



COUNTY COMMISSIONERS

Carolina Mejia-Barahona  
District One

Gary Edwards  
District Two

Tye Menser  
District Three

**HEARING EXAMINER**

*Creating Solutions for Our Future*

**BEFORE THE HEARING EXAMINER  
FOR THURSTON COUNTY**

In the Matter of the Application of	)	NO. 2020103552
	)	
<b>Rod and Debra Sternagel</b>	)	
	)	
For Approval of a Shoreline Substantial	)	FINDINGS, CONCLUSIONS,
Development Permit and Shoreline	)	AND DECISION
<u>Conditional Use Permit</u>	)	

**SUMMARY OF DECISIONS**

The request for shoreline substantial development permit and conditional use permit to construct shoreline access stairs and to keep an existing unpermitted boathouse and unpermitted retaining wall at 2329 Schirm Loop Road NW in Olympia is **GRANTED** subject to conditions.

**SUMMARY OF RECORD**

**Request:**

Rod and Debra Sternagel (Applicants) requested shoreline substantial development and shoreline conditional use permits to construct shoreline access stairs and to keep an existing unpermitted boathouse and unpermitted retaining wall at 2329 Schirm Loop Road NW, Olympia, Washington.

**Hearing Date:**

The Thurston County Hearing Examiner conducted a virtual open record hearing on the request on July 27, 2021. The record was held open until July 29, 2021 to allow any members of the public having difficulty joining the virtual hearing to submit written comments, with time scheduled for responses from the parties. One post-hearing comment was submitted, to which Planning Staff submitted a response. Both items were timely and admitted, and the record closed on August 2, 2021.

**Testimony:**

At the hearing the following individuals presented testimony under oath:

Scott McCormick, Associate Planner, Thurston County

Rod Sternagel, Applicant

Caralyn Valdeman, Integrated NW Construction, Applicant Representative

Rich Ohl, Integrated NW Construction, Applicant Representative

**Exhibits:**

At the hearing the following exhibits were admitted in the record:

Exhibit 1 Community Planning & Economic Development Department Report including the following attachments:

A. Notice of Public Hearing

B. Zoning Map

C. Master Application, received December 23, 2020

D. JARPA Application Form, received December 23, 2020

E. Notice of Application, dated June 2, 2021

F. Engineering Analysis and Design for Beach Stairs, received December 23, 2020

G. Engineering for existing boathouse (undated)

H. Engineering for retaining wall, received December 8, 2020

I. Zero Rise Analysis by Steven Morta, P.E., dated May 6, 2021

J. Critical Area Report, received December 23, 2020

K. Approval memo from Amy Crass, Thurston County Public Health and Social Services Department, dated January 28, 2021

L. Comment email from the Squaxin Tribe, dated June 4, 2021

M. Comment letter from Washington Department of Ecology, dated September 15, 2020

N. Comment email from the Squaxin Tribe, dated September 6, 2020

Exhibit 2 Post-hearing public comment from Terry Taylor email, dated July 28, 2021

Exhibit 3 Planning Staff's to post-hearing response, dated July 28, 2021

Based on the record developed through the virtual hearing process, the Hearing Examiner enters the following findings and conclusions:

## FINDINGS

1. Rod and Debra Sternagel (Applicants) requested shoreline substantial development (SSDP) and shoreline conditional use (SCUP) permits to construct shoreline access stairs and to keep an existing unpermitted boathouse and unpermitted retaining wall at 2329 Schirm Loop Road NW, in unincorporated Olympia.<sup>1</sup> *Exhibits 1, 1.C, and 1.D.*
2. The application was submitted August 11, 2020 and deemed complete December 8, 2020. A revised master application and JARPA application were submitted December 23, 2020. *Exhibits 1.C, 1.D, and 1.E.*
3. The size of the subject property is approximately 0.5 to 0.6 acres including tidelands, with approximately 107 linear feet of shoreline.<sup>2</sup> It is located near the mouth of Eld Inlet, across from Cooper Point. The parcel is developed with an existing single-family residence, a garage, a shed, a concrete bulkhead, and a boathouse. Built in 1942, the residence, which is set back approximately 85 feet from the shoreline (and approximately 45 feet vertically above the shoreline), is served by an on-site septic system and Edgewater Beach Group A public water system. There is a steep at-grade shoreline access path down the bluff to the shoreline, which is terraced by landscaping timbers and lumber planks and with vertical posts for safe passage. *Exhibits 1, 1.D, 1.F, 1.J, and 1.K.*
4. Surrounding parcels to the north and south are developed with waterfront residential uses. North and west of the subject property are residences on larger acreage parcels, vacant parcels, and an estuarine cove. *Exhibits 1 and 1.J; Google Maps site view.*
5. The subject property is zoned Rural Residential Resource, one dwelling unit per five acres (RRR 1/5). Residential uses are allowed in the zone pursuant to TCC 20.09A.020. Abutting the Puget Sound shoreline, shorelands on site within 200 feet of the ordinary high water mark are within the jurisdiction of the Shoreline Master Program for the Thurston Region (SMPTR), which designates the Applicant's shoreline as Rural shoreline environment.<sup>3</sup> Single-family residential development is permitted in the Rural

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<sup>1</sup> The legal description of the subject property is Section 9, Township 19 North, Range 2 West, WM.; EDGEWATER BEACH L 7 & 8 BLK 1 TOG/W OL'S ADJ also known as Tax Parcel no. 45800100700. *Exhibit 1.*

<sup>2</sup> The accurate size of the property is not known by the Applicant and is not listed in Thurston County Assessor's data. Planning Staff submitted that using the Geodata measuring tool, the site is just over half an acre including tidelands. *Exhibit 1; Testimony of Scott McCormick and Rod Sternagel.* The critical areas report estimates site size at 0.6 acres. *Exhibit 1.J, page 3.*

<sup>3</sup> The primary purposes of the Rural Environment are to protect areas from urban expansion, restrict intensive developments along undeveloped shore-lines, function as a buffer between urban areas, and maintain open spaces for recreational purposes compatible with rural uses. New developments in a Rural Environment are to reflect the character of the surrounding area. The "Rural Environment" designates shoreline areas in which land will be protected from high-density urban expansion and may function as a buffer between urban areas and the shorelines proper. This environment is characterized by low intensity land use and moderate to intensive water use. Residential development does not exceed two dwellings per acre. Visual impact is variable with a moderate portion of the environment dominated by structures of impermeable surfaces. Intensive cultivation and development of the renewable soils, aquatic and forest resources, as well as limited utilization of nonrenewable mineral resources is

environment subject to compliance with policies and regulations of the Residential Development Chapter of the SMPTR. *Exhibit 1; SMPTR page 98 et seq.*

6. There are no wetlands or streams; however, the Washington State Coastal Atlas has classified the site as a feeder bluff with an unstable slope, which meets the definition of geologic hazard area pursuant to TCC 24.15.010.A(3). In addition, the County considers the subject property's coastal shoreline to be within the 100-year floodplain of Puget Sound, meaning it is regulated as a frequently flood area pursuant to TCC Chapter 24.20.<sup>4</sup> Additional sensitive areas include Eld Inlet, which is listed on the 2012 Water Quality 303(d) list of impaired waterbodies related to bacteria, temperature, and dissolved oxygen. *Exhibits 1, 1.D, 1.J (page 15), and 1.M; Scott McCormick Testimony.*
7. Shoreline access stairs and retaining walls are listed as permitted uses in frequently flooded areas and/or coastal flood hazard areas pursuant to TCC 24.20.070. Boat launches - both vehicular ramps and hand launch facilities - are permitted in frequently flooded areas and/or coastal flood hazard areas; however, boathouses are not a listed use in this chapter, meaning they were not contemplated during adoption of the current critical areas ordinance. Planning Staff submitted that they have never reviewed or observed a boathouse that was not located in a floodplain. Finally, stairs and stair towers are permitted uses within geologic hazard areas and associated buffers pursuant to TCC 24.15.025. *Exhibit 1.*
8. The general regulations of the Residential use chapter of the SMPTR identifies shoreline access stairs as an allowed use so long as view obstruction is minimized by the design; however, stairs proposed on a shoreline bluff that is mapped as "unstable" or "Intermediate Stability" in the Washington Coastal Zone Atlas and all stair towers 24 feet in height or greater must be designed by a licensed civil engineer. *SMPTR, Section Three, Chapter XVI.C(11).*
9. The Applicants identified the cost of the proposed stairs to be \$30,000, which exceeds the threshold of \$7,047.00 established in state regulations and thus the stairs require a shoreline substantial development permit.<sup>5</sup> *Exhibits 1 and 1.D; WAC 173-27-040; WSR 17-17-007.*

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permitted. Recreational activities and public access to the shoreline are encouraged to the extent compatible with other rural uses and activities designated for this environment. *SMPTR, page 30.*

<sup>4</sup> Per TCC 24.03.010: "Floodplain, one hundred-year," "one hundred-year floodplain" or "flood hazard areas" means those lands which are subject to a one percent or greater chance of flooding in any year. "Frequently flooded areas" means lands in the flood plain subject to at least a one percent or greater chance of flooding in any given year or areas within the highest known recorded flood elevation, or within areas subject to flooding due to high ground water. This includes all areas within unincorporated Thurston County identified on flood insurance rate maps prepared by the Federal Insurance Administration, as supplemented by "The Flood Insurance Study for Thurston County," dated November 17, 1980, as amended.

<sup>5</sup> Note, the application calls out both stairs and a viewing deck as proposed; however, according to comments submitted by Washington State Department of Ecology, such a viewing deck would require a shoreline variance permit, which permit requires final approval by DOE, and the state agency indicated that it did not think the proposed viewing deck could satisfy shoreline variance criteria for approval. The viewing deck was no longer

10. The Applicants applied for a permit to install shoreline access stairs running from the top of the bluff to level grass bench that extends approximately 15 landward of the existing concrete bulkhead. Designed by a licensed engineer, the stairs would be three feet wide and descend approximately 30 feet, with five three- by three-foot landings, built in the footprint of the existing access path to minimize disturbance of the bluff. Of the existing path's elements, the vertical posts would be removed (using hand tools) and the existing timbers and planks that are embedded in the bluff would be left in place to reduce disturbance and prevent erosion. The new stairs, installed above the existing wood members, would be made of Alaska yellow cedar. The lowest landing would be made of concrete. Fasteners and other hardware are proposed to be galvanized and/or stainless steel. Post holes for the new vertical supports would be a maximum of five feet deep and filled with concrete. Geotextile fabric would be laid over the project site to catch any construction debris for removal and disposal off site at a licensed facility. Concrete would be handmixed and poured in place. All work would be conducted by hand tools. Materials and equipment would be staged landward of the existing garage. Construction would start after receipt of all required permits, would be conducted during daylight hours, and would last approximately 21 days. *Exhibits 1, 1.D, 1.F, and 1.J.*
11. In the initial review of the application for SSDP, County Staff discovered the unpermitted retaining wall and boathouse. Planning Staff submitted that the locations of the existing retaining wall and existing boathouse are within the shoreline jurisdiction and the improvements are subject to the requirements of the SMPTR. The Applicants subsequently submitted a revised application seeking shoreline review and approval for the two existing unpermitted improvements that predate their ownership of the property. *Exhibits 1 and 1.D; Caralyn Valdeman Testimony.*
12. While single-family residential development - including typical appurtenances - is allowed in the Rural shoreline environment, the County does not consider the existing retaining wall that is unassociated with the residential structure to be a normal appurtenance to the residential use. The SMPTR does not contain a use category that is applicable to a wall such as the one proposed; the closest category is "shoreline protection," which includes structures such as bulkheads; however, the proposed wall is behind an existing bulkhead and no alteration to the bulkhead is proposed.<sup>6</sup> Planning Staff submitted that the existing wall is an unclassified use for the purposes of the SMPTR. Pursuant to Washington Administrative Code (WAC) 173-27-160, an unclassified use may be authorized with a shoreline conditional use permit. *Exhibit 1; WAC 174-27-160; WAC 173-27-030(4).*
13. The SMPTR defines boathouse as follows: "'Boathouses' are a type of covered moorage which have walls and are usually for the storage of one (1) boat." The SMPTR allows

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proposed at time of hearing. *Exhibits 1.D, 1.F, and 1.M.* Any resulting reduction in the total project cost was not identified in the record, but it is presumed to remain above the \$7,047.00 threshold.

<sup>6</sup> The SMPTR defines "shoreline protection" as "action taken to reduce adverse impacts caused by current, flood wake or wave action. ..." *SMPTR, Section 3, Chapter XVIII, Section A.*

boathouses in the Rural shoreline environment subject to compliance with applicable policies and regulations in the boating facilities chapter. *SMPTR Section Three, Chapter IV, Boating Facilities (D)(2)*. Planning Staff submitted that SSDP approval is required for the existing boathouse, although there is no information in the record about the value of the feature, since it was constructed at an unknown date in the past by a prior owner of the property. *Exhibit 1; Testimony of Scott McCormick and Rod Sternagel*.

14. The existing boathouse measures 12 by seven feet (84 square feet) in area and is 12 feet, three inches tall. It is just large enough to shelter a canoe or kayak and associated equipment. The distance between the bulkhead, which marks the ordinary high water mark on site, and the boathouse is not provided in the record; however, the level area at the foot of the marine bluff is stated to be 15 feet deep. The boathouse appears to be located approximately 10 or slightly fewer feet from the bulkhead. The concrete block retaining wall is 24 feet wide and ranges from eight inches to six feet in height. The wall is adjacent to (just southwest of) the boathouse and is setback slightly farther from the bulkhead than the boathouse. The most vertical portion of the proposed stairs would be built perpendicular to the shoreline behind the retaining wall, and just landward of the retaining wall, the stairs would make an approximately 90 degree turn and finish in a segment parallel to the shoreline behind the retaining wall. *Exhibits 1.D and 1.F*.
15. The Applicants hired an engineering consultant to review and assess the design of both the boathouse and the retaining wall for compliance with applicable building code standards. The consultant provided stamped engineered as-built plans for both features, which were accepted by the Planning Department and Building Division as adequate to demonstrate the safety of the improves in their existing condition. *Exhibits 1, 1.G, and 1.H; Scott McCormick Testimony*.
16. The Applicants provided a professionally prepared zero rise analysis addressing the presence of the unpermitted retaining wall in the frequently flooded area, which again is regulated pursuant to the CAO. This analysis states that the retaining wall results in zero net rise of sea level resulting from placement of the retaining wall and compacted fill behind it. The analysis is in the form of a memo addressed to the County's Floodplain Manager. *Exhibit 1.I*. There is no discussion of sea level rise from the boathouse, which occupies frequently flooded area, nor any responsive comments from the Floodplain Manager.
17. The Applicants also provided a professionally prepared critical areas study addressing the proposed stairs, as well as the existing unpermitted retaining wall and boathouse in the frequently flooded area and the impact of all three features on shoreline ecological functions and values. The author of this report stated that the presence of the existing at-grade switch back trail, which has already been cleared and over which the proposed stairs would be placed, means that the project can avoid vegetation removal for construction of the stairs, and that the stair structure is minimal in size to provide desired safe shoreline access from the top of the bluff. The report indicated that best management practices would be in place during stair construction to prevent erosion (avoiding/minimizing impacts)(mitigation detailed in the report), and that once

constructed, the materials selected would not result in harmful contaminants entering the marine environment. The critical areas study noted that the existing retaining wall and boathouse are minimal in size and were constructed of environmentally friendly materials. To mitigate any impacts resulting from both proposed construction and unpermitted placement of the two existing structures, the project would remove existing quarry spall sized native rock to a lower tidal elevation, and remove existing concrete and other manmade debris from the beach, in order to improve the subject property's shoreline habitat for forage fish spawning. The author of the report states that this mitigation was requested by a Washington Department of Fish and Wildlife Area Habitat Biologist. Aside from the relocation of rock and beach clean-up, no other in-water work is proposed, and no fill would be placed in water. The report considered all species that could be found in the project area that are listed as endangered or threatened under the federal Endangered Species Act, and concluded that, as proposed, the project would have "no effect" on any listed species or any species' critical habitat. The report indicates that, with the proposed beach restoration actions, the project would result in no net loss of shoreline ecological function. *Exhibits 1.D and 1.J.*

18. Addressing impacts to vegetation, the Applicant testified that there would be no expected vegetation disruption. The only construction that would touch the ground would be the new posts and the concrete landings at top and bottom of the stair structure. In the footprint of these two landings, reed grass would be impacted. Otherwise, the slope is vegetated in places with well-established English ivy and is otherwise fairly bare; the previous owner may have scraped the bank to try to build a path. The Applicant stated that he intends to revegetate the bare areas to protect slope stability. *Rod Sternagel Testimony.*
19. Appropriate County Staff would review the retaining wall, boathouse, and stair engineering prior to/during building permit review for the stairs. Planning Staff testified that the Community Planning and Economic Development Department, the Building Department, and the County Flood Plain Manager have reviewed the Applicants' submittals and have entered comments accepting these analyses into the County's project data base indicating acceptance of the zero net rise, engineered construction, and critical areas review requirements of the County. The required floodplain permit would be administratively issued following shoreline permit approvals, if they are granted. *Scott McCormick Testimony.*
20. Addressing the boathouse, Planning Staff indicated that the Floodplain Manager had requested that the structure be raised such that its floor was at least two feet above the base flood elevation.<sup>7</sup> This was made a recommended condition of project approval by Planning Staff; however, Staff also submitted the following: The boathouse sits at the bottom of the bluff and does not impact any upland views. All boathouses Staff has ever seen are located in a floodplain. Because the excess height of the very small structure doesn't impact views and is only 84 square feet in area, Planning Staff submitted that it

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<sup>7</sup> Pursuant to TCC 14.38.020(4), "Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the "one hundred-year flood."

doesn't affect neighbors. Staff submitted that the decision of whether to require the structure to be altered to be two feet above base flood elevation is up to the undersigned. *Exhibit 1; Scott McCormick Testimony*. Of note, the blue-ish boathouse is shown in photographs in the record not far from a wood-shingled structure at the other end of the flat bench behind the bulkhead. This wood-shingled structure is on the neighboring parcel. It has approximately the same setback as the Applicants' boathouse. *Exhibit 1.J, pages 30-33; Rod Sternagel Testimony*. A Google Maps site view shows additional, similarly sized structures at approximately similar setback from bulkheads on one or more parcels to the south. *Google Maps site view*.

21. In support of the applications, Applicant Rod Sternagel testified that prior to their purchase of the parcel in January 2020, the Applicants hired a geotechnical engineer to assess slope safety (the current geotech consultants who authored the engineering information in the record), who indicated that yes, shoreline access stairs could be safely built and that the parcel has a good, safe bulkhead. The previous owner had been there about 20 years and had presumably built the well-constructed boathouse and retaining wall on the lower shelf. Prior to purchase of the property, the Applicants' consultants assessed the boathouse and the retaining wall for building code compliance after the fact. The Applicants were unable to obtain any information from the previous owner or neighbors on conditions prior to retaining wall construction that led to its construction. It is at bottom of the bank where a cut existed, and possibly there had been natural erosion over the years. The Applicant assumed the wall had stopped sloughing of the slope face. One neighbor told him that the previous owner had upgraded the boathouse about 10 years ago. Mr. Sternagel testified that the boathouse is no taller than his neighbors' similarly unpermitted structures, or any typical boathouse in the region. The Applicant's kayak is a 26-foot shell, and the existing height of the boathouse accommodates it. He observed that all other boathouses in the area are at water level. He testified that since they bought the house, no king tide has come over the bulkhead or entered the boathouse. He asked for permission to keep the unpermitted features in the shoreline area, that their removal would be costly and potentially environmentally disadvantageous, and would reduce the utility and enjoyment of his expensive waterfront parcel. He requested not to be "punished" for the former owner's failure to obtain permits. *Rod Sternagel Testimony*.
22. Applicant consultants testified at hearing that in order to raise the boathouse two feet above base flood elevation, it would have to be lifted approximately eight feet above grade. To access such a structure, a ramp would be required, that in order to be useable would occupy a large portion of the flat shelf behind the bulkhead. A boathouse raised to this height would not be useable. The consultant opined that removal of the structures would affect slope stability and that greater risk of damage to the environment would occur than if the two structures are retained. Finally, the consultants noted that it is not habitable space, but storage space, and should it be destroyed in a flood, there would be very little risk of loss of life. Regarding the stairs, the consultants noted that safe shoreline access requires construction of a new access, and the proposed stairs are important to full, safe use of the waterfront property. *Testimony of Caralyn Valdeman and Rich Ohl*.



23. The Thurston County Environmental Health Division submitted that the project is consistent with the requirements of the Thurston County Sanitary Code and recommended approval. *Exhibit 1.K.*
24. The Squaxin Indian Tribe reviewed the proposal and did not have comments but requested that the Tribe be informed if there are discoveries of archaeological resources or human remains during construction. *Exhibit 1.L and 1.N.*
25. Thurston County's SEPA Responsible Official determined that the project is exempt from review under the State Environmental Policy Act as it relates to single family residential development. *Exhibit 1; TCC 17.09.055.*
26. Notice of application was issued June 2, 2021. Notice of public hearing was mailed to owners of property within 500 feet of the site and published in The Olympian on July 16, 2021. *Exhibits 1.A and 1.E.*
27. Public comment submitted by a neighboring property owner supported approval of the application. This neighbor noted that there is only one access road into the neighborhood, and that in the event that fire or other emergency blocked vehicular egress via that road, residents could become trapped. They have formed an emergency preparedness committee and the Applicants' shoreline has been designated as a gathering place for rescue purposes, because it is connected to another neighbor's shoreline area. The proposed stairs would make emergency egress by water much safer for the residents. This neighbor indicated support for retention of the existing unpermitted boathouse as a storage place for emergency supplies and as a shelter area. *Exhibit 2.*
28. At the conclusion of all testimony, Planning Staff recommended approval with conditions of both shoreline permits. *Exhibit 1; Scott McCormick Testimony.* Except for requesting to be excused from recommended condition 1, regarding raising the boathouse to be two feet above base flood elevation, the Applicant waived objection to the recommended conditions. *Rod Sternagel Testimony.*

## **CONCLUSIONS**

### **Jurisdiction**

The Hearing Examiner is granted jurisdiction to hear and decide applications for shoreline permits pursuant to RCW Chapter 36.70, WAC 173-27, TCC 19.04.010, and Section One, Part V of the Shoreline Master Program for the Thurston region. Pursuant to WAC 173-27-200, decisions to approve a shoreline conditional use permit must be submitted to the Department of Ecology for a final decision to approve, approve with conditions, or disapprove the permit.

### **Criteria for Review**

#### **Shoreline Substantial Development Permit (WAC 173-27-150)**

To be approved by the Hearing Examiner, the proposed shoreline substantial development permit must be consistent with:

- A. The policies and procedures of the Shoreline Management Act;
- B. The provisions of applicable regulations; and
- C. The Shoreline Master Program for the Thurston Region.

*A. Shoreline Management Act*

Chapter 90.58 RCW, the Washington State Shoreline Management Act (SMA) of 1971, establishes a cooperative program of shoreline management between the local and state governments with local government having the primary responsibility for initiating the planning required by the chapter and administering the regulatory program consistent with the Act. The Thurston County Shoreline Master Program (SMPTR) provides goals, policies and regulatory standards for ensuring that development within the shorelines of the state is consistent the policies and provisions of Chapter 90.58 RCW.

The intent of the policies of RCW 90.58.020 is to foster “all reasonable and appropriate uses” and to protect against adverse effects to the public health, the land, and its vegetation and wildlife. The SMA mandates that local governments adopt shoreline management programs that give preference to uses (in the following order of preference) that: recognize and protect the statewide interest over local interest; preserve the natural character of the shoreline; result in long term over short term benefit; protect the resources and ecology of the shoreline; increase public access to publicly owned areas of the shorelines; and increase recreational opportunities for the public in the shoreline. The public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state is to be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses that are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline, are to be given preference.

*B. Applicable regulations from the Washington Administrative Code*

WAC 173-27-140 Review criteria for all development.

- (1) No authorization to undertake use or development on shorelines of the state shall be granted by the local government unless upon review the use or development is determined to be consistent with the policy and provisions of the Shoreline Management Act and the master program.
- (2) No permit shall be issued for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

WAC 173-27-190 Permits for substantial development, conditional use, or variance.

- (1) Each permit for a substantial development, conditional use or variance issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140 (5)(a) and (b).

*C. Shoreline Master Program for the Thurston Region*

Because the proposed use is unclassified, the portions of the SMPTR containing use-specific policies and regulations do not apply. However, the following criteria apply to all uses:

SMPTR Section Two, Chapter V. Regional Criteria.

- A. Public access to shorelines shall be permitted only in a manner which preserves or enhances the characteristics of the shoreline which existed prior to establishment of public access.
- B. Protection of water quality and aquatic habitat is recognized as a primary goal. All applications for development of shorelines and use of public waters shall be closely analyzed for their effect on the aquatic environment. Of particular concern will be the preservation of the larger ecological system when a change is proposed to a lesser part of the system, like a marshland or tideland.
- C. Future water-dependent or water-related industrial uses shall be channeled into shoreline areas already so utilized or into those shoreline areas which lend themselves to suitable industrial development. Where industry is now located in shoreline areas that are more suited to other uses, it is the policy of this Master Program to minimize expansion of such industry.
- D. Residential development shall be undertaken in a manner that will maintain existing public access to the publicly-owned shorelines and not interfere with the public use of water areas fronting such shorelines, nor shall it adversely affect aquatic habitat.
- E. Governmental units shall be bound by the same requirements as private interests.
- F. Applicants for permits shall have the burden of proving that a proposed substantial development is consistent with the criteria which must be met before a Permit is granted. In any review of the granting or denial of an application for a permit as provided in RCW 90.58.18.180 (1), the person requesting the review shall have the burden of proof.
- G. Shorelines of this Region which are notable for their aesthetic, scenic, historic, or ecological qualities shall be preserved. Any private or public development which would degrade such shoreline qualities shall be discouraged. Inappropriate shoreline uses and poor quality shoreline conditions shall be eliminated when a new shoreline development or activity is authorized.
- H. Protection of public health is recognized as a primary goal. All applications for development or use of shorelines shall be closely analyzed for their effect on the public health.

SMPTR Section 3, Policies And Regulations For Use Activities

*IV. Boating Facilities*

*B. Policies*

*Covered Moorage:*

18. The size of the covered moorage should be the minimum necessary for the use proposed.
19. Covered moorage over the water should be discouraged in tidal waters and prohibited in fresh water.
20. Covered moorage should be designed and located to maintain view corridors and blend with the surrounding development. (page 49)

#### C. Regulations

##### *Covered Moorage:*

30. A boathouse for residential property is permitted landward of the ordinary high-water mark. It shall not exceed one hundred (100) square feet unless the size of the applicant's boat demands a larger structure. The structure shall not exceed ten (10) feet in height.
31. Covered moorage is prohibited over fresh water. (page 53)

#### SMPTR Section Three -- Policies And Regulations For Use Activities (page 54)

##### D. Environmental Designations and Regulations Suburban and Rural Environments.

2. Suburban and Rural Environments. Marinas, boat ramps, piers, docks, boathouses, mooring buoys, recreational floats and marine railways are permitted subject to the Policies and General Regulations.

#### SMPTR Section Three , Chapter XVI. Residential Development (page 98)

##### B. Policies

1. Residential development on shorelines and wetlands should be planned with minimum adverse environmental and visual impact.
7. Removal of vegetation should be minimized and any areas disturbed should be restored to prevent erosion and other environmental impacts.
8. Waste materials from construction should not be left on shorelines or beaches but stored upland.
10. Residential structures should be located to minimize obstruction of views of the water from upland areas. The intent of this policy is to encourage the retention of views in and through new residential developments. This policy is not intended to prohibit the development of individual shoreline lots simply because it may minimize or eliminate views from upland properties.
11. Residential development along shorelines should be designed and sited to make unnecessary such protective measures as filling, beach feeding, bulkheading, shoreline berms, construction groins or jetties, or substantial grading of the site.

##### C. General Regulations

3. Residential development proposals shall identify those areas of natural vegetation, retention and erosion control measures.

4. Residential development shall be arranged and designed to protect views, vistas, aesthetic values to protect the character of the shoreline environment and the views of neighboring property owners.
5. Residential structures shall not exceed thirty-five (35) feet above average grade unless it can be shown through the variance process that a higher structure will not interfere with visual access to the water from landward or adjacent properties.
11. All stair towers meeting one of the following conditions must be designed by a licensed civil engineer:
  - a. The location proposed is mapped as "unstable" or "Intermediate Stability" in the Washington Coastal Zone Atlas prepared by the State Department of Ecology.
  - b. All stair towers 24 feet in height or greater.
  - c. Other instances where the building official determines that site conditions dictate the preparation of plans by a licensed civil engineer.
12. Stair towers shall be designed to minimize obstructing the views enjoyed by adjoining residences.
16. Each shoreline environment has a setback requirement for structures, from the ordinary high-water mark. Uncovered porches, decks or steps may project into the required setback provided such structures are no higher than thirty (30) inches above the average grade. The setback in each environment may be increased or decreased by the Administrator in the following way:
  - a. Increased Setback Requirements. The setback may be increased if the building area or setback areas have a slope of greater than forty percent (40%), severe slope instability exists or a feeder bluff is present. (Refer to the Coastal Zone Atlas of Washington, Volume 8, to identify these areas on marine shorelines.)
  - b. Decreased Setback Requirements. The setback may be relaxed provided that existing structures within three hundred (300) feet of each property line infringe on the setback. In such cases, the setback shall be determined by averaging the setback's existing structures within three hundred (300) feet along the waterfront of each property line. This shall not be construed to allow residential development over water. The setback shall be the minimum required in the environment on properties within three hundred (300) feet where residences do not exist for purposes of averaging.

#### D. Environmental Designations and Regulations

##### 3. Rural Environment

- a. Residential densities in this environment shall not exceed two dwelling units per acre, regardless of housing type.
- b. For shoreline lots which are not clustered, the minimum lot size shall be twenty thousand (20,000) square feet of dry land area and the minimum lot width shall be one hundred (100) feet (measured at the ordinary high water

mark and at the building setback line). Lot coverage with impervious surfaces in this environment shall not exceed thirty percent (30%).

- c. The basic setback for residential structures shall be fifty (50) feet from the ordinary high-water mark and/or comply with General Regulation #16.
- d. Land clearing and grading is permitted after obtaining a shoreline permit, an exemption from the Administrator, or a land clearing permit from the local jurisdiction for preparation of new building sites. A buffer of existing ground cover must be maintained in the area between the ordinary high-water mark and twenty (20) feet from the structure. The ground cover in the buffer may be disturbed only after approval of the Administrator where one or more of the following conditions apply:
  - (1) A building site has been approved in the buffer area and an erosion control and vegetation protection plan has been approved by the Administrator.
  - (2) The applicant wishes to landscape the area with other vegetation and has an erosion control plan approved by the Administrator.
  - (3) When the construction of access pathway is proposed for to the shoreline, vegetation will be removed only within the boundaries of constructed access pathway.

*Shoreline Conditional Use Permit (WAC 173-27-160)*

- (1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:
  - (a) That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;
  - (b) That the proposed use will not interfere with the normal public use of public shorelines;
  - (c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;
  - (d) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
  - (e) That the public interest suffers no substantial detrimental effect.
- (2) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.
- (3) Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency

with the requirements of this section and the requirements for conditional uses contained in the master program.

- (4) Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section.

### **Conclusions Based on Findings**

#### *A. Shoreline Substantial Development Permit*

1. As conditioned and with approval of the conditional use permit, the proposal would be consistent with the policies and procedures of the Shoreline Management Act. Given the residential zoning and development of the subject property and surrounding parcels, provision of safe private recreational access to the shoreline of the property via new stairs, and retention of the previously constructed retaining wall and boathouse, would be supportive of and consistent with “reasonable and appropriate use” of the subject shoreline. With the proposed mitigations and with the conditions adopted, the project would be consistent with the control of pollution and prevention of damage to the natural environment. *Findings 3 through 23, 27, and 28.*
2. As conditioned and with approval of the conditional use permit, the project would comply with applicable regulations in the Washington Administrative Code. The unclassified retaining requires a conditional use permit pursuant to WAC 173-27-160. No portion of the wall, the boathouse, or the stairs would exceed 35 feet above average grade. *Findings 9, 10, 11, 12, 13, and 14.*
3. As conditioned, and with approval of the conditional use permit, the proposal to construct shoreline access stairs and to retain the existing retaining wall and boathouse in their current condition and location, would be consistent with the applicable goals and regulations in the SMPTR.
  - a. Addressing regional policies: The project does not affect public access to shorelines. As conditioned, construction of the stairs and retention of the unpermitted structures would be protective of water quality through implementation of best management practices during construction and through use of environmentally sensitive materials. The project is not industrial, proposed by the government, not over or in-water, and not proposed on a shoreline that is acknowledged by the County as having exceptional aesthetic characteristics or importance. The County’s Environmental Health Division has recommended approval. *Finding 10 through 23, 27, and 28.*
  - b. Addressing policies and regulations for boating facilities use activities: The 84 square foot size of the boathouse satisfies the SMPTR’s maximum and is just large enough to accommodate the Applicants’ kayak. The boathouse is not over fresh water (or marine water) and, located at the base of a 30-foot tall bluff, it is not visible to any upland properties meaning it has no impacts to view corridors. It has been present for at least 10 years and has for some time been an established part of the view of the subject shoreline. An as-built plan for the boathouse has been stamped by a licensed engineer representing that in its current condition, it is built to code. While the

structure is over 10 feet in height, it has been present on-site for more than 10 years without apparent detriment to or complaint from neighboring properties. *Findings 10 through 22.*

- c. Addressing policies and regulations for residential use activities in the Rural shoreline environment: No vegetation would be impacted in keeping the boathouse and retaining wall in place, and only minimal amounts of shoreline vegetation would be impacted through placement of the two small concrete landings at the top and bottom of the stairs. The portion of the slope that would be shaded by the stairs does not currently contain high value habitat, and thus none would be affected. All three structures would be behind the existing concrete bulkhead and no new protective structures would be required. No elements of the project would be taller than 35 feet above grade. The stair tower has been designed by a licensed engineer, and the boathouse and retaining wall have been reviewed and made the subject of engineered as-built plans that show they are safe as/in the locations constructed and conform to applicable building codes. The balance of evidence in the record tends to suggest that the structure would not be the source of significant harm to life or to off-site improvements in the vicinity if it were to fail in high tides or storms. The Rural shoreline environment requires a setback for both the retaining wall and boathouse of not less than 50 feet from ordinary high water mark. Both structures are considerably closer than that to the OHWM, given that the flat area at the base of the bluff is only approximately 14 feet deep. The best information available suggests that to bring the boathouse into compliance with the floodplain management requirement to be at least two feet above base flood elevation, the structure would have to be raised at least eight feet above grade. The Planning Department declined to make a recommendation as to whether the structure should be required to be brought into conformance with either the 10 foot height limit, or raised to be two feet above the base flood elevation requirement, except to note that if the structure were altered to meet either or both standards, it would cease to be functional for the purpose of storing small boats. The SMPTR Residential Use General Regulation #16 gives the Administrator authority to reduce the setback from the OHWN for residential structures such that the setback provided meets the average minimum setback on properties within 300 feet of the proposed structure. The record does not contain evidence of all structures within 300 feet; however, there is another residential structure (small storage shed/boathouse) on the same 14-foot deep shelf landward of the shared bulkhead on the neighboring parcel, which has approximately the same setback as the Applicants' unpermitted structures. Given the discretion conferred in General Regulation #16, the presence of the neighbors' additional structure with reduced setback, and additional similar structures within several hundred feet to the south, the reduced setback from OHWM for both retaining wall and boathouse should be allowed to be maintained in their existing conditions and locations. *Findings 10 through 22, 27, and 28.*
- i. *Shoreline Conditional Use Permit addressing the Retaining Wall*
  1. As described in Conclusions A.1 and A.3 above, the proposed use is consistent with the policies of RCW 90.58.020 and the SMPTR.



2. Constructed wholly on private residential property, the project would not interfere with normal public use of public shorelines. *Findings 3, 4, 5, 10, and 12.*
3. The use and design of the retaining wall would remain compatible with other authorized uses existing or planned within the area. The wall, which was reviewed for engineering sufficiency and determined to be of safe design and construction, supports the unstable marine bluff, which use is consistent with permitted residential use of the shoreline property. *Findings 3, 4, 5, 10, 12, and 15.*
4. With implementation of the mitigation plan, the proposal would cause no significant adverse effects to the shoreline environment. Potential effects on listed species of wildlife and associated critical habitat were considered and determined to be unlikely to the point of a “no effect” determination. *Findings 17, 18, and 19.*
5. As conditioned, the public interest would suffer no detrimental effect. Undisputed scientific opinion in the record indicates no net loss of shoreline ecological functions if the unpermitted retaining wall is retained. The project incorporates the design and construction recommendations of a geotechnical engineer. Conditions of approval address potential impacts to shoreline ecology through prohibition of pesticide use, implementation of erosion control prior to construction, and the requirement to obtain building permits prior to stair construction. *Findings 17, 18, 19, 21, 27, and 28.*
6. Cumulative impacts have been appropriately considered. With implementation of the proposed best management practices during construction, use of environmentally safe materials, and beach clean-up and quarry spall relocation, the impacts of the proposal would be negligible and would remain consistent with the policies of the Shoreline Management Act if aggregated with similar shoreline development elsewhere. *Findings 10 through 21, 27, and 28.*

## DECISION

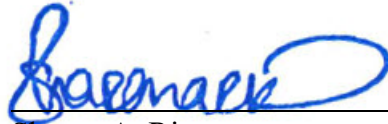
Based on the preceding findings and conclusions, the requests for shoreline substantial development permit and shoreline conditional use permit to construct shoreline access stairs and to keep an existing unpermitted boathouse and unpermitted retaining wall in their current locations and conditions at 2329 Schirm Loop Road NW in Olympia are **GRANTED** subject to Washington State Department of Ecology final approval of the shoreline conditional use permit and subject to the following conditions:

1. The Applicants shall obtain any required building permit from Thurston County prior to construction of the shoreline access stairs. Engineered plans are required.
2. No herbicides shall be used to control vegetation on the slope.
3. Proper erosion and sediment control practices shall be used at the construction site and adjacent areas to prevent upland sediments from entering the water body. All areas disturbed or newly created by construction activities shall be seeded, vegetated, or given

some other equivalent type of protection against erosion. Erosion control best management practices include, but are not limited to, installation of silt control fences and bank stabilization material.

4. All development shall be in substantial compliance with drawings and site plan submitted and made part of this staff report. Any expansion or alteration of this use will require approval of a new or amended Shoreline Substantial Development Permit. The Development Services Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
5. Construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140 (5)(a) and (b).

Decided August 17, 2021.



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Sharon A. Rice  
Thurston County Hearing Examiner

**THURSTON COUNTY**  
**PROCEDURE FOR RECONSIDERATION AND APPEAL**  
**OF HEARING EXAMINER DECISION TO THE BOARD**

**NOTE:** THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.\* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

**The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).**

**A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)**

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

**B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)**

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Community Planning & Economic Development Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

**C. STANDING** All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

**D. FILING FEES AND DEADLINE** If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$777.00** for a Request for Reconsideration or **\$1,054.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

\* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.



<b>Project No.</b> _____ <b>Appeal Sequence No.:</b> _____
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**Check here for:**                    **RECONSIDERATION OF HEARING EXAMINER DECISION**

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

**Check here for:**                    **APPEAL OF HEARING EXAMINER DECISION**

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW \_\_\_\_\_  
 on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, as an APPELLANT in the matter of a Hearing Examiner's decision rendered on \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_ relating to \_\_\_\_\_

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1.     Zoning Ordinance \_\_\_\_\_
2.     Platting and Subdivision Ordinance \_\_\_\_\_
3.     Comprehensive Plan \_\_\_\_\_
4.     Critical Areas Ordinance \_\_\_\_\_
5.     Shoreline Master Program \_\_\_\_\_
6.     Other: \_\_\_\_\_

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

**STANDING**

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

\_\_\_\_\_  
APPELLANT NAME PRINTED

\_\_\_\_\_  
SIGNATURE OF APPELLANT

Address \_\_\_\_\_

\_\_\_\_\_  
Phone \_\_\_\_\_

**Please do not write below - for Staff Use Only:**

Fee of  \$777.00 for Reconsideration or \$1,054.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_  
 Filed with the Community Planning & Economic Development Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_.