BEFORE THE HEARING EXAMINER
FOR THE CITY OF PORT ORCHARD

In the Matter of the Application of ) )
 ) No. SDP 117-12 / SDP 121-12
 )
 ) Lawrence Scheurer
 )
 ) Myhre’s Rebuild
 )
For a Shoreline Substantial Development Permit
And Shoreline Conditional Use Permit ) FINDINGS, CONCLUSIONS AND DECISIONS

SUMMARY OF DECISIONS
The requests for a Shoreline Substantial Development Permit and Shoreline Conditional Use Permit to allow reconstruction and remodeling of a fire-damaged commercial building containing a restaurant and bar, as well as to allow the addition of residential units on property located on Bay Street are GRANTED. Conditions are necessary to mitigate specific project impacts.

SUMMARY OF RECORD
Request:
Larry Scheurer requests a Shoreline Substantial Development Permit and a Shoreline Conditional Use Permit to reconstruct and remodel a commercial building, and a change of use to allow residential units. The building is located at 737 and 739 Bay Street, in Port Orchard, Washington.

Hearing Date:
The Hearing Examiner held an open record hearing on the request on August 23, 2012.

Testimony:
The following individuals presented testimony under oath at the open record hearing:

Thomas Bonsell, Associate City Planner
Mark Dorsey, City Engineer
Lawrence Scheurer, Applicant

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Exhibits:
The following exhibits were admitted into the record:

1. Application submittal, including the following documents:
   A. Application for Shoreline Substantial Development Permit and Conditional Use Permit, Shorelines, received May 21, 2012
   B. Contact Information sheet, received May 21, 2012
   C. Legal description
   D. Surrounding property owners list and map, with Property Owners List Verification, dated April 9, 2012
   E. Myhre’s Building Pre-Application Letter, received May 21, 2012
   F. Letter from Tom Bonsell to Lawrence D. Scheurer, dated December 6, 2011
   G. Revised SEPA Checklist, dated June 11, 2012
   H. Plan set – 9 sheets
      i. Site Plan, Sheet A1.0, dated January 10, 2012
      ii. Enlarged Site Plan, Sheet A1.1, dated May 7, 2012
      iii. First Floor Plan, Sheet A2.0, dated May 7, 2012
      iv. Second Floor Plan, Sheet A2.1, dated May 7, 2012
      vi. Building Sections, Sheet A4.0, dated January 10, 2012
      vii. Door Schedules/Window Schedules, Sheet A5.0, dated January 10, 2012
      ix. Roof Plan, Sheet A7.0, dated January 10, 2012

2. Design Review Board application submittal and subsequent process documents:
   A. Application, received May 21, corrected page 2 received June 13, 2012
   B. Contact Information sheet, dated April 9, 2012
   C. Legal description, received May 21, 2012
   D. Myhre’s Building Pre-Application Letter, received May 21, 2012
   E. Letter from Tom Bonsell to Lawrence D. Scheurer, dated December 6, 2011
   F. Lighting specs and info, received May 21, 2012
   G. Building exterior colors, received May 21, 2012
   H. Ledgestone product sheet, received May 21, 2012
   I. Plan set - 5 sheets (Sheets A1.0; A1.1; A2.0; A2.1; A3.0)
   J. Notice of Public Meeting with the Design Review Board, undated
   K. Meeting sign-in sheet, dated July 10, 2012
   L. Design Review Board recommendations, dated July 16, 2012
   N. Email from Larry Scheurer to Tom Bonsell, dated August 7, 2012, with email string

3. Parcel aerial map and property report, undated

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5. Comment memo from Greg Rogers, Fire Prevention Manager, South Kitsap Fire & Rescue, dated May 25, 2012
6. Comment memo from Andrea Archer, P.E., Assistant City Engineer, dated May 25, 2012
8. Notice of Application/SEPA Threshold Determination, with map, dated July 6, 2012
9. Distribution list to agencies for NOA/SEPA Threshold Determination sent July 6, 2012, with SEPA Checklist, and Map
10. Affidavit of Mailing: NOA/SEPA Threshold Determination, dated July 6, 2012, with mailing labels
11. Affidavit of Publication: NOA/SEPA Threshold Determination, in the Kitsap Sun on July 6, 2012
14. MDNS Distribution list to agencies sent July 23, 2012
15. Notice of Public Hearing, undated
17. Affidavit of Mailing: Notice of Public Hearing, dated August 10, 2012, with mailing labels
18. Staff Report prepared by Tom Bonsell for August 23, 2012 hearing
19. City of Port Orchard, Shoreline Management Program Designation map, page 7

The Hearing Examiner enters the following Findings and Conclusions based upon the testimony and exhibits admitted at the open record hearing:

**FINDINGS**

Application and Notice

1. Larry Scheurer (Applicant) requests a Shoreline Substantial Development Permit (SSDP) and a Shoreline Conditional Use Permit (SCUP) to allow reconstruction and remodeling of a fire-damaged commercial building containing a restaurant and bar, as well as to allow the addition of residential units. The building is located at 737 and 739 Bay Street, in Port Orchard, Washington.\(^1\) The building has a long history in the City of Port Orchard as a meeting place for many residents; restoration of the building would be a welcome improvement to the downtown area. *Exhibit 1.A; Exhibit 1.H; Exhibit 18, Staff Report, page 1.*

2. The City of Port Orchard (City) determined the application was complete on June 4, 2012. On July 6, 2012, the City posted notice of the application and State Environmental Policy Act (SEPA) threshold determination on the subject property; published notice in

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\(^1\) The property is identified as Kitsap County Parcel No. 4650-013-005-0003. *Exhibit 2.C; Exhibit 2.I; Exhibit 3.* A legal description is included with the application. *Exhibit I.C.*

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the *Kitsap Sun*; and mailed notice to owners of surrounding property in accord with City ordinances. The City published notice of the open record hearing associated with the application in the newspaper of record in accordance with applicable City ordinances and mailed notice to surrounding property owners on August 10, 2012. City Associate Planner Tom Bonsell testified that he posted notice of the hearing on the property. *Exhibit 10; Exhibit 11; Exhibit 12; Exhibit 13; Exhibit 15; Exhibit 16; Exhibit 17; Exhibit 18, Staff Report, page 5; Testimony of Mr. Bonsell.*

**Environmental Review**

3. The City acted as lead agency and analyzed the environmental impact of the proposal under SEPA, Chapter 43.21C RCW. The City reviewed the Applicant’s environmental checklist and other information on file with the City and determined that, with ten conditions, the proposal would not have a probable significant adverse impact on the environment. The City issued a Mitigated Determination of Nonsignificance (MDNS) on July 23, 2012. The MDNS conditions include submittal of a temporary erosion and sediment control plan, conformance to the City’s Developers Handbook and 2005 Department of Ecology Stormwater Management Manual for Western Washington, provision of a permanent easement for public use on the northern portion of the parcel, and compliance with Design Review regulations. The City issued a combined Notice of Application and SEPA Threshold Determination for comment under WAC 197-11-355. No comments were submitted and the MDNS was not appealed. *Exhibit 9; Exhibit 10; Exhibit 11; Exhibit 13; Exhibit 18, Staff Report, pages 5 and 6.*

**Comprehensive Plan and Zoning**

4. The subject property is designated Commercial under the City’s Comprehensive Plan (December 2008, and as amended 2009, 2010, and 2011). Comprehensive Plan objectives, goals and policies relevant to the proposal call for support of affordable housing; to provide diverse economic opportunities; and to provide varied economic and recreational opportunities while protecting the shore environment.² *City Comprehensive Plan, Chapter 3: Housing, pages 3-1 to 3-10; Chapter 6: Economic Development, pages 6-1 to 6-7; Chapter 9: Shorelines, pages 9-1 to 9-3.*

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² City staff identified the following Comprehensive Plan goals and policies as relevant to the proposal: Chapter 3: Housing, Goals 1, 2, 3, and 5; Chapter 6: Economic Development; and Chapter 9: Shorelines. *Exhibit 18, Staff Report, pages 2 and 3.*
5. The subject property and surrounding property are zoned Mixed Use, and are within the Port Orchard Downtown Overlay District. Restaurants and multi-family residences are permitted uses in the Mixed Use zone. *POMC Tables 16.30.080 and - .100*. Sinclair Inlet is located to the north. Mr. Bonsell testified that a parking lot, a pedestrian walkway and a marina are located north of the existing building between it and Sinclair Inlet. The Antique Central Mall lies to the east; a VFW Hall and Olympic Bike and Skate shop lie to the south; and the Slip 45 Bar & Lounge is located to the west. *Exhibit 18, Staff Report, pages 1 and 2; Exhibit 19, Testimony of Mr. Bonsell*

6. The proposed project includes alteration of a portion of the building’s exterior façade. The building is located within the City’s Downtown Overlay District and requires design review and recommendations by the City’s Design Review Board, as well as approval by

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3 The purpose of the Mixed Use zone is:
(a) Provide a permissive and alternative zoning procedure for innovative, pedestrian oriented mixed use site and building developments or physical design proposals that are capable of providing substantial value to the community over conventional zone districting; and
(b) Implement comprehensive plan goals and policies for housing diversity, affordability, and to efficiently use land, public services, and energy. The mixed use district may vary the height, use, organization, design, intensity, size or other feature of the proposed development, but shall not vary from the environmental, market, community impact, infrastructure, design, and other objectives of this title and the comprehensive plan.

*Port Orchard Municipal Code (POMC) 16.13.150(1).*

4 The purpose of the Downtown Overlay District is:
(a) Implement the land use goals and policies set forth in the comprehensive plan.
(b) Provide for the development of an integrated mixed use downtown district that contains office, service, retail, residential and recreational uses within close proximity to one another.
(c) Encourage imaginative site and building design and development while maintaining view corridors and a small town feel.
(d) Identify significant environmental impacts and ensure appropriate mitigation with attention to sustainable or low-impact development.
(e) Encourage environmentally sustainable development.
(f) Promote economic development and job creation in the city.
(g) Encourage energy conservation in building design and layout.
(h) Promote an integrated system of pedestrian-friendly walkways and parking areas.
(i) Enhance the city’s waterfront character while maintaining the maritime presence.
(j) Encourage the development of buildings with ground floor retail with office uses and residential uses above.
(k) Promote a walkable community by encouraging the development of public open spaces, waterfront access, and pedestrian-friendly walkways.
(l) Locate and combine parking areas in order to minimize the number of points of access to and from Bay Street.
(m) Encourage architectural and site designs that serve as gathering places in wet and dry conditions.
(n) Promote greater public transportation availability within Port Orchard and across Sinclair Inlet during the evening hours to improve access to/from the DOD.

*POMC 16.20.200(3).*

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the City Council. The Design Review Board reviewed the proposed project and provided recommendations to the City, dated July 16, 2012. The recommendations request an updated proposal showing signage, canopies, roof features for mechanical equipment as well as screening and other design details about the windows and guard rails. Mr. Bonsell testified that City Council review of design elements is pending, and that the design review process is independent of shoreline permit review process. POMC 2.78.010; Exhibit 2.L; Exhibit 2.M; Exhibit 18, Staff Report, page 2: Testimony of Mr. Bonsell.

Existing Site Conditions

7. The existing two-story building is located on the northwest corner of Bay Street and Sydney Street. The building has been used as a restaurant and bar for many years. It is approximately 62-feet wide along Bay Street and approximately 132-feet long along Sydney Street. The structure was damaged by fire in July 2011. The property contains zero to less than one percent slope from south to north. Mark Dorsey, City Engineer, testified that the City holds a parking lot easement north of the building. He testified that the Port of Bremerton has a waterfront lease, which includes a portion of the parking area, from the Washington Department of Natural Resources for public access to Sinclair Inlet. Exhibit 9; Exhibit 18, Staff Report, page 1; Testimony of Mr. Dorsey.

Proposal

8. The Applicant proposes to reconstruct and remodel the existing restaurant and bar on the first story to accommodate a total capacity of 180, and construct five apartment units on the second floor. The combined total floor area would be 15,484 square feet. Eight new parking stalls would be reserved for apartment parking in the parking lot located to the north (rear) of the building. Proposed construction would take place within the existing building footprint with the exception of an exterior balcony on the Sidney Avenue façade. Exhibit 1.H.ii; Exhibit 2.D.

Shoreline Management Act and Regulations

9. The State Shoreline Management Act (SMA) and the Port Orchard Shoreline Master Program (revised April 1994) (POSMP) govern work within 200 feet of Sinclair Inlet. POSMP, Sec. 1.5, page 2; RCW 90.58.030(2)(f). The POSMP includes master program element goals for shoreline uses, conservation; recreation; public access, circulation; economic development; and historical/cultural. POSMP, Sec. 2, pages 5 and 6. The proposed project would be located on property within the Downtown Upland shoreline environment. The purpose of the Downtown Upland environment is to encourage mixed use water-oriented projects\(^5\) within a shoreline area historically dominated by non-water-

\(^5\) Water-Oriented Use means any one or a combination of water dependent, water related or water-enjoyment uses. POSMP, Sec. 3, page 16.

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oriented uses. Preferred uses within the Downtown Upland environment include water-oriented uses, and requiring mixed uses within waterfront buildings. *POSMP, Sec. 6, page 31; Exhibit 18, Staff Report, page 1.*

10. Sinclair Inlet is designated a shoreline of statewide significance. All development within shorelines of statewide significance must adhere to the following policies:

1. Recognize and protect the statewide interest over local interest;
2. Preserve the natural character of the shoreline;
3. Result in long term over short term benefit;
4. Protect the resources and ecology of the shoreline;
5. Increase public access to publicly owned areas of the shorelines;
6. Increase recreational opportunities for the public in the shoreline.

*RCW 90.58.020; POSMP, Sec. 7, page 32.*

11. The POSMP provides that no substantial development shall occur on the shorelines of the city except those consistent with the policies of the State Shoreline Management Act of 1971 and the POSMP goals, policies and regulations. *POSMP, Sec. 1.6, page 3.* Substantial development permits are issued for activities classified as permitted uses by the POSMP. *POSMP, Sec. 4.1, page 18.* State law defines “substantial development” as any development of which the total cost or fair market value exceeds $5,718, adjusted for inflation every five years, or any development that materially interferes with the normal public use of the water or shorelines of the state. *RCW 90.58.030(3)(e).* The POSMP lists Water-Related/Enjoyment commercial uses and Multiple Family Residential uses as conditional uses that require a SCUP. *POSMP, Sec. 8.1, page 34.* Mr. Bonsell testified that, while repairing the restaurant would be an exempt activity under the POSMP, the addition of multiple family residences to the second floor and change of use to include residential apartments requires both a SSDP and a SCUP. *Testimony of Mr. Bonsell.*

12. Several POSMP use policies and regulations are relevant to the proposal, including:
Commercial uses should be sited to maximize the use of the shoreline for development patrons and the general public. Parking should be located so as not to interfere with the visual and physical access to the shoreline. Within the Downtown Upland environment commercial uses shall be evaluated for their visual impact, waterfront relationship to the

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6 “Development” includes construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals, bulkheading; driving of pilings; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level. *RCW 90.58.030(3)(d).*

7 A “water enjoyment use” means a use providing passive and active recreation for large numbers of people along shorelines, and ensures the ability to interact with the shoreline. The use must be open to the public with most, if not all, of the shoreline devoted to fostering shoreline/people interaction. Water enjoyment uses include public restaurants. *POSMP, Part III.3, page 16.*

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shores, and potential to enhance public access, direct and visual, to the shoreline. Non-water oriented uses are permitted when they occupy no more than 50 percent of the building floor space. *POSMP, Sec. 8.8*, pages 54 and 55; *POSMP Sec. 8.8.2*, page 58. POSMP Residential Development Policies require adequate setbacks and natural buffers from the water and a design and location that blend into the site as much as possible. *POSMP, Sec. 8.14*, page 71. Multi-family development is not considered a preferred use on the City’s shorelines on lots adjacent to the water’s edge. *POSMP, Sec. 8.14.1*, page 74. The POSMP also requires general site development standards for the Downtown Upland environment, including a 33 foot maximum building height, a 75-foot wide shoreline setback, and a 10-foot wide shoreline parking area setback. *POSMP Sec. 8.1*, pages 39 and 40; *Exhibit 18, Staff Report*, page 5.

13. The proposed structure would be 24-feet high with an additional five feet of roof mechanical metal screening. The northern portion of the structure and associated parking are located within the SMA 200-foot wide shoreline jurisdiction, but outside the Downtown Upland environment shoreline setbacks. Mr. Bonsell testified that the lot is not adjacent to Sinclair Inlet. He testified that the proposed apartments would occupy less than 50 percent of the building floor space. He testified that adding apartments would provide public access to the waterfront for those who would live there. The Applicant would dedicate a permanent easement to the City for public use within the parcel lying north of the existing private parking area. *Exhibit 1.H; Exhibit 9, page 12; Exhibit 18, Staff Report, pages 5 and 7; Exhibit 19, Testimony of Mr. Bonsell.*

14. Over 98 percent of the site is covered with impervious surface. Stormwater roof runoff would continue to be discharged to the City’s storm water system. The existing parking lot would continue to use an existing stormwater system. *Exhibit 9, pages 7 and 9.*

**Comments and Testimony**

15. Andrea Archer, P.E., Assistant City Engineer, reviewed the application and provided written comments, dated May 25, 2012. Her comments recommended that conditions of approval be included to require a temporary erosion and sediment control plan; compliance with the City’s Developers Handbook; and compliance with the 2005 Department of Ecology Stormwater Management Manual for Western Washington. Conditions of approval proposed by the City staff include these requirements. *Exhibit 6; Exhibit 18, Staff Report, pages 6 and 7.*

16. Greg Rogers, South Kitsap Fire & Rescue, Fire Prevention Manager, submitted comments, dated May 25, 2012. His comments recommended conditions of approval to require compliance with the International Fire Code and International Building Codes; installation fire suppression and fire sprinkler systems; and a final inspection prior to issuance of a Certificate of Occupancy. *Exhibit 5; Exhibit 18, Staff Report, pages 7 and 8.*

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17. Mr. Scheurer testified that the proposed building on the subject property would be redesigned to comply with the Design Review Board’s recommendation; that the building would contain sprinklers; and that the water side of the building would provide for public access to the waterfront. The Applicant would provide a deck on the second floor for apartment resident use. *Testimony of Mr. Scheurer.*

**Staff Recommendation**

18. City staff reviewed the SSDP and SCUP applications and determined that, with conditions, the applications would be consistent with the City Comprehensive Plan, the City Code, and the POSMP. The City recommends approval of both the SSDP and SCUP with conditions that would apply to both permits. *Exhibit 18, Staff Report, page 8.*

**CONCLUSIONS**

**Jurisdiction**

The City of Port Orchard Hearing Examiner is authorized to hold a hearing on the shoreline substantial development permit and shoreline conditional use permit applications. Based on the evidence in the record, the Hearing Examiner may grant, modify and grant, or deny the applications. *Port Orchard Municipal Code (POMC) 2.76.080; POMC 2.76.100; POMC 2.76.110; POMC 16.01.021(3).*

**Criteria for Shoreline Substantial Development Permit Review**

*Shoreline Management Act*

The Shoreline Management Act is codified at RCW 90.58.020. Applicable policies of RCW 90.58.020 include those to foster “all reasonable and appropriate uses;” protect against adverse effects to the public health, the land and its vegetation and wildlife; and give priority to single family residences and appurtenant structures in authorizing alternations to the natural condition of the shoreline. Permitted shoreline uses must be designed 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.*

In promulgating the Shoreline Management Act of 1971, the legislature recognized that “ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development” of the state’s shorelines.” *RCW 90.58.020.* The legislature also determined that “unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest.” *RCW 90.58.020.* Accordingly, the Shoreline Management Act requires local governments to develop a master program to regulate shoreline uses consistent with its guidelines. *RCW 90.58.080(1).*

*Shoreline Management Act Regulations*

The Department of Ecology shoreline regulations are located in Chapters 173-26 and 173-27 of the Washington Administrative Code (WAC). Chapter 173-26 sets forth procedures and
guidelines for local adoption of shoreline master programs that are not applicable to the Applicant’s permit request. Chapter 173-27 sets forth permitting procedures and permit criteria. The Hearing Examiner reviews the application using the following criteria:

1. A substantial development permit shall be granted only when the development proposed is consistent with:
   a. The policies and procedures of the act;
   b. The provisions of this regulation; and
   c. The applicable master program adopted or approved for the area. Provided, that where no master program has been approved for an area, the development shall be reviewed for consistency with the provisions of chapter 173-26 WAC, and to the extent feasible, any draft or approved master program which can be reasonably ascertained as representing the policy of the local government.

2. Local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the local master program.

WAC 173-27-150.

The Hearing Examiner must review the relevant Port Orchard shoreline master program goals and policies to determine whether the proposal complies with the Shoreline Management Act regulations. All development activity in identified shoreline areas must be consistent with the policies of the Shoreline Management Act (RCW 90.58) and the Port Orchard Shoreline Master Program. POSMP, Sec. 5.3, page 25.

Criteria for Shoreline Conditional Use Permit Review

Uses which are classified or set forth in the City of Port Orchard Shoreline Master Program (POSMP) as conditional uses may be authorized by the Hearing Examiner provided the applicant can demonstrate all of the following:

a. The proposed use will not interfere with the normal public use of public shorelines;
b. The proposed use of the site and the design is compatible with other permitted uses in the area;
c. The proposed use will cause no significant adverse effects to the shoreline environment; and

d. The public interest will suffer no substantial detrimental effect.

POSMP, Sec. 4.2, page 19.

The total or cumulative impacts of the conditional use should also remain consistent with RCW 90.58.020 policies and should not produce significant adverse effects on the shoreline environment. In authorizing a conditional use, special conditions may be attached to the permit to prevent undesirable effects of the proposed use. POSMP, Sec. 4.2, pages 4 – 5.
Consideration will be given to the cumulative impact of additional similar requests within an area. *POSMP, Sec. 4.2, pages 19 – 20.*

The criteria for review adopted by the Port Orchard City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

**Conclusions**

1. **The proposed project meets the criteria to obtain a Shoreline Substantial Development Permit.**
   a. **With conditions, the proposed project is consistent with state Shoreline Management Act policies and procedures.** Reconstructing and remodeling a fire-damaged building containing an existing restaurant, with a change of use to add residential apartments, is a reasonable and appropriate use of the shoreline. The parcel is not adjacent to Sinclair Inlet and no overwater or other development within Sinclair Inlet would occur to alter the existing condition of the shoreline. All work would take place upland within the footprint of an existing building and outside the 75 feet-wide shoreline setback. The City reviewed the Applicant’s environmental checklist and determined that, with conditions, the project would not have a probable significant adverse impact on the environment. The proposed project would not create cumulative impacts that would have significant adverse effects on the shoreline environment. Conditions are required to ensure compliance with MDNS conditions. *Findings 1-18.*

   b. **With conditions, the proposed project is consistent with Chapter 173-27, Washington Administrative Code regulations.** The Department of Ecology shoreline regulations are located in Chapters 173-26 and 173-27 of the Washington Administrative Code (WAC). Chapter 173-26 sets forth procedures and guidelines for local adoption of shoreline master programs that are not applicable to the Applicant’s permit request. Chapter 173-27 sets forth permitting procedures and permit criteria. This proposal is being reviewed under the criteria set forth in WAC 173-27-150. These criteria are intended to implement the policies of the SMA, which requires that all shoreline projects be consistent with the SMA and an approved local Shoreline Master Program. The proposal is consistent with the City SMP, as described in more detail below. Conditions are necessary to ensure that the Applicant comply with all conditions identified by City Departments and other agencies. *Findings 1-18.*

   c. **With conditions, the proposed project is consistent with the Port Orchard Shoreline Master Program and Port Orchard Shoreline Management Regulations.** The proposed project would reconstruct and remodel a restaurant

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previously destroyed by fire within the Downtown Upland shoreline environment and add five residential apartments. Water-Related/Enjoyment and multiple family uses are conditional uses within the Downtown Upland Shoreline environment. The City has determined that the POSMP requires both a SSDP and a SCUP. The proposed project would be authorized as a conditional use (see Conclusion 2). The POSMP identifies Sinclair Inlet as a Shoreline of Statewide Significance. The proposed project would not change the existing character of the shoreline and would increase public access for apartment residents to Sinclair Inlet. Conditions are necessary to ensure that the Applicant comply with all conditions identified by City Departments and other agencies and ensure compliance with MDNS conditions. Findings 1-18.

2. The proposed project meets the criteria to obtain a Shoreline Conditional Use Permit.

a. The proposed use would not interfere with the normal public use of public shorelines. The proposed use would occur as a result of reconstructing and remodeling a fire damaged restaurant with residential apartments on the second story. The public use of the Sinclair Inlet shoreline would not be affected. Findings 1, 3-18.

b. With conditions, the proposed use of the site and the design is compatible with other permitted uses in the area. The proposed use is located within the Downtown Upland shoreline environment, which encourages mixed use water-oriented projects. Properties to the west, south, and east are also commercial in nature. The Applicant would reconstruct and remodel a restaurant and bar in the same location. The addition of residential units on the second floor would contribute to a mixed use in a commercial area. The project design has been reviewed by the City’s Design Review Board and final design would be approved by the City Council. Conditions are necessary to ensure that the Applicant comply with all conditions identified by City Departments and other agencies and ensure compliance with MDNS conditions. Findings 1, 3-18.

c. With conditions, the proposed use would cause no significant adverse effects to the shoreline environment. The City acted as lead agency and determined that with conditions, the proposal would not have a probable significant adverse impact on the environment. The City issued an MDNS with ten conditions, which are included as conditions of approval. The MDNS was not appealed. No overwater or other development within Sinclair Inlet would occur or alter the current condition of the shoreline. All work would take place upland. The Applicant would dedicate a permanent easement to the City for public use within the parcel lying north of the existing private parking area. Conditions are required to ensure compliance with MDNS conditions. Findings 1, 3, 5-18.

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d. With conditions, the public interest will suffer no substantial detrimental effect.
The City provided adequate notice and opportunity to comment on the proposal. The proposal is consistent with the City Comprehensive Plan and City Codes. The City acted as lead agency and determined that with ten conditions, the proposal would not have a probable significant adverse impact on the environment. The MDNS was not appealed. The Applicant would dedicate a permanent easement to the City for public use within the parcel lying north of the existing private parking area. Conditions are necessary to ensure that the Applicant comply with all conditions identified by City Departments and other agencies and ensure compliance with MDNS conditions.

Findings 1, 3-18.

DECISIONS
Based on the above findings and conclusions, a Shoreline Substantial Development Permit and Shoreline Conditional Use Permit to reconstruct and remodel a fire-damaged commercial building containing a restaurant and bar, and a change of use to allow residential units, on property located at 737 and 739 Bay Street, in Port Orchard, Washington are GRANTED, subject to the following conditions:

SEPA MDNS Mitigation:
1. The Applicant shall provide a temporary erosion and sediment control (TESC) plan.
2. All of the development shall conform to the most recent copy of the City of Port Orchard’s Developers Handbook at the time of complete application.
3. The Developer shall comply with all stormwater requirements within the adopted City of Port Orchard Stormwater Manual, 2005 Department of Ecology Stormwater Management Manual for Western Washington, for the proposed project.

8 WAC 173-27-200(1) provides: “After local government approval of a conditional use or variance permit, local government shall submit the permit to the department for the department’s approval, approval with conditions, or denial. The department shall render and transmit to local government and the applicant its final decision approving, approving with conditions, or disapproving the permit within thirty days of the date of submittal by local government pursuant to WAC 173-27-110.”

WAC 173-29-190 (1) provides: “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).” This provision provides that notice.

9 This decision includes conditions applicable to both the SSDP and SCUP required to reduce project impacts as well as conditions required by the City Code.
4. The Applicant shall submit two sets of as-built blueprints and one electronic media copy at the end of the project.

5. Any work within the City right-of-way will require an application to perform work on City right-of-way and possibly a maintenance or performance bond. This application must be submitted as part of the SDAP process. The need for and scope of bonding will be determined at that time.

6. The Applicant shall provide the City of Port Orchard a permanent easement for public use for all portions of the parcel lying north of the limits of private parking located adjacent to the north façade of the building. Easement shall be recorded prior to building permit issuance.

7. The Owner(s) shall connect to power in compliance with the Schedule 74 work during construction.

8. The Applicant shall comply with Design Review regulations within Chapter 16.20 POMC.

9. The Applicant shall be responsible for citywide impact fees, if any, that may be enacted by the City Council prior to the issuance of the Certificate of Occupancy (C of O), consistent with Chapter 16.70 POMC.

10. The Applicant must complete a lease agreement to the satisfaction of the City of Port Orchard for any private construction within or private use of Sidney Avenue right of way or Bay Street right of way. The agreement is subject to approval by the City Council.

Zoning

11. Approval of this SSDP and SCUP is limited to the remodel and addition of five residential units on the site. Changes to the scope of the project may result in additional shoreline permitting.

12. All conditions identified by City Departments and other agencies must be met prior to final inspection.

13. A City of Port Orchard building permit will be required for the remodel of the structure and the addition of the multi-family units.

14. Approval of this SSDP and SCUP does not grant approval for the Design Review process of the Port Orchard Municipal Code and no building permits will be issued prior to final Design Review approval. Approval of this project is subject to final Design Review approval by Port Orchard City Council.

Fire Prevention Code

15. Buildings shall be constructed in accordance with the provisions of the International Fire Code, and the International Building Code, as adopted and enforced by City of Port Orchard. All construction shall be in accordance with Chapter 14, Fire Safety During Construction, Alteration or Demolition of a Building.

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16. Commercial cooking equipment is required to be installed for any equipment produces grease-laden vapors, a kitchen hood extinguishing system will need to be provided and an appropriately sized K-class fire extinguisher shall be located within 30 feet of the kitchen cooking equipment. All plans for fire suppression systems must be approved by the Fire District Prevention/Education office prior to the installation.

17. Because the building is classified as an A-2 with Residential on the second floor a fire sprinkler system is required to be installed. Building over 4,000 square feet are required to have fire alarm system installed. Building Plans for the fire system must be approved by the South Kitsap Fire & Rescue's Fire Prevention Office prior to installation. Separate permits are required for each installation. Submittals for review must include specifications on all devices to be installed.

18. A final inspection of the occupancy will be required, by a member of the South Kitsap Prevention/Education office, before a Certificate of Occupancy is issued from the City of Port Orchard. All requests for inspections must be made to the Fire Prevention/Education Office at least two business days in advance.

Decided this 4th day of September 2012.

THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center