SKAGIT COUNTY
OFFICE OF THE HEARING EXAMINER

***re*:** Appeal of Eric Battles & Emily McLaughlin of Substantial Improvement & Substantial Damage Cost Determination in FLOOD-2026-0028	**APL 2026-002** *of Administrative Decision FLOOD-2026-0028* **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

SUMMARY OF APPLICATION AND DECISION

Application: The Appellants appeal arguing that the Department erred when it did not decide that the Appellants possessed a pre-existing non-conforming right to keep their house which overrode the Department of Ecology recommendation.

Decision: The Administrative Appeal of FLOOD 26-0028 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: John Eric Battles
5412 South Fletcher St. #B
Seattle, WA 98118

Attorney/Agent: *None appeared at hearing, previously*:

	Jane Koler Land Use & Property Law, PLLC 6659 Kimball Drive, Suite B-201 Gig Harbor, WA 98335
Site Address:	41649 North Shore Lane Concrete, WA
Assessor's Parcel No(s)	P62860
Legal Description:	LOT 5, BLOCK A, CAPE HORN ON THE SKAGIT, AS PER PLAT RECORDED IN VOLUME 8 OF PLATS, PAGES 92 THROUGH 97, RECORDS OF SKAGIT COUNTY, WASHINGTON.
Lot Size:	0.25 acres
Zoning:	Rural Intermediate
Shoreline Presence:	Yes, Special Flood Hazard Zone
Application Date:	Appeal *filed*: 3/19/26

Primary Authorizing Codes, Policies, Plans, and Programs:

- Revised Code of Washington (RCW)
  - RCW 36.70A, Growth Management Act
  - RCW 36.70B, Local Project Review
  - RCW 86.16, Floodplain Management (Flood Control Act of 1968)
    - RCW 86.16.041, Floodplain Management Ordinances and Amendments
- Washington Administrative Code (WCC)
  - WAC 173-158, Flood Plain Management
- 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 14.11 – Rural Mixed-Use Zones and Uses
      - SCC 14.11.100 – Rural Intermediate (RI)
    - SCC 14.34 – Flood Damage Prevention
- 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: October 23, 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

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

Eric Battles
41649 N. Shore Lane
Concrete, WA

Emily McLaughlin
41649 N. Shore Lane
Concrete, WA

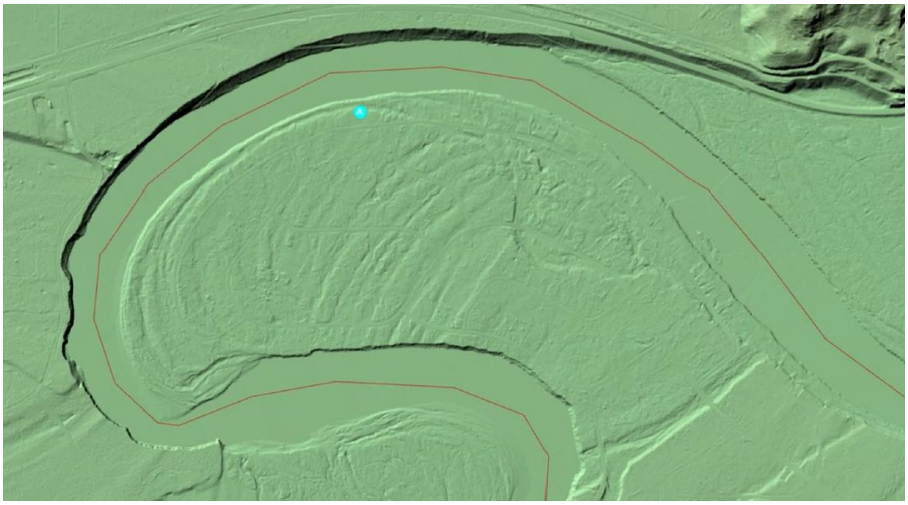
Hearing Examiner Exhibit List:

1. Battles Appeal, dated March 19, 2026
2. Signature Jane Koler, dated March 19, 2026
3. Insurance Replacement Cost, dated December 29, 2025
4. Ecology Recommendations, dated February 25, 2026
5. Site Assessment, dated February 27, 2026
6. Cost Determination Form, dated February 27, 2026
7. Cost Determination, dated March 6, 2026
8. ~~Cost Determination, dated March 6, 2026~~ [DUPLICATE OF Ex. 7]
9. Prehearing Conference Koler, dated April 13, 2026
10. Corrected Prehearing Conference Koler, dated April 17, 2026
11. PDS Certification Service, dated April 17, 2026
12. PDS Filing PA Declaration, dated April 17, 2026
13. PDS Pre-Hearing Memo, dated April 17, 2026
14. 1st Post Hearing conference, dated April 17, 2026
15. PDS 2nd Prehearing Memo, dated April 29, 2026
16. Battles request demand to Stay Administrative Appeal Proceedings, dated April 30, 2026
17. PDS Response Motion to Stay, dated May 1, 2026
18. Appellants Objection to Appeal, dated May 1, 2026
19. Battles Rely to Response to Motion to Stay, dated May 5, 2026
20. 2nd Post-Conference Order, dated May 8, 2026
21. Order Motion Stay, dated May 11, 2026
22. PDS Motion to Dismiss, dated June 16, 2026

23. Response to Motion to Dismiss with Complaint, dated May 4, 2026
24. Declaration of Service for RMTD Battles, dated July 2, 2026
25. Order Motion Dismiss, dated July 16, 2026
26. PDS Motion Continued, dated July 23, 2026
27. PDS Amended Motion to Cont., dated July 23, 2026
28. Order Continuing Final Hearing, dated July 24, 2026
29. PDS Hearing Brief, dated October 2, 2026
  a. PDS Hearing Brief – Ordinance, dated October 2, 2026
30. Battles Appellants Brief With Appx., dated October 8, 2026
  a. Certificate of Service HE Brief, dated October 8, 2026
31. Battles Motion to Change Venue to SCSC, dated October 8, 2026
32. PDS Response to Hearing Brief, dated October 9, 2026
33. PDS Response to Motion to Change Venue, dated October 9, 2026

II.

McLaughlin and Battles purchased a home on the above described subject property, which was built in 1967.[1] The home is on the northern edge of Cape Horn, on the inside of a meander, and was subject to flooding in the 2025 flood event in Skagit County. The site and vicinity have "clear evidence" of active channel migration as determined by the Washington Department of Ecology ("Dept. of Ecology")'s review of lidar digital elevation models;[2] the home's location is reflected in the lidar image:

[3]

The area is zoned Rural Intermediate where residences are allowed, but it is also designated as floodway within the Special Flood Hazard Zone.[4] The home has been a preexisting nonconforming use

[1] Ex. 5 at 1
[2] Ex. 4 at 2
[3] Ex. 4 at 3
[4] Ex. 7 at 1; Testimony of Johnson on 10/23/26

since approximately 1987 when the building of residential structures in the floodway was prohibited in the State.[5]

The home previously experienced flood damage in 2021 to a lesser degree at only 2.08% of the home value; this however, locked the assessed value for ten years at $71,400[6] under the 'substantial improvement' calculation directed by the Flood Control Ordinance.[7] That assessment decision was not appealed or challenged.

In the 2025 flood event, the home suffered substantial damage.

After its initial review,[8] the Department could not find a basis under the law to allow a rebuilding of the residence in the flood zone but took the step of seeking a determination by the Department of Ecology to see if a waiver could be obtained. The Department of Ecology did not grant the waiver.[9] Post the Department of Ecology review, the Department re-issued its own findings and again affirmed that it could not find a basis in the law for the appellants to rebuild.[10]

The Department of Ecology determined that the "[f]lood depth exceed[ed] 3 feet and velocity exceed[ed] 3 feet/second."[11] Those conclusions were based in part on the reports of Skagit County who observed the home firsthand, viewed the interior through a window and observed watermarks giving an estimate of flood levels at six feet.[12] The Appellants did not appeal the Department of Ecology decision.

The appellants wish to rebuild their home in line with FEMA standards which would require elevating the home.[13] The appellants did not have cost quotes on elevation but had already begun mitigation expending approximately $40,000.[14] The Department estimated the damages to be $104,145.30.[15] The appellant's insurance company estimated the damages to be $107,301.79 without depreciation by one calculation,[16] but actually $90,631, when not accounting for depreciation and sales taxes, or without the detached garage being part of the calculation the insurance company valuation at lowest is $83,929.64.[17] None of these values, even without the costs needed to elevate the home, are

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[5] RCW 86.16 (*at the time* Laws of 1987, ch. 523, § 4 (Wash.)); *see also* Skagit County Ordinance 11888 (Nov. 14, 1988)
[6] Ex. 5 at 1
[7] Discussed below in legal conclusions
[8] Ex. 5 and 6
[9] Testimony of Johnson on 10/23/26
[10] Ex. 7
[11] Ex. 4 at 2
[12] Ex. 5 at 1; Ex. 7 at 1; Testimony of Johnson on 10/23/26
[13] Testimony of Battles on 10/23/26
[14] Testimony of Battles on 10/23/26
[15] Ex. 5 at 2
[16] Ex. 3 at 17
[17] Ex. 3 at 14

below 50% of the assessed value of the home which is $35,700, and no party contests that mathematical fact.

III.

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

IV.

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 Department was made to any of the 33 exhibits that were pre-filed and they were admitted into the record; however, Ex. 8 will be excluded as being a duplicate of Ex. 7.

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.

V.

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.

The limited question of the appeal as agreed to by the parties is whether "…the Department erred when it did not make a determination that the Appellants possessed a pre-existing non-conforming right to keep their house which overrode the Department of Ecology recommendation." [18]

II.

General Jurisdiction & Regulation

The Legislature of the State of Washington has delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizens, and to that end Skagit County promulgated its Flood Damage Prevention

[18] Ex. 20

ordinance, SCC 14.34.[19] Under that ordinance, "[a]ny construction, location, extension, conversion, or alteration of a structure or land identified in a special flood hazard area shall fully comply within the requirements of this Chapter, RCW Chapter 86.16, and WAC Chapter 173-158." [20] The Director and his delegatees in the Skagit County Planning & Development Services Department are responsible for making administrative decisions and taking administrative actions to ensure compliance.[21]

Appeals of administrative decisions and flood area permit decisions are Type 1 cases that appeals of which are heard by the Hearing Examiner.[22] The appellants bear the burden of proving that the issuance of the order was "clearly erroneous." [23] The Hearing Examiner must "give substantial weight to the technical reviews performed by the County's technical staff and the County's third-party reviewers on technical matters." [24] 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." [25]

Appellants' Motion to Change Venue – Denial Thereof

The Appellants' filed a motion on 10/8/26 to change venue to the Snohomish County Superior Court.[26] It cited no legal authority, sought relief on issues not before the hearing examiner, was an unagreed motion not filed outside of the 30 day pre-trial motion deadline in SCHE §25(A), did not explain why or on what basis Snohomish Superior Court would be the more appropriate final administrative decision body for review of the administrative decision at hand when the law specifies the Skagit County Hearing Examiner is, and sought to relitigate issues that the hearing examiner already ruled on Ex. 21 where no motion for reconsideration was made. For those bases the motion was denied orally at the hearing.

Department of Ecology Determination

While the Department of Ecology decision is titled "recommendation" it is clear that it is an administrative determination by the Department of Ecology that the department cannot override.

> Without a recommendation from the department [of Ecology] for the substantial improvement, or repair or replacement of a substantially

[19] SCC 14.34.010
[20] SCC 14.34.060
[21] SCC 14.34.120
[22] SCC 14.06.150-1 and 14.34.130(1)(a)
[23] SCC 14.06.410(6)
[24] SCC 14.06.380(2)(b)
[25] Lauer v. Pierce County, 173 Wn.2d 242, 253 (2011) (*quoting* Phoenix Dev., Inc. v. City of Woodinville, 171 Wn.2d 820, 829 (2011)).
[26] Ex. 31

> damaged residential structure located in the regulatory floodway, no substantial improvement, or repair or replacement is allowed per WAC 173-158-070(1).[27]

A county hearing examiner lacks authority to review the Department of Ecology's determination that the property did not qualify for an exception to state regulations prohibiting construction in a designated floodway; the only body that could have given an appellate remedy is the Washington Pollution Control Hearings Board.[28]

Constitutional Challenges and Questions about Government Takings

As ruled upon on 5/11/26, the Hearing Examiner's view of the scope of issues has not changed.[29]

Constitutional claims, crimes, or torts of any nature lie outside the Hearing Examiner's jurisdiction, as is the granting of any legal relief in the form of money damages which a great deal of the cited case law appears to look at. Unless overwhelming on its face or ordered by a body with the power to do so,[30] the Hearing Examiner will presume that the County code, and the Washington State law regulating Flood Control, which the County code reflects, are consistent with the Constitution of the State of Washington and the Constitution of the United States. After reviewing the pleadings there is no overwhelming authority, and otherwise the Hearing Examiner would have to make a ruling on the unconstitutionality of both state and local law. The Hearing Examiner's role is to afford the parties an opportunity to be heard that is consistent with the County code and with principles of procedural due process for the administrative issue before them. Any further constitutional issues lie outside the Hearing Examiner's jurisdiction.

The only proper question before the Hearing Examiner is whether or not "...the Department erred when it did not make a determination that the Appellants possessed a pre-existing non-conforming right to keep their house which overrode the Department of Ecology recommendation." [31] The Office of the Hearing Examiner has no jurisdiction over other legal matters raised by the Appellants, but also true is that these matters are not before it.

III.

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[27] WAC 173-158-076(1)(b); *see also* SCC 14.34.190(3) and WAC 173-158-070(1)
[28] Klineburger v. King Cnty. Dep't of Dev. & Envtl. Servs. Bldg., 189 Wn.App. 153, 167–68, 356 P.3d 223 (2015).
[29] Ex. 21, which is mirrored in the following two paragraphs.
[30] Such as through a change in law, decision by a higher body on remand, declaratory relief, or stay on these specific matters before them.
[31] Ex. 20 at §4(a)

Since 1987, the State of Washington has required Skagit County to adopt regulations prohibiting residential structures in a floodway,[32] which it did in 1988.[33] Since then, any residence within the floodway, such as the Appellants, is a nonconforming use and structure.[34]

Lawful Preexisting Nonconforming Uses

A lawful preexisting nonconforming use

> [m]eans any use, improvement or structure established in conformance with Skagit County rules and regulations in effect at the time of establishment that no longer conforms to the range of uses permitted in the site's current zone or to the current development standards of the Code due to changes in the Code or its application to the subject property.[35]

Such uses are "allowed to continue consistent with the limitations [in the SCC Chapter 14.07]" [36] Such uses are not allowed to expand or be altered.[37] They can be repaired and maintained in the routine course,[38] but when they are damaged by a natural disaster such as a flood a building can only be restored or replaced only if:

> **(a)** A complete application for reconstruction or replacement is submitted within one year of the damage; and
> **(b)** That the restoration or replacement is made to conform to the regulations of the zone in which the building or structure is located, or if such regulations cannot physically be met without reducing the size of the building, the restoration does not extend any nonconformity that existed prior to the damage.

The issue in this appeal is criterion (b).

Special Flood Hazard Area Jurisdiction & Regulation

Skagit County's Flood Damage Prevention Ordinance, SCC 14.34, applies to the property in questions because it lies in a foodway in the Special Flood Hazard Zone. A floodway "means the river channel and adjacent overbank areas through which the base flood is discharged without cumulatively increasing the water surface elevation more than one foot..." [39]

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[32] RCW 86.16.041(1) and .041(2)(a); *see also* RCW 86.16 (*at the time* Laws of 1987, ch. 523, § 4 (Wash.))
[33] Skagit County Ordinance 11888 (Nov. 14, 1988)
[34] SCC 14.07.010(1).
[35] *See generally* 14.04.020 at "Nonconformance" and SCC 14.07.020(1)
[36] SCC 14.07.020(2)
[37] SCC 14.07.020(2)(c) and 14.07.030, *et. al.*
[38] SCC 14.07.040(1)
[39] SCC 14.34.005 at "Floodway"

In regard to special flood hazard areas, a building is considered substantially damaged when the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.[40] In this case because the costs of restoration exceed 50 percent, use of the property must conform to the zoning regulations including the Flood Damage Prevention Ordinance.

The flood control code also requires "substantial improvements" to comply with all applicable flood hazard reduction provisions.[41] Substantial improvements are:

> ...any remodel, addition, or other improvement of a building when the cost of which as calculated cumulatively with any other activity occurring during the previous 10 years and the total of all improvements or repairs equals or exceeds 50 percent of the market value of the building before start of construction of the improvement. The term includes buildings which have incurred substantial damage of any origin sustained by a building when the cost of restoring the building to its pre-damaged condition as calculated cumulatively with any previous restoration would equal or exceed 50 percent of the market value before the damage occurred. Substantial improvement does not include any project for improvement of a building to correct existing violations of State or local health, sanitary or safety code specifications which have been previously identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.[42]

Under these criteria, the Department correctly assessed the threshold value of the house to do its calculation and correctly determined the 50% value to judge repair costs against.

The Department also correctly determined that given the extent of the damage the lawful preexisting structure could only be allowed if it met the current zoning regulations, which it could not as all residential structures are disallowed in the floodway.[43]

However, there is an exception, which is if the Department of Ecology issues a waiver finding that the property meets criteria outlined in WAC 173-158-076;[44] if they were to do so then the Department could have ignored the cost calculation, assuming other criteria and requirements of the zone would be met. The Department of Ecology did not make that determination, and it went unappealed. Both the Skagit County Code and the WAC are specific that only with that Department of Ecology decision can a waiver to the substantial damage and improvement determinations be allowed by the Department. The Department correctly determined, after exploring the idea that there was no

[40] SCC 14.34.005 at "Substantial damage"
[41] SCC 14.34.190(6)
[42] SCC 14.34.005 at "Substantial improvement"
[43] SCC 14.34.190(2)
[44] SCC 14.34.190(3)

waiver to be had by the Department of Ecology, that there was not a path forward; this lawful preexisting use had been substantially damaged to the point that it could not meet the thresholds to continue as was or otherwise be in compliance with the current code which prohibits such structures.

IV.

Special Findings as to Attorney Conduct and Appellants' Election to Proceed *Pro Se*[45]

This hearing date was established following a pre-hearing conference to determine attorney availability,[46] and then later by agreed continuance of the lawyers to the hearing date.[47] It was confirmed in the court records that attorney Koler had been sent copies of the orders by the clerk of the Office of the Hearing Examiner.

On the date of the hearing Attorney Koler did not appear and did not communicate to the Office of the Hearing Examiner that she would not appear, nor did she file any kind of notice of withdrawal.[48] The hearing was opened and continued twice after attorney Koler did not appear so that proceedings could be delayed in order to determine the reason for her nonappearance. The Hearing Examiner sent a clerk to an adjacent county office to determine whether attorney Koler had mistakenly appeared at the wrong location; this concern arose because attorney Koler's office had contacted the Office of the Hearing Examiner's clerk the week before regarding the hearing location and the clerk mistakenly gave the address of an adjacent county office at the time. The Hearing Examiner also directed the attorney representing the Department to attempt to contact Attorney Koler, which the attorney for the Department attempted to do by both e-mail and telephone; those efforts were initially unsuccessful. Eventually, a legal assistant from attorney Koler's office contacted the attorney for the Department indicating that the appellants would be appearing but did not mention the status of attorney Koler. The Appellants, without attorney Koler, did appear in short order.

The appellants informed the Hearing Examiner that attorney Koler had advised them that she requested permission to appear virtually and that the request had been denied. There is no record of any motion filed by attorney Koler to this effect, nor were there any informal inquiries to the Office of the Hearing Examiner's clerk in the lead up to the hearing regarding any request.

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[45] *See generally* the oral record established in the first fifteen minutes of the hearing and testimony given under oath by clerks of the Office of the Hearing Examiner.
[46] Ex. 20
[47] Ex. 28
[48] *Contra* Attorney Koler also had not filed a Notice of Appearance as required SCHE §17, but had filed the appeal, motions, briefs, and appeared on behalf of the appellants at pre-hearing conferences throughout the process.

Approximately 15 days prior to the hearing, attorney Koler had filed an untimely motion along with the appellants' hearing brief, which appeared intended to be argued at the hearing.[49] The motion and briefing were of such nature that a layperson would not easily be able to present the arguments contained therein without professional legal assistance. The briefing made factual assertions not supported by the evidence admitted into the record or otherwise established at the hearing and addressed issues that the Hearing Examiner had previously ruled were outside the scope of the proceeding and beyond the Hearing Examiner's jurisdiction.

The appellants were advised of their right either to proceed *pro se* without attorney Koler or to seek substitute counsel and were given the opportunity to request additional time for that purpose. The appellants clearly and intentionally elected to represent themselves at this hearing and proceed without counsel. The appellants presented their position in an articulate and coherent manner, although they did not address many of the arguments and factual assertions contained in attorney Koler's hearing brief or motion.

V.

There is no evidence in the record that application of the current flood code prohibiting a residential dwelling would deny the appellant other reasonable use of the property for other permitted or allowed uses in this zone.

The facts put forward in the record show that the administrative decision does meet the legal requirements under both RCW 86.16.041 and SCC 14.34.190 for the Department to make the decision it did. The Department of Ecology waiver is not something for the Department to "override," and in fact the law specifically prevents the Department from doing so; it was just a *possibility* for bypassing the legal conclusions the Department had already correctly made and that possibility did not work out and was unappealed. The Department of Ecology decision did not materially affect the established legal conclusion made by the Department.

The Appellants have not met their burden to show that a clear error or mistake has been made in the factual or legal determinations of the Department.

VI.

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:

[49] Ex. 31

DECISION

The Appeal of the Administrative Determination regarding Substantial Improvement and Substantial Cost, APL 26-0002, is denied.

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. Unless otherwise dictated by law:

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 26th day of October 2026



Rajeev D. Majumdar
Skagit County Hearing Examiner