

SHORELINE CONDITIONAL USE PERMIT REVISION

Prepared By: Lauren Balisky, Planning Manager, on June 30, 2021

General Information

City of Mukilteo File Number:	SH-2013-001	Ecology File Number:	2014-NW-623
Applicant:	Marsha Tolon, Environmental and Permitting Lead, on behalf of Washington State Department of Transportation (WSDOT) (see Exhibit 1)		
Property Owner(s):	Port of Everett		
Location:	700 Front St (former ferry terminal location)		
Tax Parcel No(s):	28040400200100 and 28040400203000		
Legal Description:	<p>SEC 04 TWP 28 RGE 04RT-17-18) FR SW COR SEC 33-29-4 RUN S 75*00 00W 1093FT TH N15*00 00W 26FT TPB TH S75*00 00W 70FT TH N15*00 00W TO GOV MEA LN TH ALG LN TO PT N15*00 00W FR TPBTH S15*00 00E TO TPB</p> <p>and</p> <p>SEC 04 TWP 28 RGE 04RT-63C) W 200FT OF FOLG DESC ALL TIDE- LAND 2ND CLASS IN FRONT OF ADJ TO OR ABUTTING UPON FOLG DESC BAAP ON GOVT MEA LN 21FT M/L SWLY OF NW COR LOT 1 BLK 15 THOMAS ADD TO MUKILTEO TH SWLYALG MEA LN TO PT 1233.34FT AS MEAS FR MEA COR BEING SW COR 33-29-4 LESS COM SW COR LT 1 33-29-4 TH S75*00 00W 1163FTTH N15*00 00W 26FT TO TPB TH S75*00 00W 50FT TH N 15*00 00W TO GOV MEA LN TH ELY FOL SD MEA LN TO PT N15*00 00W OF POB TH S15*00 00E TO POB SUBJ R/W ESE PUD #1</p>		
Property Size:	Approximately 0.75 acres (includes adjacent tideland area)		
Request Date:	January 7, 2021		
Date Complete:	June 2, 2021		

Recommendation to Ecology

Request for Revision to Mukilteo Multimodal Ferry Terminal Approval
City of Mukilteo File No(s): SH-2013-001
Shoreline Conditional Use Permit
Ivar's Emergency Fire Access Request

Project Description and Request

The Washington State Department of Transportation (WSDOT) is requesting a revision to its Shoreline Conditional Use Permit (SCUP) for the new Mukilteo Multimodal Ferry Terminal. The revision request is to the April 1, 2014, City of Mukilteo Hearing Examiner (HE) SCUP decision (SH-2013-001) and May 14, 2014, Washington State Department of Ecology (Ecology) approval of the SCUP (Ecology File No. 2014-NW-623) (see **Exhibit 2**). The City processed the SCUP concurrently with an Essential Public Facilities permit request (City Case No: EPF-2013-001).

The WSDOT SCUP revision request is to retain 390 square feet of existing over-water trestle and four 12-inch timber piles at the former ferry terminal location to ensure an adjacent restaurant business retains its emergency fire egress. The original proposal was for removal of this portion of the trestle along with other existing ferry terminal structures/facilities that have since been removed.

This revision request is related to the following conditions of the SCUP:

- Condition 1 was for “substantial compliance with the Modified Elliot Point 2 Plan submitted on November 6, 2013”, which included complete removal of the existing ferry terminal and fishing pier;
- Condition 23 required compliance with Final Environmental Impact Statement (FEIS) ¹, Record of Decision (ROD – see **Exhibit 3**) and mitigation measure reports;
- Condition 27 required compliance with Hydraulic Project Approval (HPA) from the Washington Department of Fish and Wildlife (DFW);
- Condition 28 required compliance with Section 10/404 permit authorization from the United States Army Corps of Engineers (USACE); and
- Condition 29 required compliance with Section 401 Water Quality Certification from the Washington Department of Ecology (DOE).

Physical site characteristics, use characteristics, public utilities and services, and other descriptive information is not re-presented as part of this recommendation. This information can be found in the original shoreline conditional use permit and essential public facilities original staff report and decision for this proposal.

NOTE: A separate WSDOT SCUP revision request has been submitted to the City regarding an amendment to Condition No. 30 of Ecology's SCUP approval to ensure that ferry operations are compliant with the American with Disabilities Act (ADA) standards during all hours of operation. This request is being processed under a separate SCUP revision.

¹ See *Mukilteo Multimodal Final Environmental Impact Statement* (June 2013), available online at: <https://wsdot.wa.gov/sites/default/files/2018/11/07/Mukilteo-Multimodal-Project-Final-Environmental-Impact-Statement.pdf>

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Background

As part of Ecology's SCUP approval, a fishing pier and the ferry terminal trestle was to be removed. An unintended consequence of this action is that the Ivar's restaurant, immediately adjacent to the trestle, would lose its required emergency fire egress (as an access route from the building relied on a small portion of the trestle).

City staff, WSDOT, and Ivar's worked collaboratively on a solution that would allow WSDOT to meet as many of its over-water mitigation requirements as possible while ensuring that Ivar's remained compliant with City of Mukilteo fire code requirements. This 390 sq. ft. area is the minimum necessary to support the emergency fire egress.

This proposal is intended to be a temporary solution for the Ivar's emergency fire egress. The existing piles have been in place for approximately 50 years and are located in the nearshore transition zone. The piles are exposed to air, seawater, varying temperatures and seasons, animal activity, wave and storm action, and plant growth. The maximum remaining expected life of the trestle and pilings is 20 years, with some likely needing earlier repair or replacement. A separate permit process would be required to remove, repair, and/or replace the remaining trestle and piles and/or install a permanent solution.

Since work on the Mukilteo Multimodal Ferry terminal project was underway at the time this access issue was discovered, WSDOT's work on and around the 390 sq. ft. of existing trestle / fishing pier is substantially complete as of the writing of this recommendation.

Recommendation to Ecology

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Other Agency and Tribal Review

This request was reviewed by other agencies with jurisdiction, as summarized below:

Agency:	United States Federal Transit Administration (see Exhibit 3)		
Permit Type:	National Environmental Policy Act (NEPA)		
Request Type:	Environmental Re-Evaluation #2		
Grant Nos:	WA-05-0055, WA-04-0002, WA-70-X007, WA-70-X011 WA-90-X378, WA-90-X580, WA-90-X604, WA-95-X031 WA-2017-007, WA-2017-023	Request Status:	Approved
Request Date:	April 22, 2021	Decision Date:	May 21, 2021
Tribal Review:	Per WSDOT ² : "There were no effects to cultural resources, no effects to a tribal Usual and Accustomed Area, no effects to treaty fishing rights, and no effects to environmental justice populations (including tribes). So, tribal consultation was not needed."		
Agency:	United States Fish & Wildlife Service (see Exhibit 4)		
Permit Type:	National Environmental Policy Act (NEPA)		
Request Type:	Project Update		
Permit No:	01EWF00-2013-F-0360	Request Status:	Acknowledged
Request Date:	January 4, 2021	Decision Date:	January 4, 2021
Agency:	National Marine Fisheries Service (see Exhibit 5)		
Permit Type:	National Environmental Policy Act (NEPA)		
Request Type:	Project Update		
Permit No:	NMFS 2102/9334, WCR- 2017-6210	Request Status:	Acknowledged
Request Date:	January 4, 2021	Decision Date:	March 23, 2021

² Provided in email from M. Tolon (WSDOT / WSF) to L. Balisky on June 23, 2021.

Recommendation to Ecology

Request for Revision to Mukilteo Multimodal Ferry Terminal Approval
 City of Mukilteo File No(s): SH-2013-001
 Shoreline Conditional Use Permit
 Ivar's Emergency Fire Access Request

Agency:	United States Army Corps of Engineers (see Exhibit 6)		
Permit Type:	Section 404 Permit		
Request Type:	Permit Modification		
Permit No:	NWS-2012-47	Request Status:	Approved
Request Date:	November 10, 2020	Decision Date:	December 11, 2020
Tribal Review:	Per WSDOT ² : "Due to the USACE federal tribal trust responsibilities, the initial 404 permit application is circulated for 30-day comment with interested tribes. When modification requests arise, the request is circulated only to those tribes who commented on the initial permit. There were no comments for this request and the USACE approved the modification." WSDOT indicated that the Suquamish Tribe was contacted by USACE, however was unaware of any other request for tribal review.		
Agency:	Washington State Department of Ecology (see Exhibit 7)		
Permit Type:	Section 401 Water Quality Certification		
Request Type:	Project Update		
Certification No:	10395	Request Status:	Acknowledged
Request Date:	December 9, 2020	Decision Date:	December 9, 2020
Agency:	Washington State Department of Fish & Wildlife (see Exhibit 8)		
Permit Type:	Hydraulic Permit Approval (HPA)		
Request Type:	Major Modification #4 ³		
Permit No:	2020-4-106	Request Status:	Approved
Request Date:	December 1, 2020	Decision Date:	February 12, 2021

³ This decision was revised again on April 20, 2021, due to an unrelated request.

Recommendation to Ecology

Request for Revision to Mukilteo Multimodal Ferry Terminal Approval
 City of Mukilteo File No(s): SH-2013-001
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Analysis and Findings

Requirement and Analysis		Finding: MMC Met?
<p><i>Mukilteo Municipal Code (MMC)</i> 17B.13.170</p> <p><i>A. A permit revision is required whenever the applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the master program and/or the policies and provisions of Chapter 90.58 RCW. Changes which are not substantive in effect do not require approval of a revision. When an applicant seeks to revise a permit, local government shall request from the applicant detailed plans and text describing the proposed changes.</i></p>	<p><i>Washington Administrative Code (WAC)</i> 173-27-100</p> <p><i>A permit revision is required whenever the applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the master program and/or the policies and provisions of chapter 90.58 RCW. Changes which are not substantive in effect do not require approval of a revision. When an applicant seeks to revise a permit, local government shall request from the applicant detailed plans and text describing the proposed changes.</i></p>	<p>Yes; permit revision required.</p>
<p>A number of conditions of the EPF / SCUP addressed compliance with various environmental permitting requirements, based on complete removal of the existing ferry trestle and fishing pier, including Conditions 1, 23, and 27 – 29.</p> <p>Removal of the over-water structures addressed environmental impacts from the existing terminal, including ongoing contamination from the timber piles, loss of sunlight and habitat, and aesthetics. While this proposal does not create any new impacts, it does request a change from the original project scope and retains a small portion of an over-water structure that otherwise would have been removed. It also required approval from external agencies whose permits were conditioned as part of the original permit approval. Therefore, this proposal requires a permit revision.</p>		

Recommendation to Ecology

Request for Revision to Mukilteo Multimodal Ferry Terminal Approval
 City of Mukilteo File No(s): SH-2013-001
 Shoreline Conditional Use Permit
 Ivar's Emergency Fire Access Request

Requirement and Analysis		Finding: MMC Met?
<p><i>Mukilteo Municipal Code (MMC)</i> 17B.13.170</p> <p><i>B. If the city determines that the proposed changes are within the scope and intent of the original permit, and are consistent with the applicable master program and the Act, the city may approve a revision.</i></p> <p><i>"Within the scope and intent of the original permit" means all of the following:</i></p> <p><i>1. No additional over water construction is involved except that pier, dock, or float construction may be increased by five hundred square feet or ten percent from the provisions of the original permit, whichever is less;</i></p>	<p><i>Washington Administrative Code (WAC)</i> 173-27-100</p> <p><i>(1) If local government determines that the proposed changes are within the scope and intent of the original permit, and are consistent with the applicable master program and the act, local government may approve a revision.</i></p> <p><i>(2) "Within the scope and intent of the original permit" means all of the following:</i></p> <p><i>(a) No additional over water construction is involved except that pier, dock, or float construction may be increased by five hundred square feet or ten percent from the provisions of the original permit, whichever is less;</i></p>	<p>Proposal evaluated against all criteria in this section; see below.</p>
<p>The applicant's revision request shows that for the entire Mukilteo Multimodal Terminal project:</p> <ul style="list-style-type: none"> - 146,205 sq. ft. of existing over-water structure will be removed (tank farm pier, old terminal, and fishing pier removal); - 11,675 sq. ft. of new over-water structure will be created (new terminal and fishing pier); and - 390 sq. ft. of existing over-water structure will be retained (Ivar's emergency fire access). <p>This is a total of 157,880 sq. ft. of over-water construction, and a net before and after reduction of 134,140 sq. ft. of over-water structures following completion of the Mukilteo Multimodal Ferry Terminal project.</p> <p>The 390 sq. ft. of over-water structure proposed to be retained is approximately 0.25% of the total, and 0.29% of the net over-water construction, and is under the 500 sq. ft. threshold for this criterion.</p>		<p>Provision not applicable.</p>

Recommendation to Ecology

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 Shoreline Conditional Use Permit
 Ivar's Emergency Fire Access Request

<i>Requirement and Analysis</i>		<i>Finding: MMC Met?</i>
<i>Mukilteo Municipal Code (MMC) 17B.13.170</i>	<i>Washington Administrative Code (WAC) 173-27-100</i>	
<i>2. Ground area coverage and height may be increased a maximum of ten percent from the provisions of the original permit;</i>	<i>(b) Ground area coverage and height may be increased a maximum of ten percent from the provisions of the original permit;</i>	Provision not applicable.
No ground area coverage or height increases are proposed.		
<i>3. The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under a variance granted as the original permit or a part thereof;</i>	<i>(c) The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under a variance granted as the original permit or a part thereof;</i>	Provision not applicable.
No changes to height, lot coverage, setbacks, or other requirements of the Mukilteo Shoreline Master Program are proposed.		
<i>4. Additional or revised landscaping is consistent with any conditions attached to the original permit and with the applicable master program;</i>	<i>(d) Additional or revised landscaping is consistent with any conditions attached to the original permit and with the applicable master program;</i>	Provision not applicable.
No changes to landscaping are proposed.		
<i>5. The use authorized pursuant to the original permit is not changed; and</i>	<i>(e) The use authorized pursuant to the original permit is not changed; and</i>	Provision not applicable.
No changes to the use are proposed.		
<i>6. No adverse environmental impact will be caused by the project revision.</i>	<i>(f) No adverse environmental impact will be caused by the project revision.</i>	Yes.
Staff concurs with the analysis presented by the applicant (see Exhibit 1) and with the determinations of agencies with jurisdiction that no adverse		

Recommendation to Ecology

Request for Revision to Mukilteo Multimodal Ferry Terminal Approval
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<i>Requirement and Analysis</i>		<i>Finding: MMC Met?</i>
<i>Mukilteo Municipal Code (MMC) 17B.13.170</i>	<i>Washington Administrative Code (WAC) 173-27-100</i>	
environmental impact will be caused by the project revision – see Other Agency and Tribal Review.		
<i>C. Revisions to permits may be authorized after original permit authorization has expired under WAC 173-27-100. The purpose of such revisions shall be limited to authorization of changes which are consistent with this section and which would not require a permit for the development or change proposed under the terms of Chapter 90.58 RCW, this regulation and the local master program. If the proposed change constitutes substantial development then a new permit is required, provided this subsection shall not be used to extend the time requirements or to authorize substantial development beyond the time limits of the original permit.</i>	<i>(3) Revisions to permits may be authorized after original permit authorization has expired under RCW 90.58.143. The purpose of such revisions shall be limited to authorization of changes which are consistent with this section and which would not require a permit for the development or change proposed under the terms of chapter 90.58 RCW, this regulation and the local master program. If the proposed change constitutes substantial development then a new permit is required. Provided, this subsection shall not be used to extend the time requirements or to authorize substantial development beyond the time limits of the original permit.</i>	Provision not applicable; permit still valid.
The SCUP (and EPF permit) is still valid, and the project is completing active construction as of the writing of this recommendation.		
<i>D. If the sum of the revision and any previously approved revisions violate the provisions of this section, local government shall require that the applicant apply for a new permit.</i>	<i>(4) If the sum of the revision and any previously approved revisions under former WAC 173-14-064 or this section violate the provisions in subsection (2) of this section, local government shall require that the applicant apply for a new permit.</i>	Yes
The sum of this proposed revision and the second revision request (second revision in review) relating to Condition 30 do not violate the provisions of MMC 17B.13.170 or WAC 173-27-100.		

Recommendation to Ecology

Request for Revision to Mukilteo Multimodal Ferry Terminal Approval
City of Mukilteo File No(s): SH-2013-001
Shoreline Conditional Use Permit
Ivar's Emergency Fire Access Request

Conclusion and Recommendation

Staff concludes that the proposed revision is within the scope of the original permit. Staff further concludes that revision to SCUP Conditions 1, 23, and 27 – 29 is not necessary since the proposed revision to the scope still complies with the conditions as they exist.

As a SCUP, the local government must submit the revision to the Washington State Department of Ecology for approval, approval with conditions, or denial.

This recommendation and exhibits will be filed with Ecology for review and a decision. Transmittal of Ecology's decision shall be sent to parties of record upon receipt by the City, per MMC 17B.13.170(F) and WAC 173-27-100(6).

Staff recommends that, if approved, the proposed revision be subject to the following conditions:

1. A land use binder shall be prepared and recorded with Snohomish County upon any approval by Ecology referencing the updated Conditions of Approval for the SCUP. This may be combined with the second revision to Condition 30, if approved.
2. The applicant shall comply with all other applicable local, state, and federal rules, policies, and regulations.

Decision

The original proposal required a Shoreline Conditional Use Permit, and therefore the City's recommendation on the revision shall be submitted to Ecology for Ecology's approval, approval with conditions, or denial, review and a determination. The final decision whether to approve, approve with conditions or deny this revision shall be made by the Ecology, per MMC 17B.13.170(E) and WAC 173-27-100(5).

Recommendation By:

David Osaki, AICP
Director, Shoreline Administrator
Planning & Community Development
City of Mukilteo

Date

Appeals

Any person aggrieved by this shoreline permit revision may seek review from the shorelines hearings board by filing a petition for review within twenty-one days of the date that Ecology's final decision is transmitted to local government and the applicant, pursuant to WAC 173-27-100 and RCW 90.58.180.

Recommendation to Ecology

Request for Revision to Mukilteo Multimodal Ferry Terminal Approval
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Ivar's Emergency Fire Access Request

Effective Date and Expiration

The revised shoreline permit is effective immediately upon a final decision by Ecology. This revision expires with any expiration of the underlying shoreline permit.

Distribution

This recommendation and exhibits were distributed to the following parties:

1. Washington State Department of Ecology
2. Marsha Tolon, Environmental and Permitting Lead, Washington State Department of Transportation (Applicant)
3. Port of Everett (Property Owner)
4. Tulalip Tribes

Request for Revision to Mukilteo Multimodal Ferry Terminal Approval
City of Mukilteo File No(s): SH-2013-001 and EPF-2013-001
Shoreline Conditional Use Permit and Essential Public Facility Permit
Ivar's Emergency Fire Access Request

SHORELINE CONDITIONAL USE PERMIT REVISION

Exhibit List Prepared By: Lauren Balisky, Planning Manager, on June 23, 2021

This list was prepared based on documents available as of the date of this exhibit list. Additional exhibits may be provided at the public hearing.

1. Request for Shoreline Permit Modification, prepared by Marsha Tolon, Environmental and Permitting Lead, Washington State Department of Transportation, dated January 7, 2021
 - a. Site Map, dated December 1, 2020
 - b. Demolition Plan, dated November 19, 2020
 - c. PowerPoint, dated March 18, 2021
2. Hearing Examiner Decision for City of Mukilteo File Nos. SH-2013-001 and EPF-2013-001 / Ecology File No. 2014-NW-623, dated March 24, 2014
3. Federal Transit Administration, NEPA Re-Evaluation #2, prepared by Linda Gehrke, Regional Administrator, issued May 21, 2021
 - a. NEPA EIS Record of Decision, issued August 2014
4. United States Fish & Wildlife Service, NEPA Project Update and Acknowledgement, prepared by Leslie Durham, issued January 4, 2021
5. National Marine Fisheries Service, NEPA Project Update and Acknowledgement, prepared by Michael MacDonald, issued March 23, 2021
6. United States Army Corps of Engineers, Section 404 Modification #7, prepared by Michelle Wallin (sp) for Alexander Bullock, issued December 11, 2020
7. Washington State Department of Ecology, Section 401 Project Update and Acknowledgement, prepared by Penny Kelley, issued December 9, 2020
8. Washington Department of Fish and Wildlife Hydraulic Project Approval Revision #4, issued February 12, 2021

Exhibit 1



**Washington State
Department of Transportation**

WSDOT Ferries Division (WSF)
2901 3rd Avenue, Ste. 500
Seattle, WA 98121-3014
206-515-3400
TTY: 1-800-833-6388
www.wsdot.wa.gov/ferries

January 7, 2021

Linda Ritter
Senior Planner
Planning & Community Development
City of Mukilteo
11930 Cyrus Way
Mukilteo, WA 98275

RE: Shoreline Permit (SH 2013-001) and Essential Public Facilities Permit (EPF 2013-001) -- Modification for Emergency Fire Easement Ivar's Restaurant

Dear Linda:

The Washington State Department of Transportation Ferries Division (WSF) proposes to leave approximately 390 square feet of overwater trestle coverage, and four 12-inch timber piles of the existing terminal trestle at the shoreline bulkhead to retain a fire egress for Ivar's Restaurant (see enclosed drawing). If WSF demolishes the entire trestle as previously planned, it will leave Ivar's Restaurant in a state of non-compliance with the City of Mukilteo fire code.

This letter describes the proposed design change according to the **Mukilteo Municipal Code 17B.13.170 Revisions to shoreline permits** items B through D for consideration how the changes are within the scope and intent of the original permit SH 2013-001 and EPF 2013-001,

B. If the city determines that the proposed changes are within the scope and intent of the original permit, and are consistent with the applicable master program and the act, the city may approve a revision. "Within the scope and intent of the original permit" means all of the following:

- 1. No additional over water construction is involved except that pier, dock, or float construction may be increased by five hundred square feet or ten percent from the provisions of the original permit, whichever is less;*

The following table outlines the difference in overwater coverage by the proposed design change from the original proposal for permit SH 2013-001 and EPF 2013-001. The project continues to remove more over water coverage from Possession Sound than was built by the project. No additional over water construction is involved.

Project Element	Overwater Structure square feet (SF)
New Terminal	+7,700 (completed)
New Fishing Pier	+3,975 (completed)
Tank Farm Pier Removal	-138,085 (completed)
Old Terminal and Fishing Pier Removal	-8,120 (pending)
Ivar's Fire Egress Support	+390
Total	-134,140 SF

2. *Ground area coverage and height may be increased a maximum of ten percent from the provisions of the original permit.*

The proposal does not increase the amount of ground area coverage. See the response to item B.1. above and the enclosed drawing for more information.

3. *The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under a variance granted as the original permit or a part thereof;*

See the response to item B.1. above. The proposed design change will not exceed the waterfront zoning height of 35 feet.

4. *Additional or revised landscaping is consistent with any conditions attached to the original permit and with the applicable master program;*

The proposal does not include any specifications for landscaping additional to the original permit SH 2013-001 and EPF 2013-001.

5. *The use authorized pursuant to the original permit is not changed; and*

By leaving 390 square feet of trestle in place the existing fire egress for Ivar's Restaurant continues to comply with the City of Mukilteo Fire Code and does

not change the use of the waterfront authorized pursuant to the original permit.

6. *No adverse environmental impact will be caused by the project revision.*

The 390 square feet of remaining trestle will not cause impact to air, noise, visual quality, or energy beyond the thresholds identified by 2013 Final Environmental Impact Statement for the terminal project, and will have no impact to resources protected by the National Historic Preservation, Clean Water, or Endangered Species Acts.

This proposal is a temporary solution for the Ivar's Restaurant fire egress. Later and independent of the WSF project, any permanent proposal for the fire egress, or other waterfront proposal in this location or nearby, could be required by permit or approval, to remove the remaining trestle and piles.

C. Revisions to permits may be authorized after original permit authorization has expired under WAC 173-27-100. The purpose of such revisions shall be limited to authorization of changes which are consistent with this section and which would not require a permit for the development or change proposed under the terms of Chapter 90.58 RCW, this regulation and the local master program. If the proposed change constitutes substantial development then a new permit is required, provided this subsection shall not be used to extend the time requirements or to authorize substantial development beyond the time limits of the original permit.

The proposed design change will occur before the original permit time limit expires.

D. If the sum of the revision and any previously approved revisions violate the provisions of this section, local government shall require that the applicant apply for a new permit.

WSF anticipates the proposed design change does not appear to incur revision to or violate the provisions of the original permit.

Ritter
January 7, 2021
Page 4 of 4

WSF looks forward to your response. Please contact me at 206-515-3876, or by email at tolonm@wsdpot.wa.gov with any questions.

Sincerely,

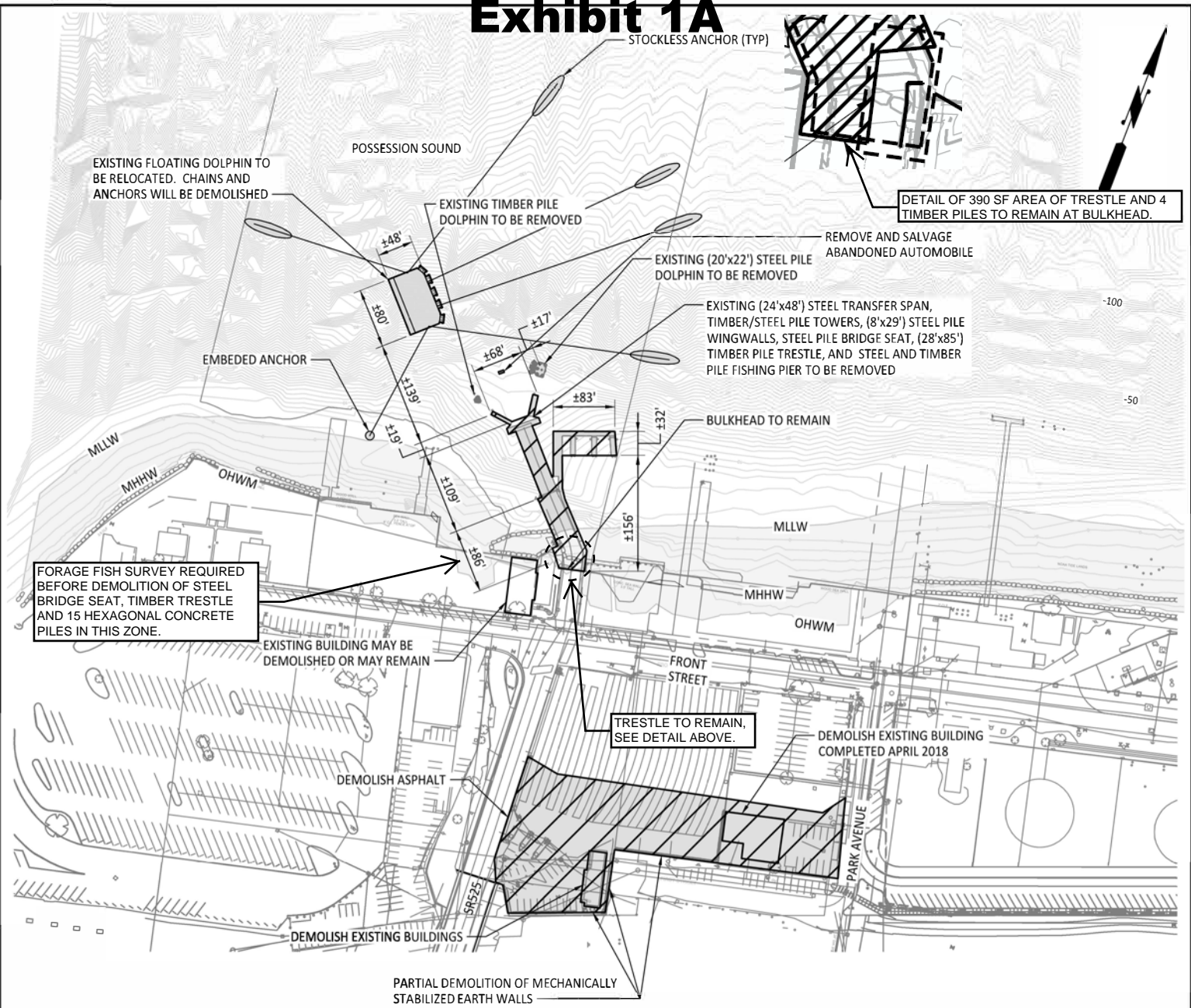
A handwritten signature in blue ink that reads "Marsha Tolon".

Marsha Tolon
Environmental and Permitting Lead

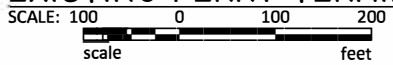
Enclosure: December 2020 page 4 of JARPA drawing

cc: Charles Torres, WSF
Mark Sawyer, WSDOT
Bryant Bullamore, WSF
Project Files

Exhibit 1A



EXISTING FERRY TERMINAL AND ADJACENT PROPERTIES DEMO PLAN



- NOTE:**
1. 390 SF AND 4 TIMBER PILES OF EXISTING TRESTLE AT THE BULKHEAD WALL TO REMAIN AS TEMPORARY STRUCTURAL SUPPORT FOR EAST-ADJACENT IVAR'S RESTAURANT EMERGENCY EGRESS. TRESTLE AND PILES TO BE REMOVED BY OTHERS VIA SEPARATE PROJECT.
 2. NEARSHORE TRESTLE, STEEL BRIDGE SEAT, AND CONCRETE PILES TO BE DEMOLISHED PRIOR TO FEB 15, 2021.

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PURPOSE: To relocate the Existing Mukilteo Ferry Terminal to the former USAF Tank Farm Site. Includes in-water and upland demolition, dredging, and other construction activities.

DATUM: MLLW = 0.0' (EVERETT, 1983 TO 2001 EPOCH); MHW = 10.21'; MHHW = 11.10'

ADJACENT PROPERTY OWNERS:

- 1) Ivars Real Estate Associates, LP
- 2) National Oceanic and Atmospheric Administration(*)
- 3) Burlington Northern Santa Fe
- 4) Mukilteo Silver Cloud Inn LCC
- 5) City of Mukilteo
- 6) A & J Enterprises
- 7) WSDOT
- 8) Losvar Condominiums (31 Units)

SITE PROPERTY OWNERS:

- 1) Port of Everett(*)
- 2) A & J Enterprises

(*) After Property transfer from U.S. Air Force

MUKILTEO MULTIMODAL PROJECT

PROPOSED MUKILTEO FERRY TERMINAL

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
 2901 THIRD AVENUE SUITE 500
 SEATTLE, WA 98121-3014

Existing Terminal Demolition Plan

USACE REFERENCE NO. NWS-2012-47

IN: Possession Sound

AT: Mukilteo

COUNTY: Snohomish

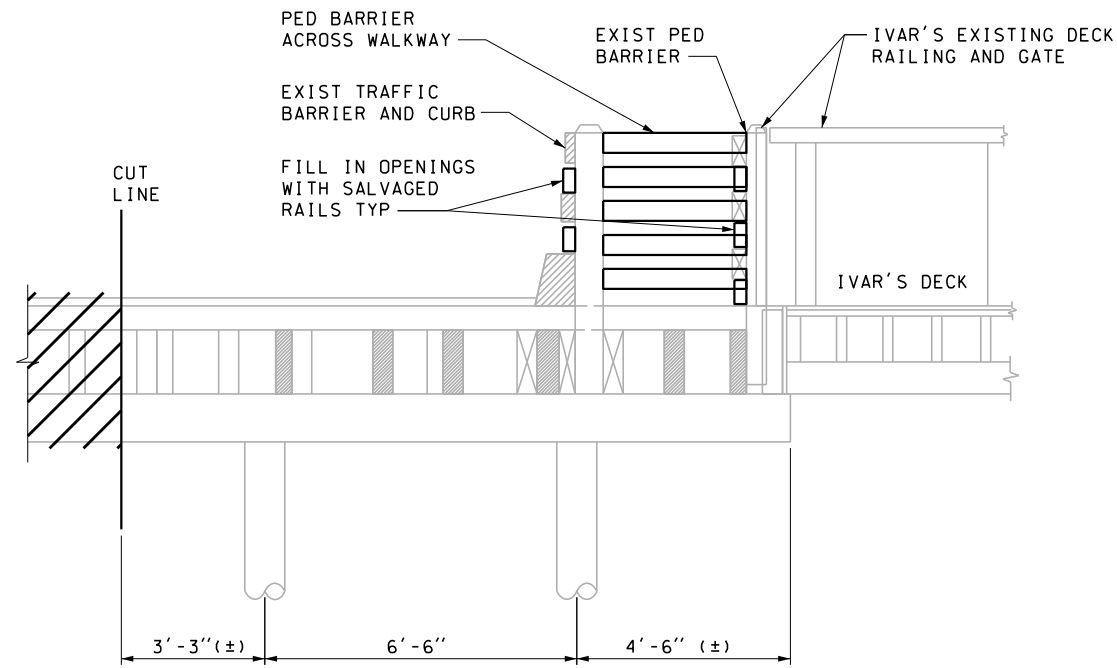
APPLICATION BY: WSDOT/Ferries Division

SHEET: 4 OF 25 DATE: 12/01/20

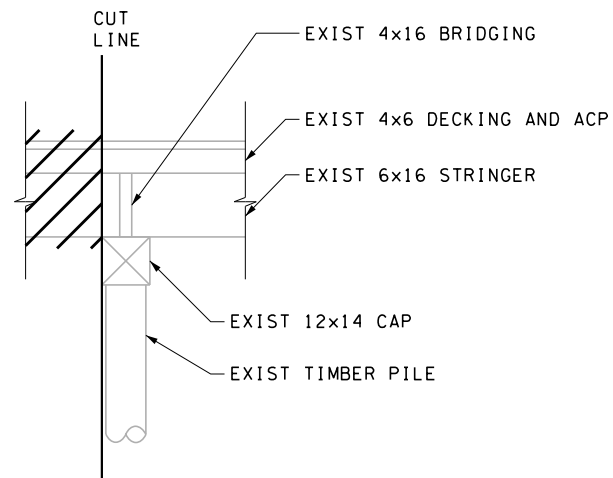
Exhibit 1B

NOTES:

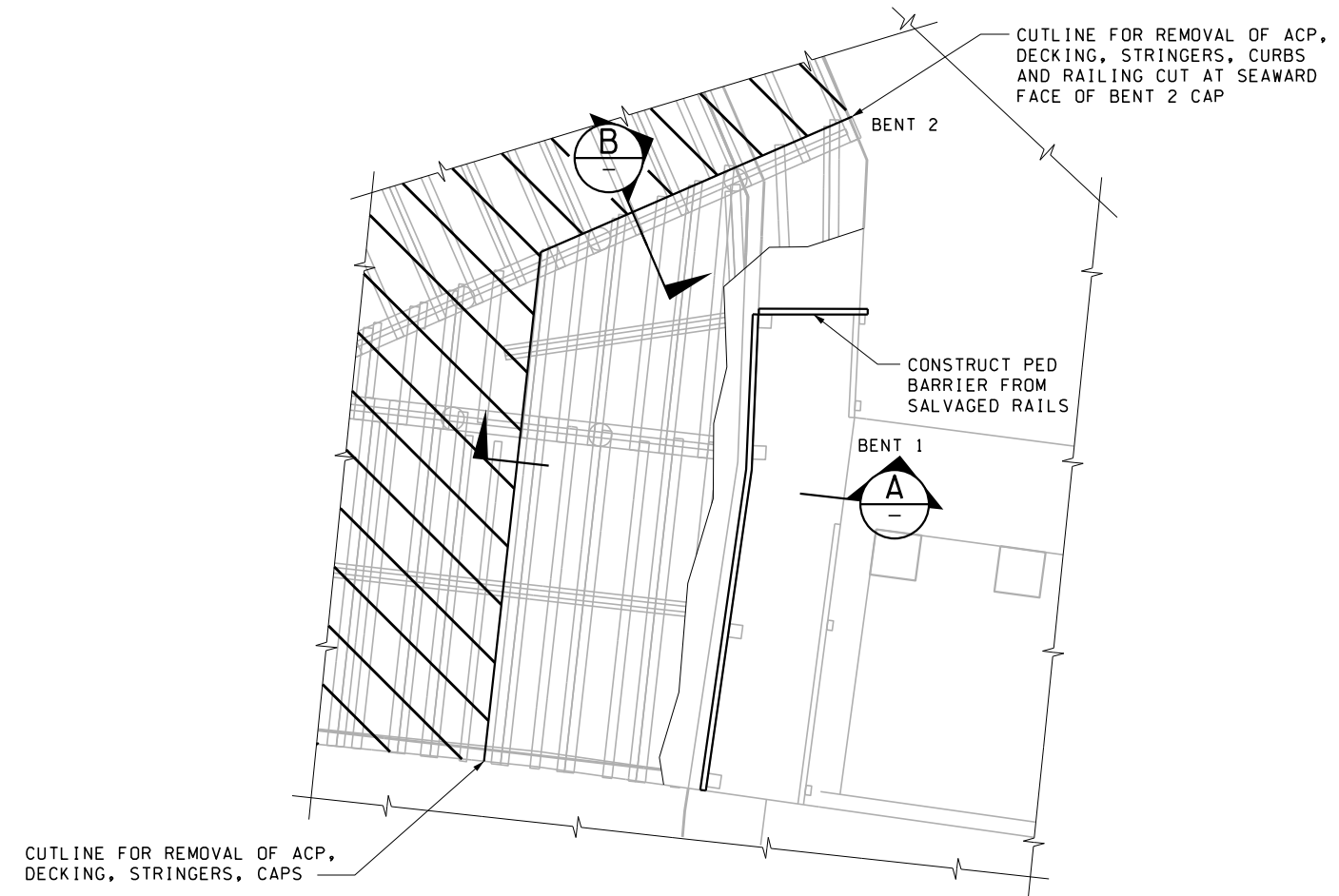
1. SEE 1982 AS-BUILT REFERENCE DRAWINGS FOR ADDITIONAL INFORMATION.
2. FOR BARRIER WORK INSTALL SALVAGED HORIZONTAL RAILS SO THAT MAXIMUM CLEAR GAP BETWEEN RAILS IS 3 1/2". SALVAGED RAILS SHALL BE 3x MEMBERS AND IN GOOD CONDITION WITH NO EXISTING HOLES.
3. ATTACH RAILS TO EXIST 6x8 AND 8x8 POSTS USING GALV. 1/2" DIA. CARRIAGE BOLTS WITH MALLEABLE WASHERS IN NEW HOLES (SIMILAR TO EXISTING RAIL/POST CONNECTION). USE 2 BOLTS PER RAIL TO POST ATTACHMENT. PROVIDE MINIMUM 2" EDGE DISTANCES TO EDGES OF POSTS AND RAILS. ADD TIMBER SHIMS AT POSTS AS REQ'D.



A SECTION

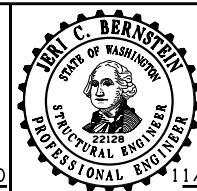
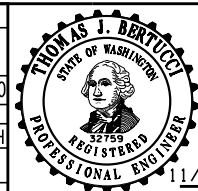


B SECTION



1 DETAIL
SD01.00

FILE NAME: WSF\Mukilteo\18W122_MarineStructures\CADD\WSF\ \$FILES\$			
PRINTED: 9:59:14 AM 11/19/2020	LAST PRINTED BY: mcknigr	FED.AID PROJ.NO.	
SUBMITTAL DATE: 11/19/2020		WA-2017-007-00	
DESIGNED BY: T. BERTUCCI	11/19/2020	REGION NO. STATE	10 WASH
ENTERED BY: M. MORIN	11/19/2020	JOB NUMBER	18W122
CHECKED BY: J. BERNSTEIN	11/19/2020	CONTRACT NO.	009338
MAR PROJ ENGR: C. TORRES	11/19/2020	REVISION	DATE BY
DIR TERM ENGR: N. MCINTOSH			
ASST SECRETARY: A. SCARTON			



SR 525
MUKILTEO FERRY TERMINAL (PHASE 2)
MARINE STRUCTURES
DEMOLITION PLAN MODIFICATION

SD01.00A
SHEET
OF
SHEETS

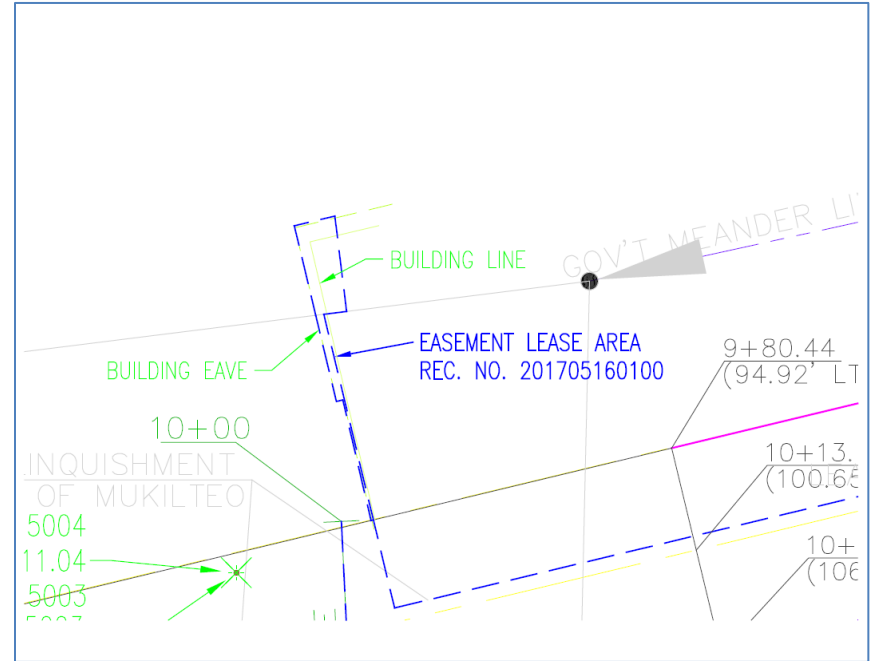
Ivar's Egress

Mukilteo Multimodal Ferry Terminal

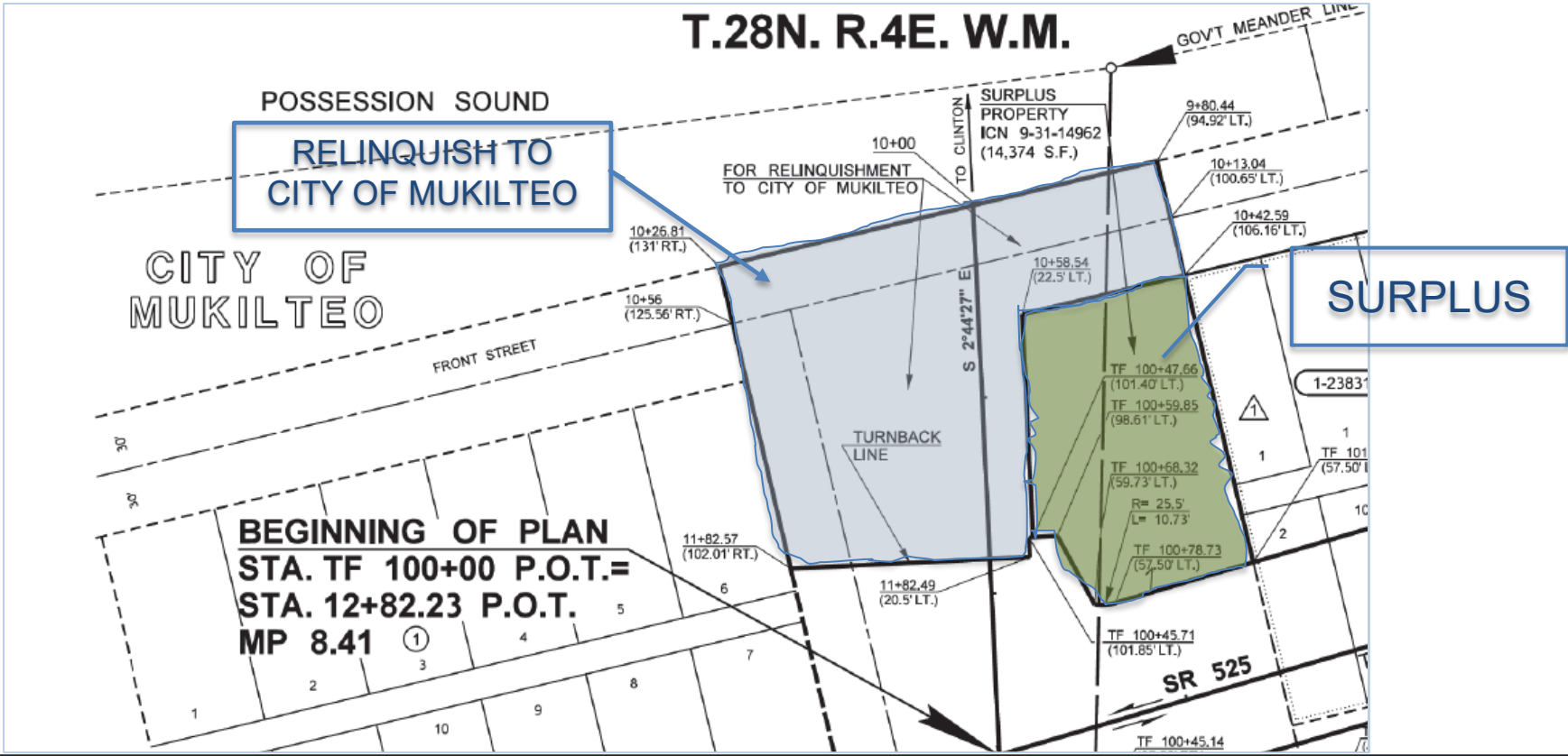
WSF Terminal Engineering

18 March 2021

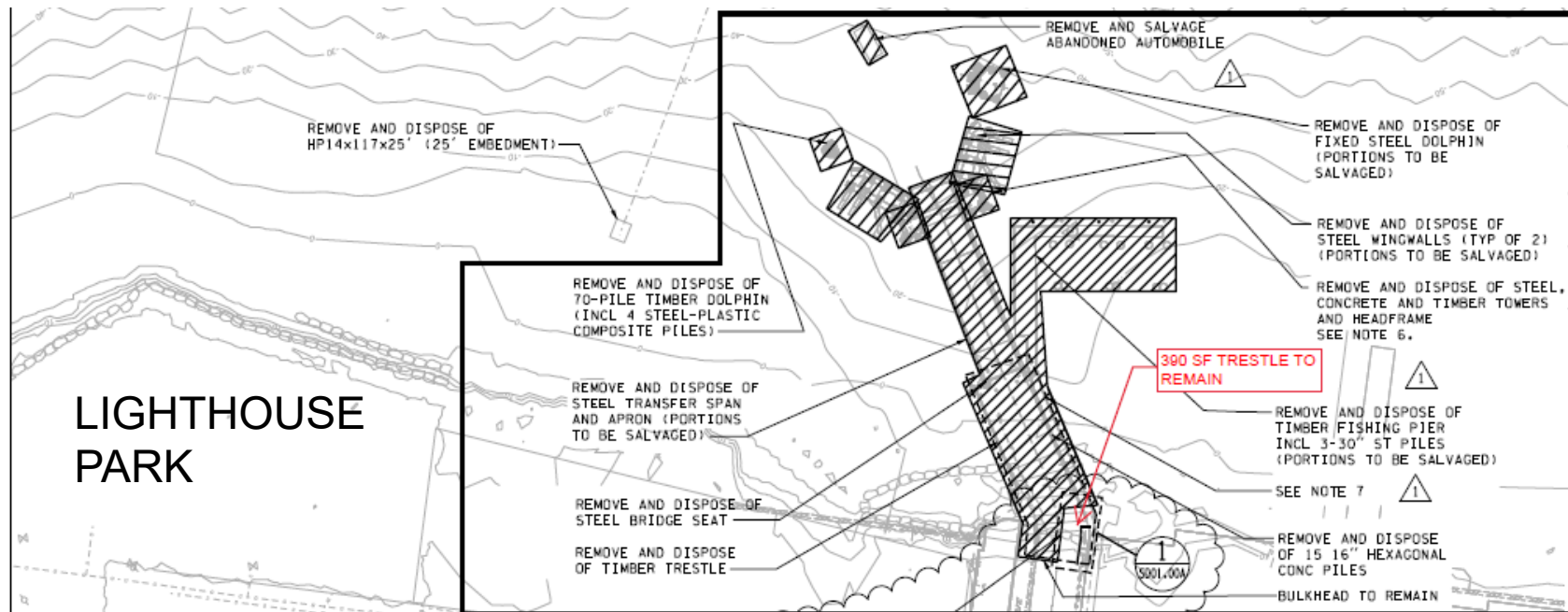
Port of Everett Easement & Lease



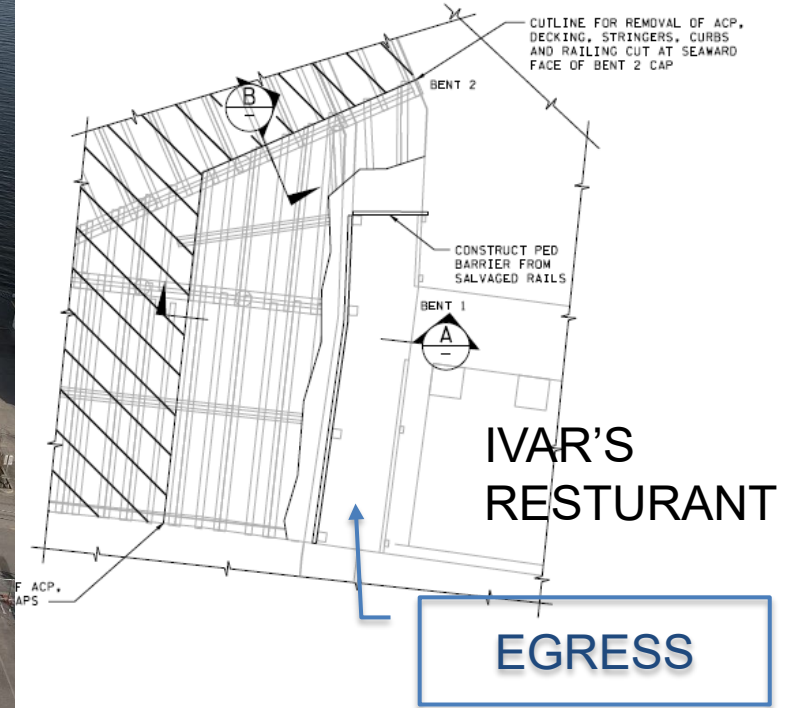
Future Property Ownership



Former terminal layout



REMNANT TRESTLE



IVAR'S EGRESS & REMNANT TRESTLE



REMNANT TRESTLE



Exhibit 2

RECEIVED

MAR 25 2014 *vm*

CITY OF MUKILTEO

BEFORE THE HEARING EXAMINER FOR THE CITY OF MUKILTEO

In the Matter of the Application of)	NO. EPF 2013-001
)	SH 2013-001
The Washington State Ferries)	
)	FINDINGS, CONCLUSIONS,
)	AND DECISION
For an Essential Public Facilities Permit and)	
<u>A Shoreline Conditional Use Permit</u>)	

SUMMARY OF DECISION

The request for an Essential Public Facilities Permit and Shoreline Conditional Use Permit to replace the Mukilteo Ferry Terminal with a new terminal and multimodal facility, located on First Street in Mukilteo, is **APPROVED**. Conditions are necessary to mitigate specific impacts of the proposed development and to ensure compliance with existing city ordinances.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on February 25, 2014. The Applicant agreed to allow additional time to prepare the decision because there were voluminous exhibits to review.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Patricia Love, City Community Development Director
 Nicole McIntosh, WSDOT, Ferry Division, Design Engineer Manager
 Burt Miller, WSDOT/Ferry Division, Environmental Division
 Sandy Glover, Project Manager for Applicant Consultant Team
 Steve Schmalz
 Dan Strandy, NOAA Project Planning
 Kevin Stoltz
 Steve Nickerson
 Charlie Panczerwiski
 Christine Schmalz
 Sharon Smith
 Jennifer Baxter
 Jennifer Gregerson

Exhibits:

Findings, Conclusions, and Decision
City of Mukilteo Hearing Examiner
Washington State Ferries EPF Permit & Shoreline CUP,
Nos. EPF 2013-001 and SH 2013-001

The following exhibits were admitted into the record:

1. City Staff Report, with the following attachments:
 - A. MMC Regulations Relevant to the WSF Terminal, undated
 - B. City of Mukilteo CompPlan & SMP Policy Compliance Checklist, undated
 - C. Location Map, undated
 - D. Aerial Map, undated
 - E. Site Layout Plan (Sheet 4 of 84), dated November 11, 2013; Optional Site Layout Plan (Sheet 5 of 84), dated November 11, 2013
 - F. Land Use Permit Application, received October 18, 2013; Supplemental Application Form, received October 18, 2013; Floodplain Permit Application, received November 6, 2013
 - G. Mukilteo Multimodal Project Narrative, dated August 16, 2013
 - H. Building elevations and layout (Sheets 53 to 63 of 84), dated November 11, 2013
 - I. Quit Claim Deed (Grantor USA/Grantee Port of Everett) and protective covenants, recorded October 4, 2013
 - J. Memorandum of Agreement, unsigned, dated January 7, 2014
 - K. Civil plan drawings (Sheets 6 to 51 and 70 to 84 of 84), dated November 11, 2013
 - L. BergerABAM, Drainage Plan/Stormwater Site Plan, draft submittal, dated August 2013
 - M. GeoEngineers, Liquefaction and Lateral Spreading Evaluation Report, dated March 26, 2008
 - N. BergerABAM, Preliminary landscape plans (Sheets 64 to 69 of 84), dated November 1, 2013
 - O. Jones and Jones, Shoreline Permit Plans Landscape & Building Elements, revised October 2013
 - P.1* Agency and public comment
 - Q.1* CD with the following documents:
 - Final Environmental Impact Statement
 - Cultural Discipline Report
 - Ecosystem Discipline Report
 - Hazardous Materials Discipline Report
 - Noise and Vibration Discipline Report
 - Transportation Discipline Study
 - P.2.* Affidavits of Notice
 - Q.2.* Additional Public Comments
 - R. City's PowerPoint (16 slides)
 - S. Applicant's PowerPoint (26 slides)
 - T. Letters of Support from City
 - U. Joint Aquatic Resources Permit Application (JARPA) form, unsigned and undated; CD with the following documents
 - FEIS (on separate CD)
 - DMMP SAP

*Findings, Conclusions, and Decision
City of Mukilteo Hearing Examiner
Washington State Ferries EPF Permit & Shoreline CUP,
Nos. EPF 2013-001 and SH 2013-001*

- Hydrodynamic Study
- Haz Mat DR
- BA
- Sediment Sampling Data Report
- Cultural Resource DR

V. Letter from Terry Preshaw to Patricia Love, dated February 25, 2014

W. Application Submittal Notification, dated October 18, 2013

* *Although the file contained advance exhibits marked Exhibit P and Q, City staff introduced exhibits at the hearing that were also marked Exhibit P and Q.*

The Hearing Examiner enters the following Findings and Conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Application and Notice

1. Burt Miller, on behalf of the Washington State Ferries (WSF) (Applicant), requests an Essential Public Facilities (EPF)¹ Permit and a Shoreline Conditional Use Permit (SCUP) to replace the existing ferry terminal with a new Mukilteo Ferry Terminal and Multimodal Facility (MMF)(facility). The property is located on First Street, north and east of the existing ferry terminal.² *Exhibit 1, Staff Report, page 1; Exhibit 1.F; Exhibit 1.K.*

¹ The City Code defines an “essential public facility” as:

A facility that is typically difficult to site, such as an airport, a state education facility, a state or regional transportation facility as defined in RCW 47.06.140, a state or local correctional facility, a solid waste handling facility, or an inpatient facility, including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020. The term “essential public facility” includes all facilities listed in RCW 36.70A.200, all facilities that appear on the list maintained by the State Office of Financial Management pursuant to RCW 36.70A.200(4), and all facilities listed as essential public facilities in the Mukilteo Comprehensive Plan.

Mukilteo Municipal Code (MMC) 17.08.020.

² The property subject to the applications is identified in the JARPA Application as Assessor Parcel Nos. (in-water) 29043300400500, 00461400000100, 28040400203400, and 28040400200100; and (upland) 00450900200100, 00450900200300, 0451300100100, 005969001601, 00596901400000, and 28040400102900. *Exhibit 1.U.* The Land Use Permit Application identified, in addition, Parcel No. 2904300300100. *Exhibit 1.F.* The legal description of the subject property is included with the EPF application. *Exhibit 1.F.* The Applicant also submitted an unsigned Joint Aquatic Resources Permit Application (JARPA) for the SCUP, as well as a Floodplain Permit Application and a Binding Site Plan Application. The Floodplain Permit and Binding Site Plan Applications are not before the Hearing Examiner. *Exhibit 1.F.*

*Findings, Conclusions, and Decision
City of Mukilteo Hearing Examiner
Washington State Ferries EPF Permit & Shoreline CUP,
Nos. EPF 2013-001 and SH 2013-001*

2. The City of Mukilteo (City) determined that the application was complete on October 18, 2013. The City published notice of the applications in the local newspaper on November 8 and 15, 2013; mailed notice to interested agencies and owners of property within 500 feet of the subject property; and posted notice on-site and at official locations for City notices. The City posted notice of the open record hearing for the application on the subject property on February 13, 2014; published notice in *The Herald* on February 14, 2014; and mailed notice to owners of property within 300 feet of the subject property and interested parties on February 25, 2014. *Exhibit 1, Staff Report, page 21; Exhibit 1.P.2; Exhibit 1.W.*

Environmental (SEPA) Review

3. WSF prepared a combined National Environmental Policy Act (NEPA) and State Environmental Policy Act (SEPA) Environmental Impact Statement (EIS) and published the Final EIS in June 2013. *Exhibit 1, Staff Report, page 21; Exhibit 1.G, page 5; Exhibit 1.Q.1.*

Comprehensive Plan and Zoning

4. The subject property is identified as “Commercial” in the City Comprehensive Plan.³ The Essential Public Facilities Element in the Comprehensive Plan is relevant to this proposal. The Essential Public Facilities Element notes that the City currently hosts the Washington State Ferries Mukilteo-Clinton Ferry Terminal, identified as an EPF, and that any future EPF permit should not be denied, but conditioned as appropriate to mitigate adverse impacts.

The subject property is located within the Waterfront Mixed Use zoning district. Ferry terminals and parking areas are an allowed use within the district. Commercial property is located to the west and zoned Downtown Business (DB). Property to the south contains single-family residences and is zoned SFR High Density. A barge rail facility and single-family residences lie to the east. Puget Sound is to the north and west. *Mukilteo Municipal Code (MMC) Table 17.16.040; Comprehensive Plan (adopted October 15, 2012), pages 32 and 33; Exhibit 1, Staff Report, pages 2 and 3.*

Site Conditions, Location and Access

5. The proposed facility would be located approximately 1,800 feet east of the existing terminal on the former U.S. Air Force Tank Farm (Mukilteo Tank Farm), the James Mongrain property, and the paved parking portion of the A&J Enterprises property in the vicinity of Front Street. The proposed site is a relatively level area of artificial fill

³ The City staff identified the following Comprehensive Plan policies as relevant to the proposed facility: Land Use: LU16, LU18, LU19, LU20, LU26 to LU28, LU33, LU38, LU41, LU44, LU52; Critical Areas, CA4; Shoreline: SH11 to SH13, SH16, SH18 to SH20, SH22; Urban Waterfront Use: UW6 to UW15, UW17; Transportation: TR3 to TR5, TR25, TR26, TR36, TR37; Economic Development, ED11; and Capital Facilities, CF17. *Exhibit 1.A.*

constructed at the base of a slope and extending into Puget Sound. *Exhibit 1.G, page 5; Exhibit 1.K; Exhibit 1.M.*

Proposed Facility

6. The proposed facility is identified as “Modified Elliot Point 2 – Preferred Alternative” in the Mukilteo Multimodal Project Final Environmental Impact Statement released in June 2013. The proposed facility would be constructed in phases. The major project elements include:
- Removal of the Tank Farm pier
 - Construction of a new signal and intersection on SR 525, just north of the SR 525 Bridge, and a new traffic signal at the entrance of the ferry terminal facility
 - A new road extension leading eastward toward to the relocated Ferry Terminal and Multimodal Facility
 - Removal of the existing ferry terminal structures/facilities, and demolition of the passenger building unless a different arrangement is made
 - Construction of the new ferry terminal and multimodal facility according to the Modified Elliot Point 2 – Preferred Alternative layout contained in the Final Environmental Impact Statement, dated June 2013
 - Construction of the waterfront pedestrian promenade, 15 to 25 feet wide
 - Demolition of tank farm walls, structures, above-ground piping, and miscellaneous buildings, and removal of foundations as needed

The proposed facility would be phased as follows:

- Phase I – Removal of pier in two construction seasons (anticipated 2014 – 2016)
- Phase II – Construction of the new terminal site (anticipated 2017-2019)
- Phase III – Demolition of the existing ferry facilities (anticipated 2019)

The Port of Everett’s existing pier and seasonal day moorage located next to the existing ferry terminal would be demolished once the existing ferry terminal is removed. The fishing pier and day moorage would be relocated near the proposed facility. The Applicant, with NOAA, would be allowed to either relocate or co-locate the fishing pier and day moorage without re-opening the shoreline permit. *Exhibit 1, Staff Report, pages 1 and 19; Exhibit 1.A, page 13; Exhibit 1.K.*

Shoreline Management Master Program and Regulations

7. On December 12, 2011, the City Council updated its Shoreline Master Program and adopted regulations under the State Shoreline Management Act. These are codified as Title 17B MMC and govern uses and development of all shorelines of the city, including the waters extending to the middle of Puget Sound from the shoreline of the city between its northern and southern limits and two hundred feet landward of such waters. *MMC 17B.04.030.* The proposed facility is located in the Urban Waterfront shoreline environment. The Urban Waterfront encompasses the waterfront mixed-use and

downtown business zoning districts. The purpose of the Urban Waterfront designation is to provide for development and redevelopment of high-intensity, water-oriented commercial and recreational activities, and to provide for transportation and essential public facilities while protecting existing ecological functions and improving ecological functions in areas that have been previously degraded. *MMC 17B.12.020.A; City SMP, page 15.* A state EPF is allowed as a conditional use in the Urban Waterfront environment. *MMC 17B.16.040.A Table 1 Permitted Use Matrix.*

8. City staff reviewed the proposed facility and determined that, with conditions, City ordinances would not preclude the proposed facility. City staff testified that the proposed facility is consistent with the shoreline development regulations for the archaeological/historical district (MMC 17B.16.050) and with land subdivision regulations through a separate Binding Site Plan process (MMC 17B.16.060). City staff testified that, with conditions, the proposed facility would also comply with the clearing, grading, and fill regulations (MMC 17B.18.030); the dredging and dredge disposal regulations (MMC 17B.18.040); and shoreline stabilization regulations (MMC 17B.18.060). The proposed facility would protect fish and wildlife habitat conservation areas (MMC 17B.52C), prohibit uses in critical saltwater habitat (MMC 17B.52C.050), and prohibit development in flood hazard areas (Chapter 17B.52D MMC). The proposal, with conditions, would ensure off-street parking is available (MMC 17B.56.060) and would comply with landscaping requirements for parking lots (MMC 17B.58.040)).
Exhibit 1.A.

Essential Public Facilities

9. MMC 17B.16.100 contains regulations to ensure the appropriate siting of Essential Public Facilities. Patricia Love, City Community Development Director, testified that the City agrees with the statements of the Applicant in Exhibit A, entitled “MMC Regulations Relevant to the WSF Terminal”; Exhibit B, “City of Mukilteo CompPlan & SMP Policy Compliance Checklist,” and Exhibit G, “Mukilteo Multimodal Project Narrative.” These exhibits detail the proposal and how it would comply with City ordinances. The City determined that the proposed facility would reduce queue length and help alleviate congestion, would not generate additional demand for public services or public service responders, would have all capital costs provided for by the Washington State Legislature, would not unreasonably increase noise levels in residential areas,⁴ and would use a design approach that mitigates visual impacts. The Applicant prepared a National Environmental Policy Act (NEPA) final Environmental Impact Statement (FEIS), which specifies detailed mitigation measures that would reduce potentially significant adverse environmental impacts, including any temporary or long-term loss of ecological functions of the shoreline area that benefit marine life. *MMC 17B.04.100.D.4; Exhibit 1, Staff Report, pages 6 to 22; Exhibit 1.A; Exhibit 1.Q.1; Testimony of Ms. Love.*

⁴ Unless the Applicant requests an exemption, construction noise would not be allowed between the hours of 6:00 PM and 7:00 AM on weekdays, and 5:00 PM and 9:00 AM on Saturdays, and no construction would be allowed on Sundays and holidays. *Exhibit 1, Staff Report, page 30.*

Geotechnical, Stormwater Management, and Landscaping

10. GeoEngineers prepared a Liquefaction and Lateral Spreading Evaluation report for the Applicant, dated March 26, 2008. The report identified liquefaction hazards at the site and proposed structural solutions to mitigate the liquefaction hazard. *Exhibit 1.M.*
11. BergerABAM prepared a draft of a Drainage Plan/Stormwater Site Plan, dated August 2013. The proposed facility would result in 8.11 acres of impervious surfaces (excluding the terminal building) and 2.25 acres of pervious surface. Stormwater would be treated using Best Management Practices (BMPs), which may include ponds, vegetated areas, biofiltration swales, filters, constructed wetlands, or other features. Stormwater would be captured by Filterra Retention System treatment vaults and discharged through two new outfall pipes into Puget Sound. *Exhibit 1, Staff Report, pages 14 and 15; Exhibit 1.G, pages 26 to 27; Exhibit 1.L, pages 3 and 17.*
12. BergerABAM prepared a preliminary landscaping plan for the Applicant, dated November 1, 2013. Jones and Jones prepared design directions, revised October 2013, for the proposed MMP. The Applicant would provide 37,600 square feet of landscaping. *Exhibit 1, Staff Report, page 16; Exhibit 1.N (Sheets 1 to 6); Exhibit 1.O.*
13. Water and sewer are available from the Mukilteo Water and Wastewater District. A new gravity sewer collection system would be constructed on site. The Applicant would provide a waste disposal plan to the Snohomish Health District that would include the management of contaminated soils, dredged materials, and treated wood. *Exhibit 1.A; Exhibit 1.G.*

Pier Removal and Dredging

14. The Applicant would remove the existing Tank Farm Pier, supported by approximately 3,900 piles, using barges to help reduce shoreline impacts. The proposed facility would require 23,500 cubic yards of dredging to provide a navigation channel through a sediment mound that has accumulated beneath the Tank Farm Pier. Dredge material would be disposed of at a Dredge Material Management Program in-water disposal site, if suitable, or to an upland disposal area. *Exhibit 1.G, page 10.*

Traffic and Infrastructure Improvements

15. The proposed facility would improve existing congestion at Front Street and at the entrance to Lighthouse Park by moving ferry traffic away from this intersection toward the east, which would improve the level of service rating from E to B. A new signal and intersection would be constructed at SR-525/First Street, which would shorten the ferry queue along SR-525, with an expected level of service of A in 2040. The intersections of SR-525/88th Street SW and SR-525/5th Street are projected to operate below City

standards by 2040. Under proposed Condition 17, the Applicant would either obtain a Certificate of Concurrency from the City prior to Phase II permit issuance in accordance with Ordinance 1131, effective July 27, 2005, or negotiate an agreement between the Applicant and the City for traffic mitigation. *Exhibit 1, Staff Report, pages 19 and 27.*

16. First Street would be realigned and extended as a four-lane roadway. It would descend to near existing grade at Park Avenue, continue to a signalized entrance to the proposed ferry terminal, and then continue as a two-lane roadway to a new bus transit facility. First Street would feature sidewalks and bike lanes. *Exhibit 1, Staff Report, page 4; Exhibit 1.K.*
17. The Applicant would remove approximately 26 on-street parking spaces due to the widening and realignment of First Street. The Applicant would construct a new parking lot south of the First Street/Park Avenue intersection for an increase of 54 spaces. The Applicant would also construct a 40-space parking lot for ferry employee parking. *Exhibit 1, Staff Report, pages 9 and 10; Exhibit 1.K.*
18. A 15- to 25-foot wide waterfront promenade would run along the proposed transit facility, and a separate promenade would run along the holding area. *Exhibit 1, Staff Report, page 4; Exhibit 1.K.*
19. A condition of approval proposed by City staff would require the Applicant to provide a pedestrian safety and access plan showing pedestrian routes along SR-525 and Front Street during construction. The plan would include a traffic control officer during the peak traffic period for the duration of the construction period. *Exhibit 1, Staff Report, page 27.*

Public Comments and Applicant Response

20. Several citizens submitted written comments and/or testified at the open record hearing about concerns with and support for the proposed facility. Terry Preshaw submitted a comment letter, dated February 25, 2014. She suggested faulty data was used to project a 73 percent ridership increase by 2030 in the Mukilteo-Clinton route. She noted that existing Old Town businesses will suffer loss of property values due to construction and operation of the proposed facility. She advocates renovating the current ferry terminal to save taxpayer dollars. Laure Carlson submitted an email, dated February 25, 2014, expressing concerns about BNSF train noise, pedestrian safety, and health impacts. Steve Schmalz testified about his concerns with pedestrian safety on a 41-inch wide sidewalk along SR-525. Kevin Stoltz submitted an email, dated February 24, 2014, expressing his concerns about pedestrian safety along SR-525. He requested a separate access point to Lighthouse Park and wider sidewalks. He also noted that piers used by birds for resting and nesting would be removed and that a replacement area for bird nesting and resting should be considered. Steve Nickerson testified about the height of the proposed building design and asked whether the roof pitch could be lowered. Charlie Pancerwiski testified to his concerns about traffic impacts from adding another stop light on SR-525. Christine

Schmalz expressed her opinion that SR-525 is the only way to get to and from the ferry and that the proposed facility will not improve traffic to alleviate the difficulty of pedestrian access to the waterfront. She also proposed moving the proposed Art Building to the existing holding area to help retain businesses and the artists that work in that building. Sharon Smith identified herself as a scuba diver and requested that workers using barges to remove the existing piers be made aware of scuba activity in the area to avoid injuries to divers. Jennifer Baxter recommended a barrier between cars and the proposed promenade to soften the pedestrian experience. Jennifer Gregerson testified in support of improving or replacing the SR-525 bridge because the bridge makes it difficult for pedestrians to reach the shoreline, and it can become a “choke point” for traffic going to the ferry and to downtown businesses. Dan Strandy testified that NOAA operates its own pier for vessel mooring and expressed concerns about a 25-foot height limitation on property north of the ferry terminal where NOAA plans to build a 35-foot tall building. *Exhibit 1.Q.2; Exhibit 1.V; Testimony of Mr. Schmalz, Mr. Stoltz, Mr. Nickerson, Mr. Pancerwiski, Ms. Schmalz, Ms. Smith, Ms. Baxter, Ms. Gregerson, and Mr. Strandy.*

21. Nichole McIntosh responded for the Applicant to the public comments presented at the open record hearing. She stated that that WSF will work with the City to address pedestrian safety. She agreed that the SR-525 bridge needs to be replaced, but testified that there are no current plans to do so. She clarified that the projected 73 percent increase in ferry ridership by 2030 is primarily for walk-on traffic, not vehicles. She testified that WSF would pay to re-locate the Art Building and that the existing ferry holding area would be sold as surplus property. Sandy Glover, Project Manager for the Applicant Consultant Team, also testified that the 73 percent increase is in pedestrian use, not vehicle use. Burt Miller, Environmental Division of WSF, testified that WSF would consider providing resting places for birds displaced due to removal of existing piers. Ms. Love testified that the City will host a public meeting with WSF to help define traffic mitigation measures and that many traffic mitigation measures would be put in place prior to issuance of any permits. *Testimony of Ms. McIntosh, Sandy Glover, Mr. Miller, and Ms. Love.*

22. Ms. Love, City Community Development Director, recommended approval of the EPF and SCUP with 54 conditions. The City identified the following conditions as ones intended to mitigate impacts that are unique to the proposed facility:
 - a. No. 2 – Requirement for a protective covenant and a Tribal MOA (Exhibit 1.I);
 - b. No. 4 – Construction start within six years of state and federal permit approval;
 - c. No. 6 – Requirement for removal of hazardous material;
 - d. No. 7 – Requirement for barge removal of existing pier;
 - e. No. 8 – Requirement to submit approved waste disposal plan to City for review;
 - f. No. 9 – Requirement to submit final engineering drawings to City for final review and approval;
 - g. No. 10 – Requirement for realignment of a portion of First Street;

- h. No. 17 – Requirement to obtain a Certificate of Concurrence or negotiated agreement prior to Phase II permit issuance;
- i. No. 19 – Requirement that no permits be issued until Binding Site Plan has been recorded;
- j. No. 21 – Requirement for relocation of tall trees if parking garage is funded;
- k. No. 24 – Requirement that applicant be responsible for all special inspection fees;
- l. No. 39 – Requirement to submit final art plan to City;
- m. No. 44 – Requirement to screen all above ground utility boxes;
- n. No. 45 – Requirement that building and landscaping designs comply with Shoreline Permit Plans Landscape and Building Elements, dated October 23103, and MOA (Exhibits 1.J. and 1.O);
- o. No. 46 – Requirement to submit final promenade design to City for approval;
- p. No. 49 – Requirement to record a Land Use Binder with Snohomish County; and
- q. No. 53 – Requirement to restrict noise from construction.

Ms. Love testified that all conditions imposed as conditions of approval would apply to both the EPF and the SCUP, and that the City would forward the entire decision to the Department of Ecology for review, noting that Ecology approval is required for a SCUP. *Exhibit 1.R; Testimony of Ms. Love.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hold a public hearing and approve the Special Use Permit for Essential Public Facilities permit application with conditions as necessary, so long as those conditions do not preclude the siting or expansion of any state or regional essential public facility in the City of Mukilteo. *RCW 36.70B.040; Mukilteo Municipal Code (MMC) 2.38.030; MMC 17.18.030.D; MMC 17.18.030.E;⁵ MMC 17B.16.100.D.3 and .4.*

The Hearing Examiner also has jurisdiction to hear and decide Shoreline Conditional Use Permit applications. *MMC 17B.13.130.Table 26.*

⁵ Under RCW 36.70A.200(5): “No local comprehensive plan or development regulation may preclude the siting of essential public facilities.” The City Code states:

The hearing examiner shall not impose conditions in such a manner as to preclude the siting or expansion of any state or regional essential public facility in the city of Mukilteo. In the event that a state or regional essential public facility cannot, by the imposition of reasonable conditions of approval, be made to mitigate the impacts described in subsection D of this section, the hearing examiner shall approve the siting or expansion of the state or regional essential public facility with such reasonable conditions of approval as may mitigate such impacts to the maximum extent practicable.

MMC 17.18.030.E.

*Findings, Conclusions, and Decision
City of Mukilteo Hearing Examiner
Washington State Ferries EPF Permit & Shoreline CUP,
Nos. EPF 2013-001 and SH 2013-001*

Criteria for Review
Shoreline Management Act

Applicable policies of the Shoreline Management Act include those to foster “all reasonable and appropriate uses”; protect against adverse effects to the public health, the land and its vegetation and wildlife; and to give priority to single-family residences and appurtenant structures in authorizing alternations to the natural condition of the shoreline. Permitted shoreline uses must be designed to “minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water.”
RCW 90.58.020.

Shoreline Management Act Regulations

The Department of Ecology shoreline regulations are located in chapters 173-26 and 173-27 of the Washington Administrative Code (WAC). Chapter 173-26 WAC sets forth procedures and guidelines for local adoption of shoreline master programs that are not applicable to the Applicant’s permit request.

Chapter 173-27 WAC specifies permitting procedures and permit criteria. WAC 173-27-160 states that the purpose of a conditional use permit is to provide a system within the master program that allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by the local government or the department to prevent undesirable effects of the proposed use and/or to assure the project’s consistency with the act and the local master program.

WAC 173-27-160(1) provides that uses that are classified or set forth in the applicable master program as conditional uses may be authorized, provided that the Applicant demonstrates all of the following:

- (a) That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;
- (b) That the proposed use will not interfere with the normal public use of public shorelines;
- (c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;
- (d) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
- (e) That the public interest suffers no substantial detrimental effect.

WAC 173-27-160(1).

In the granting of all conditional use permits, consideration must be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment. *WAC 173-27-160(2).*

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City Shoreline Master Program and Regulations

The City Shoreline Master Program (City SMP) contains seven shoreline elements: economic development, public access, circulation, shoreline land use, conservation, historical/cultural values, and flood hazard reduction. *City SMP (December 2011), page 19.*

Section 17B.64.030 of the City Shoreline Regulations provide:

The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by the city or the Department of Ecology to prevent undesirable effects of the proposed use and/or to ensure consistency of the project with the act and the local master program.

MMC 17B.64.030.

The City's Shoreline Regulations contain criteria for siting state EPFs within the shoreline jurisdiction. Any proposal for the siting or expansion of a state or regional essential public facility must follow the procedures established by chapter 17B.13 MMC for the underlying permit. State and regional essential public facilities must not be located in any residential zoning district identified in MMC Table 17B.16.040 except as provided in this subsection. State and regional essential public facilities must meet all provisions of this code for development within the zoning district in which they are proposed to be located, including but not limited to the bulk regulations of chapter 17B.20 MMC, except as provided in this subsection. If a state or regional essential public facility does not meet all such provisions, the Applicant must demonstrate to the Hearing Examiner that compliance with such provisions would preclude the siting of all similar facilities anywhere within the city. If the Applicant is able to make such a demonstration, the Hearing Examiner must authorize the essential public facility to deviate from the provisions of this code to the minimum extent necessary to avoid preclusion. *MMC 17B.16.100.D.1. to D.3.*

The Hearing Examiner is instructed to impose reasonable conditions upon the essential public facility in order to ensure that:

- a. Necessary infrastructure is or will be made available to ensure safe transportation access and transportation concurrency;
- b. Necessary infrastructure is or will be made available to ensure that public safety responders have capacity to handle increased calls or expenses that will occur as the result of the facility;
- c. The project sponsor has the ability to pay for all capital costs associated with on-site and off-site improvements;
- d. The facility will not unreasonably increase noise levels in residential areas, especially at night;
- e. Visual screening will be provided that will mitigate the visual impacts from streets and adjoining properties; and

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- f. Any and all probable significant adverse environmental impacts are mitigated.
- g. The hearing examiner shall not impose conditions in such a manner as to preclude the siting or expansion of any state or regional essential public facility in the city of Mukilteo. In the event that a state or regional essential public facility cannot, by the imposition of reasonable conditions of approval, be made to mitigate the impacts described in subsection D of this section, the hearing examiner shall approve the siting or expansion of the state or regional essential public facility with such reasonable conditions of approval as may mitigate such impacts to the maximum extent practicable.

MMC 17B.16.100.D.4.

The criteria for review adopted by the City Council are designed to implement the requirement of chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusions Based on Findings

1. **With conditions of approval, the proposed facility would comply with MMC 17B.16.100.D State Essential Public Facility provisions.** The Applicant would meet most of the provisions of the City's Urban Mixed Use district. The Applicant has demonstrated, however, that due to the nature of the proposed facility, height restrictions and setbacks cannot be met. Therefore, the Applicant should be allowed to deviate from these restrictions. Ferry traffic would move away from the entrance to Lighthouse Park to help alleviate congestion and is expected to shorten the queue along SR-525, improving the access along the SR-525 corridor to residential neighborhoods and local businesses. The proposed facility would not generate additional demand for public services or public service responders. The Washington State Legislature would provide all capital costs. The proposed facility would not unreasonably increase noise levels in residential areas. The Applicant would use a design approach that mitigates visual impacts. Conditions of approval are necessary to ensure compliance with stormwater and erosion control measures; to require that the intersections of SR-525/88th Street SW and SR-525/5th Street are improved; and to ensure that the Applicant meets building and landscape design requirements. *Findings 1-22.*
2. **With conditions, the proposed facility would comply with the Shoreline Management Act; Washington Administrative Code 173-27 provisions; the City of Mukilteo's Shoreline Master Program; and City Shoreline Management regulations.** The City provided notice of the EPF and SCUP applications, and provided an adequate opportunity for the public to comment. The Applicant prepared an Environmental Impact Statement detailing measures to mitigate probable significant adverse environmental impacts. Ferry terminals and parking areas are allowed as a conditional use within the City's Urban Mixed Use zoning district. Shoreline areas designated as Urban Waterfront also allow for the

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proposed facility. Best Management Practices would be implemented during construction to ensure the proposed facility does not have an adverse impact on water quality. Conditions of approval are necessary to ensure compliance with stormwater and erosion control measures; to make certain no construction takes place on Sundays and holidays; and to ensure that the Applicant meets building and landscape design requirements.

Findings 1-22.

DECISION

Based on the preceding Findings and Conclusions, the request for an Essential Public Facilities Permit and Shoreline Conditional Use Permit to replace the Mukilteo Ferry Terminal with a new terminal and multimodal facility is **APPROVED**, subject to the following conditions:⁶

- Essential Public Facilities and Shoreline Conditional Use Approval
1. The Essential Public Facilities and Shoreline Conditional Use Permit application request by Burt Miller on the behalf of Washington State Ferries for the Multimodal Project is approved subject to the substantial compliance with the Modified Elliot Point 2 Plan submitted on November 6, 2013. As design move from 30% plans to 100% plans, minor changes are allowed as long as the plans meet the requirements outlined in the Final Environmental Impact Statement dated June 2013 or the Record of Decision and the conditions of the Essential Facility and Shoreline Substantial Conditional Use permits.
 2. All development is subject to the protective covenant and Tribal MOA (Exhibit I).
 3. A major permit revision will be required if substantive changes are proposed to the design or conditions of this approval. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the master program and/or the policies and provisions of chapter 90.58 RCW. Changes which are not substantive in effect do not require approval of a revision. If the Applicant seeks to revise this permit, detailed plans and text describing the proposed changes shall be submitted. If the City determines that the proposed changes are within the scope and intent of the original permit, and are consistent with the applicable master program and the act, the revision may approved. "Within the scope and intent of the original permit" means all of the following:
 - Ground area and overwater coverage may be increased a maximum of ten percent (10%) from the provisions of the original permit;
 - Additional or revised landscaping is consistent with any conditions attached to the original permit and with the applicable master program;
 - The use authorized pursuant to the original permit is not changed; and
 - No adverse environmental impact will be caused by the project revision.

⁶ This decision includes conditions required to reduce unique project impacts as well as conditions required to meet Municipal code standards. The conditions in this decision are taken verbatim from those recommended by City staff, with the exception of Conditions 55 and 56 that were added after the hearing. The Applicant testified that they agreed with the conditions recommended by the City.

4. Construction shall start within six (6) years of the effective date of approval for all State and Federal permits and the Section 106 (Tribal Consultation) finalized. The pier shall be fully removed by the end of year three (3) and an engineering permit shall be issued by the end of year six (6). Provided, that the City may authorize a single extension for a period not to exceed one (1) year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the Department of Ecology.
5. Construction shall not begin and is not authorized until twenty-one (21) days from the date of approval of the Shoreline Conditional Use Permit by the Department of Ecology, or until all review proceedings and appeal processes have been completed.

Phase I

6. Removal of hazardous material per the Hazardous Material Discipline Report dated June 2013.
7. The existing pier removal shall be conducted using equipment operated from barges. If removal requires work to be done from the shore or upland area, WSF shall apply for the appropriate City permits, i.e., right-of-way, and provide a detailed haul route for the debris removal.
8. A copy of the approved waste disposal plan shall be submitted to the City for review prior to pier removal.

Phase II and III

Civil Plans

9. Final engineering drawings depicting the project design shall be submitted to the City's Public Works Director for final review and approval before issuance of any grading permits. The improvements shall be designed in accordance with the City's Development Standards. The 60% and 90% civil plans shall be made available for review by the public on the City's website.
10. Approval of the Shoreline and Essential Public Facility Permit includes the roadway alignment Option B, which moves the new portion of First Street south if the parking can be relocated without a major modification to the permit.
11. Siltation and erosion control measures shall be employed per the approved Temporary Erosion and Sediment Control Plan (TESCP) and as necessary to ensure appropriate on-site and off-site water quality control. Site runoff during construction shall be handled and treated as to quantity and quality impacts by utilizing Best Management Practices, as defined in the current DOE Stormwater Management Manual for Western Washington and the current Department of Ecology National Pollutant Discharge Elimination System (NPDES) permit.
12. The stormwater detention design and stormwater discharge shall utilize the Best Management Practices of the current DOE Stormwater Management Manual for Western Washington or

Highway Runoff Manual and the current Department of Ecology National Pollutant Discharge Elimination System (NPDES).

13. There shall be no above ground detention ponds for this project.
14. The approved traffic control plan and haul route plan shall be implemented per the approved civil plans, including requirements for any and all proposed street closures, staging areas, detours, signage, flaggers, and construction schedules.
15. The Applicant shall have a licensed Civil Engineer prepare and/or supervise the preparation of record drawings to be reviewed, approved and signed by the City Engineer upon satisfactory installation of the constructed infrastructure improvements and site work. One (1) reproducible, one (1) signed blue line drawing and one (1) 11"x17" reduced copy of the drawings shall be submitted prior to final approval of the proposed facility.
16. Prior to final approval, the Applicant shall execute a maintenance agreement with the City of Mukilteo that ensures that the public improvements is installed and maintained in acceptable condition against defects in labor and materials for a period of 24 months after final approval of the project by the City. If the improvements are found to be defective or negatively affects the public health, welfare, and safety during the two year maintenance period, the Applicant shall make any and all such repairs as needed to meet the City's safety concerns at no cost to the City. The City shall prepare the agreement for the WSF's signature.
17. SR 525/88th Street SW intersection and the SR 525/5th Street intersection are projected to operate below City of Mukilteo standards by the year 2040. WSF will work with the City of Mukilteo to develop agreements that define the specific improvements needed to reduce delay at these intersections and identify the proportion of WSF responsibility based on ferry traffic growth. The Applicant shall either obtain a Certificate of Concurrency from the City prior to Phase II permit issuance in accordance with Ordinance 1131, effective July 27, 2005 or an agreement, as a result of negotiations, between the Applicant and the City for traffic mitigation.
18. Provide a pedestrian safety and access plan showing pedestrian routes along SR525 and Front Street during construction. The plan shall include:
 - A traffic control officer during the peak traffic period for the duration of the construction period provide by WSF; and
 - Plans to elevate congestion at the Front Street/SR 525 intersection. Work with the City to determine hours of operation during the Farmer's Market and the Lighthouse Festival.
19. No permits shall be issued until the Binding Site Plan has been recorded and the properties transferred or right of entry has been given.

Binding Site Plan

- Landscaping
20. Landscaping shall be installed in accordance with the approved Landscaping Plan, the Shoreline Permit Plans Landscape and Building Elements document and the protective covenants.
 21. If the parking garage is funded, the landscape requirements of 1 tree per 4 stalls may not be met. As a condition of the Essential Public Facility permit approval, the number of trees required for the parking garage may be relocated to another area on the site to accommodate the multimodal parking facility.
 22. Prior to final approval, the Applicant shall execute a maintenance agreement with the City of Mukilteo that ensures that landscaping is installed and maintained in acceptable condition against defects in labor and materials for a period of 24 months after final approval of the project by the City. If the improvements are found to be defective or negatively affects the public health, welfare, and safety during the two year maintenance period, the Applicant shall make any and all such repairs as needed to meet the City's safety concerns at no cost to the City. The City shall prepare the agreement for WSF's signature.
- Environmental
23. Construction, grading, and associated site development must follow recommendations presented in the geotechnical and stormwater BMP's set forth in the Final Environmental Impact Statement, Record of Decision and mitigation measures reports prepared for the Mukilteo Multimodal project dated June 2013.
 24. If special inspections are required for the development of the multimodal project, the Applicant shall be responsible for all fees associated with the special inspections. Neither the Building Official nor jurisdiction shall be liable for expenses entailed in the requirements of special inspections or the removal/replacement of any material required to allow for inspections.
 25. Copies of all inspections performed by the geotech shall be submitted to the City.
 26. Copies of all State and Federal permits for this project shall be submitted to the City prior to Phase I and II engineering permit issuance.
 27. All development shall proceed in accordance with the approved Hydraulic Permit Approval (HPA) issued by the Washington State Department of Fish and Wildlife.
 28. All development shall proceed in accordance with the approved Section 10/404 permit issued by the U.S. Army Corps of Engineers.
 29. All development shall proceed in accordance with the approved Coastal Zone Management consistency determination and 401 Water Quality Certification issued by the Department of Ecology.
 30. Submit an operations plan addressing noise impacts on the upland residential neighborhood from loud speakers/intercoms used to announce loading/unloading of the ferry.

Announcements shall be limited to 9 am – 6 pm to protect the quality of life of the upland residents.

Relocated Fishing Pier

31. Permit approval allows WSF the option of doing a joint application with NOAA to install the fishing pier. The WSF Shoreline Permit process will not be reopened, separate Shoreline, State and Federal permits shall be submitted for the joint relocation of the fishing pier with NOAA.

Fire

32. The following requirements shall be adhered to during construction and completed before occupancy of any structure in accordance with Fire Code Development Standards and 2006 International Fire Code:
- A water supply capable of supplying the required fire flow for fire protection must be provided;
 - Fire Hydrants shall be installed as per fire flow and spacing requirements specified for the type of development with regards to distances to structures;
 - Fire hydrants shall be equipped four- (4) inch quarter-turn Storz adapters
 - An access route, for firefighting apparatus, must be provided at the start of construction. Minimum access route requirements include a 20' width, 13'6" vertical height clearance, and the ability to support a load up to 75,000 pounds;
 - All buildings must be addressed visibly and legibly from the road. When buildings are not visible from the street, appropriate provisions must be made to identify clearly which road or drive serves the appropriate address including private roads.

Lighting

33. All exterior facility lighting shall be arranged so as to reflect away from surrounding properties and streets.
34. Street lights on First Street shall be a downtown decorative design and shielded to direct light away from businesses and residential property.
35. The Applicant shall prepare a streetlight plan, to be approved by the Public Works Director. All exterior lighting, including the parking area and property surrounding the building, shall be arranged so as to reflect away from surrounding properties and streets.
36. Street lights shall meet the design standards outlined in the downtown business plan. Street light designs shall be submitted to the City for review and approval.

Signage and Artwork

37. All signs shown for the Multimodal Facility are for illustrative purposes only. Pursuant to chapter 17.80 MMC, a sign permit must be obtained for the placement of any non-exempt

signage. Application for that sign permit shall include an approved site plan specifying the location of all signs.

38. The Applicant shall submit a signage plan for review and approval.
39. A member of the Arts and Park Commission shall be placed on the team to determine artwork for the multimodal project. Final arts plan shall be submitted to the City for review and the opportunity to comment by the Parks and Art and Planning Commission. The Applicant shall follow the process outlined in the Memorandum of Agreement.
40. Signage and educational awareness campaign shall be prepared by WSF and approved by the City of Mukilteo prior to Phase II permitting promoting ferry riders to be courteous to the upland residential neighborhoods by reducing emissions and noise levels.

Utilities

41. The Applicant shall relocate any utilities affected by the construction of the Mukilteo Multimodal Project improvements at no cost to the City of Mukilteo.
42. All utility improvements shall be placed underground unless otherwise approved by the Public Works Director. Required relocation of utilities shall be made at no cost to the City of Mukilteo.
43. Construction of sewer facilities shall be in accordance with the standards, specifications and regulations of Mukilteo Water and Wastewater District.
44. All above ground utility boxes shall be screened with landscaping or other architectural features.

Design

45. Building and landscaping design are subject to the design criteria listed in Shoreline Permit Plans Landscape and Building Elements dated October 2013 and the Memorandum of Agreement (MOA) with final approval by the City prior to permit issuance (Exhibit J and O).
46. Final design of the promenade, i.e., design, materials and planting plan are subject to final approval by the City.
47. Small retail and vendor usage will be permitted and encouraged for the upper floor of the terminal building.

Other

48. The Applicant shall submit plans showing the design and materials used for the proposed security fence to be approved by the City of Mukilteo prior to permit issuance.
49. Prior to Phase II permit issuance, a Land Use Binder shall be prepared and recorded with Snohomish County stating the Conditions of Approval for the Essential Public Facility and Shoreline Conditional Use Permit.

50. All construction equipment, building materials, and debris shall be stored on the Applicant's property or an approved off-site location, out of the public right-of-way. If a temporary stockpile area is required on-site, the location of the stockpile shall be determined in the field with the approval of the Planning and Public Works Director, on the recommendation of a geotechnical engineer. In no case shall the access to any private or public property be blocked or impinged upon without prior consent from the affected property owners and the City of Mukilteo.
51. All contractors and subcontractors working on the project described herein shall obtain a business license from the City before initiation of any site work.
52. If at anytime during clearing, grading and construction the streets are not kept clean and clear, all work will stop until the streets are cleaned and maintained in a manner acceptable to the Public Works Director.
53. Construction noise is not allowed between the hours of six (6) p.m. and seven (7) a.m. on weekdays, and five (5) p.m. to nine (9) a.m. on Saturdays. No construction is allowed on Sundays and holidays. WSF may request exemptions from the no-work times for special and unusual circumstances. The City requires a 10-day notice for such a request.
54. The Applicant and their contractor shall attend a pre-construction meeting with City staff to discuss expectations and limitations of the project permit prior to the start of construction or site improvements.
55. The Applicant shall consider providing replacement resting and nesting places for birds that currently rest and nest on the existing pier.
56. Prior to issuance of any permits, the Applicant shall host a public meeting with the City and its citizens to help identify specific traffic mitigation measures to address citizen concerns during construction and operation of the proposed facility.

DECIDED this 24th day of March 2014.


THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center

Exhibit 3



U.S. Department
of Transportation
**Federal Transit
Administration**

REGION X
Alaska, Idaho, Oregon,
Washington

915 Second Avenue
Federal Bldg. Suite 3142
Seattle, WA 98174-1002
206-220-7954
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May 21, 2021

Patty Rubstello
Assistant Secretary
Washington State Ferries
2901 Third Avenue, Suite 500
Seattle WA 98121-3014

**Subject: Washington State Ferries
Mukilteo Multimodal Terminal Project
Ivar's Restaurant Fire Egress Modification
National Environmental Policy Act
Environmental Re-Evaluation
Grant Nos.: WA-05-0055, WA-04-0002, WA-70-X007, WA-70-X011
WA-90-X378, WA-90-X580, WA-90-X604, WA-95-X031
WA-2017-007, WA-2017-023**

Dear Ms. Rubstello:

The Federal Transit Administration (FTA) has received National Environmental Policy Act (NEPA) environmental re-evaluation documentation from Washington State Ferries (WSF) dated April 22, 2021, related to changes to the Mukilteo Multimodal Terminal Project (Project) in Mukilteo, Washington. This letter addresses a design modification at the former Mukilteo Ferry Terminal trestle described in the April 22, 2021 documentation, referred to as the Ivar's Restaurant Fire Egress Modification. The Ivar's Restaurant Fire Egress Modification changes the design of the Project as described in the NEPA Final Environmental Impact Statement (FEIS) dated May 21, 2013, Record of Decision (ROD) dated August 22, 2014, and the NEPA Environmental Re-evaluation #1 dated September 22, 2017.

Under FTA environmental regulations, changed conditions since the approval of the 2013 FEIS, 2014 ROD, and 2017 Re-Evaluation #1, and the Ivar's Restaurant Fire Egress Modification activities proposed by WSF, make it necessary to re-evaluate the earlier NEPA determination (See 23 Code of Federal Regulations (CFR) Part 771.129(c)).

May 21, 2021

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(c) After the Administration issues a combined final EIS/ROD, ROD, FONSI, or CE designation, the applicant must consult with the Administration prior to requesting any major approvals or grants to establish whether or not the approved environmental document or CE designation remains valid for the requested Administration action. These consultations will be documented when determined necessary by the Administration.

The April 22, 2021 re-evaluation documentation submitted by WSF outlines the changed conditions since the 2013 FEIS, 2014 ROD, and 2017 Re-Evaluation #1, and describes the activities contained in the Ivar's Restaurant Fire Egress Modification. Instead of demolishing and removing the entire former Mukilteo Ferry Terminal trestle, the Project design has been modified to now leave approximately 390 square feet and 4 timber piles of the former trestle structure intact at the shoreline abutment. This portion of the former trestle provides structural support for part of the fire egress for the adjacent Ivar's Restaurant. WSF acknowledges that the remaining former trestle structure and piles may be removed by others at a later date, independent of this Project. Such removal activity would be subject to its own separate environmental and permitting review.

There are no substantive changes in anticipated impacts resulting from the Ivar's Restaurant Fire Egress Modification activities compared to those described in the 2013 FEIS, 2014 ROD, and 2017 Re-Evaluation #1. Incorporation of the Ivar's Restaurant Fire Egress Modification activities into the Project would not change previous determinations made under the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, Section 106 of the National Historic Preservation Act, or Section 4(f) of the Department of Transportation Act.

Based on a review of the April 22, 2021 re-evaluation documentation provided by WSF describing the Ivar's Restaurant Fire Egress Modification activities, FTA finds that the changes described in the Project are not considered substantial and will not result in significant environmental impacts that were not evaluated in the May 21, 2013 FEIS, August 22, 2014 ROD, and September 22, 2017 Re-evaluation #1. No additional environmental review is required.

Please contact Mark Assam at 206-220-4465 or mark.assam@dot.gov if you have any questions.

Thank you for coordinating with FTA.

Sincerely,

Linda M. Gehrke
Regional Administrator

cc: Marsha Tolon, Environmental and Permitting Lead, Washington State Ferries

Exhibit 3A

MUKILTEO MULTIMODAL PROJECT

Record of Decision



AUGUST 2014

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Acronyms and Abbreviations

ABA	Architectural Barriers Act
ADA	Americans with Disabilities Act
BMP	best management practice
CFR	Code of Federal Regulations
DOT	Department of Transportation
EA	environmental assessment
EIS	Environmental Impact Statement
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act
FTA	Federal Transit Administration
HOV	high-occupancy vehicle
IHA	Incidental Harassment Authorization
LEED	Leadership in Energy and Environmental Design
Magnuson-Stevens Act	Magnuson-Stevens Fisheries Conservation and Management Act
MMPA	Marine Mammal Protection Act
MOA	Memorandum of Agreement
NAAQS	National Ambient Air Quality Standards
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NPDES	National Pollutant Discharge Elimination System
NRHP	National Register of Historic Places
ROD	Record of Decision
SEPA	State Environmental Policy Act
SHPO	State Historic Preservation Officer
Sound Transit	Central Puget Sound Regional Transit Authority
SR	State Route
USC	United States Code
USFWS	U.S. Fish and Wildlife Service
WDFW	Washington Department of Fish and Wildlife
WSDOT	Washington State Department of Transportation
WSF	Washington State Ferries

1 DECISION

The Federal Transit Administration (FTA), pursuant to 23 Code of Federal Regulations (CFR) 771.127, issues this Mukilteo Multimodal Project Record of Decision (ROD) finding that the requirements of the National Environmental Policy Act (NEPA) have been satisfied for the construction of the project by the Washington State Department of Transportation (WSDOT), Ferries Division. This ROD also provides findings on other environmentally related federal statutory requirements.

This ROD is based on the close review and independent evaluation of the planning and environmental process followed by WSDOT which involved numerous cooperating and participating agencies in developing project alternatives and evaluating their effects. These participants include the City of Mukilteo, the City of Everett, Snohomish County, the Port of Everett, Sound Transit, Community Transit, the U.S. Air Force, the U.S. Army Corps of Engineers, the Samish Indian Nation, the Stillaguamish Tribe, the Suquamish Tribe, and the Tulalip Tribes. This process has produced the *Mukilteo Multimodal Project Draft Environmental Impact Statement* (January 2012) and the *Mukilteo Multimodal Project Final Environmental Impact Statement* (June 2013) and has led to the determinations made herein (collectively referred to as the “environmental review documents”).

This ROD summarizes the Mukilteo Multimodal Project, the background of its development, the alternatives that FTA and WSDOT considered, the opportunity to comment, the public/tribal/agency comments and their responses, the basis for the decision, and the mitigation measures the project requires. The ROD does not replace or negate any of the information or descriptions in the environmental review documents. Rather, the ROD and its associated published environmental review documents (incorporated herein by reference) are part of the FTA environmental record for the project. On the basis of its consideration of the environmental review documents, FTA finds that the project has met all applicable standards and that this ROD is complete and supports the determination that all NEPA requirements have been met.

1.1 Project Description

The selected Mukilteo Multimodal Project is the Preferred Alternative as described in the Final Environmental Impact Statement (EIS). The project is designed to improve the operations and facilities serving the mainland terminus of the Mukilteo-Clinton ferry route. The ferry route is part of Washington State Route (SR) 525, the major transportation corridor crossing Possession Sound, which separates Island County (Whidbey Island) from the central Puget Sound mainland. The route connects local and regional transportation systems serving many modes of travel, including bus and rail transit, freight, and vehicles, as well as bicycle and pedestrian use. In Appendix A, Figure 1-1 shows the regional setting, Figure 1-2 shows the general project area, and Figure 1-3 shows the Preferred Alternative.

WSDOT will develop the project on the western portion of the Mukilteo Tank Farm, a 20-acre area previously used by the U.S. Air Force. The Tank Farm currently contains lands, buildings, and building remnants; the foundations of fuel tanks that have been removed; and a large pier formerly used for fuel storage and loading. Much of the shoreline is armored with riprap. The project will construct in-water and upland facilities

for ferry terminal operations, provide a six-bay transit center, and improve connections to Sound Transit's Sounder commuter rail at Mukilteo Station.

The in-water facilities comprise the features needed for the ferry slip, including wingwalls and fixed dolphins. A floating dolphin will be relocated from the existing ferry terminal. The project will construct a new transfer span, including hydraulic-lifting mechanisms and structures and a bridge seat foundation, as well as a new concrete trestle and bulkhead. The Tank Farm Pier, which includes approximately 3,900 piles, will be removed. The project will dredge about 23,500 cubic yards¹ from part of the area now occupied by the pier to create a 500-foot-wide by 100-foot-long channel with a depth of 30 feet; this channel will allow a navigation depth of -28 feet at an average lowest tide.

WSDOT will remove the existing ferry slip and all of its marine structures, including the Port of Everett-owned public fishing pier and day moorage. The project will reconstruct the fishing pier and day moorage near the new multimodal facility.

A new passenger building and a maintenance building will be combined as a two-story building and aligned parallel to the shoreline. The building will bridge over the vehicle driveway to the ferry trestle, and an overhead passenger loading ramp will connect the second story of the building to the ferry passenger deck.

Other components of the project, described more fully in the Final EIS, include:

- A vehicle holding area with a capacity of about 266 vehicles.
- A building above the new toll booths containing the terminal supervisor's area.
- A new transit center with six new bus bays and a transit passenger area.
- Designated ferry employee parking spaces.
- A reconstructed First Street/Park Avenue intersection.
- A realignment and extension of First Street as a four-lane roadway with sidewalks and bicycle lanes, generally along the southern portion of the Mukilteo Tank Farm. These improvements will extend from the new signalized intersection with SR 525 to a traffic signal at the entrance to the new ferry terminal, and from there will continue as a two-lane road to the new bus transit and paratransit center and the Mount Baker railroad crossing.
- A new public parking lot near SR 525 between the BNSF Railway tracks and the new First Street extension to replace displaced on-street parking.
- A modified access road and parking layout that maintains existing functions and capacity for the Mukilteo Station and replaces displaced parking.
- A stormwater treatment facility between Front Street and the First Street extension east of Park Avenue.

¹ The volume of dredged material is larger than the 19,500 cubic yards described in the Final EIS to allow for a cap of clean material if the newly exposed sediment surface is contaminated.

- A pedestrian pathway next to First Street connecting to a waterfront promenade and incorporated into the passenger building, allowing continuous pedestrian access along the WSDOT-controlled portion of the waterfront.
- Other sidewalks and crosswalks linking the Mukilteo Station, ferry terminal, and transit center.
- New security fences and gates surrounding the holding area and the terminal.

1.2 Basis for the Decision

1.2.1 Planning and Project Development Process

The City of Mukilteo undertook planning efforts for its central waterfront in the early 1990s. The City's *Comprehensive Plan* derived several policies from the March 1995 *Mukilteo Multimodal/Intermodal Terminal and Access Study and Programmatic EIS* (City of Mukilteo 1995), which strongly endorsed moving the ferry terminal away from its current location. In 2004, WSDOT accelerated its own planning for improvements to ferry operations, safety, transit connections, and access. It initiated the NEPA review process in 2004 with work on an environmental assessment (EA). Early in 2006, based on environmental analysis and comments from the public, tribes, and agencies, FTA determined that an EIS would be required. FTA issued a Notice of Intent in the Federal Register in February 2006. In 2007, the Washington State Legislature put the project on hold due to funding and constructability issues associated with the previously identified alternatives, and pending the finalization of the Ferries Division's long-range plan.

In 2009, WSDOT completed the *Washington State Department of Transportation Ferries Division Final Long-Range Plan: 2009–2030* (WSDOT 2009) (Long-Range Plan). The Long-Range Plan presents a vision for the future of the ferry system that maintains current levels of service and includes limited terminal improvements. This vision is now a part of the latest *Washington Transportation Plan 2030*, which was adopted by the Washington State Transportation Commission in December 2010.

WSDOT and FTA reinitiated this project's environmental process in early 2010 with new project alternatives for review and evaluation.

The reinitiated NEPA/State Environmental Policy Act (SEPA) process included another round of project scoping, which started in February 2010, followed by a formal comment period that ran from September 29 through November 19, 2010. This led to the alternatives evaluated in the Draft and Final EIS. FTA published the Draft EIS in January 2012.

After considering comments received on the Draft EIS, FTA and WSDOT concluded that the Elliot Point 2 Alternative best meets the project's purpose and need. The project team considered suggestions from commenters and refined the Elliot Point 2 design to further improve its ability to meet the purpose and need, reduce environmental impacts, and enhance other benefits. FTA and WSDOT collaborated with interested tribes and others to determine a culturally sensitive design approach to guide the project. The modified alternative is the Final EIS's Preferred Alternative, to which this ROD applies. The Final EIS was issued June 7, 2013.

1.2.2 Purpose and Need

The Mukilteo Multimodal Project's purpose is to provide safe, reliable, and efficient service and connections for general-purpose transportation, transit, high-occupancy vehicles (HOVs), pedestrians, and bicyclists traveling between Island County and the Seattle/Everett metropolitan area and beyond. The project is intended to:

- Reduce conflicts, congestion, and safety concerns for pedestrians, bicyclists, and motorists by improving local traffic and safety at the terminal and the surrounding area.
- Provide a terminal and supporting facilities with the infrastructure and operating characteristics needed to improve the safety, security, quality, reliability, and efficiency of multimodal transportation.
- Accommodate future demand projected for transit, HOV, pedestrian, bicycle, and general-purpose traffic.

The existing facility suffers from shortcomings related to safety, multimodal connectivity, and capacity, and it fails to support the goals of local and regional long-range transportation and comprehensive plans, or to satisfy future travel demand. The Final EIS provides detailed background information on the complete statement of need for the project, but the major issues are highlighted below.

Safety and Security

Current circumstances create a number of safety and security concerns—at the pedestrian/vehicle interface, with the general traffic flow in the SR 525/Front Street vicinity, and maintaining safety and security for the facility itself. Improvements are needed because:

- *The existing timber structures, including the docking facilities, have exceeded their useful lives.* The Mukilteo ferry terminal has received few improvements since it was built in 1952.
- *The existing terminal does not meet current seismic standards.* The deep, potentially liquefiable soils that lie beneath it are highly susceptible to lateral spreading during an earthquake.
- *The existing facility has city streets within the terminal area and does not allow for a physical separation between the terminal and open public areas.* This configuration conflicts with U.S. Coast Guard and U.S. Department of Homeland Security protocols requiring WSDOT to secure terminal areas when there is a natural disaster, heightened security alert, or other emergency. This layout increases safety and security concerns, and could require WSDOT to interrupt service or close the terminal to respond to an emergency or heightened security alert.
- *The SR 525/Front Street intersection creates hazardous conflicts.* Pedestrians who access the terminal area, transit facilities, surrounding businesses, and Mukilteo Lighthouse Park compete with vehicles for access to this intersection. Collisions near the SR 525/Front Street intersection have included sideswipes, pedestrian/vehicle accidents, and collisions with parked vehicles. Moreover, congestion often encourages pedestrians to make high-risk decisions to cross the intersection during breaks in ferry traffic.

- *Inadequate bus facilities increase congestion and risk.* The lack of passenger drop-off/pick-up facilities and poor bus access to the two bus bays exacerbate the problems described above.
- *Passengers must use routes that do not meet the requirements of the Americans with Disabilities Act (ADA).* This occurs during loading and unloading from the ferry or when passengers are traveling between the toll booths and the terminal building.

Transit Connectivity and Reliability

The current facility provides poor connections among transit, rail, and ferry modes, undermining the quality and reliability of the transportation system and worsening the transportation and safety problems related to the terminal. The major concerns are:

- *Transit connections at the Mukilteo ferry terminal cannot adequately serve current or future needs.* The two bus bays, located 200 feet away, uphill and across a major local street, are inadequate to support the current service, including staging and layover needs for transit operations. Boarding areas and amenities for transit riders are also limited. The current configuration will not allow bus service to be expanded. In addition, the streets between the ferry terminal and the Mukilteo Station (approximately 2,000 feet from the existing terminal) lack adequate pedestrian and bicycle facilities.
- *Current conditions make it difficult to achieve adequate schedule reliability, further degrading multimodal connectivity.* Without reliable ferry service, passengers cannot make on-time connections to scheduled bus and train service. The current vehicle staging system slows fare collection, which delays departures. Lack of a dedicated HOV access lane impedes WSDOT's preferential program for carpools and worsens operating efficiency. Moreover, because pedestrians walking on and off the ferry use the same span that vehicles use, passengers and vehicles must be loaded at separate times, causing system inefficiency and often delays that can last throughout the day.

Growth in Travel Demand

The Mukilteo-Clinton route connects the two segments of SR 525, the major transportation corridor between Island County (Whidbey Island) and the Seattle-Everett metropolitan area. SR 525 is classified as a Highway of Statewide Significance. In addition to serving ongoing travel demand, SR 525 (including the ferry) is needed to connect the communities and military facilities on the island for evacuations, disaster relief, and medical emergencies.

WSDOT forecasts higher future demand for multimodal facilities serving the route. Specifically, WSDOT predicts the total annual ridership (vehicle drivers, vehicle passengers, and walk-on passengers) on the route to grow to about 5,939,000 riders in 2030 (WSDOT 2009), compared to 3,835,000 riders in 2012 (WSDOT 2012).

The Mukilteo-Clinton route serves many commuters today, and employment growth on both Whidbey Island and on the mainland will continue to increase the need for trips by ferry. In response, the Long-Range Plan calls for meeting the growing demand at the Mukilteo ferry terminal primarily through increasing the share of walk-on trips. This

reinforces the need for improved connections between ferries and other modes, including transit, bicycle, and walking.

Other Related Objectives

Through its planning and outreach efforts, including scoping comments, WSDOT has also identified environmental and project development goals to help guide the project:

- *The project should be fiscally responsible and supportive of state, regional, and local transportation plans including, but not limited to, the Long-Range Plan, as well as regional and local land use plans.*
- *The project should be sensitive to the rich cultural and environmental resources in the vicinity in a manner that respects and enhances these resources.*
- *The project should not preclude development of a second slip at the terminal in the future to provide operational flexibility or additional capacity.*

2 ALTERNATIVES CONSIDERED IN THE FINAL EIS

In addition to the Preferred Alternative, the Final EIS evaluated the No-Build, Existing Site Improvements, and Elliot Point 1 alternatives.

The No-Build Alternative provides a baseline against which to compare the effects of the Build alternatives. It includes what would be needed to maintain the existing ferry terminal at a functional level. Under the No-Build Alternative, an improved multimodal transportation facility to meet future demand or operational needs would not be developed. Instead, the No-Build Alternative assumes that maintenance and structural replacements would occur in accordance with legislative direction to maintain and preserve ferry facilities, but WSDOT would make no investments to improve the operation, safety, security, or capacity at the terminal.

The Existing Site Improvements Alternative would construct an improved multimodal facility by replacing the existing Mukilteo ferry terminal with an expanded terminal and multimodal center on and around the current site. This expansion would improve some local traffic and safety features at the terminal facility as well as some of the multimodal transportation connections. It would provide capacity for growth in transit service at the terminal and would place buses closer to the Mukilteo Station than they are at the existing terminal.

The Elliot Point 1 Alternative would build a new ferry terminal on the eastern portion of the Mukilteo Tank Farm with an integrated multimodal center. It would remove the existing ferry terminal and Tank Farm Pier. Because the shoreline slopes more gradually in this location compared to the Preferred Alternative, the ferry slip would be at least 250 feet away from the top of the current riprap shoreline, which would require a longer trestle leading to the transfer span and towers, and new piles to support the trestle. First Street would be realigned and extended as a four-lane roadway from SR 525 to the Mount Baker Terminal.

The initial EIS process (starting in 2006) studied a different set of alternatives. These were removed from further consideration after they were determined to be no longer reasonable for WSDOT to pursue, based on potential impacts on archaeological resources, the amount of over-water construction, geotechnical conditions, and cost

concerns. The *Alternatives History through 2009* report (*Appendix E* to the Final EIS) describes the alternatives and concepts previously considered.

3 MEASURES TO MINIMIZE HARM AND PROJECT COMMITMENTS

FTA and WSDOT have designed the Preferred Alternative to avoid and minimize harm. In addition, Appendix B, which is incorporated herein by reference, establishes the mitigation measures that are required of WSDOT under this ROD. Pursuant to 23 CFR 771.109(d), WSDOT will ensure that all environmental mitigation identified in this ROD is implemented unless it receives concurrence from the FTA to do otherwise.

WSDOT shall meet the conditions of all applicable state, federal, and local permits and approvals that are required to allow construction and operation; achieve performance standards incorporated into final design; observe best management practices (BMPs); and implement the mitigation measures developed to address specific impacts as identified in Appendix B. This commitment includes WSDOT's obligation to comply with the terms of the Section 106 Memorandum of Agreement (MOA), which was developed to resolve the project's adverse effects on historic and cultural resources (see Section 6.12 below).

The mitigation measures described in Appendix B are conditions of this Mukilteo Multimodal Project ROD. These measures will be incorporated in contracts that may be awarded for construction of the project and will be relied upon by other federal permitting agencies. FTA considers the mitigation measures to be material conditions of this ROD and will incorporate them in any future grant agreement that FTA may award WSDOT for the construction of the Mukilteo Multimodal Project. FTA finds that with the accomplishment of these mitigation commitments, WSDOT will have taken all reasonable, prudent, and feasible means to avoid or minimize environmental harm from this project.

4 MONITORING AND ENFORCEMENT

To ensure compliance with required mitigation and to assist with FTA oversight, WSDOT will establish a mitigation monitoring program for the project that will track, monitor, and report the status of the environmental mitigation actions identified in the ROD. This monitoring program will be approved by FTA and may, upon FTA approval, be revised as necessary during the permitting process in order to implement mitigation measures during final design and construction.

5 OPPORTUNITIES TO COMMENT

Since the Mukilteo Multimodal Project was initiated in 2004, WSDOT and FTA have provided frequent opportunities for interested members of the public, agencies, and tribes to engage, share concerns, and discuss specific project details with WSDOT staff. Public involvement activities to date have included public meetings, agency and tribal meetings, online meetings, and stakeholder briefings. For more information, see *Chapter 7 Agency, Tribal, and Public Involvement* in the Final EIS.

The environmental review process for the Mukilteo Multimodal Project began with work to develop a NEPA EA in 2004. WSDOT held two public EA scoping meetings in the fall of 2004. Because of information acquired during development of the EA, FTA concluded that the project warranted an EIS. On February 17, 2006, FTA published a Notice of Intent to prepare an EIS for the Mukilteo Multimodal Project and announced a 30-day public comment period that ended on April 5, 2006. FTA and WSDOT requested public comments on the scope of the alternatives and the impacts to be considered, and held two public meetings in March 2006. FTA and WSDOT also held a scoping meeting for agencies and tribes on March 21, 2006.

The Washington State Legislature put the project on hold in 2007 due to funding and constructability issues associated with the previously identified alternatives, and to allow time for WSDOT to complete a long-range plan for the ferry system.

WSDOT and FTA reinitiated the environmental review process in February 2010, and conducted a second scoping period, including a public comment period, from September through November 19, 2010. They held another round of public scoping meetings in October 2010, hosting four in-person open houses to serve directly affected populations, and one online open house to increase participation among the broader community. Approximately 160 people attended the meetings in Whidbey Island, Mukilteo, Edmonds, and Everett; 15 people participated in the virtual online open house. WSDOT received approximately 365 public comments during the scoping period at public meetings, by mail, e-mail, and online using a Google map comment tool.

Following publication of the Draft EIS in January 2012, WSDOT and FTA hosted public meetings with hearings on February 22 and 23, 2012. The meetings in Mukilteo and Clinton included an informal open house, an overview presentation, and a formal hearing for public comment. Approximately 175 people attended the meetings. The 45-day comment period ended on March 12, 2012.

After considering the comments on the Draft EIS, WSDOT identified a Preferred Alternative, and FTA and WSDOT formally consulted with other agencies and tribes in accordance with the requirements of Section 106 of the National Historic Preservation Act and Section 7 of the Endangered Species Act (ESA). These consultations, as well as related agency and tribal meetings on natural resource impacts, helped define additional environmental protections to be implemented as part of the project.

WSDOT and FTA involved agencies and tribes early in the environmental review process and have continued to consult since then. FTA, working with the WSDOT Mukilteo Multimodal Project Tribal Liaison, formally engaged with potentially affected tribes to assess their interest in the Mukilteo Multimodal Project. In particular, FTA participated in government-to-government consultations with all the tribes who signed the Point Elliott Treaty because the Mukilteo shoreline is recognized as the area where the treaty was signed. FTA also consulted with all the tribes whose treaty rights could be affected by the project.

FTA and WSDOT offered each potentially affected tribe the opportunity to participate in the development of the EIS. Four tribes accepted cooperating agency status (a higher level of participation): Samish Indian Nation, Stillaguamish Tribe of Indians, Suquamish Tribe, and Tulalip Tribes.

WSDOT and FTA participated in well over 50 meetings with tribes from 2010 to 2013. These meetings covered a range of environmental and project implementation issues of interest to the tribes. As the EIS process continued, the key topics of discussion were cultural resources, ecosystems, fishing, and the treaty rights of the tribes.

The public and agency *Coordination Plan* and the *Tribal Consultation Plan* are included in *Appendix H* of the Final EIS.

Comment letters on the Final EIS were received from the City of Mukilteo and the U.S. Environmental Protection Agency (EPA), and they, along with FTA's responses, are included in Appendix E of this ROD.

6 DETERMINATION AND FINDINGS

6.1 National Environmental Policy Act

Title 42, Sections 4321 through 4347 and 4372 through 4375 of the United States Code (USC), as well as Executive Order 11514, Protection and Enhancement of Environmental Quality, require that federal agencies evaluate the environmental impacts of their actions, integrate such evaluations into their decision-making processes, and implement appropriate policies.

The environmental record for the Mukilteo Multimodal Project includes the *Mukilteo Multimodal Project Draft EIS* (January 2012), the *Mukilteo Multimodal Project Final EIS* (June 2013), and the supporting materials incorporated therein. These documents represent the detailed statements required by NEPA describing:

- The environmental impacts of the proposed action.
- The adverse environmental effects that cannot be avoided, should the proposed action be implemented.
- Alternatives to the proposed action.
- Irreversible and irremediable commitments of resources that would be involved should the proposed action be implemented.

Having carefully considered the environmental record, mitigation measures (included in Appendix B of this ROD), public and agency comments, and the findings below, FTA has determined that:

- The environmental project review application includes a record of the environmental impacts of the proposal; adverse environmental effects that cannot be avoided; alternatives to the proposal; and irreversible and irremediable impacts on the environment.
- The environmental process included cooperation and consultation with the Secretary of the Interior and the Administrator of the EPA.
- All reasonable steps have been taken to minimize adverse environmental effects of the proposed project.
- The project meets its purpose and need and the requirements of NEPA.

6.2 Executive Order 13175 Consultation and Coordination with Indian Tribes

Under Executive Order 13175 and other federal authorities, FTA conducted government-to-government consultation and coordination with the following federally recognized tribes:

- Lummi Nation
- Muckleshoot Indian Tribe
- Nooksack Indian Tribe
- Samish Indian Nation
- Sauk-Suiattle Indian Tribe
- Snoqualmie Tribe
- Stillaguamish Tribe of Indians
- Suquamish Tribe
- Swinomish Indian Tribal Community
- Tulalip Tribes
- Upper Skagit Tribe

In addition, consultation and coordination occurred with two non-federally recognized tribes under provisions of Section 106:

- Duwamish Tribe
- Snohomish Tribe of Indians

In particular, FTA contacted tribal governments about four broad areas of concern.

First, FTA consulted with tribal governments representing the tribes who signed the Point Elliott Treaty, because the Mukilteo shoreline is recognized as the area where the treaty was signed. The area has great cultural and historic significance for that reason. Second, archaeologists have discovered an archaeological site within the project footprint that dates back many centuries; FTA consulted with interested tribal governments on a project design that would avoid, minimize, and mitigate impacts to this important cultural resource. With the input received from tribes and other interested parties, FTA and WSDOT then developed a Memorandum of Agreement (MOA) to address potential effects to the cultural and historic properties. Under the MOA, FTA and WSDOT shall avoid disturbing the area known to contain intact archaeological artifacts. The MOA also commits WSDOT to preparing, with tribal input, (a) a culturally sensitive design; (b) a plan for the treatment of known archaeological and cultural materials; and (c) a plan for proceeding in the event of an inadvertent discovery of cultural or historic artifacts.

Third, FTA consulted on a government-to-government basis with each of the four tribes that have treaty-protected usual and accustomed fishing and hunting grounds within the project area. FTA and WSDOT entered into agreements with the Suquamish Tribe,

Swinomish Indian Tribal Community, and Tulalip Tribes to resolve the treaty issues raised by the project and will implement the mitigation measures called for under the executed agreements. After consulting at length with FTA, the Lummi Nation declined to execute an agreement. The tribe stated that it “does not object to the proposed project, but also has not surrendered any rights.” FTA and WSDOT will continue to coordinate with all three signatory tribes to implement mitigation measures agreed upon during consultation, and to continue coordination with the Lummi Nation.

Fourth, FTA consulted with several tribes interested in the project’s potential effects on fish and other biological resources in the project vicinity; the tribal input helped shape the mitigation identified in the Final EIS and required by this ROD.

Chapter 7, Agency, Tribal, and Public Involvement of the Final EIS contains more details about these tribal consultations.

Aside from those specific issues, FTA also offered each potentially interested tribe the opportunity to act as a cooperating agency under NEPA. Four tribes accepted cooperating agency status: Samish Indian Nation, Stillaguamish Tribe of Indians, Suquamish Tribe, and Tulalip Tribes. The Upper Skagit Tribe declined to participate in deference to other tribes and the Nooksack Indian Tribe declined to participate because the project was outside of its area of interest.

FTA and WSDOT invited interested tribes to meet with them at a number of key milestones during the development of the EIS, including project scoping, the screening of alternatives to be considered in the EIS, the publication of the Draft EIS, and the publication of the Final EIS. FTA and WSDOT also invited tribal representatives (both staff and leadership) to meetings discussing the analysis of potential project impacts to cultural resources and natural resources. FTA and WSDOT acted on a tribal suggestion that the project engage an architect with expertise in designing culturally sensitive projects in Indian country and provided several opportunities for tribes to meet with the architect to discuss design goals, themes, materials, etc. In addition, throughout the NEPA process, the project team kept tribes informed about progress, impact analyses, and upcoming milestones, and gave them the opportunity to provide feedback through written comments and meetings.

The Final EIS responds to and incorporates tribal comments and suggestions made in response to the Draft EIS.

FTA finds that the requirements of Executive Order 13175 have been met.

6.3 Executive Order 12372 Intergovernmental Review of Federal Programs

Executive Order 12372 directs federal agencies to consult with and solicit comments from state and local governments whose jurisdictions would be affected by a federal action. As required by 23 USC 139, FTA asked agencies and tribes to comment on the purpose and need for the project, the range of alternatives to be considered, and the Draft EIS. FTA accepted comments and offered briefings to agencies and tribes during the scoping period in 2010, during the development of the Draft EIS, and during the preparation of the Final EIS. Several agencies and tribes reviewed and commented on the Draft EIS. *Appendix K, Draft EIS Comments and Responses*, in the Final EIS contains responses to all public and agency comments received during the Draft EIS comment

period. Appendix E to this ROD contains a comment from the City of Mukilteo on the Final EIS and FTA's response.

State and local agencies accepted invitations to be cooperating or participating agencies for the project, as discussed in *Chapter 7, Agency, Tribal, and Public Involvement*, of the Final EIS.

FTA finds that the requirements of Executive Order 12372 have been met.

6.4 Clean Air Act

Under the Clean Air Act, EPA has established National Ambient Air Quality Standards (NAAQS), which specify maximum allowable concentrations for certain criteria pollutants (EPA 2011). Washington State and the Puget Sound Clean Air Agency have adopted these standards. Proposed transportation projects requiring federal funding or approval must demonstrate compliance with EPA's Transportation Conformity Rule (40 CFR Part 93). This rule requires showing that a project would not cause or contribute to any new violation of any NAAQS, increase the frequency or severity of any existing NAAQS violations, or delay timely attainment of the NAAQS.

This project meets project-level air quality conformity in accordance with state and federal regulations as follows:

- The project is included in the Puget Sound Regional Council's Regional Transportation Plan.
- The project is included in the current Transportation Improvement Plan.
- The project meets the local hot-spot conformity requirements. Because the project has been included in the modeling for the Regional Transportation Plan and the Transportation Improvement Plan, it demonstrates conformity to the State Implementation Plan. The project meets project-level conformity requirements because it would not cause any new NAAQS exceedance or worsen any existing one, and would not delay the timely attainment of any standard.

6.5 Clean Water Act, Coastal Zone Management Act, and Rivers and Harbors Act

The Clean Water Act (33 USC § 1251 et seq.) establishes the basic structure for regulating discharges of pollutants (including dredged materials) into the waters of the United States, and for regulating quality standards for surface waters. It therefore applies to the project's dredging and its stormwater discharges. Permits will be required for both activities. The project will satisfy all requirements arising from these permits. The project will not fill any wetlands.

Project activities will be consistent with the Coastal Zone Management Act (16 USC §§ 1451-1462) through compliance with the Shoreline Management Act and the shoreline management plans of local jurisdictions. The project will obtain permits and approvals necessary to meet applicable Shoreline Management Plan requirements.

Under Section 10 of the Rivers and Harbors Act (33 USC § 403), the building of piers within navigable waters requires approval by the U.S. Army Corps of Engineers. The project will obtain such a permit and comply with its conditions.

The final mitigation package for pier removal and construction activities will be developed during final design through the appropriate permitting processes in compliance with the requirements of the U.S. Army Corps of Engineers, EPA, and state agencies.

Accordingly, the FTA finds that the project meets the requirements of the Clean Water Act, Coastal Zone Management Act, and Rivers and Harbors Act.

6.6 Endangered Species Act

The Endangered Species Act (ESA) (16 USC § 1531 et seq.) is intended to protect threatened and endangered species and the ecosystems on which they depend. When the federal government takes an action subject to the ESA, it must comply with Section 7 of the ESA. Section 7 (a)(2) generally requires that any action authorized, approved, or funded by a federal agency is not likely to jeopardize the continued existence of any threatened or endangered species or adversely modify any designated critical habitat of such species. Federal agencies must consult with federal wildlife agencies to ensure that their actions satisfy these requirements.

FTA therefore consulted with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS). It submitted a Biological Assessment to these agencies on October 29, 2012.

The USFWS issued a letter (December 19, 2012) concurring with the FTA's Biological Assessment determinations of "may affect, likely to adversely affect" for bull trout and bull trout critical habitat. The USFWS issued its Biological Opinion (July 8, 2013) concurring with the FTA's Biological Assessment determinations of "may affect, not likely to adversely affect" determination for marbled murrelet, and concluding that the project is not likely to jeopardize the continued existence of bull trout and is not likely to destroy or adversely modify bull trout critical habitat. The Biological Opinion included an incidental take statement on bull trout, and defined the terms and conditions of the allowed incidental take. The Biological Opinion also included conservation recommendations for the project.

NMFS issued a Biological Opinion on July 31, 2013 concluding the action, as proposed, is not likely to jeopardize the continued existence of Puget Sound Chinook salmon, Puget Sound steelhead, southern resident killer whales, humpback whales, and Steller sea lions. NMFS also concluded the project is not likely to destroy or adversely modify the critical habitats for Puget Sound Chinook salmon and southern resident killer whales. The Biological Opinion contains an incidental take statement on salmon and steelhead and specifies protective measures and habitat conservation actions.

NMFS did not authorize any incidental take of marine mammals in the Biological Opinion because the take of marine mammals was not yet authorized under Section 101(a)(5) of the Marine Mammal Protection Act (MMPA). On June 18, 2014, following the issuance of such an authorization (see Section 6.8 below), NMFS amended the 2013 Biological Opinion to allow the incidental take of southern resident killer whales and humpback whales from September 1, 2014 to August 31, 2015. Washington State Ferries (WSF) must apply for further authorizations as needed after August 31, 2015.

FTA finds that the project meets the requirements of the ESA.

6.7 Magnuson-Stevens Fisheries Conservation and Management Act

The Magnuson-Stevens Fisheries Conservation and Management Act (16 USC § 1801 et seq.) requires federal fisheries management regulations to identify and conserve habitat that is essential to federally managed fish species. Essential fish habitat is defined as “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.” If an action will adversely affect essential fish habitat, then NMFS must provide conservation recommendations to the federal action agency managing essential fish habitat.

FTA’s Biological Assessment determined that the project will adversely affect essential fish habitat. NMFS concurred with this determination and provided conservation recommendations. FTA agreed to implement 16 of 18 of the measures and conservation recommendations in a letter to NMFS dated August 15, 2013, which is included in Appendix C. Accordingly, FTA finds the project meets the requirements of the Magnuson-Stevens Act.

6.8 Marine Mammal Protection Act

The Marine Mammal Protection Act (16 USC § 1361 et seq.) prohibits, with certain exceptions, the “take” of marine mammals in United States waters. “Take” includes harassment and disturbance, whether intentional or not. The project includes a number of avoidance and minimization measures designed to protect marine mammals.

As described in the Biological Assessment, the project had to obtain an Incidental Harassment Authorization (IHA) through the MMPA separate from the incidental take statement authorized under the ESA. On March 18, 2014, the National Oceanic and Atmospheric Administration (NOAA) issued an IHA to the WSF, which is valid from September 1, 2014 to August 31, 2015, the first year of construction of the 3-year project. Subsequent work will require additional authorizations.

Marine mammal monitoring and other conditions of the IHA will be implemented during pile removal and pile-driving. FTA finds that the project meets the requirements of the MMPA.

6.9 Fish and Wildlife Coordination Act

The Fish and Wildlife Coordination Act (16 USC §§ 661-667) requires consultation with the USFWS to evaluate and mitigate impacts to fish and wildlife resources whenever water resources are affected by federal agency actions. During the course of the project, FTA invited USFWS to provide input on the Draft EIS and Biological Assessment. Additional information related to the Biological Assessment was provided. The Final EIS responded to USFWS’s comments received on the Draft EIS, which are included in *Appendix K, Draft EIS Comments and Responses*, in the Final EIS.

Accordingly, FTA finds that the project meets the requirements of the Fish and Wildlife Coordination Act.

6.10 Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act

The Migratory Bird Treaty Act (16 USC § 703-712) prohibits taking, killing, or possessing native migratory birds. The Bald and Golden Eagle Protection Act (16 USC § 668) prohibits “taking” or disturbing bald eagles, including their nests, to a degree that causes injury or interferes with normal behavior. Bald eagles were identified as a species that occurs in the project area.

FTA finds that with the mitigating actions identified in Appendix B of this ROD, which include the conditions stated in the Biological Opinions, the project meets the requirements of the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act.

6.11 Executive Order 12898 Environmental Justice

Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority and Low-Income Populations” (1994), directs federal agencies to identify and address disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations. Department of Transportation (DOT) Order No. 5680.1 to Address Environmental Justice in Minority Populations and Low-Income Populations requires agencies to 1) explicitly consider human health and environmental effects related to transit projects that may have a disproportionately high and adverse effect on minority and low-income populations; and 2) implement procedures to provide “meaningful opportunities for public involvement” by members of these populations during project planning and development.

As part of the project planning process and continuing through completion of the Final EIS, FTA and WSDOT performed meaningful and extensive outreach efforts to minority and low-income communities to ensure their active participation. *Chapter 4, Environmental Impacts and Mitigation*, of the Final EIS describes these outreach efforts.

The Final EIS concludes that two potential impacts would disproportionately affect Native Americans. The project would interfere with certain tribes’ treaty-protected rights to fish in Possession Sound, and the project could adversely affect cultural resources of importance to several tribes.

FTA and WSDOT have conducted government-to-government consultations with four tribes whose treaty-protected fishing rights would be affected by the project. The consultations helped identify mitigation measures, and FTA and WSDOT have executed agreements with the Suquamish Tribe, Swinomish Indian Tribal Community, and Tulalip Tribes committing to these measures. After extensive consultations with FTA and WSDOT, the Lummi Nation has declined to sign a similar agreement, but has stated that it does not object to the project advancing. FTA and WSDOT will continue to coordinate with all three signatory tribes and to implement mitigation measures agreed upon during consultation. FTA and WSDOT will continue coordination with the Lummi Nation.

Similarly, as described in Section 6.12 of this ROD, FTA and WSDOT consulted with tribes, the State Historic Preservation Officer (SHPO), and others interested in cultural and historic resources, and developed a variety of measures to mitigate potential impacts

to cultural and historic resources. A Memorandum of Agreement (Appendix D to this ROD) documents the project's commitments to protect those resources.

In other areas, adverse impacts such as unmitigated noise impacts, traffic impacts, visual impacts, and displacements do not fall disproportionately on low-income communities. The Preferred Alternative will not displace housing, social service providers, unique ethnic establishments, or other resources that are particularly important to low-income and minority populations. The Preferred Alternative will benefit environmental justice populations at similar or higher levels than the general population by:

- Creating jobs to construct the new terminal facilities.
- Enhancing public shoreline access and the aquatic environment through removing the Tank Farm Pier over-water structures and piles that are potential sources of contamination. The removal of the existing terminal and Tank Farm Pier will also open up additional waters for tribal and public fishing, and will also improve public waterfront access.
- Providing increased transit capacity and reliability, as well as improved safety conditions for motorists, bicyclists, and pedestrians accessing the ferry and the waterfront.

Chapter 4, Section 4.5, of the Final EIS, contains more details about FTA's environmental justice analysis.

Accordingly, FTA finds that the project will not have a disproportionately high and adverse effect on minority or low-income populations and that appropriate outreach has been conducted such that meaningful opportunities for public involvement for those populations have been achieved. Therefore, the project includes the commitments needed to meet the requirements of Executive Order 12898 and DOT Order 5680.1.

6.12 Section 106 of the National Historic Preservation Act

The National Historic Preservation Act (NHPA) (16 USC § 470) establishes government policy and procedures regarding "historic properties," which include districts, sites, buildings, structures, and objects that are listed in or eligible for listing on the National Register of Historic Places (NRHP). Section 106 of the NHPA requires federal agencies to consider the effects of their actions on historic properties.

FTA has consulted with the SHPO and others and has identified five historic and/or archaeological resources in the area of potential effects that are listed in or recommended as eligible for listing on the NRHP. The Preferred Alternative would affect three of them:

- Point Elliott Treaty Site, a NRHP-eligible site where the 1855 treaty between the United States government and Puget Sound Native American tribes was signed.
- Old Mukilteo Townsite, a NRHP-eligible site holding archaeological remains of the early Mukilteo business district.
- Mukilteo Shoreline Site, a NRHP-eligible archaeological site with a shell midden and other deposits dating back more than 1,000 years.

The Preferred Alternative would not alter any of the characteristics that make the Point Elliott Treaty Site eligible for the NRHP, and aside from the geographic setting, there are no remaining features related to the site's historic significance.

FTA and WSDOT determined that excavation will have an adverse effect on the Old Mukilteo Townsite and may have an adverse effect on the Mukilteo Shoreline Site. The SHPO concurred with an adverse effect finding for the project under Section 106. FTA and WSDOT then undertook consultations under Section 106 to develop an agreement defining the measures the project will take to resolve adverse effects. Consulting parties included interested tribes, local governments, a non-profit historic preservation group, and the American Council on Historic Preservation, along with FTA, WSDOT, and the SHPO.

Although the Preferred Alternative has been designed to minimize excavating within the Old Mukilteo Townsite, some construction would occur on or near it. The MOA defines the measures the project will take to resolve adverse effects, including data recovery and public dissemination of investigative findings. This ROD requires compliance with the MOA stipulations. The MOA is included in Appendix D of this ROD.

The Preferred Alternative has also been designed to avoid excavation within the known limits of the Mukilteo Shoreline Site with intact archaeological/stratigraphic context. As described in the MOA, WSDOT has committed to redesign any elements of the project that would otherwise require such excavation in order to avoid impacts. If direct excavation impacts to the Mukilteo Shoreline Site cannot be avoided following all feasible avoidance planning and redesign, such impacts may occur only after all Signatory and Concurring Parties sign an Amendment to the MOA that specifically allows it.

WSDOT will use context-sensitive solutions to incorporate into the design significant historical and cultural themes or events related to the site, reflecting its importance both as a place of gathering for over a thousand years and the Treaty of Point Elliott. The Design Criteria for Cultural Elements reference document, developed with tribal participation, will inform this work.

Based on the cultural resources analysis; the extensive consultation and coordination with the SHPO, tribes, and other consulting parties; and the execution of the MOA with stipulations to resolve adverse effects; FTA finds that there is adequate mitigation for the adversely affected resources and that suitable procedures exist to address any inadvertent discovery. Therefore, the requirements of the National Historic Preservation Act for this project have been fulfilled.

6.13 Section 4(f) of the U.S. Department of Transportation Act

Section 4(f) of the U.S. Department of Transportation Act (49 USC § 303) requires that the use of land from important public parks, recreation areas, wildlife refuges, or land containing historical sites of local, state, or federal significance be approved and constructed only if (a) there is no feasible and prudent alternative, and (b) the project includes all possible planning to minimize harm to these resources. If resources protected by Section 4(f) are involved in a project's planning, a determination whether there is a "use" of those resources is required. Section 4(f) evaluations also require review by the U.S. Department of the Interior.

6.13.1 Absence of Prudent and Feasible Avoidance Alternatives

None of the project's proposed alternatives completely avoids using Section 4(f) resources. Therefore, FTA must determine if there are other prudent and feasible alternatives that would avoid using Section 4(f) resources.

The Preferred Alternative would use four resources that also would be used by the other Build alternatives. Any other alternative within the Mukilteo waterfront area would also use these resources, even if some design elements were modified or the alternatives had different footprints. FTA and WSDOT considered alternatives outside of Mukilteo that would have avoided these resources but determined they did not meet the project's purpose and need and worsened environmental effects (see *Chapter 2, Alternatives* of the Final EIS for more information). The No-Build Alternative would also use at least one Section 4(f) resource, and as it also does not satisfy the purpose and need, it is not a prudent and feasible alternative to a use. Therefore, FTA determined that there are no feasible and prudent Section 4(f) avoidance alternatives.

6.13.2 Determining "Least Harm" Alternatives

Because no alternative completely avoids Section 4(f) uses, FTA must identify one or more "least harm" alternatives, considering factors defined in Section 4(f) regulations. *Appendix I, Final Section 4(f) Evaluation*, of the Final EIS lists the factors to be considered; they include the remaining impacts to the Section 4(f) resources after mitigation, the degree to which each alternative meets the project's purpose and need, and any adverse impacts after mitigation to resources not protected by Section 4(f) resources.

FTA has incorporated in its analysis the results of the environmental analysis, public comments on the Draft EIS, the information gathered through continuing Section 4(f) evaluation and coordination, and Section 106 consultations with other agencies, tribes, and interested parties. *Appendix I* of the Final EIS describes in more detail each of the alternatives' performance with respect to all of the least harm factors. The primary conclusions of this complex analysis are:

- The Preferred Alternative is most able to mitigate adverse impacts on the affected Section 4(f) properties.
- The Preferred Alternative best meets the project's purpose and need.
- The Preferred Alternative has similar or lower environmental impacts than the other alternatives and offers the highest benefits to other environmental resources.

In addition, the costs of the alternatives are not substantially different to the point that cost would either prevent or provide a major advantage toward implementation of a particular alternative.

6.13.3 Section 4(f) Evaluation

The full Section 4(f) evaluation in *Appendix I* of the Final EIS provides a complete description of the factors FTA has considered and the analysis performed to support its finding that:

- FTA has found no feasible and prudent avoidance alternatives to using protected Section 4(f) resources.
- In developing the Preferred Alternative, WSDOT and FTA have conducted all possible planning to minimize harm to each property that would be used.
- Considering the Preferred Alternative's mitigation and enhancement measures for Section 4(f) uses, as well as its impacts and benefits, the Preferred Alternative would have the least overall harm to Section 4(f) resources and the environment.

The U.S. Department of the Interior has reviewed FTA's evaluation and informed FTA that it had no comments on it. Accordingly, FTA finds that the project meets the requirements of Section 4(f).

6.14 Americans with Disabilities Act/Architectural Barriers Act

The ADA (42 USC § 126 and 47 USC § 5) addresses issues relating to accessibility to places of public accommodation; the Architectural Barriers Act (ABA) (42 USC § 4151) further specifies accessibility standards. The project facilities will be designed to meet all ADA and ABA requirements. Accordingly, FTA finds that the project will meet the standards and requirements of the ADA and ABA.

6.15 Executive Order 11988 Floodplain Management

Executive Order 11988 requires federal agencies to avoid to the extent possible the long-term and short-term adverse impacts caused by using and modifying floodplains, and to avoid floodplain development wherever there is a practicable alternative. This order directs each agency to preserve the natural and beneficial values served by floodplains in carrying out its responsibilities with respect to federal approvals and project funding, among other directives.

A small portion at the west edge of the project (part of the First Street extension) is located within the Federal Emergency Management Agency's 100-year floodplain. Because most of the existing flooding in the waterfront area is related to high tides or storm surges, the Preferred Alternative's changes to stormwater flows would not increase the risk of flooding. The development of a new roadway within the floodplain, much of which is on retained fill, would not reduce storage capacity or increase the risk of flooding in other areas. Any new outfalls would be designed and sited to prevent impacts from occasional tidal backwater that could flood the site and adjacent areas.

FTA finds that the project meets the requirements of Executive Order 11988.

6.16 Resource Conservation and Recovery Act

Several federal authorities regulate the generation, transportation, treatment, storage, and disposal of hazardous waste. These include the Resource Conservation and Recovery Act (42 USC § 82 subchapter III and §§ 6901-6992k), as well as other regulations.

As described in *Section 4.8, Hazardous Materials*, of the Final EIS, construction of the Preferred Alternative will affect three sites that had previous contamination. The U.S. Air Force conducted a survey of the current and past storage tanks on the Mukilteo Tank Farm that contained fuel or other hazardous materials. The survey found that all the tanks had been substantially cleaned up. The Preferred Alternative will appropriately

manage remnant contamination that might be encountered on the Mukilteo Tank Farm, as well as creosote-treated piles that will be removed from the existing ferry terminal and the Tank Farm Pier. Project commitments related to hazardous materials are described in Appendix B of this ROD.

FTA finds that the project will comply with federal hazardous waste requirements.

6.17 Noise Control Act

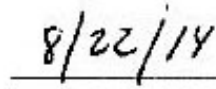
The Noise Control Act (as amended by the Quiet Communities Act) (42 USC 65 §§ 4901-4918) requires federal agencies to develop programs to promote an environment free of noise that jeopardizes public health and welfare. This act requires that the agencies comply with state and local noise ordinances.

Under the Preferred Alternative, all project elements are far enough from the noise-sensitive land uses to avoid potential long-term (operational) impacts. However, some construction activities would generate high noise levels. WSDOT will implement measures to minimize noise and vibration activities associated with construction as described in Appendix B of this ROD.

FTA finds that with these mitigation measures, the project will comply with the Noise Control Act and Quiet Communities Act.



R.F. Krochalis
Regional Administrator, Region 10
Federal Transit Administration



Date of Approval

7 REFERENCES

WSDOT (Washington State Department of Transportation). 2009. Washington State Department of Transportation Ferries Division Final Long-Range Plan: 2009-2030. June 30, 2009. Available at: <http://www.wsdot.wa.gov/ferries/planning/>.

WSDOT (Washington State Department of Transportation). 2012. Mukilteo Multimodal Project Biological Assessment. Seattle, WA.

Exhibit 4

From: [Durham, Leslie L](#)
To: [Huey, Rick](#); michael.macdonald@noaa.gov
Cc: [Tolon, Marsha](#); [Assam, Mark \(FTA\)](#); [Handel, Lindsey \(FHWA\)](#); [Love, Sharon \(FHWA\)](#); [Manning, Sandra](#); [Lang, Jennifer W. \(USACE\)](#)
Subject: Re: [EXTERNAL] WSF Mukilteo Multimodal Project Update - Emergency Fire Easement Ivar's Restaurant - NMFS 2102/9334, WCR-2017-6210; USFW 01EWF00-2013-F-0360-R001 X-Ref: 01EWF00-2013-F-0360-R001
Date: Monday, January 4, 2021 2:26:06 PM

Rick,

Thank you for the project update regarding the change in the amount of overwater trestle cover to be removed. I understand the reasoning and the justification for not removing the 390 square feet of overwater trestle cover to provide legally required fire egress for the adjacent private business as detailed in your information.

I will place this correspondence in the administrative record (01EWF00-2013-F-0360; Ref 01EWF00-2013-F-0360-R001).

Leslie Durham
WSDOT Liaison - ESA Biologist
U.S. Fish and Wildlife Service
Washington Fish and Wildlife Office
510 Desmond Drive SE, Ste. 254
Lacey, Washington 98503

360-753-9532
leslie_durham@fws.gov

From: Huey, Rick <HueyR@wsdot.wa.gov>
Sent: Monday, January 4, 2021 2:59 PM
To: Durham, Leslie L <leslie_durham@fws.gov>; michael.macdonald@noaa.gov <michael.macdonald@noaa.gov>
Cc: Tolon, Marsha <TolonM@wsdot.wa.gov>; Assam, Mark (FTA) <Mark.Assam@dot.gov>; Handel, Lindsey (FHWA) <Lindsey.Handel@DOT.GOV>; Love, Sharon (FHWA) <Sharon.Love@dot.gov>; Manning, Sandra <Sandra.L.Manning@usace.army.mil>; Lang, Jennifer W. (USACE) <Jennifer.W.Lang@usace.army.mil>
Subject: [EXTERNAL] WSF Mukilteo Multimodal Project Update - Emergency Fire Easement Ivar's Restaurant - NMFS 2102/9334, WCR-2017-6210; USFW 01EWF00-2013-F-0360-R001 X-Ref: 01EWF00-2013-F-0360-R001

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Hello,

WSF has a project update. This is not a request for ESA re-initiation, just an update. All potential effects on Endangered Species of the actions below have been consulted on in the above referenced Biological Opinions.

Maintain a legal fire egress for Ivar's Restaurant

WSF proposes to leave approximately 390 SF of overwater trestle coverage, and four 12" timber piles of the existing terminal trestle at the shoreline bulkhead to retain a fire egress for Ivar's restaurant (see Attachments 1- 4). If we demolish the entire trestle as previously planned, it will leave Ivar's in a non-compliant state according to the City of Mukilteo fire code. At a later date and independent of the WSF project, Ivar's will undertake a project to rebuild the fire egress appropriately. Any new design of a permanent fire egress would likely be in the same location as the existing, and removal of the remaining trestle and piles would likely be conditions of the permit and approval conditions Ivar's obtains for their project.

Table 1 summarizes the overwater coverage for the project:

Table 1

Element	Overwater Structure SF
New Terminal	+7,700 (completed)

New Fishing Pier	+3,975 (completed)
Tank Farm Pier Removal	-138,085 (completed)
Old Terminal Removal (includes Old Fishing Pier)	-8,120 (pending)
Ivar's Fire Egress	+390
Total	-134,140

The work described above is consistent with the attached Biological Opinions (Attached):

- The work described above is within the project footprint, as consulted on.
- As much demolition work as possible will be done within the in-water work window of August 1 – February 15.
- The work will be completed by the end of the February 28 extension.
- Salmonids, including bull trout, are highly unlikely to be present in the project footprint during this timeframe.
- Vibratory timber pile removal produces limited in-water noise levels that may harass or harm marine mammals or harass marbled murrelet.
- Marbled murrelet have rarely been observed in the nearshore demolition area. Over 53 days of observation from the Mukilteo Lighthouse during the tank farm pier demolition (2015-16 Aug. 4- Nov. 6), only 2 marbled murrelet were observed near the old terminal demolition zone. The observations were made by WSF Biologist Rick Huey (MAMU certified). Other monitoring days were assigned to sub-contracted biologists.

MAMU monitoring was implemented during impact driving steel piles at the new terminal (approximately ¼ mile from the old terminal demolition zone):

- 2017-2018 - 38 days impact monitoring by certified MAMU observers – **zero marbled murrelet** observed in nearshore monitoring zone
- 2018-2019 - no in-water construction
- 2019-2020 – no impact driving
- Turbidity limits at the 150 foot compliance zone will be met, which will limit turbidity effects on marbled murrelet, murrelet forage fish, and salmonids.
- Forage fish egg sampling per WDFW requirements will be implemented in the orange zone, to ensure protection of spawning forage fish. If forage fish eggs are present, work will be suspended in the orange zone (see attached Mukilteo Demo sheet). Per the WDFW HPA:

Due to the lengthy spawning period for sand lance in this portion of Puget Sound work will also be allowed from OCTOBER 16 through DECEMBER 31 and JANUARY 1 through FEBRUARY 15 of any year, **EXCEPT 2021 when work may occur through FEBRUARY 28**, if a biologist approved by the Department of Fish and Wildlife does not detect sand lance eggs during a beach survey. Work must begin within 72 hours of survey and you must complete the work within two weeks of the survey.

Resampling for forage fish eggs must meet the following requirements:

- If forage fish eggs are present, there should be at least 2 days of consecutive “no eggs present” samples before resuming demolition work in the ‘orange zone’ (see attached).
- Demolition work in the ‘green zone’ can proceed without sampling, or can proceed even if forage fish eggs are present.
- Example:
 - Day 1 - eggs present

- Day 2 -resample, eggs absent
- Day 3 - resample, eggs absent – demolition work in 'orange zone' can proceed
- If eggs are present during Day 2 or 3, restart 2 day resampling sequence

Preserve and retain any eggs samples for WDFW to review later. If eggs are present, and 48 hours later not present, WDFW will look at the stage of the eggs found, to see if it makes sense that they might have hatched in that period.

Exposure to turbidity and contaminants is reviewed and summarized in the table below (in months).

Table 2

In-water work window	Turbidity Exposure Duration authorized in 2013 ITS	Contaminants Exposure Duration authorized in 2013 ITS	Turbidity Exposure Duration authorized in 2017 ITS	Contaminants Exposure Duration authorized in 2017 ITS	Turbidity and Contaminants Exposure Duration of Salmonids claimed from authorized take	Previous 2020 project update request** (anchor chain repair)	Previous 2020 project update request (old terminal demolition work window extension)	Balance of take remaining
2015-16	7.0 mo	7.0 mo			7.0 mo			0 mo
2016-17	7.0 mo	7.0 mo			1.0 mo			6.0 mo
2017-18			7.0 mo		7.0 mo			0 mo
2018-19*								
2019-20				0 mo		.25 mo		5.75 mo
2019-20				0 mo			.50 mo	5.25 mo

*No in-water work in the 2018-19 season.

**Note that the 12/28/20 update on demolition pile types did not increase or decrease exposure duration, so is accounted for in the 6.0 months remaining before these updates (i.e. no change from the original consultations).

As noted in Table 1, there will be **-134,140 SF of overwater coverage** when the project is complete, over-mitigating for all project overwater coverage impacts, including the Ivar's Fire Egress. As noted in Table 2, there will still be **5.25 months of unused take** remaining per the consultations.

Therefore, no potential effects to endangered species will occur that have not been consulted on in the attached Biological Opinions for the demolition work.

Please let me know if you have additional questions.

*Rick Huey
WSF Biologist
206-330-5149 (cell)*

Exhibit 5

Tolon, Marsha

From: MacDonald, Michael K.
Sent: Tuesday, March 23, 2021 7:55 AM
To: Huey, Rick
Cc: Tolon, Marsha; Assam, Mark (FTA); Handel, Lindsey (FHWA); Love, Sharon (FHWA); Manning, Sandra (ECY); Lang, Jennifer W. (USACE); Durham, Leslie (USFWS); Meade, Michelle; MacDonald, Michael K.
Subject: WSF Mukilteo Multimodal Project Update - Emergency Fire Easement Ivar's Restaurant - NMFS 2102/9334, WCR-2017-6210
Attachments: Pg4_NWS-2012-47_DWG_2020-1201.pdf; Trestle Partial Demo 10292020.pdf; 18w122sd01_00A.pdf; 18w122sd01_00-REV1.pdf; Mukilteo Demo.pdf; Mukilteo NMFS BO 2017.pdf; Mukilteo USFW BO 2013.pdf; Mukilteo USFW BO 2017.pdf; Mukilteo NMFS BO 2013.pdf

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Michael MacDonald
WSDOT/NMFS liaison
206-440-4909

From: Michael MacDonald - NOAA Affiliate <michael.macdonald@noaa.gov>
Sent: Tuesday, January 5, 2021 8:41 AM
To: MacDonald, Michael K. <MacDonM@wsdot.wa.gov>
Subject: [EXTERNAL] Fwd: WSF Mukilteo Multimodal Project Update - Emergency Fire Easement Ivar's Restaurant - NMFS 2102/9334, WCR-2017-6210; USFW 01EWF00-2013-F-0360-R001 X-Ref: 01EWF00-2013-F-0360-R001

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----- Forwarded message -----

From: Huey, Rick <HueyR@wsdot.wa.gov>
Date: Mon, Jan 4, 2021 at 1:11 PM
Subject: WSF Mukilteo Multimodal Project Update - Emergency Fire Easement Ivar's Restaurant - NMFS 2102/9334, WCR-2017-6210; USFW 01EWF00-2013-F-0360-R001 X-Ref: 01EWF00-2013-F-0360-R001
To: Durham, Leslie (USFWS) <Leslie_Durham@fws.gov>, michael.macdonald@noaa.gov, michael.macdonald@noaa.gov
Cc: Tolon, Marsha <TolonM@wsdot.wa.gov>, Assam, Mark (FTA) <Mark.Assam@dot.gov>, Handel, Lindsey (FHWA) <Lindsey.Handel@dot.gov>, Love, Sharon (FHWA) <Sharon.Love@dot.gov>, Manning, Sandra <Sandra.L.Manning@usace.army.mil>, Lang, Jennifer W. (USACE) <Jennifer.W.Lang@usace.army.mil>

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2016-17	7.0 mo	7.0 mo			1.0 mo			
2017-18			7.0 mo		7.0 mo			
2018-19*								
2019-20				0 mo		.25 mo		5
2019-20				0 mo			.50 mo	5

*No in-water work in the 2018-19 season.

**Note that the 12/28/20 update on demolition pile types did not increase or decrease exposure duration, so is accounted for in the 6.0 months

remaining before these updates (i.e. no change from the original consultations).

As noted in Table 1, there will be **-134,140 SF of overwater coverage** when the project is complete, over-mitigating for all project overwater coverage impacts, including the Ivar's Fire Egress. As noted in Table 2, there will still be **5.25 months of unused take** remaining per the consultations.

Therefore, no potential effects to endangered species will occur that have not been consulted on in the attached Biological Opinions for the demolition work.

Please let me know if you have additional questions.

Rick Huey

WSF Biologist

206-330-5149 (cell)

Exhibit 6



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
SEATTLE DISTRICT, CORPS OF ENGINEERS
P.O. BOX 3755
SEATTLE, WASHINGTON 98124-3755

Regulatory Branch

December 11, 2020

Mr. Kevin Bartoy
Washington State Ferries
2901 3rd Avenue, Suite 500
Seattle, Washington 98121-3014

Reference: NWS-2012-47
Washington State Ferries
(Mukilteo Multimodal
Modification 7)

Dear Mr. Bartoy:


On November 10, 2020, we received a modification to the scope of work authorized by the above-referenced Department of the Army permit. The original plans, dated August 2, 2013, were to relocate the Mukilteo Ferry Terminal in Possession Sound at the City of Mukilteo, Washington. You have requested a seventh modification of the permit to temporarily disturb benthic sediment to reset three anchor chains and retain 390 square feet of trestle and four piles originally proposed to be removed.

Your request for a permit modification is approved. Enclosed are the approved modified plans dated December 1, 2020, which supersede plans authorized by the Secretary of the Army on October 15, 2014, December 15, 2015, February 11, 2016, August 10, 2017, November 3, 2017, January 26, 2018, and August 9, 2019.

All other terms and conditions contained in the original permit, and modified permits remain in full force and effect.

If you have any questions, please contact the Project Manager, Ms. Jennifer Lang at jennifer.w.lang@usace.army.mil or at (206) 764-6071.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:


for Alexander L. Bullock
Colonel, Corps of Engineers
District Engineer

Enclosure

Exhibit 7

Lauren Balisky

From: Kelley, Penny <Pkel461@ecy.wa.gov>
Sent: Wednesday, December 9, 2020 2:18 PM
To: Tolon, Marsha
Subject: Re: WSF Mukilteo Project Cert #10395

Hello Marsha,

Thanks for the phone call today. I reviewed the email update and i do not have any further questions. As long as they are monitoring the work and all other approvals have been obtained, nothing else is needed on my end. Thanks for keeping me updated

Penny Kelley
WSDOT Liaison

Sent from my iPhone

> On Dec 9, 2020, at 1:02 PM, Tolon, Marsha <TolonM@wsdot.wa.gov> wrote:

>

> Hi Penny,

>

> Attached for reference is the HPA modification application describing the upcoming work at the Mukilteo Multimodal Terminal project. Sheets 4 and 11 of the updated JARPA drawings show the changes. The text below is an excerpt from the application describing water quality BMPs specific to the resetting of the anchor chains that WSF will undertake. Water quality BMPs for all other work described is the current WQMPP for the project.

>

> "Air-Lifting, to complete the installation of the anchor chains, is not considered dredging, because the sediment is not removed from the water, however the effects are similar, except on a much smaller scale. Any impacts on water quality will meet water quality regulations at the 150-foot compliance point. WSF will:

>

> n Visually monitor airlifting within the 150-foot zone.

>

> n Stop work if any extreme turbidity occurs and wait until it dissipates to continue work. That is, if turbid conditions rise to the surface and spread to reduce visibility for the divers, and if turbid conditions extend far towards the 150-foot boundary, work will stop until conditions are clear again."

>

> WSF anticipates starting the work on Monday, Dec 14 , 2020 to fix the anchor chains at the new Mukilteo Terminal. The other updates described—leaving a remnant area of existing trestle and in-water work window extension—will occur in January and February 2021. Following is a listing of permit and approval work status for your reference.

>

> * WDFW = permit mod issued 12/04/20

> * USACE = permit mod in process

> * DOE = email update only because the work is not new from what was originally permitted.

> * USFW = ESA update in review

> * NMFS = ESA update in review.

>

> Please let me know if there are any questions or changes to the proposed BMPs for the anchor chain work to make.

>

> Thank you,

- > Marsha Tolon
- > Environmental and Permitting Lead
- > Environmental Stewardship & Sustainability Program Washington State
- > Ferries
- > (WSF)<<https://gcc02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.wsdot.wa.gov%2Fferries%2F&data=04%7C01%7CPkel461%40ecy.wa.gov%7C7e0c98c86f434033a16608d89c85c703%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C637431445732467536%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQljojV2luMzliLCJBTil6Ik1haWwiLCJXVCi6Mn0%3D%7C1000&sdata=a09Mr2EqvSACHmD6sulXTP7rPW5KAmq7mylFxl46ZS0%3D&reserved=0>>
- > Terminal Engineering
- > 2901 3rd Avenue, Suite 500
- > Seattle, Washington 98121
- > 206.515.3876 (office)
- >

Exhibit 8



HYDRAULIC PROJECT APPROVAL

Washington Department of
Fish & Wildlife
PO Box 43234
Olympia, WA 98504-3234
(360) 902-2200

Issued Date: February 12, 2021
Project End Date: December 31, 2021

Permit Number: 2020-4-106+04
FPA/Public Notice Number: N/A
Application ID: 20162

PERMITTEE	AUTHORIZED AGENT OR CONTRACTOR
Washington State Ferries ATTENTION: Marsha Tolon 2901 3rd Ave Seattle, WA 98121-3014	

Project Name: Mukilteo Multimodal Project

Project Description: Complete construction of a new ferry terminal and demolish the existing terminal.

- a. Construction of a transfer span (2,600 SF)
- b. Construction of a pedestrian overhead loading structure (2,600 SF)
- c. Construction of wingwalls (900 SF ea. plus piles) on either side of the trestle and fixed dolphins (440 SF plus piles) on either side of the slip;
- d. Relocation of a concrete and steel floating dolphin (4,600 SF) from the old terminal to the new terminal. Demolish existing chains and anchors and install 6 new anchors and associated chains;
- e. Removal of the existing terminal (7,730 SF, plus piles);
- f. Revetment construction at wall 5; and
- g. Relocation of Port of Everett's existing fishing pier (2,030 SF) to the east of the new terminal. New fishing pier will occupy 3,400 SF and 26 piles.

PROVISIONS

1. A. EXISTING TERMINAL: To protect fish and shellfish habitats at the job site, work below the ordinary high water line must occur from JULY 15 and OCTOBER 15 of any year.

(1) Due to the lengthy spawning period for sand lance in this portion of Puget Sound work will also be allowed from OCTOBER 16 through DECEMBER 31 and JANUARY 1 through FEBRUARY 15 of any year, if a biologist approved by the Department of Fish and Wildlife does not detect sand lance eggs during a beach survey. For 2021 work may occur between FEBRUARY 15 and FEBRUARY 28. Forage fish surveys must still be conducted and reported to WDFW per provision A.(2).

(2) Work must begin within seventy-two hours of survey and you must complete the work within two weeks of the survey. The biologist must follow the department-approved intertidal forage fish spawning protocol and use the standard department data sheets when conducting forage fish spawning beach surveys. A list of certified biologists, the approved protocol and data sheets are available on the department's web site http://wdfw.wa.gov/licensing/hpa/technical_assistance.html The biologist must submit the completed, data sheets to the department within seventy-two hours of completing the survey to WDFW by e-mail at HPAapplications@dfw.wa.gov; mail to Post Office Box 43234, Olympia, Washington 98504-3234; or fax to (360) 902-2946. In addition, the biologist must preserve the winnowed portion of the sediment samples and retain them for a minimum of four weeks. The sediment samples must be provided to WDFW staff upon request.

B. NEW TERMINAL: To protect fish and shellfish habitats at the job site, work below the ordinary high water line must occur from JULY 15 through DECEMBER 31 and JANUARY 1 through FEBRUARY 15 of any year. Excavation



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activities below the 0.0 ft MLLW (0.0= MLLW) at the new terminal location must occur between SEPTEMBER 15 and DECEMBER 31 and JANUARY through FEBRUARY 15. An exception exists for the pile cleanout work, which may occur year-round.

2. APPROVED PLANS: Work must be accomplished per plans and specifications submitted with the application(s) and approved by the Washington Department of Fish and Wildlife, entitled MUKILTEO MULTIMODAL PROJECT, dated DECEMBER 19, 2016, JANUARY 22, 2018, JUNE 4, 2019, JANUARY 20, 2020, and DECEMBER 1, 2020, except as modified by this Hydraulic Project Approval. You must have a copy of these plans available on site during all phases of the project proposal.

NOTIFICATION

3. PRE- AND POST-CONSTRUCTION NOTIFICATION: You, your agent, or contractor must contact the Washington Department of Fish and Wildlife by e-mail at HPAapplications@dfw.wa.gov; mail to Post Office Box 43234, Olympia, Washington 98504-3234; or fax to (360) 902-2946 at least three business days before starting work, and again within seven days after completing the work. The notification must include the permittee's name, project location, starting date for work or date the work was completed, and the permit number. The Washington Department of Fish and Wildlife may conduct inspections during and after construction; however, the Washington Department of Fish and Wildlife will notify you or your agent before conducting the inspection.

4. FISH KILL/ WATER QUALITY PROBLEM NOTIFICATION: If a fish kill occurs or fish are observed in distress at the job site, immediately stop all activities causing harm. Immediately notify the Washington Department of Fish and Wildlife of the problem. If the likely cause of the fish kill or fish distress is related to water quality, also notify the Washington Military Department Emergency Management Division at 1-800-258-5990. Activities related to the fish kill or fish distress must not resume until the Washington Department of Fish and Wildlife gives approval. The Washington Department of Fish and Wildlife may require additional measures to mitigate impacts.

STAGING, JOB SITE ACCESS AND EQUIPMENT

5. Establish the staging area (used for activities such as equipment storage, vehicle storage, fueling, servicing, and hazardous material storage) in a location and manner that will prevent contaminants like petroleum products, hydraulic fluid, fresh concrete, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials from entering waters of the state.

6. Clearly mark boundaries to establish the limit of work associated with site access and construction.

7. Confine the use of equipment to specific access and work corridor shown in the approved plans.

8. Check equipment daily for leaks and complete any required repairs before using the equipment in or near the water.

9. Clearly mark the edge of the seagrass and/or kelp habitat adjacent to the project during construction activities. Remove markers upon project completion.

10. Lubricants composed of biodegradable base oils such as vegetable oils, synthetic esters, and polyalkylene glycols are recommended for use in equipment operated in or near water.

11. Operate vessels with minimal propulsion power and in adequate water depth to prevent impacts from grounding and propeller wash to seagrass, kelp, and forage fish spawning beds.

12. Operate vessels with minimal propulsion power to avoid prop scour damage to the bed and marine vegetation



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habitats.

13. Do not deploy anchors or spuds in seagrass or kelp.

14. Maintain anchor cable tension, set and retrieve anchors vertically, and prevent mooring cables from dragging to avoid impacts to seagrass and kelp.

15. Relocate vessels moored over seagrass between March 21 and September 21 every 4th day to minimize shading of seagrass.

16. As specified in the letter dated May 22, 2014, barges must be located at -20 ft MLLW or deeper when not in use.

CONSTRUCTION-RELATED SEDIMENT, EROSION AND POLLUTION CONTAINMENT

17. Prevent contaminants from the project, such as petroleum products, hydraulic fluid, fresh concrete, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials, from entering or leaching into waters of the state.

18. Use tarps or other methods to prevent treated wood, sawdust, trimmings, drill shavings and other debris from contacting the bed or waters of the state.

CONSTRUCTION MATERIALS

19. To prevent leaching, construct forms to contain any wet concrete. Place impervious material over any exposed wet concrete that will come in contact with waters of the state. Forms and impervious materials must remain in place until the concrete is cured.

20. Do not use wood treated with oil-type preservative (creosote, pentachlorophenol) in any hydraulic project. Wood treated with waterborne preservative chemicals (ACZA, ACQ) may be used if the Western Wood Preservers Institute has approved the waterborne chemical for use in the aquatic environment. The manufacturer must follow the Western Wood Preservers Institute guidelines and the best management practices to minimize the preservative migrating from treated wood into aquatic environments. To minimize leaching, wood treated with a preservative by someone other than a manufacturer must follow the field treating guidelines. These guidelines and best management practices are available at www.wwpinstitute.org.

CONSTRUCTION OF NEW FERRY TERMINAL AND EXISTING TERMINAL REMOVAL

21. Project activities include the following activities, as illustrated in your plans, except as modified by this Hydraulic Project Approval:

Complete construction of new terminal and demolish existing terminal.

- a. Construction of a transfer span (2,600 SF)
- b. Construction of a pedestrian overhead loading structure (2,600 SF)
- c. Construction of wingwalls (900 SF ea. plus piles) on either side of the trestle and fixed dolphins (440 SF plus piles) on either side of the slip;
- d. Relocation of a concrete and steel floating dolphin (4,600 SF) from the old terminal to the new terminal. Demolish existing chains and anchors and install 6 new anchors and associated chains;
- e. Removal of the existing terminal (minimum of 7,730 SF, plus 286 piles);
- f. Areas of shoreline riprap removal and replacement associated with the new terminal construction and existing terminal removal; and
- g. Relocation of Port of Everett's existing fishing pier (2,030 SF) to the east of the new terminal.



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New fishing pier will occupy 3,400 SF plus 26 piles.

22. Remove the existing structures and associated materials from waters of the state. Do not relocate the structure within waters of the state without written authorization from Washington Department of Fish and Wildlife.
23. As specified in the modification dated 12/1/2020, 390 sf of the existing trestle adjacent to the bulkhead and four piles will temporarily remain to support a structurally dependent emergency egress for the adjacent Ivar's Restaurant. The remnant trestle will be turned over to the City of Mukilteo. The proponent will be responsible for completing removal of the remnant trestle and piles.
24. As specified in the application, temporary platform(s), or a temporary construction access pier and associated temporary piles may be required, and must be removed upon project completion.
25. The new terminal and associated features and structures must be constructed as specified and illustrated in the updated plans dated DECEMBER 1, 2020.
26. As specified in the modification dated 12/1/2020, due to hard sediments, three anchor chains will be reset. Chains will be reset below the mudline using divers and Air-Lift equipment. Trench widths and depths for the chains must be kept to the minimum necessary to lay the chains.
27. The bottom of the pier must be at least six feet above the bed at the landward end.
28. The bottom of the fishing pier float(s) must be at least one foot above the substrate so that the structure will not rest on the bottom.
29. The new fish pier must be constructed as illustrated in the revised plans dated JANUARY 20, 2020. The new fishing pier includes a "L" shaped pier and "L" shaped gangway and floats. The structure must not exceed the following widths; the 133 – foot long pier, 11'-6" , and the 83'-9" long connecting "L" shaped pier, 6'-8", the adjacent 80 – foot long gangway, 5'-7" wide, the 30 ft long connecting removable concrete float, 8 ft wide, the 85 – ft long "L" shaped floats, 8'0" wide and 2'-6" wide.
30. As illustrated in the plans, the fishing pier will have 100 percent of the deck surface grated. The pier must have at least fifty percent of the entire deck surface covered in functional grating. The grating material's open area must be at least sixty percent. Orient grating so the lengthwise opening maximizes the amount of light penetration.
31. The fishing pier and ramp structures must include functional grating.
 - a. Grating installed parallel to the length of the pier must extend the length of the pier and cover 100 percent of the deck area.
 - b. The ramp must have one hundred percent of the entire deck surface covered in functional grating.
32. Fully enclose and contain flotation for the structure in a shell (tub). The shell or wrap must prevent breakup or loss of the flotation material into the water. The shell or wrap must not be readily subject to damage by ultraviolet radiation and abrasion.
33. Do not construct skirting, including batter fencing, around piers, docks or floats.
34. Use low-intensity lights that are located and shielded to prevent light from reaching the water surface.
35. Use of treated wood for decking is not authorized, but may be used for structural elements. Treated wood subject to abrasion by vessels, floats, or other objects must incorporate approved design features such as rub strips to minimize



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abrasion of the wood. Use of tires is not approved unless proper post-treatment for aquatic environments is performed.

SLOPE PROTECTION

36. As specified in the modification dated February 11, 2021, wall repair to the new terminal promenade will include placing approx. 65 tons of shoreline armor over approx. 620 sf, and repair to the eastern most end of the east wall will receive approx. 13 tons of armor over approximately 235 sf.

37. As specified in the updated plans, approximately 80 CYs of riprap and 107 CYs of bedding and armor stone will be placed along walls 5 and 7 between elevations +4.0 – 10.0 ft MLLW (35 ft by 18 ft).

38. Establish the waterward distance of the rock slope protection from a permanent benchmark(s) (fixed objects) before starting work on the project. The benchmarks must be located and shown on the approved plans, marked in the field, and protected to serve as a post-project reference for ten years.

39. Angle the slope protection wing walls 30 degrees to the bankline.

40. Incorporate all upland drainage tight lines into the slope protection near beach grade to prevent erosion of the bed.

41. Keep the use of equipment on the beach to a minimum, confined to a single access point, and limited to a 25-foot work corridor waterward of the base rocks. Construction material must not touch the beach outside this work corridor.

42. Do not stockpile excavated materials containing silt, clay, or fine-grained soil waterward of the ordinary high water line.

43. You may stockpile sand, gravel, and coarse excavated material waterward of the ordinary high water line provided the material is placed within the 25-foot work corridor waterward of the base rocks.

44. If sand, gravel, and other coarse excavated material is to be temporarily placed where it will come into contact with tidal waters, this material must be covered with filter fabric and adequately secured to prevent erosion and/or potential entrainment of fish.

45. Prior to tidal inundation, backfill all trenches, depressions, or holes created during construction waterward of the ordinary high water line.

46. Remove all stockpiled and excavated material from the beach within 72 hours of slope protection construction.

47. Reshape beach area depressions created during project activities to preproject beach level upon project completion.

PILE REMOVAL, DRIVING

48. As specified in the modification dated February 11, 2021, piles may be removed at the existing terminal per the following criteria:

- a. If two negative FF samples occur, proceed immediately with vibratory removal and direct pull pile removal.
- b. If two negative FF samples are not achieved by February 15, 2021, proceed with the least invasive pile removal methods which includes,
 - i. Remove 6 creosote-treated timber piles in the dry at low tide above +5 ft MLLW.
 - ii. Remove remaining 15 concrete, 8 steel, and 34 creosote-treated timber piles using direct pull or vibratory removal



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iii. Cut piles that break during removal and back fill pile holes with clean sediment.

49. Remove the existing piling and dispose of them in an upland area above extreme high tide waters unless the material is approved by the Washington Department of Fish and Wildlife for reuse in the project.

50. Do not use wood treated with oil-type preservative (creosote, pentachlorophenol) in any hydraulic project. Wood treated with waterborne preservative chemicals (ACZA, ACQ) may be used if approved by the Western Wood Preservers Institute for use in the aquatic environment. Any use of treated wood in the aquatic environment must follow guidelines and best management practices available at www.wwpinstitute.org.

51. Incorporate features, such as steel, plastic or rubber collars, fendering or other systems to prevent or minimize the abrasion of the treated wood by floats, ramps or vessels. Use of tires is not approved unless proper post-treatment for aquatic environments is performed.

52. Attach rubbing strips made of ultra-high molecular weight (UHMW) type plastic, or high density polyethylene (HDPE) type plastic to the fender system. Use of tires is not approved unless proper post-treatment for aquatic environments is performed.

53. Fit all pilings with devices to prevent perching by fish-eating birds.

54. The use of both a vibratory and/or an impact hammer is authorized for piling installation under this Hydraulic Project Approval, however a vibratory driver is preferred.

55. Sound attenuation methods are required for the driving or proofing of steel piles with an impact hammer below the ordinary high water line. For impact driving of steel piles that exceed the following criteria, a bubble curtain or other Washington Department of Fish and Wildlife approved sound attenuation device must be used. The specific criteria include sound pressure levels of:

- a. Greater than or equal to 206 dB (one micropascal squared per second) peak,
- b. Greater than or equal to 187 dB (one micropascal squared per second) accumulated sound exposure level (SEL) for fish greater than or equal to 2 grams, and
- c. Greater than or equal to 183 dB (one micropascal squared per second) (SEL) for fish less than 2 grams.

Install a bubble curtain around the pile during all driving operations to ensure proper sound attenuation. The bubble curtain must distribute air bubbles around 100 percent of the perimeter of the piling over the full length of the pile in the water column.

56. To avoid attracting fish to artificial light at night, limit impact pile driving to daylight hours whenever feasible.

57. Piling removal:

- a. Vibratory or direct pull is the preferred method of pile removal.
- b. Place the piling on a construction barge or other dry storage site after the piling is removed. The piling must not be shaken, hosed off, left hanging to dry or any other action intended to clean or remove adhering material from the piling near waters of the state.
- c. If a treated wood piling breaks during extraction, remove the stump from the water column by fully extracting. If the stump cannot be fully extracted, remove the remainder of the stump with a clamshell bucket, chain, or similar means, or cut it off two feet below the mudline. If cutting piles located at -10' mean lower low water or deeper, cut the piling a minimum one foot below the mudline. If cutting piles in intertidal or shallow subtidal waters (less than -10' mean lower low water) cut the piling a minimum two feet below the mudline. Cap all buried cut stumps and fill holes left by piling extraction with clean sediment that matches the native material.
- d. When removing creosote piling, containment booms and absorbent booms (or other oil absorbent fabric) must be placed around the perimeter of the work area to capture wood debris, oil, and other materials released into marine



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waters as a result of construction activities to remove creosote pilings. All debris on the bed and accumulated in containment structures must be collected and disposed upland at an approved disposal site.

e. Submit post-project surveys (e.g., underwater video, photos at low-tide) along transects within the project area to Washington Department of Fish and Wildlife within two weeks of pile removal to verify debris removal.

STORMWATER OUTFALLS

58. Ensure all catch basins, culverts, energy dissipation devices, and pipeline outfalls are free of obstructions for the life of the project to ensure proper functioning of the stormwater management system.

FISH LIFE REMOVAL

59. All persons participating in capture and removal must have training, knowledge, and skills in the safe handling of fish life.

60. Capture and safely move fish life from the work area to the nearest suitable free-flowing water.

DEMOBILIZATION/CLEANUP

61. Remove all trash and unauthorized fill in the project area, including concrete blocks or pieces, bricks, asphalt, metal, treated wood, glass, floating debris, and paper, that is waterward of the ordinary high water line and deposit upland.

62. Remove any riprap (including quarry spalls) scattered, or abandoned outside the original design footprint from the bed and deposit it an upland area above the limits of extreme high tidal water.

63. Remove all debris or deleterious material resulting from construction from the beach area or bed and prevent from entering waters of the state.

64. Do not burn wood, trash, waste, or other deleterious materials waterward of the ordinary high water line.

65. Alteration or disturbance of the bank and bank vegetation must be limited to that necessary to construct the project. Within seven calendar days of project completion, all disturbed areas must be protected from erosion using vegetation or other means. Plant riparian vegetation during the first dormant season (late fall through late winter) after project completion. The banks, including the area behind the bulkhead, must be (re)planted per the planting plan using appropriate salt and clay tolerant native species to stabilize the shoreline. Additional planting options are available in the Marine Riparian Vegetation Communities of Puget Sound by James Brennan available at www.pugetsoundnearshore.org/technical_papers/riparian.pdf.

Vegetation must be planted at a maximum interval of three feet (on center) and maintained for at least three years to ensure at least eighty percent of the plantings survive. Failure to achieve the eighty percent survival in year three will require you to submit a plan with follow-up measures to achieve requirements or reasons to modify requirements. You must upload the photographs to the post-permit requirement page in the Aquatic Protection Permitting System (APPS) or mail them to Washington Department of Fish and Wildlife at Post Office Box 43234, Olympia, Washington 98504-3234 within 30-days after the work is completed.

66. NOTE: At the request of Marsha Tolon, on February 11, 2021, this Hydraulic Project Approval (HPA), which now supersedes all previous HPAs for this project, is a provision change of the original HPA issued February 11, 2020 and last modified December 1, 2020. See Provisions 1.A(1), 36 and 48.

This HPA is linked to HPA Control #133041, APP ID #10217, and #18204.



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Issued Date: February 12, 2021
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Permit Number: 2020-4-106+04
FPA/Public Notice Number: N/A
Application ID: 20162

LOCATION #1: Site Name: Mukilteo Ferry Terminal 910 First Street, Mukilteo, WA 98275						
WORK START: February 12, 2021				WORK END: December 31, 2021		
<u>WRIA</u>		<u>Waterbody:</u>			<u>Tributary to:</u>	
07 - Snohomish		Wria 07 Marine			Puget Sound	
<u>1/4 SEC:</u>	<u>Section:</u>	<u>Township:</u>	<u>Range:</u>	<u>Latitude:</u>	<u>Longitude:</u>	<u>County:</u>
	04	28 N	04 E	47.949722	-122.306944	Snohomish
<u>Location #1 Driving Directions</u>						
LOCATION #2: Site Name: Mukilteo Ferry Terminal 910 First Street, Mukilteo, WA 98275						
WORK START: February 12, 2021				WORK END: December 31, 2021		
<u>WRIA</u>		<u>Waterbody:</u>			<u>Tributary to:</u>	
07 - Snohomish		Wria 07 Marine			Puget Sound	
<u>1/4 SEC:</u>	<u>Section:</u>	<u>Township:</u>	<u>Range:</u>	<u>Latitude:</u>	<u>Longitude:</u>	<u>County:</u>
	04	29 N	04 E	47.9506	-122.2978	Snohomish
<u>Location #2 Driving Directions</u>						

APPLY TO ALL HYDRAULIC PROJECT APPROVALS

This Hydraulic Project Approval pertains only to those requirements of the Washington State Hydraulic Code, specifically Chapter 77.55 RCW. Additional authorization from other public agencies may be necessary for this project. The person(s) to whom this Hydraulic Project Approval is issued is responsible for applying for and obtaining any additional authorization from other public agencies (local, state and/or federal) that may be necessary for this project.

This Hydraulic Project Approval shall be available on the job site at all times and all its provisions followed by the person (s) to whom this Hydraulic Project Approval is issued and operator(s) performing the work.

This Hydraulic Project Approval does not authorize trespass.



HYDRAULIC PROJECT APPROVAL

Washington Department of
Fish & Wildlife
PO Box 43234
Olympia, WA 98504-3234
(360) 902-2200

Issued Date: February 12, 2021
Project End Date: December 31, 2021

Permit Number: 2020-4-106+04
FPA/Public Notice Number: N/A
Application ID: 20162

The person(s) to whom this Hydraulic Project Approval is issued and operator(s) performing the work may be held liable for any loss or damage to fish life or fish habitat that results from failure to comply with the provisions of this Hydraulic Project Approval.

Failure to comply with the provisions of this Hydraulic Project Approval could result in civil action against you, including, but not limited to, a stop work order or notice to comply, and/or a gross misdemeanor criminal charge, possibly punishable by fine and/or imprisonment.

All Hydraulic Project Approvals issued under RCW 77.55.021 are subject to additional restrictions, conditions, or revocation if the Department of Fish and Wildlife determines that changed conditions require such action. The person(s) to whom this Hydraulic Project Approval is issued has the right to appeal those decisions. Procedures for filing appeals are listed below.

MINOR MODIFICATIONS TO THIS HPA: You may request approval of minor modifications to the required work timing or to the plans and specifications approved in this HPA unless this is a General HPA. If this is a General HPA you must use the Major Modification process described below. Any approved minor modification will require issuance of a letter documenting the approval. A minor modification to the required work timing means any change to the work start or end dates of the current work season to enable project or work phase completion. Minor modifications will be approved only if spawning or incubating fish are not present within the vicinity of the project. You may request subsequent minor modifications to the required work timing. A minor modification of the plans and specifications means any changes in the materials, characteristics or construction of your project that does not alter the project's impact to fish life or habitat and does not require a change in the provisions of the HPA to mitigate the impacts of the modification. If you originally applied for your HPA through the online Aquatic Protection Permitting System (APPS), you may request a minor modification through APPS. A link to APPS is at <http://wdfw.wa.gov/licensing/hpa/>. If you did not use APPS you must submit a written request that clearly indicates you are seeking a minor modification to an existing HPA. Written requests must include the name of the applicant, the name of the authorized agent if one is acting for the applicant, the APP ID number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA, the reason for the requested change, the date of the request, and the requestor's signature. Send by mail to: Washington Department of Fish and Wildlife, PO Box 43234, Olympia, Washington 98504-3234, or by email to HPAapplications@dfw.wa.gov. You should allow up to 45 days for the department to process your request.

MAJOR MODIFICATIONS TO THIS HPA: You may request approval of major modifications to any aspect of your HPA. Any approved change other than a minor modification to your HPA will require issuance of a new HPA. If you originally applied for your HPA through the online Aquatic Protection Permitting System (APPS), you may request a major modification through APPS. A link to APPS is at <http://wdfw.wa.gov/licensing/hpa/>. If you did not use APPS you must submit a written request that clearly indicates you are requesting a major modification to an existing HPA. Written requests must include the name of the applicant, the name of the authorized agent if one is acting for the applicant, the APP ID number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA, the reason for the requested change, the date of the request, and the requestor's signature. Send your written request by mail to: Washington Department of Fish and Wildlife, PO Box 43234, Olympia, Washington 98504-3234. You may email your request for a major modification to HPAapplications@dfw.wa.gov. You should allow up to 45 days for the department to process your request.

APPEALS INFORMATION



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If you wish to appeal the issuance, denial, conditioning, or modification of a Hydraulic Project Approval (HPA), Washington Department of Fish and Wildlife (WDFW) recommends that you first contact the department employee who issued or denied the HPA to discuss your concerns. Such a discussion may resolve your concerns without the need for further appeal action. If you proceed with an appeal, you may request an informal or formal appeal. WDFW encourages you to take advantage of the informal appeal process before initiating a formal appeal. The informal appeal process includes a review by department management of the HPA or denial and often resolves issues faster and with less legal complexity than the formal appeal process. If the informal appeal process does not resolve your concerns, you may advance your appeal to the formal process. You may contact the HPA Appeals Coordinator at (360) 902-2534 for more information.

A. INFORMAL APPEALS: WAC 220-660-460 is the rule describing how to request an informal appeal of WDFW actions taken under Chapter 77.55 RCW. Please refer to that rule for complete informal appeal procedures. The following information summarizes that rule.

A person who is aggrieved by the issuance, denial, conditioning, or modification of an HPA may request an informal appeal of that action. You must send your request to WDFW by mail to the HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat Program, PO Box 43234, Olympia, Washington 98504-3234; e-mail to HPAapplications@dfw.wa.gov; fax to (360) 902-2946; or hand-delivery to the Natural Resources Building, 1111 Washington St SE, Habitat Program, Fifth floor. WDFW must receive your request within 30 days from the date you receive notice of the decision. If you agree, and you applied for the HPA, resolution of the appeal may be facilitated through an informal conference with the WDFW employee responsible for the decision and a supervisor. If a resolution is not reached through the informal conference, or you are not the person who applied for the HPA, the HPA Appeals Coordinator or designee may conduct an informal hearing or review and recommend a decision to the Director or designee. If you are not satisfied with the results of the informal appeal, you may file a request for a formal appeal.

B. FORMAL APPEALS: WAC 220-660-470 is the rule describing how to request a formal appeal of WDFW actions taken under Chapter 77.55 RCW. Please refer to that rule for complete formal appeal procedures. The following information summarizes that rule.

A person who is aggrieved by the issuance, denial, conditioning, or modification of an HPA may request a formal appeal of that action. You must send your request for a formal appeal to the clerk of the Pollution Control Hearings Boards and serve a copy on WDFW within 30 days from the date you receive notice of the decision. You may serve WDFW by mail to the HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat Program, PO Box 43234, Olympia, Washington 98504-3234; e-mail to HPAapplications@dfw.wa.gov; fax to (360) 902-2946; or hand-delivery to the Natural Resources Building, 1111 Washington St SE, Habitat Program, Fifth floor. The time period for requesting a formal appeal is suspended during consideration of a timely informal appeal. If there has been an informal appeal, you may request a formal appeal within 30 days from the date you receive the Director's or designee's written decision in response to the informal appeal.

C. FAILURE TO APPEAL WITHIN THE REQUIRED TIME PERIODS: If there is no timely request for an appeal, the WDFW action shall be final and unappealable.



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Habitat Biologist Laura.Arber@dfw.wa.gov
Laura Arber 425-379-2306

A handwritten signature in black ink, appearing to read "Laura Arber".

for Director
WDFW
