR beach user’s accommodation requirement after the County approves the dock design. Any County review is easily accomplished by a simple permit amendment, issuance of a shoreline exemption or simply checking the box that a standard SMP requirement was met. *See* WAC173-27-100; 050. This approach promotes flexibility and the best use of respective agency expertise.

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<sup>2</sup> Decision, Conclusion No. 14, pp. 20-21.

The opposition's assertion that everything is discretionary and the SHB's decision must be accorded deference goes too far. The Code controls and allows private docks.<sup>3</sup> The word "allowed" means "permit."<sup>4</sup> The word permitted means "to consent to expressly."<sup>5</sup> In this regard, the County employs a shoreline substantial development permit for a dock application with performance-based approval criteria, not a conditional use approval or variance. If the approval criteria are met, there is no discretion to deny a proposal based upon concerns regarding the "first dock" in the general vicinity.

**II. COUNTERSTATEMENT: THE PROPOSED USE IS ALLOWED, A STATUS UNAFFECTED BY THE SMP'S GENERAL POLICIES OR THE ABSENCE OF OTHER DOCKS IN THE VICINITY**

In this case, the Board's perspective when it reviewed the proposal unduly influenced the outcome. The Board considered a dock as a disfavored use, a perspective which erroneously permeated its decision.

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<sup>3</sup> This Court can note that the Gig Harbor community was not successful in convincing Pierce County to change the SMP to ban docks. See Veto, Ordinance No. 2017-6s, attached as Appendix A-1. The Court can take official notice of this law. This rule applies equally to state laws and local ordinances. See e.g., *Gross v. City of Lynnwood*, 90 Wn.2d 395, 397, 583 P.2d 1197 (1978) ("It is the general rule that public statutes of Washington State will be judicially noticed by all courts of this state.") (citing *State v. Larson*, 49 Wn.2d 239, 299 P.2d 568 (1956); *State v. Whetstone*, 30 Wn.2d 301, 191 P.2d 818 (1948); 5 R. Meisenholder, Wash. Prac. § 595 (1965); 9 J. Wigmore, A Treatise on the Anglo-American System of Evidence in Trials at Common Law, § 2572 (3d ed. 1940)). The new shoreline regulations adopted in 2018 continue to allow docks on Fox Island. See Appendix A-2.

<sup>4</sup> <https://www.merriam-webster.com/dictionary/allow>

<sup>5</sup> <https://www.merriam-webster.com/dictionary/permit>

*See, e.g.*, Conclusion No. 30 (“The proposed single-use dock is discouraged under the SMP Piers Policies.) The Code is much more accommodating than the general policies, a point not addressed by the SHB.

On the last point, docks are not just permitted. Chapter 20.62 PCC,<sup>6</sup> “Residential Development” provides that piers, docks, buoys, and floats are uses commonly accessory to single-family residential dwellings in all shoreline environments with the exception of the Natural Environment. In addition, the County’s regulations (PCC 20.56.040.A.6.) state that a dock is a “water-dependent use.” A water-dependent use is accorded preference under state law. *See* RCW 90.58.020.

Viewing the approval criteria from the jaundiced perspective of “discouraged” is fundamentally different from considering an application for an “allowed” use. This is not a play on words but substantive. Respondents say the general local policies “discourage” single-use docks and prefer mooring buoys. They argue these policies provide the Shoreline Hearings Board (“the Board” or the “SHB”) independent authority to deny the proposal. (Reetz Resp., p.10; West Resp., p. 26.) This disregards the Code’s treatment of docks as allowed uses.

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<sup>6</sup> “Pierce County Code.”

The Nieszses are not “elevating their own status in this appeal outside of the law” when discussing the permitted status of their proposal. (Reetz Resp., p. 20.) They are simply pointing out the promulgated local and state permissions and their implication when reviewing and applying the approval criteria. If policies trump the permitted use status, the word “permitted” or “allowed” is erroneously read out of both the applicable local and state laws. *See infra*, pp. 8-9. WAC 173-27-150 cited by the Reetzses (Resp., p. 31) refers to consistency of the Master Program but makes no provision elevating policies in the context of an allowed use.

Despite the statutory allowance of the proposed use, and its water dependent accessory use status, Respondents say there is no preferred<sup>7</sup> or priority right to construct a dock. (Reetz Resp., pp. 16-17.) This is a red herring. Petitioners simply ask that their application be judged for what it is: an allowed water dependent use. That does not mandate an application approval, but it does demand a fair evaluation, something that did not occur with the County or the Board. To deny the proposal because the Nieszses will also use the dock for other recreational uses, as contended by Respondents (Reetz Resp., pp. 28-29) is absurd. RCW 79.105.430 speaks in terms of “recreational purposes.”

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<sup>7</sup>The County’s new Shoreline Regulations provide water-dependent docks are preferred. *See* Appendix A-2, p. 38 (PCC §18s.30.90.)

Here, the Board denied approval because the Nieszes' dock would be the first in the neighborhood. (CP 961-962.)<sup>8</sup> To sustain the ruling, this court must reverse its decision in *May v. Robertson* 153 Wash. App. 57, 87 218 P.3d 211 (2009) (The Board's focus on alternative facilities and "[t]he fact that this would be the first [pier] within this sandy crescent" are not the proper criteria for evaluating and denying this joint-use pier permit application."). The opposition contends the "joint use" component of the application in *May* distinguishes the case (West Resp., p 17, p. 29) but a first dock is a first dock, whether joint or single use. Following and applying case precedent is not asserting "some undefined, unexplained" error of "constitutional import," as Respondents claim. (Reetz Resp., p. 2.)

### **III. COUNTERSTATEMENT: THE PROTECTED PROPERTY RIGHT IN THE APPLICATION AND ITS FAIR PROCESSING AND CONSIDERATION**

People have rights (not property) and here the rights are fundamental. That does not mean there is a constitutional right to build a dock. *Maytown Sand & Gravel, LLC v. Thurston Cty.*, 191 Wash.2d 392, 423 P.3d 223 (2018), confirms that the right to develop land and the right to be free from arbitrary decision-making in the land use context are constitutionally protected rights. In *Maytown*, the Court noted that, under

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<sup>8</sup> Decision at 25-26 (Conclusions Nos. 25-27), attached as Appendix A-3.

the Fourteenth Amendment, "property" encompasses more than just tangible physical property, and a permit applicant has a cognizable property interest "when there are articulable standards that constrain the decision-making process." In other words, a permit applicant has a constitutionally protected property interest "if discretion [to deny the final issuance of the permit] is substantially limited," as here, for an allowed use which is a common accessory to a single-family waterfront home. The *Maytown* Court recognized that there is a constitutionally-protected right to develop land where the applicant has satisfied the necessary preconditions.

#### **IV. REPLY ARGUMENT: THE POLICIES**

Pierce County Staff advised the Examiner and Board that the proposal was inconsistent with the policy of the Shoreline Master Program (SMP) Conservancy Environment that states areas should maintain their existing character. (Staff Report, p. 1.) (000603.)

The policies considered by the Board were an "initial element" of the process to enact the County's first SMP. Their promulgation preceded adoption of use regulations to "deal with location and design criteria for specific development activities . . . intended to be more precise

than the policy statements.”<sup>9</sup> Within this context, too much emphasis on the policies was erroneously made by the Board.

The SMP sets forth the “Definition and Purpose” of the Conservancy Environment which sets out a policy that the “existing character” should be maintained.

The General Regulations and Policies of the Conservancy Environment are as follows: (1) Areas should maintain their existing character, and (3) Substantial and non-substantial developments which do not lead to significant alterations of the existing natural character of an area should be encouraged.<sup>10</sup>

According to the County, as accepted by the SHB, the proposed dock does not comply with the stated policies because it changes the natural character even though “outdoor recreation” is considered a preferred use and “substantial development” is allowed if significant alteration are avoided. As interpreted and erroneously applied by the Board, this policy prevents any single-use (or joint use) dock because there will always be a change to the existing character when no other docks are present and the structure crosses a beach. This position creates a

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<sup>9</sup> See Resolution No. 16990 attached as Appendix A-4.

<sup>10</sup> These policies are attached as Appendix A-5.

direct conflict to the County Code's allowance and its accessory use provisions.

The law does not allow a conflict between general policies and specific development regulations. Respondents argue Petitioners can cite no legal authority for this proposition within the context of the SMA. This is not correct; *see Lund v. Ecology et al*, 92 Wn. App. 329, 969 P. 2d 1072(1998) (holding that SMA's general policy of protecting private property rights could not override explicit language of Tacoma Shoreline Master Program, which prohibited construction of residences over water). Further, SMP policies are GMA Comprehensive Plan Policies. *See* RCW 36.70A.480(1).

Washington courts have held that when a specific land use regulation conflicts with a comprehensive plan provision, the more specific regulation prevails because "a comprehensive plan is a guide and not a document designed for making specific land use decisions..." *See, among others, Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 873, 947 P.2d 1208 (1997); *see also Lakeside Indus. v. Thurston Cty.*, 119 Wn. App. 886, 894, 83 P.3d 433 (2004), *as amended* (Feb. 24, 2004)<sup>11</sup>.

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<sup>11</sup> Development regulations under the GMA include "Shoreline Master Programs." RCW 36.70A.030(7).

The SMP states a proposal must meet all policies and requirements, but these policies are implemented<sup>12</sup> by the promulgated criteria. *See* PCC 20.20.010 (“The use activity regulations are a means of implementing the more general policies of Phase I of the Master Program and the Shoreline Management Act.”)<sup>13</sup> In other words, by the terms of the SMP, the policies guide promulgation of the approval standards, but are not a separate approval criterion for a discreet application.

The opposition chides Petitioners for not citing to any SMA case to the effect that the policies do not have independent preclusive regulatory status. But there was no need to do so based upon the above cited SMP language. The SMP also states:

“General” means that the policies, proposals and guidelines are not directed towards any specific site.<sup>14</sup>

(Respondents concede all the SMP policies considered by the SHB are “general.” *See* Reetz Resp., pp. 7-8.)

The upside-down approach of the Board is not answered by self-serving statements that the ruling in this matter does not go beyond the facts of the specific application. First, the Board has already employed the

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<sup>12</sup> The word “implement” means to “carry out, accomplish; *especially*, to give practical effect to and ensure actual fulfillment.” <https://www.merriam-webster.com/dictionary/implement>.

<sup>13</sup> *See* Use Activity Policies, Appendix A-6, attached (000279).

<sup>14</sup> *See* Appendix A-7, attached.

same approach to a dock proposal in a different more intense shoreline environment. *See* Turner Decision, (West Resp., pp. 36-37.) Second, the Board's claim that it is not denying a "first dock in every instance" must be judged against its ultimate conclusion that the Niesz dock "would not be compatible" with the community and the "proposed dock is not consistent with pier density." *Compare* Decision at 25 (Conclusion No. 25) with Decision at 26, 28 (Conclusions Nos. 27, 32). Third, the Board ruled any "first dock" is a precedent invoking the cumulative impacts doctrine which precludes the use. *See infra*, p. 23.

#### V. REPLY ARGUMENT: THE APPROVAL CRITERIA

This is not a "formula appeal" from a dissatisfied applicant contesting adverse factual findings. It is correct that the findings of the Board are "context driven." (Reetz Resp., p. 12.) That is precisely the point of this appeal.

A closer look at the criteria that the Board held were not met show the dispute is over interpretation of the criteria and application of the facts to the law, *de novo* considerations for this court—not factual disputes. *Washington Cedar & Supply Co., Inc. v. State, Dep't of Labor & Indus.*, 137 Wn. App. 592, 598, 154 P.3d 287 (2007); *Wilson v. Employment Sec. Dep't of State*, 87 Wn. App. 197, 201, 940 P.2d 269 (1997).

The Board ruled that the Neiszes did not meet four of the criteria, Nos. 1, 3, 5, and 7. Approval criteria Nos. 1 and 3<sup>15</sup> relate to marine oriented recreational areas and access to the beach, the impediment on beach walkers. On this last point, the neighbors see their right to use the beach and nearshore owned by the State of Washington as unfettered and denying all docks a legally defensible position. The Board concurred. However, state law, RCW 79.105.430, allows the private use dock which is a new use determining its “intensity” does not unduly compromise “other public uses” as claimed by Respondents (Reetz Resp., p. 31). This is one of many conflicts inherent in the Board’s decision.

Respondents do not address RCW 79.105.430 except to say the law does not waive the requirement for approval under the Shoreline Management Act. (West Resp., pp. 38-39.) No one argues otherwise. The point is that the law limits local regulation “... to applicable local, state, and federal rules and regulations governing **location, design, construction, size, and length of the dock.**”<sup>16</sup> (Emphasis supplied.)

Since the proposal is an allowed use in the applicable shoreline designation, the location of the dock is already determined. The various public interests have been weighed by the Legislature: some intrusion on

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<sup>15</sup> Criterion No. 7 is dealt with below, pp. 17-18, as is No. 5, reasonable alternative, pp. 18-21.

<sup>16</sup> The Neiszes’ proposal meets all of these criteria. See Note 15, Opening Brief.

beach walkers, swimmers and nearshore users is acceptable in order to promote family-oriented recreation via a dock. The Board had no business under the guise of presuming cumulative impacts or interpreting and applying the approval criteria to negate the statutory permission or second guessing the Legislature's weighing of the interests. This is a legal error, not a weighing of facts or an exercise of deferential discretion.

Further, as noted, beach walking, no matter the level of perceived impact, must be accommodated under state regulations "allowing use of public tidelands," WAC 332.30.144(4)(d), which applies because the Nieszes do not own their beach. The Board refused to apply the required DNR mitigation, an error of law. Again, this error has nothing to do with applying or interpreting "subjective criteria" that "require the exercise of judgment and discretion," as contended. (Reetz Resp., p. 9.)

The opposition says the Board did not act in an arbitrary fashion. That is not correct. In *Overlake Fund v. Shoreline Hearings Bd.*, 90 Wn. App. 746, 954 P.2d 304 (1998), a decision of the Shorelines Hearings Board to impose additional conditions on substantial development permit so as to limit size of proposed hotel and to prohibit use of any wetlands on site for any purpose was held arbitrary and capricious. As with RCW 79.105.430, the Board in that case arbitrarily ignored or did not inquire into reasons for the municipal balancing act in approving the permit, and

substituted its judgment on reasonableness of use for that of local decision-makers.

**A. The Promulgated Approval Criteria Are Met**

1. Criteria No. 1; Marina Orientated Recreation (PCC 20.56.040(A)(1)).

An impact such as beach walking mitigated to the level of accommodation is not a factor allowing denial of an application within the meaning of RCW 90.58.020 or the local approval criteria. Respondents attempt to defend the Board's failure to apply the DNR mitigation requirement embodied in WAC 332-30-144(4)(d) on the basis that Mr. and Mrs. Niesz' "belated acceptance of a hypothetical pedestrian access condition" does not negate the Board's determination of noncompliance. (Reetz Resp., p. 25.) They contend the DNR requirement is an "offer before the Board to accept additional conditions on the specific permit" which is not allowed, citing *Hayes v. Yount*, 87 Wn.2d 280, 291, 552 P.2d 1038(1976).

According to Respondents, a request to comply with the stated requirement was not part of the application made to the County and simply a discretionary component. (West Resp, pp. 18-22.) Nothing could be further from the truth. Compliance with the law is mandatory. The Staff Report to the Examiner states as one proposed condition of approval:

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17. The dock must be constructed according to the requirements in WAC 332-30-144(4)(d). The owners/applicants must provide a safe, convenient, and clearly available means of pedestrian access over, around, or under the dock at all tide levels.

(Staff Report, p. 15.) (Index No. 000615.)

The Board erred in failing to see the DNR requirement in play. It further erred in not following precedent that it will presume an applicant will abide by other laws. *See* Opening Br., p. 32.

2. Criteria No. 2: Adjoining Properties ingress/egress as well as Use and Enjoyment of the Beach. (PCC 20.56.040(A)(2).

Mr. and Mrs. Niesz do not repeat their argument as to accommodation of beach walkers. *See infra*, pp. 1-2; 11-12. They note the assertion “the dock will deny beach walkers access to extensive portions of the shoreline” (Reetz Resp., p. 22) is a gross exaggeration without regard to the DNR mitigation requirement.

The Board found there would be interference with nearshore recreational use, Decision at 21 (Conclusion No. 15), but such use *would not be unduly impaired*, Decision at 22 (Conclusion No. 17). The question is the correctness of this interpretation, whether the level of impact must be considered: it must.

The Board's "no impact" interpretation does not comport with the law, nor SMP policies to the extent they are in play.

The permission accorded by RCW 79.105.430 may be revoked or cancelled if the dock significantly interferes with navigation or with navigational access to and from other upland properties. WAC 332-30-144 (5)(b).

Respondents argue the Board could construe PCC 25.56.040(A) (1) as imposing a "no impairment or obstruction" standard. (West Resp., pp. 21-22.) They claim this is not a "no impact" standard, but the word "no" means "in no respect or degree."<sup>17</sup>

The SMP standard is that impacts be minimized "so far as practicable." RCW 90.58.020. This statewide, qualified standard controls. *See Citizens for Rational Shoreline Planning v. Whatcom County*, 172 Wash.2d 384, 392, 258 P.3d 36 (2011). *See also* Conservancy Policies, *infra.*, p. 7, Appendix A-5 (avoid substantial alteration).

The opposition chides Petitioners' cite to *Cougar Mountain Associates v. King County*, 11 Wn.2d 742, 765 P. 2d 264 (1988), and contends that the courts have not ruled applying a "no impact" standard is

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<sup>17</sup> <https://www.merriam-webster.com/dictionary/no>.

illegal. (West Resp., pp. 21-22.) This is not a correct reading of the law. Mr. and Mrs. Niesz refer this Court to the following cases: *Maranatha Min., Inc. v. Pierce Cty.*, 59 Wn. App. 795, 804, 801 P.2d 985 (1990) (“The law does not require that all adverse impacts be eliminated; if it did, no change in land use would ever be possible.”); *Pease Hill Cmty. Grp. v. Cty. of Spokane*, 62 Wn. App. 800, 808, 816 P.2d 37 (1991) (noting “it is unrealistic to expect no effect from development” and holding that the law does not require elimination of all adverse impacts of property development).

As postured, an analysis of the interference standard ruling is not fact driven, but resolved by the correct interpretation and application of the law. The opposition asserts that a dock cannot be approved for mere convenience. If so, then it cannot be denied based upon the convenience of the neighbors, in light of RCW 79.04.430’s balancing of interests. The implementing DNR regulation notes that the statutory permission “is not a grant of exclusive use of public aquatic lands to the dock owner.” The regulation further states: it does not prohibit public use of any aquatic lands around or under the dock. WAC 332-30-144 (4) (d). Simply, the paddle boaters or swimmers are going to have to endure going under the

three-foot structure or avoiding it by going in another direction which is pristine for miles or using the beach at lower tides,<sup>18</sup>

3. Criteria No.7: Compatibility/Intensity of Use (PCC 20.56.040(A)(7)).

Criterion No. 7, intensity of use to evaluate compatibility, involves an illegal interpretation and application. On this factor, the Board's "no new dock" standard was erroneously engrafted onto the approval language by misapplying the general policy language to "discourage" single-use docks.

The SHB's ruling that this stated policy has independent status from the promulgated approval criteria allowed it to erroneously interpret "existing pier density." The result is absurd. **The word "existing" means "to have actual being."**<sup>19</sup> Thus, the intensity of use standard has application only in the context of considering a proposal where at least one other dock exists and if one or more can be fit in without being incompatible "with the surrounding environment and land and water uses." Again, these are legal determinations, not questions of fact or discretion.

*May v. Robertson*, 153 Wn. App. 57, 62, 218 P.3d 211, 214 (2009), SHB No 99-011(*Gennotti*), and SHB No 00-03(*Viafore*) cited by

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<sup>18</sup> See Opening Brief, pp. 40-41.

<sup>19</sup> <https://www.merriam-webster.com/dictionary/exist>

Respondent did not involve the use of state-owned tidelands and the balance inherent in RCW 79.105.430. Respondents do not explain how they are applicable under the circumstances.

4. Criteria No. 5: Reasonable Alternatives (PCC 20.56.040(A)(5)).

The proposed dock is presently a single use dock but by law is designated for joint use. The Board erroneously failed to recognize or understand the difference. WAC 332-30-144 “implements the permission created by RCW 79.105.430, Private recreational docks, which allows abutting residential owners, under certain circumstances, to install private recreational docks without charge.” An “abutting residential owner” is the owner of property physically bordering on public aquatic land used for single family housing. WAC 332-30-144 (2) (a):

For purposes of the state regulation a dock has a unique definition:

(b) Two or more abutting residential owners may install and maintain a single joint-use dock provided it meets all other design requirements of this section; is the only dock used by those owners; and that the dock fronts one of the owners' property.

(WAC 332-30-144 (2) (b): Private recreational docks.)

As phrased, for state aquatic lands, the proposal is designated for joint use, plus the Nieszses have offered the facility for joint use. The designation and offer (“the intended purpose”) are controlling even if not

yet accepted by another property owner. This is consistent with the SMP's policy to discourage single use docks. In this regard the state permission requires that the dock "conform to adopted shoreline master programs and other local ordinances." WAC 332-30-144 (4) (e). It is also consistent with the County's new shorelines regulations which state docks can serve "more than one parcel, under the same or different ownerships."<sup>20</sup>

In short, joint use is proposed, simply not yet realized. Thus, a reasonable alternative analysis is inapplicable, as Respondents concede. (West Resp, p. 17.)<sup>21</sup> Respondents concede the local regulations focus on the "intended use." (West Resp., p. 18.) They also acknowledge that the Board did not rely upon commercial marinas as a reasonable alternative to the proposed dock (West Resp., p. 16), although Petitioners did brief that to avoid a question on remand. Contrary to assertion (Reetz Resp., p. 19) Petitioners raised WAC 332-30-144 with the Board and argued a joint use after designates the proposal as joint use. See Partial Motion for Summary Judgment, pp. 7-8, Index No. 14.

---

<sup>20</sup> See Appendix A-2, attached.

<sup>21</sup> Mr. and Mrs. West claim the dock is not "installed" by two owners (West Resp., pp. 18-19) but it will be maintained and used by two owners. Later sharing of the cost of installation is a detail beyond purview of the Board.

The test under the Pierce County reasonable alternatives standard is not “feasibility” or “adequacy,” but whether there are “reasonable” alternatives. Application of the criteria must be based upon the purpose of the facility, in this case, to extend the short boating season. In *Seidl v San Juan County*, SHB No 09-012(August 27, 2010), the Board held lengthening the boating season and use was not “mere convenience” and approved a dock proposal. The Opening Brief, pp. 36-37 shows the straw man “year-around use” (winter months use) Respondents assign to Petitioners (Reetz Resp., p. 27) is not what is proposed and the limitations on the existing buoy and boat launch prevent measurable current use, especially after 5:00 pm work day recreation. See Opening Brief, p. 36. This is not about convenience, but feasibility. See Opening Brief, pp. 38-39. The alleged “factual dispute” is not the weighing of testimony. It involves legal errors associated with misuse and misapplication of a need or feasibility standard, and the mischaracterization of the proposal as “year-round use.”

**B. Cumulative Impacts Are of No Concern.**

The “Board” found that the Nieszses’ proposal (1) does not unduly impair views; (2) important navigational routes would not be obstructed; and (3) the public’s use of the surface waters below ordinary high water would not be unduly impaired “by the need to go out around the proposed

dock.” These are basic rulings showing the dock proposal is far from the impediment on the general public the neighbors claim it will be, this putting into play only more narrow local parochial interests.

The proposed use is not disfavored but allowed. *See infra*, p. 1, n.1. The stated Board findings do not support “significant degradation of views and aesthetic values.” Impacts to habitat were never raised by the opposition, the County or any agency with jurisdiction. Any perceived loss of community use needs to be taken up with the decision-makers who decided to allow private docks on state-owned tidelands or in the applicable SMP shoreline environmental designation.

Respondents concede the Board made no findings regarding the foreseeability of new permit applications if the Niesz proposal was granted. (West Resp, p. 33), but urge that is unnecessary. That is not what the Board has done in the past. Because the approval of one project can theoretically set a precedent for others to follow, feasibility is a critical analysis. *Snow v. Ecology*, 1998 WL 934934, SHB No. 98-020 (1998), is instructive on how to properly assess the cumulative impacts of a proposed development project.

In that case, the Department of Ecology denied a variance permit previously approved by King County that would allow Jeffrey Snow to build a residential pier on his nonconforming lot (having less than 50 feet

of shoreline) on Lake Sammamish. In denying the proposed variance, Ecology relied on WAC 173-27-170, which requires that “consideration shall be given to the cumulative impact of additional requests for like actions in the area.” Ecology asserted that since the proposed pier would be located between two existing piers, it would establish precedent that would allow increased density of docks on the lake. *Id.*, at \*5. The SHB rejected this argument for several reasons, including the fact that only eight or nine additional nonconforming lots on the lake were suitable locations for a residential pier, and “[i]f such piers were proposed, **each would be decided on its own merits.**” *Id.* (emphasis added).

This is similar to what the SHB did below, noting that the “proposed dock would be the first of its kind on the southwest side of Fox Island” and concluding that “[a]llowing the proposed dock would set a precedent for allowing other similar docks in this area. The cumulative impacts of this dock, and future similar docks, would degrade aesthetic values.” SHB No. 16-011, Findings of Fact, Conclusions of Law, and Order, p. 27. As noted in *Snow v. Ecology*, each development permit must be decided on its own merits; this did not occur here.

The fact the County has not received any dock applications in a specific area does not indicate there is any “pent-up” interest. Nor does it support speculation that approval of the Niesz Application will result in a

proliferation of new requests. A “parade of horrors” approach cannot be grounds to deny a shoreline permit approval. *See May v. Robertson, supra*, 87; *see also Danny v. Laidlaw Transit Servs., Inc.*, 165 Wn.2d 20, 221 (2008) (rejecting assumption that ruling would give rise to innumerable bad outcomes).

The “build and more will come” opinion of the County Planner relied upon by the Board (West Resp., p. 34) rings hollow when the Gig Harbor community has asked the legislative body to ban docks. *See* n.2, p. 3, *infra*. The outcome determinative nature of the cumulative impacts decision is demonstrated by the fact the County’s SEPA analysis identified no such impacts (Exhibit P-13, Index 503-515; Exhibit P-12, Index No. 499-502).

**C. Constitutional Law Principles Are in Play Although for This Appeal Can Remain Backdrop.**

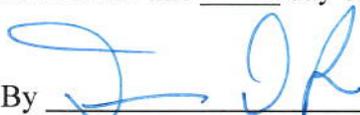
Mr. and Mrs. Niesz have provided constitutional law principles and doctrines because they confine decision-making: no public official or quasi-judicial officer can make an unconstitutional decision. More fundamentally, the constitutions define what is a property right which must be considered substantively and not at a whim because a mere privilege. *See infra*, pp. 6-7.

There is no “waiver, as contended. (Reetz Resp., p. 2, n. 2.) The base constitutional principles relating to the nature of the property right and conflicts with the general laws of the state were raised to the superior court; they are manifest and truly of constitutional magnitudes.<sup>22</sup> See Opening Brief, CP 1460, p. 11. See also, Superior Court Reply Brief, CP 1560, p. 6, addressing *Maytown Sand and Gravel, LLC*, pp. 6-7 (CP 1569) (CP 1560-61), p. 9, addressing conflict with general laws of the state.

## VI. CONCLUSION

The appeal should be granted and this matter remanded to Pierce County for issuance of a shoreline substantial development permit with the conditions set out in the Staff Report.

RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of May, 2019.

By   
Dennis D. Reynolds, WSBA #04762  
DENNIS D. REYNOLDS LAW OFFICE  
200 Winslow Way West, Suite 380  
Bainbridge Island, WA 98110  
(206) 780-6777 Phone  
(206) 780-6865 Fax  
Email: dennis@ddrlaw.com  
Counsel for Appellants

---

<sup>22</sup> Constitutional claims can be raised for first time on appeal. See *In re J.R.*, 156 Wn. App. 9, 18, 230 P.3d 1087, 1092 (2010) (“constitutional challenges to statutes may be raised for the first time on appeal under RAP 2.5(a)(3).”)

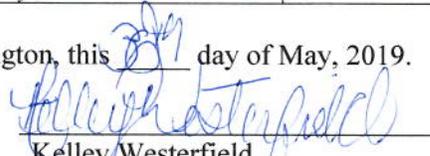
**CERTIFICATE OF SERVICE AND MAILING**

I, the undersigned, hereby certify under penalty of perjury under the laws of the State of Washington, that I am now, and have at all times material hereto been, a resident of the State of Washington, over the age of 18 years, not a party to, nor interested in, the above-entitled action, and competent to be a witness herein.

I further certify that I caused a true and correct copy of the foregoing pleading to be served this date, in the manner indicated, to the parties listed below:

<p>Lisa M. Petersen, WSBA #30372                  Assistant Attorney General                  Licensing and Administrative Law Division                  800 Fifth Avenue, Suite 2000                  Seattle, WA 98104                  (206) 389-2127, tel. / (206) 389-2800, fax                  Lisap1@atg.wa.gov; lalseaef@atg.wa.gov  <i>Attorney for Shorelines Hearings Board</i></p>	<p><input type="checkbox"/> Legal Messenger  <input type="checkbox"/> Hand Delivered  <input type="checkbox"/> Facsimile  <input checked="" type="checkbox"/> U.S. Mail  <input checked="" type="checkbox"/> Email</p>
<p>Todd A. Campbell, WSBA #21457                  Cort O'Connor, WSBA #23439                  Pierce County Prosecutor / Civil                  955 Tacoma Avenue South, Suite 301                  Tacoma, WA 98402-2160                  (253) 798-7837, tel Mr. Campbell                  (253) 798-6201, tel Mr. O'Connor                  Tcampbe@co.pierce.wa.us; court.oconnor@piercecountywa.gov  <i>Attorneys for Respondent Pierce County</i></p>	<p><input type="checkbox"/> Legal Messenger  <input type="checkbox"/> Hand Delivered  <input type="checkbox"/> Facsimile  <input checked="" type="checkbox"/> U.S. Mail  <input checked="" type="checkbox"/> Email</p>
<p>James V. Handmacher, #8637                  Morton McGoldrick, PS                  820 "A" Street, #600 / P.O. Box 1533                  Tacoma, WA 98401                  (253) 627-8131, tel / (253) 272-4338, fax                  jvhandmacher@bvmm.com  <i>Attorneys for Petitioners Gordon Baldwin and Norman and Barbara Simon</i></p>	<p><input type="checkbox"/> Legal Messenger  <input type="checkbox"/> Hand Delivered  <input type="checkbox"/> Facsimile  <input checked="" type="checkbox"/> U.S. Mail  <input checked="" type="checkbox"/> Email</p>
<p>Margaret Y. Archer, WSBA #21224                  Gordon Thomas Honeywell LLP                  1201 Pacific Avenue, #2100                  Tacoma, WA 98402                  (253) 620-6500, tel / (253) 620-6565, fax                  marcher@gth-law.com; lblakeney@gth-law.com  <i>Attorneys for Petitioners/Intervenors Mark and Sarah Taylor</i></p>	<p><input type="checkbox"/> Legal Messenger  <input type="checkbox"/> Hand Delivered  <input type="checkbox"/> Facsimile  <input checked="" type="checkbox"/> U.S. Mail  <input checked="" type="checkbox"/> Email</p>

DATED at Bainbridge Island, Washington, this 27 day of May, 2019.

  
 \_\_\_\_\_  
 Kelley Westerfield  
 Legal Assistant

# Appendix A-1

THE ORDINANCE IS NOT EFFECTIVE. THE ORDINANCE  
WAS VETOED BY THE EXECUTIVE ON APRIL 26, 2017

1 Sponsored by: Councilmember Derek Young  
2 Requested by: Executive/Planning and Land Services  
3  
4  
5  
6

7 **ORDINANCE NO. 2017-6s**  
8  
9

10  
11  
12 **An Ordinance of the Pierce County Council Adopting the 2017**  
13 **Amendments to the Pierce County Comprehensive Plan**  
14 **Policies and Land Use Designations; "Gig Harbor**  
15 **Community Plan" Policies; and "Key Peninsula Community**  
16 **Plan" Policies; Adopting Findings of Fact; and Setting an**  
17 **Effective Date.**  
18

19 **Whereas**, the Growth Management Act (GMA) required Pierce County to  
20 develop, adopt, and implement a Comprehensive Plan pursuant to Revised Code of  
21 Washington (RCW) 36.70A.040; and  
22

23 **Whereas**, pursuant to Chapter 36.70A RCW, the Pierce County Council adopted  
24 Ordinance No. 94-82s on November 29, 1994, which enacted the 1994 Pierce County  
25 Comprehensive Plan; and  
26

27 **Whereas**, pursuant to Chapter 36.70A RCW, the Pierce County Council adopted  
28 Ordinance No. 2015-40 on June 30, 2015, which updated the Pierce County  
29 Comprehensive Plan; and  
30

31 **Whereas**, RCW 36.70A.130 requires that the County's Comprehensive Plan be  
32 subject to continuing review and evaluation, and any amendment or revision to the  
33 Comprehensive Plan must conform to requirements of the GMA; and  
34

35 **Whereas**, RCW 36.70.130 requires the adoption of procedures for amending  
36 comprehensive plans; and  
37

38 **Whereas**, on April 18, 1995, the Pierce County Council adopted Ordinance No.  
39 95-27s which established the procedures for amending the Pierce County  
40 Comprehensive Plan (Chapter 19C.10 of the Pierce County Code), which was last  
41 amended by Ordinance No. 2016-18 on June 7, 2016; and  
42



1       **Whereas**, after public hearings, the Pierce County Council passed Resolution  
2 No. 2016-114s on September 27, 2016, which identified proposed amendments to the  
3 Pierce County Comprehensive Plan initiated by the Council, the Executive, and Cities  
4 and Towns; and

5  
6       **Whereas**, Resolution No. R2016-114s requested the Department of Planning  
7 and Land Services (PALS) and the Planning Commission evaluate and consider  
8 proposed text amendments, area-wide map amendments, urban growth area  
9 amendments; and community plan amendments; and

10  
11       **Whereas**, the applicable Comprehensive Plan Amendments were reviewed in  
12 public meetings by the appropriate Land Use Advisory Commissions (LUACs)  
13 throughout December 2016, and recommendations and comments were forwarded to  
14 the Pierce County Planning Commission; and

15  
16       **Whereas**, the Pierce County Regional Council held a public hearing and made  
17 its recommendations on the proposed Urban Growth Area amendments on January 19,  
18 2017; and

19  
20       **Whereas**, the Pierce County Planning Commission held meetings and public  
21 hearings on the proposed amendments on January 11, 18, and 25, and February 1,  
22 2017; and

23  
24       **Whereas**, the Pierce County Planning Commission made its recommendations  
25 on proposed amendments to the Comprehensive Plan at a public meeting on  
26 February 1, 2017; and

27  
28       **Whereas**, on January 31, 2017, the Environmental Official for Pierce County  
29 issued an environmental determination on the various proposed amendments to the  
30 Comprehensive Plan; and

31  
32       **Whereas**, on February 1, 2017, the Pierce County Planning Commission  
33 transmitted the above-mentioned recommendations to the County Executive for  
34 transmittal to the Pierce County Council; and

35  
36       **Whereas**, on March 6, March 20 and April 3, 2017, the Community Development  
37 Committee held public hearings on the Planning Commission's final recommendations,  
38 and on April 3, 2017, passed the Committee's recommendations on the text  
39 amendments, area-wide map amendments, urban growth area amendments, and  
40 community plan amendments to the full Council for further consideration; and

41



1       **Whereas**, on April 18, 2017, the Pierce County Council held a public hearing on  
2 the proposed amendments to Pierce County's Comprehensive Plan and considered the  
3 amendments concurrently so their cumulative effect and consistency could be  
4 ascertained; and

5  
6       **Whereas**, the Pierce County Council has determined the amendments and  
7 revisions set forth herein conform to the requirements of the Growth Management Act,  
8 and are consistent with the Pierce County Countywide Planning Policies; and

9  
10       **Whereas**, the Pierce County Council has determined that amending the Pierce  
11 County Comprehensive Plan is necessary to protect the public health, safety and  
12 welfare, and protect the public interest; **Now Therefore**,

13  
14       **BE IT ORDAINED by the Council of Pierce County:**

15  
16       Section 1. The 2015 Pierce County Comprehensive Plan, as adopted by  
17 Ordinance No. 2015-40, is hereby amended as indicated in Sections 2 through 7.

18  
19       Section 2. Urban Growth Area amendments to Title 19A of the Pierce County  
20 Code, "Comprehensive Plan," are hereby adopted as set forth in Exhibit A, which is  
21 attached hereto and incorporated herein by reference.

22  
23       Section 3. Comprehensive Plan Text amendments to Title 19A of the Pierce  
24 County Code, "Comprehensive Plan," are hereby adopted as set forth in Exhibit B,  
25 which is attached hereto and incorporated herein by reference.

26  
27       Section 4. Amendments to Chapter 14, Appendix C "Gig Harbor Community  
28 Plan," of Title 19A of the Pierce County Code, "Comprehensive Plan," are hereby  
29 adopted as set forth in Exhibit C, which is attached hereto and incorporated herein by  
30 reference.

31  
32       Section 5. Area-wide Map and Urban Growth Area amendments (that affect land  
33 use designation maps) to Title 19A of the Pierce County Code, "Comprehensive Plan,"  
34 are hereby adopted as set forth in Exhibit E, which is attached hereto and incorporated  
35 herein by reference.

36  
37       Section 6. Amendments to the Pierce County Open Space Corridor Map are  
38 hereby adopted as set forth in Exhibit F, which is attached hereto and incorporated  
39 herein by reference.  
40



1 Section 7. Findings of Fact documenting the actions taken by the County  
2 Council are hereby adopted as set forth in Exhibit G, which is attached hereto and  
3 incorporated herein by reference.

4  
5 Section 8. This Ordinance shall become effective on July 1, 2017.  
6

7 Section 9. The Council recognizes that formatting, numbering, and citation  
8 modifications to Exhibit B may be necessary as a result of amendments made during  
9 the legislative process. To this extent, the Clerk of the Council is hereby authorized to  
10 modify Exhibit B prior to final printing so that the Council's amendments are accurately  
11 reflected throughout the document and formatting, numbering, and citations are  
12 correctly shown.  
13

14 Section 10. If any provisions of this Ordinance or the Comprehensive Plan are  
15 found to be illegal, invalid, or unenforceable, the remaining provisions of this Ordinance  
16 or the Comprehensive Plan shall remain in full force and effect.  
17

18  
19 PASSED this 18<sup>th</sup> day of April, 2017.  
20

21 ATTEST:

22 **PIERCE COUNTY COUNCIL**  
23 Pierce County, Washington

24 Patricia A. Yace for  
25 Denise D. Johnson  
26 Clerk of the Council  
27

28 Douglas G. Richardson  
29 Douglas G. Richardson  
30 Council Chair  
31

32 Bruce F. Dammeier  
33 Pierce County Executive  
34 Approved \_\_\_\_\_ Vetoed X, this  
35 26<sup>th</sup> day of April,  
36 2017.

37 Date of Publication of 02/22/2017, 03/01/2017  
38 Notice of Public Hearing: and 04/07/2017

39 Effective Date of Ordinance: Not effective. Ordinance  
40 vetoed by the Executive.  
41  
42



Only those portions of Chapter 14, Appendix E that are proposed to be amended are shown.  
Remainder of text, maps, tables and/or figures is unchanged.

**Chapter 14: Community Plans**

**Appendix E: Gig Harbor Community Plan**

**CHAPTER 2: LAND USE ELEMENT**

RURAL

RURAL SENSITIVE RESOURCE

**GH. LU-24.3.2** The open tract shall be located so as to provide the greatest protection for fish and wildlife habitat and water quality protection. This open space area shall be located in a tract that is separate from any newly created lots.

**CHAPTER 4: NATURAL ENVIRONMENT ELEMENT**

SHORELINES

~~**GH ENV 2.4** Permit piers and docks in the High Intensity, Residential, and Conservancy shoreline environments. Piers and docks should generally be prohibited in the Natural shoreline environment.~~

~~**GH ENV 2.4.1** Encourage environmentally friendly dock design (e.g., grated dock surfaces that allow light to pass through instead of traditional dock construction methods).~~

~~**GH ENV 2.4.2** Require the joint use of piers and docks whenever possible.~~



# Appendix A-2

1 Sponsored by: Councilmembers Rick Taibert and Derek Young  
2 Requested by: County Council

3  
4  
5  
6 **ORDINANCE NO. 2018-57s**  
7

8  
9 **An Ordinance of the Pierce County Council Relating to the Pierce County**  
10 **Shoreline Master Program (SMP); Amending Exhibit G and**  
11 **Section 11 to Ordinance No. 2013-45s4, as Required by the**  
12 **Washington State Department of Ecology; Conducting the**  
13 **Required Periodic Review and Update of the Pierce County**  
14 **SMP Pursuant to Revised Code of Washington (RCW)**  
15 **90.58.080(4) of the Shoreline Management Act; Adopting**  
16 **Findings of Fact; and Setting an Effective Date.**  
17

18 **Whereas**, the Pierce County Council adopted Ordinance No. 2013-45s4 on  
19 March 10, 2015, establishing "Title S" of the Pierce County Code, Development Policies  
20 and Regulations – Shorelines; and  
21

22 **Whereas**, pursuant to Ordinance No. 2013-45s4, the Pierce County Council  
23 updated various Chapters and Titles of the Pierce County Code for compliance with the  
24 Washington State Shoreline Management Act; and  
25

26 **Whereas**, Revised Code of Washington RCW 90.58.090 requires the  
27 Washington State Department of Ecology (DOE) to review and approve locally adopted  
28 Shoreline Master Programs (SMP) before they can become effective; and  
29

30 **Whereas**, on May 31, 2018, Pierce County received "conditional approval" of its ✓  
31 SMP update as adopted pursuant to Ordinance No. 2013-45s4; and  
32

33 **Whereas**, the DOE's conditional approval of Pierce County's SMP update  
34 includes a list of 21 required changes and 68 recommended changes; and  
35

36 **Whereas**, Revised Code of Washington RCW 90.58.080 provides the timetable  
37 for local governments to amend SMPs consistent with the required elements of the  
38 guidelines adopted by the DOE to assure that the master program complies with  
39 applicable law and guidelines in effect at the time of review and to assure consistency  
40 with the local governments comprehensive plan and development regulations; and  
41

42 **Whereas**, RCW 90.58.080(4)(b)(i) obligates the County to conduct a periodic  
43 review of its SMP on or before June 30, 2019, to ensure the SMP complies with State  
44 laws and guidelines that have been added or changed since the most recent update;  
45 and  
46



1       **Whereas**, the DOE has identified several changes to the Pierce County SMP, as  
2 adopted via Ordinance No. 2013-45s4, that are necessary to comply with current State  
3 law and which may be incorporated in the County's SMP to complete the periodic  
4 review requirement of RCW 90.58.080(4); and

5  
6       **Whereas**, Pierce County intends to make the necessary changes to its SMP to  
7 satisfy the requirements of the DOE to receive final SMP approval and complete the  
8 periodic review requirement of RCW 90.58.080(4); and

9  
10       **Whereas**, Ordinance No. 2013-45s4 established an effective date of the  
11 ordinance "90 days following final approval by the Washington State Department of  
12 Ecology" which is inconsistent with RCW 90.58.090(7) and must be revised for  
13 consistency with State statute; **Now Therefore**,

14  
15       **BE IT ORDAINED by the Council of Pierce County:**

16  
17       Section 1. Exhibit G to Ordinance No. 2013-45s4, adopting a new Title 18S of  
18 the Pierce County Code, "Development Policies and Regulations – Shorelines," is  
19 hereby amended as shown in Exhibit A, which is attached hereto and incorporated  
20 herein by reference.

21  
22       Section 2. Section 11 of Ordinance No. 2013-45s4 is hereby amended as  
23 follows:

24  
25               "Section 11. This Ordinance shall become effective 90 14 days following  
26 written notice of final approval action by the Washington State Department of  
27 Ecology."

28  
29       Section 3. Findings of Fact documenting the actions taken by the County  
30 Council are hereby adopted as shown in Exhibit B, which is attached hereto and  
31 incorporated herein by reference.

32  
33       Section 4. The Council recognizes that formatting, numbering, and citation  
34 modifications to Exhibit A may be necessary as a result of amendments made during  
35 the legislative process. To this extent, the Clerk of the Council is hereby authorized to  
36 modify Exhibit A prior to final printing so that the Council's amendments are accurately  
37 reflected throughout the document and formatting, numbering, and citations are  
38 correctly shown.

39  
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Section 5. This Ordinance shall become effective on October 15, 2018.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

ATTEST:

**PIERCE COUNTY COUNCIL**  
Pierce County, Washington

\_\_\_\_\_  
**Denise D. Johnson**  
Clerk of the Council

\_\_\_\_\_  
**Douglas G. Richardson**  
Council Chair

\_\_\_\_\_  
**Bruce F. Dammeier**  
Pierce County Executive  
Approved \_\_\_\_\_ Vetoed \_\_\_\_\_, this  
\_\_\_\_\_ day of \_\_\_\_\_,  
2018.

Date of Publication of  
Notice of Public Hearing: \_\_\_\_\_

Effective Date of Ordinance: \_\_\_\_\_



NOTE: Only those portions of Title 18S that were adopted pursuant to Ordinance No. 2013-45s4 that are proposed to be amended are shown. Remainder of the text, maps, tables and/or figures adopted through Ordinance No. 2013-45s4 are unchanged.

**Shoreline Master Program Periodic Review Amendments:**

- 1. On page 24 of Exhibit G, starting on line 30, amend PCC 18S.30.030 D. by inserting a new subsection 7. to read as follows:

"18S.30.030 Ecological Protection.

D. Regulations – Critical Areas.

7. Wetlands shall be rated using the Washington State Wetland Rating System for Western Washington (Hruby, 2014) (Ecology Publication #14-06-029)."

- 2. On page 56 of Exhibit G, lines 43-45, amend PCC 18S.40.110 C.3. as follows:

"3. Shoreline restoration projects that result in a landward shift in the ordinary high water mark may be reviewed pursuant to meet RCW 90.58.580 to determine if may be granted relief from Master Program development standards and use regulations are warranted within urban growth areas."

- 3. On page 66 of Exhibit G, line 45, amend PCC 18S.60.020 C.1. as follows:

"1. Fair Market Value. Development of which the total cost or fair market value, whichever is higher, does not exceed \$7,047.00\$6,416.00 if such development does not materially interfere with the normal public use of the water or Shorelines of the State."

- 4. On page 70 of Exhibit G, starting on line 35, amend PCC 18S.60.020 C.17. as follows:

"17. The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) or to otherwise provide physical access to the structure by individuals with disabilities."

~~17. Hazardous Substance Remediation. Pursuant to RCW 90.58.355 regarding hazardous substance remedial actions, the procedural requirements of the Shoreline Management Act shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to Chapter 70.105D RCW, or to the Department of Ecology when it conducts a remedial action under Chapter 70.105D RCW. The Department of Ecology shall ensure compliance with the substantive requirements of Chapter 90.58 RCW, Chapter 173-26 WAC and the Master Program through the consent decree, order, or~~



1           ~~agreed order issued pursuant to Chapter 70.105D RCW, or during the department-~~  
2           ~~conducted remedial action, through the procedures developed by Ecology pursuant~~  
3           ~~to RCW 70.105D.090.~~  
4

- 5 5. On page 72 of Exhibit G, amend PCC 18S.60.020 by inserting a new subsection H.  
6 to read as follows:  
7

8           **"18S.60.020 Shoreline Substantial Development (SD) Permit Exemptions.**  
9

10           **H. Persons, Projects, and Activities Not Required to Obtain Certain Permits.**

11 Pursuant to RCW 90.58.355, the following persons, projects, and activities are  
12 not required to obtain a Substantial Development Permit, Conditional Use  
13 Permit, Variance, Letter of Exemption, or other review conducted by the  
14 County to implement this Shoreline Master Program:

- 15           1. **Hazardous Substance Remediation.** Pursuant to RCW 90.58.355  
16 regarding hazardous substance remedial actions, the procedural  
17 requirements of the Shoreline Management Act shall not apply to any  
18 person conducting a remedial action at a facility pursuant to a consent  
19 decree, order, or agreed order issued pursuant to Chapter 70.105D RCW,  
20 or to the Department of Ecology when it conducts a remedial action  
21 under Chapter 70.105D RCW. The Department of Ecology shall ensure  
22 compliance with the substantive requirements of Chapter 90.58 RCW,  
23 Chapter 173-26 WAC, and the Master Program through the consent  
24 decree, order, or agreed order issued pursuant to Chapter 70.105D RCW,  
25 or during the department-conducted remedial action, through the  
26 procedures developed by Ecology pursuant to RCW 70.105D.090.  
27           2. Any person installing site improvement for storm water treatment in an  
28 existing boatyard facility to meet requirements of a national pollutant  
29 discharge elimination system stormwater general permit.  
30           3. The Department of Transportation projects and activities that meet the  
31 conditions of RCW 90.58.356."  
32

- 33 6. On page 84 of Exhibit G, lines 7-12, amend the definition for "Development" as  
34 follows:  
35

36 "Development" means a use consisting of the construction or exterior alteration of  
37 structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals;  
38 bulkheading; driving of piling; placing of obstructions; or any project of a permanent or  
39 temporary nature which interferes with the normal public use of the surface of the waters  
40 overlying lands subject to the Act at any state of water level. "Development" does not  
41 include dismantling or removing structures if there is no other associated development or  
42 redevelopment. (Note: This definition intentionally differs from the definition for  
43 "Development" found in Chapter 18.25 PCC.)"  
44  
45



- 1 7. On page 85 of Exhibit G, starting on line 21, insert the following new definitions  
2 alphabetically:  
3

4 "Floating home' means a single-family dwelling unit constructed on a float that is  
5 moored, anchored, or otherwise secured in waters, and is not a vessel, even though it may  
6 be capable of being towed.  
7

8 "Floating on-water residence" means any floating structure other than a floating home:  
9 (a) That is designed or used primarily as a residence on the water and has detachable  
10 utilities; and (b) Whose owner or primary occupant has held an ownership interest in  
11 space in a marina, or has held a lease or sublease to use space in a marina, since a date  
12 prior to July 1, 2014."  
13  
14

15 ***Washington State Department of Ecology Required SMP Changes:***  
16

- 17 1. On page 10 of Exhibit G, lines 25-27, amend PCC 18S.10.065 B. as follows:  
18

19 **"18S.10.065 Procedural Guidance.**  
20

21 B. **Title 18E PCC, Development Regulations – Critical Areas.** Critical area  
22 regulations adopted in compliance with the State Growth Management Act are  
23 contained ~~in~~ administered by Title 18E PCC, Ordinance Nos. 2004-56s, 2004-  
24 57s, 2004-58s, 2006-103s, 2016-52, amended by Ordinance 2017-12s,  
25 effective date April 15, 2017, and incorporated by reference into the Shoreline  
26 Master Program. In the event Title 18E PCC is amended, the referenced  
27 edition will still apply in shoreline jurisdiction until revised through an  
28 approved Master Program amendment."  
29

- 30 2. On page 10 of Exhibit G, starting on line 41, amend PCC 18S.10.065 D. and E. as  
31 follows:  
32

33 **"D. Conditional Uses.** ~~Certain uses are considered "conditional" by the Act and,~~  
34 ~~therefore, conditional r~~Review is required for Conditionalsuch uses per Table  
35 18S.60.030-1.  
36

- 37 1. A proposal may require both a Substantial Development Permit and a  
38 Conditional Use Permit. Other proposals, that are not a "substantial  
39 development", may require only a Conditional Use Permit.  
40 2. Other uses which are not classified or set forth in in Table 18S-60.030-1 may  
41 be authorized as conditional uses provided the applicant can demonstrate  
42 consistency with the requirements of WAC 173-27-160 and PCC 18S.60.060.  
43 However, uses which are specifically prohibited by the Master Program may  
44 not be authorized through a Conditional Use Permit. '  
45 3. The issuance of a Conditional Use Permit is based upon a determination that  
46 the project will be consistent with the criteria listed in PCC 18S.60.060 and  
47 those listed in WAC 173-27-160.  
48 24. The Washington State Department of Ecology (Ecology) has the final  
decision-makingapproval-authority forof conditional uses.



- 1 E. **Variance.** When development is proposed that does not comply with the bulk and  
2 dimensional standards, such as a shoreline buffer, of the Master Program, then the  
3 development can only be authorized with approval of a variance. The purpose of a  
4 variance permit is strictly limited to granting relief from specific bulk, dimensional  
5 or performance standards set forth in the Master Program where there are  
6 extraordinary circumstances relating to the physical character or configuration of  
7 property such that the strict implementation of the Master Program will impose  
8 unnecessary hardships on the applicant or thwart the policies set forth in RCW  
9 90.58.020.
- 10 1. The issuance of a variance is predicated upon a determination that the project  
11 will be consistent with the criteria listed in PCC 18S.60.070 and those listed in  
12 WAC 173-27-170.
  - 13 2. Variances to the type of uses and development authorized by the Master  
14 Program are prohibited.
  - 15 3. Ecology has final decision-making approval authority for Shoreline  
16 Variances."
- 17
- 18 3. On page 24 of Exhibit G, starting on line 13, amend PCC 18S.30.030 D.3. as  
19 follows:  
20  
21 "3. ~~The Reasonable Use provisions of PCC 18E.20.050 are not included as part of the~~  
22 ~~Shoreline Master Program.~~ The following provisions of Title 18E PCC do not apply  
23 within shoreline jurisdiction:  
24 a. PCC 18E.10.090, Reconsideration and Appeal Procedures;  
25 b. PCC 18E.20.050, Reasonable Use Exceptions; and  
26 c. PCC 18E.20.060, Variances."
- 27
- 28
  - 29 4. On page 29 of Exhibit G, starting on line 11, amend PCC 18S.30.040 B.1. as follows:  
30  
31 **"B. Policies.**  
32 1. Prohibit fill waterward of the ordinary high watermark (OHWM) except for  
33 restoration projects, mitigation actions, beach nourishment or enhancement  
34 projects, or when necessary to support a water dependent use, public access,  
35 cleanup of contaminated sediments, or alteration of a transportation facility of  
36 statewide significance."  
37
- 38 5. On page 29 of Exhibit G, starting on line 40, amend PCC 18S.30.040 C.1. as  
39 follows:  
40  
41 "1. The following activities are prohibited:  
42 a. Filling in locations that will cut off or isolate hydrologic features, except as  
43 allowed pursuant to PCC 18S.40.060, Flood Hazard Management;  
44 b. Solid waste landfills; and  
45 c. Dredging for the purpose of obtaining fill material, except for projects  
46 associated with Model Toxics Control Act (MTCA) or Comprehensive  
47 Environmental Response, Compensation, and Liability Act (CERCLA) habitat



1 restoration, or any other significant restoration effort project approved by a  
2 Conditional Use Permit; and  
3 ~~d. Disposal of dredged material within the Nisqually Reach Aquatic Reserve."~~  
4

- 5 6. On page 44 of Exhibit G, starting on line 14, amend PCC 18S.40.040 B. by inserting  
6 a new subsection 12. to read as follows:  
7

8 "12. Pierce County shall adopt a prohibition on new commercial marine aquaculture  
9 operations in the Aquatic Environment adjacent to areas designated Natural. Pierce  
10 County will revisit this prohibition as part of the 2027 periodic review required  
11 under RCW 90.58.080(4)(b)(ii). The prohibition is intended to provide time for the  
12 County to implement the comprehensively updated Shoreline Master Program and  
13 evaluate the impacts of aquaculture projects resulting from monitoring reports. The  
14 prohibition will also allow the County to review other scientific and technical  
15 information specific to Natural areas. The prohibition shall not apply to farms with  
16 existing aquaculture permits or to designated Bush Act Lands."  
17

- 18 7. On page 45 of Exhibit G, starting on line 10, amend PCC 18S.40.040 C.10. and  
19 C.11. as follows:  
20

21 "10. The operator of any aquaculture activity shall provide contact information to  
22 abutting waterfront property owners and shall, in a timely manner, respond to and  
23 rectify any complaint relating to materials, equipment, or operation activities as  
24 necessary to comply with permit conditions.

25 11. Predator control shall not involve deliberate killing or harassment of birds,  
26 invertebrates, or mammals. Approved controls include, but are not limited to  
27 plastic tubes or netting. Predator control equipment shall be removed as defined  
28 within the approved schedule, ~~but no longer than two years after installation."~~  
29

- 30 8. On page 45 of Exhibit G, starting on line 25, amend PCC 18S.40.040 C.14. as  
31 follows:  
32

33 "14. Introduction of a new shellfish species, changing the shellfish species cultivated,  
34 expansion of the physical area cultivated or relocation of the aquaculture operation  
35 ~~is considered a new use/development, and~~ shall require notification to the County.  
36 The County shall review the proposal consistent with permit revision criteria in  
37 PCC 18S.60.080 B. Proposals that do not meet revision criteria shall require a new  
38 permit and compliance with this SMP."  
39

- 40 9. On page 45 of Exhibit G, starting on line 33, amend PCC 18S.40.040 C.16. through  
41 C.20. as follows:  
42

43 "16. Aquaculture activities allowed pursuant to an approved Shoreline Conditional Use  
44 Permit shall not be subject to review of a new Shoreline Conditional Use Permit for  
45 subsequent cycles of planting and harvest ~~unless specified in the original Shoreline~~  
46 ~~Conditional Use Permit.~~ Activities shall be subject to reviews in accordance with an  
47 approved monitoring plan, and the permit shall be rescinded per PCC 18S.10.070 I.



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should reviews find that aquaculture activities are being exercised contrary to approval conditions.

17. ~~With the exception of Olympia Oyster propagation which is a conditional use, new commercial shellfish aquaculture operations are prohibited within the Nisqually Reach Aquatic Reserve~~ Olympia Oyster propagation and other activities supporting the enhancement and/or recovery of native shellfish, finfish and aquatic plant species is allowed within the Nisqually Reach Aquatic Reserve.

18. ~~Aquaculture is prohibited in Estuaries within 300 feet of the mouth of freshwater streams (as measured at extreme low tide).~~

19. ~~Aquaculture is prohibited adjacent to residential neighborhoods in Horsehead Bay, Wollochet Bay, Lay Inlet and adjacent to Raft Island due to water quality and visual impacts.~~

1820. Aquaculture applications shall be reviewed for consistency with the mitigation sequence in PCC 18S.30.030 C.1. Aquaculture proposals that will ~~could~~ result in significant adverse environmental impacts that cannot be mitigated ~~as demonstrated through a scientific analysis~~ shall be prohibited.

19. New aquaculture is prohibited in the Aquatic SED abutting the Natural SED on marine waters. Existing or permitted aquaculture operations in areas subject to the prohibition shall be considered conforming uses. Designated Bush Act Lands (RCW 79.135) abutting the Natural SED are not included in this prohibition."

10. On page 74 of Exhibit G, Table 18S.60.030-1, amend Note (2) as follows:

"(2) Aquaculture is prohibited in the Aquatic SEDs abutting the Natural SEDs on Marine waters (see PCC 18S.40.040 B. and C)."

11. On page 77 of Exhibit G, lines 7-10, amend PCC 18S.60.060 as follows:

"B. **Applicability.** This Section applies to uses allowed in Table 18S.60.030-1, Shoreline Permit Table, subject to approval of a Shoreline Conditional Use Permit (C). Other uses which are not classified or set forth in the Master Program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements for conditional uses contained in this Section. Uses which are specifically prohibited by Title 18S PCC shall not be authorized pursuant to this Section."

12. On page 77 of Exhibit G, lines 20-23, amend PCC 18S.60.060 C.2.b. as follows:

"b. Aquaculture activities allowed pursuant to an approved Shoreline Conditional Use Permit shall not be subject to review of a new Shoreline Conditional Use Permit for subsequent cycles of planting and harvest ~~unless specified in the original Shoreline Conditional Use Permit approval.~~ Activities shall be subject to reviews in accordance with an approved monitoring plan, and the permit shall be rescinded per PCC 18S.10.070 I. should reviews find that aquaculture activities are being exercised contrary to approval conditions."



1 13. On page 80 of Exhibit G, line 7, amend PCC 18S.60.080 B.2. by inserting a new  
2 subsection 2. to read as follows and renumbering the current subsection 2 to 3:

3  
4 "2. The applicant shall provide detailed plans and text describing the proposed  
5 changes."  
6

7  
8 14. On page 80 of Exhibit G, starting on line 12, amend PCC 18S.60.080 B.2. as follows:  
9

- 10 "a. No additional overwater construction ~~development~~ in an Aquatic SED, except  
11 that pier, dock, or float construction may be increased by 500 square feet, or  
12 10 percent from the provisions of the original permit, whichever is less, ~~when~~  
13 ~~necessary to meet state and federal permit requirements;~~  
14 b. Ground area coverage and height may be increased a maximum of 10 percent  
15 from the provisions of the original permit;  
16 c. The revised permit does not authorize development to exceed height, lot  
17 coverage, buffer, or any other requirements of Title 18S PCC except as  
18 authorized under a Shoreline Variance granted as the original permit or a part  
19 thereof;  
20 d. Additional or revised landscaping is consistent with any conditions attached to  
21 the original permit and with Title 18S PCC;  
22 e. The ~~used development~~ authorized pursuant to the original permit is not changed;  
23 and  
24 f. No adverse environmental impact will be caused by the project revision ~~action~~.  
25 4. Revisions to permits may be authorized after original permit authorization has  
26 expired under RCW 90.58.143. The purpose of such revisions shall be limited to  
27 authorization of changes which are consistent with this Section and which would  
28 not require a permit for the development or change proposed under the terms of  
29 Chapter 90.58 RCW, this regulation, and the Master Program. If the proposed  
30 change constitutes substantial development, then a new permit is required.  
31 Provided, this subsection shall not be used to extend the time requirements or to  
32 authorize substantial development beyond the time limits of the original permit.  
33 53. If the sum of the revision and any previously approved revisions violate the  
34 decision criteria of this Section, the County shall require that the applicant apply for  
35 a new permit."  
36

37 15. On page 104 of Exhibit G, line 11, insert a new item 9. to read as follows:  
38

39 "9. Crescent Lake  
40 a. Entire lake located on Gig Harbor Peninsula."  
41

42 16. On page 107 of Exhibit G, within Appendix H: Shoreline Environment Township  
43 Atlas, on T19N-R03E (page 34 of 57), delete the reference to "~~Morey Creek~~" and  
44 replace with "Spanaway Creek".  
45  
46  
47

1 **Washington State Department of Ecology Recommended SMP Changes:**

- 2  
3 1. On page 2 of Exhibit G, starting on line 21, amend PCC 18S.10.010 as follows:

4  
5 **"18S.10.010 Title.**

6 Title 18S PCC shall be officially cited as Title 18S PCC, Development Policies and  
7 Regulations – Shorelines, and may be referred to as Title 18S PCC. Title 18S PCC  
8 includes the shoreline policies, regulations, and shoreline environment designation maps.  
9 Title 18E PCC, Development Regulations – Critical Areas, ~~and Title 18H PCC,~~  
10 ~~Development Regulations – Forest Practices, are~~ is incorporated by reference<sup>1</sup>.  
11 Collectively, Title 18S PCC, ~~Title 18H PCC~~ and Title 18E PCC make up the Pierce  
12 County Shoreline Master Program."  
13

- 14 2. On page 2 of Exhibit G, following line 44, strike footnote 1 in its entirety:

15  
16 ~~"<sup>1</sup>Title 18E PCC, Ordinance Nos. 2004-56s, 2004-57s, 2004-58s, and amended by~~  
17 ~~Ordinance 2006-103s. Title 18H PCC, Ordinance 2004-58s, amended by Ordinance~~  
18 ~~2012-2s7."~~  
19

- 20 3. On page 8 of Exhibit G, starting on line 17, amend PCC 18S.10.060 as follows:

21  
22 **"18S.10.060 Coordination with Other Titles.**

23 In addition to Title 18S PCC and Title 18E PCC, which together comprise the  
24 Shoreline Master Program, shoreline development may be subject to other Pierce County  
25 Code (PCC) Titles. Below is a list of some of the frequently used PCC Titles and  
26 Chapters which may be applicable to the review process of a shoreline development, or  
27 which may provide additional regulations applicable to the shoreline project site."  
28

- 29 4. On page 9 of Exhibit G, starting on line 19, delete PCC 18S.10.060 I. in its entirety  
30 and renumber the remaining subsections accordingly:

31  
32 ~~"I. Title 18E PCC. Development Regulations – Critical Areas.~~

- 33 1. ~~Wetlands. Regulations that apply to Wetlands are found in Chapter 18E.30~~  
34 ~~PCC.~~  
35 2. ~~Fish and Wildlife Species and Habitat Conservation Areas. Regulations~~  
36 ~~that apply to Fish and Wildlife Species and Habitat Conservation Areas are~~  
37 ~~found in Chapter 18E.40 PCC.~~  
38 3. ~~Aquifer Recharge and Wellhead Protection Areas. Regulations that apply~~  
39 ~~to Aquifer Recharger and Wellhead Protection Areas are found in Chapter~~  
40 ~~18E.50 PCC.~~  
41 4. ~~Volcanic Hazard Areas. Regulations that apply to Volcanic Hazard Areas~~  
42 ~~are found in Chapter 18E.60 PCC.~~  
43 5. ~~Flood Hazard Areas. Regulations that apply to Flood Hazard Areas are~~  
44 ~~found in Chapter 18E.70 PCC.~~  
45 6. ~~Landslide Hazard Areas. Regulations that apply to Landslide Hazard Areas~~  
46 ~~are found in Chapter 18E.80 PCC.~~  
47 7. ~~Seismic (Earthquake) Hazard Areas. Regulations that apply to Seismic~~  
48 ~~Hazard Areas are found in Chapter 18E.90 PCC.~~



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- 8. ~~Mine Hazard Areas. Regulations that apply to Mine Hazard Areas are found in Chapter 18E.100 PCC.~~
- 9. ~~Erosion Hazard Areas. Regulations that apply to Erosion Hazard Areas are found in Chapter 18E.110 PCC."~~

5. On page 10 of Exhibit G, starting on line 28, amend PCC 18S.10.065 B. as follows:

- "B. Title 18E PCC, Development Regulations -- Critical Areas. Critical area regulations adopted in compliance with the State Growth Management Act are administered by Title 18E PCC.
  - 1. ~~Buffers to protect critical areas, such as a wetland or fish and wildlife habitat conservation area, may be wider than the shoreline buffers of Title 18S PCC. The most protective regulations apply.~~
  - 2. ~~Application requirements for critical areas are in addition to those for shoreline permits.~~
  - 3. ~~Shoreline permits for development which may impact a critical area will not be granted until critical area review is complete.~~
  - 1. **Wetlands.** Regulations that apply to Wetlands are found in Chapter 18E.30 PCC.
  - 2. **Fish and Wildlife Species and Habitat Conservation Areas.** Regulations that apply to Fish and Wildlife Species and Habitat Conservation Areas are found in Chapter 18E.40 PCC.
  - 3. **Aquifer Recharge and Wellhead Protection Areas.** Regulations that apply to Aquifer Recharger and Wellhead Protection Areas are found in Chapter 18E.50 PCC.
  - 4. **Volcanic Hazard Areas.** Regulations that apply to Volcanic Hazard Areas are found in Chapter 18E.60 PCC.
  - 5. **Flood Hazard Areas.** Regulations that apply to Flood Hazard Areas are found in Chapter 18E.70 PCC.
  - 6. **Landslide Hazard Areas.** Regulations that apply to Landslide Hazard Areas are found in Chapter 18E.80 PCC.
  - 7. **Seismic (Earthquake) Hazard Areas.** Regulations that apply to Seismic Hazard Areas are found in Chapter 18E.90 PCC.
  - 8. **Mine Hazard Areas.** Regulations that apply to Mine Hazard Areas are found in Chapter 18E.100 PCC.
  - 9. **Erosion Hazard Areas.** Regulations that apply to Erosion Hazard Areas are found in Chapter 18E.110 PCC."

6. On page 11 of Exhibit G, starting on line 18, amend PCC 18S.10.070 B. and C. as follows:

- "B. No person may commence any shoreline development without first obtaining all permits and approvals required pursuant to Title 18S PCC. A person may be required to obtain multiple permits and approvals, ~~including critical area approvals. All development within shoreline jurisdiction subject to critical area review shall receive critical area review approval before or concurrent with the associated shoreline permit or approval.~~"

- 1 C. The Act requires that critical areas located within shorelines be addressed through  
2 the Shoreline Master Program (Master Program). To meet the requirement, Title  
3 18S PCC adopts by reference the ~~existing~~ County Critical Areas Regulations (Title  
4 18E PCC). Title 18S PCC contains additional regulations that apply to shorelines.  
5 1. Critical area review and approval within shoreline jurisdiction shall occur as a  
6 component of any associated shoreline permit and approval."  
7

8 7. On page 18 of Exhibit G, starting on line 43, amend PCC 18S.20.070 as follows:  
9

10 "A. **Designation Criteria.** The Aquatic SED applies to all shoreline areas waterward of  
11 the ordinary high-water mark. The Aquatic SED includes Aquatic Marine and  
12 Aquatic Freshwater.

- 13 1. Aquatic Marine applies to all Puget Sound tidal waters. Tidal waters, as used  
14 here, includes marine and estuarine waters bounded by the OHWM. Where a  
15 stream enters the tidal water, the tidal water is bounded by the extension of the  
16 elevation of the marine OHWM within the stream.  
17 2. Aquatic Freshwater applies to the waters of all rivers, streams and lakes."  
18

19 8. On page 24 of Exhibit G, starting on line 30, amend PCC 18S.30.030 D. by inserting  
20 the following new subsections to read as follows:  
21

- 22 "8. Buffers to protect critical areas, such as a wetland or fish and wildlife habitat  
23 conservation area, may be wider than the shoreline buffers of Title 18S PCC. The  
24 most protective regulations apply.  
25 9. Application requirements for critical areas are in addition to those for shoreline  
26 permits.  
27 10. Shoreline permits for development which may impact a critical area will not be  
28 granted until critical area review is complete."  
29

30 9. On page 29 of Exhibit G, starting on line 37, amend PCC 18S.30.040 B. by inserting  
31 the following new subsection to read as follows:  
32

33 "10. Pierce County is concerned about potential for impacts to the environment from  
34 discharging dredged materials in Pierce County marine waters within the Nisqually  
35 Reach Aquatic Reserve. The County encourages citizen participation and  
36 engagement in the oversight of dredged material disposal through the Nisqually  
37 Reach Aquatic Reserve Implementation Committee and the Anderson Island  
38 Citizens Advisory Board (AICAB). The County shall work with DNR Aquatic  
39 Reserve Program staff to seek feedback from the Implementation Committee and  
40 the AICAB on Shoreline Conditional Use Permit applications related to dredge  
41 disposal within Reserve boundaries."  
42

43 10. On page 44 of Exhibit G, starting on line 31, amend PCC 18S.40.040 C.5. as  
44 follows:  
45

- 46 "5. Aquaculture activity boundaries shall be illustrated on a site plan that includes a  
47 depiction of the real property boundaries consistent with the legal description of the  
48 property. Aquaculture activity boundaries and property corners shall be



1 marked ~~staked~~ according to Chapter 58.17 RCW and Chapter 332-130 WAC. At its  
2 discretion, the County may require traditional survey methods or allow GPS  
3 methodology."  
4

5 11. On page 47 of Exhibit G, starting on line 5, amend PCC 18S.40.040 F.2. as follows:  
6

7 "2. Over-water structures and/or equipment, and any items stored upon such structures  
8 such as materials, garbage, tools, apparatus, shall be designed and maintained to  
9 minimize visual impacts. The maximum height above water for permanent  
10 structures shall be limited to three feet from the deck surface of the float or dock  
11 unless shoreline conditions serve to minimize visual impacts (for example: high  
12 bank environments, shorelines without residential development). Height limitations  
13 do not apply to materials and apparatus removed from the site on a daily basis or to  
14 required safety-related equipment."  
15

16 12. On page 47 of Exhibit G, starting on line 15, amend PCC 18S.40.040 G.2. as  
17 follows:  
18

19 "2. New aquatic species that have not been previously cultivated in Washington State  
20 shall not be introduced into the County without prior written approval of the  
21 Director of the Washington Department of Fish and Wildlife ~~and the Director of the~~  
22 ~~Washington Department of Health.~~"  
23

24 13. On page 47 of Exhibit G, line 46, amend PCC 18S.40.050 C.1. as follows:  
25

26 "1. Structures waterward of the OHWM shall be on piling or other open-framework,  
27 and shall be limited to those that require over-water facilities."  
28

29 14. On page 48 of Exhibit G, starting on line 3, amend PCC 18S.40.050 C.3. as follows:  
30

31 "3. Non water-oriented commercial, civic or industrial uses, or portions of a use that are  
32 non-water oriented, are prohibited in shorelines unless they meet one of the  
33 following criteria:"  
34

35 15. On page 48 of Exhibit G, starting on line 25, amend PCC 18S.40.050 7. and 8. as  
36 follows:  
37

38 "7. When commercial, civic or industrial redevelopment involves relocating or  
39 expanding the existing structure, shoreline restoration or mitigation shall be a  
40 condition of approval. ~~Mitigation~~Restoration may include, but is not limited to:  
41

42 8. When commercial, civic or industrial redevelopment involves relocating or  
43 expanding the structure, public access shall be a condition of approval, unless  
44 infeasible due to health or safety issues. Public access may include, but is not  
45 limited to:"  
46  
47

1 16. On page 50 of Exhibit G, starting on line 42, amend PCC 18S.40.070 A.2. as follows:  
2

- 3 "2. Class IV-General Forest Practices where shorelines are being converted to non-  
4 forest uses ~~are not subject to this chapter~~. Class IV-General Forest Practices are  
5 subject to the requirements of the other Sections ~~Chapters~~ of Title 18S PCC,  
6 Development Policies and Regulations – Shorelines, as applicable, and to Title 18H  
7 PCC, Development Regulations – Forest Practices."  
8

9 17. On page 51 of Exhibit G, starting on line 8, amend PCC 18S.40.070 C. as follows:  
10

11 "**C. Regulations.**

- 12 1. Forest Practice regulations are found in Title 18H PCC, Development  
13 Regulations – Forest Practices.  
14 2. Class I, II, and III Forest Practices located within 200 feet of the OHWM on  
15 Shorelines of Statewide Significance, consistent with RCW 90.58.150, shall  
16 only allow selective timber cutting so that no more than 30 percent of the  
17 merchantable trees may be harvested in any 10-year period of time; provided  
18 that other timber harvesting methods may be permitted in those limited  
19 instances where the topography, soil conditions, or silviculture practices  
20 necessary for regeneration render selective logging ecologically detrimental;  
21 and provided further, that clear cutting of timber which is solely incidental to  
22 the preparation of land for other uses authorized by this chapter may be  
23 permitted. Exceptions to this standard shall be by Conditional Use Permit  
24 only.  
25 3. When forest land is to be converted to another use under a Class IV Forest  
26 Practice, the conversion shall be clearly indicated on the Forest Practices  
27 application. Preparatory work associated with the conversion of land to non-  
28 forestry uses or developments shall not be considered forest practices and  
29 shall be reviewed in accordance with the provisions for the proposed non-  
30 forestry use and the general provisions of this Master Program, including  
31 vegetation conservation."  
32

33 18. On page 53 of Exhibit G, starting on line 7, amend PCC 18S.40.090 C.6. as follows:  
34

- 35 "6. Structures waterward of the ordinary high water mark (OHWM) shall be floating or  
36 on piling or other open-framework and shall be limited to those uses that require  
37 over-water facilities."  
38

39 19. On page 53 of Exhibit G, starting on line 12, amend PCC 18S.40.090 C.8. as  
40 follows:  
41

- 42 "8. Restrooms, refuse disposal, parking, maintenance, and similar facilities shall be  
43 provided consistent with the expected demand. Designs shall consider ways ~~to limit~~  
44 ~~attendance~~ to prevent overuse of the site."  
45  
46

1 20. On page 54 of Exhibit G, starting on line 15, amend PCC 18S.40.100 C. as follows:

2  
3 "2. Table 18S.30.030-24, Standard Shoreline Buffers and Setbacks, indicates the  
4 required buffer and setback for each SED. Table 18E.40.060-1, Fish and Wildlife  
5 Habitat Conservation Area Buffer Requirements, indicates the required fish and  
6 wildlife habitat area buffer ~~or setback~~ width for each ~~shoreline~~-water type. Chapter  
7 18E.40 PCC includes the provisions by which fish and wildlife habitat area buffers  
8 and setbacks may be modified."  
9

10 21. On page 59 of Exhibit G, starting on line 29, amend PCC 18S.40.140 C.5. as  
11 follows:

12  
13 "5. In- and over-water facilities shall be visible under normal day and nighttime  
14 conditions. Visual aids may include reflectors and warning lights, and shall be  
15 consistent with any applicable U.S. Coast Guard requirements."  
16

17 22. On page 63 of Exhibit G, starting on line 4, amend PCC 18S.40.140 G.1. as follows:

18  
19 "1. Facilities attached to another facility, such as a pier and ramp attached to a dock  
20 (see Figure 18S.40.140-2), shall be considered one facility ~~separately~~ for the purpose  
21 of dimensional measuring."  
22

23 23. On page 63 of Exhibit G, starting on line 32, amend PCC 18S.40.140 H.3. as  
24 follows:

25  
26 "3. Length means the linear distance of all facility segments measured from the  
27 OHWM, except that for Lake Tapps, the linear distance of a facility shall be  
28 measured from the 543-foot elevation of the Lake. The length of the facility  
29 includes any attached "U", "T" or "L" segments. See Figure 18S.40.140-1, Length  
30 of Dock Measurement."  
31

32 24. On page 66 of Exhibit G, line starting on line 38, amend PCC 18S.60.020 B. as  
33 follows:

34  
35 "B. **Applicability.** This Section applies to shoreline development and uses within  
36 shorelines that do not require a Substantial Development Permit, as listed in PCC  
37 18S.60.020 C. If any part of a proposal is not eligible for an SD Exemption, then an  
38 SD shall be required for the entire proposal."  
39

40 25. On page 84 of Exhibit G, starting on line 23, delete the definition of "Excavated  
41 Moorage Slips" in its entirety.

42  
43 ~~"Excavated Moorage Slips" means a mooring location that is excavated or dredged from~~  
44 ~~a segment of shoreline and/or substrate."~~  
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26. On page 92 of Exhibit G, starting on line 17, Chapter 18S.70 -- Appendix C, amend subsection A.1.c. as follows:

"c. A general depiction of adjacent land uses including the presence of structures, docks, bulkheads, and other modifications. If there are shore stabilization structures, provide the beach elevation at the toe of the structure and the top of the structure (MLLW datum);"

27. On page 94 of Exhibit G, starting on line 22, Chapter 18S.70 -- Appendix C, amend Section F. as follows:

"F. **Assessment of Impacts.** This Section shall be based upon the results of the baseline conditions study. This shall be accompanied by a discussion of avoidance, minimization, and mitigation actions proposed. Potential impacts that shall be discussed include: impacts to regulated critical areas and species, loss of benthic biotic diversity, increase in pollutant loading, alteration to nearshore sediment composition or transport processes, decrease in water quality. ~~This shall be accompanied by a discussion of avoidance, minimization and mitigation actions proposed.~~"

28. Starting on page 105 of Exhibit G (Appendix F), delete "Proposed" from the Shoreline Environment Designation Maps.

29. Starting on page 106 of Exhibit G (Appendix G), replace the 2008 Park and Recreation Maps with the 2014 Parks, Recreation and Open Space Plan Maps.

30. Starting on page 107 of Exhibit G (Appendix H), delete "Proposed" from the Shoreline Environment Township Atlas Maps.



**FINDINGS OF FACT**

The Pierce County Council finds that:

1. The Pierce County Council adopted Ordinance No. 2013-45s4 on March 10, 2015, establishing "Title 18S" of the Pierce County Code (PCC), Development Policies and Regulations – Shorelines.
2. Pursuant to Ordinance No. 2013-45s4, the Pierce County Council updated various Chapters and Titles of the Pierce County Code for compliance with the Washington State Shoreline Management Act.
3. Revised Code of Washington RCW 90.58.090 requires the Washington State Department of Ecology (DOE) to review and approve locally adopted Shoreline Master Programs (SMP) before they can become effective.
4. RCW 90.58.080 provides the timetable for local governments to amend SMPs consistent with the required elements of the guidelines adopted by the Washington State Department of Ecology to assure that the master program complies with applicable laws and guidelines in effect at the time of review and to assure consistency with the local governments comprehensive plan and development regulations.
5. On May 31, 2018, Pierce County received "conditional approval" of its SMP update as adopted pursuant to Ordinance No. 2013-45s4.
6. The DOE's conditional approval of Pierce County's SMP update includes a list of 21 required changes and 68 recommended changes.
7. Pierce County has modified its SMP to make the 21 required changes that have been identified by the DOE. Required changes include citing Ecology's role in conditional use and variance procedures, elimination of the prohibition of disposal of dredged materials within the Nisqually Reach Aquatic Reserve, revising development standards for aquaculture, minor Shoreline Environment Designations (SED) mapping changes, and other technical changes that will provide greater consistency with Chapter 90.58 RCW and Washington Administrative Code (WAC) 173-27.
8. Pierce County has modified its SMP to make an additional 30 changes that have been recommended by the DOE. The recommended changes adopted by the Council are primarily technical in nature. Changes to Title 18S PCC include clarification of the shoreline development permit review process and procedures, formatting modifications to improve internal consistency between the County's critical area regulations and the SMP, and edits that provide greater consistency with Chapter 36.70A RCW, Chapter 90.58 RCW, WAC 173-26 and WAC 173-27.

- 1 9. RCW 90.58.080(4)(b)(i) obligates the County to conduct a periodic review of its SMP  
2 on or before June 30, 2019, to ensure the SMP complies with State laws and  
3 guidelines that have been added or changed since the most recent update.  
4
- 5 10. The periodic review process is intended to bring the SMP into compliance with  
6 requirements of the act or state rules that have been added or changed since the  
7 last SMP amendment, ensure the SMP remains consistent with amended  
8 comprehensive plans and regulations, and incorporate amendments deemed  
9 necessary to reflect changed circumstances, new information, or improved data.  
10
- 11 11. Pierce County used DOE's checklist of legislative and rule amendments to review  
12 amendments to Chapter 90.58 RCW and department guidelines that have occurred  
13 since the master program was last amended, and determine if local amendments  
14 are needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i).  
15
- 16 12. The DOE has identified several changes to the Pierce County SMP, as adopted via  
17 Ordinance No. 2013-45s4, that are necessary to comply with current State law and  
18 which may be incorporated in the County's SMP to complete the periodic review  
19 requirement of RCW 90.58.080(4).  
20
- 21 13. Pierce County has modified its SMP to make the necessary changes to complete the  
22 periodic review requirement of RCW 90.58.080(4). The seven changes to Title 18S  
23 PCC include a reference to the Washington State Wetland Rating System for  
24 Western Washington (Hruby, 2014), increasing the SD exemption threshold to  
25 \$7,047.00, updates to several definitions, and other technical changes that will  
26 provide greater consistency with Chapter 90.58 RCW and WAC 173-27.  
27
- 28 14. Ordinance No. 2013-45s4 established an effective date of the ordinance "90 days  
29 following final approval by the Washington State Department of Ecology" which is  
30 inconsistent with RCW 90.58.090(7) and has been revised for consistency with State  
31 statute.  
32
- 33 15. Pierce County provided notification of Ordinance No. 2018-57 to 1,098 interested  
34 parties, published legal notice in the Tacoma News Tribune on September 5 and  
35 September 12, 2018 and conducted a formal public comment period in compliance  
36 with the requirements of WAC 173-26-100.  
37
- 38 16. Pierce County Council's adoption of Ordinance No. 2018-57 completes the required  
39 process for periodic review of the SMP in accordance with RCW 90.58.080(4) and  
40 applicable State guidelines in WAC 173-26.  
41
- 42 17. The Pierce County Council, pursuant to Ordinance No. 2018-57, has made all the  
43 necessary changes to its SMP as required by the Department of Ecology to receive  
44 final SMP approval.  
45



Chapter 18S.10

INTRODUCTION

Sections:

- 18S.10.010 Title.
- 18S.10.020 Purpose.
- 18S.10.025 Constitutional Protection.
- 18S.10.030 Applicability.
- 18S.10.040 Procedural Exemption.
- 18S.10.050 Interpretation.
- 18S.10.055 Recognition of Legally Established Development.
- 18S.10.060 Coordination with Other Titles.
- 18S.10.065 Procedural Guidance.
- 18S.10.070 Compliance.
- 18S.10.080 Severability.
- 18S.10.090 Warning and Disclaimer of Liability.

18S.10.010 Title.

Title 18S PCC shall be officially cited as Title 18S PCC, Development Policies and Regulations – Shorelines, and may be referred to as Title 18S PCC. Title 18S PCC includes the shoreline policies, regulations, and shoreline environment designation maps. Title 18E PCC, Development Regulations – Critical Areas, and Title 18H PCC, Development Regulations – Forest Practices, are incorporated by reference<sup>1</sup>. Collectively, Title 18S PCC, Title 18H PCC and Title 18E PCC make up the Pierce County Shoreline Master Program.

18S.10.020 Purpose.

The purpose of Title 18S PCC is to implement the Shoreline Management Act (Act) in unincorporated Pierce County. There are three interrelated basic policy areas to the Act: (1) shoreline use; (2) environmental protection; and (3) public access. The Act expresses a preference for appropriate development that requires a shoreline location, protection of shoreline environmental resources, and protection of the public's right to access and use the shorelines (RCW 90.58.020).

The Act requires that "uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shorelines..." Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single-family residences, ports, shoreline recreational uses, water-dependent industrial and commercial developments, and other developments that provide public access opportunities. To the maximum extent possible, the shorelines should be reserved for water-oriented uses, including water-dependent, water-related, and water-enjoyment uses.

<sup>1</sup> Title 18E PCC, Ordinance Nos. 2004-56s, 2004-57s, 2004-58s, and amended by Ordinance 2006-103s. Title 18H PCC, Ordinance 2004-58s, amended by Ordinance 2012-2s7.



1 The Act is intended to protect shoreline natural resources, including "...the land and its  
2 vegetation and wildlife, and the waters of the state and their aquatic life..." against adverse  
3 effects. All development is required to mitigate adverse environmental impacts to the maximum  
4 extent feasible and preserve the natural character and aesthetics of the shoreline.

5 The overarching policy is that, "The public's opportunity to enjoy the physical and aesthetic  
6 qualities of natural shorelines of the State shall be preserved to the greatest extent feasible,  
7 consistent with the overall best interest of the State and the people." Alterations of the natural  
8 conditions of the shorelines of the State, in those limited instances when authorized, shall be  
9 given priority for development that will provide an opportunity for substantial numbers of people  
10 to enjoy the shorelines of the State.

11 The Act also implements the common law Public Trust Doctrine. The essence of this court  
12 doctrine is that the waters of the State are a public resource for the purposes of navigation,  
13 conducting commerce, fishing, recreation, and similar uses, and that this trust is not invalidated  
14 by private ownership of the underlying land. The Doctrine limits public and private use of  
15 tidelands and other shorelands to protect the public's right to use the waters of the State.

16 The protection of ecological functions, and the aquatic and terrestrial life associated with  
17 shorelines, shall be integral in the consideration of all development in the shorelines. New land  
18 alterations and development shall not result in any net loss to ecological functions as  
19 implemented by the concept of mitigation sequencing.

20 A. **General Purpose.** The general purpose of Title 18S PCC is to implement the  
21 following:

- 22 1. Shoreline Management Act (Act) (Chapter 90.58 RCW) which governs the  
23 development of Washington's shorelines. The Act requires the County to prepare  
24 and adopt a Shoreline Master Program (Master Program); and
- 25 2. Washington State Department of Ecology (Ecology) Rules (Chapters 173-18, 20, 22,  
26 26 and 27 WAC) that guide, along with the Act, the required contents of the Master  
27 Program.

28 B. **Specific Purpose.** In implementing the above general purpose, the more specific  
29 purpose of Title 18S PCC is to:

- 30 1. Regulate the development of shorelines;
- 31 2. Protect critical areas from the impacts of development;
- 32 3. Protect development from the impacts of hazards areas;
- 33 4. Achieve no net loss of ecological functions of shorelines; and
- 34 5. Promote the public health, safety, and general welfare of the community.

35  
36 **18S.10.025 Constitutional Protection.**

37 No person shall be deprived of property without due process of law; nor shall private  
38 property be taken for public use, without just compensation.

39  
40 **18S.10.030 Applicability.**

41 A. Title 18S PCC applies to all shoreline use and development occurring in unincorporated  
42 Pierce County. For purposes of Title 18S PCC, "shorelines" consist of:

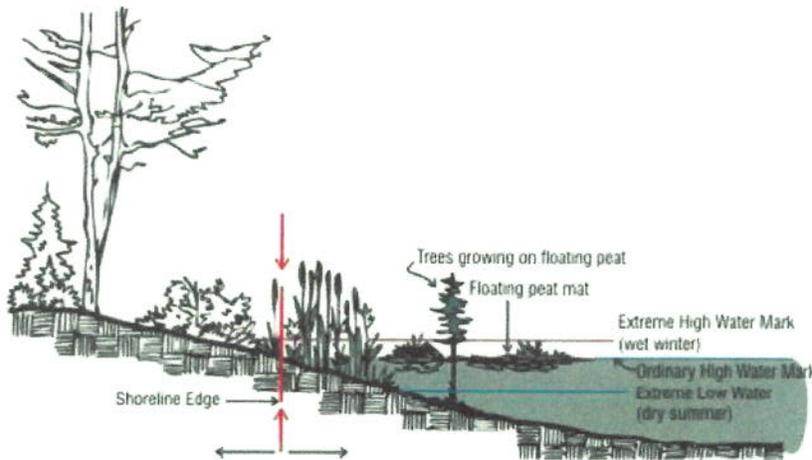
- 43 1. All marine waters;
- 44 2. All rivers and streams downstream from a point where the mean annual flow is 20  
45 cubic feet per second; and
- 46 3. All lakes 20 acres in size or larger.



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4. For the shorelines listed in PCC 18S.10.030 1.-3., Title 18S PCC shall apply to the following:
  - a. The waters themselves;
  - b. Those shorelands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark (OHWM) of the water body;
  - c. Associated wetlands; and
  - d. River deltas.
5. Floodways and contiguous floodplain areas landward 200 feet from such floodways.
6. For the shorelines listed in PCC 18S.10.030 1.-5., Title 18S PCC shall also apply to the following:
  - a. The air above the shoreline area; and
  - b. The land below the shoreline area.
7. Shorelines do not include land necessary for critical area buffers when the buffer is located outside areas identified in PCC 18S.10.030 4.-5.
8. The shoreline jurisdiction does not include land owned by tribal members or tribes within their tribal reservation, or lands held in trust by the federal government for tribes or tribal members.

**FIGURE 18S.10-1 – Ordinary High Water Mark**



**18S.10.040 Procedural Exemption.**

For development exempt from the requirement to obtain a Shoreline Substantial Development Permit (SD), see PCC 18S.60.020, Shoreline Substantial Development Permit Exemptions.

**18S.10.050 Interpretation.**

- A. Any inconsistencies between the Shoreline Management Act (Act) and Title 18S PCC shall be resolved in accordance with the Act. Within Title 18S PCC, any ambiguities between the policies and the regulations shall be resolved in accordance with the policies. Furthermore, the provisions of other applicable County, State, and Federal regulations shall control when they establish more protective restrictions than are



- 1 established in Title 18S PCC, provided such regulations are consistent with the Act and  
2 Title 18S PCC.
- 3 B. Water dependent uses, to include associated incidental and necessary uses that are  
4 located within shoreline jurisdiction and regulated by Title 18S PCC, shall not be  
5 regulated by the Use Tables of Title 18A PCC.
- 6 C. When a provision of County Code conflicts with another provision in County Code, the  
7 more restrictive shall apply.
- 8 D. In case of any ambiguity, difference of meaning, or inconsistencies between the text and  
9 any illustrations or other graphics and maps, the text throughout Title 18S PCC,  
10 including text within tables, shall control.
- 11 E. Terms that appear in Title 18S PCC and one or more other Titles in the Title 18 PCC  
12 series are defined in Chapter 18.25 PCC. In instances where a specific term has one  
13 definition in Chapter 18.25 PCC and a different definition appears in Title 18S PCC, the  
14 term in Title 18S PCC shall apply. Terms found only in Title 18S PCC are located in  
15 Chapter 18S.70 PCC – Appendix A. Except for words and terms defined in Title 18S  
16 PCC and in Chapter 18.25 PCC, all words and terms used in Title 18S PCC shall have  
17 their customary meanings.
- 18 1. The term "shall" means a mandate and the action is required.
- 19 2. The term "should" means that the particular action is required unless there is a  
20 demonstrated, compelling reason, based on a policy of the Shoreline Management  
21 Act and Title 18S PCC for not taking the action.
- 22 3. The term "may" indicates that the action is discretionary, provided it satisfies all  
23 other applicable regulations.
- 24 F. Formal written administrative interpretations of Title 18S PCC require consultation with  
25 Ecology to ensure consistency with the purpose and intent of Chapter 90.58 RCW and  
26 the applicable guidelines.
- 27 G. When a site contains more than one regulated critical area, the standards and  
28 requirements for each identified feature shall be applied.
- 29 H. **Maps.** The County Geographic Information System (GIS) includes the shoreline  
30 environment designation (SED) maps.
- 31 1. Changes to County designated SED boundaries require a Shoreline Master Program  
32 (Master Program) Amendment which requires approval of the County Council and  
33 the Washington State Department of Ecology (Ecology). The SED of a shoreline  
34 cannot be changed with a Shoreline Variance or any other process addressed in Title  
35 18S PCC.
- 36 2. Associated wetlands have the same designation as the adjacent SED. However, the  
37 determination of the exact boundary of an associated wetland, and corresponding  
38 shoreline jurisdiction boundary, would occur at the time of project review.
- 39 3. If a shoreline has not been assigned an SED, it shall automatically be designated  
40 "Conservancy" until it can be designated through a Pierce County Shoreline Master  
41 Program Amendment.
- 42 4. Divided Parcels.
- 43 a. Where the County Council, as part of an ordinance approving Title 18S PCC,  
44 approves SEDs that divide a parcel, the parcel shall be so divided, provided such  
45 boundaries are shown on the approved map and the parcel split is acknowledged  
46 in the ordinance. However, for parcels split by an Aquatic SED, the parcel shall  
47 be divided at the OHWM.



1 functions, as evidenced by the shoreline configuration and the presence of native  
2 vegetation. Generally, but not necessarily, ecologically intact shorelines are free of  
3 structural shoreline modifications, structures, and intensive human uses. In forested  
4 areas, they generally include native vegetation with diverse plant communities,  
5 multiple canopy layers, and the presence of large woody debris available for  
6 recruitment to adjacent water bodies. Recognizing that there is a continuum of  
7 ecological conditions ranging from near natural conditions to totally degraded and  
8 contaminated sites, this term is intended to delineate those shoreline areas that  
9 provide valuable functions for the larger aquatic and terrestrial environments which  
10 could be lost or significantly reduced by human development.

- 11 5. The term ecologically intact shorelines applies to all shoreline areas meeting the  
12 above criteria ranging from larger reaches that may include multiple properties to  
13 small areas of a single property and may be inside or outside urban growth areas.

14 **B. Management Policies.**

- 15 1. Any use that would degrade ecological functions, natural features, and overall  
16 character of the shoreline area shall not be allowed.  
17 2. Single-family residential development may be allowed if the density and intensity of  
18 the use is limited to protect ecological functions and is consistent with the intent of  
19 the natural shoreline environment.  
20 3. New land divisions shall be developed consistent with low impact development  
21 (LID) techniques.  
22 4. Private and public enjoyment should be facilitated through low-intensity  
23 development such as passive, recreational, scientific, historical, cultural, and  
24 educational uses, provided that no net loss in ecological function and processes will  
25 result.  
26 5. Low intensity agricultural and forestry uses may be consistent when they are limited  
27 to ensure that the intensity remains low.  
28 6. Commercial, industrial, multi-family residential, and non water-oriented recreation  
29 uses should not be permitted.  
30 7. New roads, utility corridors, and parking areas should not be permitted, except as  
31 necessary to support uses otherwise allowed by Title 18S PCC.  
32 8. New development or vegetation removal that would reduce ecological functions or  
33 processes should not be permitted.  
34 9. Scientific, historical, cultural, educational research uses, and low-intensity water-  
35 oriented recreational access uses may be allowed provided that no significant  
36 ecological impact on the area will result.

- 37 **C. Maps.** Natural Shoreline Environment Designation maps are found in Chapter 18S.70  
38 PCC – Appendix F.  
39

40 **18S.20.040 Conservancy Shoreline Environment Designation (SED).**

41 The intent of the Conservancy SED is to conserve and manage existing natural resources and  
42 valuable historic and cultural areas while providing recreational benefits to the public and while  
43 achieving sustained resource utilization and maintenance of floodplain processes. Shoreline  
44 ecological functions should be preserved by avoiding development that would be incompatible  
45 with existing functions and processes, locating restoration efforts in areas where benefits to  
46 ecological functions can be realized, keeping overall intensity of development or use low, and  
47 maintaining most of the area's natural character.



1 A. **Designation Criteria.** The Conservancy designation applies to shoreland areas that  
2 meet one or more of the following criteria:

- 3 1. The shoreline is currently  
4 supporting lesser-intensity  
5 resource-based uses, such as  
6 agriculture, forestry, or recreational  
7 uses, or is designated agricultural  
8 or forest lands pursuant to RCW  
9 36.70A.170;
- 10 2. The shoreline is currently  
11 accommodating low density  
12 residential uses;
- 13 3. The shoreline is supporting human  
14 uses but is subject to environmental  
15 limitations, such as properties that  
16 include or are adjacent to steep  
17 banks, feeder bluffs, or flood plains or other flood-prone areas;
- 18 4. The shoreline is of high recreational value or with unique historic or cultural  
19 resources; or
- 20 5. The shoreline has predominantly low-intensity water-dependent uses.
- 21 6. Shoreline areas appropriate and planned for development that is compatible with  
22 maintaining or restoring of the ecological functions of the area, that are not generally  
23 suitable for water-dependent uses and that lie in urban growth areas, or commercial  
24 or industrial "limited areas of more intensive rural development" if any of the  
25 following characteristics apply:
- 26 a. They are suitable for water-related or water-enjoyment uses;
- 27 b. They are open space, flood plain or other sensitive areas that should not be more  
28 intensively developed;
- 29 c. They have potential for ecological restoration;
- 30 d. They retain important ecological functions, even though partially developed; or
- 31 e. They have the potential for development that is compatible with ecological  
32 restoration.



FIGURE 18S.20-2 –  
Example of Conservancy Shoreline Environment

33 B. **Management Policies.**

- 34 1. Active and passive outdoor recreation activities and resource-based uses such as  
35 timber harvesting, aquaculture, and passive agricultural uses such as pasture and  
36 range lands shall receive priority.
- 37 2. Opportunities for ecological restoration should be pursued, giving priority to the  
38 areas with the greatest potential to restore ecosystem-wide processes (the site of  
39 naturally occurring physical and geologic processes of erosion, transport, and  
40 deposition; and specific chemical processes that shape landforms within a specific  
41 shoreline ecosystem and determine both the types of habitat and the associated  
42 ecological functions) and functions.
- 43 3. Development should be limited to that which sustains the shoreline area's physical  
44 and biological resources and temporary uses that do not substantially degrade  
45 ecological functions or the natural character.
- 46 4. Agriculture, forestry, and aquaculture should be allowed.



5. Mining, as a unique use due to its inherent relationship to geology, may be an appropriate use when conducted in a manner consistent with the Conservancy SED, and located consistent with mineral resource lands' designation criteria pursuant to applicable provisions of the Growth Management Act, RCW 36.70A.170, and WAC 365-190-070.
  6. Water-dependent and water-enjoyment recreation facilities that do not deplete the resource over time including, but not limited to boating facilities, angling, hunting, wildlife viewing trails, and swimming beaches, may be allowed.
  7. Commercial and industrial development should be limited to, water-oriented commercial and industrial development in instances where those uses have been located there in the past, or at unique sites that possess shoreline conditions and services necessary to support the development.
  8. Outstanding recreational or scenic values should be protected from incompatible development.
- C. **Maps.** Conservancy Shoreline Environment Designation maps are found in Chapter 18S.70 PCC – Appendix F.

**18S.20.050 Residential Shoreline Environment Designation (SED).**

The intent of the Residential SED is to accommodate residential development in areas that are already developed with or planned for residential development. The Residential SED may also include water-oriented commercial and recreation uses.

- A. **Designation Criteria.** The Residential SED applies to shoreland areas that are predominantly single-family or multi-family residential development or are planned and platted for residential development.
- B. **Management Policies.**

1. Priority should be given to residential and water-oriented commercial development where such development can be accommodated with no net loss of shoreline ecological functions.
2. Public or private recreation facilities should be encouraged if compatible with surrounding development. Preferred recreational uses include water-dependent and water-enjoyment recreation facilities that provide opportunities for substantial numbers of people to access and enjoy the shoreline.
3. Development should be designed to preserve and enhance the visual quality of the shoreline, including views over and through the development from the upland side, and views of the development from the water.
4. New commercial development should be limited to water-oriented uses. Expansion of existing non water-oriented commercial uses may be permitted, provided that such uses should create a substantial benefit with respect to the goals and policies of Title 18S PCC, such as providing improved public access or restoring degraded shorelines.



**FIGURE 18S.20-3 – Example of Residential Shoreline Environment**

- 1 concerns, with special emphasis on protecting and restoring priority habitats and  
2 species.
- 3 4. Regulations for shoreline stabilization, to include breakwaters, jetties, groins, and  
4 weirs, are found in PCC 18S.30.070, Shoreline Stabilization, and in Chapter 18E.110  
5 PCC, Erosion Hazard Areas.
- 6 5. Regulations for piers and docks are found in PCC 18S.40.140, Water Access  
7 Facilities.
- 8 6. Regulations related to filling, dredging and dredge material disposal are found in  
9 PCC 18S.30.040, Excavation, Dredging, Filling, and Grading.
- 10 7. Regulations for shoreline habitat and natural systems enhancement are found in PCC  
11 18S.40.110, Restoration and Enhancement.

12  
13 **18S.30.090 Water Oriented Development.**

14 The intent of the Water Oriented Development policies and regulations is to ensure that  
15 water-dependent, water-related, or water-enjoyment, or a combination of such uses, is preferred  
16 in shorelines.

17 A. **Applicability.** The policies and regulations of this Section shall apply to all uses and  
18 development, within all shoreline environment designations.

19 B. **Policies.**

- 20 1. Reserve shorelines, to the maximum extent possible, for water-oriented uses,  
21 including water-dependent, water-related and water-enjoyment uses.
- 22 2. Allow water-related and water-enjoyment uses as part of mixed use development on  
23 over-water structures where they are clearly auxiliary to, and in support of, water-  
24 dependent uses.
- 25 3. Allow mixed use commercial and industrial development, including non water-  
26 dependent uses, only when they include and support water-dependent uses.
- 27 4. Give priority to water-oriented uses over non water-oriented uses, with highest  
28 priority given to water-dependent uses.

29 C. **Regulations.**

- 30 1. Parking areas associated with a principal use shall be located outside shorelines  
31 unless no feasible alternative location exists. Parking as a principal use is prohibited.
- 32 2. Except for single-family residences, non water-oriented uses or portions of a use that  
33 are non-water-oriented shall demonstrate why the use must be located in shorelines.
- 34 3. Water dependent uses and public access to shorelines are preferred use in all  
35 shoreline environments.
- 36 4. In the Natural SED, commercial, industrial, multi-family residential, and non water-  
37 oriented recreation uses are prohibited.
- 38 5. In the Conservancy SED, water-dependent and water-enjoyment recreation facilities  
39 that do not deplete the resource over time including, but not limited to boating  
40 facilities, angling, hunting, wildlife viewing trails, and swimming beaches, may be  
41 allowed if adverse impacts to the shoreline are mitigated. Commercial development  
42 should be limited to where those uses have been located in the past or to unique sites  
43 that possess shoreline conditions and services necessary to support the commercial  
44 development.
- 45



- 1 6. In the Residential SED:
  - 2 a. Residential and water-oriented commercial development is allowed where such
  - 3 development can be accommodated with no net loss of shoreline ecological
  - 4 functions.
  - 5 b. Public or private recreation facilities are allowed if compatible with surrounding
  - 6 development. Preferred recreational uses include water-dependent and water-
  - 7 enjoyment recreation facilities that provide opportunities for substantial numbers
  - 8 of people to access and enjoy the shoreline.
  - 9 c. New commercial development should be limited to water-oriented uses.
  - 10 Expansion of existing non water-oriented commercial uses may be permitted,
  - 11 provided that such uses should create a substantial benefit with respect to the
  - 12 goals and policies of Title 18S PCC, such as providing improved public access or
  - 13 restoring degraded shorelines.
- 14 7. In the High Intensity SED, non water-oriented uses are not allowed unless they
- 15 provide a significant public benefit, such as ecological restoration and public access,
- 16 and:
  - 17 a. They are within a legally established building or are located within an existing
  - 18 mixed-use development;
  - 19 b. They do not conflict with or limit opportunities for water-oriented uses; or
  - 20 c. They are located on sites where there is no direct access to the water's edge.
- 21 8. A change from an existing non water-oriented use to another non water-oriented use
- 22 is permitted, without a Conditional Use Permit, subject to the general policies and
- 23 regulations of this Title.
- 24 9. Expansion of an existing non water-oriented use is subject to a Conditional Use
- 25 Permit.
- 26 10. A change in use from an existing water-oriented use to a non water-oriented use is
- 27 not permitted.
- 28

29 **18S.30.100 Water Quality, Stormwater, and Nonpoint Pollution.**

30 The intent of the Water Quality, Stormwater, and Nonpoint Pollution policies and regulations  
 31 is to protect against adverse impacts to water quality and quantity.

- 32 A. **Applicability.** The policies and regulations of this Section shall apply to all uses and
- 33 development, within all shoreline environment designations.
- 34 B. **Policies.**
  - 35 1. Locate, construct, and operate development in a manner that maintains or enhances
  - 36 the quantity and quality of surface and ground water over the long term.
  - 37 2. Prevent impacts to water quality and stormwater quantity that would result in a net
  - 38 loss of shoreline ecological functions.
  - 39 3. Prevent contamination of surface and ground water and soils.
  - 40 4. Minimize the need for chemical fertilizers, pesticides, or other similar chemical
  - 41 treatments.
  - 42 5. Encourage the use of low impact development (LID) techniques.
  - 43 6. Minimize the use of impervious surfaces.
  - 44 7. Protect commercial shellfish areas and legally established aquaculture enterprises
  - 45 from damaging sources of pollution.
  - 46



3. Allow non water-oriented utility production and processing facilities, or parts of those facilities within shorelines, only when there is no other feasible option.
4. Prohibit new solid waste disposal facilities or transfer facilities in shoreline areas except water-dependent solid waste transfer facilities which may be allowed in port or industrial areas.
5. Coordinate utility right-of-way acquisition and construction with transportation and recreation planning and also with other local government agencies and utility providers.

**C. Regulations.**

1. New solid waste disposal facilities or transfer facilities are prohibited in shoreline areas, except water-dependent solid waste transfer facilities may be allowed in port or industrial areas if they include a modern transfer system where all waste is either delivered to the site already containerized or waste is transferred to containers inside of an enclosed building.
2. Utilities should be underground, including underneath water bodies, unless such location would cause greater degradation to ecological functions or be technically prohibitive.
3. Appropriate measures shall be employed to protect public safety and prevent adverse impacts on navigation, public access, recreation and other approved shoreline development.
4. Parks, scenic views, and historic, archaeological and cultural resources shall be avoided unless no feasible alternative exists.
5. After construction, the work site shall be restored to the maximum extent possible.
6. Any mitigation required shall be maintained for the life of the project.
7. All normal utilities associated with a principal use shall be reviewed as part of the principal use.
8. Applicants shall demonstrate the need for a shoreline location, and if the utility is proposed outside of an existing right-of-way, why collocation within existing right-of-way is not feasible.

**18S.40.140 Water Access Facilities.**

The Water Access Facilities policies and regulations are intended to manage development of facilities that support water dependent uses such as mooring buoy, mooring piling, float, lift, railway, launching ramp, dock (pier, ramp, and/or float), marina, and water access stairs.

**A. Applicability.** This Section applies to water dependent facilities such as mooring buoy, mooring piling, float, lift, railway, launching ramp, dock (pier, ramp, and/or float), boathouse, and marina.

**B. Policies.**

1. Locate, design, and operate facilities so that other water-dependent and preferred uses are not adversely affected.
2. Discourage facilities that serve only one residence, and encourage facilities serving more than one residence.
3. Discourage railways, docks and launching ramps on shallow, gradually-sloping beaches that result in excessively long facilities, or normal length facilities that are nonfunctional (e.g., high and dry) a majority of the time.
4. Size facilities in small water bodies, such as coves, bays, and inlets to accommodate maneuverability and existing legally established uses.



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- 5. Give preference to facilities:
  - a. That provide public access and recreational opportunities;
  - b. That are landward of the ordinary high water mark (OHWM) such as upland dry storage marinas;
  - c. That are waterward of the OHWM that can be removed seasonally rather than permanent facilities; or
  - d. That minimize the amount of shoreline modification (e.g., buoys rather than docks).
- 6. Encourage the removal of unutilized or derelict facilities.
- 7. Restrict liveboards from extended mooring except when located at a marina.
- 8. Limit proposals located in a constricted body of water to ensure the site is not overrun with facilities, and has the flushing capacity necessary to maintain water quality.

**C. Regulations – General.**

- 1. New piers and docks shall be allowed only for water-dependent uses or public access and shall be the minimum size necessary to meet the needs of the proposed use. As used here, a dock associated with a single-family residence is a water-dependent use provided that it is designed and intended as a facility for access to watercraft or the water.
- 2. Floating facilities (including anchor lines) and vessels moored to all facilities shall not ground or beach on the substrate. Flotation material shall be fully enclosed and contained.
- 3. Facilities shall be stable against the elements and maintained in safe and sound condition.
- 4. Facilities waterward of the OHWM in marine waters shall consist of an open framework (e.g., pilings, grated surfaces, cable railings, floating facilities held in place with anchors) as opposed to solid surfaces with no openings, to the maximum extent feasible.
- 5. In- and over-water facilities shall be visible under normal day and nighttime conditions. Visual aids may include reflectors and warning lights.
- 6. Accessory uses shall be:
  - a. Limited to water-dependent recreation (such as fishing and swimming) and may involve the addition of swim ladders, diving boards, slides, trampolines, etc. where allowed; or
  - b. Related to boating, necessary for operation of the facility and/or provide water access.
- 7. Lighting (except for warning lights) shall be the minimum voltage and height necessary for safe use of the facility and shielded to prevent glare.
- 8. Utilities should be placed on or under, and not overhead, of the facility.
- 9. Off-shore facilities shall be:
  - a. Clearly marked with the owner's name, contact information and, if on State land, Washington State Department of Natural Resources (DNR) registration number; and
  - b. Located so that they balance the goals of avoiding nearshore habitat, minimizing obstructions to navigation, and minimizing impacts to legally established facilities and moored vessels.



- 1 c. Extended moorage on waters of the State shall be consistent with State
- 2 regulations.
- 3 10. Limited fill or excavation may be allowed landward of the OHWM to match the
- 4 upland with the elevation of the over-water structure.
- 5 11. Fueling facilities are prohibited, unless located at a marina.
- 6 12. Height of a facility should be the minimum necessary for safe operations.
- 7 13. In a constricted body of water, docks, except for residential docks, shall be allowed
- 8 only where there is one surface acre of water within the constricted body, measured
- 9 at mean low water, for each boat moorage (including buoys) within said constricted
- 10 body.
- 11 14. Maximum intrusion into the water shall be only so long as to obtain a depth of 8-feet
- 12 of water as measured at mean lower low water (MLLW) on saltwater shorelines, or
- 13 as measured at ordinary high water in freshwater shorelines, except that the intrusion
- 14 into the water of any pier or dock shall not exceed the lesser of 15 percent of the
- 15 fetch or the maximum allowed length.
- 16 15. New waterfront developments of two or more dwelling units and land divisions
- 17 containing two or more dwelling units within shoreline jurisdiction shall provide for
- 18 joint use water access, unless determined during the review of the project that such
- 19 joint use water access is infeasible due to topographic constraints.
- 20 16. Water access facilities are subject to Chapter 18E.110 PCC, Erosion Hazard Areas.
- 21 17. This Section shall not be circumvented by installing a motor, motor mount, oars, etc.
- 22 on a facility and registering it as a vessel.
- 23 D. **Regulations – Residential.** The following regulations apply to residential water access
- 24 facilities serving four or fewer parcels:
  - 25 1. Facilities may be allowed if a residential parcel meets the following criteria:
    - 26 a. The parcel abuts either the water's edge or is separated from the water's edge by
    - 27 an existing road that abuts the water's edge;
    - 28 b. The parcel is vacant or developed with a maximum of two dwellings (not
    - 29 including legally established accessory uses); and
    - 30 c. The parcel is not within a residential development having a previous land use
    - 31 decision that prohibits establishment of the facility.
  - 32 2. Residential properties may be served by one dock (including a pier, ramp and/or
  - 33 float). For purposes of this subsection, a residential dock may accommodate
  - 34 temporary floats and boat lifts. The following additional criteria shall apply to the
  - 35 number of water access facilities allowed:
    - 36 a. A parcel may have no more than one railway;
    - 37 b. A parcel may have no more than one mooring buoy or mooring piling except a
    - 38 second mooring buoy may be authorized to secure moorage when authorized by
    - 39 the Washington State Department of Natural Resources;
    - 40 c. Facilities attached to another facility (such as boat and jet ski lifts attached to
    - 41 docks) shall be considered permitted accessory uses.
  - 42 3. If a principal residence occupies more than one parcel, then the project site shall be
  - 43 considered one parcel for purposes of this Section.
  - 44 4. Use of residential water access facilities shall be limited to property owners,
  - 45 residents, and guests for recreational noncommercial purposes, except for those
  - 46 associated with a legally established home occupation or cottage industry.
  - 47 5. Docks and railways serving one parcel shall be subject to the following:



- 1 a. Applicants shall contact abutting shoreline owners and inquire about sharing any
- 2 existing legal facilities they may have or, if none exist, their interest in
- 3 participating in a new one;
- 4 b. Applicants shall demonstrate how they considered the use of existing facilities
- 5 and joint use of a new facility, and why these alternatives are not feasible; and
- 6 c. Docks may consist of shapes other than a straight line, such as a "U," "T," or "L,"
- 7 as determined by the appropriate reviewing authority.
- 8 6. Facilities serving more than one parcel, under the same or different ownership, shall
- 9 be subject to the following:
  - 10 a. Applications shall include documentation of all parcel property owners that
  - 11 would share the facility. Prior to construction or installation, the owners shall
  - 12 record with the County Auditor a joint-use agreement that will appear on the title
  - 13 of all parcels sharing the facility. The agreement should address apportionment
  - 14 of responsibilities/expenses, easements, liabilities, and use restrictions;
  - 15 b. Shoreline permits shall not be required for conversion of an existing, legal
  - 16 single-use facility to joint-use facility unless modifications are proposed.
  - 17 However, a joint-use agreement shall be recorded with the County Auditor and a
  - 18 copy provided to Planning and Land Services; and
  - 19 c. Docks may consist of shapes other than a straight line, such as a "U," "T," or "L,"
  - 20 as determined by the appropriate reviewing authority.
- 21 7. Water service and sewage pump-out facilities are allowed.
- 22 8. A facility or combination of facilities shall not enclose surface waters on all sides for
- 23 personal use (such as a swimming enclosure).
- 24 9. Boathouses.
  - 25 a. Boathouses shall be constructed landward of the OHWM;
  - 26 b. Boathouses may be served by utilities, but otherwise shall not be utilized for
  - 27 purposes other than boat storage;
  - 28 c. A boathouse may include a sink and toilet but shall not include other bathroom
  - 29 facilities or other human habitation accommodations;
  - 30 d. A boathouse shall be limited to a maximum of 300 square feet and shall not
  - 31 exceed a building height of 12 feet; and
  - 32 e. A boathouse may have a zero setback from the OHWM, but allowance of the
  - 33 boathouse shall not justify the need for shoreline armoring.
- 34 10. Launching ramps, and covered moorage that is not light penetrable, are prohibited
- 35 waterward of the OHWM.
- 36 11. Water access stairs shall not be constructed waterward of the OHWM. Landings
- 37 within the stairway shall be limited to the minimum size necessary to meet
- 38 applicable building codes.
- 39 E. **Regulations – Recreational and Marina.** The following regulations apply to facilities
- 40 serving more than four parcels, private and public recreational facilities, and marinas;
  - 41 1. Number of moorage facilities permitted:
    - 42 a. **Community recreational:** Maximum one moorage for each 20 feet of frontage,
    - 43 up to 200 feet, plus one moorage for each additional 10 feet of frontage (e.g., a
    - 44 20-boat facility would require 300 feet of frontage). In no case shall there be
    - 45 more than one moorage space for each parcel.



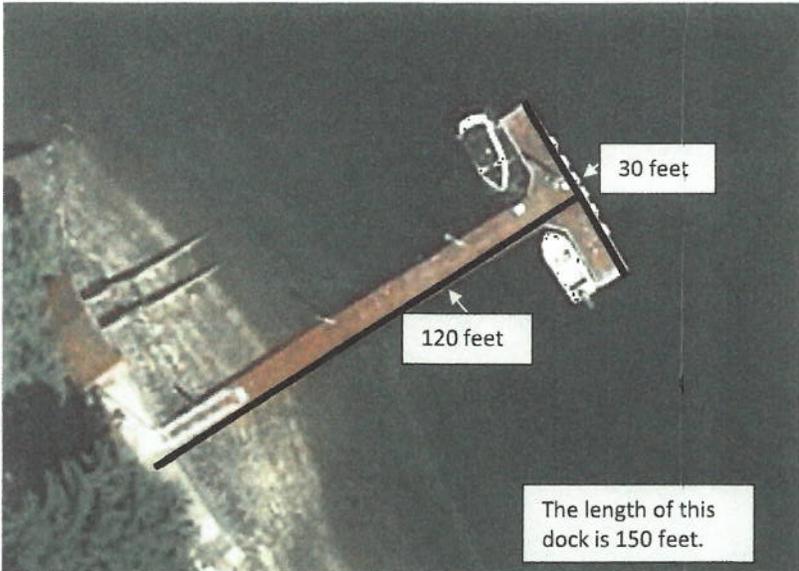
- 1 G. **Regulations – Dimension Tables.** Tables 18S.40.140-1 and 18S.40.140-2 contain  
2 dimension standards for boating facilities addressed in this Section. The following  
3 information pertains to the interpretation of the Table.  
4 1. Facilities attached to another facility, such as a pier and ramp attached to a dock,  
5 shall be considered separately for the purpose of dimensional measuring.  
6 2. Piling detached from, but utilized for, mooring/berthing to a dock, such as dolphin  
7 structures, shall not be considered part of the pier/dock dimension but shall be  
8 considered a separate facility.
- 9 H. **Regulations – Dimensions.** Refer to Tables 18S.40.140-1 and 18S.40.140-2 for  
10 dimension standards.  
11 1. Water Depth at Terminus means the vertical distance from the bottom of the water  
12 body to the water's surface at the end of the facility.  
13 a. On saltwater, the measurement is based upon mean lower low water (MLLW).  
14 b. On freshwater, the measurement is based upon the OHWM.  
15 c. For both salt and fresh water, depth shall be measured at the furthest point from  
16 the OHWM.  
17 2. Fetch means the distance across a water body measured in a straight line from where  
18 a facility connects to the OHWM to the closest point on the opposite shore.  
19 a. Fetch shall only apply to facilities that connect to the OHWM.  
20 b. Fetch shall be determined as follows:  
21 (1) Identify the location where the facility will connect with the OHWM.  
22 (2) Identify which direction the long axis of the facility will extend in/over the  
23 water.  
24 (3) From where the facility will connect with the OHWM, draw a line along the  
25 long axis.  
26 (4) Beginning at the point where the facility connects with the OHWM, draw  
27 two 45 degree angles extending waterward, one on each side of the line  
28 drawn along the long axis.  
29 (5) The fetch is the distance from where the facility connects to the OHWM to  
30 the closest point of OHWM on any shoreline that lies within either of the  
31 two 45 degree angles and is not located on the subject parcel.  
32 3. Length means the linear distance of a facility measured from the OHWM, except  
33 that for Lake Tapps, the linear distance of a facility shall be measured from the 543-  
34 foot elevation of the Lake. See Figure 18S.40.140-1, Length of Dock Measurement.  
35 4. Width means the distance of the facility measured from side to side.  
36 5. Setbacks waterward of the OHWM.  
37 a. For water access facilities located in bedlands or tidelands owned by the upland  
38 property owner, a minimum separation of 10 feet shall be maintained from the  
39 side property lines. For water access facilities located on bedlands or tidelands,  
40 not owned by the upland property owner (such as state-owned tidelands), a  
41 minimum separation of 10 feet should be maintained between the structure and  
42 the side property lines extended as per Appendix I, Waterfront Titles in the State  
43 of Washington. The placement of over- or in-water structures shall not  
44 substantially interfere with the use and enjoyment of the water or the over- or in-  
45 water structures on the neighboring property.  
46 b. For parcels that share a water access facility, setbacks shall not be required from  
47 their mutual property line.



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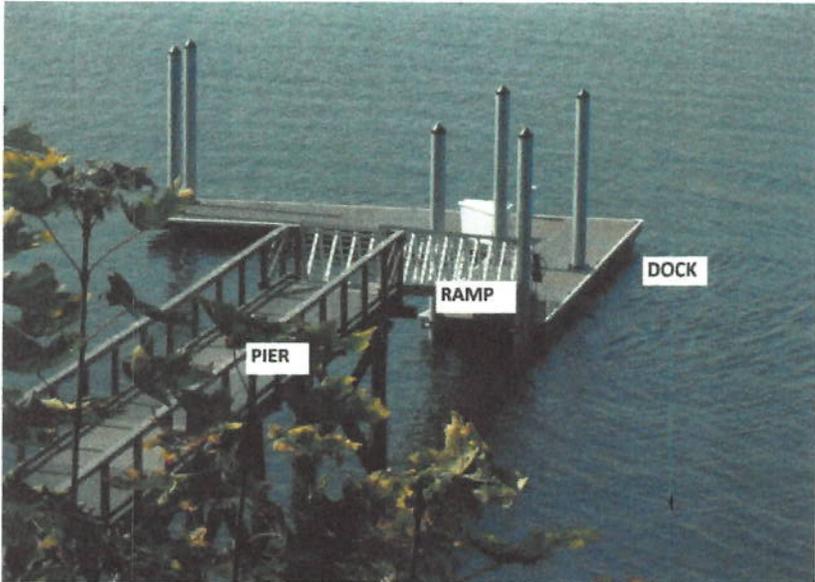
- c. Facilities authorized pursuant to PCC 18S.40.140 shall not extend over, or swing across, side property lines (of those not sharing the facility) without prior written authorization from the affected property owner(s).

**FIGURE 18S.40.140-1 -- Length of Facility Measurement**



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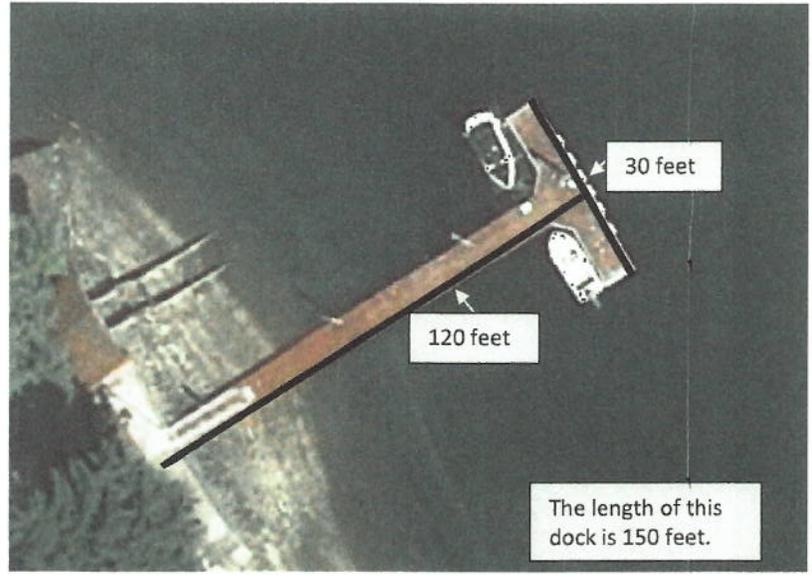
**FIGURE 18S.40.140-2 -- Pier, Ramp, Dock**



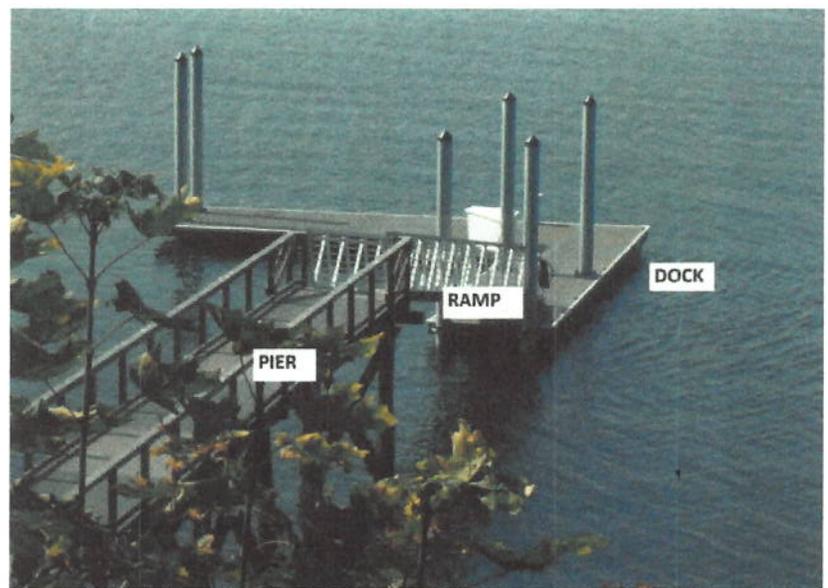
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c. Facilities authorized pursuant to PCC 18S.40.140 shall not extend over, or swing across, side property lines (of those not sharing the facility) without prior written authorization from the affected property owner(s).

**FIGURE 18S.40.140-1 -- Length of Facility Measurement**



**FIGURE 18S.40.140-2 -- Pier, Ramp, Dock**



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<b>Table 18S.40.140-1. Residential Water Access Facility Dimensions</b>			
<b>Water Depth at Terminus</b>	Dock or Railway		Minimum: 0 feet Maximum: 8 feet
<b>Fetch</b>	Dock or Railway		Maximum: 15 percent
<b>Length of Facility</b>	Dock, Ramp, Pier	Saltwater	Maximum: 150 feet, when serving one or two parcels. 175 feet, when serving three parcels. 200 feet, when serving four or more parcels.
		Freshwater	Maximum: 60 feet
	Railway		Maximum: 60 feet
<b>Width</b>	Pier Ramp		Maximum: 6 feet
	Dock Railway		Maximum: 8 feet
<b>Area</b>	Dock, Ramp, Pier	Saltwater	Maximum: 900 square feet when serving one or two parcels. 1,200 square feet when serving three or more parcels.
		Freshwater	Maximum: 360 square feet when serving one parcel. 480 square feet when serving two or more parcels.
	Float (not attached to land or a dock)		Maximum: 100 square feet, when serving one parcel. 200 square feet, when serving two to four parcels.

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<b>Table 18S.40.140-2. Recreational, Marina and Non-Recreational Water Access Facility Dimensions</b>			
<b>Water Depth at Terminus</b>	Recreational, Marina	Dock, Railway, Launching Ramp	Minimum: 0-feet Maximum: 8-feet
	Non-Recreational	As determined by the appropriate reviewing authority	
<b>Fetch</b>	Recreational, Marina	Dock, Railway, Launching Ramp	Maximum: 15%
	Non-Recreational	As determined by the appropriate reviewing authority	
<b>Length</b>	Recreational, Marina, Non-Recreational	As determined by the appropriate reviewing authority	
<b>Width and Area</b>	Recreational, Marina, Non-Recreational	As determined by the appropriate reviewing authority	

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1 **18S.60.040 Shoreline Substantial Development Permit.**

- 2 A. **Purpose.** The Shoreline Substantial Development Permit (SD) process provides a  
3 comprehensive review of development on shorelines to ensure compliance with the  
4 Shoreline Management Act (Act), Title 18S PCC, and any other applicable development  
5 regulations.
- 6 B. **Applicability.** This Section applies to development allowed on shorelines that do not  
7 meet the SD Exemption criteria.
- 8 C. **Review Process.** Shoreline Substantial Development Permits shall be reviewed  
9 administratively and shall include public notice and comment. This review process is  
10 required to ensure that the development, if established, will be in full compliance with  
11 applicable development regulations, the County Comprehensive Plan, applicable  
12 community plans, adjacent development, planned uses, and the character of the  
13 surrounding area.
- 14 D. **Decision Criteria.** The Director shall review applications for Shoreline Substantial  
15 Development in accordance with the following decision criteria:  
16 1. The proposal is consistent with the policies and procedures of the Act.  
17 2. The proposal is consistent with the Title 18S PCC policies and regulations including,  
18 at a minimum, the following:  
19 a. Policies and regulations of the shoreline environment designation (SED) in  
20 which the proposal is located;  
21 b. Policies and regulations for Shorelines of Statewide Significance if the proposal  
22 is within such area;  
23 c. Policies and regulations within the applicable General Policies and Regulations  
24 found in Chapter 18S.30 PCC; and  
25 d. Policies and regulations within the applicable Use and Development Policies and  
26 Regulations found in Chapter 18S.40 PCC.  
27 3. The proposal is consistent with the applicable provisions of Title 18E PCC.  
28 4. The proposal is consistent with the applicable policies of the Comprehensive Plan  
29 and any applicable Community Plan.  
30 5. The proposal is consistent with all applicable development regulations including, but  
31 not limited to Title 18A PCC, Development Regulations – Zoning.
- 32 E. **Burden of Proof.** The applicant has the burden of proving that a proposal meets all  
33 applicable criteria for a Shoreline Substantial Development Permit.
- 34 F. **Approval.** The Director may approve an application for a Shoreline Substantial  
35 Development Permit, approve with additional requirements obtained from other Sections  
36 of the County Code above those specified in the Master Program, or require  
37 modification of the proposal to comply with specified requirements or local conditions.
- 38 G. **Denial.** The Director may deny an application for a Shoreline Substantial Development  
39 Permit if the proposal fails to comply with specific standards found in the Master  
40 Program or if any of the decision criteria of PCC 18S.60.020 E.2.-6, are not supported  
41 by evidence in the record as determined by the Director.  
42

43 **18S.60.050 Shoreline Administrative Conditional Use Permit.**

- 44 A. **Purpose.** The purpose of a Shoreline Administrative Conditional Use Permit is to allow  
45 flexibility in the application of development regulations in a manner consistent with the  
46 policies of the Shoreline Management Act (Act). Conditions may be attached to the



1 permit to prevent undesirable effects of the proposal or to assure consistency of the  
2 project with the Act and the Master Program.

3 B. **Applicability.** This Section applies to uses allowed in Table 18S.60.030-1, Shoreline  
4 Permit Table, subject to approval of a Shoreline Administrative Conditional Use Permit  
5 (AC). Uses specifically prohibited by Title 18S PCC shall not be authorized pursuant to  
6 this Section.

7 C. **Review Process.** An administrative review process, which includes public notice, is  
8 required to ensure that the use, if established, will be in full compliance with applicable  
9 regulations and that such use is compatible with the Master Program, Comprehensive  
10 Plan, applicable community plan, adjacent development, planned uses, and the character  
11 of the surrounding area.

12 D. **Decision Criteria.**

- 13 1. The Director shall review the location of the proposal for compatibility with  
14 development permitted in the surrounding areas; and make further stipulations and  
15 conditions to reasonably assure that the basic intent of the Master Program will be  
16 served.
- 17 2. An Administrative Conditional Use Permit may be granted provided that the  
18 applicant demonstrates all of the following:
  - 19 a. That the proposed use is consistent with the policies of the Act and the Master  
20 Program;
  - 21 b. That the proposed use will not interfere with the normal public use of public  
22 shorelines, nor use of waters under the Public Trust Doctrine;
  - 23 c. That the proposed use of the site and design of the project is compatible with  
24 other authorized uses within the area and with uses planned for the area under the  
25 Comprehensive Plan and Master Program;
  - 26 d. That the proposed use will cause no significant adverse effects to the shoreline  
27 environment in which it is to be located;
  - 28 e. That the public interest suffers no substantial detrimental effect; and
  - 29 f. The proposed use is consistent with all applicable development regulations.
- 30 3. In the granting of all Shoreline Administrative Conditional Use Permits,  
31 consideration shall be given to the cumulative impact of additional requests for like  
32 actions in the area. For example, if Shoreline Administrative Conditional Use  
33 Permits were granted for other developments in the area where similar circumstances  
34 exist, the total of the conditional uses shall also remain consistent with the policies of  
35 RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline  
36 environment.

37 E. **Burden of Proof.** The applicant has the burden of proving that a proposal meets all  
38 applicable criteria for a Shoreline Administrative Conditional Use Permit.

39 F. **Approval.** The Director may approve an application for a Shoreline Administrative  
40 Conditional Use Permit, approve with conditions, or require modification of the  
41 proposal to comply with specified requirements or local conditions.

42 G. **Denial.** The Director may deny an application for a Shoreline Administrative  
43 Conditional Use Permit if the proposal fails to comply with specific standards found in  
44 Title 18S PCC, or if any of the decision criteria of PCC 18S.60.050 D. are not supported  
45 by evidence in the record as determined by the Director.  
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# Appendix A-3

1 **SHORELINES HEARINGS BOARD**  
2 **STATE OF WASHINGTON**

3 ERIC and KENDRA NIESZ,

4 Petitioners,

5 v.

6 PIERCE COUNTY,

7 Respondent,

8 JOHN and CHRISTINE WEST and  
9 WILLIAM and ERIN REETZ,

10 Intervenors.

SHB No. 16-011

FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND ORDER

11 Petitioners Eric and Kendra Niesz filed a petition with the Shorelines Hearings Board  
12 ("Board") for review of Pierce County's (County) denial of their request for a Shoreline  
13 Substantial Development Permit (SSDP) to construct a single-use dock. William and Erin Reetz  
14 and John and Christine West were granted leave to intervene.

15 The Board held a hearing on September 18, 2017, in Tacoma, Washington, and on  
16 September 19, 2017, in Tumwater, Washington. The Board considering this matter was  
17 comprised of Board Chair Thomas C. Morrill, presiding, and Board Members Robert Gelder and  
18 Grant Beck.<sup>1</sup> Attorney Dennis Reynolds represented Mr. and Mrs. Niesz. Deputy Prosecuting  
19 Attorneys Cort O'Connor and Todd Campbell represented the County. Attorney James  
20 Handmacher represented Intervenors John and Christine West. Attorney Margaret Archer  
21 represented Intervenors William and Erin Reetz. Pamela Nelson of Capitol Pacific Reporting  
provided court reporting services.

<sup>1</sup> Andrew Hayes was on the initial Board, but Mr. Hayes is no longer a member of the Board. Mr. Hayes was replaced by Mr. Beck.

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1 The Board visited the site,<sup>2</sup> received sworn testimony of witnesses, admitted exhibits, and  
2 heard arguments on behalf of the parties. Having fully considered this record, the Board enters  
3 the following:

4 **FINDINGS OF FACT**

5 1.

6 Eric and Kendra Niesz own a waterfront home at 695 Kamus Drive on Fox Island in  
7 Pierce County (Site). Ramos Testimony; Carlson Testimony; Exs. R-1, P-13. The Site, parcel  
8 number 01201108, is along the southwest side of Fox Island facing east toward Carr Inlet.  
9 Carlson Testimony; Exs. R-2, R-5. The Nieszs have lived at the Site since 2004. From 1990 to  
10 2004 the parents of Eric Niesz lived at the Site. Ramos Testimony. There is a large garage  
11 behind the home. Ramos Testimony; Ex. R-3. The waterfront portion of the Site is  
12 approximately 128 feet long. Ramos Testimony.

13 2.

14 The Site is located in a Conservancy Shoreline Environment and is zoned Rural 10. The  
15 tidelands adjacent to the Site are public. The state-owned aquatic lands are regulated by the  
16 Department of Natural Resources (DNR). Ramos Testimony; Carlson Testimony; Ex. P-19.

17 3.

18 **The Proposal**

19 In September of 2015, the Nieszs submitted an application for an SSDP to construct a  
20 single-use dock and place a mooring buoy 245 feet off shore at the Site (Proposal). Ex. R-1.

21 \_\_\_\_\_  
<sup>2</sup> Mr. Beck was not at the site visit, but he did attend the entire hearing.

1 The proposed dock would be 154 feet long, with 150 feet of the dock over water. The buoy  
2 would be 245 feet off shore. Carlson Testimony.

3 4.

4 The Nieszs initially attempted to develop the proposed dock as a joint-use dock. They  
5 asked the owners of the properties directly north and south of the Site, the Wests and the Reetz,  
6 if there was interest in participating in a joint-use dock development. The Wests and the Reetz  
7 declined to participate. Ramos Testimony; Ex. P-14.

8 5.

9 The 154-foot dock would consist of a 90-foot long by four-foot wide pier, a 46-foot long  
10 by three-foot wide ramp, and an eight-foot long by 24-foot wide float.<sup>3</sup> The pier and ramp would  
11 be supported by four steel piles and the float would be supported by four steel piles, for a total of  
12 eight steel piles that would be 10 inches in diameter. Carlson Testimony; Stroud Testimony; Ex.  
13 R-20. The piles supporting the pier and ramp would be approximately 42, 44, and 40 feet apart  
14 and the piles that support the float would be 24 feet apart. Ex. R-20.

15 6.

16 The pier and ramp would be constructed with 100 % fiberglass decking and grating to  
17 achieve 69% open area. The float surface would be constructed with 50% fiberglass grating to  
18 achieve 69% open area. Stroud Testimony; Ex. P-13, p. 3. The handrail on the pier and ramp is  
19 three inches wide and is three feet six inches above the surface of the pier and ramp. The sides  
20

21 <sup>3</sup> Although the ramp would be 46 feet long, a portion of the ramp would extend out over the float, so the total length  
of the pier-ramp-float would be 154 feet with 150 feet over water. Ex. R-20. For ease of reference the pier-ramp-  
float is referred to as the proposed dock throughout this decision.

1 of the pier and ramp are made of aluminum in a diagonal pattern that resembles roof trusses.  
2 Stroud Testimony; Ex. R-20.

3 7.

4 The pier of the dock would be attached to the top of a concrete bulkhead that runs along  
5 the east side of the Site. The bulkhead is two feet eight inches high. The dock would be located  
6 at the north end of the bulkhead, approximately 11 feet to the south of an existing concrete boat  
7 ramp. Carlson Testimony; Stroud Testimony; Exs. R-20(4), R-27(2).

8 8.

9 The proposed dock meets the dimensional criteria of the County Shoreline Management  
10 Use Regulations. Carlson Testimony. The criteria provide that a single-use dock may intrude  
11 into the water the lesser of 15 percent of the fetch or 150 feet on saltwater shorelines so long as  
12 no more than a depth of eight feet of water is obtained. Carlson Testimony; PCC  
13 20.56.040(B)(6)(a). The maximum length parallel to the shore can be no more than eight feet  
14 and a minimum of 10 feet of separation must be maintained between the structure and the  
15 property line. PCC 20.56.040(B)(6)(b&c). The proposed dock meets all of these dimensional  
16 criteria. Carlson Testimony; Ex. P-26, p. 11.

17 9.

18 **The Site**

19 The beach in front of the Site and along a significant portion of the southwest side of Fox  
20 Island is a gravel beach with a gradual slope. Carlson Testimony; Reetz Testimony; West  
21 Testimony; Exs. R-6, R-7, R-12, R-13, R-25. The gradually sloping gravel beach in front of the

1 Site and to the north and south of the site is a good beach for walking along the shoreline. *Id.*

2 The Site faces to the east with views of the water and the Olympic Mountains. Ex. R-26(2).

3 10.

4 John and Christine West own property adjacent to and South of the Site. The West  
5 property consists of two parcels. The parcel immediately to the south of the Site is vacant, and  
6 the Wests live in a house on the next parcel. West Testimony; Ex. R-3. The West property is  
7 also low-bank waterfront, and it has a rock wall bulkhead. West Testimony; Exs. R-4, R-6.

8 11.

9 Directly to the south of the West's property is a public access point for the beach. West  
10 Testimony; Carlson Testimony; Exs. R-3, R-21. Although there are some parking restrictions,  
11 there are locations for the public to park and the public access is commonly used by people who  
12 do not live along the beach. West Testimony; Reetz Testimony; Heim Testimony.

13 12.

14 William and Erin Reetz own property along the beach directly to the north of the Site.  
15 Reetz Testimony; Ex. R-3. There is a house on the Reetz property that is used by the Reetz as a  
16 second home. Erin Reetz testified that their other home is nearby, and she spends approximately  
17 half of her time at the beach house. Reetz Testimony. The Reetz property is also low-bank.  
18 Their home is protected by a bulkhead that consists of rocks and driftwood. Reetz Testimony;  
19 Exs. R-23(4), R-41.

1 13.

2 Access to the beach north and south of the Site is possible, in part, due to the absence of  
3 docks. West Testimony; Reetz Testimony; Watkins Testimony; Heim Testimony. There are no  
4 private docks along the entire southwest side of Fox Island. Carlson Testimony; Ex. R-5. The  
5 nearest dock to the south of the Site is a County pier that is approximately 3.1 miles away. *Id.*  
6 The nearest dock to the north of the Site is a Navy pier that is approximately 1.4 miles away. *Id.*  
7 The nearest private dock is around the north end of Fox Island beyond the sand spit along Bella  
8 Bella Drive. Exs. R-5, R-18.

9 14.

10 The beach in the area near the Site is commonly used by people who live nearby and by  
11 the public in general. West Testimony; Reetz Testimony; Watkins Testimony; Heim Testimony.  
12 The use of the beach includes walking, accessing the water for diving and swimming, and  
13 accessing the water with water craft such as paddle boards, kayaks, and various types of small  
14 and larger boats. *Id.* People using small water craft such as paddle boards and kayaks tend to  
15 stay close to the shoreline in shallow water, both for enjoyment and due to safety concerns. *Id.*

16 15.

17 **Potential Impacts to Use of the Beach**

18 The neighbors who testified all stated that the proposed dock would prevent them from  
19 walking along the beach at many tides and would require people using small water craft to go out  
20 around the dock at many tides. *Id.* They also all stated that they believe the proposed dock is out  
21 of character with the area as there are no other private docks along the southwest side of Fox

1. Island. They stated that the lack of docks provides a unique environment for exploring and  
2 enjoying the shoreline for more than a mile both north and south of the Site. *Id.*

3 16.

4 As noted above, the beach adjacent to the Site is a publicly owned beach. Ramos  
5 Testimony; Carlson Testimony; Exs. P-19, P-20. Although the proposed dock does not require a  
6 lease from DNR, the regulations that govern the construction of docks over state-owned  
7 tidelands require that docks be located in a manner that provides "a safe, convenient, and clearly  
8 available means of pedestrian access over, around, or under the dock at all tide levels." WAC  
9 332-30-144(4)(d); Ex. P-20. Mr. Ramos acknowledge that the Project, as presented to the  
10 Hearing Examiner, does not meet the DNR requirement for pedestrian access over, around, or  
11 under the dock at all tide levels. Mr. Ramos stated, however, that the Nieszs intended to comply  
12 with the DNR requirement concerning pedestrian access, and that the Project would be modified  
13 as necessary to ensure compliance. Ramos Testimony.

14 17.

15 The Board determines that the beach adjacent to the Site and going north and south of the  
16 Site is commonly used by the neighbors and the public for walking. In addition, due to the  
17 gradual slope of the beach, the low height of the bulkhead and the placement of the proposed pier  
18 on top of the bulkhead, the ability to walk along the beach will be impacted by the proposed  
19 dock. The evidence concerning how far the tide would have to be out to allow people to walk  
20 under the dock was insufficient to support a specific finding as to which tide levels will be  
21 associated with public access issues. Wendell Stroud, the contractor for the dock, testified that to

1 get five feet of clearance under the pier, the tide would need to be approximately at the location  
2 of the first piling which is 42 feet waterward of the bulkhead. Stroud Testimony; Ex. R-20(1).  
3 Two photographs showing a six-foot tall man standing on the beach in the area where the pier  
4 would be placed provide some support for Mr. Stroud's rough calculation. Ex. R-29. Based on  
5 the evidence presented, the Board determines that at many tide levels, people will not be able to  
6 walk unimpeded under the pier.

7 18.

8 **Potential Alternatives to a Dock**

9 Because there are no private docks on the southwest side of Fox Island, it is common for  
10 waterfront property owners to secure a boat to a mooring buoy in front of their property during  
11 the boating season. *Id.* To access their boats, people use a small craft such as a dingy that can be  
12 stored on shore and transported over the beach and launched in shallow water. A boat secured to  
13 a buoy may be accessed with a small craft that is then secured to the buoy. The larger boat that  
14 was secured to the buoy is brought close to, or onto, the shore to allow additional individuals to  
15 board the boat. When the boating activity is complete, the process is reversed, and the larger  
16 boat is left secured to the buoy for the next use. *Id.*

17 19.

18 The boating season in the area near the Site runs from approximately late May to late  
19 September due to winter storms that occur along the southwest side of Fox Island. *Id.* The long  
20 open fetch across Carr Inlet from Fox Island is subject to significant storms in the winter months  
21

1 which create safety issues for storing a boat on a mooring buoy. Watkins Testimony; Heim  
2 Testimony; Exs. R-30(1)-R-30(16).

3 20.

4 The Nieszs have a boat which they access with a dingy. The dingy is stored along the  
5 north side of the Niesz bulkhead. Ramos Testimony; Ex. R-15. While in the water, the boat sits  
6 on a boat lift that is attached to a mooring buoy. Ramos Testimony; Exs. R-27(3), R-39. The  
7 boat lift can raise the boat out of the water, but it is not secure enough to withstand winter storms  
8 and thus is only used during the boating season. Ramos Testimony. The Nieszs also have a  
9 concrete boat ramp on the north end of the Site that is 12.5 feet wide and 96 feet long. The boat  
10 ramp extends 58 feet waterward of the property line onto the beach and is usable at many tide  
11 levels, but not all tide levels. Ramos Testimony; Halsan Testimony; Exs. R-16, R-17, R-20(3).

12 21.

13 The Nieszs are requesting the proposed dock to allow easier and safer access to their boat  
14 during the normal boating season and to extend the boating season by creating a safer mooring  
15 location for their boat in the winter. Ramos Testimony. They remove their boat and the boat lift  
16 from the water in the winter months. *Id.* Jordan Ramos, a son-in law of the Nieszs, stated that  
17 the Nieszs have an extended family that has owned and used the Site since 1990. He stated that  
18 the Site is used continuously by various family members and that some of them have difficulty  
19 accessing the boat from a dingy or the beach due to their age. He also stated that there are safety  
20 concerns with having children access the boat from a dingy or the beach. Ramos Testimony.

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22.

Mr. Ramos stated that there is no public moorage for the Niesz boat on Fox Island and that other available public moorage is not close enough to be a reasonable alternative to the proposed dock. Ramos Testimony. Matt Heim lives in the third house to the south of the Niesz property. He stated that he moors his boat on a buoy during boating season and at the Narrows Marina on the other side of Carr Inlet in the winter. He stated that the drive to Narrows Marina is approximately 20-25 minutes by car from his house. Heim Testimony.

23.

The Board determines that due to the composition of the beach materials and the gradual slope of the beach in the area around the Site, accessing a boat secured to a buoy and bringing it to the beach for loading and unloading is a reasonably manageable activity. This process has been used by home owners, including the Niesz, along the southwest side of Fox Island for many years. West Testimony; Reetz Testimony; Watkins Testimony; Heim Testimony.

24.

Tom Watkins testified for the Reetz concerning the potential for using a dock to extend the boating season and moor a boat during the winter. Mr. Watkins stated that the dock would potentially sustain significant damage due to the strength of winter storms, and that a boat moored to a dock in this area would not be safe in the winter. He did not expect a dock to significantly extend the boating season as a boat should not be moored throughout the winter in this exposed area and winter boating is not common. Watkins Testimony.

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25.

Ms. Reetz also testified that she is concerned that the proposed dock will change the manner in which driftwood moves up and down the beach which could have an impact on her property and on the public's ability to access the beach. Reetz Testimony.

26.

Mr. Stroud testified that the dock is designed to withstand the type of weather conditions experienced at the Site. He also stated that he did not expect the dock to impact the movement of driftwood up and down the beach because the distances between the support piles is at least 40 feet, which should be sufficient to allow logs to move through or around the dock. Stroud Testimony.

27.

The Board determines that although the dock may be designed to withstand the types of storms expected at the Site, the Nieszs have not established that the addition of the dock will significantly increase the boating season or increase access to the water in the winter months. The Nieszs did not establish that it is safe to leave their boat moored to a dock throughout the year or that there would be significant use of their boat during the winter months.

28.

**Potential Impacts to Views**

Mr. West and Ms. Reetz both testified that they believe the dock will have an undue impact on the views from their properties. West Testimony; Reetz Testimony. They stated that because their homes are at the same level at which the dock will be placed on the bulkhead, and

1 because the beach has a gradual slope, their view will be directly impacted by the pier, the ramp  
2 and the float in a significant manner. The neighbors also stated that part of what makes their  
3 views unique is the absence of any docks along this side of Fox Island. The addition of a dock in  
4 the current environment would change the character of the beach, which would negatively  
5 impact their views. *Id.* Ms. Reetz also stated that the proposed dock will unduly impact her  
6 view of the beach from the water when she is on the water in a boat or kayak. Reetz Testimony.

7 29.

8 Carl Halsan, a consultant for the Niesz, and Mr. Stroud testified that the dock was  
9 designed to minimize view impacts with the use of certain materials and spacing. Halsan  
10 Testimony; Stroud Testimony. Mr. Halsan acknowledged that the dock will impact views, but  
11 he did not believe the impact will be undue in light of the potential to see through portions of the  
12 dock, the remaining views of the shoreline and horizon that will not be impacted and the fact that  
13 docks are common on shorelines. Halsan Testimony.

14 30.

15 The parties did not submit a view analysis demonstrating the expected view impacts of  
16 the proposed dock. The evidence concerning view impact included photographs of the existing  
17 beach with a dock structure superimposed in the photograph to demonstrate a conceptual impact  
18 on some of the views. Exs. R-24, R-31.

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31.

County's Review and Process

The Gig Harbor Peninsula Advisory Council (PAC) considered the Proposal on April 13, 2016. Ex. P-22. The PAC advises Pierce County officials including the Hearing Examiner and the Pierce County Planning and Land Services on land use matters within defined geographic areas. PCC 2.45.010. The PAC recommended denial of the proposed dock and approval of the buoy. Ex. P-23, p. 4.

32.

The County issued a Determination of Nonsignificance (DNS) for the Proposal on July 11, 2016. Ex. P-12. No comments or appeals were submitted on the DNS. Ex. P-27, p. 1.

33.

The County Hearing Examiner held a public hearing on the Proposal on September 28, 2016. Ex. P-28, p. 2X. The County Department of Planning and Land Services submitted a Staff Report which recommended that the Hearing Examiner deny the proposal for the dock and approve the proposal to place the mooring buoy. Ex. P-27, p. 13.

34.

The Hearing Examiner found that the proposed dock: does not comply with the "Definition and Purposes" of the Conservancy Environment, is not consistent with applicable policies of the Piers element of the SMP, and is not consistent with the General Criteria and Guidelines for Piers and Docks. Ex. P-28, pp. 11X-20X. The Hearing Examiner also found that due to the low-bank/no-bank waterfront, the proposed dock would have an undue impact on the

1 views from the surrounding parcels and also from the publically owned shoreline. Ex. P-28, p.  
2 17X.

3 35.

4 The Hearing Examiner denied the request for construction of the dock and approved the  
5 request to install a mooring buoy.

6 36.

7 The Nieszs timely appealed the denial of their request for an SSDP for the proposed  
8 dock. The decision to grant the request for a mooring buoy was not appealed by any party.

9 37.

10 Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

#### 11 CONCLUSIONS OF LAW

12 1.

13 The Board has jurisdiction over this matter pursuant to RCW 90.58.180. The scope and  
14 standard of review for this matter is *de novo*. WAC 461-08-500(1). The Nieszs have the burden  
15 of proving that the proposed dock is consistent with the requirements of the Shoreline  
16 Management Act (SMA) and the County SMP. RCW 90.58.140(7).

17 2.

18 The following issues were identified for resolution in the Amended Prehearing Order:

- 19 1. Is the petitioner's proposal for a single use dock, approximately 154 feet  
20 long (150 feet over water) and eight foot wide, consistent with the  
21 applicable provisions of the Pierce County Shoreline Master Program, the  
Washington State Shoreline Management Act (90,58 RCW), Washington  
Administrative Code (Chapters 332-30, 461-08, 173-26, and 173-27), and  
any other applicable local regulations and plans?

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- 1 2. Does the fact that the proposed dock is the first proposed in a defined  
2 Stretch of Puget Sound somehow disqualify it from approval when it is a  
permitted use?
- 3 3. Will the proposed dock unduly impair views taking into account that its  
4 design meets all dimensional criteria?
- 5 4. Considering Department of Natural Resources regulations and enabling  
6 statutes, WAC 332-30-144(4)(d) and RCW 79.105.430, does the fact that  
the Petitioners have not obtained a lease for use of state-owned tidelands  
7 disqualify the proposal from approval?
- 8 5. Can the dock proposal be mitigated to provide safe, convenient and clearly  
9 available pedestrian access over, around and under the dock at all tide  
10 levels?
- 11 6. Does the fact that neighbors were offered but refused a joint-use dock  
12 proposal disqualify the application for approval because it is still  
13 considered a "single-use" dock?
- 14 7. Under the facts and circumstances, is use of the Nieszes' existing mooring  
15 buoy and boat ramp unfeasible?
- 16 8. Where SMP policies are implemented by adopted use regulations, and  
17 those regulations permit private recreational single-use docks in the  
18 applicable shoreline designation, may those policies nevertheless be  
19 interpreted and applied such to disqualify the dock proposal from  
20 approval?
- 21 9. Can the Gig Harbor Community Plan be interpreted and applied to  
prohibit the dock proposal?
- 10 Does the failure to appeal the County's SEPA decision relating to the dock  
11 proposal foreclose contending that elements of the environment disclosed  
12 in the SEPA Checklist for the project are foreseeable, significant and/or  
13 incapable of being mitigated?
- 14 11. Under the facts and circumstances, are significant cumulative impacts  
15 reasonably foreseeable?
- 16 12. Whether the SSDP should be denied based on a cumulative impact  
17 analysis utilizing the factors set forth in *De Tienne*, SHB No. 13-016?

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1 13. Whether the SEPA declaration of non-significance issued by Pierce  
2 County limits the Board's review of impacts from the Project?

3 3.

4 **A. Compliance with SMA and SMP (Issues 1-9)**

5 "The policy of the SMA was based upon the recognition that shorelines are fragile and  
6 that the increasing pressure of additional uses being placed on them necessitated increased  
7 coordination in their management and development." *Buechel v. State Dep't of Ecology*, 125  
8 Wn. 2d 196, 203, 884 P.2d 910, 915 (1994). "The SMA does not prohibit development of the  
9 state's shorelines, but calls instead for 'coordinated planning ..., recognizing and protecting  
10 private property rights consistent with the public interest,'" (quoting RCW 90.58.020). *Samson*  
11 *v. City of Bainbridge Island*, 149 Wn. App. 33, 46, 202 P.3d 334, 341 (2009)(citations deleted).

12 4.

13 The proposed single use dock is not a preferred use under the policies of the SMA.

14 *Samson v. City of Bainbridge Island*, 149 Wn. App. at 50-1. In *Samson*, the Court noted that:

15 [T]he reference in RCW 90.58.020, to single-family residential uses and  
16 their appurtenant structures, does not specifically list docks or piers. Piers  
17 are listed however, as a preferred use, under improvements which  
18 facilitate public access to the state's shorelines. We conclude that the  
19 Legislature purposefully distinguished between public and private piers  
20 and did not apply any particular preference to the latter, which would limit  
21 public access in, rather than promote public access to the waters of the  
state.

1 *Id.* at 50, 51. Although the proposed dock is an allowed use, Pierce County encourages the  
2 construction of joint-use or community-use docks and piers "whenever feasible so as to lessen  
3 the number of structures projecting into the water." PCC 20.56.020.

4 5.

5 The proposed dock must meet the requirements for an SSDP. PCC 20.56.030(B). In  
6 Pierce County, an SSDP may be granted only if the proposed development is consistent with the  
7 policies of the SMP and with the criteria set forth in PCC 20.56.040. PCC 20.56.040(A). Here  
8 the relevant SMP is the Pierce County SMP passed in 1974<sup>4</sup>.

9 6.

10 The Site is located in the Conservancy Environment which is "designed to protect,  
11 conserve and manage existing natural resources and valuable historic and cultural areas in order  
12 to ensure a continuous flow of recreational benefits to the public and to achieve sustained  
13 resource utilization." PCC 20.14.010.

14 7.

15 The general regulations and policies for the Conservancy Environment also provide that  
16 areas in the Conservancy Environment "should maintain their existing character." PCC  
17 20.14.202(A).

18 8.

19 In addition to the general policies and regulations for Conservancy Environments, the  
20 SMP contains policies applicable to piers that are set out in the SMP Phase I, Goals and Policies.

21 \_\_\_\_\_  
<sup>4</sup> Pierce County has passed a new SMP but Ecology has not yet approved it.

1 § 5 T, subsections (a)-(o)(SMP Piers Policies). The Nieszs argue that the specific regulations in  
2 the SMP control over the SMP Piers Policies.

3 9.

4 The Board declines to consider the regulations in the SMP separate from the applicable  
5 policies. The SMP provides that the Board must determine whether the proposed dock is in  
6 "conformance with the use activity regulations as well as the goals and policies of Phase I of the  
7 Master Program." PCC 20.20.010. Moreover, PCC 20.56.040A requires a determination of  
8 whether the proposed dock is consistent with the policies of the SMP in addition to the specific  
9 criteria set forth in the SMP.

10 10.

11 The SMP Piers Policies that are at issue in this matter are Piers Policies (d), (e), and (f)  
12 which provide:

13 (d) Piers associated with single family residences should be discouraged.

14 (e) In considering any pier, considerations such as environmental impact,  
15 navigational impact, existing pier density, parking availability, and impact  
on adjacent proximate land ownership should be considered.

16 (f) Encourage the use of mooring buoys as an alternative to space-  
17 consuming piers such as those in front of single family residences.

18 SMP at pp. 37-38; Ex. P-26.

11.

1 As discussed above, the proposed dock must comply with both the SMP Piers Policies  
2 and with applicable regulations in the SMP.<sup>5</sup> The SMP sets forth specific criteria that must be  
3 met to issue an SSDP for the proposed dock. The criteria are as follows:

4. 1. Important navigational routes or marine oriented recreation areas will not  
5 be obstructed or impaired;
- 6 2. Views from surrounding properties will not be unduly impaired;
- 7 3. Ingress-Egress as well as the use and enjoyment of the water or beach on  
8 adjoining property is not unduly restricted or impaired;
- 9 4. Public use of the surface waters below ordinary high water shall not be unduly  
10 impaired;
- 11 5. A reasonable alternative such as joint use, commercial or public moorage  
12 facilities does not exist or is not likely to exist in the near future;
- 13 6. The use or uses of any proposed dock, pier or float requires, by common and  
14 acceptable practice, a Shoreline location in order to function;
- 15 7. The intensity of the use or uses of any proposed dock, pier and/or float  
16 shall be compatible with the surrounding environment and land and water  
17 uses.

18 PCC 20.56.040(A).

12.

19 The Nieszs argue that the proposed dock will not interfere with the recreational benefits  
20 of the public or be inconsistent with the existing character of the surrounding area. They assert  
21 that the public will be able to walk under the pier at many tides and that water craft can either go

<sup>5</sup> Although the Gig Harbor Peninsula Advisory Council recommended denial of the proposed dock, the Board's review of the decision to deny the dock is based on the County SMP not on the Gig Harbor Community Plan.

1 under the pier and ramp or go out and around the structure on the water. They also assert that  
2 because they are required by DNR regulations to provide access to the public over or around the  
3 dock at all tides, the Board should find that there will be no interference with any recreational  
4 benefits to the public. Finally, the Nieszs argue that the surrounding area is highly developed  
5 with waterfront homes and that a single dock will not be inconsistent with the character of that  
6 area.

7 13.

8 The Respondents argue that the dock will block public access to the beach at many tides  
9 and would interfere with a continuous flow of recreational benefits to the public, which is  
10 inconsistent with the definition and purpose of the Conservancy Environment. The Respondents  
11 also argue that the proposed dock does not comply with the general regulations and policies for  
12 the Conservancy Environment because it would not be consistent with the existing character of  
13 the shoreline which is free of protruding waterward structures. In addition, Respondents argue  
14 that the only Proposal that is before the Board is the Proposal that was submitted to the Hearing  
15 Examiner for review. Respondents assert that the Nieszs may not attempt to amend their  
16 Proposal by offering to make whatever changes are necessary to comply with the DNR  
17 pedestrian requirement.

18 14.

19 The Board agrees with Respondents that the Proposal that is before the Board in this  
20 matter is the proposed dock and mooring buoy as submitted to the Hearing Examiner. The offer  
21 by the Nieszs to make changes to the Proposal to ensure compliance with DNR's pedestrian

1 requirements and the County's public access provisions are not conditions that the Board may  
2 consider because the Board is limited to a review of the specific permit or permit application  
3 before it. *See Hayes v. Yount*, 87 Wn.2d 280, 291, 552 P.2d 1038 (1976).

4 15.

5 As to the initial part of the first regulatory criterion, important navigational routes, the  
6 Board concludes that there are no important navigational routes that would be obstructed or  
7 impaired by the proposed dock. However, the Board concludes that marine oriented recreation  
8 areas will be obstructed and impaired by the proposed dock. The use of the beach to access the  
9 water will be obstructed and impaired. Due to the fact that the bulkhead is only 2 feet 8 inches  
10 high and the pier will be attached on top of the bulkhead and extend out over a gradually sloping  
11 beach from that height, the distance between the bottom of the pier and the beach will prohibit  
12 the public from walking along the beach at many tides. Ex. R-29. The use of the near shore  
13 water for marine recreation will also be obstructed and impaired as swimmers and people on  
14 small watercraft will be required to go around the proposed dock at many tide levels. *Id.*<sup>6</sup>

15 16.

16 As to the second criterion, whether views from surrounding properties will be unduly  
17 impaired, the Board concludes that views from the surrounding properties will be impaired but  
18 not unduly. The evidence before the Board does not sufficiently demonstrate the degree to  
19 which the views from the West home or the Reetz home will be impacted by the proposed dock.

20  
21 <sup>6</sup> Although not necessary to the Board's analysis concerning whether the proposed dock is consistent with the SMA and the County SMP, the Board also determines that the proposed dock does not comply with WAC 332-30-144(4)(d).

1 The proposed dock will have a significant impact on the Wests' view looking north and the  
2 Rectzs' view looking south due to the fact that the homes are on low-bank waterfront and the  
3 pier will be at the approximately the same level as the homes. However, the structure will not  
4 completely block any views and there are significant portions of the views from both homes that  
5 will not be impacted at all. Accordingly, the Board determines that, based on the information  
6 presented, the proposed dock will not unduly impair the views from surrounding properties.

7 17.

8 As to the third criterion, undue impairment or restriction on ingress and egress and use  
9 and enjoyment of the water or beach by adjoining properties, the Board concludes there would be  
10 undue restriction and impairment as to the use of the beach. As discussed above, the distance  
11 between the bottom of the pier and the beach will prevent the adjoining property owners from  
12 walking along the beach at many tides. Although the limited distance between the surface of the  
13 water and the bottom of the pier will require neighbors who swim, or use small watercraft to go  
14 out around the pier at certain tide levels, the Board determines that this would not result in an  
15 undue impairment or restriction.

16 18.

17 As to the fourth criterion, undue impairment of the public's use of waters below ordinary  
18 high water, the Board concludes, as discussed above, that the public's use of the surface waters  
19 below ordinary high water would not be unduly impaired by the need to go around the proposed  
20 dock at many tide levels when swimming, or using small water craft.

21  
FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER  
SHB No. 16-011

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19.

The fifth criterion requires the Nieszszs to demonstrate that there is no reasonable alternative such as joint-use, commercial, or public moorage facilities and that such a reasonable alternative is not likely to exist in the near future. The fifth criterion advances the SMP Pier Policies which discourage piers associated with single-family residents and encourage the use of mooring buoys. The Nieszszs have established that a joint-use dock is not an available option at this time as they attempted to enter into a joint-use dock arrangement with both of their neighbors. However, even though a joint-use dock is not an available option, the Board concludes that other reasonable moorage alternatives exist for the Nieszszs.

20.

The Nieszszs have lived at the Site since 2004, and Mr. Nieszszs' family has lived at the Site back to 1990. The Nieszszs, like all of the other residents along the beach on the southwest side of Fox Island currently access the water through the use of a mooring buoy. The nature of the beach at the site allows for the use of a small boat to access a larger boat stored on a buoy and it also allows for the larger boat to come close enough to the shore to load additional people. Unlike many other properties, the Nieszszs also have a boat ramp on their property which allows them to launch their larger boat at many tides.

21.

The testimony from the neighbors established that a mooring buoy is a reasonable alternative to a dock at this location and that it has worked as a reasonable alternative along the beach at and near the Site for many waterfront residents. Moreover, in light of the weather

1 experienced in the open water fetch at the site, it is unlikely that a dock would allow the Nieszs  
2 to significantly increase their use of the water in the winter months. The boating season,  
3 commonly runs from late spring to early fall due to the weather and winter storms. The  
4 unprotected nature of the beach makes it unlikely that the Nieszs would leave a boat moored to  
5 the dock throughout the winter. Although a dock may make it more convenient to use a boat in  
6 the summer months, a mooring buoy is a reasonable alternative to a dock at this location.

7 22.

8 The Nieszs' request for the dock is based in part on their desire to provide easier access  
9 to their boat for elderly family members who have difficulty accessing the boat from the beach,  
10 and for younger children who need help accessing boat from the beach or the dingy. The Board  
11 has previously refused to consider the age and health of the applicant in evaluating whether  
12 approval for a dock SSDP should be granted. *Walker and Seidl v. San Juan County*, SHB No.  
13 09-012 COL 8 (August 27, 2010).

14 23.

15 As to the seventh criterion,<sup>7</sup> whether the intensity of the use is compatible with the  
16 surrounding land and water uses, the Board has already found that this beach is regularly used by  
17 the public for walking. There are no other private docks along the entire southwest side of Fox  
18 Island. More than a mile of beach north and south of the Site is unimpaired with structures.  
19 Moreover, the gradual slope and gravel structure of the beach provides the public with an  
20 excellent location for a long walk on the beach with beautiful views of the water and the

21  

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<sup>7</sup> The sixth criterion is not in dispute.

1 Olympic Mountains. As proposed, the dock would present an impediment to the public's use of  
2 the beach.

3 24.

4 The seventh criterion relates to SMP Piers Policy (e), which addresses existing pier  
5 density. Here, there are no private docks on a multiple mile stretch of shoreline, and the Board  
6 has concluded that this proposed dock will interfere with marine-oriented near-shore recreation  
7 and will interfere with the public's use of this stretch of beach.

8 25.

9 The Niesz argue that their proposed dock cannot be denied merely because it will be the  
10 first dock in the area. They cite to *May v. Robertson*, 153 Wn. App. 57, 218 P.3d 211 (2009) for  
11 the proposition that the absence of docks is not determinative of whether a dock should be  
12 allowed. Niesz Prehearing Brief, pp. 11-13. The Board agrees that the absence of docks is not  
13 determinative of the decision on whether the intensity of use is compatible or whether a dock  
14 would be inconsistent with existing pier density.

15 26.

16 Each application must be considered on its own merits. In *May*, the proposed pier was a  
17 joint-use pier which was encouraged by the County policies and which was not subject to the  
18 requirement that the applicant consider reasonable alternatives. *May*, 153 Wn. App at 84-85.  
19 The dock at issue here is a single-use facility. While the Niesz attempted unsuccessfully to  
20 engage their neighbors in a joint-use dock, this does not excuse them from the requirement to  
21 consider the availability of other alternatives. The Board has already concluded that other

1 reasonable alternatives to a single-use dock are available. Moreover, in *May* the proposed joint-  
2 use pier was determined to be consistent with the area's Rural Residential Environment shoreline  
3 designation and the area's existing land and water activities. *May*, 153 Wn. App at 87. The  
4 proposed dock in this matter would interfere with marine-oriented near-shore recreation and the  
5 use of the beach by walkers.

6 27.

7 In light of the specific impacts of the dock proposed by the Niesz and the County's  
8 policy of discouraging single-use docks, the Board concludes that the intensity of use concerning  
9 the proposed dock is not compatible with the surrounding land and water uses and the proposed  
10 dock is not consistent with existing pier density. The Board is not ruling that all docks are  
11 prohibited along the southwest side of Fox Island. Although the proposed dock would not be  
12 compatible with the land and water uses in the area or the existing pier density, other docks may  
13 not have the impacts of the proposed dock or the reasonable alternative of the proposed dock.

14 28.

15 **C. Cumulative Impacts (Issues 11-12)**

16 The Board has held in past cases that it may consider cumulative impacts resulting from  
17 the approval of an SSDP pursuant to the SMA and local SMP, separate from SEPA. *Garrison v.*  
18 *Pierce County (De Tierne)* SHB 13-016c (January 22, 2014), affirmed, *De Tierne v. Shorelines*  
19 *Hearings Bd.*, 197 Wn. App. 248 (2016). In the *Garrison* decision, the Board stated:

20 The Supreme Court has, in fact, recognized that approval of one project  
21 can set a precedent for others to follow, and that it is proper for the Board  
to consider cumulative impacts that might occur from the granting a

1 substantial development permit. *Id.*, citing *Skagit County v. Department of*  
2 *Ecology*, 93 Wn.2d 742, 750, 613 P.2d 121 (1980).

3 *Garrison*, COL 21.

4 29.

5 The factors the Board weighs in considering whether a cumulative impacts analysis is  
6 required for an SSDP are listed below:

- 7 1. Whether a shoreline of statewide significance is involved;
- 8 2. Whether there is potential harm to habitat, loss of community use, or a  
9 significant degradation of views and aesthetic values;
- 10 3. Whether a project would be a "first of its kind" in the area;
- 11 4. Whether there is some indication of additional applications for similar  
12 activities in the area;
- 13 5. Whether the local SMP requires a cumulative impacts analysis be  
14 completed prior to the approval of an SSDP;
- 15 6. The type of use being proposed, and whether it is a favored or disfavored  
16 use.

17 *Garrison*, SHB 13-016 at 54-55. The parties do not dispute that a cumulative impact analysis is  
18 appropriate in this matter.

19 30.

20 The proposed single-use dock is discouraged under the SMP Piers Policies. The 150-foot  
21 proposed dock would be the first of its kind on the southwest side of Fox Island. Allowing the  
proposed dock would set a precedent for allowing other similar docks in this area. The  
cumulative impacts of this dock, and future similar docks, would degrade aesthetic values.

1 There would be a significant loss of community uses. Beach-walkers would be obstructed and  
2 marine recreation would be affected. The Board concludes that approval of an SSDP for the  
3 proposed dock in this location would likely have cumulative impacts that would be inconsistent  
4 with the policies and regulations of the SMP.

5 31.

6 As noted above, the Board is not ruling that all docks are prohibited along the southwest  
7 side of Fox Island. Although the proposed dock would not be compatible with the land and  
8 water uses in the area or the existing pier density, other docks may not have the impacts of the  
9 proposed dock or the reasonable alternative of the proposed dock. A dock with fewer impacts  
10 and no reasonable alternative may not lead to unacceptable cumulative impacts.

11 32.

12 **D. SEPA (Issues 10 and 13)**

13 The Nieszs did not present evidence or argument concerning Issues 10 and 13 and thus  
14 the Board determines that those issues have been abandoned. To the extent the Nieszs consider  
15 these issues to include arguments that the proposed dock is consistent with the SMA and County  
16 SMP due to its alleged limited impacts, the Board determined above that the Nieszs failed to  
17 demonstrate that the proposed dock is consistent with the SMA and the County SMP.

18 33.

19 In summary, the Board concludes that the Nieszs have failed to demonstrate that the  
20 proposed dock is consistent with the SMA and the County SMP. As a result, the Hearing  
21 Examiner's decision should be upheld and the SSDP for the proposed dock should be denied.

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34.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

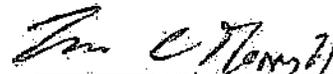
Having so found and concluded, the Board enters the following order.

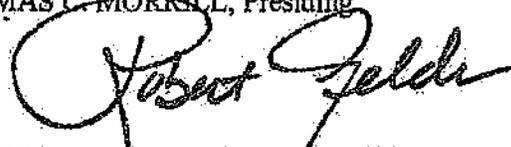
**ORDER**

The decision issued by Pierce County denying Petitioners' request for a Shoreline Substantial Development Permit to construct a single-use dock is **AFFIRMED**.

SO ORDERED this 20<sup>th</sup> day of November, 2017.

**SHORELINES HEARINGS BOARD**

  
\_\_\_\_\_  
THOMAS C. MORRILL, Presiding

  
\_\_\_\_\_  
ROBERT GELDER, Member

  
\_\_\_\_\_  
GRANT BECK, Member

# Appendix A-4

FILE NO. 399

RESOLUTION NO. 16990

RESOLUTION BY THE BOARD OF PIERCE COUNTY COMMISSIONERS ADOPTING AN AMENDMENT TO THE COMPREHENSIVE PLAN ENTITLED SHORELINES MANAGEMENT MASTER PROGRAM GOALS AND POLICIES.

WHEREAS, the Shoreline Management Act of 1971, requires that each County have a Master Program which, at the County's option, either the County or the State would prepare, and

WHEREAS, on November 16, 1971, the Board adopted Resolution No. 15388 which expresses Pierce County's intention to prepare and complete the Master Program for Pierce County, and

WHEREAS, an 85-person Citizens Committee was appointed by the Board, which Committee is representative of a wide variety of interests and no special interest group or organization was in a majority position on said committee, and said committee held meetings and have adopted the first of three stages of the Master Program entitled "Goals and Policies", and

WHEREAS, on February 14, 1974, the Planning Commission, (by a vote of 4 ayes and 2 members abstaining) voted to recommend to the Board that the said "Goals and Policies" be adopted, and

WHEREAS, the Board thanks the persons serving on the Citizens Committee and the Planning Department for their many hours of dedicated service in preparing this initial stage of the Master Program, and

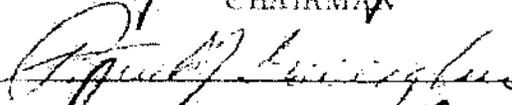
WHEREAS, the Board believes the Comprehensive Plan should be amended to add the initial element of the Master Program entitled "Goals and Policies" since it is in the public interest, health, and safety,

RESOLUTION NO. \_\_\_\_\_ (Cont'd.)

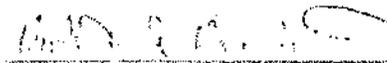
To have said Master Program in Pierce County, NOW THEREFORE  
BE IT RESOLVED BY THE BOARD OF PIERCE  
COUNTY COMMISSIONERS:

The attached initial element of the Shoreline Management Act of  
1971, Master Program entitled "Goals and Policies" is hereby adopted  
and shall amend the Pierce County Comprehensive Plan.

PASSED and APPROVED this 4th day of March, 1974.

  
\_\_\_\_\_  
CHAIRMAN  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
Board of Pierce County Commissioners

Approved as to form:

  
\_\_\_\_\_  
Chief Civil Deputy

PART V - SHORELINE MASTER PROGRAM - PHASES

Phase I

1. Develop area-wide goals which relate to the following plan elements: Economic development, public access, circulation, recreation, shoreline use, conservation, and history/culture. Goals represent the ideal state a community seeks to attain and are usually set higher than the expected achievement.
2. Develop policies to clarify and amplify the goals. Policies are action oriented directives selected to guide activities towards realization of the desired use of county shorelines.

Phase II

1. Study the shoreline Environments (Natural, Conservancy, Rural, Rural Residential and Urban) and apply them to all Pierce County shorelines. Placement will reflect intent for future uses rather than the status quo.
2. Develop regulations for specific land and water uses within the environments mentioned above. The Use Regulations will deal with location and design criteria for specific development activities, and are intended to be more precise than the policy statements.

Phase III

1. Conduct detailed studies concerning plan elements, their implementation, and integration with related federal, state, and Pierce County policies and plans. This is intended to be a continuous, ongoing procedure, with no time frame.

# Appendix A-5

## THE CONSERVANCY ENVIRONMENT

### A. Definition and Purpose

The Conservancy Environment is designed to protect, conserve and manage existing natural resources and valuable historic and cultural areas in order to ensure a continuous flow of recreational benefits to the public and to achieve sustained resource utilization. This environment should also include areas of steep slopes which present potential erosion and slide hazards, areas prone to flooding, and areas which cannot adequately deal with sewage disposal.

### B. General Regulations and Policies

The following general regulations and policies should apply to all shorelines classified as in a Conservancy Environment:

1. Areas should maintain their existing character.
2. Developments which do not consume the natural physical resource base should be encouraged.
3. Substantial and nonsubstantial developments which do not lead to significant alterations of the existing natural character of an area should be encouraged.

### C. Preferred Uses

Outdoor recreation activities  
Commercial timber harvesting  
Passive agricultural uses (pasture and range lands)

# Appendix A-6

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SHORELINE MASTER PROGRAM

FOR

PIERCE COUNTY

Phase I

Adopted by the Board of  
Pierce County Commissioners  
March 4, 1974

EXHIBIT A

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USE ACTIVITY POLICIES

Shoreline use activities are specific classifications of the various types of activities which can be anticipated to occupy shoreline locations.

The Department of Ecology final guidelines for Master Program development established twenty-one use activities and set minimum guidelines for managing each activity. In addition to this the Citizens' Advisory Committee added four use activities which they felt were needed in order to effectively manage the shoreline areas of Pierce County.

Use activity policies are a means of guiding types, locations, designs, and densities of the future shoreline developments. These general policies are implemented by the use regulations which are included in Phase II of the Master Program.

The policies and regulations of each use activity have been developed on the premise that all appropriate shoreline uses require some degree of control in order to minimize adverse affects to the shoreline environment and adjoining properties.

Each project which falls within the jurisdiction of the Act will be evaluated to determine its conformance with the policies and regulations of the appropriate use activities.

- (n) Efforts should be made to locate roads in such a manner that does not limit access to the shoreline.
- (o) Prior to the site preparation or construction of new roads or railroads, near the shoreline, of any type, an environmental impact study should be made in accordance with Washington State Environmental Policy Act of 1971.
- (p) New, efficient, pollution-free methods of transportation which have fewer environmental effects than present transportation methods should be encouraged.

Piers:

- (a) Piers in conjunction with marina development in appropriate areas should be allowed.
- (b) Piers in conjunction with recreational development in appropriate areas should be allowed. Consideration should be given to size and intensity of uses in relation to adjacent shoreline uses.
- (c) Piers for commercial facilities should be discouraged unless they are an integral part of the commercial operation.
- (d) Piers associated with single family residences should be discouraged.
- (e) In considering any pier, considerations such as environmental impact, navigational impact, existing pier density, parking availability, and impact on adjacent proximate land ownership should be considered.
- (f) Encourage the use of mooring buoys as an alternative to space-consuming piers such as those in front of single family residences.
- (g) Piers should not be built for the purpose of storing vehicles and/or boat trailers.
- (h) Piers and floating docks should be encouraged to be built perpendicular to the shoreline rather than along it.
- (i) Encourage pier construction to include larger spans on fewer pilings rather than smaller spans and more pilings. Piers in marine waters may provide habitat suitable for predatory fish with consequent detriment to young salmonids.
- (j) When plastics or other non-degradable materials are used in pier construction precautions should be taken to insure their containment.
- (k) Encourage the formulation and enforcement of pier maintenance regulations. Encourage regulations governing removal of piers and restoration of pier sites when no longer in use.

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- (l) The use of floating docks should be encouraged in those areas where scenic values are high and where conflicts with recreational boaters and fishermen will not be created.
- (m) Open-pile piers should be encouraged where shore trolling is important, where there is significant littoral drift and where scenic values will not be impaired.
- (n) Priority should be given to the use of community piers and docks in all new major waterfront subdivisions. In general, encouragement should be given to the cooperative use of piers and docks.
- (o) Areas having a significant near shore fishery should not be used for floating docks.

Educational & Archeological Areas & Historic Sites:

- (a) Archeological areas, ancient villages, military forts, old settlers homes, ghost towns, historic trails, kitchen middens, and historical cemeteries are nonrenewable resources and many are in danger of being lost through present day changes in land-use and urbanization. Because of their rarity and the educational link they provide to our past, these locations should be preserved.
- (b) Professional archeologists should be consulted to identify and maintain an inventory of areas containing potentially valuable archeological data, and to establish procedures for salvaging the data.
- (c) Where possible, sites should be permanently preserved for scientific study, education, and public observation. In areas known to contain archeological data, local governments should attach a special condition to a shoreline permit providing for a site inspection and evaluation by an archeologist to ensure that possible archeological data are properly salvaged. Such a condition might also require approval by local government before work can resume on the project following such an examination.
- (d) Shoreline permits, in general, should contain special provisions which require developers to notify local governments if any possible archeological data are uncovered during excavations.
- (e) Consideration should be given to the National Historic Preservation Act of 1966 and chapter 43.51 RCW provide for the protection, rehabilitation, restoration and reconstruction of districts, sites, buildings, structures and objects significant in American and Washington history, architecture, archeology or culture.

# Appendix A-7

## DESCRIPTION OF PIERCE COUNTY SHORELINE MASTER PROGRAM

The Shoreline Management Act requires Pierce County to develop a Master Program for the future use of its shorelines. By its definition, a master program is general, comprehensive, and long-range in order to be applicable to the whole area for a reasonable length of time under changing conditions.

"General" means that the policies, proposals and guidelines are not directed towards any specific site.

"Comprehensive" means that the program is all inclusive toward land and water uses, their impact on the environment and logical estimates of future growth. It also means that the program should recognize plans and programs of other governmental units, adjacent jurisdictions and private developers.

"Long-range" means that the program is to be directed at least 20 to 30 years in the future, look beyond immediate issues, and follow creative objectives rather than a simple projection of current trends and conditions.

The policies of the Shoreline Management Act and all applicable goals, policies and use regulations of this Pierce County Master Program shall be considered in ruling upon applications for Substantial Development permits.

The Master Program consists of the following:

- 1.) Goal Statements
- 2.) Supporting Policies
- 3.) Environment Designations
- 4.) Use Regulations

Table number 2 which follows identifies these tasks more fully and groups them into phases.

**DENNIS REYNOLDS LAW OFFICE**

**May 30, 2019 - 4:19 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 52658-1  
**Appellate Court Case Title:** Eric Niesz and Kendra Niesz, Appellants v. Pierce County, Respondent  
**Superior Court Case Number:** 17-2-14146-7

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