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- Listen to the meeting by phone (if one number does not work, please try the other number): 1-253-215-8782 and enter Meeting ID 846 8530 0609 or 872-240-3412, Access Code: 261-991-485
- The public is encouraged to comment via email to pced@cityofanacortes.org, via written comment addressed to PCED, P.O. Box 547, Anacortes, WA 98221, or via e-comment (<https://www.anacorteswa.gov/700/Watch-Meetings> - click on meeting you wish to provide comment and in upper right corner is an option to include Public Comment). Public comments received prior to 3:00 p.m. the day of the meeting will become part of the record for the meeting, just as if presented in person.
- Complete guidelines for virtual participation in Anacortes Planning Commission meetings are available [here](#) (page 2). View the quick video example for connecting to the meeting [here](#).

ANACORTES PLANNING COMMISSION

August 9, 2023

AGENDA

6:00 PM

- A. Roll Call**
- B. Minutes**
 - 1) Minutes of 06/14/2023
- C. Correspondence**
- D. New Business**
 - 1) Port of Anacortes' Request for Reconsideration of Shoreline Substantial Development Permit (SDP-2023-0002) for Curtis Wharf / 2nd Street
- E. Old Business**

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Anacortes Planning Commission Minutes - June 14, 2023

Roll Call

Executive Session

Potential Litigation or Litigation per RCW 42.30.110(1)(i) (20 minutes)

The Commissioners and staff convened off-site for approximately 30 minutes. The topic does not pertain to tonight's hearing and no decision will be made.

Minutes

Minutes of 05/24/2023

Chairperson MacKenzie confirmed that the Commissioners reviewed the minutes and there were no additions or corrections. The minutes from May 24, 2023 were accepted as submitted.

Correspondence

New Business

Old Business

Continuation of Open Record Public Hearing and Decision for Shoreline Substantial Development Permit SDP-2023-0002 Port of Anacortes 2nd Street and Curtis Wharf

Grace Pollard presented an overview of the application and provided clarification. She pointed out that everything is in the packet. Grace reviewed the project, which is within the Shoreline Substantial Development zone designation of Urban Maritime with Manufacturing and Shipping zoning. The proposal includes excavation, backfilling, upgrading stormwater, installing new asphalt and a new access gate with chain link security fencing. The intersection of O Avenue and 2nd Street is the proposed new rolling gate area with a connection at the end of 2nd Street to fencing along Curtis Wharf to their lot to the south. The review process is a type 3 review process. The pre-application meeting was held in January, the neighborhood meeting in March, the public comment period ended May 11th without comment. This is a continuation the May 24th Planning Commission meeting. There is a ROW use agreement between the City and the Port for this area. The Port is responsible for all improvements to use the 2nd Street ROW. The Shoreline Master Program is the comprehensive use plan to protect the shoreline environment through management of uses. The SMP regulates all development within the shoreline jurisdiction. A Shoreline Substantial Development permit is required to be obtained for development when the development interferes with the normal public use of the water of the shorelines of the state. Chapter 4 of the SMP contains the goals and policies that apply to all areas of the shorelines. She reviewed the elements included in section 4. Chapter 5 of the SMP includes the shoreline environmental designations and the policies for those specific designations. Management policies are used for determining uses and activities for each environment. Development regulations determine how and where permitted development can take place within the shoreline. This proposal falls within the permitted uses for this zone. Chapter 6 of the SMP deals with environmental protections. These ensure no net loss of ecological function happens thru this process, and if some are unavoidable, there are mitigation elements that apply. There are no concerns from staff on the environmental impacts of this project. The proposed work is within already exposed areas. They satisfy the requirements of this chapter. Chapter 7 addresses the shoreline public access, which is the physical ability of the general public to reach the waters edge or the ability to view the water from uplands. There are a variety of ways this can be done. An important goal of the Shoreline Management Act is to protect and enhance public access to the shoreline. The SMP emphasizes the importance of street ends that abut shorelines provide public access to communities.

Chairperson MacKenzie opened the public hearing for comment. There were no comments received. The

Chairperson closed the public hearing at 6:49 p.m.

Commissioner Martin referenced the intersection of O Ave and 2nd St asking if the gates are on the west side of 2nd St, but the proposal looks to be across the street. Grace clarified that is part of the repaving plan, but the gate is on the west side of O Ave. The overall project crosses the intersection, but only for paving. Chairperson MacKenzie asked staff to highlight what has changed in the details of the proposal. Grace pointed out that the Port's representative would like to say a few things.

Kevin Anderson addressed the intersection, stating that work is to clean up the intersection. The project is mostly about paving the last stretch of gravel in downtown Anacortes. Currently, it's gravel with many potholes and is not compatible with current traffic. The project is to facilitate future activities in that area. It's also to improve the stormwater infrastructure in that area. The fencing will separate the incompatible uses of pedestrian traffic versus commercial and industrial uses. The Commissioners did not have any questions for Mr. Anderson.

Ms. Pollard reviewed the original staff report with the proposed conditions and recommendations. For recommendation #1 the SMP mentions that when a project proposes to remove public access to a shoreline area, that can be permitted if there is an alternative access plan that is agreed to by the City. There was some confusion that this is being interpreted to require the Port to modify or amend the existing plan (listed as the Integrated Approach Plan from 2003 in the SMP). Chairperson MacKenzie asked if there are any changes for recommendations #3-9. Grace clarified there were not; there are only changes to recommendations #1 and 2. Commissioner Martin asked if Recommendation #5 is new. Ms. Pollard clarified that there is a new Recommendation #3, which pushed all the other recommendations back. She reviewed the revised recommendations. New Recommendation #1 was reviewed, which states the Port needs to provide a phase 1 design proposal of the N Ave beach connection for review and approval by the Planning, Community, and Economic Development department, to include wayfinding and improvements to the pedestrian connection. She listed options for this connection. The intent of rewording this condition is in response to the Port's concern that the Planning Commission was asking for them to create a new plan. The intent was to do a section of that plan, so we are calling that Phase 1. The overall requirements for wayfinding and pedestrian improvements have not changed. This just clarified that this is due to the existing plan between the Port and City. Chairperson MacKenzie clarified that this is referencing the plan that was already adopted in the Shoreline Master Plan in 2003.

Grace agreed. She moved on to the revised recommendation #2. The original recommendation had the same timeline, we just edited the terminology in reference to the integrated approach plan for the N Ave beach plan. Commissioner Stoneman pointed out that this is referencing an already existing plan. He asked what is being required.

Ms. Pollard said that was a vague plan. The integrated approach allowed some flexibility, so this asks for more details at a construction level in order to permit the project. She moved on to the revised recommendation #3, which requires the Port to submit a complete N Ave beach connection plan for review and permit approval prior to or concurrently with the establishment of the new or expanded use or development on Curtus Wharf / 2nd St ROW or within the Port's adjacent lot to the south or within 5 years of subject project completion or whichever is sooner. This is in response to the Port's clarification that the N Ave beach connection exists. This is staff's recognizing that the plan exists and we expect the plan to be fulfilled.

Grace reviewed the Port's letter to modify the conditions. In regard to recommended condition #1, the Port recommends that they will provide wayfinder signage to the pedestrian link between Commercial Ave and Guemus Channel at N Ave beach consistent with the requirements in the ROW use agreement for 2nd St from O Ave to shoreline. The Port feels that the reason for the change is unclear in the recommended condition. If the requirement that the Port submit an alternative public access improvement plan means that the Port must amend the already adopted public access plan in the SMP, that is problematic. They feel that the project does not propose a new industrial use or development that triggers the development regulations or requirements in the

SMP to improve the existing alternative access to the N Ave beach. Staff feels that the revised condition #1 addresses this concern and recognizes that this is required and is a phased approach. The development under this plan does not include expansion of use or new buildings, so phase 1 was intended to be scaled for this application. The staff recommended condition for a second phase to complete the entire plan be with in 5 years or at time of a new development, expansion of use or new use.

Tim Schermetzler, Port Attorney, referenced their letter. The Port's position is that the alternate access requirement aren't triggered by this project. This project is basically a repaving of a gravel roadway. The location is already under industrial use. It will provide safety and stormwater improvements to this area, but no change in use. He pointed out that the access to this ROW and the water at this project area was already restricted by the City and Port ILA. This project does not restrict the access. He commented that there is no trigger to the SMP to provide additional access. Part of this area that the original conditions referred to (extending all the way to Commercial Ave) is outside of the shoreline jurisdiction, which is problematic. Lastly, the revised conditions have some improvements over the original conditions, but it feels like an agreement to agree. There's already an agreement that says the City and Port will work out this other plan for access, but it's unclear because there is an ongoing review and approval via city staff regarding access. If there is a disagreement, the Port's appeal rights are unknown. He feels that it is more appropriate to have clearer conditions. The alternative access issues were already addressed in the ILA and should not be tied to this development permit. In summary, the Port wants the Planning Commission to adopt the Port's proposed conditions and strike the staff revised conditions.

Commissioner Stoneman asked if the Port doesn't want the revised recommendations approved.

Tim Schermetzler said the staff revisions are not addressing all of the issues the Port originally pointed out. For example, the issue of alternative access from Commercial Ave along 3rd St should have been addressed in the ILA. The Port isn't saying it won't participate in the street improvements as this area develops, but with this specific permit, these conditions seem outside of the scope of this permit and outside the SMP if going all the way to Commercial Ave.

Chairperson MacKenzie stated that the proposed fencing changes the public access.

Grace pointed out that the use agreement is not development. The SMP has a specific definition of what development is. The fencing meets that "substantial development" definition. A substantial development is any development that materially interferes with the normal public use of the water or shorelines of the state. The fence is within the shoreline 200' high water mark. She clarified that the SMP and ILA both encourage the development of alternative public access plans where public safety is compromised by water-dependent transportation, shipping, and manufacturing uses in proximity to deep shipper berths.

Chairperson MacKenzie asked if the staff conditions as they are written in the revised staff report conform to shoreline management requirements for alternate access.

Commissioner McCombs asked if there would still be access.

Grace clarified that the 2nd St access would be completely unusable by public whether vehicle or pedestrian.

The alternative plan is one block to the south, which connects to the primary beach access that already exists.

Commissioner McCombs asked for staff to clarify the thresholds for substantial development.

Grace stated that the threshold is for the fair market value of \$ 8504. Any project that exceeds that or development that interferes with the public access to the shoreline triggers the threshold.

Chairperson MacKenzie summarized that access would be shut off; the project is within the shoreline area; it does require an alternate access plan, but there is one already in place; and the staff recommendations are to follow that plan.

Grace agreed.

Commissioner Martin moved to approve the City's revised recommendations, dated 6/6/2023, numbered 1-12 as written. Commissioner Stoneman seconded the motion. Commissioner McCombs abstained, all other Commissioners, ayes.

Adjourned 7:28 p.m.



Planning Commission Agenda Bill

Meeting Date: August 9, 2023 **Agenda Item:** D.1.

Subject: Port of Anacortes' Request for Reconsideration of Shoreline Substantial Development Permit (SDP-2023-0002) for Curtis Wharf / 2nd Street

Staff Contact: Grace Pollard

Approved for Submittal to Commission by

Grace Pollard
John Coleman
LIBBY GRAGE

Action Type

Motion

Summary Statement: The Port of Anacortes has submitted a request for reconsideration regarding the Planning Commissions decision on Shoreline Substantial Development Permit SDP-2023-0002, Curtis Wharf / 2nd Street.

A request for reconsideration is not an appeal. A request for reconsideration is heard by the same decision-maker of the underlying decision. The Planning Commission, as the decision-maker of a Type 3-PC Shoreline Substantial Development Permit, must consider the request per the standards listed below.

Anacortes Municipal Code (AMC 19.20.200) states:

A. A party to the underlying decision may seek reconsideration only of a final decision by filing a written request alleging specific errors on a form provided by the Department within 10 days of the date of decision.

B. The decision-maker must consider the request without public comment or argument by the party filing the request. Reconsideration may be granted only when a material legal error has occurred or a material factual issue has been overlooked that would change the previous decision.

1. If the request is denied, the previous action will become final.

2. If the request is granted, the decision-maker may revise and reissue its decision or may call for argument in accordance with the procedures for closed record appeals. If the decision is revised and the decision requires a notice of decision, the Department must distribute the revised notice. (Ord. 3040 § 2 (Att. A), 2019; Ord. 2992 § 1 (Att. A), 2016. Formerly 19.20.230)

The Port of Anacortes met the required timeline to submit the request for reconsideration and have provided their written argument.

Background: The Port of Anacortes requested a Shoreline Substantial Development Permit for the installation of roadway improvements and fencing. Proposed work included excavation of 2nd Street gravel surface and base materials, installation of updated and new stormwater conveyances and BMP facilities, backfilling and compaction of clean imported fill and base course materials, approximately 18,500 total square feet of new asphalt paving four inches in depth, and installation of a new rolling access gate and an additional length of chain-link fence connecting existing security fence at Quiet Cove to existing fence at Curtis Wharf. A portion of the overall proposal extends beyond shoreline jurisdiction.

The scheduled open record public hearing of May 24, 2023 was continued to June 14, 2023 at the Port's request to provide additional time for the Port to compile a request to modify the proposed conditions presented in the staff report. At the June 14, 2023 hearing, the Planning Commission, as the deciding body, voted to approve the permit request with the following conditions. (available here: [Planning Commission • City of Anacortes • CivicClerk](#))

1. The Port shall produce and submit a Phase 1 design proposal of the "*N*" Avenue Beach Connection referenced in the Port of Anacortes' *Integrated Approach to Marine Public Access, October 2003* and adopted by reference in the Anacortes Shoreline Master Program for review and approval by the Planning, Community, and Economic Development (PCED) Department to include but not be limited to provisions for wayfinding and improvements to the pedestrian link between Commercial Avenue and Guemes Channel at Q'elech'ilhch Park ("N" Avenue Beach). Considerations for improvements to the pedestrian connection to Q'elech'ilhch Park should include items such as landscaping and an aesthetic treatment to existing Port owned privacy fencing along 3rd Street adjacent to the public sidewalk by way of additional landscaping, art installation(s), or a similar proposed effect approved by the PCED Department.
2. Per Condition of Approval No. 1, the required Phase 1 plan of "*N*" Avenue Beach Connection shall be submitted to the Planning, Community, and Economic Development Department prior to subject project completion and shall be installed within one (1) year of plan approval.
3. The Port shall produce and submit the complete "*N*" Avenue Beach Connection plan to the Planning, Community, and Economic Development Department for review and permit approval prior to or concurrently with the establishment of a new or expanded use or development on Curtis Wharf, the 2nd Street right-of-way, or within the Port's adjacent Quiet Cove laydown lot (P55354), or within 5 years of subject project completion, whichever is sooner.
4. The Port shall obtain a fence permit for the proposed rolling gate at 2nd Street as well as the additional chain-link fencing along the shoreline. Permit application shall show the fence and gate designed to preserve visual access

down 2nd Street to the shoreline and shall be constructed to meet the standards of AMC 19.66.040.

5. The Port shall obtain construction permits for the street improvements and stormwater facility, shall comply with all applicable codes, manuals, and standards, and shall be reviewed and approved by the Public Works Engineering Division.
6. The Port and the subject project shall comply with all applicable state law requirements regarding preservation of archaeological and historic resources, including provisions to stop work and notify the appropriate agencies should protected resources be uncovered during excavation.
7. Removal of or relocation of all discarded materials including concrete blocks in upland areas beyond the fenced enclosure must be complete prior to completion of the subject project.
8. The scope of the project shall not exceed that as set out in the shoreline permit application and shall be valid only for the improvements described within the application materials, except as modified by this decision or other jurisdictional agencies. This permit does not include review or approval of any use.
9. All applicable permits (local, state, & federal) shall be secured before any construction activities begin onsite and copies provided to the City of Anacortes' PCED. This includes a local City of Anacortes Flood Development Permit.
10. The applicant/landowner shall comply with federal statutes including but not limited to: Endangered Species Act, Clean Water Act, Marine Mammal Protection Act, and other federal statutes.
11. The project shall comply with all applicable Shoreline Master Program regulations, including but not limited to those listed above.
12. Development shall comply with AMC 18.16.130 regulating the time limit for shoreline permits as follows:

9.1. Construction, or substantial progress toward completion, must begin within two (2) years after approval of the permit. Substantial progress toward construction shall include, but not limited to, the letting of bids, making of contracts, purchasing of materials involved in development, but shall not include development or uses which are inconsistent with the Shoreline Management Act or the city's master program. In determining the running two-year period hereof, there shall not be included the time during which development was not actually pursued by construction and the pendency of litigation reasonably related thereto made it reasonable not to so pursue; provided, that the city may, in its discretion, extend the two-year time period for a reasonable time based on factors, including the inability to expeditiously obtain other governmental permits which are required prior to the commencement of construction.

9.2. 5-Year Permit Authorization: If construction has not been completed within five years of approval by the City of Anacortes, the city will review the permit, with prior notice to parties of record, and, upon showing of good cause, either extend the permit for one additional year, or terminate the permit. Prior to the

city authorizing any permit extensions, it shall notify any parties of record and the Department of Ecology. Note: Only one single extension is permitted.

Previous Action: Planning Commission Approval with Conditions - Shoreline Substantial Development Permit SDP-2023-0002. Available here: [Planning Commission](#)
• [City of Anacortes](#) • [CivicClerk](#)

Competing Viewpoints Considered: See agenda packet.

Recommended Motion: I move we:

Deny the Port's request for reconsideration on the grounds no material legal errors were made nor any material factual issues were overlooked.

Alternative Actions: I move we:

Grant the Port's request for reconsideration and schedule a closed record hearing two weeks from today on August 23rd where the Planning Commission will call for arguments as permitted under AMC 19.20.200.

or

Grant the Port's request for reconsideration recognizing the following errors were made... and revise and reissue the decision as follows...

Attachments (listed in order presented):

1. EXHIBIT A - Request for Reconsideration 2023.07.21
2. EXHIBIT B - Staff Responses to Port's alleged errors
3. EXHIBIT C - Email providing Port with staff's revised recommendations
4. SIGNED Decision SDP-2023-0002



PLANNING, COMMUNITY, & ECONOMIC DEVELOPMENT DEPARTMENT

Mailing Address: P.O. Box 547, Anacortes, WA 98221

Office Location: 904 6th Street, Anacortes WA 98821

Phone: (360) 299-1984

REQUEST FOR RECONSIDERATION

AMC 19.20.200 Reconsideration.

A. A party to the underlying decision may seek reconsideration only of a final decision by filing a written request alleging specific errors on a form provided by the Department within 10 days of the date of decision.

B. The decision-maker must consider the request without public comment or argument by the party filing the request. Reconsideration may be granted only when a material legal error has occurred or a material factual issue has been overlooked that would change the previous decision.

1. If the request is denied, the previous action will become final.
2. If the request is granted, the decision-maker may revise and reissue its decision or may call for argument in accordance with the procedures for closed record appeals. If the decision is revised and the decision requires a notice of decision, the Department must distribute the revised notice.

APPLICATION INFORMATION	
CITY FILE NUMBER: SDP-2023-0002	PERMIT/ACTION TYPE: Shoreline Substantial Development Permit
SITE ADDRESS: 2 nd Street ROW and Curtis Wharf	
DECISION/DETERMINATION: Approval with Conditions	DATE OF FINAL DECISION/ACTION: July 11, 2023
REQUESTOR CONTACT INFORMATION	
NAME: Timothy Schermetzler, counsel for the Port of Anacortes	MAILING ADDRESS: 1500 Railroad Avenue
CITY, STATE, ZIP: Bellingham, WA 98225	PHONE #: (360) 671-1796 ext. 221 EMAIL ADDRESS: tschermetzler@csdlaw.com

Attach your written request alleging specific errors to this form.

July 21, 2023

VIA ELECTRONIC MAIL

gracep@cityofanacortes.org

pced@cityofanacortes.org

City of Anacortes
Planning, Community & Economic Development
P.O. Box 547
Anacortes, WA 98221

RE: Request for Reconsideration and Appeal of Permit Conditions

Permit: SDP-2023-0002 (the "Permit")
Project Title: 2nd Street and Curtis Wharf Improvements (the "Project")
Project Location: 2nd Street west of the east side of O Avenue and the Curtis Wharf access to the north, adjacent to 166 O Avenue.

Owner/Applicant/Appellant: The Port of Anacortes (the "Port")
Attn: Brenda Treadwell
100 Commercial Avenue
Anacortes, WA 98221
(360) 293-3134

To Whom It May Concern,

Our firm represents the Port of Anacortes (the "Port") regarding the above-referenced Permit to execute the above-referenced Project. I am writing to request that the City of Anacortes (the "City") reconsider its recent approval of the Permit with certain conditions effectively requiring the Port to perform services to the City that do not align with the Port and City Right of Way Use Agreement for 2nd Street—From "O" Avenue to Shoreline, dated February 16, 2022 (the "Right of Way Use Agreement") or the City's Shoreline Management Program ("SMP").

I. APPEAL PROCESS

As a preliminary matter, the Port submitted the enclosed Request for Reconsideration form as instructed by the City Attorney in a July 7, 2023, email and the appeal statement included with the Notice of Decision on the Permit.¹ The Anacortes Municipal Code (the "AMC") does not specify that a Request for Reconsideration pursuant to AMC 19.20.200 tolls the applicable administrative appeal timeline provided in AMC 19.20.180, despite this being the typical practice for administrative appeals

¹ A copy of the July 7, 2023, email from Darcy Swetnam is attached hereto as **Exhibit A**.

of similar municipal entities. In the event that a Request for Reconsideration does not toll the appeal timeline, please accept this letter as an appeal pursuant to AMC 19.20.180.² Furthermore, should the City determine that the deadline to appeal is not tolled by this Request for Reconsideration, please notify the Port and its counsel as soon as possible so that the Port may submit the requisite appeal filing fee.

All that being said, the Port is only submitting this letter and engaging in local administrative appeal processes as a precaution. The Port's reading of the City's municipal code is that an appeal of this Permit under the City's SMP must be made to the Shorelines Hearings Board (the "SHB") pursuant to AMC 18.16.110. The administrative appeal processes in Chapter 19.20 AMC do not apply to the SMP. This conclusion is based on, among other things, AMC 19.20.020 – Applicability, which does not incorporate by reference Title 18 AMC, only Titles 16, 17, and 19; and AMC 19.12.060 – Supremacy. The Supremacy code provides in part that, "[i]n the event of a conflict between provisions of this title [Title 19 AMC] and AMC Chapter 18.16, Shoreline Master Plan, the provisions of AMC Chapter 18.16, Shoreline Master Plan, control."

Based upon the Port's interpretation of the relevant AMCs, the Port intends on filing an appeal with the SHB to preserve its appeal rights. After receiving this letter, should the City arrive at the same conclusion as the Port's legal team that the appropriate venue for appeals is the SHB, not a local administrative appeal under Chapter 19.20 AMC, please contact the Port's legal counsel to discuss reissuance of the City's notice of decision with the correct appeal language. While the Port's legal counsel believes the SHB is the appropriate appeal venue, the Port still hopes that it and the City can come to a resolution to revise the errored conditions in the Permit that will not require the parties to engage in a costly and time-consuming appeal process.

II. PUBLIC HEARING AND PROCEDURAL ERRORS

On May 24, 2023, and June 14, 2023, public hearings were held to discuss the Port's application for a Shoreline Substantial Development Permit ("SSDP"), required to execute the Project. In the time between those two hearings, the Port reviewed the City's Staff Report regarding the Project.³ After the Port's review, on May 30, 2023, the Port submitted to the City a "Request to Modify Conditions Presented in City Staff Report" (the "Comment Letter").⁴ The Comment Letter asked for clarification from the City as to the basis for certain conditions being applied to the Permit, provided recommendations and the reasoning behind those recommendations for revisions to the City's conditions, and emphasized the Port's desire to work collaboratively with City staff to revise the proposed conditions in a manner that best reflects the Project and is consistent with the City SMP, development regulations, and the 2nd Street Right of Way Use Agreement.

² The Notice of Decision includes the following appeal statement, "Pursuant to AMC 19.20.030, a closed record appeal to the City Council is available for Type 3-PC Planning Commission Decisions. Appeals of this decision must be filed in accordance with AMC 19.20.180 within 14-days from the date of issuance of the decision. Pursuant to AMC 18.16.110, appeals of the final decision shall be filed within 21-days from the date the permit decision is filed with Ecology and shall be heard by the Shorelines Hearings Board pursuant to the procedures and timelines of RCW 90.58.180."

³ A copy of the City Staff Report is attached hereto as **Exhibit B**.

⁴ A copy of the Port's May 30, 2023, Comment Letter is attached hereto as **Exhibit C**.

In response to the Port's May 30th Comment Letter, on June 6, 2023, the City issued its "Revised Recommendations." These Revised Recommendations, however, were never sent to the Port ahead of the final June 14th hearing. Therefore, the Port was deprived of any opportunity to engage with the City on the proposed conditions, as the Port had requested in its Comment Letter. Rather, it was not until June 14th, the day of the final hearing, that Port Staff and I first saw the Revised Recommendations posted on the City Planning Commission's website, leaving no opportunity for the Port to further engage with City staff ahead of the hearing.

I, along with Port staff, attended the June 14th virtual public hearing to address the Port's concerns regarding the conditions in the City Staff Report and Revised Recommendations. However, at the hearing, the Planning Commission did not afford the Port an opportunity to comment on these issues. This resulted in the Planning Commission acting on incomplete and inaccurate information. I, and Port staff participated online and had our hands raised on the remote hearing, but the Planning Commission did not allow us to speak prior to moving to a vote. It is unclear why the City would repeatedly ignore the Port's efforts to engage. Moreover, as the Applicant and Project Proponent, the Port ought to have been afforded the opportunity to address the Planning Commission and correct the record prior to the Planning Commission vote on the Permit.

As a result of the June 14th virtual hearing, on June 23, 2023, the Port issued another letter directly to Darcy Swetnam, the City of Anacortes' City Attorney.⁵ The Port's June 23rd letter was written in an effort to further explain how the inaccurate information conveyed to the Planning Commission has resulted in permit conditions that are not in line with the already established ILA between the Port and the City. Those issues are reiterated below.

III. PERMIT CONDITION ERRORS AND REQUESTED RELIEF

Pursuant to AMC 19.20.180.A.2., as the Applicant for the SSDP, the Port has standing to submit this Request for Reconsideration and any subsequent or concurrent Appeal to the City and/or the SHB. Furthermore, the Revised Recommendations approved by the Planning Commission, along with each of their corresponding errors and requested relief by the Port, are detailed below.

Condition No. 1 – The Port shall produce and submit a Phase 1 design proposal of the "N" Avenue Beach Connection referenced in the Port of Anacortes' Integrated Approach to Marine Public Access, October 2003 and adopted by reference in the Anacortes Shoreline Master Program for review and approval by the Planning, Community, and Economic Development (the "PCED") Department to include but not be limited to provisions for wayfinding and improvements to the pedestrian link between Commercial Avenue and Guemes Channel at Q'elech'ilhch Park ("N" Avenue Beach). Considerations for improvements to the pedestrian connection to Q'elech'ilhch Park should include items such as landscaping and an aesthetic treatment to existing Port owned privacy fencing along 3rd Street adjacent to the public sidewalk by way of additional landscaping, art installation(s), or a similar proposed effect approved by the PCED Department.

Error – The imposition of this condition is not consistent with or provided for within the SMP and amounts to an exaction.

⁵ A copy of the June 23, 2023, letter is attached as **Exhibit D** and incorporated herein by reference.

Request Relief – Remove Condition No. 1

Condition No. 2 – Per Condition of Approval No. 1, the required Phase 1 plan of “N” Avenue Beach Connection shall be submitted to the Planning, Community, and Economic Development Department prior to subject project completion and shall be installed within one (1) year of plan approval.

Error – This condition is not consistent with the SMP and improperly delegates the Planning Commission’s authority to condition this SSDP to City staff and further condition the Project after the issuance of the Permit.

Request Relief – Remove Condition No. 2

Condition No. 3 – The Port shall produce and submit the complete “N” Avenue Beach Connection plan to the Planning, Community, and Economic Development Department for review and permit approval prior to or concurrently with the establishment of a new or expanded use or development on Curtis Wharf, the 2nd Street right-of-way, or within the Port’s adjacent Quiet Cove laydown lot (P55354), or within 5 years of subject project completion, whichever is sooner.

Error – This condition is not consistent with the SMP and improperly delegates the Planning Commission’s authority to condition this SSDP to City staff and further condition the Project after the issuance of the Permit.

Request Relief – Remove Condition No. 3

IV. GROUNDS FOR APPEAL

A. The 2nd Street Right of Way Use Agreement prohibits public access, not the Project.

The Port understands that City Staff have informed the Planning Commission that the portion of the Project which includes fencing along 2nd Street triggers the need for an alternative plan for public access to the shoreline under the SMP. This is incorrect. Rather, public access to the shoreline via 2nd Street was already eliminated when the Port and the City executed the 2nd Street Right of Way Use Agreement in February 2022. More specifically, Section 6.2 of the Agreement states the following:

Except as set forth in Agreement Section 7, the City hereby grants to the Port, and **the Port shall have exclusive use of, the 2nd St. ROW** for the Term of the Agreement for the uses described in Agreement Section 8.⁶

The only rights reserved by the City under this sub-section are the rights to use the subsurface portion of the 2nd Street ROW “for the siting and construction of utility improvements, including a segment of an outfall connection from the City’s wastewater treatment plant to Guemes Channel.”⁷ Section 8.1 of the Agreement further makes clear the Port’s authority to restrict access to the 2nd Street ROW:

⁶ 2nd Street Right of Way Use Agreement, § 6.2 (emphasis added).

⁷ *Id.* at § 7.

Under this Agreement, the Port is granted the right of use over, under, upon and across the 2nd St. ROW for the support of industrial and/or commercial uses associated with the Port's marine terminal facilities... These uses include, without limitation, (i) vehicle access; (ii) product storage operations; (iii) **restricting public traffic and access to the 2nd St. ROW**; and (iv) constructing any improvements the Port deems necessary to support these uses.⁸

B. The Project does not trigger the development regulations or requirements in the SMP to improve an existing alternative access to Q'elech'ilhch Park.

As explained in the Port's June 23rd letter to Ms. Swetnam and the Port's May 30, 2023, Comment Letter, the City Staff Report cites SMP DR-8.6.8 as authority for its public access conditions to the Permit.⁹ This development regulation triggers public access where industrial use is proposed. That is not the case with the Project which is predominantly a paving project. As such, the Planning Commission's cited authority in fact does not apply.

Additionally, as a practical matter, even if the Port were required to provide alternative public access as a result of this Permit, which it should not be so required, the public access along 3rd Street to the shoreline already exists, thereby satisfying this requirement. Conditions Nos. 1 through 3 of the Permit requiring the Port to beautify 3rd Street, go above and beyond creating a public access. In this regard, the City seeks through Permit conditions Nos. 1 through 3 to exact from the Port beautification and street improvements to an existing public access that are not authorized within the SMP development regulations.

C. The Permit conditions go beyond the jurisdiction of the City's SMP.

The conditions encompass parcels outside of not only the Project area, but parcels that the Port does not own, as well as some parcels that lie wholly outside of the shoreline jurisdiction. The SMP "shall apply to all the lands and waters in the City of Anacortes that fall under the jurisdiction of the Shoreline Management Act."¹⁰ The SMP defines its shoreline jurisdiction as follows:

Shorelines include the waters within the City limits together with the lands underlying them and lands extending landward 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark together with any associated wetlands.

...

Where a substantial development is proposed which would be partly within and partly without shoreline jurisdiction, a shoreline substantial development permit shall be

⁸ *Id.* at § 8.1 (emphasis added).

⁹ See **Exhibit B**, at 9.

¹⁰ The SMP, at § 2.3(A).

required for the entire development. The regulations of this Master Program shall apply only to that part of the development which occurs within shoreline jurisdiction.¹¹

The Project includes parcels which are both within and outside of the SMP jurisdiction. Therefore, the Port is required to obtain a shoreline substantial development permit for the entire Project. That being said, according to Section 2.3(E) of the SMP, the SMP's regulations shall only apply to parts of the Project that are within the designated shoreline jurisdiction. The City's Revised Conditions disregard this limitation and require the Port to carry out additional projects that are outside of the SMP's stated jurisdiction. In particular, Conditions No. 1 through 3 of the Permit require the Port to design and construct street improvements along 3rd Street from Guemes Channel at Q'elech'ilhch Park ("N" Avenue Beach) to Commercial Avenue, well outside of the shoreline jurisdiction.¹² The City has no authority under the SMP to condition property and parcels that are not part of this Project and outside of the shoreline jurisdiction.

V. CONCLUSION AND NEXT STEPS

It is clear to the Port that the Permit Conditions are purely a result of the City's desire to exact from the Port improvements to the existing public access on 3rd Street beyond what is justified to mitigate for the Project and in some cases wholly outside of the shoreline jurisdiction. Simply put, these conditions are nothing more than a bootstrapped attempt on the part of the City to get the Port to improve City property. If the City was concerned about improvements to 3rd Street, it should have negotiated the same at the time that the 2nd Street Right of Way Use Agreement was executed back in February 2022.

It is both inappropriate and unlawful for the City to now—over a year later—put the burden of designing, funding, and executing the City's desired improvements on the Port by way of an SSDP that does not even concern the 3rd Street area. The City's attempts to shift responsibility for these improvements on to the Port is made even more egregious given that the City's SMP plainly states that the SMP's regulations do not apply to areas of the development project which lie outside of shoreline jurisdiction.

In consideration of the above and the identified factual and procedural errors on the part of the City, the City must revise the Permit Conditions. As indicated above, the Port is prepared to appeal this determination in the appropriate venue, which is the SHB. The Port provides the enclosed Request for Reconsideration and local administrative appeal to preserve its rights given the City's appeal statement in the Notice of Decision and prior communication with the City Attorney directing the Port to a local administrative appeal process. Notwithstanding this letter and the enclosed Request for Reconsideration, the Port is preparing an appeal to the SHB to protect its appeal rights under Chapter 18.16 AMC.

The Port still wishes to arrive at a negotiated solution to this matter without the need for litigation. To that end, the Port is willing to enter into a tolling agreement after filing the SHB appeal to afford the Port and the City an opportunity to negotiate appropriate conditions for the Permit. In the alternative

¹¹ *Id.* at § 2.3(A) and (E).

¹² Revised Recommendations, at 1 (June 6, 2023).

to filing an appeal and entering a tolling agreement, should the City like to avoid an unnecessary appeal and instead discuss a resolution with the Port, the Port would not object to the City rescinding the Permit and re-opening the public hearing in order to correctly issue the Permit.

The Port appreciates the City's attention to this matter and looks forward to the City's formal response. In the meantime, the Port continues to reserve all rights and remedies.

Sincerely,

CSD ATTORNEYS AT LAW P.S.



Timothy D. Schermetzler

TDS/SBF/sld

Encls.

cc: Client

Darcy Swetnam, darcys@cityofanacortes.org

City Clerk, cityclerk@cityofanacortes.org

EXHIBIT A

From: [Darcy Swetnam](#)
To: [CSD - Tim Schermetzler](#)
Cc: [John Coleman](#); [Jonn Lunsford](#); [Libby Grage](#); [Grace Pollard](#); [Jordan Boggs](#)
Subject: Your letter requesting reconsideration
Date: Friday, July 7, 2023 11:42:12 AM

Caution: External (darcys@cityofanacortes.org)

First-Time Sender [Details](#)

[Report This Email](#) [FAQ](#) [Protection by INKY](#)

Tim,

I just met with City staff on your letter requesting a meeting to discuss reopening the hearing on the Port's 2nd Street shoreline substantial development permit. City Code provides a process for requesting reconsideration of a final decision at Section 19.20.200 AMC. To allow the Port to proceed with a request for reconsideration, the City will be issuing its final decision on the application and will provide the request for reconsideration form. The request will then be considered by the Planning Commission. We anticipate sending out the relevant documents by early next week.

Thank you,
Darcy

Darcy Swetnam

City Attorney
City of Anacortes
P.O. Box 547
Anacortes, WA 98221
www.cityofanacortes.org
(360) 299-1950

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EXHIBIT B



Anacortes Planning, Community & Economic Development Department

904 6TH Street / P.O. Box 547, Anacortes, WA 98221

360.299-1984 - Office Hours: Mon-Fri 8:00 AM – 5:00 PM

SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT: STAFF REPORT

File Number	SDP-2023-0002	Date of Report	May 18, 2023
Project Title	MRT-64 2 nd Street and Curtis Wharf Improvements	Related File(s)	PRE-2023-0002
Project Location	Second Street west of the east side of O Avenue and the Curtis Wharf access to the north, adjacent to 116 O Avenue.		
Request	The Port of Anacortes has requested a shoreline substantial development permit for the installation and construction of approximately 18,500 square feet of new asphalt at 2 nd Street and the entry to Curtis Wharf. Proposed work includes excavation of existing gravel surface and base materials, backfilling and compaction of clean imported fill and base course materials, installation of updated stormwater conveyances and BMP facilities, paving with asphalt four inches in depth, and installation of a new rolling access gate and an additional length of chain-link fence connecting existing security fence at Quiet Cove and Curtis Wharf. The applicant has stated the new fence and gate is a measure to limit potential conflicts between the public and industrial use tenants at Curtis Wharf. No footprint expansion is proposed under this proposal, all work will be done within existing disturbed/ developed areas. This Shoreline Substantial Development Permit application does not include a proposal to expand an existing use or establish a new use.		
Landowner/Applicant	Port of Anacortes 100 Commercial Ave Anacortes, WA 98821		

SITE INFORMATION

Zoning	Manufacturing and Shipping (MS)	Comprehensive Plan Designation	Manufacturing / Shipping (MS)
Present Use of Property	Port facility including a commercial/industrial pier and 2 nd Street right-of-way.		
Critical Areas	Pursuant to Chapter 6 and Appendix "A" of the Shoreline Master Program (SMP) regulating critical areas, the subject development was reviewed for proximity to critical areas. SMP A-1: Frequently Flooded Areas Based on FEMA's National Flood Hazard Mapping, the subject property is located within FIRM panel 5303170040A. A Flood Development Permit has been		

	submitted to the City (FLD-2023-0001) and will be required to be obtained prior to the beginning of construction. SMP A-3: Geologically Hazardous Areas Based on the City mapping system, the subject property is in an identified area of tsunami hazard and seismic hazard area; however, the proposed street paving and fence does not have a risk of hazard. Therefore, the provisions of this section would not apply. SMP A-5: Fish and Wildlife Conservation Areas Based on the City mapping system, the subject property is adjacent to an identified Critical Areas Habitat Group for smelt spawning and Dungeness Crab; however, the proposed street paving and fencing will not exceed the existing developed footprint of the site, no encroachment into critical areas are proposed or permitted. It is determined that no net loss of critical habitat area will occur.
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PROJECT LOCATION & SURROUNDING USES



	Zoning / Comprehensive Plan	Property Use
North	Manufacturing & Shipping (MS)	Port owned – industrial maritime facility
South	Manufacturing & Shipping (MS)	Port owned – industrial maritime facility
West	Light Manufacturing (LM)	Port owned – industrial maritime facility
East	Manufacturing & Shipping (MS)	Port owned – industrial maritime facility

PROCEDURAL

- Type of Review.** According to AMC 19.20.030(1) and 18.16.100(B), shoreline substantial development permit applications for projects valued less than \$1 million are considered a Type 3 review. For Type 3 reviews, the Planning Commission holds the public hearing and renders the final decision regarding the proposed shoreline substantial development permit.
- Project History.**
 - A mandatory preapplication meeting was held on January 31, 2023, with the mandatory preapplication neighborhood meeting held on March 9, 2023.
 - The Port of Anacortes has obtained a Right of Way Use Agreement from the City of Anacortes for this portion of 2nd Street lying westerly of the west line of “O” Avenue (AFN 202206240050). (Exhibit 6)
 - The project site is adjacent to a known cleanup site, Quiet Cove, in-water and sediment remediation are proposed in the next five (5) years and will be conducted in accordance with all applicable requirements. The Port of Anacortes has an Agreed Order with Department of Ecology (No. DE11346) (Exhibit 15)
 - The City of Anacortes’ Shoreline Master Program adopted by reference the *Port of Anacortes Integrated Approach to Marine Public Access, October 2003* plan (Exhibit 19)
- Environmental Review.** The Port of Anacortes, as lead agency, determined the scope of work to be categorically exempt from SEPA Review per WAC 197-11-800(2)(d)(vii) and (2)(d)(viii). (Exhibit 10)
- Public notice and reviewing departments/agencies.** A notice of application with a 30-day public comment period was published in the Anacortes American, posted on the project site and mailed to property owners within 300 ft. (Exhibit 17)

Application Submitted	February 27, 2023
Determination of Completeness	March 10, 2023
Notice of Application & Public Hearing	April 12, 2023
Open Record Public Hearing (Planning Commission)	May 24, 2023

- Reviewing departments/agencies.** The project application was routed for review to applicable agencies and City departments.

REVIEWING DEPARTMENTS & AGENCIES			
City of Anacortes	Local Agencies	State & Federal	Other

• Building • PW – Operations • PW – WWTP • PW – Engineering • PW – Water	N/A	• USACE • DAHP • DOE • WDFW • WA DNR	• Samish Indian Nation • Sauk-Suiattle • Skagit System Cooperative • Stillaguamish Tribe • Swinomish Tribe
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6. **Consideration of written comments and applicant responses.** The notice of application public comment period ended May 11, 2023. In making its recommendation, the Department considered timely received written comments and the applicant’s responses, if any, as required in AMC 19.20.130(C).

6.1. Comments from Public Works Engineering were relayed to the applicant a copy of which can be found in (Exhibit 18).

6.2. No public or agency comments, other than the referenced above, were received for the proposal.

DEPARTMENT REVIEW – FINDINGS OF FACT

1. **Right of Way Use Agreement 2nd Street from “O” Avenue to Shoreline** (AFN 202206240050). This agreement between the City of Anacortes and the Port of Anacortes is for the conveyance of property interest from the City to the Port. Under this agreement the City grants to the Port exclusive use of the 2nd Street right-of-way for the term of the agreement described in Agreement Section 8 which includes the right of use over, under, upon and across the 2nd Street right-of-way including, without limitation vehicle access, product storage operations, restricting public traffic and access to the 2nd Street right-of-way, and constructing any improvements the Port deems necessary. Also included in Agreement Section 8 is stated the Port and its contractors use of the 2nd Street right-of-way shall comply with all applicable federal, state, and local laws, ordinances, orders, rules, and regulations. The Port is responsible for all necessary permits, licenses, certificates, or approvals required by applicable laws, ordinances, and regulations necessary to use the 2nd Street right-of-way. (Exhibit 6)

2. **The City of Anacortes Shoreline Master Program (SMP)** contains many goals, policies, and development regulations. Not all are applicable to each Shoreline Substantial Development Permit project proposal. Below, staff has listed some of the goals, policies, and regulations believed to be the most relevant, however all applicable regulations apply even if not noted below.

3. **SMP Chapter 5: Shoreline Environments & Associated Policies and Regulations.** This section contains the shoreline environment designations. The intent of designating shoreline environments is to encourage development that will enhance the present or desired character of the shoreline. Management policies are an integral part of the environment designations and are used for determining uses and activities that can be permitted in each environment. Specific development regulations specify how and where permitted development can take place within each shoreline environment.

3.1. The subject property is located within the **Urban Maritime** shoreline environment designation.

3.1.1. The purpose of the Urban Maritime designation is to preserve a variety of water-dependent, water-oriented, and water-related public, commercial, and industrial uses such as those associated with the Port of Anacortes.

3.2. Management Policies:

- 3.2.1. Use Policy 5.11.1 Encourage expansion of water-dependent and water-related uses.
- 3.2.2. Use Policy 5.11.6 Industrial and commercial development along Urban Maritime shorelines should provide protection of existing ecological functions where practicable and mitigated. It should also provide public access opportunities only where appropriate and where public safety would not be compromised and alternative off-site provision has been made.
- 3.2.3. Public Access Policy 5.11.7 Where desirable and practicable, industrial, and commercial facilities should be designed to facilitate pedestrian waterfront activities. *The Port of Anacortes' Integrated Approach to Marine Public Access, October 2003* is incorporated by reference, and substitutes for uniform public access requirements on individual port actions.

3.3. Development Regulations:

- 3.3.1. DR-5.11.5 Redevelopment and renewal of substandard, degraded, or obsolete urban shoreline areas shall be encouraged in order to make maximum use of the available shoreline resources and to accommodate future water-oriented uses.
- 3.3.2. DR-5.11.7 Ensure that, where applicable, improvements are reviewed for consistency with Design Standards codified in the zoning code.
- 3.3.3. DR-5.11.10 Developments consisting of water-dependent scientific, historical, industrial, commercial, cultural, or educational research uses, public access, water-oriented recreation and ecological restoration are not required to meet the setback requirements, nor are piers, ramps, or docks.

3.4. Shoreline Uses and Modification Matrix and Development Standards:

- 3.4.1. Section 5.12(A)(5) If any part of a proposed development is not eligible for Shoreline Exemption, then a Substantial Development Permit is required for the entire proposed development project.
- 3.4.2. Section 5.12(A)(9) Except as otherwise stated, the comprehensive plan, zoning regulations, subdivision regulations, health regulations, and other adopted regulatory provisions apply within shoreline jurisdiction. In the event the provisions of this SMP conflict with provisions of other responsible local government regulations, the more protective of shoreline resources shall prevail.
- 3.4.3. Per Table 5.1 Shoreline Use and Modification Matrix the following uses are permitted in the Urban Maritime environment designation.
 - 3.4.3.1. Transportation Facilities (i.e. roads and associated facilities i.e. storm drainage); permitted.
 - 3.4.3.2. Industrial and Port Facilities – Water-dependent; permitted.
Industrial and Port Facilities – Water-related; permitted.
 - 3.4.3.3. Fill – upland; permitted.

3.4.4. Per Table 5.2 Shoreline Development Standards Matrix non-water-dependent structures have a minimum twenty-five-foot (25') setback from the ordinary high water mark (OHWM). Water-dependent structures have a zero-foot (0') setback requirement.

4. **SMP Chapter 6: Environmental Protection General Regulations.** The intent of these regulations is to provide policies and regulations that protect the shoreline environment as well as the critical areas found within the shoreline jurisdiction. The Shoreline Management Act (SMA) mandates the preservation of the ecological functions of the shoreline by preventing impacts that would harm the fragile shorelines of the state.
 - 4.1. DR-6.4.2 All shoreline permits shall contain provisions that require developers to comply with all applicable state law requirements regarding preservation of archaeological and historic resources, including provisions to stop work and notify the appropriate agencies should protected resources be uncovered during excavation.
 - 4.2. DR-6.4.9 Chemical pesticides using aerial spraying techniques within the shoreline jurisdiction, including over waterbodies shall be prohibited unless specifically permitted by the Washington Departments of Agriculture or Public Health.
5. **SMP Chapter 7: Shoreline Public Access.** Shoreline public access is the physical ability of the general public to reach and touch the water's edge or the ability to have a view of the water and the shoreline from upland locations. There are a variety of types of public access, including docks and piers, boat launches, pathways and trails, promenades, street ends, picnic areas, beach walks, viewpoints, and others. Inarguably, the economic vitality of the City is bolstered by the public access to and enjoyment of these shorelines.
 - 5.1. General Policy 7.3.1 Seek to maintain and enhance public access, both physical and visual, throughout the City's shoreline. Access should be provided for a range of users including pedestrians, bicyclists, boaters and, to the extent feasible, people with disabilities. Access opportunities should be varied, ranging from urban water walks to viewing platforms of natural areas. Encourage the use of public access facilities to actively educate and inform the public on the importance of environmental protection of the shoreline jurisdiction. Work in partnership with local entities (e.g., Skagit Marine Resources Committee, and others) to implement this policy.
 - 5.2. General Policy 7.3.5 Require new development that impacts public access to mitigate through the provisions of on-site visual and physical public access, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline. In lieu of on-site improvements, the Shoreline Administrator may allow for off-site improvements if said improvements would provide a greater public benefit.
 - 5.3. General Policy 7.3.7 Incorporate public access provisions into the review and approval of all public and private development projects. Exceptions may be considered for the following: (b) Where deemed inappropriate due to health, safety, security, incompatible uses, constitutional or other legal limitations and environmental concerns. In these cases, alternate methods of providing public access shall be considered such as off-site improvements, viewing platforms, separation of uses through site planning and design, and restricting hours of public access; and (c) Where a more effective integrated public access plan exists.
 - 5.4. Street Ends Policy 7.3.9 Encourage the use of street ends and other publicly owned or controlled lands to increase public access to shoreline areas.

- 5.5. Street Ends Policy 7.3.10 Develop street end access and viewpoints. Improvements to and linkages between these street-ends should be determined by the physical characteristics of the shorelines, existing development patterns, potential for structural improvements, and other factors relevant to developing a continuous pedestrian system.
- 5.6. Street Ends Policy 7.3.11 Ensure that use of street ends for parking does not physically block public access to the shoreline or degrade the scenic qualities of the City. (See Parking Facilities, Section 8.9 Chapter 8)
- 5.7. Design Policy 7.3.14 Public access improvements should be designed and constructed to: (a) Look and “feel” welcoming to the public and be usable by the greatest number and diversity of people including, to the extent possible the physically handicapped. (b) Connect to public areas, street-ends and other pedestrian or public thoroughfares. (e) Enhance the character of Anacortes, including the historic and economic activity of downtown, marine business and industry, Port activity, and natural areas. (f) Avoid conflicts with water-dependent uses. (h) Require low maintenance design.
- 5.8. Development Regulation (DR) 7.4.1 Developments, uses, and activities shall be designed and operated to avoid significantly blocking, reducing, or adversely interfering with the public’s visual or physical access to the water and the shorelines.
- 5.9. DR-7.4.2 Except as provided in regulations 7.4.4 and 7.4.5, shoreline substantial developments or conditional uses shall provide public access where any of the following conditions are present: (b) Where a development or use will interfere with an existing or potential public access way, the development or use shall apply mitigation sequencing principles and provide public access to address the impact. (e) Where a development or use is located on public land or is managed by a public entity, unless access is incompatible with safety, security, or environmental protection.
- 5.10. DR-7.4.3 Required public access shall include the preservation of shoreline views, the establishment of public access easement to and along the shoreline, enhancement of an adjacent street-end or park, or other consideration commensurate with the degree of impact caused by the development.
- 5.11. DR-7.4.4 Public access is not required if the applicant can demonstrate to the satisfaction of the City that constitutional and or statutory limitations would be violated by the provisions of such access.
- 5.12. DR-7.4.5 Alternatives to on-site, physical access to the shoreline may be approved if the applicant can demonstrate to the satisfaction of the City that one or more of the following conditions exist: (a) Unavoidable health or safety hazards to the public exist which cannot be prevented by any practical means; (c) Inherent security requirements of the proposed development or use cannot be satisfied through the application of alternative design features or other solutions; (d) The cost of providing on-site access, easement, or an alternative amenity is unreasonably disproportionate to the total long-term cost of the proposed development; Provided further, that the applicant has first demonstrated and the City has determined that all reasonable alternatives have been exhausted, including, but not limited to: (g) Regulating access by such means as limiting hours of use to daylight hours, or allowing public access to only a portion of the site. (h) Designing separation of uses and activities, using such means as terracing, hedges, and landscaping.
- 5.13. DR-7.4.6 When on-site public access is not required under DR-7.4.5, alternative shoreline access must result in an equal or greater public benefit. Alternatives may include but are not limited to:

(b) Off-site public access, such as improvements to a nearby street end, an offsite, or a trail system, purchase of land or an easement at a location appropriate for future access improvements. (c) A payment in lieu agreement with the City in accordance with RCW 82.02.020 (relating to fees associated with development).

5.14. DR-7.4.7 Off-site public access, when required, must meet the same standards and requirements as on-site public access.

5.15. DR-7.4.9 When required, public access sites shall be fully developed and available for public use at the time of occupancy or use of the development or activity, except where the decision maker determines an appropriate mechanism for delayed public access implementation is necessary for practical reasons.

5.16. DR-7.4.15 Future actions by the applicant or other parties shall not diminish the usefulness or value of the public access site.

5.17. DR-7.4.18 Public access landscape design shall use native vegetation in the shoreline setback and predominantly native vegetation (i.e., 80% or greater) in the remainder of shoreline jurisdiction, particularly drought-resistant and, along marine shorelines, saline-tolerant plant species, Landscape plantings may be required where desirable to provide public/private space separation.

6. **SMP Chapter 8: Specific Use Policies and Development Regulations.** This chapter provides specific policies and regulations for specific uses. The performance standards contained herein augment standards established through other land development regulations. Where conflict arises between these and other applicable controls, the regulations that provide more protection to the shoreline area shall apply.

6.1. Industrial and Port Facilities

6.1.1. Policy 8.6.1 Reserve shorelines that are particularly suitable for water-dependent and water-related industrial and port development for these uses.

6.1.2. Policy 8.6.3 Require new industrial and port development to provide physical and visual access to shorelines whenever possible, consistent with constitutional and statutory limitations, and provided such access does not interfere with industrial operations or endanger public health and safety.

6.1.3. Policy 8.6.4 Encourage cooperative use of docks, cargo handling, storage, parking, and other accessory facilities among private or public entities in shoreline industrial and port areas.

6.1.4. Policy 8.6.5 Ensure that land transportation and utility corridors serving ports and water-related industry follow the guidelines provided under the sections dealing with utilities and transportation.

6.1.5. Policy 8.6.6 Only water-dependent industrial and port uses shall be permitted on shorelands with direct frontage on and practical access to navigable waterways.

6.1.6. Policy 8.6.7 Opportunities for public access to the water are required at port and industrial sites, unless such access would interfere with operations or endanger public health and safety, or the proponent otherwise provides for equivalent access elsewhere in the City.

6.1.7. Policy 8.6.9 Industrial uses and redevelopment are encouraged to locate where environmental cleanup and restoration can be accomplished.

6.1.8. Development Regulations (DR) 8.6.8 Port and industrial facilities shall provide public access to shoreline areas in accordance with Chapter 7, *Public Access*, taking into consideration constitutional and statutory limitations, public safety, health, and security. Where industrial use is proposed for location on land in public ownership, public access shall be required in the general vicinity of the impact. Such provisions could be the preservation of shoreline views, the establishment of public access easements across and to the shoreline, enhancement of an adjacent street-end or park or other consideration commensurate with the degree of impact caused by the development. In this regard the *Port of Anacortes' Integrated Approach to Marine Public Access, October 2003* is incorporated by reference into this SMP.

6.2. Transportation Facilities

- 6.2.1. Policy 8.13.12 Design of new roadways or redesigned roadways shall use Low Impact Development provisions when practicable.
- 6.2.2. Development Regulation (DR) 8.13.6 All roads and drainage systems shall be maintained to prevent erosion and/or water quality degradation.
- 6.2.3. DR-8.13.8 Herbicides used for maintenance along roads and drainage systems shall follow the performance standard outlined in Section 6.4.
- 6.2.4. DR-8.13.9 To the greatest extent practicable, organic, nontoxic, methods and BMPs should be utilized for maintenance along roads and drainage systems in the vicinity of critical fish and wildlife habitats.

6.3. Fill

- 6.3.1. Policy 9.7.2 Fill landward of the ordinary high water mark should be permitted when necessary to support permitted uses, and when significant impacts can be avoided or mitigated.
- 6.3.2. Policy 9.7.5 Perimeters of fill should be protected by shoreline stabilization or other design measures, unless it can be demonstrated that there will be environmental or public benefit for not employing any of these methods.
- 6.3.3. Development Regulation 9.7.2 Fill shall be permitted only when in conjunction with a proposal or activity otherwise permitted under the SMP.

CONCLUSIONS OF LAW

1. Via the signed and recorded Use Agreement with the City, the Port has exclusive use of the 2nd Street right-of-way for the term of the agreement described in Agreement Section 8 which includes the right of use over, under, upon and across the 2nd Street right-of-way including, without limitation vehicle access, product storage operations, restricting public traffic and access to the 2nd Street right-of-way, and constructing any improvements the Port deems necessary to support its use.
2. Public access to the shoreline is referenced multiple times in the SMP. The street end of 2nd Street exits onto Q'elech'ilhch Park ("N" Avenue Beach), the Port has received City permission to restrict public traffic and access to this portion of 2nd Street via the Use Agreement, the Port's use of the 2nd Street right-of-way also requires them to comply with all applicable federal, state, and local laws, ordinances, orders, rules, and regulations. The Port is responsible for all necessary permits, licenses, certificates, or approvals required by applicable laws, ordinances, and regulations necessary to use the 2nd Street right-of-way. Shoreline Master Program Development Regulation 8.6.8 states: Where

industrial use is proposed for location on land in public ownership, public access shall be required in the general vicinity of the impact. Such provisions could be the preservation of shoreline views, the establishment of public access easements across and to the shoreline, enhancement of an adjacent street-end or park or other consideration commensurate with the degree of impact caused by the development.

3. Road improvements including stormwater facilities is a permitted action.
4. The shoreline permit was reviewed for conformance with all applicable Shoreline Master Program regulations, including but not limited to, the above list.
5. The subject proposal is consistent with the Washington State's Shoreline Management Act, City of Anacortes' 2010 Shoreline Master Program and development regulations listed therein for developments within the Urban Maritime shoreline environment designation.
6. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.
7. Staff reserves the right to supplement the record of the case to respond to matters and information raised subsequent to the writing of this report.

RECOMMENDATION

Based upon the application, Findings of Fact, and Conclusions of the staff report, staff recommends that the Planning Commission approve the shoreline substantial development permit subject to the following conditions of approval:

1. The Port shall provide and submit an Alternative Public Access Improvement Plan for review and approval by the Planning Department to include but not be limited to provisions for wayfinding and improvements to the pedestrian link between Commercial Avenue and Guemes Channel at Q'elech'ilhch Park ("N" Avenue Beach). Improvements to the pedestrian connection to Q'elech'ilhch Park should include items such as street trees, pedestrian scale lighting, public art, etc.
2. The required Alternative Public Access Plan shall be submitted to the Planning Department prior to subject project completion and shall be installed within one (1) year of plan approval.
3. The Port shall obtain a fence permit for the proposed rolling gate at 2nd Street as well as the additional chain-link fencing along the shoreline. Permit application shall show the fence and gate designed to preserve visual access down 2nd Street to the shoreline and shall be constructed to meet the standards of AMC 19.66.040.
4. The Port shall obtain construction permits for the street improvements and stormwater facility, shall comply with all applicable codes, manuals, and standards, and shall be reviewed and approved by the Public Works Engineering Division.
5. The Port and the subject project shall comply with all applicable state law requirements regarding preservation of archaeological and historic resources, including provisions to stop work and notify the appropriate agencies should protected resources be uncovered during excavation.
6. Removal of or relocation of all discarded materials including concrete blocks in upland areas beyond the fenced enclosure must be complete prior to completion of the subject project.
7. The scope of the project shall not exceed that as set out in the shoreline permit application and shall be valid only for the improvements described within the application materials, except as modified

by this decision or other jurisdictional agencies. This permit does not include review or approval of any use.

8. All applicable permits (local, state, & federal) shall be secured before any construction activities begin onsite and copies provided to the City of Anacortes' PCED. This includes a local City of Anacortes Flood Development Permit.
9. The applicant/landowner shall comply with federal statutes including but not limited to: Endangered Species Act, Clean Water Act, Marine Mammal Protection Act, and other federal statutes.
10. The project shall comply with all applicable Shoreline Master Program regulations, including but not limited to those listed above.
11. Development shall comply with AMC 18.16.130 regulating the time limit for shoreline permits as follows:
 - 9.1. *Construction, or substantial progress toward completion, must begin within two (2) years after approval of the permit. Substantial progress toward construction shall include, but not limited to, the letting of bids, making of contracts, purchasing of materials involved in development, but shall not include development or uses which are inconsistent with the Shoreline Management Act or the city's master program. In determining the running two-year period hereof, there shall not be included the time during which development was not actually pursued by construction and the pendency of litigation reasonably related thereto made it reasonable not to so pursue; provided, that the city may, in its discretion, extend the two-year time period for a reasonable time based on factors, including the inability to expeditiously obtain other governmental permits which are required prior to the commencement of construction.*
 - 9.2. *5-Year Permit Authorization: If construction has not been completed within five years of approval by the City of Anacortes, the city will review the permit, with prior notice to parties of record, and, upon showing of good cause, either extend the permit for one additional year, or terminate the permit. Prior to the city authorizing any permit extensions, it shall notify any parties of record and the Department of Ecology. Note: Only one single extension is permitted.*

EXHIBIT C



May 30, 2023

VIA EMAIL

gracep@cityofanacortes.org

City of Anacortes Planning, Community & Economic Development Department
Attn: Grace Pollard – Senior Planner
904 6th Street
PO Box 547
Anacortes, WA 98221

RE: Request to Modify Conditions Presented in City Staff Report

Permit: SDP-2023-0002
Applicant: Port of Anacortes (the “Port”)
Project Title: MRT-64 2nd Street and Curtis Wharf Improvements (the “Project”)
Project Location: 2nd Street west of the east side of O Avenue and the Curtis Wharf access to the north, adjacent to 166 O Avenue (the “Project Site”)

Dear Ms. Pollard,

Thank you for sharing the Shoreline Substantial Development Permit (SSDP) Staff Report on the above reference Project with Port staff. The Port appreciates the Planning Commission’s postponement of a decision to its’ next meeting as the Port wanted to take an opportunity to share some feedback on City staff’s recommended conditions to clarify the Port’s responsibilities and ensure the conditions align with the Port and City Right of Way Use Agreement for 2nd Street – From “O” Avenue to Shoreline, dated February 16, 2022 (the “2nd Street ILA”).¹

The Port requests that City Staff recommend, and the Planning Commission adopt, revisions to two of the recommended conditions in the City Staff Report. The City Staff recommended condition, the Port’s proposed revised condition, and the reasoning for the changes are discussed in turn below.

Recommended Condition No. 1 in the Staff Report - The Port shall provide and submit an Alternative Public Access Improvement Plan for review and approval by the Planning Department to include but not be limited to provisions for wayfinding and improvements to the pedestrian link between Commercial Avenue and Guemes Channel at Q’elech’ilhch Park (“N” Avenue Beach). Improvements to the pedestrian connection to Q’elech’ilhch Park should include items such as street trees, pedestrian scale lighting, public art, etc.

¹ Skagit County AF No. 202206240050 - see Exhibit 6 on the Staff Report.

Revised Condition No. 1 Proposed by the Port – The Port shall provide wayfinder signage to the pedestrian link between Commercial Avenue and Guemes Channel at Q’elech’ilhch Park (“N” Avenue Beach) consistent with the requirements in the Right of Way Use Agreement 2nd Street – from “O” Avenue to Shoreline, Skagit County AF No. 202206240050.

Reasoning for the Change – It is unclear in the recommended condition if the requirement that the Port submit an “Alternative Public Access Improvement Plan” means that the Port must amend the Public Access Plan identified in *the Port of Anacortes’ Integrated Approach to Marine Public Access*, October 2003, which is adopted by reference in the City’s SMP. This request is problematic because it could be interpreted as a requirement for the Port to amend or alter an adopted planning document within the SMP. In addition, and perhaps more important with respect to the Project under review, the Project does not propose a new industrial use or development, or otherwise trigger the development regulations or requirements in the SMP to improve an existing alternative access to Q’elech’ilhch Park (“N” Avenue Beach).

The Staff Report cites SMP DR-8.6.8 as the authority for the Condition No. 1. SMP DR-8.6.8 provides as follows (underline emphasis added):

Public Access DR-8.6.8 - Port and industrial facilities shall provide public access to shoreline areas in accordance with Chapter 7, Public Access, taking into consideration constitutional and statutory limitations, public safety, health, and security. Where industrial use is proposed for location on land in public ownership, public access shall be required in the general vicinity of the impact. Such provisions could be the preservation of shoreline views, the establishment of public access easements across and to the shoreline, enhancement of an adjacent street-end or park or other consideration commensurate with the degree of impact caused by the development. In this regard *the Port of Anacortes’ Integrated Approach to Marine Public Access*, October 2003 is incorporated by reference into this SMP.

The Project is a resurfacing of approximately 18,500 square feet of the section of the 2nd Street ROW that the City previously agreed to restrict to the Port’s exclusive use in the 2nd Street ILA. Access to the 2nd Street ROW became limited when the City executed the 2nd Street ILA in 2022, not by this Project. Accordingly, this Project is not a new proposed “industrial use” that limited public access such that it triggers DR-8.6.8. This conclusion is further supported by DR-8.6.8’s references to the public access policies in Chapter 7 of the SMP, specifically (underline emphasis added):

Public Access Policies - Policy 7.3.5 Require new development that impacts public access to mitigate through the provision of on-site visual and physical public access, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline. In lieu of on-site improvements, the Shoreline Administrator may allow for off-site improvements if said improvements would provide a greater public benefit.

If the City wanted require the Port, as part of the closure of the 2nd Street ROW, to develop the Public Access Plan according to *the Port of Anacortes’ Integrated Approach to Marine Public Access* referenced in the SMP, then this requirement should have been specifically negotiated as part of the terms to the 2nd Street ILA – the authorization from the City that closed the 2nd Street ROW to general public access. As one of the co-contributors, the Port remains committed to *the Port of Anacortes’*

Integrated Approach to Marine Public Access, October 2003 that is incorporated by reference into the SMP, including the Public Access Plan for the Connection to “N” Avenue Beach. The Port, however, does not believe that the Project is the kind of development that triggers a permit condition requiring the Port to undertake the proposed improvements in the Public Access Plan by itself. Not all of the properties along the 3rd Street between Commercial and N Avenue are part of the Project and some of these properties are not even owned by the Port (The Port does not own 1110 3rd Street (Parcel P55357)² or 220 Commercial Avenue (Parcel P134591)³.

Accordingly, the Port requests Condition No. 1 be revised to reflect the impacts associated with the Project consistent with the 2nd Street ILA.

Recommended Condition No. 2 in the Staff Report - The required Alternative Public Access Plan shall be submitted to the Planning Department prior to subject project completion and shall be installed within one (1) year of plan approval.

Revised Condition No. 2 Proposed by the Port – The signage referred to in Condition No. 1 shall be installed within (1) year of issuance of this Approval.

Reasoning for the Change – The removal of the Alternative Public Access Plan requirement in Condition No. 1 necessitated the changes to Condition No. 2. The reasoning here is largely the same as discussed above.

The Port recognizes that the timeline between production of the Staff Report and the public hearing does not necessarily afford the City and the Port a meaningful opportunity to discuss the City Staff recommended conditions in detail. The Port does, however, desire to work collaboratively with City staff to revise the proposed conditions in a manner that best reflects the Project and is consistent with the City SMP, development regulations, and the 2nd Street ILA. The Port asks that this letter be made part of the record for the Planning Commission. Thank you for your consideration and ongoing efforts to partner with the Port to improve our City.

Sincerely,



Brenda Treadwell,
Director of Planning, Properties & Environment

² Parcel P55357 is owned by Guemes Channel Corp.

³ Parcel P134591 is owned by the Anacortes Housing Authority, Inc.

EXHIBIT D

June 23, 2023

VIA E-MAIL

darcys@cityofanacortes.org

City of Anacortes
Attn: Darcy Swetham – City Attorney
904 6th Street
Anacortes, WA 98221

RE: Request for Reconsideration of Permit Conditions

Permit: SDP-2023-0002
Project Title: 2nd Street and Curtis Wharf Improvements (the “Project”)
Project Location: 2nd Street west of the east side of O Avenue and the Curtis Wharf access to the north, adjacent to 166 O Avenue.
Owner/Applicant: The Port of Anacortes (the “Port”)

Dear Darcy:

This firm represents the Port regarding the above-identified Permit and Project. The Planning Commission voted to approve the Permit. The Port was, of course, seeking approval of the Permit, however, there are three (3) conditions in the Staff Revised Recommendations which are unlawful, and which must be revised or removed. I am reaching out now, ahead of the Planning Commission’s written decision, to address procedural, factual, and material legal errors in the City’s Staff Revised Recommendations and the hearing itself.

The Port writes this letter to invite a discussion with the City to correct these errored conditions now rather than having to file an appeal after the written decision is issued. The Port would like to set up a meeting with City legal staff to discuss the Permit conditions and the possibility of re-opening the hearing to revise the Permit conditions. Please let me know if the City is willing to engage in a discussion with Port staff prior to the issuance of the written decision of the Planning Commission, and we can look to schedule a meeting with the appropriate representatives. The remainder of this letter addresses some of the Port’s concerns with respect to the Permit conditions.

On May 30th, the Port submitted written comments (the “Comment letter”)¹ on the City issued the Staff Report dated May 18, 2023, (the “Staff Report”) including a request to modify Conditions No. 1 and No. 2 in the Staff Report. In the Port’s May 30th letter, the Port invited City staff to work collaboratively with the Port to revise the proposed conditions ahead of the Planning Commission hearing. City staff did revise the conditions in the Staff Report in the Revised Recommendations dated June 6, 2023,

¹ A copy of this letter is enclosed herewith as **Attachment A**.

(the "Revised Recommendations"), but corrected only one (1) of the several issues raised by the Port in its Comment letter. Unfortunately, City staff failed to send the Port a copy of these Revised Recommendations ahead of the hearing and did not otherwise engage with Port staff before drafting the Revised Recommendations. As a result, the Revised Recommendations continued to include significant errors.

When Port staff and I attempted to address these concerns at the Planning Commission hearing, the Port was not afforded an opportunity to respond to this information and the Planning Commission acted on incomplete and inaccurate information. Myself, and Port staff participating online, had our hands raised at the remote hearing, but the Planning Commission did not allow us to speak prior to moving to a vote.²

Among the inaccurate information conveyed at the hearing was that City Staff informed the Planning Commission that the proposed fencing triggers an alternative plan for public access under the Shoreline Master Program ("SMP") because this Project prevents public access through 2nd Street.³ This is, of course, not accurate. The Project does not prevent public access because public access is already prohibited by the Right of Way Use Agreement Section 6.2, which provides (underline emphasis added):

Except as set forth in Agreement Section 7, the city hereby grants to the Port, and the Port shall have exclusive use of, the 2nd St. ROW for the term of the Agreement for the uses described in Agreement Section 8.

And Section 8.1 of the Right of Way Use Agreement which provides, in part, that the City granted the Port the right to restrict public traffic and access to the 2nd Street ROW in that agreement.

I raised this issue in my initial comments at the hearing, but I was not allowed to address the Planning Commission's questions following my comments, despite my hand being raised. Had the Port been afforded the opportunity to answer the Planning Commission's questions and clarify and correct the statements of City staff, perhaps these errors could have been avoided.

There are several legal errors impacting Revised Conditions No.1 through 3. As raised in the Port's Comment Letter, the development regulation the City SMP that was cited as authority for the public access conditions is Public Access DR-8.6.8, which only triggers public access where industrial use is proposed. The Project is largely a paving project, not an industrial development. Therefore, this provision does not apply.

Another issue raised in the Port's Comment Letter, and by myself at the hearing, was that the conditions concerning public access impacts parcels outside of the Project area, parcels not in the Port's (the applicant's) ownership, and in some cases, parcels outside of the shoreline jurisdiction altogether. Condition No. 1 of the Revised Conditions require the Port to make unspecified

² It is worth noting that the Planning Commission did not clearly close the public hearing section of the meeting, even though regardless of whether the public comment section was closed or not, the Port should have been afforded the opportunity to respond to Planning Commission questions as the applicant and project proponent.

³ Hearing Recording starting at time mark 1:21:10 through 1:26:00.

improvements along 3rd Street to Commercial Avenue, which is well outside of the shoreline jurisdiction.⁴

Conditions No. 1 through No. 3 are further problematic because they authorize the City Planning Staff to condition the Permit at a future date through the City's review and approval of the "Phase 1 design proposal of the "N" Avenue Beach Connection" and a "complete "N" Avenue Beach Connection." The authority to condition a shoreline permit of this type is with the City Planning Commission, not City Planning Staff, yet Conditions No. 1 through No. 3 amount to a delegation of the Planning Commission's authority. Such a delegation is not permitted in the SMP. Furthermore, it is unclear in these Conditions what permit process or rights the Port would have to appeal a City decision on these design proposals for Beach Connection.

From the Port's perspective, if the City was concerned about improvements to the existing public access on 3rd Street, then the City should have raised these concerns when the parties negotiated the Right of Way Use Agreement. The City, however, did not raise these issues at the time of negotiating that agreement. Had this occurred, the Port and the City may have been able to reach an agreement concerning the improvements along 3rd Street. Nevertheless, imposing these requirements on the Port now, in a shoreline permit, and after the Right of Way Use Agreement has been executed, is clearly inappropriate and unlawful.

The Port prefers to work with the City to correct these errored conditions before a written decision is issued and avoid the expense and delay of an appeal. The Port has grant funding paying for a large portion of this Project and delays from an appeal could put the Port at risk of losing these funds. However, if the Port and the City cannot resolve these issues before a written decision is issued, the Port may be forced to file an appeal to preserve its rights while the City and it seek a resolution. If a written decision is issued and an appeal becomes necessary, the Port reserves the right to file an appeal on issues not raised in this letter, and otherwise, the Port continues to reserve all rights and remedies.

I appreciate your attention to this letter and look forward to your response.

Sincerely,

CSD ATTORNEYS AT LAW



Timothy D. Schermetzler

TDS/ale
cc: Client

⁴ See Section 2.3.A and 2.3.E of the SMP regarding the jurisdictional limits of the SMP.

ATTACHMENT A



May 30, 2023

VIA EMAIL

gracep@cityofanacortes.org

City of Anacortes Planning, Community & Economic Development Department
Attn: Grace Pollard – Senior Planner
904 6th Street
PO Box 547
Anacortes, WA 98221

RE: Request to Modify Conditions Presented in City Staff Report

Permit: SDP-2023-0002
Applicant: Port of Anacortes (the “Port”)
Project Title: MRT-64 2nd Street and Curtis Wharf Improvements (the “Project”)
Project Location: 2nd Street west of the east side of O Avenue and the Curtis Wharf access to the north, adjacent to 166 O Avenue (the “Project Site”)

Dear Ms. Pollard,

Thank you for sharing the Shoreline Substantial Development Permit (SSDP) Staff Report on the above reference Project with Port staff. The Port appreciates the Planning Commission's postponement of a decision to its' next meeting as the Port wanted to take an opportunity to share some feedback on City staff's recommended conditions to clarify the Port's responsibilities and ensure the conditions align with the Port and City Right of Way Use Agreement for 2nd Street – From “O” Avenue to Shoreline, dated February 16, 2022 (the “2nd Street ILA”).¹

The Port requests that City Staff recommend, and the Planning Commission adopt, revisions to two of the recommended conditions in the City Staff Report. The City Staff recommended condition, the Port's proposed revised condition, and the reasoning for the changes are discussed in turn below.

Recommended Condition No. 1 in the Staff Report - The Port shall provide and submit an Alternative Public Access Improvement Plan for review and approval by the Planning Department to include but not be limited to provisions for wayfinding and improvements to the pedestrian link between Commercial Avenue and Guemes Channel at Q'elech'ilhch Park (“N” Avenue Beach). Improvements to the pedestrian connection to Q'elech'ilhch Park should include items such as street trees, pedestrian scale lighting, public art, etc.

¹ Skagit County AF No. 202206240050 - see Exhibit 6 on the Staff Report.

Revised Condition No. 1 Proposed by the Port – The Port shall provide wayfinder signage to the pedestrian link between Commercial Avenue and Guemes Channel at Q’elech’ilhch Park (“N” Avenue Beach) consistent with the requirements in the Right of Way Use Agreement 2nd Street – from “O” Avenue to Shoreline, Skagit County AF No. 202206240050.

Reasoning for the Change – It is unclear in the recommended condition if the requirement that the Port submit an “Alternative Public Access Improvement Plan” means that the Port must amend the Public Access Plan identified in *the Port of Anacortes’ Integrated Approach to Marine Public Access*, October 2003, which is adopted by reference in the City’s SMP. This request is problematic because it could be interpreted as a requirement for the Port to amend or alter an adopted planning document within the SMP. In addition, and perhaps more important with respect to the Project under review, the Project does not propose a new industrial use or development, or otherwise trigger the development regulations or requirements in the SMP to improve an existing alternative access to Q’elech’ilhch Park (“N” Avenue Beach).

The Staff Report cites SMP DR-8.6.8 as the authority for the Condition No. 1. SMP DR-8.6.8 provides as follows (underline emphasis added):

Public Access DR-8.6.8 - Port and industrial facilities shall provide public access to shoreline areas in accordance with Chapter 7, Public Access, taking into consideration constitutional and statutory limitations, public safety, health, and security. Where industrial use is proposed for location on land in public ownership, public access shall be required in the general vicinity of the impact. Such provisions could be the preservation of shoreline views, the establishment of public access easements across and to the shoreline, enhancement of an adjacent street-end or park or other consideration commensurate with the degree of impact caused by the development. In this regard *the Port of Anacortes’ Integrated Approach to Marine Public Access*, October 2003 is incorporated by reference into this SMP.

The Project is a resurfacing of approximately 18,500 square feet of the section of the 2nd Street ROW that the City previously agreed to restrict to the Port’s exclusive use in the 2nd Street ILA. Access to the 2nd Street ROW became limited when the City executed the 2nd Street ILA in 2022, not by this Project. Accordingly, this Project is not a new proposed “industrial use” that limited public access such that it triggers DR-8.6.8. This conclusion is further supported by DR-8.6.8’s references to the public access policies in Chapter 7 of the SMP, specifically (underline emphasis added):

Public Access Policies - Policy 7.3.5 Require new development that impacts public access to mitigate through the provision of on-site visual and physical public access, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline. In lieu of on-site improvements, the Shoreline Administrator may allow for off-site improvements if said improvements would provide a greater public benefit.

If the City wanted require the Port, as part of the closure of the 2nd Street ROW, to develop the Public Access Plan according to *the Port of Anacortes’ Integrated Approach to Marine Public Access* referenced in the SMP, then this requirement should have been specifically negotiated as part of the terms to the 2nd Street ILA – the authorization from the City that closed the 2nd Street ROW to general public access. As one of the co-contributors, the Port remains committed to *the Port of Anacortes’*

Integrated Approach to Marine Public Access, October 2003 that is incorporated by reference into the SMP, including the Public Access Plan for the Connection to "N" Avenue Beach. The Port, however, does not believe that the Project is the kind of development that triggers a permit condition requiring the Port to undertake the proposed improvements in the Public Access Plan by itself. Not all of the properties along the 3rd Street between Commercial and N Avenue are part of the Project and some of these properties are not even owned by the Port (The Port does not own 1110 3rd Street (Parcel P55357)² or 220 Commercial Avenue (Parcel P134591)³).

Accordingly, the Port requests Condition No. 1 be revised to reflect the impacts associated with the Project consistent with the 2nd Street ILA.

Recommended Condition No. 2 in the Staff Report - The required Alternative Public Access Plan shall be submitted to the Planning Department prior to subject project completion and shall be installed within one (1) year of plan approval.

Revised Condition No. 2 Proposed by the Port – The signage referred to in Condition No. 1 shall be installed within (1) year of issuance of this Approval.

Reasoning for the Change – The removal of the Alternative Public Access Plan requirement in Condition No. 1 necessitated the changes to Condition No. 2. The reasoning here is largely the same as discussed above.

The Port recognizes that the timeline between production of the Staff Report and the public hearing does not necessarily afford the City and the Port a meaningful opportunity to discuss the City Staff recommended conditions in detail. The Port does, however, desire to work collaboratively with City staff to revise the proposed conditions in a manner that best reflects the Project and is consistent with the City SMP, development regulations, and the 2nd Street ILA. The Port asks that this letter be made part of the record for the Planning Commission. Thank you for your consideration and ongoing efforts to partner with the Port to improve our City.

Sincerely,



Brenda Treadwell,
Director of Planning, Properties & Environment

² Parcel P55357 is owned by Guemes Channel Corp.

³ Parcel P134591 is owned by the Anacortes Housing Authority, Inc.



CITY OF ANACORTES

PLANNING, COMMUNITY, and ECONOMIC DEVELOPMENT DEPARTMENT

Date: August 4, 2023

To: Planning Commission

From: City staff

Re: Port of Anacortes' Request for Reconsideration of the PC's decision on SDP-2023-0002

Background

On June 14th, 2023 the Planning Commission approved the Port of Anacortes' application for a shoreline substantial development permit, subject to conditions ([Planning Commission • City of Anacortes • CivicClerk](#)). On July 21, 2023, the Port of Anacortes submitted a formal request for reconsideration of the decision.

The procedure and criteria for review of a request for reconsideration are outlined in [AMC 19.20.200](#).

As the decision-maker, the Planning Commission is the appropriate body to consider the request. The request is scheduled to be considered by the Planning Commission at its August 9, 2023, meeting.

Consideration of Request

The Planning Commission must consider the request for reconsideration without public comment or argument by the party filing the request. Reconsideration may be granted only when a material legal error has occurred, or a material factual issue has been overlooked that would change the previous decision.

The Port of Anacortes has asserted that there were procedural and permit condition errors. The specific alleged errors and requested relief are outlined in the Port of Anacortes's letter dated July 21, 2023 (Exhibit A).

Staff opposes the Port's opinion that any procedural or permit conditions were made in error in the review, consideration, or decision of Shoreline Substantial Development Permit SDP-2023-0002. Below are excerpts from the Port's *Request for Reconsideration and Appeal of Permit Conditions* letter dated July 21, 2023. Included are only the sections staff believe are relevant to the Request for Reconsideration. Following each argument by the Port is a response from city staff. (Port exhibits were not copied, please refer to the original document for provided exhibits.)

1. Excerpt from Port of Anacortes' Request Letter

I. APPEAL PROCESS

1. PCED Staff Response

Code interpretations of the appeal process for shoreline permits is outside the purview of a Request for Reconsideration. The local appeal process for a Type 3-PC Planning Commission Decision of a Substantial Development Permit will be heard before City Council. Once City Council has issued their decision on the appeal the final decision will be sent to the Department of Ecology and the Attorney General's office at which time the Port can file an appeal with the Shoreline Hearings Board.

2. Excerpt from Port of Anacortes' Request Letter

II. PUBLIC HEARING AND PROCEDURAL ERRORS

On May 24, 2023, and June 14, 2023, public hearings were held to discuss the Port's application for a Shoreline Substantial Development Permit ("SSDP"), required to execute the Project. In the time between those two hearings, the Port reviewed the City's Staff Report regarding the Project.³ After the Port's review, on May 30, 2023, the Port submitted to the City a "Request to Modify Conditions Presented in City Staff Report" (the "Comment Letter").⁴ The Comment Letter asked for clarification from the City as to the basis for certain conditions being applied to the Permit, provided recommendations and the reasoning behind those recommendations for revisions to the City's conditions, and emphasized the Port's desire to work collaboratively with City staff to revise the proposed conditions in a manner that best reflects the Project and is consistent with the City SMP, development regulations, and the 2nd Street Right of Way Use Agreement.

In response to the Port's May 30th Comment Letter, on June 6, 2023, the City issued its "Revised Recommendations." These Revised Recommendations, however, were never sent to the Port ahead of the final June 14th hearing. Therefore, the Port was deprived of any opportunity to engage with the City on the proposed conditions, as the Port had requested in its Comment Letter. Rather, it was not until June 14th, the day of the final hearing, that Port Staff and I first saw the Revised Recommendations posted on the City Planning Commission's website, leaving no opportunity for the Port to further engage with City staff ahead of the hearing.

2. PCED Staff Response

Please refer to EXHIBIT C. The Port was provided the complete agenda packet including the "Revised Recommendations" via email the morning of June 9, 2023.

3. Excerpt from Port of Anacortes' Request Letter

I, along with Port staff, attended the June 14th virtual public hearing to address the Port's concerns regarding the conditions in the City Staff Report and Revised Recommendations. However, at the hearing, the Planning Commission did not afford the Port an opportunity to comment on these issues.

This resulted in the Planning Commission acting on incomplete and inaccurate information. I, and Port staff participated online and had our hands raised on the remote hearing, but the Planning Commission did not allow us to speak prior to moving to a vote. It is unclear why the City would repeatedly ignore the Port's efforts to engage. Moreover, as the Applicant and Project Proponent, the Port ought to have been afforded the opportunity to address the Planning Commission and correct the record prior to the Planning Commission vote on the Permit.

As a result of the June 14th virtual hearing, on June 23, 2023, the Port issued another letter directly to Darcy Swetnam, the City of Anacortes' City Attorney.⁵ The Port's June 23rd letter was written in an effort to further explain how the inaccurate information conveyed to the Planning Commission has resulted in permit conditions that are not in line with the already established ILA between the Port and the City. Those issues are reiterated below.

3. PCED Staff Response

The named contact person for the Port on the submitted shoreline substantial development permit application, Kevin Anderson, was present at the June 14th hearing and spoke at the podium. The Port's legal counsel, Tim Schermetzler, was virtually present at the June 14th hearing and spoke on behalf of the Port for approximately 8 minutes addressing 1) The Port's position that the Alternative Public Access Improvement Plan requirement of the SMP is not triggered by the proposed project under SDP-2023-0002. 2) The Port's position that the recorded Right-of-Way Use Agreement of 2nd Street between the City and Port, referred to in his testimony as the "ILA" (Interlocal Agreement), had previously restricted the public's access to the shoreline via the 2nd Street right-of-way and that the project proposal under SDP-2023-0002 should not be reviewed as restricting public access. 3) The opinion that requiring improvements outside of shoreline jurisdiction is problematic. 4) Delegating the review and approval of the *N Avenue Beach Connection Plan* away from the Planning Commission to city staff which would be conducted after the appeal period for the shoreline substantial development permit has expired. 5) The Port's position that if the city wanted to require the Port to provide an alternative public access improvement plan that it should have been included in the Right-of-Way Use Agreement (ILA).

The testimony provided by Port representation can be watched online at [Planning Commission • City of Anacortes • CivicClerk](#).

The City recognizes that there were virtual attendees with their hands up indicating the request to speak before the Commissioners made a motion for a vote however the City does not acknowledge that the Commission is required to provide unlimited time to the Applicant for comments prior to making a motion. Based on the request for reconsideration no new information beyond what was already provided during the hearing has been brought forward.

4. Excerpt from Port of Anacortes' Request Letter

III. PERMIT CONDITION ERRORS AND REQUESTED RELIEF

Condition No. 1 - The Port shall produce and submit a Phase 1 design proposal of the "N" Avenue Beach Connection referenced in the Port of Anacortes' Integrated Approach to Marine Public Access, October 2003 and adopted by reference in the Anacortes Shoreline Master Program for review and approval by

the Planning, Community, and Economic Development (the "PCED") Department to include but not be limited to provisions for wayfinding and improvements to the pedestrian link between Commercial Avenue and Guemes Channel at Q'elech'ilhch Park ("N" Avenue Beach). Considerations for improvements to the pedestrian connection to Q'elech'ilhch Park should include items such as landscaping and an aesthetic treatment to existing Port owned privacy fencing along 3rd Street adjacent to the public sidewalk by way of additional landscaping, art installation(s), or a similar proposed effect approved by the PCED Department.

Error - The imposition of this condition is not consistent with or provided for within the SMP and amounts to an exaction.

Request Relief - Remove Condition No. 1

4. PCED Staff Response

It is the opinion of staff that applicable Shoreline Master Program policies and development regulations were applied appropriately. Staff stands by the findings of fact, conclusions of law, and recommendations of the staff report for shoreline substantial development permit SDP-2023-0002.

5. Excerpt from Port of Anacortes' Request Letter

Condition No. 2 - Per Condition of Approval No. 1, the required Phase 1 plan of "N" Avenue Beach Connection shall be submitted to the Planning, Community, and Economic Development Department prior to subject project completion and shall be installed within one (1) year of plan approval.

Error - This condition is not consistent with the SMP and improperly delegates the Planning Commission's authority to condition this SSDP to City staff and further condition the Project after the issuance of the Permit.

Request Relief - Remove Condition No. 2

5. PCED Staff Response

It is the opinion of staff that applicable Shoreline Master Program policies and development regulations were applied appropriately. Staff stands by the findings of fact, conclusions of law, and recommendations of the staff report for shoreline substantial development permit SDP-2023-0002.

6. Excerpt from Port of Anacortes' Request Letter

Condition No. 3 - The Port shall produce and submit the complete "N" Avenue Beach Connection plan to the Planning, Community, and Economic Development Department for review and permit approval prior to or concurrently with the establishment of a new or expanded use or development on Curtis Wharf, the 2nd Street right-of-way, or within the Port's adjacent Quiet Cove laydown lot (P55354), or within 5 years of the subject project completion, whichever is sooner.

Error - This condition is not consistent with the SMP and improperly delegates the Planning Commission's authority to condition this SSDP to City staff and further condition the Project after the issuance of the Permit.

Request Relief - Remove Condition No. 3

6. PCED Staff Response

It is the opinion of staff that applicable Shoreline Master Program policies and development regulations were applied appropriately. Staff stands by the findings of fact, conclusions of law, and recommendations of the staff report for shoreline substantial development permit SDP-2023-0002.

7. Excerpt from Port of Anacortes' Request Letter

IV. GROUNDS FOR APPEAL

7. PCED Staff Response

Grounds for Appeal are outside the purview of a Request for Reconsideration. The local appeal process for a Type 3-PC Planning Commission Decision of a Substantial Development Permit will be heard before City Council. Once City Council has issued their decision on the appeal the final decision will be sent to the Department of Ecology and the Attorney General's office at which time the Port can file an appeal with the Shoreline Hearings Board.

8. Excerpt from Port of Anacortes' Request Letter

V. CONCLUSION AND NEXT STEPS

It is clear to the Port that the Permit Conditions are purely a result of the City's desire to exact from the Port improvements to the existing public access on 3rd Street beyond what is justified to mitigate for the Project and in some cases wholly outside of the shoreline jurisdiction. Simply put, these conditions are nothing more than a bootstrapped attempt on the part of the City to get the Port to improve City property. If the City was concerned about improvements to 3rd Street, it should have negotiated the same at the time that the 2nd Street Right of Way Use Agreement was executed back in February 2022.

It is both inappropriate and unlawful for the City to now-over a year later-put the burden of designing, funding, and executing the City's desired improvements on the Port by way of an SSDP that does not even concern the 3rd Street area. The City's attempts to shift responsibility for these improvements on to the Port is made even more egregious given that the City's SMP plainly states that the SMP's regulations do not apply to areas of the development project which lie outside of shoreline jurisdiction.

In consideration of the above and the identified factual and procedural errors on the part of the City, the City must revise the Permit Conditions. As indicated above, the Port is prepared to appeal this determination in the appropriate venue, which is the SHB. The Port provides the enclosed Request for Reconsideration and local administrative appeal to preserve its rights given the City's appeal statement in the Notice of Decision and prior communication with the City Attorney directing the Port to a local

administrative appeal process. Notwithstanding this letter and the enclosed Request for Reconsideration, the Port is preparing an appeal to the SHB to protect its appeal rights under Chapter 18.16 AMC.

The Port still wishes to arrive at a negotiated solution to this matter without the need for litigation. To that end, the Port is willing to enter into a tolling agreement after filing the SHB appeal to afford the Port and the City an opportunity to negotiate appropriate conditions for the Permit. In the alternative of filing an appeal and entering a tolling agreement, should the City like to avoid an unnecessary appeal and instead discuss a resolution with the Port, the Port would not object to the City rescinding the Permit and re-opening the public hearing in order to correctly issue the Permit.

The Port appreciates the City's attention to this matter and looks forward to the City's formal response. In the meantime, the Port continues to reserve all rights and remedies.

8. PCED Staff Response

It is the opinion of staff that only applicable Shoreline Master Program policies and development regulations were applied to the shoreline substantial development permit and the conditions are aligned with the Shoreline Master Program and fully within the authority of the city to require.

The burden falls on the Port to provide specific errors that were made of either a material legal nature or a material factual nature. It is the opinion of staff that the Port has not provided any additional points beyond those made during the June 14th hearing and those provided in the *Request to Modify Conditions Presented in City Staff Report*, dated May 30, 2023. Staff stands by the findings of fact, conclusions of law, and recommendations of the staff report for the associated shoreline substantial development permit.

The Planning Commission is to consider only material legal errors that may have occurred or a material factual issue that has been overlooked that would change the previous decision.

The local appeal process for a Type 3-PC Planning Commission Decision of a Substantial Development Permit will be heard before City Council. Once City Council has issued their decision on the appeal the final decision will be sent to the Department of Ecology and the Attorney General's office at which time the Port can file an appeal with the Shoreline Hearings Board.

From: [Grace Pollard](#)
To: [Brenda Treadwell](#)
Cc: [Brad Tesch](#); [Kevin Anderson](#)
Subject: Re: Port of Anacortes Comments to SSDP Staff Report for 2nd Street and Curtis Wharf Improvements
Date: Friday, June 9, 2023 8:28:31 AM
Attachments: [Outlook-4q1uveiq.png](#)

Good morning,

The continued open public hearing for the 2nd Street/Curtis Wharf Shoreline Substantial Development Permit is scheduled for Wednesday June 14th @ 6pm. Please find below a link to the agenda and agenda packet for next week's meeting. If you have any questions please feel free to contact me directly.

[Planning Commission](#) • [City of Anacortes](#) • [CivicClerk](#)

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CivicClerk events and agendas for citizens

anacorteswa.portal.civicclerk.com

Best Regards,



<!--[if !vml]--><!--[endif]-->**Grace Pollard – Senior Planner**

PLANNING, COMMUNITY & ECONOMIC DEVELOPMENT

City of Anacortes - PO Box 547 – 904 6th St. – Anacortes, WA 98221

gracep@cityofanacortes.org – www.cityofanacortes.org – (360) 588-8231

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From: Brenda Treadwell <Brenda.Treadwell@portofanacortes.com>

Sent: Tuesday, May 30, 2023 9:12 AM

To: Grace Pollard <gracep@cityofanacortes.org>

Cc: Brad Tesch <Brad.Tesch@portofanacortes.com>; Kevin Anderson

<Kevin.Anderson@portofanacortes.com>; Libby Grage <LibbyB@cityofanacortes.org>

Subject: Port of Anacortes Comments to SSDP Staff Report for 2nd Street and Curtis Wharf Improvements

***** This email is from outside the City of Anacortes network. Please use caution when clicking on links, opening attachments, or replying. *****

Hi Grace,

Hope you had a good weekend.

Please excuse the formality in the letter. The Port wanted to go on record with the Planning Commission as taking the first two conditions on the staff report as fairly serious asks.

Thank you for postponing the decision from the last meeting to the next. We appreciate the opportunity to discuss this matter further with you and Libby and with the Planning Commission next time they convene, which I believe is June 7th.

Brenda

Brenda Treadwell | Director of Planning, Properties & Environmental

Direct (360) 299-1811 | Mobile (360) 499-4011

100 Commercial Ave, Anacortes, WA 98221

Public Communication: Information contained in any communication to or from the Port of Anacortes, including attachments, may be subject to the disclosure requirements of Washington's Public Records Act, Ch. 42.56 RCW.



ANACORTES PLANNING COMMISSION

Findings of Fact, Conclusions of Law, and Decision

File Number	SDP-2023-0002
Project Name	MRT-64 2 nd Street and Curtis Wharf Improvements
Proposal	The Port of Anacortes has requested a shoreline substantial development permit for the installation of roadway improvements and fencing. Proposed work includes excavation of 2 nd Street gravel surface and base materials, installation of updated and new stormwater conveyances and BMP facilities, backfilling and compaction of clean imported fill and base course materials, approximately 18,500 total square feet of new asphalt paving four inches in depth, and installation of a new rolling access gate and an additional length of chain-link fence connecting existing security fence at Quiet Cove to existing fence at Curtis Wharf. A portion of the proposed development extend beyond shoreline jurisdiction.
Public Hearing & Decision Body	Anacortes Planning Commission
Public Hearing Date	May 24, 2023 Continuation of Public Hearing to June 14, 2023
PC Deliberations	June 14, 2023
Exhibits	1. Staff Report 2. Site Plan 3. Master Land Use Permit Application 4. Shoreline Permitting Checklist 5. 2nd Street paving SSDP Narrative 6. 2nd Street ROW Use Agreement 7. Civil Structural 30% Design Curtis Wharf 8. Quiet Cove Geotechnical Assessment – BD-redline 9. Quiet Cove Geotechnical Assessment – Figures 10. SEPA Exemption 11. Cultural Resources Report of Quiet Cove 12. Curtis Wharf Drainage Report – FINAL 13. FINAL DRAFT Quiet Cove Interim Action Work Plan w/ appendices 14. N Ave Beach Background 15. Port of Anacortes Agreed Order no DE11346 16. Port of Anacortes Quiet Cove Final RIFS Work Plan 17. Noticing 18. Comments 19. Port of Anacortes Integrated Approach to Marine Public Access 2003 20. Port's Ltr to City Planning Commission – Curtis Wharf 21. Staff Revised Recommendations 6.6.2023

Documents are available at City Hall in the Planning, Community, and Economic Development Department or may be accessed online via the public portal at:

<https://docs.cityofanacortes.org/WebLink/Browse.aspx?startid=884795>

After considering the written and spoken comments and considering the record before it, the Planning Commission enters the following findings of fact, conclusions of law, and decision:

Findings of Fact & Conclusions of Law

1. The Staff report dated May 18, 2023, accurately describes the project proposal, and is hereby incorporated by reference. (Exhibit 1)
2. The following members of the public provided testimony during the public hearing: N/A
3. The following individuals provided testimony on behalf of the Port of Anacortes:
 - a. Kevin Anderson, Environmental Specialist with the Port of Anacortes
 - b. Tim Schermetzler, attorney for the Port of Anacortes
4. The following additional exhibits were entered into the record at the public hearing: N/A
5. The following additional Findings of Fact and/or Conclusions of Law are entered: N/A

Decision

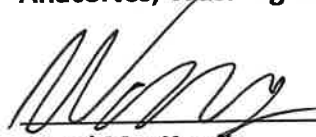
Based on the foregoing findings and conclusions of law, and review of the City's regulatory authority to implement the policies, standards, and regulations of the Anacortes Municipal Code, the Planning Commission hereby makes the following decision regarding the subject Shoreline Substantial Development Permit:

- ☒ Approve with Conditions
☐ Approve
☐ Deny

Subject to staff's revised recommended conditions as stated in Exhibit 21 dated June 6, 2023.

PLANNING COMMISSION VOTE				
Planning Commissioners	Approve	Oppose	Absent	Abstain
William McCombs				x
Jeff Graf			x	
Ward MacKenzie	x			
James Stoneman	x			
Frank Jeretzky	x			
Linda Martin	x			
vacant seat				
TOTAL	4			

ANACORTES PLANNING COMMISSION
Anacortes, Washington


Ward MacKenzie
Planning Commission Chair

07/10/2023
Date

Appeals

Pursuant to AMC 19.20.030, a local appeal of Type 3-PC Planning Commission Decisions is available to the City Council. Appeals of this decision must be filed in accordance with AMC 19.20.180 by 5:00 PM, 21 days from the date the WA Dept. of Ecology receives the decision.