

ISLAND COUNTY HEARING EXAMINER

RE: Appeals)	
Appellant: PC Landing Corporation)	File No. APP379/13
Appellant: The Tulalip Tribes)	File No. APP382/13
)	
Applicant: Jesse Valentine)	S-CUP 089/12
Snohomish PUD)	
)	FINDINGS OF FACT
)	CONCLUSIONS OF LAW
)	AND DECISION

SUMMARY OF APPEAL AND DECISION

APPEAL: PC Landing and The Tulalip Tribes are appealing the decision of Island County Planning and Community Development, granting Snohomish PUD a Shoreline Conditional Use Permit Approval to temporarily install two tidal turbine generators in Admiralty Inlet for the purpose of gathering data regarding the technical, economic, and environmental viability of tidal energy generation. This 10-year project includes the construction, operation, and removal of the turbines, with an objective to obtain 5-years of operational data within this 10-year period. The construction of this project can be separated into three categories, (1) onshore improvements, (2) cable lay, and (3) turbine deployment.

DECISION: The Island County Hearing Examiner hereby denies the Appeals and approves S-CUP 089/12, granting Snohomish County PUD a Shoreline Conditional Use Permit for the proposed Pilot Project consisting of the location of two tidal turbine generators on the floor of Admiralty Inlet; the proposed cable connecting the generators to an onshore facility and connecting it to the power grid, and the associated onshore facilities, subject to the following conditions.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing on March 7, 2014.

I.

PRELIMINARY INFORMATION

Appellants: PC Landing and The Tulalip Tribes

Applicants: Jesse Valentine on behalf of Snohomish PUD

Property Location: Central Whidbey Island and Admiralty Inlet

Publication: Notice of Appeal Hearing, dated February 19, 2014

Statement of Appeal, prepared by Craig Trueblood, PC Landing, dated 12/18/2013;
Statement of Appeal, prepared by Kimberly Ordon, The Tulalip Tribes, dated 12/18/2013

Comprehensive Statement of Appeal, prepared by K&L Gates, dated 1/10/2014;
Comprehensive Statement of Appeal, prepared by Kimberly Ordon, The Tulalip Tribes, dated 1/09/2014

Hearing Date: March 7, 2014

Exhibit Log:

Binder 1

Tab 1

1. Staff Appeal Response
2. Staff Report

Tab 2 – Application

Application packet for S-CUP, dated 4/12/12

3. Narrative of project, dated 4/12/12, received 4/12/12
 - a. Master Land Development Permit Application, dated 4/11/12, received 4/12/12
 - b. Application for Shoreline Variance/Conditional Use Permit, received 4/12/12
 - c. Drainage Narrative, dated 4/11/12, received 4/12/12
 - d. Admiralty Inlet Pilot Tidal Project Site plans, dated 4/12/12, received 4/12/12
 - e. Biological Site Assessment Project #12069, dated 4/11/12, received 4/12/12
 - f. Application for a New Pilot Project License, Volume IV Appendix G, dated February 29, 2012, received 4/12/12

Additional Information

4. Notice of Availability of Environmental Assessment Project 12690-005, dated 1/15/2013
5. Final Environmental Assessment for Hydropower License FERC Project No. 12690-005, dated 8/20/13, received 8/21/13

Tab 3 – Site Data

6. Site Data, received 4/12/12

Tab 4 – Agency Comments

7. Letter from Russell Holter to Craig Collar, re: Log 030311-05-FERC, dated 2/28/12
8. Staff Report & recommendation HPC EBY-12-032, dated 5/1/12
9. Memorandum from Tamra Patterson to Jennifer Hagenow re: building permit requirements, dated 5/8/12
10. Letter from Aneta Hupfauer to Jennifer Hagenow re: health permit requirements, dated 5/11/12
11. Letter from John Bertrand to Jennifer Hagenow re: public works requirements, dated 5/23/12
12. Letter from John Bertrand to Jason Johnson re: no objection of project, dated 5/23/12
13. Letter from Bob Glasgow to Jessie Valentine re: access connection permit 48911/AC12060011, dated 8/21/12
14. Errata Notice from Kimberly D. Bose, dated 8/9/13, received 8/21/13
15. Notice of availability of final environmental assessment from Kimberly D. Bose, dated 8/9/13, received 8/21/13
16. Letter from Jessica Spahr to Jason Johnson, re: copies of final Environmental Assessment prepared by the FERC, dated 8/20/13, received 8/21/13
17. Notice of Acceptance of NEPA SEPA File No. 2009064, dated 8/27/13, received 8/29/13
18. Copy of SEPA addendum FERC Project P-12690, received 8/29/13
19. Letter from Aneta Hupfauer to Jason Johnson, re: additional information received 9/17/13, dated 10/18/13
20. E-mail from Jessica Spahr to Jason Johnson, re: Snohomish PUD – Tidal Project SEPA Threshold Determination, dated 11/14/13

Tab 5 – Notices

21. Notice of Complete application to Eric Schneider from Virginia Shaddy on behalf of Jennifer Hagenow, dated 4/30/12
22. Notice of Application to Whidbey Examiner, dated 5/3/12
23. Letter of Transmittal from Eric Schneider to Jennifer Hagenow re: signed affidavit of posting and 3 images of posted sign, dated 5/1/12, received 5/3/12
24. Notice of Publication from the Whidbey Examiner, dated 5/3/2012, received 5/8/12
25. Notice of Affidavit, no date
26. Notice of Republication to Whidbey Examiner, dated 5/10/12
27. Notice of Republication from the Whidbey Examiner, dated 5/10/12, received 5/15/12
28. Notice of Affidavit from Jessica Spahr, dated 5/14/12, received 5/17/12

Tab 6 - Public Comments

29. Letter from The Tulalip Tribes to Kimberly D. Bose re: Admiralty Inlet Tidal Energy Project FERC No. 12690, dated 5/23/12, received 6/20/12
30. Letter from Whidbey Environmental Action Network to Jennifer Hagenow re: 12-05 IC APP c089/12 S-CUP; SNO PUD: Admiralty Inlet Tidal Generator, dated 6/11/12
31. Letter from K & L Gates to Jennifer Hagenow re: Comments of PC Landing Corp. on Application: File #089/12 S-CUP-Type II Decision, dated 6/11/12

32. Letter from The Tulalip Tribes to Jennifer Hagenow re: Comments of the Tulalip Tribes concerning the Admiralty Inlet Tidal Energy Project File Number 089/12 S-CUP-Type II Decision, dated 6/18/12, received 6/20/12

Tab 7 - Correspondence

33. Tidal Energy Project notes from Jennifer Hagenow, no date
34. Email from Brad Johnson to Jennifer Hagenow re: review process, dated 3/19/12
35. Email from Virginia Shaddy from Jennifer Hagenow re: correction of sign, dated 3/7/12
36. Email from Michael Moore to Jennifer Hagenow re: viewing the file, dated 5/20/12
37. Email from Michael Moore to Virginia Shaddy re: request for viewing of file, dated 5/21/12
38. Letter from Craig Trueblood to Jennifer Hagenow re: Comments of PC Landing Corp. on Application: File #089/12 S-CUP, dated 6/11/12, received 6/13/12
39. Letter to Craig Trueblood from Robert Pederson re: SEPA compliance for project, dated 6/13/12
40. Letter to Daryl Williams from Robert Pederson re: SEPA compliance for project, dated 6/25/12
41. Email to Jessica Spahr from Jennifer Hagenow re: additional information that may be needed by Planning, dated 8/15/12
42. Email to Jennifer Hagenow from Eric Schneider re: site plan changes, dated 8/17/12
43. Email to Megan Todd, Hillersjv@verizon.net, penncovebb@earthlink.net, syonkman@yonkman.com, Jennifer Hagenow from Paula Bradshaw re: request for updated on the Admiralty Inlet Project, dated 8/22/12
44. Email from Karen Stewart to Jennifer Hagenow re: request for updated on the Admiralty Inlet Project, dated 8/28/12
45. Email from Jessica Spahr to Jennifer Hagenow re: possible alternative turbine siting arrangement, dated 10/8/12
46. Letter to Kimberly D. Bose from Steven Klein re: Application for a Preliminary Permit, Project No. 12690, dated 7/2/13, received 7/8/13
47. Email from Jason Johnson, to Jessica Spahr re: Availability of environmental assessment, dated 8/13/13
48. Letter from Craig Trueblood to Jennifer Hagenow re: supplemental comments on application file# 089/12 S-CUP, dated 10/4/13, received 10/7/13
49. Email from Jessica Spahr to Jason Johnson re: tidal project SEPA threshold determination dated 11/14/13
50. Notice of Postal Error to Parties of Record from Jason Johnson, re: damaged mailing and return, dated 12/11/13

Binder 2

Tab 8 - Appeal Information for APP 379/13 – PC Landing

51. Statement of Appeal from Craig Trueblood, dated 12/18/13
52. Acknowledgment of Appeal to K & L Gates from Virginia Shaddy, dated 12/19/13
53. Notice to Snohomish PUD of Appeal, dated 12/19/13
54. Letter from Craig Trueblood to Michael Bobbink re Island County Hearing Examiner Rules of Procedure, dated 12/26/13
55. Comprehensive Statement of Appeal from K & L Gates, dated 1/10/14, received 1/13/14

Tab 9 - Appeal Information for APP 382/13 – The Tulalip Tribes

56. Statement of Appeal from Kimberly Ordon, dated 12/18/13, received 12/19/13
57. Acknowledgment of Appeal to Kimberly Ordon from Virginia Shaddy, dated 12/20/13
58. Notice to Snohomish PUD of Appeal, dated 12/20/13
59. Comprehensive Statement of Appeal from Kimberly Ordon, dated 1/9/14, received 1/13/14

Tab 10 – Combined Correspondence (related to both appeals)

60. Letter from Duncan Greene to Michael Bobbink re: request for a Prehearing Conference, dated 12/20/13
61. **Binder 3** - District Motion to Dismiss In Part Cause N. APP 379/13 PCLC Opposition to PUD Motion to Dismiss SEPA
62. **Binder 4** - Volume I District Prehearing Brief Declarations of Dunne, Ford-Ramsden; Cooper; Kramer; POLAGYE and Meggitt, District's Witness & Exhibit List
63. **Binder 5** - Volume II Second Declaration of Craig Collar exhibits A-L
64. **Binder 6** - Volume III Second Declaration of Craig Collar exhibit M-Y
65. **Binder 7** - Pre-Hearing Statement of Appellant PC Landing Corp, Cause No. APP 379/13
66. Memorandum from Michael Bobbink to Craig Trueblood, Kimberly Ordon, Duncan Greene, Anne Spangler re: extension of due date for the Comprehensive statements, dated 12/23/13
67. Letter from Duncan Greene to Michael Bobbink re: request for a Prehearing Conference, dated 12/31/13
68. Memorandum from Michael Bobbink to Craig Trueblood, Kimberly Ordon, Duncan Greene, Anne Spangler and Planning & Community Development regarding Prehearing Conference schedule, dated 1/2/14
69. Letter from Duncan Greene acknowledging the scheduled prehearing conference, dated 1/3/14
70. Letter from Craig Trueblood acknowledging the scheduled prehearing conference, dated 1/3/14
71. Letter from Kimberly Ordon acknowledging the scheduled prehearing conference dated, 1/3/14
72. E-mail from Michael Bobbink to Virginia Shaddy re: Prehearing conference dated and time, dated 1/9/14
73. E-mail from Virginia Shaddy to Duncan Greene, Kimberly Ordon, Tadas Kisielius, Craig Trueblood, David Wechner and Jason Johnson re: timeframes discussed in prehearing conference, dated 1/15/14
74. Letter from Tadas Kisielius to Michael Bobbink re: objection to additional submissions by PC Landing, dated 2/4/14
75. Letter from Craig Trueblood to Michael Bobbink re: request from PUD, Tadas Kisielius, dated 2/5/14
76. Letter from Virginia Shaddy to Craig Trueblood, Kimberly Ordon and parties of record re: Date of Hearing, dated 2/10/14.
77. PC Landing Corp Opposition to Snohomish County PUD's Motion to Dismiss in Part, dated 2/14/14
78. Memorandum from Michael Bobbink to Craig Trueblood, Kimberly Ordon, Duncan Greene and Island County Planning & Community Development re: clarification of review and de novo hearing, dated 2/18/14
79. E-mail from Virginia Shaddy to Duncan Greene, Tadas Kisielius, Kimberly Ordon, Craig Trueblood, David Wechner, Amanda Kleiss-Acres and Paula Bradshaw, re: correspondence e-mail to Michael Bobbink, dated 2/18/14
80. E-mail to Michael Bobbink from Duncan Greene re: memorandum dated 2/18/14 from Michael Bobbink regarding clarification of review and de novo hearing, dated 2/19/14
81. Response from The Tulalip Tribes to Snohomish PUD No. 1 Motion to Dismiss in Part from Kimberly Ordon, received 2/24/14
82. E-mail from Michael M. Moore to Virginia Shaddy, re: attendance and comments to the hearing, dated 2/21/14
83. Letter from Duncan Greene to Michael Bobbink re: untimely submittal from Basic Life Resources, dated 2/24/14

Tab 11 – Information Prior to Application Submittal

84. Proposed Area Potential Effects for Snohomish County PUD Admiralty Inlet Pilot Tidal Project (FERC No. 12690), letter to Robert Pederson from Craig Collar, dated 8/3/11, received 8/5/11
85. Admiralty Inlet Project Landward Topographic Survey, one page, dated 7/26/11

86. Sound and Sea Technology GIS Department Map Packet, dated 8/2/11
87. United States Department of the Interior Geological Survey, no date
88. Site Boundary map dated 4/26/11
89. FERC, Project No. 12690-000 RE: Section 106 Consultation Authorization, dated 11/7/2008
90. FERC, Notice of Technical Meeting to Discuss Information and Monitoring needs for a License Application for a Pilot Project, dated 3/4/10

Tab 12 - Opening brief for the Tulalip Tribes

91. Opening Brief for The Tulalip Tribes, dated 1/31/14

Additional items after Binder sent to Hearing Examiner

92. E-mail from Michael Moore to Jessica Roper re: letter from Duncan Greene regarding untimely submittal from BLR, dated 2/25/14
93. Letter dated 2/27/14 from Craig Trueblood to Michael Bobbink re: 2 expert reports
 - a. Report from Mr. Gordon Fader, P. Geo dated 2/2014
 - b. report of Capt Richard P. Fiske, USN (ret.) dated 2/27/14
94. E-mail from Duncan Greene to Kimberly Ordon asking for written confirmation from her in regards to withdrawing cultural resource issues raised by the Tribes, dated 2/27/14
95. E-mail from Kimberly Ordon to Duncan Greene in response to withdrawal of cultural resource issue, dated 2/28/14
96. Letter dated 3/3/14 from Craig S. Trueblood to Michael Bobbink re: 2 expert reports
 - a. Report from Michael E. Wilson, Alcatel-Lucent Submarine Networks Maintenance Authority, Pacific Crossing (PC-1), dated 2/2014
 - b. Report from Jena F. Gilman, P.E. and William J. Gerken, dated 2/2014
97. E-mail from Tadas Kisielius with illustrative exhibits of the tidal generators, received 3/5/14
98. 2010 Integrated Resource Plan for Snohomish County PUD submitted by Kimberly Ordon, received 3/6/14
99. 2013 Integrated Resource Plan for Snohomish PUD submitted by Kimberly Ordon, received 3/6/14.
100. Olympic Relay: Innovatice Techniques in Cable Projects with Regulatory and Environmental Dimensions submitted by Tadas Kisielius, received 3/6/14
101. Percent of total Chinook caught at varying depth ranges illustration submitted by Kimberly Ordon, received 3/6/14.

Additional Information Submitted after the Record was closed

- E-mail from Craig Trueblood with copies of cases to support K & L Gates in respect to the need to assess cumulative impacts prior to Conditional Use Permit under Shoreline Management Act, received 3/10/14
 - Lees Mooring v Seattle SHB 05-019
 - Stollar v Bainbridge SHB 06-024 + 06-027
 - Wriston v Ecology SHB 05-005
 - Yakima Nation v Central Pre-Mix SHB 98-042
- E-mail from Duncan Green with copies of the Shoreline Hearings Board Decisions cited in the section of the District Pre-hearing Brief, received 3/10/14
 - Andrea Boitano Donovan – Kirsten Sweanson-Barker – Cynthia Branson – Milana MCLE
 - Earl Iddings Petitioner v Griffith – Mason County – and Washington State
 - Lee's Mooring Houseboat residents Petitioner v City of Seattle and State of Washington, Department of Ecology, Respondent
 - Jeff and Erin Wriston and Wahkiakum County – Petitioners v State of Washington
 - Yakama Indian Nation Appellant v Central Pre-mix Concrete Company Yakima County
 - Peggy Heinz Appelant v Clallam County Respondent
 - Leonel S and Isle K Stollar Husband and Wife – PaulB and Margery M Greenawalt
 - May v Robertson
 - Boehm v City of Vancouver

HEARING TESTIMONY

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II.

On December 5, 2013, Island County Planning and Community Development, issued a decision granting a Shoreline Conditional Use Permit, S-CUP 089/12, approving a proposal from the Snohomish Public Utility District [PUD], including both off-shore and on-shore work within shoreline jurisdiction for the temporary installation of two tidal turbine generators in Admiralty Inlet. A more detailed project summary is set forth on the first page of the Staff Report and Decision, approving the Shoreline Conditional Use Permit, Exhibit No. 2 in the Hearing Examiner file. More detailed descriptions of the project are found in various places throughout the file, including the briefs submitted by the Project Proponent and Appellants herein; the Environmental Assessment, prepared by the Federal Energy Regulatory Commission [FERC]; and the Biological Assessment, prepared by National Marine Fisheries Service [NFMS].

The Shoreline Conditional Use Permit granted was a permit for a Pilot Project involving installation of two tidal turbine generators on the seafloor of Admiralty Inlet. The purpose of the project is to gather data regarding technical, economic, and environmental viability of tidal energy generation and of tidal energy generation in Admiralty Inlet.

III.

Two Appeals of Shoreline Conditional Use Permit, S-CUP 089/12, were filed in a timely manner. One Appeal was filed by PC Landing Corporation. The second Appeal was filed by the Tulalip Tribes. Two pre-hearing conferences were held telephonically. The conferences included the representatives of both the Appellants, the representatives of the PUD and the representatives of Island County Planning and Community Development. A Hearing Examiner file consisting of seven binders and more than 100 exhibits was compiled. Proper hearing notices were given. And a consolidated hearing on the Appeals was held on March 7, 2014.

IV.

The Appeal by PC Landing Corporation [PC Landing] file No. APP379/13, stated in its simplest form, is an objection to the location of the turbines in relationship to PC Landing's fiber optic cable, PC-1. PC-1 is an integrated 13,076-mile long fiber optic system between Japan and the United States. The system traverses Admiralty Inlet, near the proposed location of the turbines, with a U.S. landing at Mukilteo, Washington. The proposed location of the tidal turbine generators on the seafloor of Admiralty Inlet are 170 meters and 238 meters from the PC-1 cable. PC Landing argues that the location should be at least 500 meters from the cable location on the seafloor bed. PC Landing argues, as located, the installation, maintenance, and removal of the turbines, creates an unacceptable risk of damage to the fiber optic cable. PC Landing also argues that the proposed location would unreasonably and unnecessarily interfere with potential repair of the cable should a fault or problem occur on the portion of the cable closest to the turbine locations.

In addition to arguing that the proposed location is incompatible with fiber cable use nearby, PC Landing argues that the Island County Planning Department did not have the necessary information to make their determination and that the determination does not comply with the Shoreline Management Act and with the Island County Code Requirements. PC Landing also argues that Island County did not have the necessary information to comply with SEPA and that the County relied on an outdated environmental analysis and plans.

V.

The Tulalip Tribes filed a timely Appeal and Comprehensive Statement. The Appeal was given the file number APP382/13. The Tribes' original Statement of Appeal challenged the issuance of the permit on the grounds that Island County Planning failed to adequately assess environmental impacts to Shorelines of Statewide Significance; failed to address species listed under the Endangered Species Act in violation of Federal Law, and WAC 173-27-160; failed to address the project's cumulative impacts; and failed to adequately address adverse impacts to the Tribes' cultural sites. The Tribes later withdrew the claim that the Shoreline Conditional Use Permit did not adequately address impacts to Tulalip Tribes' cultural sites [the landward portion of the project].

Both Appeals raised the issue of the failure to assess cumulative impacts which would result from a much larger, commercially viable, installation of tidal turbine generators in Admiralty Inlet.

Cumulative impact arguments were raised both under the rubric of environmental review [Washington State Environmental Protection Act, SEPA] and National Environmental Protection Act [NEPA], and under cumulative impacts as regulated by the Washington State Shoreline Management Act, and Island County Shoreline Management Program, and implementing regulations.

VI.

The lead agency for SEPA Review on this project is the Snohomish PUD. The PUD issued a Determination of Environmental Non-Significance [DNS] for the project, prior to Island County's review and issuance of a Shoreline Conditional Use Permit.

At or before the issuance of the DNS, the PUD modified its SEPA regulations to remove the availability of an administrative level Appeal of the SEPA Determination. On August 9, 2013, the Federal Energy Regulatory Commission gave Notice of Availability of a Final Environmental Assessment for the proposed PUD Pilot Tidal Project in Admiralty Inlet. This 202-page Environmental Assessment [not including attached Appendices] recommended including "licensed articles" [conditions of approval], and set them forth in a 12-page document attached to the EAS as Appendix A. FERC Staff concluded that, subject to the recommended licensed articles in Appendix A, the Pilot Tidal Turbine Project proposed by the Snohomish PUD, "would not constitute a major Federal action significantly affecting the quality of the human environment. Preparation of an Environmental Impact Statement is not required."

After issuance of the Environmental Assessment under NEPA by the Office of Energy Projects and US Department of Energy, the Snohomish PUD prepared a SEPA Addendum, dated August 27, 2013.

Listed as an Attachment to the Staff Decision [page 9] was the "NEPA Environmental Assessment, prepared by the Office of Energy Projects and US Department of Energy, dated January 15, 2013, ADOPTED BY REFERENCE." The Assessment dated January 15, 2013, was the draft Assessment and this footnote and attachment appears to have given rise to the claim by PC Landing that Island County Planning relied on an outdated Environmental Assessment. As indicated above, the Final Environmental Assessment with the recommended licensed requirements was issued in August 2013. Island County Planning has testified that they had the Final Environmental Assessment available and reviewed it prior to the issuance of their Permit Decision. There is a copy of the Final Environmental Assessment in the Hearing

Examiner file, which was date-stamped as received by Island County Planning and Community Development on August 21, 2013. [Exhibit No. 5 in the Hearing Examiner file]. Planning testified at the hearing that they had reviewed the Final Assessment prior to the issuance of the Shoreline Conditional Use Approval and that the reference to the January 15, 2013, date on page 9, and in Condition No. 2 on page 7 of the Planning Department Decision was in error. The Planning Department did have the Final Assessment prepared by the Department of Energy when reviewing the project. The language in Condition No. 2 should be changed to reflect that the project is to conform to Final Environmental Assessment issued under NEPA in August 2013.

Island County Planning received a copy of the Snohomish PUD Notice of Acceptance of NEPA Environmental Assessment and SEPA Addendum on August 29, 2013 [Exhibits No. 17 and 18 in the Hearing Examiner file]. Island County Planning concluded that the necessary SEPA Threshold Determination had been done by the Lead Agency, Snohomish PUD, and that they were required to rely on it for purposes of compliance with SEPA.

In addition to the Environmental Assessment, prepared under NEPA, and the SEPA documents, prepared by Snohomish PUD, Planning reviewed a draft Biological Assessment, prepared by Wetland Resources, prior to granting the Shoreline Conditional Use Permit, subject to conditions.

On page 6 of Island County Planning's Decision on the Shoreline Conditional Use Permit, Planning concluded that the proposed use will cause no significant adverse impacts to the shoreline environment in which it is to be located [as required by WAC 173-27-160(1)(d)], stating as follows:

"Extensive environmental review has been conducted on this project. Intensive and ongoing environmental monitoring during this project is planned, and this monitoring is considered a critical component for project success by all parties involved. The project is temporary in nature, all components, save for the garage/shelter are slated for removal from the shoreline

environment upon project completion.”

The project is for a temporary pilot project to assess the potential viability and environmental impact of the use of tidal turbine generators, including the use within Admiralty Inlet. It is unlikely that similar pilot projects will be located in this area. It is also unlikely that, even if there were a number of similar two turbine pilot projects in Admiralty Inlet, they would cumulatively result in substantial adverse effects to the shoreline environment.

Both Parties have raised issues regarding cumulative impacts under both SEPA and under the Shoreline Management Act, and the Island County Shoreline Master Program and Regulations.

It appears that the Appellants have stepped back from their SEPA arguments and, instead, are relying on the consideration of cumulative impacts under the Shoreline Management Act.

The Appellants' concerns arise out of the possibility that future large commercial-scale tidal turbine generator projects will be proposed for Admiralty Inlet. They point out, correctly, that Snohomish PUD, at one point, had a preliminary permit, which gave them a priority to install up to 450 tidal turbine generators in Admiralty Inlet. The PUD sought the temporary permit during the time where applications for preliminary permits granted priority rights for future projects. The granting of the preliminary permit to the PUD at that time gave them a vested right or priority to pursue commercial scale tidal turbine projects in Admiralty Inlet. The PUD no longer has this preliminary permit and the proposed permit sought is for a temporary pilot project consisting of two turbines only.

It is possible, depending upon the results of the pilot project, and future events, that at some point, Snohomish PUD will request a permit to site a commercial scale tidal turbine array in Admiralty Inlet. When, and what form this kind of proposal might take, is unknowable. This project, as proposed, is basically a scientific, fact gathering

project, designed to generate further understanding of tidal turbines, and help ascertain if they are feasible both economically and environmentally for use on a commercial scale. Any future proposals will require a thorough assessment, as was required as part of this pilot project, and will be subject to National, State, and local regulations, including environmental protections and compatibility with other shoreline uses, in effect at the time of Application.

The Hearing Examiner finds this a factual matter that the cumulative impacts from the possible future large scale commercial operations are not ascertainable at this time.

This investigatory pilot project is not dependent upon future development or actions. It is an isolated, stand-alone project.

VII.

In addition to the Decision by Island County Planning and the documentation available to Planning when Shoreline Conditional Use Approval Decision was made, the Hearing Examiner has the advantage of additional information, including the Final Biological Assessment done by Wetland Resources; numerous declarations and supporting documents; and Declarations of expert witnesses, submitted by both the PUD and the Appellants; and, most importantly, the National Marine Fisheries Services [NMFS] Biological Opinion regarding the impacts from the PUD proposal. The NMFS Biological Opinion was issued on December 3, 2013.

The Biological Opinion was issued to carry-out the NMFS legal responsibilities, under the Endangered Species Act and the Magnuson-Stevenson Fisheries Conservation Management Act, for the PUD Admiralty Inlet Pilot Title Project. The 131-page Biological Opinion concluded that the proposed project is not likely to jeopardize any of the species in the area listed under the Endangered Species Act, and is not likely to destroy or adversely modify any of the critical area habitats of these species. Additionally, the Biological Opinion did not recommend Conservation

Recommendations under the Magnuson-Stevenson Act, stating that they did not identify any potential adverse impacts on essential fish habitat.

Page 118 of the Biological Opinion provides the required DATA QUALITY ACT DOCUMENTATION AND PRE-DISSIMINATION REVIEW. This review states that the Biological Opinion has utility, integrity, and objectivity. It states that the Biological Opinion “and supporting documents are clear, concise, complete, and unbiased, and were developed using commonly accepted scientific research methods.” It goes on to state that the Biological Opinion and supporting documents used best available information and were drafted by NMFS Staff with training in the Endangered Species Act and Magnuson-Stevenson Act implementation.

The Biological Opinion does allow extremely limited “takes” of certain endangered or threatened species and allows some limited actions which might legally constitute harassment of Marine Mammals [sound impacts]. Taken as a whole, the Biological Opinion concluded that the project impacts, including the incidental “take” levels allowed, are not likely to result in jeopardy to the listed or threatened species or result in the destruction or adverse modification of critical fisheries habitat. The Biological Opinion requires the adoption and compliance with [See page 131 of the NMFS Biological Opinion]:

- Adaptive management framework
- Acoustic monitoring mitigation plan
- Marine Mammal monitoring and mitigation plan
- Near field monitoring and mitigation plan
- Pathetic habitat monitoring and mitigation plan
- Derelict gear monitoring and mitigation plan

The Adaptive Management Mitigation Plan requires regular ongoing monitoring and requires certain actions to be taken if there is evidence of adverse impacts or “takes.” The Biological Opinion also requires re-initiation of consultation if the amount or extents of incidental “take” allowed in the Opinion are exceeded; if new information reveals impacts from the project that may affect listed species or critical habitat in a manner, or to an extent, not considered in the Opinion; if the Agency action is

subsequently modified in a manner that causes an impact to the listed species or to critical habitat not considered in the Opinion; or if a new species is listed, or critical habitat designated that may be effected by the PUD Pilot Turbine Project. [See page 115 of the NMFS Biological Opinion, dated December 3, 2013].

The Hearing Examiner finds nothing in the record that supports a finding that the Environmental Assessment, issued by FERC, or the Biological Opinion, issued by NMFS, are inadequate, faulty, or incomplete. All of the evidence in the file supports a finding that the PUD project will not have a significant adverse environmental impact on Endangered Species, Fisheries Habitat, or Marine Habitat in general.

The Hearing Examiner also finds that, subject to the Adaptive Management Framework, and Mitigation Plans required for the continual monitoring of the project will be adequate to identify any unexpected significant adverse impacts and will further lead to changes in the operation of the project or its termination to avoid those identified impacts.

The Adaptive Management Framework requires the creation of the Marine Aquatic Resource Committee [Committee] to advise the District on the aquatic resource issues related to construction, monitoring, and operation of the Pilot Tidal Turbine Project. The Committee established consists of the PUD, NMFS, US Fish and Wildlife Service, Washington Department of Fish and Wildlife, the Washington State Department of Ecology, Washington State Department of Natural Resources, and the Tulalip Tribe, Suquamish Tribe, Snohomish Indian Tribe, and Sauk-Suiattle Tribe. The Hearing Examiner finds that since this is basically a Pilot Project to monitor impacts of the two tidal turbines and will be actively managed by the Committee members set forth above, that the project is highly unlikely to have any significant adverse impacts on marine species or the marine environment.

VIII.

The National Marine Fisheries Biological Assessment includes a number of nondiscretionary [mandatory] measures to minimize the amount and extent of incidental "take." These are set forth in the Biological Opinion, starting on page 113, and include terms and conditions that FERC must require compliance with as a condition of licensing [page 114 of the Biological Opinion].

IX.

The Appeal of PC Landing is centered on a perceived risk to the intercontinental seabed cable communications, owned by PC Landing which runs through Admiralty Inlet. PC Landing objects to the location of the turbines, as close as 170 meters from their seabed cable. PC Landing appropriately points out the importance of the vast information carried by this intercontinental fiber optic cable; the harm disruption of the cable service would cause; and the expense and time involved in implementing any necessary repairs, should the cable be damaged.

PC Landing's concerns regarding adequate separation can be summarized as follows:

1. The extra vessel traffic associated with the installation, maintenance, repair [if necessary], and removal of the turbines, increases the risk of damage to the cable. The perceived risk is one from physical damage to the cable should a vessel working with the turbine project become distressed, due to weather, engine failure, damage to the vessel, or otherwise, and therefore be required to drop an anchor which might entangle and damage the cable in some way.
2. That the location proposed for the turbines, 170 meters and 238 meters from the cable at their nearest point, would unnecessarily and unreasonably interfere with the ability of PC Landing to repair a cable break or defect in the immediate vicinity of the turbines, by interfering with cable recovery and repair operations. [Not enough separation to safely allow recovery and repair].

As a starting point, PC Landing urges adoption of separation recommendations. PC Landing identified in six different resources, which analyzed and recommended safe separation distances between seafloor optic cables and other uses. PC Landing states that all of these recommendations have endorsed a separation of at least 500 meters. That distance is nearly three times the distance that the closest turbine would be located in reference to PC Landing's PC-1 cable in Admiralty Inlet. It is fair to note that most of these recommendations have come from resources prepared by or for the seabed cable industry.

PC Landing raised the same issue before FERC. FERC concluded, in its Environmental Assessment, that a 170 meter separation was adequate.

The record before FERC includes a letter from the Federal Communications Commission expressing concern over the proposed separation between the closest turbine and the cable, and referencing the 500 meter separation urged by PC Landing. Subsequent to that letter, the PUD moved the proposed turbine location further from the cable to the present 170 meters and 238 meters proposed.

Additionally, the PUD proposed safeguard plans which would, among other things, address the concerns regarding damage to PC Landing's cable from vessel navigation associated with the installation of the turbine. The plan includes a wet boat requirement. A wet boat requirement is a requirement that the vessels involved do not anchor. In order to ensure anchoring will not be necessary, the plan builds in a number of redundancies. The installation process, itself, is expected to take less than one hour. The record indicates that accurate installation of the turbine in the exact location chosen is virtually assured. Installation of the turbine itself is expected to take less than one hour. The installation time must be during optimal conditions which include low current speed and low wind speed, as well as any other criteria which might be identified in a post licensing Hazard Identification and Risk Assessment required by FERC. The turbine installation would include a non-motorized barge without an anchor;

two tug boats, one of which would have two engines; an ORV with its own support vessel; and other small support vessels. Additionally, the PUD will be required to identify a safe harbor, away from the PC Landing cable, where the vessels involved in either the turbine installation, cable laying, or other activities associated with the project, can retire to should conditions change rapidly or should one or more vessels become distressed. This proposal has a great deal of redundancy built into it.

After review of the navigation safety plan and redundancy proposed regarding the installation, maintenance, and removal of the turbines, the Federal Communications Commission concluded that, if these conditions were required by FERC, their concerns relating to the location of the turbines within 170 meters of PC-1 were alleviated.

The record as a whole shows that it would be highly unlikely [very remote chance] that any marine work involved with the installation, operation, and removal of the turbines and cable would result in damage to PC Landing's fiber optic cable.

X.

The second issue is PC Landing's claim that the location of the turbines would unnecessarily and unreasonably interfere with their ability to repair the cable should a break or defect take place near the turbines. The necessity for repairs to cables usually is a result of damage caused by navigation accidents involving emergency anchoring, or by fishing operations. International fiber optic cable companies have contingency plans for the repair of damaged cables. Damage is more likely to occur in areas of shallower water and in fishing and/or navigational activity. The part of PC-1's 1,300 plus mile intercontinental cable system that runs through Admiralty Inlet to Mukilteo is in relatively shallow water, 50 meters to 60 meters, near the turbines, and is in an area of heavy marine traffic. Significant international shipping transverse Admiralty Inlet daily, using the traffic separation lanes monitored by the United States Coast Guard. The record indicates that approximately 7,700 ships, subject to Coast Guard monitoring, transverse Admiralty Inlet, yearly. A very significant number of smaller vessels, including fishing and pleasure boats, would also use Admiralty Inlet to enter or leave

Puget Sound for recreation. Admiralty Inlet itself is only three miles wide. PC Landing's PC-1 cable is located along the edge of the northbound traffic separation lane and therefore is in proximity to year-round vessel traffic. The area of Admiralty Inlet where the cable is located near the turbines is unlikely to be a site for concentrated commercial fishing activity. The waters are deep and the tides run strong. Admiralty Inlet itself is closed to salmon net fishing. PC-1 cable is not located in a place where bottom trawls would be expected to operate. The main threat to the cable, then, comes from distressed vessels which drop their anchor in the chart marked "no anchoring zone" around the cable. Cable damage from this source can and has happened. PC Landing's cable in Puget Sound has, as far as the record shows, not required any repair operations. However, a nearby sea bottom cable was damaged when a Coast Guard ship felt a need to lower anchor while in a distressed situation. This cable was successfully repaired, although there are indications that there were difficulties involved in the repair. There are no other indications in the record of fiber optic cable damage in Admiralty Inlet or Puget Sound itself. The record does include an undescribed incident, in the near past regarding Century Tel underwater cable that services Orcas Island. No other seabed cable damage from vessel activity in Washington State waters appears in the record.

Overall, the likelihood of damage to PC-1's cable in the immediate vicinity of the turbines' location is extremely low. If the cable was damaged in the immediate vicinity of the turbine location, this damage location near the turbines might cause some additional difficulties during repair.

Both PC Landing and the PUD have provided a number of sworn statements and testimony from experts in cable repair, as well as documents discussing fiber optic cable repair.

There was significant discussion during the hearing and in documents in the record regarding the use of remote operated vehicles for submarine cable repair. The Hearing Examiner finds that the location of the turbines would not have a significant

impact on the use of ROVs for cable repair. However, the record does indicate that ROVs may not always be useful for repair in this location. The limitations on ROVs are a result of times of high tidal currents [the same currents that may make tidal turbine generations commercially feasible in this location], and turbidity.

Turbidity is expected to be higher during high current periods or storm events. In clear water conditions or during periods of times [sometimes up to hours], where the tidal currents are low, an ROV would be useful in cable repair and its deployment would not be significantly impacted by the nearest turbine located 170 meters away. Repair vessels, including those which operate ROVs, are normally equipped with Dynamic Stabilization Systems, which allow them to remain virtually in place over a certain area of the bottom. In this case, a vessel using a Dynamic Stabilization System and an ROV could locate over the cable or even further from the turbine to the west of the cable, and deploy the ROV, if other conditions allowed ROV repair capabilities to work without significant interference from the turbines in the proposed location.

An ROV was used to cut the cable in the Coast Guard anchoring incident, which occurred reasonably close to PC Landing's cable within the high tide, narrow areas of Admiralty Inlet. Apparently the ROV was not used for recovering the cable, bringing it to the surface for repair, or replacing the cable. It is possible that the limited use of the ROV was due to tidal conditions and/or turbidity.

If an ROV cannot be used, traditional grappling measures are to be used to cut and recover the cable. A cutter, or a hook, is attached to a moderate link of chain and lowered with a line to the bottom and then towed by the ship across the cable to either cut the cable or to grab the cable to bring it to the surface. PC Landing argues that, if the damaged area of the cable were in the area closest to the turbines, their ability to recover and repair the cable would be compromised. However, all experts agreed that the cable could be recovered and repaired.

Repair of the cable, damaged in an area immediately adjacent to the turbines, may require two cuts of the cable instead of one. Both witnesses for PC Landing and for the PUD testified that a double-cut operation could be done and that would result in an addition to the fiber optic cable of three times the water depth, instead of two times the water depth required for a single cut recovery. The ultimate result is the addition of an extra 50 meters to 60 meters of cable during the repair process and the necessity to rebury or recover that excess cable. In conditions where an ROV can be used to cut and recover, only one cut would be needed. If grappling was necessary, two cuts might be required.

Given the high unlikelihood of damage to that small area of cable that is immediately adjacent to the turbine location, and given the fact that reasonable repairs at a reasonable cost could still be accomplished using the two cut method and grappling, the Hearing Examiner finds that the interference of the turbines in the proposed location would have minimal impact on PC Landing's ability to repair and maintain their cable as necessary.

XI.

PC Landing raises concerns about the information available on the nature of the seabed where the turbines will be located. PC Landing asserts that there is insufficient geological information and that the seabed may, in fact, not adequately support the turbine structures. The Hearing Examiner finds that it is unlikely the seabed will be unable to adequately support the structure. Although there were limitations beyond the control of the PUD in determining with great exactitude the nature of the seabed in the proposed location, the geological information obtained and analyzed supports a conclusion that there is a high likelihood the seabed will be adequate to properly allow the turbines to function. If problems occur with turbine stability, the turbine could be lifted and moved, or removed. There is no evidence in the record that indicates any problems with the turbines' location, based on the geological condition of the seabed, which would in any measureable way contribute to increased risk to the cable or increased interference with cable repairs. At most, it would increase the vessel trips

associated with the project. These trips would still be subject to the Navigation Plan and very unlikely to result in damage to the cable.

In the same regard, PC Landing cites problems with other pilot tidal turbine projects. One of these resulted in the moving of the turbine from one location to a more stable location. The other incident cited led to the turbine being left on the bottom for months in inoperable condition. However, there is nothing in the information provided on either of these instances which would increase the likelihood of environmental damage or increased risk to PC-1's fiber optic cable.

XII.

The Appellants also raised the issue of adverse impacts from scour caused by the placement of the turbine structure on the seabed. Scour, if it occurs, would be discovered through the monitoring, and addressed through the Adaptive Management Plan. Any scouring that does take place is expected to affect a limited area [may be up to 10 meters], and can be addressed through remedial efforts. There is no evidence in the record which would support a conclusion that issues regarding scouring would affect PC Landing's fiber optic cable. There is no evidence that adverse impacts from scouring would have a significant impact on marine species or the marine environment. If such an impact was found and could not be mitigated, turbine removal would be the final solution.

XIII.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

CONCLUSIONS OF LAW

I.

All Parties agree that the Hearing Examiner does not have the authority to review the decision made in the Environmental Assessment by the Department of Energy that under the National Environmental Protection Act, that the Project, subject to recommended limitations or conditions, would not have a significant adverse environmental impact. However, the Hearing Examiner would note that the Environmental Assessment included a thorough review of all issues raised by the Appellants in this matter; that the Appellants have not submitted additional evidence which leads the Hearing Examiner to conclude that the Environmental Assessment was flawed; and that the Hearing Examiner can properly give the weight deemed appropriate by him to the Environmental Assessment.

Both Appellants raised issues regarding SEPA in their Comprehensive Statements and in their initial briefs. Both Appellants appeared to back off of the SEPA arguments during the hearing process. The Snohomish County Public Utility District was the Lead Agency for SEPA Review on this proposal. They issued a Determination of Non-Significance. The PUD does not provide for an Administrative Review. Island County was entitled, and in fact required, to rely on the SEPA Determination of Non-Significance issued by the PUD. The Island County Hearing Examiner has no authority to review compliance with SEPA by the PUD. Any Appeal of the SEPA Determination of Non-Significance issued by the PUD will be a judicial appeal which would normally take place in combination with any non-SEPA issues [WAC 197-11-390] after Final Permit Approval and an Appeal.

II.

Both Appellants argue that Island County Planning and Community Development erred in not considering the cumulative impacts of this proposal, together, with potential large scale future proposals for a commercial scale tidal energy turbine project in Admiralty Inlet. Both Appellants point out the preliminary permit sought by the PUD

prior to application for the Pilot Project requesting a preliminary permit in order to explore the installation of up to 450 tidal turbines in the Admiralty Inlet area.

A review of cumulative impacts is required, both under SEPA and under Washington Shoreline Management Act.

In its opening brief, the Tulalip Tribes makes the following statement on page 3:

The County's Conditional Use Permit [CUP [sic] 0089/12] is invalid because there has been no meaningful analysis of the environmental impacts associated with the pilot project. The CUP itself is premature insofar as it relies on the PUD's DNS. The Tulalip Tribes do not challenge the adequacy of the DNS in the current proceeding. In issuing its CUP, the County does not have the necessary environmental analysis to meet its obligations under SEPA.

The error in the Tribes' position is made clear by the first few words of WAC 197-11-390[1], which reads as follows:

(1) When the responsible official makes a threshold determination, **it is final and binding on all agencies** [Emphasis added].

The Hearing Examiner does agree that Island County does retain its substantive authority under the Shoreline Management Act to address relevant environmental issues covered by the Act, the implementing WACs, the Island County Shoreline Management Program and the implementing Shoreline Regulations.

As noted in the findings, Island County Planning reviewed extensive materials, including the Environmental Assessment prepared by the Department of Energy. Planning determined they had sufficient information to evaluate the project and concluded that, subject to conditions of approval, the project would be compatible with other shoreline uses both on the uplands and in the water column or on the seabed of Admiralty Inlet, and approved the requested Shoreline Permit. The Hearing Examiner agrees that there is adequate information available to conclude that, subject to the conditions that will be placed on this project by MNFS, FERC, other Federal or State

Agencies, and subject to the Shoreline Conditional Use Permit issued by Island County, the proposal will not adversely affect priority species, Endangered Species; result in illegal takes under the ESA; or result in significant adverse environmental impacts or fail to ensure that public interest does not suffer a detrimental effect.

In regard to the public interest, the Criteria for Shorelines of Statewide Significance do require placing the public interest over private interest. In this case, the public has a significant interest both in determining viability and environmental impacts of tidal turbine generators for the production of power, and the protection of marine resources. It was suggested in the hearing that placing energy production over the protection of marine resources would be inappropriate. In many instances, that would be true. However, with this case, the potential to use tidal energy to produce significant amounts of green energy, which will either replace or at least not contribute to climate change, can and should be seen as protecting the marine resources. In fact, the Environmental Assessment and the Biological Opinion issued by NMFS point out in a number of locations that the threatened or endangered species that could be impacted by this project are already being adversely impacted by climate change. The Snohomish Public Utility District is a governmental entity which serves the public interest by supplying the energy resources which we all rely on. In fact, the record indicates that the PUD is going out of its way to ensure, to the greatest degree possible, that it maximizes its use of "green energy" and minimizes its use of carbon fuels. The public interest would be served by commercially viable and environmentally benign tidal turbine electrical power production. If both can be done, remains to be seen.

III.

The Appellants argue that Island County Planning failed to properly take into account the cumulative impacts of the project. In the various iterations of the issue, there are suggestions that this project is just a small part of a much larger project and that analysis of the Pilot Project for two tidal generators should include an analysis, including a large commercial scale project.

It is true that the PUD is undertaking this proposal with an eye toward a possible future commercial scale tidal generation project in Admiralty Inlet. It is also true that the PUD is spending millions of dollars of its ratepayers' money on the Pilot Project. It is reasonable to assume that the PUD has at least a moderate degree of expectation that the Pilot Project will provide evidence supporting a larger commercial scale project.

However, it would be inaccurate to call a two turbine monitoring project, clearly aimed at producing real evidence as to the viability and environmental acceptability of tidal turbine generators, a small part of a larger commercial project. The Pilot Turbine Project is not dependent on any future development. It is by its terms investigatory and temporary. The PUD has not artificially segregated out a portion of a larger product for the purpose of avoiding compliance with the Shoreline Management Act. In fact, the PUD has proposed the project to determine if a future project could be compliant with the Shoreline Management Act. It has been suggested, in one way or another, that the granting of approval of the Pilot Project would have a coercive effect leading to approval of a commercial project. However, there is no evidence in the record which would support a conclusion that approval of this project will create significant momentum towards approval of a large commercial scale energy project. In fact, the evidence derived from the Pilot Project could conceivably reduce the potential for future tidal energy projects on a commercial scale. There is no evidence that the proposal of this small Pilot Project will create an irresistible momentum for future projects whose cumulative impacts could be harmful to the shoreline environment or that the approval would provide a coercive effect, making approval of future projects more likely regardless of adverse cumulative impacts that might exist.

No other tidal energy projects have been submitted or proposed. No other applications for either pilot or commercial scale projects may ever be submitted. It is appropriate in this circumstance to assume that any new project proposals will consider cumulative impacts when proposed and reviewed.

It should be noted that approval of a single tidal generator within 170 meters of PC Landing's cable in no way supports a conclusion that a number of tidal generators through Admiralty Inlet within 170 meters from PC Landing's cable would be acceptable. Additional tidal generators within that distance could result in an unacceptable interference with PC Landing's ability to maintain and repair their existing fiber optic cable.

IV.

Admiralty Inlet is a Shoreline of Statewide Significance. The guidelines for Shorelines of Statewide Significance are set forth in RCW 90.58.020. The Hearing Examiner finds that the Shoreline Conditional Use Permit, approved for the Pilot Project for the installation of two tidal turbines in the proposed location in Admiralty Inlet by Snohomish PUD is consistent with the general criteria for a Shoreline of Statewide Significance. More specifically, the Hearing Examiner finds that this investigatory project aimed at determining the viability and potential of environmental impacts from producing energy through tidal turbine generators and, potentially leading to the future development of a non-carbon based form of energy production with the goal of reducing or minimizing climate change, does recognize and protect the Statewide interest and is consistent with the public interest, and with long-term protection of marine resources. It will not affect the natural character of the shoreline in any visual manner; it will result in a long-term benefit, with little or no short-term cost; it can be done in a manner which protects the resources and the ecology of the shoreline and marine environment, while investigating an energy source which could further benefit the natural environment and endangered and threatened species by increasing our ability to reduce or minimize potential or adverse effects from climate change which may result from carbon fuel consumption. The proposal will not impact public access to the shorelines or impact recreational opportunities for the public in the shorelines.

V.

In order to approve a Shoreline Conditional Use Permit, the Shoreline Conditional Use Criteria set forth in WAC 173.27.160 must be met. Island County Planning reviewed the project and concluded that all of the Shoreline Conditional Use

Criteria were met and that a permit should be granted, subject to conditions. The Hearing Examiner has created and reviewed a more extensive record. For the reasons set forth in the Findings of Fact and Conclusions of Law above, the Hearing Examiner concludes that the proposed project, subject to Conditions of Approval, meets all of the Criteria for a Shoreline Conditional Use Permit, and that such a Permit should be granted, subject to conditions.

VI.

The proposal is a utility project, located in both the Rural Shoreline Designation and the Aquatic Shoreline Designation. The proposed use is shoreline dependent. The proposed use is consistent with regulations applicable to utility use in the Rural and Aquatic Use Requirements and is consistent with the Specific Use Requirements found in Utilities in ICC 17.05.260.

VII.

Based on the entirety of the Findings of Fact and Conclusions of Law set out above, the Hearing Examiner should grant the Snohomish County PUD a Shoreline Conditional Use Permit for the proposed Pilot Project consisting of the location of two tidal turban generators on the floor of Admiralty Inlet; the proposed cable connecting the generators to an onshore facility and connecting it to the power grid, and the proposed onshore facility.

VIII.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

DECISION

The Island County Hearing Examiner hereby denies the Appeals and approves S-CUP 089/12, granting Snohomish County PUD a Shoreline Conditional Use Permit for the proposed Pilot Project consisting of the location of two tidal turbine generators on the floor of Admiralty Inlet; the proposed cable connecting the generators to an onshore

facility and connecting it to the power grid, and the associated onshore facilities, subject to the following conditions:

1. All work, construction, and mitigation shall conform to the submitted Biological Assessment (including Appendix Draft Biological Assessment) prepared for Public Utility District No. 1 of Snohomish County Admiralty Inlet Pilot Tidal Project by Wetland Resources, Inc., dated April 11, 2012, except that minor non-substantive changes may be made if necessary to comply with the requirements of another permitting agency.
2. All work, construction, and mitigation shall conform to the Final NEPA Environmental Assessment, prepared by the Office of Energy Projects and U.S. Department of Energy, dated August 21, 2013, except that minor non-substantive changes may be made if necessary to comply with the requirements of another permitting agency.
3. All work, construction, and mitigation shall conform to the submitted SEPA Addendum to the submitted NEPA Environmental Assessment, prepared by Snohomish PUD, dated August 27, 2013, except that minor non-substantive changes may be made if necessary to comply with the requirements of another permitting agency.
4. Any temporary alterations to the Fish & Wildlife Habitat Conservation Area must be restored to a pre-development condition upon completion of the project.
5. All work, construction, and mitigation shall conform to the approved plot plans, except that minor non-substantive changes may be made if necessary to comply with the requirements of another permitting agency.
6. Conditions in the attached memo dated May 23, 2012 from John Bertrand of Island County Public Works/Engineering are hereby adopted as Conditions of this Approval.
7. Conditions in the attached memo dated May 11, 2012 from Aneta Hupfauer of Island County Public Health are hereby adopted as Conditions of this Approval.
8. Conditions in the attached memo dated May 8, 2012 from the Island County Building Inspector/Plans Examiner are hereby adopted as Conditions of this Approval.
9. With the exception of the work shown in the approved plans, no clearing, construction or development activities are permitted within 75 feet of the Ordinary High Water Mark.
10. With the exception of the work shown in the approved plans, no clearing, construction or development activities are permitted on steep slopes or within 100 feet of steep slopes.
11. The applicant shall comply with all local, state, and federal flood-plain development regulations. Prior to starting any work or construction activities, the applicant shall obtain all required flood development permits and approvals.
12. Erosion and Sedimentation Control Best Management Practices shall be employed during all development activity. No materials shall be stored or stockpiled seaward of the Ordinary High Water Mark, within Critical Areas, or in any unpaved Critical Areas buffers.

13. All construction and demolition debris shall be disposed of at a site approved by Island County Public Works Department. Treated wood must be separated and disposed of at an Island County transfer station. There shall be no dumping or disposing of debris on the beach or in the waters of the state.
14. Applicant bears the full responsibility of notifying site crews of all permit conditions, and shall be held fully accountable for any activity that results in on- or off-site violations, hazards or damages.
15. No shoreline development rights under this permit shall be transferred by sale, lease, or other conveyance of any interest without prior County notification in order to determine if any new owner or operator can meet the terms and conditions of this permit.
16. All shoreline and overwater activities shall be restricted to reasonable hours and/or days of operation when necessary to protect residents and properties from adverse impacts such as noise, light, and glare.
17. The entirety of the attached document, Inadvertent Archaeological and Historic Resources Discovery Plan for Island County, is hereby adopted into this decision by reference. All terms of this adopted document constitute Conditions of Approval for this decision. Compliance with all applicable laws pertaining to archaeological resources (RCW 27.53, 27.44 and WAC 25-48) and human remains (RCW 68.50) is required. Failure to comply with the terms of this adopted attached document, Inadvertent Archaeological and Historic Resources Discovery Plan for Island County, could constitute a misdemeanor and possible civil penalties and/or constitute a Class C Felony.
18. No equipment or vehicles shall be parked or stored within Critical Areas or in unpaved portions of the Critical Area buffer.
19. The conditions of approval identified in this decision are subject to change if any information provided by the applicant or their authorized representative is found to be inaccurate.
20. This project is required to comply with Washington State and Island County water quality standards, Washington State and Federal laws and regulations protecting archaeological sites and resources and all other pertinent laws, rules, regulations, codes, and ordinances.
21. Applicant shall contact the State Department of Fish and Wildlife (WDFW) to determine if a Hydraulic Project Approval (HPA) permit is required. Contact Doug Thompson at (360) 466-4345 x251 or by email at thompdst@dfw.wa.gov.
22. If approved, this permit is valid for a period of two (2) years. The construction, use, work, or activity authorized by this permit shall be commenced within two years of the effective date of this permit. Island County *may* authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the department.
23. Construction pursuant to a Shoreline Conditional Use Permit shall not begin or be authorized until twenty-one (21) days from the date the final order granting the permit is filed with the Washington State Department of Ecology pursuant to RCW 90.58.140(6), or until all review proceedings are terminated if such proceedings were initiated within twenty-one (21) days from the date of such

- filing, except as provided in RCW 90.58.140(5)(a) and (b).
24. Issuance of a shoreline permit shall in no way be construed as excusing the applicant from compliance with any other local, state, or federal statutes, ordinances, or regulations applicable to the proposed substantial development.

Entered this 21st day of March 2014, pursuant to authority granted under the laws of the State of Washington and Island County.

Michael Bobbink

MICHAEL BOBBINK
Island County Hearing Examiner