

**FINDINGS AND DECISION OF THE HEARING EXAMINER  
CITY OF BAINBRIDGE ISLAND**

In the Matter of the Appeals of

**WASHINGTON STATE FERRIES and  
CHARLES SCHMID, et al.**

**SSDP10-31-94-1**

Regarding the Administrative Decision of the Director,  
Planning and Community Development Department,  
on the Request of WSF to Revise a Shoreline Permit

**Introduction**

The Washington State Ferries (WSF) sought approval from the Director to modify the ferry terminal dock widening project that had been applied for in 1994. The Director granted approval with numerous conditions in 2004. WSF applied for revisions and, in July 2005, the Director approved the revision, retaining some of the previously imposed conditions, adding, modifying and eliminating others. Both WSF and a group of concerned citizens have appealed that administrative decision.

Following proper notice, the Hearing Examiner conducted the appeal hearing that began on September 22, 2005 and continued on November 10, 2005. Parties represented at the hearing were: the Director, Planning and Community Development Department (Department or PCD), by Rod P. Kasaguma and Rosemary Larson, Attorneys for the City of Bainbridge Island; Applicant/Appellant, State Department of Transportation (WSDOT), Washington State Ferries (WSF), by Stephen Klasinski, Assistant Attorney General; and, the Appellant group referred to as Charles Schmid *et al.* (Schmid), by Charles Schmid *pro se* and Dennis Reynolds, attorney for Parfitt Way Management Corporation (Parfitt) a member of the appellant group.

The record remained open through December 1, 2005, to allow for post-hearing submittals by the parties. The record was reopened on December 20, 2005 to allow parties to comment on an unexpected post-hearing submittal by WSF. That submittal, a letter from Hien Trinh, WSF Project Engineer, was added to the record as Exhibit 108. Comments regarding that correspondence were received as follows: Charles Schmid, 12/21/05 letter, Exhibit 110; the Director, 12/21/05 letter from Rosemary Larson, Attorney for the City, Exhibit 111; Appellant Schmid *et al.*, 12/23/05 letter from Dennis Reynolds, Attorney for Parfitt; and, Appellant WSF, 12/28/05 letter from Stephen Klasinski. The record was closed on December 28, 2005.

After due consideration of all the evidence in the record, the following constitutes the findings, conclusions, and decision of the Hearing Examiner in this matter.

## Findings of Fact

### Background

1. The Washington State Ferries (WSF), Washington State Department of Transportation (WSDOT), proposes to expand the dock at the Bainbridge Ferry Terminal. WSF filed an application for a Shoreline Substantial Development Permit (SSDP) in October 1994. During the first few years following that filing, review of the application was “on hold” at the request of WSF. By late in 1999, the matter was before the City Council, but action had to be deferred awaiting completion of a plan for off-site mitigation. That plan was submitted in 2002, but it was the PCD Director, not the City Council, who made the decision to approve with conditions in 2004. That decision was appealed and after the appeal was withdrawn, WSF sought to eliminate several of the conditions of approval through a permit revision process. The Director’s decision regarding the revision is the subject of these appeals.

2. The plans submitted as part of the 1994 application were not placed into the record of this proceeding. The “Dock Widening Layout Plan” dated 1997 [Exhibit 92] and Appendix F in Exhibit 38 (produced in 1999 in support of the mitigation plan), were relied upon for the following description of the proposal.

This project consists of both widening and replacing the ferry dock...increasing vehicle storage capacity in the holding lanes; provide adequate facilities and circulation for bicycles, pedestrians, large vehicle loading, HOV, and mobility impaired passengers...provide stormwater treatment for dock widening project; to provide facilities to pump vessel sewage, and to upgrade the holding and dock area site lighting...The completed project will comprise 11 vehicle lanes, capable of holding 294 vehicles; provide a dedicated bicycle lane within the holding area to control and process the loading of bicycles...provide ADA staging area; provide upgraded replacement facilities for...sewage pump lift station...collect and treat stormwater runoff... [Applicant’s Supplemental Report, as excerpted in Exhibit 38]

3. The project descriptions in the 1998 PCD Staff Report [Exhibit 84] and the Findings prepared by the Hearing Examiner in 1999 [Exhibit 85], both note that the proposed expansion would add 30,000 sq. ft. to the existing dock. Most of that area would be over water [see Exhibits 3, 26, 90 and 92).

4. WSF was the lead agency for SEPA review and the Suquamish Tribe appealed the MDNS that WSF issued in 1997. An agreement was reached on a mitigation project to mitigate for unavoidable adverse environmental impacts to shoreline and aquatic resources and habitat due to overwater construction. The “mitigation plan” referred to in this decision is the plan for that mitigation project. (In 1998 the mitigation project site was to be “Hall Brothers’ Creek”, but this was changed to the “Irene Mitigation Site” [see Exhibit 83]).

5. The project site is the ferry terminal, 270 Olympic Drive, Township 26 N., Range 2E W.M., Bainbridge Island, Kitsap County, Washington. The proposed development is within Eagle Harbor and/or its associated wetlands. [Exhibit 78, page 1]

6. Pertinent highlights from the long and convoluted history of the review of the application for the dock widening project are shown below. (Sources, exhibits in the record and/or names of individuals, are noted in [brackets]).

## History

### **1994**

- 10/31/1994: Application SSDP10-31-94-1 [Exhibit 38] filed; placed “on hold” by WSF. [Exhibit 84, page 8]

### **1997**

- 04/15/1997: Application amended. [Exhibit 84, page 23]
- 04/25/1997: WSDOT issues Mitigated Determination of Significance. [Exhibit 84, page 23]

### **1998**

- 01/20/1998: PCD gives notice of “complete application”. [Exhibit 85, page 2]
- 09/11/1998: Planning Commission recommendation/PCD Report [James] sent to Hearing Examiner. [Exhibit 84]
- 09/18/1998: Hearing Examiner [Hunter] begins and later continues hearing. [Exhibit 93, Tab 12]
- 12/07/1998: WSF [Brater and MacIntosh] submits “Supplemental Report” to Hearing Examiner [Hunter]. [Exhibit 38]

### **1999**

- 05/20/1999: A “new revised final mitigation proposal” is entered into the hearing record. [Exhibit 85, page 4]
- 08/20/1999: After completing hearing, Hearing Examiner [Baker] issues Findings and Recommendations. [Exhibit 85, page 16]
- 09/08/1999: City Council notes receipt of Hearing Examiner’s Findings and Recommendation; action deferred awaiting WSF submittal of the final mitigation plan. [Exhibit 93, Tab 11]

### **2000**

- 02/02/2000 WSF [Brater] requests PCD Director [Warren] grant one year extension of “Shoreline Permit” owing to funding uncertainties. [Exhibit 93, Tab 12]
- 02/25/2000 Director writes to WSF [Warren to Brater] denying request for extension and noting “This application has been in process for several years without coming to completion.” [Exhibit 93, Tab 12]
- 04/07/2000 PCD staff [James] gives “formal notification” to WSF [Brater] that application “will be cancelled in 30 days (May 7, 2000)...” if the “required information” for City Council review is not submitted. [Exhibit 93, Tab 12]

## **2001**

- 02/01/2001 WSF [East] writes to Director [Warren] inquiring about a telephone conversation in late 2000; asserts that Director had “agreed to prepare a letter giving written approval for us to proceed with our Shoreline Permit application reviewed under the municipal codes...in effect in 1994.” [Exhibit 93, Tab 12]

## **2002**

- 03/12/2002: WSF submits “conceptual mitigation plan”. [Exhibit 93, Tab 12, James memo to Council; Exhibit 83, page 1]
- 05/13/2002 PCD memo [James] to City Council regarding history and current status. [Exhibit 93, Tab 12]

## **2004**

- 01/13/2004: PCD Director [Frazier] issues administrative decision approving application SSDP10-31-94-1 with numerous conditions [Exhibit 89]; decision based upon Staff Report [James] dated 09/11/1998 [Exhibit 84] and Hearing Examiner [Baker] Findings dated 08/20/1999 [Exhibit 85].
- 02/04/2004: Eagle Harbor Condominium Homeowners’ Association files appeal of Director’s 01/13/2004 decision. [Exhibit 11]
- 05/11/2004: WSF [Fordjour] in letter to Director [Frazier] requests of that the City “modify certain conditions of the SSDP issued on January 13, 2004.” “Revision” request includes elimination of Condition #15 (pedestrian trail adjacent to condo from terminal, to connect with City trail) and Condition #18 (access stairway from terminal to shoreline). [Exhibits 7, 8, and 9; Exhibit 93, page 2]
- 05/18/2004: Eagle Harbor Condo Homeowners’ Association withdraws appeal. [Exhibit 11]
- 05/19/2004: Hearing Examiner [Getches] issues Orders dismissing Eagle Harbor Condo appeal. [Exhibit 17]
- 07/20/2004: Revised plans for Irene Mitigation Site, dated 12/22/2003, submitted to PCD. [Exhibit 25]

## **2005**

- 02/22/2005: Revised (“90%”) plans for Irene Mitigation Site, submitted to PCD. [Exhibit 59]
- 07/20/2005: Director [Frazier] issues administrative decision approving WSF application for “modification of Shoreline Substantial Development Permit 10-31-94-1” with Staff Report [Machen]. [Exhibits 80 and 78]

- 08/02/2005 Appellant Schmid *et al.* files appeal of the 07/20/2005 decision. [Exhibit 81]
- 08/09/2005 WSF [East] files appeal of the 07/20/2005 decision. [Exhibit 82]

### Application

7. When the application was filed in 1994, the process for reviewing an application for a Shoreline Substantial Development Permit (SSDP) included: review by the Director; review and recommendation by the Planning Commission; findings and recommendation by the Hearing Examiner to the City Council after public hearing; and, decision on the application by the City Council. The Council's action was to be the City's final decision on the application, appealable to the State's Shoreline Hearing Board. In the current process, the Director makes decisions on SSDP applications. Those decisions can be appealed to the Hearing Examiner and the Hearing Examiner's decision can be appealed to the State's Shoreline Hearing Board. [Exhibit 84; Exhibit 85; BIMC 16.12.370, Finding 46]

8. After submittal in 1994, WSF put the application "on hold" and little if any progress was made on it until a "pre-application" meeting with PCD staff and submittal of an amendment in April 1997. PCD issued a notice of complete application in January 1998. PCD determined that the application would subsequently be processed as a SSDP under the Winslow Shoreline Master Plan (SMP) rather than as a Shoreline Conditional Use Permit (SCUP) under the Bainbridge Island SMP [Exhibit 84, pages, 9 and 23].

9. The project was intended to: (1) expand the terminal dock "an additional 30,000 square feet" (providing holding lane capacity for 294 vehicles); (2) replace the sewage pump station; and, (3) install a vault for temporary storage of vessel sewage. Additional aspects of the proposal included a dedicated HOV lane, a dedicated bicycle lane, pedestrian sidewalk, and an ADA staging area. [Exhibit 84, page 1; Exhibit 85, page 1]

10. The Planning Commission reviewed and made a recommendation for approval of the application. A Staff Report and an extensive list of conditions were sent to the Hearing Examiner. A "pedestrian sidewalk and bicycle lane" was one of the recommended conditions. Conditions requiring extension of the overhead walkway and a stairway to the beach with a connection to the waterfront trail, for were also recommended. [Exhibit 84].

11. The Hearing Examiner [Hunter] began the public hearing in September 1998, but it was continued to May 1999 and completed by a different Hearing Examiner. The recommendation of the Hearing Examiner [Baker], transmitted to the City Council in September 1999, was for approval with numerous conditions, subject to the City Council receiving and approving an expanded off-site "mitigation plan". [Exhibit 84; Exhibit 85, page 16]

12. In February 2000, WSF asked PCD for a one-year application extension; the request was denied and in April 2000, PCD notified WSF that its application "will be cancelled in 30 days" if the mitigation plan required for City Council review [see Finding 11] was not submitted by that

date. (BIMC 2.16.055.C provides for cancellation following 60 days notice, not 30 days. See Finding 50.) The mitigation plan was submitted in March 2002, nearly two years after the deadline.

13. It was not explained at hearing why the Department continued to review the application after the notice of cancellation was issued. WSF asserted in 2001 that the Director Warren had agreed to continue to process the application “under the municipal codes for the City of Bainbridge Island in effect in 1994.” There is no testimony or writing from PCD confirming that contention.

#### Decision on SSDP 10-31-94-1: January 13, 2004

14. On January 13, 2004, nearly a decade after the application had been filed; the Director issued an administrative decision approving application SSDP10-31-94-1 [Exhibit 89]. That decision included twenty-three conditions; several of these (discussed below) are detailed, difficult to understand, and proved to be controversial. The decision included the following project description:

Expand the ferry terminal dock, remove the existing sewer pump station and replace with larger underground pump station, and install sewage vault for temporary storage of vessel sewage.

15. Condition #15 of this decision [Exhibit 89] is a requirement for “a pedestrian sidewalk and bicycle lane” to be installed as part of the dock widening project and specifies several details regarding the “pedestrian sidewalk” (the “bicycle lane” is not mentioned again). The sidewalk is to be located along the western edge of the holding lanes. Condition #15 also has a lengthy and complex set of “if this, then that” provisions (in consideration of possible “new significant environmental, technical, geotechnical or right-of-way issues”) that could change location and timing. (*E.g.*, if issues delay locating where specified, then locate it along the south side of Olympic Drive; or, if issues cannot be resolved within two years, then “meet to discuss suitable alternative”, *etc.*)

16. Condition #16 requires the construction of “a temporary overhead walkway connection spanning between the existing overhead walkway and the new sidewalk...”

17. Condition #18 requires WSF to construct “a stairway east of the dock and a connection to the existing waterfront trail” for public access to the water. This condition also has an “if this, then that” provision for a different location if steep slope prevented the location specified in the condition. Condition #18 continues with a requirement for WSF to construct a “pedestrian trail” as depicted in the Winslow Master Plan, to connect to the existing City trail system. Another lengthy and complex set of “if this, then that” provisions are included (as in Condition #15) in apparent anticipation of potential future problems and how they should be addressed.

18. Both the 1998 Staff Report [Exhibit 84] and the 1999 Hearing Examiner findings [Exhibit 85] address the sidewalk, bike lane, pedestrian trail, and access connection to the

waterfront as recommended conditions of approval; not project components proposed by WSF. A “pedestrian overpass” was part of a WSF project approved in a 1988 SSDP which had a “connector trail” from the terminal included as a condition of approval.

19. The Director’s decision was appealed by the Eagle Harbour Condominium Homeowners’ Association (Condo Association). The condominiums are adjacent southwest of the ferry terminal [see relative locations Exhibit 3]. The Condo Association appealed out of concern regarding the “negative impact of the terminal operation” on the residents of the condominium, including effects of the trail required by the Director’s conditions of approval. [Exhibit 11; Exhibit 93, page 2]

20. WSF did not appeal the Director’s decision although it later became clear that WSF objected to a number of the conditions of approval [see Finding 22]. After the appeal was filed by the Condo Association, the parties asked that the hearing be postponed so that they could have settlement discussions. [Testimony of Trinh; Testimony of Machen; Exhibit 10]

21. On May 18, 2004, the Condo Association withdrew its appeal with the understanding that WSF would make a “new modified program submission” and that there would be future public hearings and opportunity for “public input and/or appeal”. The “issues” mentioned by the Condo Association when withdrawing its appeal included: noise (vehicles loading and unloading); air pollution (vehicles idling and loading and unloading); and, light (from light towers and vehicles unloading).

#### “Revision” Request

22. WSF did not appeal the conditions of the Director’s January 2004 decision, but it sought “revision” to have some of the conditions imposed by the Director (Conditions 5, 7, 8, 9, 11, 13, 15, 16, 18, 20, and 22) modified or eliminated. In May 2004, WSF submitted a newly completed SSDP application form [Exhibit 8] which has the original 1994 submittal date crossed out and is labeled by the City “revision received 5-11-2004” [Exhibit 8]. The cover letter [Exhibit 9] indicates the materials being submitted (*i.e.*, the application and a consultant-prepared memo “identifying the SSDP conditions WSF is requesting modification to” and references the Director’s decision [Exhibit 89] as “the SSDP issued on January 13, 2004”. [Exhibit 85].

23. The “substantive changes to the application” were: 1) Elimination of the “wet ponds” and, 2) Elimination of pedestrian access to the terminal south of Harborview Drive. WSF proposed to use catch basins with water quality devices to catch and treat stormwater, so the “wet ponds”, part of the original proposal, would not be needed. Elimination of the “pedestrian facilities”, required by Condition 18 in the Director’s January 13, 2004, was sought because the Condo Association was opposed to it, heightened security requirements anticipated in compliance with the Homeland Security Act would make it infeasible, and the City hadn’t completed its plans for the Waterfront Trail System. [Exhibit 13; Exhibit 27]

24. On July 13, 2004, the Director advised the Mayor and City Council that WSF had not yet submitted “a complete application”. At that time PCD was anticipating more materials from

WSF and “had not commenced its analysis of the revised application.” [Exhibit 24] On July 15, 2004, WSF submitted a number of documents to PCD in connection with “the modifications to [WSF’s] SSDP application” [Exhibit 27]. These documents included plans for the Irene Mitigation Site [Exhibit 25]; revised site plan [Exhibit 26]; proposed pedestrian circulation plan [Exhibit 28]; stormwater treatment plan [Exhibit 29]. The record does not reveal if these items constituted a complete application. The major elements of the project, as shown on revised Site Plan [Exhibit 26] were: widen the dock; remove pump station; add pump out capability to each slip; reconfigure vehicle holding lanes; reconfigure pedestrian circulation (*i.e.*, Olympic Way sidewalk and lighting). “Adding crosswalk” was noted as a separate project and an overhead loading facility was to be reconfigured in a “subsequent phase”. Neither the sidewalk and bicycle lane southwest of the vehicle holding lanes nor the “Pedestrian Trail Connection To The City Trail” shown in the 1997 Layout Plan [see Exhibit 92] are shown in the revised site plan. [Exhibit 26]

25. Both before and after the Condo Association’s appeal was dismissed, WSF and PCD staffs communicated about how WSF could and/or should respond to the issues that had been raised. A community meeting was held on August 18, 2004; noticed as an opportunity for the public to ask questions and/or make comments on “proposed modifications to the shoreline permit.” The nature and extent of the “modifications” proposed (*e.g.*, elimination of Conditions 16 and 18) were not described in the notice. [Exhibits 37, 40, 42, 43, 50; Testimony of Machen; Testimony of Trinh]

#### Decision on “Revisions”: July 20, 2005

26. On July 20, 2005 the Director issued an administrative decision [Exhibit 80] stating that, the “application is approved with conditions” and citing BIMC Chapter 16.12.360 as the authority for the administrative review that had been conducted. The decision was based on the Staff Report dated that same day [Exhibit 78] and the Hearing Examiner’s findings from 1999 [Exhibit 85].

27. BIMC 16.12.360.E prescribes the review procedures for SSDP applications. It is Chapter 16.12.370, not the cited Chapter 16.12.360, that governs the process for “Revisions to Permits” [see BIMC 16.12.370.C].

28. The Staff Report [Exhibit 78] calls the project “Amended Dock Expansion, Washington State Ferries” and describes it as a request for “Modification of Shoreline Substantial Development Permit (SSDP10-31-94-1) approved January 13, 2004”. The Staff Report lists the “requested modifications” to include:

- (1) Eliminate the storm water wet ponds (instead install water quality control features in catch basins subject to the City’s stormwater facilities regulations).
- (2) Eliminate pedestrian facilities below Harborview Drive on the southwest.

- (3) Eliminate all stairways and direct pedestrian access trails to the beach from Ferry Terminal property.
- (4) Change mitigation site from Halls Brothers Creek (the Winslow ravine) to the Irene Place mitigation site.
- (5) Eliminate or alter language of several conditions in the January 13, 2004 decision.

29. Some of the conditions of approval in this decision were the same as the conditions included in the January 13, 2004 decision; some of the original conditions were modified, some were eliminated, and some new conditions were added. The conditions modified and added are shown in **boldface** in the decision [Exhibit 80]. To aid in understanding the changes, the Director's conditions of approval with the changes in **boldface** are in Appendix A at the end of this decision. The conditions that were in the January 2004 decision and eliminated in the July 2005 decision, are in Appendix B.

30. The Director retained a modified "pedestrian sidewalk and bicycle lane" requirement similar to Condition 15 in the original decision [see Finding 15 and Exhibit 89]. This modified condition [Condition 14] requires a "pedestrian/bicycle trail" installed "as part of this dock widening proposal". The trail would connect the existing City Waterfront Trail at Harborview Drive, to the "proposed bicycle circulation on the southwest side of the holding lanes". The trail was to be limited to only bicycles (and WSF could limit use to bicycle unloading), until a new overhead loading facility provides a means for WSF to "safely monitor" pedestrians.

31. The Director also added conditions that were not in the January 2004 decision and are not in response to the "revisions" sought by WSF.

- Condition 16: Do not eliminate or hinder existing trail and waterfront access on condominium property southwest of the holding lanes.
- Condition 17: Designate a "viewing area" for passengers waiting in the holding lanes.

#### Appeals of Director's Decision on "Revisions"

32. The WSF timely filed an appeal [Exhibit 82] of the Director's July 20, 2005 decision (some of the issues noted in the appeal were subsequently dropped [Exhibits 87 and 88]). The primary objections were to Condition 14, the pedestrian/bicycle trail connection, and Condition 17, the viewing area. Several conditions requiring City review and approval (Conditions 4, 5, 6, 12 and 13) were appealed based upon WSF's assertion that WSDOT is not subject to local regulation. Conditions 4, 12 and 13 were appeal even though they were unchanged from the January 2004 decision; WSF did not object to them then nor request that they be changed as part of the requested "revision" [Exhibit 7].

33. Charles Schmid *et al.* also timely filed an appeal [Exhibit 81]. This group of concerned citizens objected to the elimination and modification of conditions regarding shoreline access

and safe pedestrian and bicycle circulation (*i.e.*, Conditions 15, 16 and 18 that had been included in the January 13, 2004 decision).

34. Critical procedural issues were also raised [see Exhibit 94, Item 1 and Exhibit 104]. Appellant Schmid asserts that no valid shoreline permit exists, so the Director's decision here, approving a permit revision, is a nullity.

35. One basis for the "no valid permit" argument is that, by the terms of the Cancellation Notice issued in 2000, application SSDP10-31-94-1 was canceled as of May 8, 2000. This record does not corroborate WSF's assertion that in December 2000, the Director agreed to allow WSF to proceed with the application, but PCD did continue to review the application. In 2002, PCD staff reported that the application had not been cancelled because WSF progress had been slowed by factors (funding, *etc.*) that it could not control.

36. Another basis for the "no valid permit" argument is that the permit process in effect when the application was filed required City Council decision for approval, but the City Council never made a decision to approve. PCD determined that the application, still vested to the regulations in effective at the time of filing, could be processed under the current procedures for a SSDP that provide for decision by the Director, rather than the City Council. (Under current regulations, a Shoreline Conditional Use Permit (SCUP) would be required for the dock widening proposal; SCUP is not a Director decision.)

37. The third basis for the "no valid permit" argument is that requirements of BIMC 16.12.370.A.5 were not followed. BIMC 16.12.370.A.5 [see Finding 45] requires that the City file with the Department of Ecology (DOE) the "*permit and other information required*" within eight days of the City's final action. When the Condo Association's appeal was withdrawn and dismissed, the local appeal process was completed and within eight days of that "*completion*" PCD should have filed with DOE. This was not done [Testimony of Machen]. As nothing was filed with DOE, no date of filing was established to signal the opportunity for an appeal to the Shoreline Hearings Board (SHB). As the period for appealing to the Shoreline Hearings Board was never initiated, it has never been completed.

38. No document was offered into the record purported to be the "permit" issued consistent with the January 13, 2004 decision of the Director.

39. BIMC 16.12.370.C [see Finding 48], regulating the revision of issued permits, specifies that the Director's decision on a permit revision (and review of that decision on appeal) must determine if the revisions are "*within the scope and intent of the original permit*". This is a different basis for review than an appeal of a decision on a SSDP application where appealed conditions would be evaluated based upon consistency with the Shoreline Master Program.

40. BIMC 16.12.370.C [Finding 48] lists the sorts of "revisions" that can be considered within the "scope and intent of the original permit". The list anticipates limited changes of the size and/or impacts of the elements being revised (*e.g.*, limit on increase in overwater coverage,

limit on increase in building coverage or height, limit on adding buildings and adding landscaping, *etc.*).

#### Bainbridge Island Municipal Code (BIMC)

41. The Shoreline Master Program, at BIMC 16.12.360.A.2, provides that a shoreline permit is required and no substantial development shall be undertaken “...*unless an appropriate shoreline permit has been obtained, the appeal period has been completed, and/or the applicant has been given permission by the proper authority to proceed.*”

42. The Director is authorized to make decisions on Shoreline Substantial Development Permit (SSDP ) applications and BIMC 16.12.360.E.4.b directs that when making those decision:

*...the director shall consider the applicable provisions of the Shoreline Management Act of 1971, as amended, Chapter 173-14 WAC or its successor, the master program, all other applicable law, and any related documents and approvals. The director shall also consider whether the cumulative impact of additional past and future requests that reasonably may be made in accordance with the comprehensive plan, or similar planning document, for like actions in the area will result in substantial adverse effects on the shoreline environment and shoreline resources.*

43. BIMC 16.12.370.A provides for “*local appeals*” of the Director’s SSDP decisions to the Hearing Examiner. If the Director’s decision is appealed, the Hearing Examiner is to review the case following the procedures established in BIMC 2.16.130.

44. The shoreline permit review procedures, at BIMC 16.12.360.E.4.g, direct that: “*The permit, whether approved or denied, shall be in the form required by WAC 173-14-120 or its successor.*”

45. The appeal procedures at BIMC 16.12.370.A.5 (emphasis added) direct that: “*Within eight days of final action by the city, including completion of appeals...the director shall file copies of the action with the State Department of Ecology and the Attorney General...*” Receipt of that filing begins a 21-day appeal period when the City’s decision can be appealed to the Shoreline Hearings Board.

46. The SMP, at BIMC 16.12.370.B, provides the following regarding the Washington State Department of Ecology (DOE) appeal period:

*B. Washington State Department of Ecology Appeal Period.*

*1. On the day the permit and other information required by WAC 173-14-090 or its successor are received by Ecology and the Attorney General, the 21-day appeal period begins. (Ecology generally sends a letter to the director and the applicant informing them of the date the application was received.)*

*2. During the 21-day appeal period, the city decision on the permit may be appealed to the Washington State Shorelines Hearings Board....*

*3. Development pursuant to a shoreline permit shall not begin and is not authorized until 21 days from the date of filing...or until all review proceedings initiated within 21 days from the date of such filing have been terminated...*

47. RCW 90.58.180(2) provides that DOE or the Attorney General may seek review of local decisions during the 21-day DOE appeal period,

48. The procedures of the Shoreline Master Program, at BIMC 16.12.370.C, regulates revisions to permits as follows:

*C. Revisions to Permits.*

*1. When an applicant wishes to revise a permit, the applicant must submit detailed plans and text describing the proposed changes. If the director determines that the revisions proposed are within the scope and intent of the original permit, consistent with WAC 173-14-064 or its successor, the director may approve the revision.*

*2. "Within the scope and intent of the original permit" means all of the following:*

*a. No additional over-water construction is involved, except that pier, dock, or float construction may be increased by 500 square feet or 10 percent, whichever is less;*

*b. Ground area coverage and height of each building is not increased more than 10 percent;*

*c. Additional structures do not exceed a total of 250 square feet;*

*d. The revision does not authorize development to exceed height, setback, lot coverage, or any other requirement of the city of Bainbridge Island shoreline master program;*

*e. Additional landscaping is consistent with conditions, if any, attached to the original permit and with the applicable master program;*

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

*g. No substantial, adverse, environmental impact will be caused by the project revision. (WAC 173-14-064(2)(a) through (g) as amended.)*

*3. If the sum of the proposed revision and any previously approved revisions do not meet the criteria above, an application for a new shoreline permit must be submitted. If the revision involves a conditional use or shoreline variance which was conditioned by the Department of Ecology, the revision also must be reviewed and approved by Ecology. (WAC 173-14-064 or its successor.)*

*4. A city or Ecology decision on revision to the permit may be appealed within 21 days of such decision, in accordance with RCW 90.58.180 or its successor and WAC 173-14-064 or its successor.*

*5. Construction allowed by the revised permit that is not authorized under the original permit is undertaken at the applicant's risk until the expiration of the appeals deadline.*

49. BIMC 2.16.075.A sets a deadline for final decisions on land use applications at 120 days from the date an application is determined by the Director to be complete consistent with BIMC 2.16.055. Several time periods are not included in the calculation of the 120 days, including the time needed for the applicant to correct plans, provide additional information, and "any

*extension of time mutually agreed upon by the applicant and the city.” With a substantially revised application, the 120-day period is restarted.*

50. BIMC 2.16.055.C provides that:

*...The application may be canceled for inactivity if an applicant fails to respond to the department’s written request for revisions, corrections, or additional information within 60 days of the date of the request. The department director may extend the response period beyond 60 days if the applicant provides and adheres to an approved schedule with specific dates for submitting the full revisions, corrections, or other information needed by the department.*

51. BIMC 2.16.130 applies to appeals of “*administrative decisions, departmental rulings and interpretations...*” In considering such appeals, BIMC 2.16.130.F authorizes the Hearing Examiner to: affirm the Director's decision, affirm with modifications, reverse the decision, or remand it to the Director. That section of the Code also requires that the Hearing Examiner give “*substantial weight to the decision of the department director.*”

### **Conclusions**

1. This matter is properly before the Hearing Examiner. The Hearing Examiner has jurisdiction to hear and decide appeals of administrative decisions. In deciding appeals of these decisions, the Code directs that the Director’s decision be given substantial weight.

2. To overcome the substantial weight accorded the Director, an appellant has to show that the Director's decision is clearly erroneous. Under this standard of review, the Director can be reversed only if the Hearing Examiner is left with the definite and firm conviction that a mistake has been made.

### **Application Question**

3. Appellant Schmid contends that the application either was canceled several years prior to a decision being made, or was made ineffective by State and local regulations that limit the time allowed for making a decision. In support of this position Appellant Schmid notes that the Director had refused a request from WSF to extend the time for review and had given formal notification of cancellation in 2000. The record affirms that a notice of cancellation was issued, but it also reveals that the notice did not provide 60 days notice as required, and PCD continued to process the application as if the notice had not been issued.

4. The undersigned is not persuaded that the City (through this appeal) can assert the cancellation (which may have been inaccurate) after years of a course of conduct in complete disregard of the notice. The undersigned is also not persuaded that statutory deadlines and timelines that ensure timely processing of land use permits are enforceable by third parties.

## Permit Question

5. Appellant Schmid asserts that, even if the application had somehow stayed “alive” for a decade, the decision process leading to the Director’s January 13, 2004 decision was so flawed as to not have produced a valid permit.

6. The SSDP process, to which the application vested, required a decision by the City Council. But in the intervening years since the application vested, the process was changed. Now the Director is the required decision maker for SSDP applications, but the current regulations would require a Shoreline Conditional Use Permit for this proposal; SCUP is not a Director’s decision. The Director chose to mix the applicable regulations: vesting WSF to the old regulations for type of permit needed (*i.e.*, SSDP), but not to the decision maker for that type decision in the old regulations. WSF sought to have the application reviewed under the municipal codes in effect in 1994, but WSF has not complained that the decision maker was not the City Council as required in the former code. Appellant Schmid asserts that vesting was improperly interpreted and applied here. That argument is persuasive to the extent that this approach to vesting was an irregular and, possibly, unfortunate choice. However, it was a choice, not a clear error.

7. Appellant Schmid’s second basis for the proposition that there is no valid permit is that the procedures for filing with the Department of Ecology were not filed. The record is clear that the required procedures were not followed; no final action was filed with DOE. Filing with DOE is not a choice for the Director; it is required by both State and local regulations. The failure to file with DOE was a mistake and a serious one. With no notice of a final action filed, there was no appeal opportunity to the Shoreline Hearings Board.

8. WSF objected to a number of conditions in the Director’s January 13, 2004 decision and had a right to appeal them, but failed to do so. This record does not reveal why WSF did not utilize the available City appeal process to object to the conditions it believed were inappropriate, inapplicable and/or untenable. Instead of appealing the conditions, WSF sought to modify or eliminate the conditions it objected to, by “revising” them out of the Director’s January 13, 2004 decision.

9. By considering the requested changes “revisions”, the Director set the stage for different review on appeal. With an appeal of a decision to approve a Shoreline Substantial Development Permit application with conditions, the inquiry is whether the Director has properly “*considered the applicable provisions of the Shoreline Management Act...the master program, all other applicable law, and any related documents and approvals*” [see Finding 42]. Here, with an appeal of a decision allowing revision to a permit, the question is not about consistency with the SMA or the City’s SMP, but whether “*the revisions proposed are within the scope and intent of the original permit*” [see Finding 48]. Modifying or eliminated the conditions requiring pedestrian and bicycle circulation improvements and waterfront access as permit “revisions” removed consistency with the Shoreline Master Plan, Comprehensive Plan, *etc.*, as bases for subsequent appeals.

10. When the Condo Association appeal was withdrawn, WSF and PCD both anticipated that WSF would seek changes in the conditions that would eliminate the objections of the Condo Association. To address those objections, the trail and access conditions would have to be modified or eliminated. WSF and PCD knew that the January 13, 2004 decision was going to be changed; they knew it was not the final action on the application. (PCD treated the “revision” as a revision to the application; *e.g.*, the Director refers to the WSF changes as a “revised application”. See Finding 24; Exhibits 24, 26, 27.) The January 13, 2004 decision was not a final action. With no final action, there was no permit, and with no permit, there could be no permit revision.

#### Revisions Must Be Within Scope and Intent

11. It is assumed here that Conditions 15, 16, and 18 in the Director’s January 13, 2004 decision were founded in the Shoreline Management Act and the Shoreline Master Plan as directed by BIMC 16.12.360.E.4.b [see Finding 42]. As conditions of approval, their imposition must have been determined necessary and appropriate to achieve consistency with applicable law and policy. That is, but for the conditions of approval, the SSDP would not have been approved. The conditions eliminated through the permit revision process are integral parts of the scope and intent of the January 13, 2004 decision. If there had been a valid permit issued here (see Conclusion 10), eliminating these conditions would be a mistake because their elimination would fail the “within the scope and intent” test of BIMC 16.12.370.C.

12. Having an application in the review process for over a decade is certainly (and thankfully) an unusual occurrence. The record suggests remarkable forbearance on the part of PCD as it allowed for protracted review in recognition that other facets of project development (*e.g.*, appeal of the MDNS) and economic realities (*e.g.*, budget cuts), were slowing WSF response (even to a standstill). Also, the Director’s willingness to seek practical resolution and alternate means to resolve issues so that the review process could be completed and the much needed improvements implemented, is admirable.

13. This project review has been difficult from the beginning. The passage of time has complicated the process as through the years there have been changes in the laws, policies, and procedures, changes in the proposal, changes in staffs and in elected and appointed officials, changes in the issues, and a WSF witness [Trinh] has suggested future changes in the form of a revised MDNS and dispute over the size of the proposed dock and holding capacity. WSF’s frequent and lengthy delays and noticeable lack of familiarity with the shoreline permit review has slowed and complicated this process. Correcting for cumulative missteps and extended delays will take (more) time to correct. After a dozen years, there is no simple answer or quick fix.

14. The best next step would be for WSF to complete its current terminal master plan planning process and then submit a revised application incorporating the master plan and incorporating mitigation (Irene Mitigation Site, on-site actions, *etc.*), pedestrian circulation (sidewalks, crosswalks, overhead walkway, *etc.*), bicycle circulation (dedicated lanes, *etc.*), ADA facilities, and addressing what can be done with regard to shoreline access. It is not within the

Hearing Examiner's authority to direct the applicant to do this. A remand to the Director to "reset" the review process to a point prior to the occurrence of critical errors is the most that can be ordered within the Hearing Examiner's jurisdiction.

### **Decision**

The Director's administrative decision of July 20, 2005 is hereby **REVERSED AND REMANDED**. The Director shall reconsider the WSF application, as amended, and based upon that reconsideration and on the required considerations of BIMC 16.12.360.E.4.b, the Director shall, consistent with the procedural requirements of BIMC 16.12.360 and BIMC 16.12.370, EITHER: 1) reissue the January 13, 2004 SSDP decision; OR, 2) Withdraw the January 13, 2004 decision and issue an new SSDP decision. (Within a timeframe agreed to by the Director, WSF shall be allowed to make additional modifications to the proposal to be considered by the Director in making his decision. If additional modifications are proposed, an opportunity for public review and comment, following standard notice, shall be provided prior to the issuance of the Director's decision.)

Entered this 17th day of January 2006.

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Meredith A. Getches  
City of Bainbridge Island  
Hearing Examiner *pro tem*

### **Concerning Further Review**

NOTE: It is the responsibility of a person seeking further review to consult applicable Code sections and other appropriate sources, including State law, to determine his/her rights and responsibilities relative to appeal.

The decision of the Hearing Examiner is the final decision the City in this matter. Appeal of this decision is to the Washington State Shorelines Hearings Board as provided by RCW 90.58.180 (or its successor) and Chapter 461-08 WAC (or its successor). To be timely, petition for review must be filed within the 21-day appeal period [see BIMC 16.12.370].

## APPENDIX A

### Conditions of Approval Modification of Shoreline Development Permit SSDP10-31-94-1 July 20, 2005

Conditions shown in **bold** are new or modified relative to the January 13, 2004 decision.  
Conditions marked with asterisk\* were appealed by WSF.

1. All conditions of any Hydraulic Project Approval shall be met.
2. All conditions of any Corps of Engineers' approval shall be met.
3. A public way permit may be required from the City's Department of Public Works for any work in Olympic Drive or for installation of public utilities.
4. \*An erosion control plan shall be approved by the City Engineer and inspected on the ground by the City Engineer prior to any work occurring in the upland area. TESC and drainage plans shall be approved by the City Engineer prior to construction. The Washington State Ferries will comply with the requirements set forth in the Highway Runoff Manual implemented pursuant to Chapter 173-270 WAC.
5. **\*The upland portion of the ferry loading facility, designated as the holding lanes for vehicles, will be subject to a stormwater management plan which complies with current Best Management Practices (BMP) for a stormwater treatment system in accordance with Bainbridge Island Municipal Code 15.20 and the Department of Ecology (DOE) Storm Water Management Manual for the Puget Sound Basin. This storm water system will control pollutants of concern from storm water runoff, from the terminal facility and the upland holding lanes by installing a water quality system to treat the stormwater. All stormwater systems will must be reviewed and approved by the City's Public Works Department prior to building permit issuance.**
6. **\*Installed systems for the Ferry facility shall be subject to the provisions of Bainbridge Island Municipal Code 15.21, Stormwater Facilities Maintenance Program.**
7. Concrete staging areas and a concrete truck wash will be located outside the 50 foot shoreline native vegetation zone. A specific location shall be assigned for the concrete truck wash and the concrete or waste water from the wash out shall not enter the conveyance or Puget Sound.
8. \*Prior to construction of this project, a contract shall be executed between the City and the Washington State Ferries (WSF) regarding the use of the City's sewage treatment plant for treatment of boat sewage. If no agreement is reached between the City and WSF, then the sewage holding tank presently located on the site will be replaced by WSF during the dock widening project with a new tank of the same size as the existing one at the new location under the holding lanes as shown in the project plans. Bilge water from the vessels shall not be pumped into Eagle Harbor from the marker buoy in.

9. No herbicides or pesticides shall be used on the site.
10. \*All disturbed buffer areas shall be replanted with native plantings immediately upon completion of work. If the relocated pump station is above ground, it shall be screened with native plants that do not obstruct views.
11. \*The maintenance of the subject property vegetation shall follow current Best Management Practices and shall include all watering, weeding, cultivating and pruning necessary to keep the plant materials in a healthy state and to maintain public safety.
12. \*The Washington State Ferries shall schedule, with the City of Bainbridge Island, a site review of this dock widening project within three years of the completion of construction for this project. The purpose of the review will be to verify the conformance with the City planting standards and review the condition of the open space in all buffer areas. The City shall notify the Ferry System within 30 days of the site visit, of any conditions which the City finds must be brought into compliance with the requirements of the Bainbridge Island Municipal Code. The site review shall include a review of mitigation measures required to be implemented:
  - a. **In addition to the improvements at the Irene Place Mitigation site, the WSDOT shall:**
    - i. **Improve the habitat quality of the remaining buffer within the project area, and**
    - ii. **Enhance the shoreline buffer in the dock area to directly mitigates the impact of the project. The removal of invasive vegetation, such as Himalayan blackberry, English ivy and Scot's broom, along the slope toward the shoreline and replanting with native vegetation is required. A replanting/enhancement plan shall be submitted and approved by the City prior to beginning of the project.**
13. Prior to construction, the Washington State Ferries shall submit for approval by the Director of Planning, a plan specifying a plan for community notification regarding project construction. The address list of interested parties will include community leaders and individuals who have expressed an interest in the project at Open Houses and an address list of all parties attending the public hearings.
14. \*A pedestrian/bicycle trail shall be installed as part of this dock widening proposal and shall include the following:
  - a. **The pedestrian/bicycle trail shall extend from the existing City Waterfront Trail at Harborview Drive SE to the proposed bicycle circulation on the southwest side of the vehicle holding lanes.**
  - b. **The pedestrian/bicycle trail shall only be opened to bicycle traffic, no pedestrians, until phase III of the proposed expansion (new overhead loading) is constructed and the WSF can safely monitor pedestrians loading and unloading the ferries. Appropriate signage shall be posted at Harborview Drive directing pedestrians to the Olympic Drive and the Ferry Terminal.**
  - c. **WSF may limit the use of this connection to unloading bicycle traffic, if a fee is assessed to loading bicycles.**
  - d. **WSF shall record a public access easement for the trail connection.**
15. \*In order to minimize the width of the new dock necessary to accommodate the 294 vehicles proposed for this project, the new or replacement lighting poles added to the dock area will be no

higher than 35 feet in height and will be equipped with high cut off fixtures which will minimize light trespass on the water and to adjacent properties. The use of 35 foot tall light poles is necessary to provide a safe lighting scheme over the newly widened dock area without the necessity of placing light poles between the vehicle lanes of the newly widened dock.

16. **The proposed expansion project shall not eliminate or hinder the existing pedestrian trail and waterfront access that exists on the condominium property southeast of the holding lanes.**
17. **\*A pedestrian viewing area of the harbor shall be designated for passengers waiting in the holding lanes.**
18. **Interpretive displays shall be provided to describe Eagle Harbor's history. Washington State Ferries shall work with the City to determine the appropriate place to provide interpretive displays.**
19. It is understood that the Washington State Ferries method of disposing bilge water from its vessels is and will continue to be that the bilge water is pumped into trucks and disposed of in Seattle at the Emerald Disposal site or similar disposal site.
20. The use of the Eagle Harbor Vessel Maintenance Facility for employee parking as off site accessory parking shall not be considered a precedent for future use or patterns of ownership on the shoreline.
21. **Approval of a final mitigation plan for the Irene Place mitigation site shall be coordinated between the City, the Washington Department of Fish and Wildlife and Suquamish Tribe. The final mitigation plan shall include an implementation schedule and monitoring plan. No work can occur within marine waters at the project site or the mitigation site until the mitigation plan is accepted by the City and a Hydraulic Project Approval is granted by Washington State Department of Fish and Wildlife.**
22. All conditions of the Mitigated Determination of Nonsignificance (MDNS) shall be met:
  - a. Riprap, or cobbles and small gravel, will be placed along the bank above the OHWM under the dock to control erosion.
  - b. A stormwater treatment system will be designed to treat runoff following WSDOT's Highway Runoff Manual and Department of Ecology's Stormwater Management Manual for the Puget Sound Basin.
  - c. \*Approximately 7,600 SF of existing impervious surface will be converted to a landscaped area. The proposed transit deck included in the Terminal Master Plan would remove a portion of this landscape area and leave 2,300 SF of landscape area.
  - d. \*The macroalgae, eelgrass, and macrofauna study showed there was no eelgrass on the site. To enhance or restore hardshell clam resources affected by unavoidable losses and potential impacts to juvenile salmonid migration, the following actions are proposed:
    - i. work will not be allowed in the water between March 15 and June 15 to protect any migrating salmonids;
    - ii. approximately 40 creosote piling and a steel rail/boat tram south of the dock will be removed to restore the area to natural substrata;
    - iii. \*replace 179 creosote treated wooden timber piles supporting the existing trestle with 95 steel piles which will create more ambient light penetrating the intertidal and shallow

- subtidal habitat and reduce the surface area occupied by piles allowing opportunity for recolonization by macro and microbenthic infauna;
- iv. coat the underside of the new decking with pigmented sealer to provide more ambient light under the structure; and
  - v. remove debris from the shoreline to restore the area to natural substrata.
- e. A pile removal and pile driving best management practice plan will be prepared and incorporated into the contract provisions.
  - f. Noise levels will increase during the construction period due to pile driving. The majority of the noise will be during normal working hours. The noise levels 50 feet from the pile driving hammer are expected to be in the 100 to 115 dBA range. Exterior noise levels at buildings within 400 feet of the pile driver will range from 92 to 94 dBA with interior noise levels ranging from 68 to 72 dBA with the doors and windows closed. The increase in operational noise levels will be minimal due to the slow speed of the vehicles approaching the terminal and the location of the new dock for the additional 76 vehicles. The exit lanes will remain in the same location.
  - g. Pile removal and pile driving will occur during normal working hours. WAC 173-60 and BIMC Chapter 16.16 (Noise Regulations) will be followed. Solid concrete rails along each side of dock will help reduce engine noise beyond the terminal site.
  - h. Lighting fixture design will direct light toward the dock surface and not the water or surrounding areas.
  - i. The terminal will remain operational throughout the construction, some slight delays are anticipated. The 40 displaced parking spaces for ferry system employees will be relocated to the Eagle Harbor Vessel Maintenance Facility.
  - j. The existing pump station within the environmental sensitive area buffer will be relocated further upland and outside the 50 foot buffer area.

## APPENDIX B

### Conditions Modified and Eliminated in Revision Decision Appealed by Schmid et al. [Exhibit 89]

**14.** A pedestrian sidewalk and a bicycle lane shall be installed as part of this dock widening proposal and shall include the following:

a. A pedestrian sidewalk shall run along the southwestern portion of the dock (passing along the side of the proposed ADA parking spaces) from the south end of the dock to the toll booths along the western edge of the holding lanes.

b. In addition, Washington State Ferries will extend this new pedestrian sidewalk from the toll booths to Harborview Drive. However, if significant environmental, technical, geotechnical or right-of-way issues arise regarding the construction of the pedestrian sidewalk from the toll booths to Harborview Drive, those issues must be resolved prior to bid opening on the main project, to be included in the main project bid proposal. If any new significant environmental, technical, geotechnical or right-of-way issues cannot be resolved prior to bid opening, then this pedestrian sidewalk extension from the toll booths along the south side of Olympic Drive to Harborview Drive would be separated from the main project and would be constructed in its own project as phase 2A. If the significant environmental, technical, geotechnical or right-of-way issues which cause postponement of the sidewalk extension project can be solved within a reasonable time, then the pedestrian sidewalk as Phase 2A of the main project, will be pursued and implemented as soon as the problems are resolved and in any event prior to the Ferry System beginning the Overhead Loading Walkway Replacement Project. If a significant environmental, technical, geotechnical or right-of-way issue arises concerning the pedestrian sidewalk extension project which cannot be reasonably solved within one year from the date of bid opening on the main project, then the Washington State Ferries and the City of Bainbridge Island will meet to discuss a suitable alternative to the pedestrian sidewalk extension project or a reasonable extension of time for the resolution of problems which delay the beginning of construction on Phase 2A

c. The pedestrian sidewalk proposed as the Phase 2A extension shall connect to the existing pedestrian sidewalk on Harborview Drive.

d. After construction of the pedestrian sidewalk, the Ferry System shall provide appropriate striping across Harborview Drive to the existing sidewalk along Olympic Way that connects with Winslow Way East.

\* \* \*

**16.** To maximize the use of the sidewalk along the south side of the dock and holding area, the Applicant will construct a temporary overhead walkway connection spanning between the existing overhead walkway and the new sidewalk located near the ADA vehicle parking area on the newly widened dock. The temporary overhead connection spanning between the existing overhead walkway and the new sidewalk will not be ADA accessible. It is understood that this temporary structure will be torn down and replaced in the future Overhead Loading/Elevated Walkway Project planned at the Eagle Harbor Ferry Terminal site in the near future.

\* \* \*

**18.** Access to the terminal from the shoreline shall be provided. Access shall include a

stairway east of the dock and a connection to the existing waterfront trail. The waterfront access on the east side of the dock via stairway will be a stairway built to UBC requirements and will remain upland of the ordinary high water mark on the shoreline. If, because of steep slope located on the east end of the terminal where the stairway is proposed, an access stairway cannot be built upland of the ordinary high water mark when constructed according to the requirements of the UBC, then an access stairway to the shoreline will not be built at this location. In that event the Applicant will meet with the city to determine a new location for a shoreline access stairway at the site.

The Applicant will construct a pedestrian trail as shown in the Ferry Terminal Zone Master Plan (EXHIBIT 10) and the Winslow Master Plan that will connect to the existing City of Bainbridge Island Waterfront Trail System at Harborview Drive. Construction of this pedestrian trail will be included as a part of the main dock widening project. However if significant environmental, technical, geotechnical or right-of-way issues cannot be resolved prior to the main project bid opening on the main project. If any new significant environmental, technical, geotechnical or right-of-way issues arise, they must be resolved prior to bid opening on the main project. If any new significant environmental, technical, geotechnical or right-of-way issues cannot be resolved prior to the main project bid opening, then this pedestrian trail extension construction would be separated from the main project and would be constructed as a separate project, Phase 2A, If the significant environmental, technical, geotechnical or right-of-way issues which cause a postponement of the pedestrian trail construction can be solved within a reasonable time, then the pedestrian trail, as Phase 2A of the main project, will be pursued and implemented as soon as the problems are resolved and in any event prior to the Washington State Ferries beginning the Overhead Loading Walkway Replacement Project. If a significant environmental, technical, geotechnical or right-of-way issue arises concerning the pedestrian trail connection project which cannot reasonably be solved within one year from the date of bid opening on the main project, then the Washington State Ferries and the City will meet to discuss a suitable alternative to the pedestrian trail connection plan or a reasonable extension of time for resolution of problems which delay the beginning of construction of this pedestrian trail as part of Phase 2A of the main project.