

**SKAGIT COUNTY
OFFICE OF THE HEARING EXAMINER**

re: Appeal of Leveck of 3/25/26
Administrative Order to Abate Violation of
Shoreline Master Program

APL 26-0003

Appeal of CODE 25-0169

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND DECISION**

SUMMARY OF APPLICATION AND DECISION

Application: The Appellants, Mark and Colleen Leveck, are appealing the Administrative Order issued March 25, 2026, by Skagit County Department of Planning and Development Services (“Department” or “PDS”), in which it is alleged they have violated §12.02 of the Shoreline Master Program regarding reconstruction outside the regulations of the program.

Decision: The Administrative Appeal of CE25-0169 is denied.

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted and evidence presented at a properly noticed public hearing.

FINDINGS OF FACT

I.

Appellants/Property Owners: Mark Leveck
2105 N. 57th St.
Seattle, WA 98103

Attorney/Agent: Adriena X. Clifton
Clifton Law Office, PLLC
PO Box 2862
Kirkland, WA 98083

Site Address: 33711 South Shore Drive
Mount Vernon, WA 98274

Assessor's Parcel No(s) 938-001-123-0001 / P6601

Lot Size: 0.50 acres

Zoning: Rural Village Residential (RVR)

Shoreline Presence: Rural Residential

Critical Areas Presence: Fish & Wildlife Habitat Conservation Act (SCC 14.24.500(1))

Application Date: Appeal *filed*: April 3, 2026

Notice Information: Order to Abate mailed, March 25, 2026
Date received, March 30, 2026

Primary Authorizing Codes, Policies, Plans, and Programs:

- Revised Code of Washington (RCW)
 - RCW 36.70A, Growth Management Act
 - RCW 36.70B, Local Project Review
- Washington Administrative Code (WCC)
- Skagit County Code (SCC)
 - SCC 14 – Unified Development Code
 - SCC 14.02 – General Provisions
 - SCC 14.02.070 – Office of the Hearing Examiner
 - SCC 14.04 – Definitions
 - SCC 14.06 – Permit Procedures
 - SCC 14.09 – Enforcement Procedures
 - SCC 14.09.120 – Violations defined
 - SCC 14.09.290 - Appeals
 - SCC 14.09.340 - Abatement
 - SCC 14.11 – Zoning
 - SCC 14.11.300 – Rural Village Residential
 - SCC 14.24, Critical Areas
 - SCC 14.24.060 – Authorizations required
 - SCC 14.48, Shorelines
 - SCC 15, Buildings and Construction

- SCC 16, Environment
- Skagit County Shoreline Master Program of 6/29/76, as amended by Skagit County Board of Commissioners through 7/10/95 (“SMP”)
- Skagit County Comprehensive Plan 2024-2025, as adopted by Skagit County Board of Commissioners on 6/23/25 (“SCP” or “Comprehensive Plan”)
- Skagit County Hearing Examiner’s Rules of Procedure (“SCRE”), as authorized by Skagit County Commissioners per Resolution #R20240280 on 12/16/24

Hearing Date: August 14, 2026

Participating Parties of Record:

Jason D’Avignon, Deputy Prosecutor
Prosecuting Attorney’s Office
Courthouse Annex
700 S. 2nd Street, Suite 300
Mount Vernon, WA 98273

Adriana X. Clifton, Attorney
Clifton Law Office, PLLC
PO Box 2862
Kirkland, WA 98083

Randy Johnson, Building Official
Skagit County Planning & Development Services
1800 Continental Place
Mount Vernon, WA 98273

Greg Adams, Code Enforcement Officer
Skagit County Planning & Development Services
1800 Continental Place
Mount Vernon, WA 98273

Leah Forbes, Sr. Natural Resources Planner
Skagit County Planning & Development Services
1800 Continental Place
Mount Vernon, WA 98273

Hearing Examiner Exhibit List:

1. Leveck Appeal Statement Final, dated April 3, 2026
2. Additional Information from EPL, dated April 3, 2026
3. Receipt, dated, April 3, 2026
4. Signature Mark Leveck, dated April 3, 2026
5. Pre Hearing Order Leveck, dated April 29, 2026
6. Corrected Prehearing Order Leveck, dated April 29, 2026

7. Request to Reschedule, dated May 5, 2026
8. Order on Ex Parte Contact, dated May 5, 2026
9. PDS Filing Declaration of Jeane Aungst, dated April 8, 2026
10. PDS Certificate of Service, dated April 8, 2026
11. Departments records
 - a. A1. Administrative Order to Abate Code-2025-0169, dated March 25, 2026
 - b. B2. AOA USPS Tracking
 - c. C3. Plan Snapshot Report APL 2026-0003
 - d. D4. Code Case Activity Report CODE-2025-0169
 - e. E5. Photos
 - f. F6. Residential Building Permit Application BP24-0083, dated January 19, 2024
 - g. G7. Site Plan & Critical Areas BP24-0083, dated January 19, 2024
 - h. H8. Critical Area Site Plan BP24-0083, dated January 19, 2024
 - i. I9. Exemption from Shoreline Substantial Development Permit Requirement BP24-0083, dated February 21, 2024
 - j. J10. Approved Plans BP24-0083, dated February 23, 2024
 - k. K11. 250915 - 1018 FW: Boathouse
 - l. L12. 250915 - 1043 RE: Boathouse
 - m. M13. 250915 -1147 RE: Boathouse
 - n. O14. 250915-1205 FW Permit No. BP24 - 0083 Boat House Repair
 - o. P15. 250915-1518 RE: Boathouse 2
 - p. Q16. 250918-0947 Lake CavanaughCode-2025-0169
 - q. R17. 250918-1001 RE: Lake Cavanaugh Code-2025-0169
 - r. S18. 250918-1009 RE: Lake Cavanaugh Code-2025-0169
 - s. T19. 251219-0513 RE: Code-2025-0169
 - t. U20. 260325-0908 RE: Code-2025-0169- 1
 - u. V21. 260325-0948 RE: Code-2025-0169
 - v. W22. 260325-1040 RE: Code-2025-0169 3
 - w. X23. 260325-1041 FW: Code-2025-0169
12. PDS Prehearing Memo
13. PDS filling Declaration, dated May 8, 2026
14. PDS Certificate of Service, dated May 8, 2026
15. 1st Post Hearing Order, dated May 15, 2026
16. Compliance Order Laveck APL26-003, dated July 2, 2026
17. Amended Prehearing Memo , dated July 10, 2026
18. 2nd Post Hearing Order, dated July 10, 2026
19. PDS Prehearing Brief, dated July 29, 2026
20. PDS Staff Report – 7/29/2026
21. **A. & B.** Two Photos Submitted by Department at Hearing - date unknown, *filed* 8/14/26 – Not admitted

II.

At the hearing, the parties indicated in concurrence with the hearing examiner that there did not seem to be a substantial dispute about the background and procedural facts, aside from valuation numbers. The disputes were primarily one of law.

The Appellant, Leveck, did not appear in order to give testimony; all oral testimony at the hearing came from Department officials, and supplements the documentary record.

III.

At issue is the repair of a boat house which was considered a pre-existing non-conforming structure.

The property where the alleged activity has taken place is on the shores of Lake Cavanaugh. The property is zoned Rural Village Residential and within 200 feet of the designated shoreline area, and the boathouse is within 35 feet of the ordinary high-water mark (OHWM) of the shoreline.¹

In January 2024, Leveck applied for a building permit to “[r]epair boat house and replace siding. Install new exterior access door.”² The site plan noted that scope of work was:

- Repair of existing boathouse with the following work:
- Replacement of siding and roof sheet metal with new Hardi siding and standing seam metal roof.
- Addition of door with header
- Replacement of existing window and garage door.³

In February of 2024, Leveck obtained a statement of exemption from a Shoreline Substantial Development Permit on February 21, 2024, for “Repair and maintenance of the existing boathouse to include replacement of the siding and roofing materials, replacement of the garage door, replacement of the window, and installation of a new access door.”⁴

As condition of his exemption Leveck was required to:

1. “comply with all policies and regulations of the Skagit County Shoreline Management Master Program and the Shoreline Management Act RCW 90.58;”⁵ and
2. “strictly adhere to the approved project information and site plan submitted for this proposal.”⁶

In the event of a modification, he was required to “request a permit revision prior to the start of construction.”⁷

¹ Ex. 11.h

² Ex. 11.f at 1

³ Ex. 11.g at 1-2

⁴ Ex. 11.i at 1

⁵ Ex. 11.i at 1

⁶ Ex. 11.i at 2

⁷ Ex. 11.i at 2

With the old siding removed, the structure was nominally existent in this picture, showing the structure still with the dilapidated old roof:⁸



Leveck did not strictly adhere to the project information and site plan and made a number of admissions to these facts in writing directly or through agents: “During the repair process, [Leveck] discovered that more structural 2x4s would need to be replaced; the level of rot created a structural hazard.”⁹ “The roofing and siding were compromised, leading to water intrusion that caused some damage to the underlying wooden framing. Without the addition of new structural members (stud framing and rafters), the deterioration would have eventually rendered the structure unsafe.”¹⁰ “[T]he repairs undertaken were not elective but essential to preserve the structural integrity ... [and were] necessary to meet Building Code requirements called out in the permit #BP24-0083.”¹¹

⁸ Ex.11.e at 1

⁹ Ex. 11.u at 4

¹⁰ Ex. 11.u at 12

¹¹ Ex. 11.u at 12

The evidence shows that virtually all extant framing was replaced, with Greg Adams testifying that the old framing appeared to be just nailed back on to the old framing, giving the cosmetic appearance of keeping the old structure in place, as reflected in the evidence, which shows old vertical framing not touching the ground being affixed to new vertical framing, and new header beams with old framing affixed to them as a cover:¹²



¹² Ex. 11.e at 5-9



Like the Ship of Theseus, the building has been effectively replaced as the entire assembly has been effectively replaced, not merely repaired.

It is undisputed that appellant undertook significant work on the boathouse, or that this work was outside the scope of the permit they received. Despite these modifications to the approved plan, the appellant did not seek a revision of the permit.¹³ There was no persuasive evidence of any emergency to the degree that would have prevented the appellant from getting permission from the Department pursuant to the granted permit. There was no persuasive evidence that any defects in the framing would not have been discoverable at the time of seeking the exemption and building permit.

In August 2025, the Department met with Leveck and informed him that he had exceeded the scope of his permit and the values of allowable repairs and would need to relocate the structure outside of the shoreline buffers.¹⁴ Leveck disagreed with the Department's reliance on the tax assessment of \$1,400 to determine the value and asserted the replacement cost should be determined by material

¹³ Ex. 11.u at 4

¹⁴ Ex. 11.a at 1

and labor costs to actually replace the structure, which he determined has an average cost of \$28,490.¹⁵ The actual work cost \$11,505.¹⁶

On March 25, 2026, after Leveck indicated they would not relocate the structure, the Department issued an Administrative Order to Abate. It stated a single violation:

14.48.010 Shoreline Management Master Program - Chapter 12.02 Non-conforming Use of, or Structures on Shoreline (4) If damaged to an extent exceeding 75% of replacement cost, it is reconstructed only in accordance with regulations of this program for the shoreline area of its location.¹⁷

The order to abate also clearly required the removal or relocation of the boathouse by April 29, 2026.¹⁸

Leveck timely filed an appeal on April 3, 2026, of the Order to Abate.¹⁹

Leveck did not remove or relocate the boathouse by April 29, 2026.

IV.

The Skagit County Planning and Development Services Staff (the “Department”) have issued factual findings in a “Staff Report re: Appeal of Administrative Order” (“Staff Report” **Ex. 20**).

The Appellant or any witnesses on the appellant’s behalf, did not appear and add any oral or filed facts to challenge or impeach the facts as laid out, except to rely on e-mail already in the record to support their position as to the facts (**Ex. 11 (k. thru m.)**).

The Findings of Fact and Conclusions of Law in the Staff Report, a copy of which is attached hereto and incorporated herein, are supported by the record as a whole and are hereby adopted and incorporated herein by this reference, except where explicitly contradicted by the findings herein.

V.

There were no written public comments received prior to the hearing or during the public comment period.

VI.

SCHE §14 grants parties the right to object to evidence and to cross-examine. In the case at hand, with full knowledge of the evidence being admitted, no objection by the applicant or the

¹⁵ Ex. 11.a at 1; Ex. 11.u at 16

¹⁶ Ex. 11.a at 1; Ex. 11.u at 12

¹⁷ Ex. 11.a at 2

¹⁸ Ex. 11.a at 2

¹⁹ Exs. 1, 3, and 13

Department was made to any of the 20 exhibits that were pre-filed and they were admitted into the record. Sustaining the objection of the appellant, **Ex. 21** was not admitted both for foundation and because it was not disclosed earlier when there was opportunity to do so and exhibits were disclosed.

In **Ex. 17** the parties identified and disclosed three additional potential exhibits in the possession of the Appellant, but they were never filed or entered on their own into the record. The proposed “24” in that document seems to be reflected in **Ex. 11.u at 16**. The proposed “25” in that document seems to be reflected in **Ex. 1 at Sub.Ex. C**. The proposed “26” in that document seems to be reflected in **Ex. 1 at Sub.Ex. E**.

Generally, oral testimony made under oath at the hearing supplemented and gave context to the documentary evidence in the record and is reflected in the factual findings made herein.

VII.

Some testimony and argument from both sides had to do with bad acts not cited for in the Order of Abatement, these were disregarded by the Hearing Examiner as not having bearing on the violation as alleged. It was noted in the hearing that those acts could have and still can be cited civilly or the subjects of new administrative orders of abatement and that they remain uncured.

VIII.

Any Conclusion of Law below 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.

General Jurisdiction & Regulation

A “violation” which there can be administrative enforcement action is a failure to comply with SCC Title 14, 15, or 16, including failure to comply with a permit or an administrative order issued pursuant to SCC Title 14, 15, or 16;²⁰ this includes administrative orders to compel correction of violations and payment of penalties.²¹ Specifically for this situation, and in addition to or as an alternative to any other judicial or administrative remedy, the Director may order any person who creates or maintains a violation to correct the violation through an Administrative Order to Abate Violation under

²⁰ SCC 14.09.120(1)

²¹ SCC 14.09.220(1)(a).

the Director's abatement authority.²² An Order to Abate Violation is an enforcement action is an administrative order under SCC 14.09.²³

An Administrative Order to Abate must contain a statement of the specific code section or other requirements that have been violated and the corrective action to take.²⁴

Appeals of administrative orders issued per SCC 14.09 are Type 1 cases that appeals of which are heard by the Hearing Examiner.²⁵ The appellants bear the burden of proving that the issuance of the order was "clearly erroneous."²⁶ To find the Department's decision clearly erroneous, the Hearing Examiner must be "left with the definite and firm conviction that a mistake has been committed."²⁷

Shoreline Jurisdiction & Regulation

The property is zoned Rural Village Residential and within 200 feet of the designated shoreline area; therefore it is subject to the requirements of the Skagit County Shoreline Master Program (SMP) under the Rural Residential designation.²⁸ The boathouse itself is further within the 100-foot buffer²⁹ and 35-foot accessory use residential setback.^{30, 31} The requirements of the SMP and the need for an application by the developer of the project shall apply to every person, natural or unnatural, business entity, association, or government entity who wishes to develop or make use of lands, wetlands, and waters which fall under the jurisdiction of the SMA; real property ownership is not a requirement.³²

The Director of the Department and their delegates have explicit authority to enforce the SMP not only through it being incorporated through 14.48 into Title 14 enforcement actions, but also through the SMP itself.³³

²² SCC 14.09.140 and 14.09.340(1); *see also* SCC 15.04.040

²³ SCC 14.09.340(1)

²⁴ SCC 14.09.220(2)(d).

²⁵ SCC 14.06.150-1 (at "Administrative order issued per SCC Chapter 14.09") and 14.09.290

²⁶ SCC 14.06.410(6)

²⁷ Lauer v. Pierce County, 173 Wn.2d 242, 253 (2011) (*quoting* Phoenix Dev., Inc. v. City of Woodinville, 171 Wn.2d 820, 829 (2011)).

²⁸ SMP 6.04(2); Ex. 11.1 at 1.

²⁹ SMP 7.18 at Table U

³⁰ SMP 7.13 at Table RD

³¹ Ex. 11.h

³² *See generally* SMP Chapter 2

³³ SMP 8.02, *et. al.*

The Hearing Examiner has authority to hear and decide requests for shoreline substantial development permits,³⁴ shoreline conditional use permits,³⁵ and shoreline variances,³⁶ as well as appeals of administrative enforcement actions.³⁷

All of these matters fall under the SMP, which directs:

...the [SMA] is exempted from the rule of strict construction; the [SMA] and this program shall therefore be liberally construed to give full effect to the purposes, goals, objectives, and policies for which the [SMA] and this Master Program were enacted and adopted, respectively.³⁸

II.

The purpose of the Rural Village Residential district is to preserve the residential character of those portions of Rural Villages designated for residential use, while allowing for limited nonresidential uses appropriate to the village through the Special Use permit process. Allowed densities within this district are based on the availability of public water and on environmental considerations.

III.

Shorelines and Pre-Existing Uses: Scope and Valuation – Appellant’s Primary Appeal Bases

Development on the shoreline requires either a Shoreline Substantial Development Permit (“SSDP”) or a Statement of Exemption from a SSDP.

No substantial development... shall be undertaken by any person on shorelines without first obtaining a shoreline permit from Skagit County; PROVIDED, that such a permit shall not be required for the following classes of substantial development exempted from the shoreline permit requirement; PROVIDED FURTHER, that a statement of exemption as provided for in Section 2.06 of this program shall be obtained from the Administrator prior to beginning development if uncertainty exists regarding qualification for the exemption;

a. Normal maintenance or repair of existing structures or development, including damage by fire, accident, or elements; PROVIDED that the new development or structure is essentially the same as the original in location, size, design, function, and use;

...³⁹

Repairs to structures on the shoreline do not require a SSDP, but an exemption.

³⁴ SCC 14.06 *et. al.*, 14.06.050(1)(b), 14.06.120; SMP §§8.07(1)(a), 9.06, and 9.07

³⁵ SCC 14.06 *et. al.*, 14.06.050(1)(b), 14.06.120; SMP §§8.07(1)(a), 9.06, 9.07, and 11.02

³⁶ SCC 14.06 *et. al.*, 14.06.050(1)(b), 14.06.120, and 14.10.020(3); SMP §§8.07(1)(a), 9.06, 9.07, and 10.02

³⁷ SMP 8.07(2)(d)

³⁸ See also RCW 90.58.900

³⁹ SMP 2.05

Non-conforming uses and structures have their own chapter of the SMP dedicated to them “for the control and eventual elimination of shoreline uses and structures which are non-conforming” requiring additional considerations.⁴⁰

In this case, this boathouse could only have been repaired or replaced under a SSDP or a Statement of Exemption; in this case the appellant did acquire an exemption and building permit under that latter path.⁴¹ That permit had conditions and they were not complied with by the Appellant. Including to “strictly adhere to the approved project information and site plan submitted for this proposal.” Not strictly adhering to the proposal itself is a violation of the SMP in a variety of manners and puts their development outside of the scope of the two allowable paths as here was no SSDP and the appellant was now outside the scope of their applied for exemption. Having exceeded the scope of their permit without seeking revision as was allowed under the permit,⁴² and having been documented in doing so and cited with the AoA, the appellant argues two primary things in this thrust of their appeal: 1.) that this was a mere repair consisting of normal maintenance or emergency construction to protect property from damage by the elements; and 2.) that the repairs performed did not trigger the reconstruction threshold value they were cited for because the Department incorrectly used the actual value of the structure and not the cost of labors and materials to replace.⁴³ The first argument is factually incorrect based on the findings above. The second argument warrants greater legal review of the SMP’s provisions regarding non-conforming structures and their repair or replacement.

Under the heading “*Non-conforming Use of or Structures on Shorelines*”, subsection (4) notes: “[The non-conforming use of or structures on shorelines may be continued provided that] [i]f damaged to an extent exceeding **75% of replacement cost**, it is reconstructed only in accordance with regulations of this program for the shoreline area of its location.”⁴⁴

Under the heading “*Reconstruction*” it is noted that if the structure is a pre-existing nonconforming one and in need of restoration and repairs, the damages to be repaired are limited to no more than “**75% of the existing assessed value** of the building or structure for tax purposes.”⁴⁵

There is what on a *prima facie* glance at the SMP is an inherent conflict in the SMP, as reflected in the emphasized portions of the code above, and the at the heart of the appellant’s argument. The appellant argues that the Department erred by using the assessed value instead of the replacement

⁴⁰ SMP 12.01

⁴¹ Ex. 1 at Sub. Ex. A

⁴² Ex. 11.i at 2

⁴³ See Ex. 1 at 5-6 and argument at the hearing

⁴⁴ SMP 12.02(4), **emphasis** added

⁴⁵ SMP 12.03, **emphasis** added

cost.⁴⁶ The Department's AoA cites to SMP 12.02(4) on page 2, which talks of 'replacement cost,' but on page 1 and elsewhere in the record up to the day of the hearing the Department has held firm that the correct interpretation is "assessed value." An initial review would seem to favor the Appellant; after all, the two sections of code use explicitly different language, and presumably the drafters of the SMP had intent to use differing language with purpose. However, the language is otherwise identical in effect and purpose if not syntax. While the Department argues that the more specific language is the Reconstruction provision and that is what consequently should be examined,⁴⁷ they raise a more persuasive and straightforward answer that the Hearing Examiner cannot deny. The SMP is inherently a part of Title 14 through SCC 14.48, and where terms need to be defined there is a legislative directed source for this, and the Board of County Commissioners has defined "replacement" and how to determine if something is being replaced.

"Replacement" means to put something new in place of something existing as a substitute, such as a building or structure, or part of a building or structure. When the value or extent of the work proposed, as determined by the Department, exceeds 75 percent of the preconstruction value or extent of the building, structure or assembly, the building, structure or assembly is deemed to be completely replaced.⁴⁸

Here, it is clear that the determination of replacement value uses 'preconstruction value,' not the cost of labor and materials to replace. SMP 12.02(4) and 12.03 are thus reconciled as using the same definition, and it is one that is harmonious with the goals of the SMP which is the control and eventual elimination of such non-conforming uses from within the shoreline. It also dissuades property owners from attempting to keep their structures undervalued in the eyes of the assessor to avoid taxes and then claiming greater value when repairs are needed. The Department used the correct valuation in making its determination.

Further, while the appellant focuses on the first part of the valuation law, the code and the citation both require the condition of the work being done "...only in accordance with regulations of this program for the shoreline area of its location." The regulations were violated, valuation aside, when the appellant breached the terms of their permit by not seeking modification as strictly directed in the permit. The Order to Abate was proper, and while the Department seemingly could have cited additional violations and still can, they limited their citation to the one violation. The determination that there was shoreline development done outside one of the two legitimate permitting paths in the replacement of

⁴⁶ Ex. 1 at 2-3

⁴⁷ Ex. 19 at 5

⁴⁸ SCC 14.04.010 at "Replacement"

the boathouse, outside of the scope of the regulations (including the permit), and that unpermitted work far exceeded 75% of the assessed value was not in error. The lack of evidence as to an emergency in seeking revision of the permit and the cosmetic non-structural reattachment of prior boathouse parts casts a shadow of bad faith on the part of the appellant. Far outside of the scope of the permit, the Appellant effectively built an entirely new boathouse.

IV.

Other Issues Raised on Appeal

The Appellant raised a number of other issues in their original appeal filing,⁴⁹ which are addressed as follows, numbered according to the Appellant's brief:

- c. *Erroneous Procedure – Failure to Provide Adequate Notice*: the legal argument is not clear and there is not evidence to support a conclusion that the Department failed to provide adequate notice, either in the language of the citation or actual noticing; the language in the e-mail exchanged between the Department and the Appellant also seems clear. There does not seem to be any requirement for the Department to respond to “formal written demands”; there is an administrative process, it was followed. There is no pre-notice requirement for the Department to issue an Order of Abatement, though there does seem to be a great deal of courtesy attempts by the Department to encourage resolution of the matter through compliance with the SMP prior to giving up and issuing the Order for Abatement. The corrective action required was clear and unambiguous.
- d. *Error in Fact – Shoreline Boundary Classification*: This argument mistakes the law. All evidence shows the property and this specific structure inside the shoreline jurisdiction and the specific buffers applicable. It appears to conflate critical area jurisdiction with shoreline jurisdiction and regulations applicable to structures below and above the OHWM.
- e. *Equitable Estoppel*: The permit issued was not strictly complied with as was required; there does not appear to be any waiver of SMP regulations where the permit issued as part of an exemption is not complied with, and in fact the complete rebuild-like ends of the project appear to make the original permit applied for to be done in bad faith; there was no evidence presented persuasively that these defects were undiscovered at the time of permitting or

⁴⁹ Ex. 1 at 2 to 4.

any emergency would have allowed construction that would have gone over the 100% value of what was permitted under the Appellant's replacement cost argument.

- f. *Duty to Repair – Latent Condition Necessity*: There was no evidence persuasively prevented that the defects were undiscoverable at the time of permitting, that they could not be discovered prior to removing all siding, or that there was an emergency that prevented complying with the terms of the permit and seeking a revision. Given that the photos show virtually each and every header, truss, and vertical framing component was replaced, it is highly unlikely such extensive required repairs would not have been noticed once the first piece of cover came off, if not detected before permitting.

V.

Potential of Exceptions to Requirements by Hearing Examiner

Under SMP 12.04, the Hearing Examiner can determine

that the enlargement, extension or increase of the non-conforming use of shorelines or structures on shorelines can be accomplished without appreciable threat to the health, safety and general welfare of the public or the shoreline environment and purpose of this Program and the Act, and that to deny the enlargement, extension or increase in the nonconformity would constitute a hardship greater than the public benefit derived from denial of the non-conformity, such proposals shall be permitted subject to terms and conditions established by the Hearing Examiner... and attached to the variance and/or conditional use permit required of the applicant.

It does not appear from the plain reading of this ordinance that the Hearing Examiner can do make this determination outside of an intentionally and thoughtfully applied for variance or conditional use permit. Neither of those were applied for- this is a scenario where the appellant is asking for forgiveness after the fact of unpermitted action and taking the risk of enforcement action when not complying with the permit terms. Consequently, the Hearing Examiner cannot grant an exception on appeal via this route; however, even if the Hearing Examiner was able to make such a determination on review of an Order of Abatement, the policy argument of any real hardship over an “accessory dwelling” relocation does not outweigh the goals of the SCP, nor the SMP's specific goal to limit, remove, and ultimately eliminate such non-conforming uses.⁵⁰

VI.

⁵⁰ SMP 12.01

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

DECISION

The Appeal of the Administrative Order to Abate, APL 26-0003, is denied.

ABATEMENT WARNINGS

See generally SCC 14.09 and the Disclosures in the Administrative Order to Abate Violation.

NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF THE HEARING EXAMINER

This action of the Hearing Examiner is final.

The applicant, any party of record, or any county department may appeal any final decision of the Hearing Examiner.

- A.** Type 1 decisions are appealed to Skagit Superior Court, pursuant to the provisions of SCC 14.06.150-1; Appeals to the Superior Court must be filed with the Superior Court within 21 calendar days of the final decision of a hearing examiner pursuant to RCW 36.70C.040(C).
- B.** Type 2 and 3 decisions are appealed to the Skagit County Board of Commissioners, pursuant to the provisions of SCC 14.06.150-1; Appeals to the Skagit County Board of Commissioners require filing of a written notice of appeal within 14 calendar days of the final decision of a hearing examiner for most decisions, *but* Shoreline permit decisions require filing a notice of appeal within five days of the decision per the same ordinance as provided in SCC 14.06.410(3).

More detailed information about reconsideration and appeal procedures are contained in the Skagit County Code Title 14.06 and which is available at <https://www.codepublishing.com/WA/SkagitCounty/>

DATED this 27th day of August 2026



Rajeev D. Majumdar
Skagit County Hearing Examiner