

Initial Project Review

Shoreline Substantial Development Permit / Shoreline Administrative Conditional Use Permit: Whalen Beach Access Stairway

Application Numbers: 925183, 925184
Parcel Number: 3290000640

Key Peninsula Advisory Commission (KPAC) Public Meeting: March 18, 2020, at 6:30 p.m.,
at the Key Peninsula Civic Center, 17010 S. Vaughn Road, Vaughn, WA 98394.

Proposal: Legalize an existing but unpermitted beach access stairway. The stairway measures approximately 33 feet long by 3 feet wide. The stairway terminates on an overwater landing that is approximately 36 square feet in size. The stairway is accessory to an existing single-family residence.

Project Location: 5620 Crescent Beach Rd. NW, on the east shoreline of Case Inlet (Puget Sound) and just north of the mouth of Dutcher Cove, in a Rural 10 (R10) zone classification, Conservancy/Aquatic Shoreline Environments, and in the Key Peninsula Community Plan area, within Section 15, T21N, R1W, W.M., in Council District #7.

Review Summary: This proposal seeks to resolve an ongoing County Code Enforcement issue. It appears that a path/stairs/pier have existed historically, but changes/unpermitted work have occurred (including due to a slide). Staff has reviewed the proposal for compliance with applicable policies and regulations. The proposal appears to meet those with the following exceptions:

- The proposal encroaches onto the abutting parcel to the north. The proposal needs to be pulled back onto the Applicants' parcel.
- The proposal must meet required setbacks from the north property line.
- Overwater stairs are not allowed. They need to be pulled back landward of the shoreline.
- The overwater landing could be considered a pier (provided it meets regulations including setbacks).
- The application shall provide responses to the Shoreline Administrative Conditional Use Permit (SACP) required findings.
- A geotechnical analysis is required.
- The application materials need to describe any vegetation removal proposed. It may be appropriate to plant additional vegetation to mitigate the impacts of any vegetation removal and/or for aesthetic purposes.

- The proposal shall be designed so that no bulkhead is necessary in the future.

Aside from the above, Staff has no objections to the Applicants desire to have a means to access/enjoy the shoreline/beach (provided the proposal can meet applicable development regulations). Ideally a joint-use agreement would be reached between the Applicants and abutting property owner to the north to share the proposal.

State Environmental Policy Act (SEPA): A SEPA checklist was submitted for this application. Pursuant to SEPA (Washington Administrative Code, Chapter 197-11) and County Environmental Regulations (Pierce County Code, Title 18D), the Department has reviewed the proposal and determined that a Determination of Nonsignificance (DNS) is likely to be issued. Issuance of a DNS means that the County has determined the proposal is not likely to result in any probable significant adverse environmental impacts.

Contact: Ty Booth, Planner, ty.booth@piercecounitywa.gov, 253-798-3727



Pierce County Online Permit Information:

<https://pals.piercecounitywa.gov/palsonline/#/permitSearch/permit/departementStatus?applPermitId=925183>

Project Data

Complete Application Date:	December 11, 2019
Initial Project Review Mailed:	March 11, 2020
Owners/Applicants:	William and Yvonne Whalen P.O. Box 156 Vaughn, WA 98394-0156 wvwhalen@hotmail.com
Applicants' Agent:	Halsan EF & P LLC P.O. Box 1447 Gig Harbor, WA 98335 carlhalsan@gmail.com

Legal and Public Notice

- *January 3, 2020:* Notice of Application and Public Meeting Notice (including the Key Peninsula Advisory Commission (KPAC) meeting date, time, location) was sent to the following:
 - Property owners within a radius of 300 feet, but not less than two parcels deep, around the exterior boundaries of the site.
 - Applicable governmental agencies
- *January 10, 2020:* Public Notice sign was posted on the site by the Agent, confirmed with a Declaration of Posting.
- *March 5 and 12, 2020:* Legal notices were published in the official County newspaper (*The News Tribune*) and the *Peninsula Gateway* newspaper, advertising the public meeting to be held by the Key Peninsula Advisory Commission (KPAC).

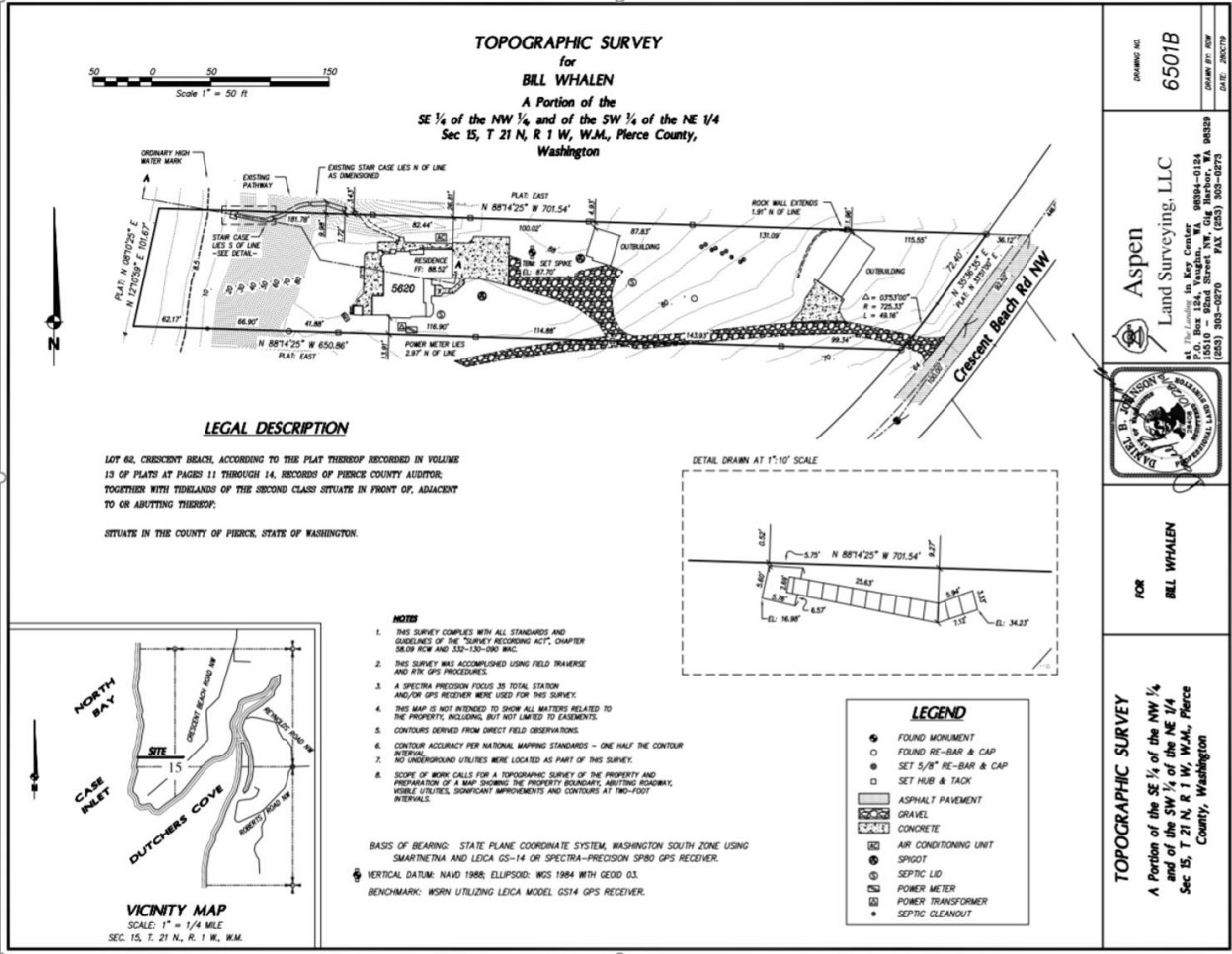
2016 Washington State Coastal Atlas



2017 County Aerial Photo



Site Plan



DRAWING NO.
6501B

DATE: 200719

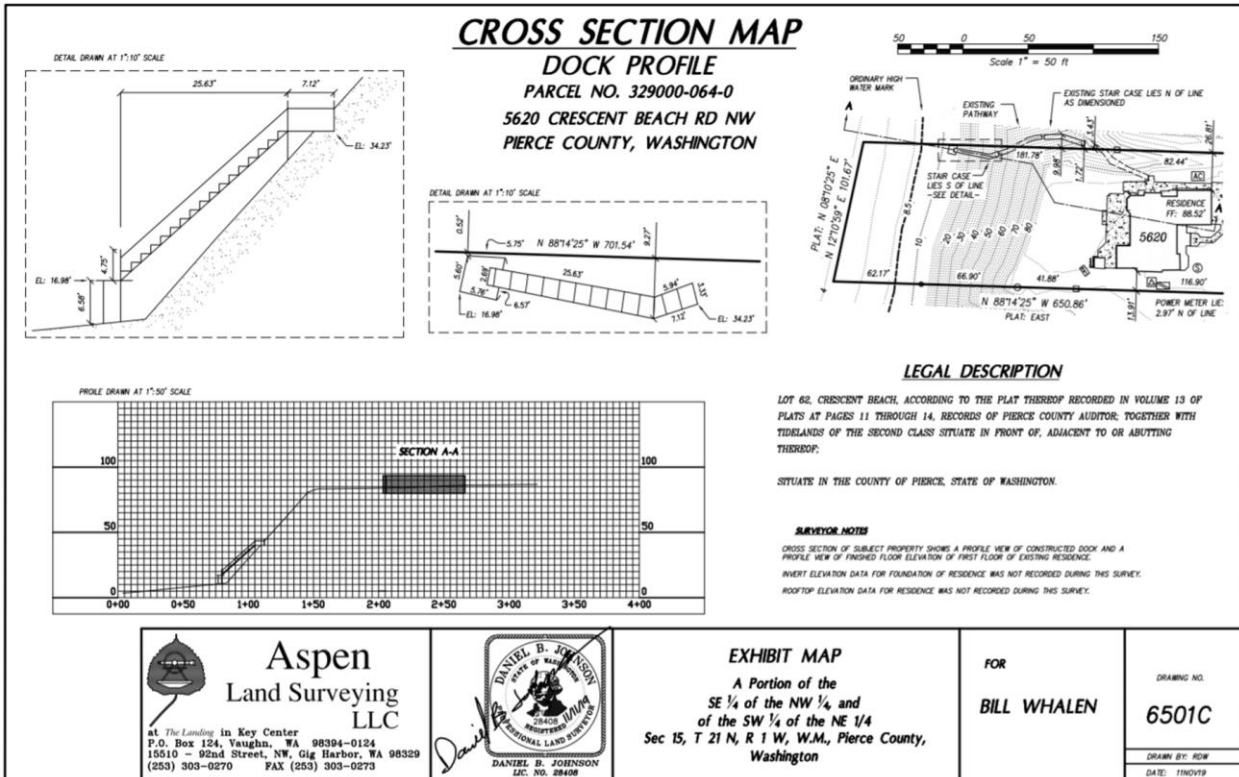
Aspen
 Land Surveying, LLC

AS, The Landline in Key Center, 98394-0124
 P.O. Box 124, Westport, WA
 (206) 305-0270 FAX (206) 305-0270

FOR
BILL WHALEN

TOPOGRAPHIC SURVEY
 A Portion of the SE 1/4 of the NW 1/4
 and of the SW 1/4 of the NE 1/4
 Sec 15, T 21 N, R 1 W, W.M., Pierce
 County, Washington

Cross-Section



Comments Received from the Abutting Property Owners, Public, and Government Agencies

- **Comments from Public:**

- The abutting property owner to the north has twice submitted comments/questions summarized as follows: Trail/stairs encroach onto their parcel; they provided their own survey of the stairs; is the encroachment a violation of County regulations; is the dock built on the Whalen parcel; when was the dock constructed; is the dock permitted; and what is the required property line setback for a dock and stairs.
- No other abutting property or public has commented.

- **Comments from Agencies:**

Various comments have been received. The following are of note:

- County Development Engineering Division: A geotechnical analysis is required but has not yet been submitted. In addition, it must be demonstrated that the proposal would not require future protection with hard armoring (bulkhead).
- County Resource Management Division (Environmental Biologists): No wetland or fish/wildlife habitat area review is required. Of note, the parcel is not designated as Marine Shoreline Critical Salmon Habitat per the County Critical Area Regulations (Pierce County Code, Title 18E, Chapter 18E.40).
- Washington State Department of Ecology: The proposal must meet the Administrative Conditional Use Permit criteria and erosion control measures are necessary during construction.
- Nisqually and Squaxin Island Indian Tribes: They have no cultural resource concerns and have not requested a cultural/archaeological study.

Note, State and/or Federal approvals are required for overwater development. It is the Applicants responsibility to contact the applicable agencies and obtain any necessary permits/approvals...regardless of if those agencies have provided comments to the County.

Parcel Site Characteristics (Existing)

- The site is located on the east shoreline of Case Inlet. The closest opposite shoreline (fetch) is 8,600 to the northwest (Stretch Island).
- The site is Lot 62 within the subdivision/plat of Crescent Beach (created in 1944).
- The size of the site is 1.55 acres. The long axis is oriented in an east-west direction. The following are the dimensions for each property line: north 701 feet, south 650 feet, west (shoreline) 101 feet, and east (Crescent Beach Road NW) 121 feet.
- The topography is flat except abutting the shoreline. The shoreline has an 80-foot tall bluff.
- The parcel is vegetated with trees/bushes except for around the buildings (where it consists of lawn) and some bare soils on the bluff.
- A single-family residence is set back approximately 130 feet from the shoreline. Outbuildings are located in the center and east side of the parcel.
- A driveway is located along the south property line. The driveway also appears to provide access to the abutting parcels to the south (owned by another party).
- The subject proposal is located in the northwest corner of the parcel.

Parcel History

- In 2000, the residence received a final on a building permit application.
- In 2001, a garage received a final on a building permit application.
- In 2011, the Applicants purchased the parcel from a bank. Between 1998 and present, the parcel changed hands at least four times.
- October 2018, the new County shoreline regulations went into effect.
- In January 2019, Mr. Booth received an email from the Agent, Carl Halsan. It stated the following:

“I know the picture is old, but it shows a dock that the owner estimates had been there for about 75 years. A 1998 survey showed the dock and a portion of the stairs encroaching onto the neighbor’s property. After a big storm wiped out a portion of the stairs and the lower bank, the owner had them rebuilt and also moved the dock, so the stairs landed on it. However, it still encroaches. The neighbor is willing to just leave everything where it is and sign a shared use agreement for both the stairs and the little dock, but only if the County says all is good. Can you help me figure out a good path to make this happen please?”

- On March 13, 2019, Mr. Booth responded to Mr. Halsan. The email stated the following: “Apologies for the delay. So, I have done some research myself on our permit records, assessor records, and aerial photos. I have created a slideshow (attachment 2). Note, I did research on both this parcel and the abutting one to the west (-650). The abutting parcel had most of the Assessor photos that are in the slideshow. I could not find a recorded copy of the survey in the Auditor records. Based on everything, I believe that prior to the

old shoreline regulations there was a dock and stairway to the dock. However, based upon what you stated and Assessor records there was a slide. In looking at older photos and newer photos, it appears the stairs have been significantly upgraded and the dock too. Of note, the wood is very new on all of this and the appearance of the stairs (at a minimum) is different too. Anyhow, there is no permit history on either parcel for work to the dock and stairs (no shoreline exemption, no building permit, no geotechnical review, etc.). So, where am I going with this? My hunch is that Dave would say this work may have been exempt at one point, but permits were not obtained...so that to legalize all of this would require permits now (likely would not be exempt). As such, if it is not legal...than that makes it difficult to answer your question. I have not discussed with Dave. I would be happy to chat with you alone or we could include him and see what he says. In the meantime, I suppose the owners could just record something privately that addresses their needs...but that would not make it legal in the eyes of the County.” Note, references in the email are regarding Dave Risvold, County Shoreline Supervisor.

- In March 29, 2019, County Code Enforcement received a public complaint regarding the subject development.
- In April 2019, Code Enforcement sent a letter to the Applicants informing them that a complaint had been filed regarding beach access stairs and dock.
- On December 11, 2019, the subject shoreline permit applications were created.

Staff Comment: At present, County Code Enforcement has put their enforcement action on-hold pending the outcome of this permit process. Note, should the Applicants assert any adverse possession claims with the abutting owner such is a civil issue of which the County is not involved. Note, Code Enforcement finds that the issue is bigger in scope than addressed in this application. The unpermitted path/stairway on the abutting parcel to the North is part of their enforcement action. Therefore, this proposal needs to be revised accordingly.

Surrounding Land Use / Shoreline / Zoning Designation

LAND USE		SHORELINE	ZONING
North	Vacant	Conservancy	Rural 10 (R10)
South	Vacant	Conservancy	R10
East	Crescent Beach Road NW and single-family residences across the street	Conservancy	R10
West	Puget Sound	Aquatic Marine	Not applicable

Initial Staff Review for Consistency with Policies and Regulations

Key Peninsula Community Plan (Pierce County Code, Title 19A, Appendix G):

In 2008, the Plan went into effect. It is part of the County Comprehensive Plan.

Staff Comment: There are any number of policies from the Community Plan that could apply. Staff has not listed them in this report as the County Shoreline Regulations (Pierce County Code, Title 18S) have similar ones that are addressed later in this report. In summary though, the Community Plan places great emphasis on maintaining shoreline aesthetics, vegetation, and stability.

Pierce County Shoreline Policies/Regulations (Pierce County Code, Title 18S)

Title 18S regulates development on County shorelines. It regulates not only the waterbody itself, but also the abutting uplands located within 200 feet of the shoreline. Each regulated shoreline has been assigned one or more shoreline environment designations (SED).

Staff Comment: The upland areas of this parcel have been designated a Conservancy SED and the abutting marine waters an Aquatic Marine SED.

Conservancy SED (Pierce County Code, Title 18S, Section 18S.20.040)

The intent of the Conservancy SED is to conserve and manage existing natural resources and valuable historic and cultural areas while providing recreational benefits to the public and while achieving sustained resource utilization and maintenance of floodplain processes. Shoreline ecological functions should be preserved by avoiding development that would be incompatible with existing functions and processes, locating restoration efforts in areas where benefits to ecological functions can be realized, keeping overall intensity of development or use low, and maintaining most of the area's natural character.

Applicable Management Policies.

1. Active and passive outdoor recreation activities and resource-based uses such as timber harvesting, aquaculture, and passive agricultural uses such as pasture and range lands shall receive priority.
2. Opportunities for ecological restoration should be pursued, giving priority to the areas with the greatest potential to restore ecosystem-wide processes (the site of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions) and functions.
3. Development should be limited to that which sustains the shoreline area's physical and biological resources and temporary uses that do not substantially degrade ecological functions or the natural character.
6. Water-dependent and water-enjoyment recreation facilities that do not deplete the resource over time, including but not limited to boating facilities, angling, hunting, wildlife viewing trails, and swimming beaches, may be allowed.
8. Outstanding recreational or scenic values should be protected from incompatible development.

Staff Comment: The proposal is for recreational purposes and therefore appears consistent with the applicable policies. Of note, Chapter 18S.70, Appendix A, defines the following terms: water-enjoyment, water-oriented, water-related, water-dependent, and water-enjoyment.

Aquatic SED (Pierce County Code, Title 18S, Section 18S.20.070)

The intent of the Aquatic SED is to protect, restore, and manage the unique characteristics and resources of marine and fresh waters.

Applicable Management Policies.

1. All development on navigable waters and submerged lands should be located and designed to minimize interference with surface navigation, to reduce impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.
2. Development that adversely impacts the ecological functions of marine and freshwater habitats should not be permitted except where necessary to achieve the objectives of RCW 90.58.020, and then only when all identified impacts are mitigated as necessary to assure maintenance of shoreline ecological functions and processes.
3. Shoreline development and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.
4. New over-water structures should only be permitted for water-dependent uses or public access. The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.
5. Multiple uses of the same over-water facility should be encouraged.

Staff Comment: The portion of the proposal located overwater/waterward of the shoreline is water dependent and of small size. Therefore, it is difficult to see how the proposal would be inconsistent with the applicable policies.

Water Access Facilities (Pierce County Code, Title 18S, Section 18S.40.140)

The Water Access Facilities policies and regulations are intended to manage development of facilities that support water dependent uses such as mooring buoy, mooring piling, float, lift, railway, launching ramp, dock (pier, ramp, and/or float), marina, and water access stairs.

Applicable Policies.

1. Locate, design, and operate facilities so that other water-dependent and preferred uses are not adversely affected.
2. Discourage facilities that serve only one residence, and encourage facilities serving more than one residence.
3. Discourage railways, docks and launching ramps on shallow, gradually sloping beaches that result in excessively long facilities, or normal length facilities that are nonfunctional (e.g., high and dry) a majority of the time.
5. Give preference to facilities:
 - a. That provide public access and recreational opportunities;
 - b. That are landward of the ordinary high water mark (OHWM) such as upland dry storage marinas;
 - c. That are waterward of the OHWM that can be removed seasonally rather than permanent facilities; or
 - d. That minimize the amount of shoreline modification (e.g., buoys rather than docks).

Applicable Regulations:

- C.3.: Facilities shall be stable against the elements and maintained in safe and sound condition.
- C.12.: Height of a facility should be the minimum necessary for safe operations.
- D.4.: Use of residential water access facilities shall be limited to property owners, residents, and guests for recreational noncommercial purposes, except for those associated with a legally established home occupation or cottage industry.

- D.11.: Water access stairs shall not be constructed waterward of the OHWM. Landings within the stairway shall be limited to the minimum size necessary to meet applicable building codes.

Staff Comment: The entire proposal is considered to be a water access facility. The proposal appears to meet the applicable policies/regulations with the following exceptions:

- Overwater stairs are not allowed.
- The proposal must be on the Applicants' parcel and not encroach upon the abutting parcel to the north (unless the pier is shared).
- There do not appear to be any regulations in the Water Access section addressing the width of trails/stairs and/or their setback from property lines. However, in terms of setbacks, these are required to be setback a minimum of 3 feet from interior/side property lines per the Zoning Code (Pierce County Code, Title 18A, Section 18A.15.040.B.4.)

Shoreline Permit Table (Pierce County Code, Title 18S, Section 18S.60.030-1)

This table shows that water access facilities (for residential facilities serving less than four parcels) in the Conservancy SED requires a SD or SD Exemption. Further, in the Aquatic SED they also require an SACP.

Staff Comment: The proposal requires a SD as it does not meet any of exemptions listed in Pierce County Code, Title 18S, Section 18S.60.020 or Washington Administrative Code, Chapter 173-27, Section 173-27-040. Notably, there are exemptions for development that does not exceed a fair market value of \$7,047.00 and another for normal maintenance, repair, and replacement. However, this proposal does not appear to meet either as the fair market value presumably exceeds the exempt amount and the existing development is not legal (was repaired/replaced in the past without permits).

Further, an SACP is required in the Aquatic SED. However, while a pier is allowed, water access stairs are not allowed waterward of the OHWM. In this case, the bottom landing of the bluff stairway appears be located overwater. Further, there is another set of stairs which extends off the side of the pier (they may have already been removed).

Therefore, even though the Applicants' may consider the overwater structure to be a landing for the stairs, stairs cannot be located overwater. However, the stairs could be pulled back so that they are not located overwater (if they are waterward). Subsequently, the overwater structure could be considered a pier. As a pier, it would appear to generally meet the policies/regulations as addressed in the Water Access Facilities section. The only possible exception is that a 10-foot setback would be required from the interior/side property line (unless a joint-use dock was proposed).

Ecological Protection (Pierce County Code, Title 18S, Section 18S.30.030).

The intent of the Ecological Protection policies and regulations is to ensure that shoreline development is established and managed in a manner that protects existing ecological functions and ecosystem-wide process and that mitigates adverse impacts to ecological functions. This means assuring no net loss of ecological functions and processes in shorelines and protecting

critical areas. In the Conservancy SED, the required buffer is 100 feet. However, there are buffer exceptions listed in Section 18S.30.030 E.3. including, but not limited to, the following:

- Water dependent uses and public shoreline access are allowed within the standard shoreline buffer subject to applicable regulations of the Master Program.
- An unpaved access path from a residential dwelling to the shoreline is allowed if:
 - The path width is limited to 4 feet;
 - The length of the path is minimized by keeping the path at a right angle to the shoreline to the degree feasible; and
 - No trees are removed.

Staff Comment: A geotechnical report is required to make sure the slope is stable (it sounds as if a slide may have occurred in the past). It is possible it may demonstrate that a path/stair are not feasible or that a different design/location are appropriate. Further, vegetation disturbance is discouraged. The application materials need to describe any vegetation removal proposed (including location and type of vegetation). It may be appropriate to plant additional vegetation to mitigate the impacts of any vegetation removal and/or for aesthetic purposes.

Shoreline Substantial Development Permit (Pierce County Code, Title 18S, Section 18S.60.040)

D. Decision Criteria. The Director shall review applications for Shoreline Substantial Development in accordance with the following decision criteria:

1. The proposal is consistent with the policies and procedures of the Act.
2. The proposal is consistent with this Title's policies and regulations including, at a minimum, the following:
 - a. Policies and regulations of the shoreline environment designation (SED) in which the proposal is located;
 - b. Policies and regulations for Shorelines of Statewide Significance if the proposal is within such area;
 - c. Policies and regulations within the applicable General Policies and Regulations found in Chapter 18S.30 PCC; and
 - d. Policies and regulations within the applicable Use and Development Policies and Regulations found in Chapter 18S.40 PCC.
3. The proposal is consistent with the applicable provisions of Title 18E PCC.
4. The proposal is consistent with the applicable policies of the Comprehensive Plan and any applicable Community Plan.
5. The proposal is consistent with all applicable development regulations, including but not limited to Title 18A PCC, Development Regulations – Zoning.

Staff Comment: For the reasons previously stated in this report, it appears the proposed path/stairs meet the SD criteria subject to the comments made by Staff previously in this report (including that no overwater stairs are allowed). Further, per Code Enforcement, the path/stairs on the abutting parcel need to be addressed. Note, the overwater structure may be included in the proposal but needs to be proposed as a pier.

Shoreline Administrative Conditional Use Permit (Pierce County Code, Title 18S, Section 18S.60.050)

D. Decision Criteria.

1. The Director shall review the location of the proposal for compatibility with development permitted in the surrounding areas; and make further stipulations and conditions to reasonably assure that the basic intent of the Master Program will be served.
2. An Administrative Conditional Use Permit may be granted; provided, that the applicant demonstrates all of the following:
 - a. That the proposed use is consistent with the policies of the Act and the Master Program;
 - b. That the proposed use will not interfere with the normal public use of public shorelines, nor use of waters under the Public Trust Doctrine;
 - c. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Plan and Master Program;
 - d. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located;
 - e. That the public interest suffers no substantial detrimental effect; and
 - f. The proposed use is consistent with all applicable development regulations.
3. In the granting of all Shoreline Administrative Conditional Use Permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if Shoreline Administrative Conditional Use Permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW [90.58.020](#) and shall not produce substantial adverse effects to the shoreline environment.

Staff Comment: This permit is triggered by the overwater development. For the reasons previously stated in this report, overwater stairs are not allowed. However, if the overwater portion is included in the proposal and presented as a pier, it appears to meet the applicable criterion (provided it does not include any stairs waterward of the OHWM and meets the required setback from the property line). Note, older photos showed a davit (small boat crane) on the structure. In terms of cumulative impacts, what is proposed is similar to other existing development along the shorelines of the Key Peninsula. Notably, the pier is much shorter than most existing ones

Whalen SD-SACP IPR KPAC-TB.docx