



COUNTY COMMISSIONERS

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**HEARING EXAMINER**

*Creating Solutions for Our Future*

**BEFORE THE HEARING EXAMINER  
 FOR THURSTON COUNTY**

In the Matter of the Application of	)	NO. SSDP 2008103579
	)	
Jim and Patty Leonard	)	
	)	
For Approval of a Shoreline Substantial	)	FINDINGS, CONCLUSIONS,
Development Permit	)	AND DECISION
	)	

**SUMMARY OF DECISION**

A Shoreline Substantial Development Permit to construct a 29.44-foot stairway from the top of a marine bluff to a beach on the Totten Inlet of Puget Sound on property at 5340 78th Avenue, NW, Olympia, Washington, is **GRANTED** with conditions.

**SUMMARY OF RECORD**

Request:

Jim and Patty Leonard (Applicants) requested approval of a Shoreline Substantial Development Permit (SSDP) to construct a 29.44-foot stairway<sup>1</sup> from the top of a marine bluff to the beach on property at 5340 78th Avenue, NW, Olympia, Thurston County, Washington. The property is located within the Conservancy Shoreline Environment and adjacent to Totten Inlet.<sup>2</sup>

Hearing Date:

The Thurston County Hearing Examiner held an open record hearing on the request on February 16, 2010.

Testimony:

At the hearing, the following individuals presented testimony under oath:

Gayle Zeller, Resource Stewardship Department

<sup>1</sup> During the hearing the structure was referred to as a staintower and a stairway. In this decision it will be referred to as a stairway.

<sup>2</sup> The legal description of the property is: A portion of Section 12, Township 19, Range 3W known as Parcel No. 13912110401, in Thurston County, State of Washington.

Arthur Saint, P.E., Public Works Department  
John Ward, Environmental Health Department  
Ryan Moore, Vector Engineering

Exhibits:

At the hearing, the following exhibits were admitted in the record:

EXHIBIT 1 Resource Stewardship Department Report including the following exhibits:

attachment a	Notice of Hearing
attachment b	Vicinity Map
attachment c	Zoning/Parcel Map
attachment d	Aerial View of Subject Parcel
attachment e	Aerial View of Subject Parcel and Adjacent Parcels
attachment f	JARPA Application dated September 19, 2008
attachment g	Site Plan
attachment h	Cross-Sections of Stairway
attachment i	Mitigated Determination of Nonsignificance Issued January 7, 2010
attachment j	August 19, 2003 Geotechnical Report prepared by D. Strong, Bradley Noble Geotechnical Services
attachment k	Correspondence dated December 3, 2008 by J. Goode, Environmental Health Department
attachment l	Correspondence dated December 9, 2009 by C. Meyers, Public Works
attachment m	Correspondence dated January 22, 2010 from Washington Department of Ecology
attachment n	Photos of Site: Photo 1 – Approximate top of bluff (left of alder tree) where top of stairway will be located Photo 2 – Approximate location of stairway to left of alder trees Photo 3 – Area at toe of bluff for terminus of stairway

EXHIBIT 2 Photo of Public Hearing Notice Posting  
EXHIBIT 3 Color Aerial of Subject Parcel  
EXHIBIT 4 Color Aerial of Subject Parcel and Surrounding Properties  
EXHIBIT 5 Enlarged Site Plan of Stairway  
EXHIBIT 6 Enlarged Cross Section of Stairway  
EXHIBIT 7 Color Photos (Exhibit 1, attachment n)  
EXHIBIT 8 Staff Request to Leave Record Open

Based on the record developed at hearing, the following Findings and Conclusions are entered:

## FINDINGS

1. The (Applicants) requested approval of an SSDP to construct a 29.44 stairway from the top of a marine bluff to the beach on property at 5340 78th Avenue, NW, Olympia, Thurston County, Washington. *Exhibit 1, Pages 1-2; Testimony of Ms. Zeller; Exhibit 1, attachment f, JARPA application.* The property is privately owned and the beach is not a public beach. *Testimony of Ms. Zeller.*
2. The stairway would be a 29.44-foot high wood stairway that would extend from the top of the marine bluff to the beach at the toe of the marine bluff. The bottom of the stairway would land on natural rocks, sized to receive bearing loads. *Exhibit 1, Staff Report, pg. 2; Exhibit 1.* The stairway would be located beyond the required six-foot side-yard setback of both the northeast and northwest property lines *Exhibit 1, attachments c, d and n---Photos 1 through 4.* Ryan Moore, a licensed professional engineer in the State of Washington, completed the design of the stairway. *Exhibit 5.*
3. The property is a 1.33-acre parcel that is zoned Rural Residential/Resource One Dwelling Unit per Five Acres (RRR-1/5). Because the developed parcel is less than five acres in area, it is considered by Thurston County as a legal nonconforming parcel within an RRR 1/5 district. *Exhibit 1, attachments c and d.*
4. The site is on Totten Inlet of Puget Sound and is under the jurisdiction of the Washington State Shoreline Act (RCW 90.58). Due to its location and because the cost of the project, is estimated to be \$13,000, which exceeds the threshold amount<sup>3</sup>, the project requires an SSDP. Projects in Thurston County that require an SSDP are regulated pursuant to the provisions of RCW 90.58 and the Shoreline Master Program of Thurston Region (SMPTR). The SMPTR identifies the site as being in a Conservancy Shoreline Environment. Single-family development is permitted subject to compliance with policies and regulations of the Residential Development Chapter of the SMPTR. *Exhibit 1, Staff Report, pg. 2; Exhibit 1, attachments b, c and f; Testimony of Ms. Zeller.* Further, subject to the policies and general regulations of the SMPTR, the Residential Development Chapter of a Conservancy Shoreline designation allows for a stairway. *Exhibit 1, Staff Report, pg. 3; Testimony of Ms. Zeller.*
5. The subject parcel includes a low marine bluff with an estimated vertical relief of 15 feet from the toe of the slope to the top of the bluff. The bluff is vegetated with low-growing ground cover and a small number of trees. In Thurston County a marine bluff is a regulated critical area that is subject to the provisions of TCC 17.15, Thurston County Critical Areas Ordinance (CAO). The marine bluff is designated as “unstable” in the Coastal Zone Atlas of Washington. *Exhibit 1, Staff Report, pg. 2; Exhibit 1, attachments d, f, g, h and j.* The marine bluff is a critical area and construction of the stairway must comply with the CAO.
6. The footings for the stairway at the top and along the bluff would be concrete cast-against-earth, with the maximum depth of the footings would be three feet below the

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<sup>3</sup> Currently the threshold amount is \$5,718.00.

- surface depth. They would be either hand dug or augured with a small auger hanging from an excavator on the upland side of the stairway. As part of the design, a davit-style lifting arm, compatible with the height of the top of the stair rails, is proposed. The location of the davit would not cause a visual interference for adjacent property owners nor adversely impact the vegetation on the bluff. The davit would be used to carry items, such as kayaks, up the stairs. *Exhibit 1, Staff Report, pg. 4; Testimony of Ms. Zeller; Testimony of Mr. Leonard; Exhibit 1 attachments f and h.*
7. Large rocks are proposed at the bottom of the stairway. The Applicant may use a barge with an outrigger craned to place them, or may lower them in place from the top of the bluff. *Exhibit 1, Staff Report, pg. 4; Exhibit 1, attachment h.* County staff recommended that in order to avoid any disturbance to the beach and habitat, delivery of materials by barge must occur at high tide. *Exhibit 1, Staff Report, pg.*
  8. The Applicant submitted engineered plans for the construction of the stairway. They also submitted a geotechnical report that was completed on August 19, 2003. The report was originally drafted to evaluate soil conditions for site development of a single-family residence that was proposed to be built in 2003. In the report there is mention of erosion processes at the marine bluff, but there are no specifics of evaluation of a stairway and the impacts, if any, it would caused. . However, a conclusion of the report is that “Construction of a stairway for beach access is possible...” *Exhibit 1, attachment j, pgs. 1 and 2.*
  9. The Thurston County Resource Stewardship Department and the Public Works Department submitted that the review completed in the August 19, 2003 geotechnical report was sufficient for the review of proposed stairway. This was based in part on the stable history of the slope during the construction of the single-family residence. *Exhibit 1, Staff Report, pg. 4; Testimony of Ms. Zeller; Testimony of Mr. Saint.* The Applicant’s representative testified that there were no problems encountered with the marine bluff during the construction of the single family residence on-site. The engineering of the stairway was done with consideration of the data of the August 19, 2003 report. *Testimony of Mr. Moore.*
  10. There would be minimal disturbance of vegetation during construction of the stairway. The Applicant indicated that the only removal of trees on the slope would be two alder trees that located near the toe of the slope. Two existing fir trees are called out on the plans to remain. *Exhibit 1, Staff Report, pg. 4, Exhibit 1 attachments g and n; Exhibit 5; Testimony of Mr. Moore.* The landing would be located on the top of the marine bluff, which has a natural clearing. Within the buffer zones of the top of the slope there is native vegetation. *Exhibit 1, Staff Report, pg. 4,*
  11. Pursuant to the State Environmental Policy Act (SEPA) (RCW 43. 21C) the County had jurisdictional authority for environmental review of impacts that would be related to the proposed project. A Mitigated Determination of Non-Significance (MDNS) was issued on January 7, 2010 and became final on January 22, 2010. No appeals were filed. *Exhibit 1, Staff Report, pg. 3; Exhibit 1, attachment i.*

12. Written notice of the public hearing was sent to all property owners within 500 feet of the site; notice was published in The Olympian on February 5, 2010, at least ten (10) days prior to the hearing. The site was posted on February 5, 2010. *Exhibit 1, Staff Report, pg. 2; Exhibit 1, attachment a; Exhibit 2.* No public testimony was presented. No written comments from the public were received.

### **CONCLUSIONS**

The Hearing Examiner is granted jurisdiction for Shoreline Substantial Development Permits pursuant to RCW Chapter 36.70, TCC 19.04.010(c), WAC 173-27-020, and Section One, Part V of the Thurston County Shoreline Master Program.

#### **Criteria for Review**

*RCW 90.58.020.* The primary goal of the state of Washington Shoreline Management Act (SMA) is to protect at a statewide level the public's interest in the State's shorelines through a coordinated management and development process. The SMA allows all reasonable and appropriate uses of the shorelines that will promote and enhance the public interest. The SMA mandates protection against adverse effects to the public health, the land, vegetation, wildlife, waters and preserving to the greatest extent feasible the physical and aesthetic qualities of the natural shoreline. Permitted uses in the shorelines must be designed and conducted in a manner that minimize resultant damage to the ecology and environment of the shoreline area and interference with the public's use of the water.

*WAC 173-27-140<sup>4</sup>* requires that all use or development on shorelines of the state must:

- (1) Be consistent with the policy and provisions of the Shoreline Management Act and the master program
- (2) Be more than 35 feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

*Shoreline Substantial Development Permits criteria are set forth in WAC 173-27-150.*

- (1) A shoreline substantial development permit shall be granted only when the development proposed is consistent with:
  - (a) The policies and procedures of the Shoreline Management Act;
  - (b) The provisions of this regulation, and
  - (c) The applicable master program adopted or approved for the area.

*The Shoreline Master Program for the Thurston Region.* The relevant section is:

Section Three—Policies and Regulations for Use Activities

XVI. Residential Development, C. General Regulations

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<sup>4</sup> TCC 19.04 and the County's Shoreline Master Program references WAC 173-14. This section of the WAC was repealed in 1995 and replaced by WAC 173-27.

11. All stair towers meeting one of the following conditions must be designed by a licensed civil engineer:
  - (a) The location proposed is mapped as “Unstable” or “Intermediate Stability” in the Washington Coastal Zone Atlas prepared by the State Department of Ecology.
  - (b) All stair towers 24 feet in height or greater
  - (c) Other instances where the building official determines that site conditions dictate the preparation of plans by a licensed civil engineer.Stair towers shall be designed to minimize obstructing the views enjoyed by adjoining residences.

### Conclusions Based on Findings

1. The Applicants requested approval of as SSDP to construct a new 29.49-foot stairway that would extend from the beach on Totten Inlet of Puget Sound to the top of a marine bluff on property at 5340 78th Avenue, NW, Olympia, Thurston County, Washington. The property is within a Conservancy Shoreline Environment. Stairways are permitted in a Conservancy Shoreline Environment. Because of the location of the project and the cost of the improvements, the project is subject to SSDP review. *Findings of Fact Nos. 1, 2 and 4.*
2. The stairway would exceed 24 feet, and a licensed civil engineer has designed the proposed stairway. *Finding of Fact Nos. 2,*
3. **The proposed stairway on the subject property would be consistent with the policies set forth in RCW 90.58.020 and the Shoreline Master Program for the Thurston Region.** Thurston County’s SMPTR provides regulations for development within the shorelines of Thurston County. The applicable policies and regulations of the SMPTR are satisfied by the Applicants’ proposal. *Findings of Fact Nos. 3-10.* The policies of the SMA include the planning for and fostering all reasonable and appropriate uses to promote and enhance the public interest of the shorelines. *RCW 90.58.020.*
4. A goal of the SMPTR is to preserve, to the fullest possible extent, the scenic, aesthetic and ecological qualities of the shorelines of the Thurston Region in harmony with those uses which are deemed essential to the life and well-being of Thurston County’s citizens. *SMPTR, Section 2, Part I.* All development must ensure that water quality, public health, shoreline integrity, and habitat are protected. *SMPTR, Section 2, Part V.* The stairway would be developed in a manner that was not significantly damage the shoreline. The soils on site can adequately support the structure. It would be in harmony with other uses and would preserve the scenic, aesthetic and ecological qualities of the shoreline. *Findings of Fact Nos.6 and 10.*
5. **The stairway will not interfere with the normal public use of public shorelines.** The subject property is in private ownership and is not a public area. *Finding of Fact No. 1.* The stairway will not create any visual and aesthetic impacts on the shoreline. *Finding of Fact Nos. 1 and 6.*

6. **The stairway is compatible with other uses within the area and with uses planned for under the Comprehensive Plan and Shoreline SMPTR.** *Finding No. 6*
7. **As conditioned, the proposals will not cause significant adverse effects to the shoreline environment.** Conditions of approval ensure that proper erosion control measures are imposed with the stairway. Additional permits may be required. *Finding of Fact Nos. 7 and 8, 9 and 10*
8. **As conditioned, the public interest will not suffer substantial detrimental effect.** As conditioned, the stairway has been reviewed and determined to provide soil stability. It is structurally sound and the public interest will not be impacted. *Findings of Fact Nos. 6, 6, 8, 9 and 10.* Removal of vegetation would be minimized and the small area to be disturbed would be restored to prevent erosion and other environmental impacts. *Finding of Fact No. 10.* The proposal is consistent with the general and specific I Regulations" and specific "Environmental Designation and Regulations" for "XVI. Residential Development" contained within the Shoreline Master Program for the Thurston Region (1990), as amended.
9. **The stairway is consistent with the policies of RCW 90.58.020 and will not have a substantial adverse effect on the shoreline environment.** *Findings of Fact Nos. 3-16.*
10. The proposed stairway is consistent with the policies and procedures of the Shoreline Management Act (RCW 90.58), the provisions of WAC 173-27-140, and the Thurston County Shoreline Master Program. *Findings of Fact Nos. 3-10*

### **DECISION**

Based upon the preceding Findings and Conclusions, a Shoreline Substantial Development Permit to construct a 29.44-foot stairway from the top of a marine bluff to a beach on the Totten Inlet of Puget Sound on property at 5340 78th Avenue, NW, Olympia, Washington, is **GRANTED**, subject to the following conditions:

1. Prior to, or in conjunction with, the issuance of a building permit, all regulations and requirements of the Thurston County Environmental Health Department, Thurston County Public Works Department, Thurston County Resource Stewardship Department must be satisfied. These conditions have been incorporated into this permit. In addition all conditions as set forth in the January 7, 2010 Mitigated Determination of Nonsignificance shall be satisfied.
2. The Applicant must obtain a building permit from the Thurston County Permit Assistance Center prior to construction of the stairway structure. Engineered plans are required.
3. The development of the stairway and its base on the toe and at the top of the bank shall incorporate best management practices for the treatment of stormwater as per the Drainage Design and Erosion Control Manual for Thurston County, Washington, as

implemented by Thurston County Public Works Department. The Thurston County Public Works Department must approve final storm drainage of the site.

4. No discharge of sediments into Puget Sound shall be permitted at any time.
5. There shall be no more than two large rocks at the terminus of the stairway located at the Ordinary High Water Mark.
6. A detailed erosion control plan shall be developed and submitted prior to work on the site. This plan shall address the use of the barge for delivering materials and the methods necessary to avoid water quality impacts. Erosion control and stormwater runoff shall be controlled through all phases of the project by facilities designed to control the quality and quantity of discharges, and shall not alter nor impact the existing drainage on this or adjacent properties.
7. No discharge of sediments into Puget Sound is allowed during and after construction.
8. Erosion control best management practices must be installed prior to the construction phase of the project and maintained throughout the construction phase. Erosion control best management practices include, but are not limited to, installation of silt control fences and bank stabilization material.
9. There shall be no tree removal on the marine bluff or top of the bluff buffer during construction of the stairway and landing.
10. Washington State Water Quality Laws, Chapter 90.48 RCW Water Pollution Control and WAC 173-201A, Water Quality Standards for Surface Waters of the State of Washington, define quality of state waters. Any discharge of sediment-laden runoff or of other pollutants to waters of the state is in violation of these state laws and may be subject to enforcement action.
11. As a condition of approval, those areas meeting landslide hazard and Marine Bluff criteria and the 50-foot vegetated buffer shall be depicted on the final construction documents along with the following language:

"To minimize damage to the shoreline due to erosion, sliding, earthquake, or other geological events no clearing, grading, filling, logging, removal of native trees or other native vegetation, or other construction activities shall be allowed within the landslide hazard or buffer areas except where exempted by and when prior authorization is obtained from Thurston County Development Services."
12. As a condition of approval, the following notation shall be placed on the construction documents:

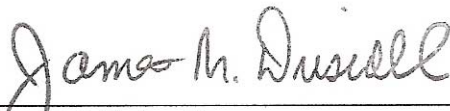
"No clearing, grading, filling or other construction activities shall be allowed within the Shoreline Master Program jurisdiction except as approved under this SSDP. There shall be no additional clearing or development prior to stair tower development except where exempted by and when prior authorization is obtained from Thurston



County Development Services, Environmental/Shoreline Section."

13. The proposal lies adjacent to Totten Inlet which is a shoreline within the jurisdiction of the Shoreline Management Act of 1971 (RCW 90.58) and the SMPTR. Approval of this project does not exempt the applicant from meeting the requirements of the SMPTR or the Act pertaining to development within a Conservancy Shoreline Environment. The boundary of the shoreline jurisdiction is: (a) 200-foot horizontal distance from the edge of the ordinary high-water mark; (b) the edge of the 100-year flood plain based upon the Flood Insurance Rate Map; or (c) the edge of a wetland associated with Totten Inlet, whichever is greater.
14. Construction must commence within two years and all construction must be complete within five years of the effective date of this permit. The effective date is the date of the last action required on the shoreline permit and all other government permits and approvals that authorize the development to proceed.
15. The proposed project must be consistent with all applicable policies and other provisions of the Shoreline Management Act, its rules, and the Shoreline Master Program for the Thurston Region.
16. All development shall be in substantial compliance with drawings and site plan submitted and made part of this staff report. Any expansion or alteration of this use will require approval of a new or amended Shoreline Substantial Development Permit. The Resource Stewardship Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
17. Construction pursuant to this permit shall not begin and is not authorized until 21 days from the date of filing of the Hearing Examiner's decision with the Department of Ecology as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within 21 days from the date of filing have been terminated; except as provided in RCW 90.58.140(5)(a) and (b).

**Decided** this 25<sup>th</sup> day of February 2010.

  
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James M. Driscoll  
Thurston County Hearing Examiner