

1 **SHORELINES HEARINGS BOARD**
2 **STATE OF WASHINGTON**

3 MARY REPAR,
4 Petitioner,
5 v.
6 CITY OF STEVENSON and FDM
7 DEVELOPMENT, INC.,
8 Respondents.

SHB No. 24-002
FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER

8 **INTRODUCTION**

9 On February 15, 2024, Mary Repar (Petitioner) filed a petition with the Shorelines
10 Hearings Board (Board) seeking review of the City of Stevenson’s (Stevenson or the City)
11 conditional approval of Shoreline Substantial Development Permit (SSDP) No. SHOR2023-02
12 issued to FDM Development, Inc. (FDM) on January 22, 2024, to construct up to 19 cabins that
13 will serve as nightly and weekly lodging, as well as an event space to be used for private weddings,
14 reunions, and parties (Project).

15 The Board conducted a site visit on May 17, 2024, and held a hearing on this matter on
16 May 20-21, 2024. The Board deciding this matter was comprised of Board Chair Michelle
17 Gonzalez and Board Members Dennis Weber and RJ Lott.¹ Administrative Appeals Judge
18 Andrew J. O’Connell presided for the Board. Petitioner represented herself *pro se*. City Attorney
19
20

21 _____
¹ This case is being decided by three Board members (a “short board”) pursuant to RCW 90.58.180(3).

1 Robert C. Muth represented the City. Attorney Julie Wilson-McNerney represented FDM. Dani
2 Schemm with Buell Realtime Reporting provided court reporting services.

3 The Board's Prehearing Order established, among other things, six legal issues for the
4 Board's resolution. *Prehearing Order, pp. 11-12*. Later, the Board denied summary judgment on
5 Issue 1, granted summary judgment to FDM on Issues 2, 4, and 5, and granted summary judgment
6 to Petitioner on Issues 3 and 6. *Order on Summ. J., pp. 21-22*. Thus, at the commencement of the
7 hearing, the following issue remained for the Board's resolution:

- 8 1. Whether the public access approved in the SSDP is consistent with
9 Chapter 90.58 RCW, associated Department of Ecology regulations,
and the City's Shoreline Management Program?²

10 The Board received the sworn testimony of witnesses, admitted exhibits, and heard
11 argument on behalf of the parties. Based upon the evidence and arguments presented, the Board
12 enters the following Findings of Fact, Conclusions of Law, and Order.

14 FINDINGS OF FACT

15 Witnesses

16 1.

17 Petitioner testified and called two additional witnesses, Auguste Zettler and Ben Shumaker.
18 FDM called Frank Dean Maldonado, Brad Kilby, Morgan Worthington, Bruce Haunreiter, and
19 Steffanie Simpson to testify. Ben Shumaker was called to testify by both FDM and the City.

21 ² It was clarified in the proceeding that the legal issue regards the City's Shoreline *Master* Program, which the Board
took official notice of and was admitted to the record as *Ex. C-1*.

1 2.

2 Repar testified regarding the inadequacy of the public access provided by the Project and
3 its inconsistency with Chapter 90.58 RCW, the Shorelines Management Act (SMA) and
4 Stevenson’s Shoreline Master Program (SMP). *Repar Testimony*. Repar has lived in Skamania
5 County for 34 years and in Stevenson for nearly the same amount of time. *Id.* Repar is a veteran,
6 having retired as a Major from the United States’ Air Force Reserve, has a degree in applied
7 physics from Michigan Tech University and worked formerly as a geophysicist for oil companies
8 in the United States and Saudi Arabia. *Id.*

9 3.

10 Auguste Zettler, who serves as the Vice Chair and is a voting member of the City’s
11 Planning and Zoning Board, testified for Petitioner regarding the history of proposed developments
12 on the site and his knowledge of the Stevenson Planning Commission’s (Planning Commission)
13 meetings in October, November, and December 2023, and Zettler’s explanation for voting against
14 approving the SSDP at issue in this case. *Zettler Testimony*. Zettler has approximately 18 years of
15 community planning and zoning experience: Zettler has been a member of the City’s Planning and
16 Zoning Board since 2019 and was previously a member of a planning and zoning board in Florida.
17 *Id.*

18 4.

19 Ben Shumaker was called to testify by Petitioner, and later by FDM and the City regarding
20 the City’s permitting process and his knowledge of the Project. *Shumaker Testimony*. Shumaker is
21 the Community Development Director for the City and works with the Planning Commission.

1 5.

2 Steffanie Simpson testified for FDM regarding the history of the site, its characteristics,
3 including vegetation and critical areas, as well as knowledge of the Project and its impacts on the
4 environment and ecology at the site. *Simpson Testimony*. Simpson has a degree in Environmental
5 Studies from the Evergreen State College and is currently a Senior Biologist and Principal with
6 Ecological Land Services (ELS), where Simpson has been employed since 2000. *Ex. FDM-24*.
7 Simpson took over as ELS's project manager for the Project in December 2023. *Simpson*
8 *Testimony*.

9 6.

10 Frank Dean Maldonado testified for FDM regarding the Project, the development plan for
11 the site, and FDM's experience throughout the permitting process. *Maldonado Testimony*.
12 Maldonado is the developer for the Project and is one of three owners of the property and the
13 managing member of those three. *Id.* Maldonado has 28 years of experience in development, is a
14 licensed commercial real estate broker, a licensed and bonded general contractor, and a certified
15 commercial investment manager. *Id.*

16 7.

17 Brad Kilby testified for FDM regarding the Project and FDM's experience throughout the
18 permitting process. *Kilby Testimony*. Kilby has a degree in Urban and Regional Planning from
19 Eastern Washington University. *Ex. FDM-21*. Kilby is a veteran of the United States Marine
20 Corps, has worked in planning since 1997, and is currently a Senior Planner, Planning Manager,
21 and Project Manager for Harper Houf Peterson Righellis, Inc. *Id.*

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Morgan Worthington testified for FDM regarding the engineering and relevant technical knowledge for the Project. *Worthington Testimony*. Worthington has a degree in Civil Engineering from California State University, Chico, and is currently employed as a Civil Engineer by Harper Houf Peterson Righellis, Inc. *Ex. FDM-22*. Worthington’s work on the Project was reviewed by Bruce Haunreiter. *Id.*

9.

Bruce Haunreiter testified for FDM regarding the engineering of the Project and supervision of Worthington. *Haunreiter Testimony*. Haunreiter has a degree in civil engineering from Portland State University and is a registered civil engineer in both Washington and Oregon. *Ex. FDM-23*. Haunreiter is currently a Principal and Project Managing Engineer at Harper Houf Peterson Righellis, Inc. *Id.* The type of engineering work Haunreiter does includes land development and transportation. *Haunreiter Testimony*.

Background

10.

An SSDP (SHOR2020-01) was issued in 2020 for a different project on this same property. *Maldonado Testimony*. That 2020 project included a plan for four-plexes: 16 3-bedroom condominium units operated as a hotel, in addition to some other venue developments and

1 landscape and public access improvements. *Exs. FDM-1g, 1h; Maldonado Testimony.*³ The 2021
2 replat of the property was associated with SHOR2020-01 and was approved by the City Council.
3 *Zettler Testimony.*

4 11.

5 The 2020 project did not proceed as the COVID-19 pandemic caused delays, a
6 reassessment of the costs, and the developer ultimately determined the project wasn't feasible.
7 *Maldonado Testimony.* Due to those delays, SHOR2020-01 expired. *Ex. FDM-1a.*

8 12.

9 A shorelines application for the Project was submitted in May 2023. *Ex. P-3*

10 13.

11 The Planning Commission held meetings addressing the Project in October 2023,
12 November 2023, December 2023, and January 2024. *Zettler Testimony; Exs. FDM-3, FDM-4.* The
13 Planning Commission voted to approve the SSDP with conditions at the December 2023 meeting.
14 *Zettler Testimony; Ex. FDM-4.*

15 14.

16 The City issued the current SSDP (SHOR2023-02) for the Project on January 22, 2024.
17 *Ex. FDM-1a.*

18
19 ³ Per the request of parties at the close of hearing, a list of admitted exhibits was provided in a letter issued by the
20 Board on May 31, 2024. At hearing, Ex. FDM-1 was subdivided and only certain portions were offered and
21 admitted. The subdivisions for the admitted portions of Ex. FDM-1 are as follows: Exs. FDM-1a (pp. 442-466),
FDM-1b (pp. 23-54), FDM-1c (pp. 520-523), FDM-1d (pp. 55-66), FDM-1e (pp. 67-79), FDM-1f (pp. 783-785),
FDM-1g (p. 84), FDM-1h (p. 290), FDM-1i (p. 486), FDM-1j (pp. 146-176), FDM-1k (p. 485), FDM-1l (p. 487),
FDM-1m (pp. 429-439), FDM-1n (pp. 616-620).

1 **The Project**

2 15.

3 The Project (also known as the Rock Creek Cove Hospitality project) is a proposal to
4 construct 19 cabins to serve as nightly and weekly lodging, an event space to be used for private
5 events, on-site parking and public pedestrian access, as well as landscaping and enhancements to
6 the riverbank. *Exs. FDM-1a; FDM-1j.* The Project is intended to attract local and regional visitors
7 with venue space for weddings, company parties, family reunions, and corporate retreats.
8 *Ex. FDM-1j.* The Project also proposes to restore water-side portions of the property to enhance
9 public access for observation and enjoyment. *Id.* The Project will allow public access to a boat
10 launch and walking trails on the property. *Ex. FDM-1d; Maldonado Testimony.*

11 16.

12 The property where the Project will be developed is approximately 6.4 acres, zoned as
13 Commercial Recreation, and located at 968 SW Rock Creek Drive in Stevenson, Washington with
14 tax lot numbers 02-07-01-0-0-1302-00 and 02-07-01-0-0-1303-00 and parcel numbers
15 02070100130300 and 02070100130200. *Exs. FDM-1a, FDM-1b, FDM-1c, FDM-1e, FDM-1f,*
16 *FDM-1j.*

17 17.

18 The property is an irregular, anvil-shaped peninsula that extends eastward into Rock Cove
19 from SW Rock Creek Drive. *See Exs. FDM-1m, FDM-1h, FDM-1e, FDM-1b.* The slope from the
20 water up to the top of the bank is mostly steep with loose stones and gravel. *Simpson Testimony;*
21 *Maldonado Testimony; Zettler Testimony; Exs. FDM-1b, FDM-1m.* There is a gravel boat launch

1 on the eastern edge of the property where Rock Cove can be accessed. *Maldonado Testimony;*
2 *Ex. FDM-1b.*

3 18.

4 The property was previously the site of the Hegewald Lumber Mill from 1952-1973 but
5 has been vacant for decades. *Exs. FDM-1a; FDM-1m.* Skamania County owned the property for
6 several decades afterward. The County created access easements and a 15-foot pedestrian
7 easement along the edge of the property, which at times encroached within the building setbacks
8 from Rock Cove. *Ex. FDM-7.* The County also divided the property into three lots. *Ex. FDM-1a.*
9 In 2019, the County sold the property. *Id.* In 2021, the property was replatted. *Ex. FDM-8.* Three
10 private owners now own the property, of which Maldonado is one. *Maldonado Testimony; see*
11 *Ex. FDM-8; Ex. FDM-1b.*

12 19.

13 The property is currently undeveloped, with the exception of some underground utilities
14 near the western access to the property that had been installed in anticipation of development
15 pursuant to SHOR2020-01. *Maldonado Testimony; Exs. FDM-1e, FDM-1j.*

16 20.

17 The Board finds that the slopes of the property are steep and hinder or prevent physical
18 public access to the shorelines on the property outside of the fish and wildlife habitat conservation
19 areas (FWHCA) with the exception of the boat launch area, which the Project will maintain.

1 21.

2 There is currently no public access to the property. *Repar Testimony*. No pedestrian
3 pathways currently exist. *See Exs. FDM-1d, FDM-1e*. The Project will give public access to the
4 property and its shoreline via the proposed pedestrian pathways and by maintaining the gravel boat
5 launch. *Ex. FDM-1a*. The Project contemplated connections to pedestrian pathways on adjacent
6 properties, but no such pathways currently exist on any adjacent property. *Exs. FDM-1a, FDM-1e*.

7
8 **Public Access**

9 22.

10 The City has a long-term project to create an interconnected trail system along the entire
11 waterfront for the benefit of the community and tourism. *Zettler Testimony; Ex. P-11*.

12 23.

13 Repar testified that the City should follow the goals and objectives in its Integrated
14 Shoreline Public Access and Trail Plan of 2023 by ensuring to provide accessible parks and trails
15 drawing the community toward shoreline resources and amenities, striving to provide access to
16 existing trails, physical and visual amenities through expanded pedestrian routes, and ensure safe
17 and visually appealing pedestrian routes that emphasize pedestrians and cyclists over cars. *Repar
18 Testimony; Ex. P-11*.

19 24.

20 In 1996, the County created access easements and a 15-foot pedestrian easement along the
21 water's edge of the property. *Ex. FDM-7, Ex. FDM-1n*. It is not feasible to develop pedestrian

1 pathways that follow exactly the 1996 pedestrian easements due to the characteristics of the
2 property, including the steep slope down to the water. *Zettler Testimony*.

3 25.

4 The 1996 easement locations were modified by the 2021 replat associated with
5 SHOR2020-01. *Zettler Testimony; Exs. FDM-8, FDM-1n*.

6 26.

7 The Project’s proposed pedestrian pathways would provide public access beginning with
8 three access points connecting to SW Rock Cove Drive. The pathways progress eastward from the
9 road, remaining initially on the interior of the peninsula and outside of a FWHCA in the northern
10 portion of the property (northern FWHCA), but partially inside an FWHCA in the southern portion
11 of the property (southern FWHCA). The pathways remain on the interior side of the proposed
12 cabins until reaching the eastern extent of the northern and southern FWHCAs. At those points,
13 the pathways move closer to the shoreline, but at the top of the steep slope. Because the pathways
14 remain on the interior of the cabins until the eastern extent of the FWHCAs, views of the FWHCAs
15 would be intermittently blocked by the proposed cabins. The pathways provide uninterrupted
16 views of Rock Cove from atop the steep slope and along the entire eastern edge of the property,
17 which is the side of the property with the longest waterfront. The pathways form a continuous,
18 unbroken loop through the property. *Maldonado Testimony; Ex. FDM-1e*.

1 27.

2 Repar testified that the Project’s proposed public access had decreased from an earlier
3 proposal in 2021 and objected to the Project’s site plan locating cabins in the 1996 public
4 easements. *Repar Testimony*.

5 28.

6 Repar claimed that the Project will impede public access to the Rock Cove shoreline,
7 contrary to the SMP. *Id.*; see SMP § 4.6.3.

8 29.

9 No party put forward evidence identifying or comparing the total length or square footage
10 of the pedestrian easements and pedestrian pathway proposals from 1996, 2021, or the Project’s
11 revised site plan.

12 30.

13 The Board finds Repar credible. However, the Board disagrees with her conclusions and
14 finds, as explained in the Conclusions of Law, that the preponderance of the evidence does not
15 support her position that the SSDP is inconsistent with the SMA and the SMP.

16
17 **Critical Areas**

18 31.

19 ELS prepared a Critical Areas and FWHCA Report pertaining to the Project and the
20 property in May 2023. *Simpson Testimony; Ex. FDM-1b*. In the report, ELS identified the observed
21 high-water mark line and its buffer, the FWHCA buffer for an unnamed tributary stream to the

1 north of the property, and the functionally isolated FWHCAs for Rock Cove as a side channel of
2 the Columbia River. *Ex. FDM-1b; see Simpson Testimony.* The FWHCAs are buffers from the
3 waterway (either the stream or Rock Cove) with a fully-functioning riparian area with vegetation
4 consisting of mature trees and shrubs and dense undergrowth. *Simpson Testimony.* The vegetation
5 functions to provide shade and “thermal regulation of the adjacent waterway habitat for various
6 animals, like shelter foliage,” a corridor for animals to move about undisturbed, and the wooded
7 material such as trees provide screening between the Project and the FHWCA. *Simpson Testimony.*
8 Development in the FWHCA would disrupt some or all those functions. *Simpson Testimony.*

9 32.

10 The site plan for the Project was revised in November 2023 after feedback from the
11 Washington State Department of Ecology (Ecology) and the Washington Department of Fish and
12 Wildlife about the planned development in the FWHCA and the avoidance and mitigation efforts
13 for that development. *Exs. FDM-1d, FDM-1c, FDM-1f; Simpson Testimony.*

14
15 **Cabins**

16 33.

17 The original site plan for the Project included 19 cabins, with six of those having at least a
18 portion inside the southern FWHCA. *Exs. FDM-1d, FDM-1e.* The revised site plan removed in
19 their entirety four of the six cabins from the southern FWHCA and moved the remaining two
20 cabins to locations partially outside of the southern FWHCA. *Exs. FDM-1d, FDM-1e, FDM-1i,*

1 P-7. The site plan approved by SHOR2020-01 also included two units with portions inside the
2 southern FWHCA. *Ex. FDM-1k.*

3
4 **Pathway Connections**

5 34.

6 The original site plan for the Project also located a portion of the pedestrian pathway inside
7 the northern FWHCA. *Exs. FDM-1d, FDM-1e.* Additionally, the Project had considered two
8 separate proposals for connecting the pedestrian pathway to an adjacent property through the
9 southern FWHCA: a bridge, or an at-grade path with a six-foot tall retaining wall on one side due
10 to the steep slopes. *Simpson Testimony.*

11 35.

12 The bridge would require bridge abutments and construction that would significantly
13 disturb the buffer riparian habitat in the FWHCA and would cost approximately \$972,000.
14 *Exs. FDM-1e, FDM-1m; Simpson Testimony; Maldonado Testimony; Kilby Testimony;*
15 *Worthington Testimony; Haunreiter Testimony.* The at-grade path would also require construction
16 that would significantly disturb the buffer riparian habitat in the FWHCA and would cost
17 approximately \$200,000. *Exs. FDM-1e, FDM-1m; Simpson Testimony; Maldonado Testimony;*
18 *Kilby Testimony; Worthington Testimony; Haunreiter Testimony.* Maldonado testified that these
19 costs would cause the Project to not move forward. *Maldonado Testimony.* The Board finds
20 Maldonado credible. In addition, the adjacent property does not have any pedestrian pathway to
21

1 connect abridge or an at-grade pathway. *Maldonado Testimony; Kilby Testimony; Haunreiter*
2 *Testimony.*

3 36.

4 The revised site plan relocated the portion of the pedestrian pathway inside the northern
5 FWHCA, removing it from the FWHCA. It also relocated the portion of the pedestrian pathway
6 inside the southern FWHCA, moving it to the northern edge of the FWHCA. The revised site plan
7 indicates that all pedestrian pathways will connect to the sidewalk along SW Rock Creek Drive at
8 three points. *Exs. FDM-1d, FDM-1e, FDM-1i, P-7.*

9
10 **Mitigation & In-lieu Payments**

11 37.

12 Zettler testified that an in-lieu payment would be considered as a mitigation because
13 connections to the adjacent properties through the FWHCAs was cost-prohibitive. *Zettler*
14 *Testimony, Ex. FDM-1a.* Instead, the Project will connect its pedestrian pathways to the adjacent
15 properties via the existing sidewalk along SW Rock Creek Drive. *Zettler Testimony, Ex. FDM-1a.*

16 38.

17 The Project's revised site plan proposes impacts totaling 0.16 acres of the property.
18 *Simpson Testimony; Ex. FDM-1e.* The Project will mitigate these impacts with enhancement
19 measures and an in-lieu payment to the Lower Columbia Fish Enhancement fund. *Simpson*
20 *Testimony; Exs. FDM-1a, FDM-1e.* The changes and mitigation efforts made on the property,

1 including to the pedestrian pathways and cabin locations, demonstrate avoidance and minimization
2 of impacts within the FWHCA. *Simpson Testimony*.

3
4 **SSDP**

5 39.

6 The SSDP identified the following findings regarding public access:

- 7 a. The proposal has one or more of the characteristics requiring
8 public access.
- 9 b. The application contains detailed narratives, stormwater,
10 landscape and mitigation plans contending consistency with this
11 criterion.
- 12 c. The site is subject to numerous public access easements which
13 conflict with and/or where no public access project is proposed,
14 however, the application makes no contention regarding the
15 infeasibility of providing such public access.
- 16 d. Via early written comment, the Washington Department of
17 Ecology contended the proposal has not appropriately addressed
18 public access.
- 19 e. Public access, as more fully described through supplemental
20 information submitted into the record prior to the December 11th
21 public hearing on this application, has been adequately provided at
this site.
- f. Via verbal testimony, the applicants contend infeasibility of an
ADA compliant connection between this property and an existing
public easement to the south, and construction absent participation
by the City and adjacent property owner.
- g. Follow-up written comment from the Department of Ecology after
the site plan was amended indicated the changes adequately
addressed the previous comments.
- h. The Planning Commission concurs with the applicants'
contentions regarding the disproportionate share and feasibility of
barrier-free access for the physically disabled (ADA) where the
public pedestrian pathway would connect to the adjacent public
pathway easement south of the site.

- 1 i. The Planning Commission contends the applicant bears
2 responsibility for its proportionate share of the eventual
3 improvement and approves a payment in-lieu of this improvement
4 into a City public access fund.
5 j. The public access provided related to this proposal bears a rational
6 nexus with its impacts and is roughly proportional thereto.
7 k. The findings, conclusions and conditions related to Chapter 5 are
8 relevant to this criterion.

9 *Ex. FDM-1a.*

10 40.

11 The SSDP included the conclusion of law that “This project will comply with SMP 4.6.3
12 upon fulfillment of the conditions below.” *Id.*

13 41.

14 The conditions of the SSDP applicable to public access and reference by the above-cited
15 conclusion of law are conditions 12-14:

- 16 12. **Prior to the Start of Construction** the applicants shall, subject to
17 review and approval by the shoreline administrator:
18 a. make a payment in-lieu of providing a trail connecting to the public
19 pathway easement south of the site, or
20 b. enter into an agreement with the City to support development at a
21 later date of a trail connecting to the public pathway easement south
of the site.
13. **Prior to Occupancy** all public access amenities shall be fully
developed and available for public use.
14. **Prior to Occupancy** the applicants shall provide signage at
conspicuous locations indicating the public's right of access to
shoreline areas.

15 *Id.*

16 42.

17 The SSDP also included conditions related to the FWHCAs, including a requirement that

1 jurisdiction. *Skagit Surveyors and Eng'rs, LLC v. Friends of Skagit Cnty.*, 135 Wn.2d 542, 558,
2 958 P.2d 962 (1998).

3 4.

4 The Board has jurisdiction over the parties and the subject matter in this case.
5 RCW 90.58.180; WAC 461-08-315(2)(a). The scope and standard of review for this matter is *de*
6 *novo*. WAC 461-08-315(2); WAC 461-08-500(1). The Board makes findings of fact based on the
7 preponderance of the evidence. WAC 461-08-500(2). In general, petitioners have the burden of
8 proving that an SSDP was inconsistent with the requirements of the SMA, Ecology's
9 implementing regulations, and the SMP. RCW 90.58.140(7); WAC 461-08-500(3). In this case,
10 the Petitioner has the burden to prove that the public access approved in the SSDP is inconsistent
11 with the SMA and the SMP. As explained below, the Petitioner has failed to meet the burden and
12 the Board finds that the public access approved by the SSDP is consistent with the SMA and the
13 SMP.

14
15 **Consistency with the SMA**

16 5.

17 Petitioner has the burden to show that the public access granted by the SSDP is inconsistent
18 with the SMA. If the SSDP is found to be inconsistent, then the Board must deny the SSDP.

19 6.

20 The legislature found that unrestricted construction along the shorelines of the state,
21 whether it be on publicly- or privately-owned land, is not in the public interest and that, therefore,

1 federal, state, and local governments must jointly perform “a planned, rational, and concerted
2 effort . . . to prevent the inherent harm in an uncoordinated and piecemeal development of the
3 state’s shorelines.” RCW 90.58.020.

4 7.

5 It is Washington’s policy to manage “the shorelines of the state by planning for and
6 fostering all reasonable and appropriate uses.” RCW 90.58.020. It is also Washington’s policy to
7 protect “against adverse effects to the public health, the land and its vegetation and wildlife, and
8 the waters of the state and their aquatic life, while protecting generally public rights of navigation
9 and corollary rights incidental thereto.” RCW 90.58.020.

10 8.

11 The SMA directs local governments, in developing their master programs, to give
12 preference to uses in the following order of preference which:

- 13 (1) Recognize and protect the statewide interest over local interest;
- 14 (2) Preserve the natural character of the shoreline;
- 15 (3) Result in long term over short term benefit;
- 16 (4) Protect the resources and ecology of the shoreline;
- 17 (5) Increase public access to publicly owned areas of the shorelines;
- 18 (6) Increase recreational opportunities for the public in the shoreline;
- 19 (7) Provide for any other element as defined in RCW 90.58.100
20 deemed appropriate or necessary.

21 RCW 90.58.020.

9.

The SMA requires permitted uses to “be designed and conducted in a manner to minimize,
insofar as practical, any resultant damage to the ecology and environment of the shoreline area and
any interference with the public’s use of the water.” RCW 90.58.020.

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10.

The SMA requires the implementation of its policy to preserve “the public’s opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state . . . to the greatest extent feasible consistent with the overall best interest of the state and the people generally.” RCW 90.58.020.

11.

Preservation of the natural character of the shoreline and protecting the resources and ecology of the shoreline are both uses that are preferred over those that will increase public access. RCW 90.58.020.

12.

Here, the Project’s public access and location of the pedestrian pathways is consistent with preservation of the natural character of the shoreline and the resources and ecology of the shoreline, particularly in the FWHCA. Significant impacts to the FWHCA have been avoided or mitigated by allowing or requiring that the pedestrian pathways be constructed mostly outside of the FWHCAs, that a pedestrian bridge or at-grade pedestrian pathway through the southern FWHCA not be required, and moving the cabins originally planned in the southern FWHCA farther away from the shoreline. The pedestrian pathway that will go through the northern edge of the southern FWHCA causes impacts that are mitigated by the SSDP’s required enhancement measures and in-lieu payments.

1 13.

2 The property is characterized by the large northern and southern FWHCAs and steep slopes
3 leading to the water that hinder or prevent physical access to the shorelines except in the area of
4 the boat launch. The northern and southern FWHCAs will remain largely undisturbed and the
5 Project's public access will provide new visual access of the shorelines along the entire eastern
6 edge of the property as well as maintain the physical access provided by the boat launch. Thus, the
7 Board concludes that the SSDP is consistent with implementation of the SMA's policy to preserve
8 the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the
9 state to the greatest extent feasible consistent with and in consideration of the overall best interest
10 of the state and the people generally.

11 14.

12 Petitioner's argument that the public access approved by the Project is inconsistent with
13 the SMA is not supported by the evidence presented or the Board's examination of the law.

14 15.

15 Accordingly, the Board concludes that the Petitioner has failed to meet the burden and that
16 the public access granted by the SSDP is consistent with the SMA.

17
18 **Consistency with the SMP**

19 16.

20 Petitioner has the burden to show that the public access granted by the SSDP is inconsistent
21 with the SMP. If the SSDP is found to be inconsistent, then the Board must deny the SSDP.

1 17.

2 Another element defined in RCW 90.58.100, as referenced in the order of preferential uses
3 of RCW 90.58.020, indicates that an SMP “shall include, when appropriate . . . a public access
4 element making provision for public access to publicly owned areas.” RCW 90.58.100(2)(b). Here,
5 the SMP complies with the SMA by including several public access elements. SMP § 4.6.

6 18.

7 The Board must determine the consistency or inconsistency of the public access granted
8 by the SSDP with those public access elements in the SMP.

9 19.

10 In section 4.6.1, the SMP defines such public access as including “the ability of the general
11 public to reach, touch, and enjoy the water’s edge . . . and to view the water and the shoreline from
12 adjacent locations.” SMP § 4.6.1. That same section of the SMP indicates that “all proposed review
13 activities on shorelines are subject to the following policies and regulations.” *Id.*

14 20.

15 Section 4.6.2 of the SMP provides the following public access policies:

- 16 1. Continuous public pedestrian access *should* be provided along the
17 City’s shorelines, especially the Columbia River, Rock Cove, and
Lower Rock Creek.
- 18 2. The system of public physical and visual access to Stevenson’s
19 shorelines *should* be maintained, enhanced, and protected over time
on both private and public lands.
- 20 3. Public access and recreational facilities *should* be located in a
manner that will preserve the natural characteristics and functions
of the shoreline.
- 21 4. Private property rights, public safety, and navigational rights *should*
be considered when providing public access opportunities.

1 24.

2 Public access must be incorporated into all proposals with certain characteristics.
3 SMP § 4.6.3.1. No party disputes that public access must be incorporated into the Project. The
4 Board also concludes public access is required.

5 25.

6 Public access is required by the SMP to be “in the form of a walkway, trail, bikeway,
7 corridor, viewpoint, . . . boat launch, dock or pier area, or other area serving as a means of view
8 and/or physical approach to public waters.” SMP § 4.6.3.7.a. The SMP does not require the
9 walkway or trail to be placed precisely on an existing public easement. Indeed, the characteristics
10 of this property render constructing such a walkway or trail along the 1996 public easements, as
11 advocated by the Petitioner, infeasible. Here, the Project provides public access in the form of a
12 walkway or trail and a boat launch, which serve as means of viewing and physically approaching
13 Rock Cove.

14 26.

15 Public access is also required by the SMP to “[r]esult in no net loss of shoreline ecological
16 functions.” SMP § 4.6.3.7.d. Here, the Project preserves the ecological functions of the northern
17 and southern FWHCAs as public access will be constructed outside of the FWHCAs except for a
18 small portion of the southern FWHCA, which will be mitigated by an in-lieu payment included in
19 the SSDP’s public access conditions.

1 27.

2 The SMP also requires public access to “be connected directly to the nearest public street
3 or non-motorized trail through a parcel boundary, tract, or easement, wherever feasible.”
4 SMP § 4.6.3.8.a. Here, the public access is connected to SW Rock Creek Drive at three points.

5 28.

6 The SMP provides that public access is not required when an applicant demonstrates public
7 access is infeasible due to “[t]he cost of providing the access . . . [being] unreasonably
8 disproportionate to the total long-term cost of the proposed development” or “[u]nacceptable
9 environmental harm will result from the public access which cannot be mitigated.”
10 SMP §§ 4.6.3.3.c-d. Here, providing a public access connection through the southern FWHCA via
11 a bridge or an at-grade path would be too costly and result in unacceptable environmental harm to
12 the FWHCA. Consistent with the SMP, the SSDP is conditioned upon a fee contributed to the local
13 public access fund as a payment in lieu of such a public access connection or, alternatively,
14 agreeing with the City to support development at a later date. SMP §§ 4.6.3.4-5; *Ex. FDM-1a*.

15 29.

16 Accordingly, the Board finds that the SSDP is consistent with section 4.6.3 of the SMP.

17 30.

18 The Board concludes there is no evidence to support a determination that the SSDP is
19 inconsistent with any public access element of the SMP.
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31.

Petitioner’s argument that the public access approved by the Project is inconsistent with the SMP is not supported by the evidence presented or the Board’s examination of the law.

32.

After review of all evidence presented, the facts established therefrom, and applicable law, the Board concludes by a preponderance of the evidence that the SSDP is consistent with the SMA and SMP and that the Petitioner has failed to show the SSDP is inconsistent with the same.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Having so found and concluded, the Board enters the following:

ORDER

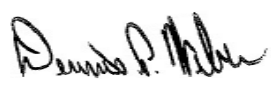
The City’s conditional approval of SSDP No. SHOR2023-02 issued on January 22, 2024, is **AFFIRMED**.

SO ORDERED on this day August 13, 2024.

SHORELINES HEARINGS BOARD



MICHELLE GONZALEZ, Chair



DENNIS WEBER, Member



RJ LOTT, Member



ANDREW J. O'CONNELL Presiding
Administrative Appeals Judge

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This is a FINAL ORDER for purposes of appeal to Superior Court within 30 days.
See WAC 461-08-570 and 575, and RCW 34.05.542(2) and (4).

You are being given the following notice as required by RCW 34.05.461(3): Any party may file a petition for reconsideration with the Board. A petition for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final decision. WAC 461-08-565.