

**FINDINGS, CONCLUSIONS AND DECISION
OF THE HEARING EXAMINER FOR
THURSTON COUNTY**

CASE NO: 2011102012 (Hoover substantial development permit)

APPLICANT: Dale Hoover

SUMMARY OF REQUEST:

The Applicant requests a substantial development permit under the state Shoreline Management Act to construct a stair tower on a 45-foot high marine bluff.

LOCATION OF PROPOSAL:

Thurston County Assessor's Parcel No. 11910220502 in a portion of Section 35, T19N, R2W.

SUMMARY OF DECISION:

The substantial development permit is granted, subject to conditions.

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HEARING AND RECORD:

The hearing on this request was held before the undersigned Hearing Examiner on July 16, 2012. The Applicant agreed to a two-day extension to August 1, 2012 of the time for issuance of the decision. The following exhibits are admitted as part of the record:

Exhibit 1. Staff Report by Thurston County Resource Stewardship Department for Case No. 2011102012, prepared by Mike Kain and dated July 16, 2012. This Exhibit includes the nine-page Staff Report and Attachments a through v listed on Pages Eight and Nine of the Staff Report.

Exhibit 2. Photograph of posted notice at project site.

At the hearing, the following individuals testified under oath:

Mike Kain, Planning Manager
Thurston County Resource Stewardship Department
2000 Lakeridge Drive SW
Olympia, WA 98502

Dale Hoover
8322 Walnut Road NE
Olympia, WA

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John Ward

Thurston County Public Health and Social Services Department

2000 Lakeridge Drive SW

Olympia, WA 98502

After consideration of the testimony and exhibits described above, the Hearing Examiner makes the following findings of fact, conclusions of law, and decision.

FINDINGS OF FACT

1. The Applicant requests a shoreline substantial development permit to construct a residential stair tower on a 45-foot high marine bluff.

2. The proposed stair tower is shown in the drawings at Exhibit (Ex.) 1, Attachment (Att.) h. The proposal would include an eleven-foot by seven-foot steel landing platform above high tide on the upper beach. The four legs of this platform would be anchored into the beach with concrete. A short, five-step stairway would lead from this platform down to the beach. A sixteen step stairway would lead up from this platform parallel to the bluff to a three-foot by three-foot platform. From this platform a 49-step stairway would lead directly up the bluff to an eight-foot by eight-foot concrete landing at the top of the stairway. The upper 49-step stairway would be anchored to the bluff face with steel pin piles, as shown on Ex. 1, Att. h. The lower sixteen-foot stairway, the three by three-foot landing, and the lower portion of the upper 49-step stairway would be supported by four steel columns anchored to the beach, as shown on Ex. 1, Att. h. The entire stairway from the beach to the top of the bluff would have steel guardrails on both

sides. From the beach to the top, the stair tower would be approximately 45 feet high. Portions of the tower would be of steel and portions of high density polyethylene.

3. The proposed stair tower is designed by a licensed civil engineer and is designed to avoid undue stress on the bluff face.

4. The fair market value of the proposal is estimated to be around \$8000.

5. The proposed stair tower would serve an existing single-family residence, built in 2009. Access to the beach is currently over the ladder shown at Ex. 1, Att. v, which is neither safe nor convenient.

6. The subject parcel, including the location of the proposed stair tower, is zoned Rural Residential Resource – One Dwelling Unit Per Five Acres (RRR 1/5). The parcel is 1.38 acres in size and is designated a Rural environment under the Shoreline Master Plan for the Thurston Region (SMP).

7. Residential uses lie to the south and west and the Nisqually Reach of Puget Sound lies to the north and east of the project parcel.

8. Due to the curve of the shoreline, it is unlikely that the proposed tower would be visible from adjoining residences. The only portion potentially visible would be the steel guardrail at the top of the bluff, and that only from one nearby residence. The proposal would not obstruct views from adjoining residences and is placed and designed to minimize its visibility.

9. Vegetation would be removed as part of this proposal only within the access pathway to the top of the stairs.

10. Two geotechnical reports were submitted. The 2004 Bradley- Noble report at Ex. 1, Att. s, examined the property and concluded that, subject to conditions, the proposed residence would be safe from bluff erosion for at least 50 years. The 2011 E3RA report at Ex. 1, Att. q examined the proposed stair tower and approved its construction subject to conditions. The Staff Report at Ex. 1, p. 4 states that the 2011 engineered plans for the proposal by Sitts & Hill Engineers are in compliance with the E3RA recommendations.

11. A revegetation plan was submitted in connection with approval of the 2009 residence and was implemented, except for approximately 100 square feet of buffer near the top of the proposed stair tower which was planted in lawn. This decision is conditioned on the proper revegetation of that area. No trees or any significant vegetation are proposed to be removed in connection with construction of the stair tower.

12. The proposal would create insignificant new impervious surfaces and would involve insignificant grading. In addition, the proposal will not disturb or alter the effectiveness of the tightline drainage system installed for the 2009 home construction. This system has reduced infiltration into the bluff, thus enhancing its stability. For these reasons, the Public Works Department pursuant to Thurston County Code (TCC) 17.15.630 (C) (3) properly waived the requirements for a drainage and erosion control plan and for a grading plan.

13. The Staff Report at Ex. 1, p. 4 points out that the International Building Code requires a landing of at least three feet by three feet for a residential stairway. Although this code would not specifically apply to the stair tower, the Department argues persuasively that this minimum supplies guidance about the needed size for stair landings. The eleven-foot by seven-foot lower platform and the eight-foot by eight-foot top platform significantly exceed the size needed for a landing and are more in the nature of a deck or storage area. See test. of Kain. Because decks are not allowed in the shoreline buffer, the Department argues, these landings should be reduced to three feet by three feet.

14. At the hearing the Applicant offered to reduce these landings to three by three, if he could install a vertical rack at the bottom for kayak storage. Mr. Ward suggested that the steel columns that support the upper 49-step stairway would be a suitable location for a kayak rack, to which Mr. Hoover agreed. These revisions would remove any question about the legality of the large landing platforms and are incorporated as conditions. In keeping with the testimony of Mr. Kain, the Applicant is also given the option of eliminating the lower landing entirely, if desired.

15. The County Environmental Health Division recommended approval, as long as no vehicle parking or travel and no staging of equipment takes place over any part of the septic system. This is included as a condition below.

16. The County Public Works Department recommended approval.

CONCLUSIONS OF LAW

A. The shoreline standards applicable to this proposal.

1. With exceptions not pertinent to this proposal, the SMA defines shorelines of the state to include "all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them . . ." RCW 90.58.030 (2) (d). Shorelands, in turn, are defined as "those lands extending landward for two hundred feet . . . from the ordinary high water mark . . ." RCW 90.58.030 (2) (f). The SMA requires a substantial development permit for any "substantial development" on the shorelines of the state. RCW 90.58.140 (2). "Substantial development" includes any development "of which the total cost or fair market value exceeds five thousand dollars . . ." RCW 90.58.030 (3) (e). By operation of statute, that threshold is now \$5718. The proposal here at issue would lie in the shorelands of the state, as just defined. The fair market value of the proposal exceeds \$5718. Therefore, the proposal may be carried out only if a substantial development permit is issued.

2. A substantial development permit may be granted only if the proposal is consistent with the SMA and the local SMP. RCW 90.58.140 (2) (b). As stated, the SMP for Thurston County is the Thurston Region Shoreline Master Program, as amended by TCC 19.01.010.

3. SMP Section Three, XIV, A defines recreational uses as "[f]acilities for refreshment of body and mind through play, amusement or relaxation." SMP Section Three, XIV, C 8 and 9 expressly regulate stair towers as recreational uses, implying that they are considered to be that type of use. Thus, this proposal must meet the applicable policies and requirements for recreational uses found in SMP Section Three, Part XIV.

4. SMP Section Three, XVI, A defines residential development as "[a]ctivity associated with provision of human dwelling facilities, including subdivision of property, accessory buildings common to residential structures and individual utility services to residential units." SMP Section Three, XVI, B, 11 and 12 expressly regulate stair towers, which implies that stair towers are considered a part of residential development under the SMP. Thus, this proposal must meet the policies and requirements for residential uses, as applicable, found in SMP Section Three, Part XVI.

5. SMP Section Three, XVI, B, 6 also states that residential development "should be consistent with . . . the local jurisdiction's land use plans and ordinances." Where there is no strong reason to the contrary, a policy phrased in terms of "should" ought to be followed. Therefore, an SDP may be granted for this proposal only if it also complies with general County plans and standards. The only plan or set of standards about which any issues lie is the Critical Area Ordinance (CAO), Chap. 17.15 TCC. This is discussed below.

B. Compliance with SMP policies and regulations for shoreline protection.

6. Low to medium intensity recreational uses are allowed in the Rural shoreline environment by SMP Section 3, XIV, D, 3. A stair tower is plainly a low or medium intensity use. As conditioned, this proposal is consistent with the policies for recreational uses in SMP Section 3, XIV, B, as applicable. Of the regulations for recreational uses in SMP Section 3, XIV, C, the only applicable ones are in subsection 8 and 9, which state:

"8. 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 taller.
- c. Other instances where the building official determines that site conditions dictate the preparation of plans by a licensed civil engineer.

9. Stair towers shall be designed to minimize obstructing the views enjoyed by adjoining residences."

As shown in the Findings, above, these requirements are met.

7. Residential uses, including stair towers, are allowed in the Rural shoreline environment by SMP Section 3, XVI, D, 3.

8. The policies governing shoreline residential development are found in SMP Section 3, XVI, B. Of these, Policy 7 states that "[r]emoval of vegetation should be minimized and any areas disturbed should be restored to prevent erosion and other environmental impacts." As found, vegetation removal has been minimized. This decision is conditioned to require that all areas disturbed be restored to prevent erosion and other environmental impacts. As conditioned, this proposal is consistent with the policies in Section 3, XVI, B, as applicable.

9. Of the regulations for residential uses in SMP Section 3, XVI, C, the only applicable ones are in subsections 4, 8, 9 and 16. In addition, the authorization of the use in Section 3, XVI, D, 3, c and d also contains use regulations.

10. As conditioned, this proposal complies with the regulations in SMP Section 3, XVI, C, 4, 8 and 9.

11. SMP Section 3, XVI, C 16 states:

"Each shoreline environment has a setback requirement for structures, from the ordinary high-water mark. Uncovered porches, decks or steps may project into the required setback provided such structures are no higher than thirty (30) inches above the average grade . . ."

SMP Section Three, XVI, D, 3, c states:

"The basic setback for residential structures shall be fifty (50) feet from the ordinary high-water mark and/or comply with General Regulation #16."

12. The construction of a landing platform significantly larger than needed and intended for storage would effectively be a deck. The Applicant's willingness to reduce the sizes of the landing platforms, as incorporated in the conditions, removes any potential violation of this standard.

13. Finally, SMP Section Three, XVI, D, 3, d states:

"Land clearing and grading is permitted after obtaining a shoreline permit, an exemption from the Administrator, or a land clearing permit from the local jurisdiction for preparation of new building sites. A buffer of existing ground cover must be maintained in the area between the ordinary high-water mark and twenty (20) feet from the structure. The ground cover in the buffer may be disturbed only after approval of the Administrator where one or more of the following conditions apply . . .

(3) When the construction of access pathway is proposed for to the shoreline, vegetation will be removed only within the boundaries of constructed access pathway."

The access pathway to the stair tower is reasonable and, as found, vegetation will be removed only within its confines. As conditioned, the proposal meets this regulation.

14. The proposal also meets the Regional Criteria found in SMP Section 2, V.

15. As noted, the proposal must also meet applicable requirements of the County CAO. The standards at issue here are those in TCC 17.15.620, establishing buffers landward of the tops of marine bluffs, and TCC 17.15.630, requiring special reports for marine bluffs in some circumstances.

16. TCC 17.15.620 B, 1 requires that a buffer of native vegetation shall be maintained from the ordinary high water mark to at least fifty feet landward from the top of the marine bluff, but allows exceptions when:

"a. A residential structure setback of less than seventy feet is approved per subsection B2 or B3 below, the vegetative buffer shall extend from the ordinary, high water mark to within twenty feet of the structure. Any reduction of the buffer shall be limited to the width of the structure plus twenty feet.

b. With review by the review authority as provided in TCC Section 17.15.615 M, tree removal is allowed to eliminate danger trees . . .

c. If vegetation has been removed without the benefit of review, the property owner may be subject to civil penalty and shall be required to install replacement vegetation as provided in TCC Section 17.15.635 G."

17. None of these exceptions apply to the stair tower. Therefore, this provision would prohibit the tower, if read literally. However, since the SMP expressly allows stair towers, it makes no sense to prohibit them through an incorporated condition. Therefore, when the SMP and CAO are read together, the proposal must be deemed to not violate this provision.

18. Finally, TCC 17.15.630 C requires a number of special reports for proposal on marine bluffs or in their buffers. For the reasons set out in the Findings, the reports required for this proposal have either been submitted or waived under the authority of this section.

DECISION

The requested shoreline substantial development permit is granted, subject to the following conditions:

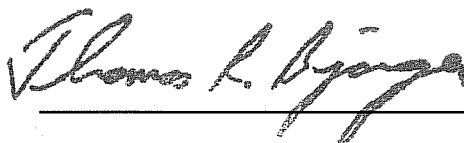
A. Recommended conditions 1 through 5 and 7 through 16 on pp. 5-7 of the Staff Report at Ex. 1 are incorporated by reference. Recommended condition No. 6 is included in Condition B, below.

B. The eleven-foot by seven-foot lower platform and the eight-foot by eight-foot top platform shown in the application materials shall be reduced to three feet by three feet each, or less if approved by the Department. If the Applicant wishes and if the Department sees no structural problems, the Applicant may entirely eliminate the lower platform. The Applicant may install a rack or racks for kayaks and similar storage on the steel columns that support the upper 49-step stairway, as long as the Applicant's engineer approves.

C. No vehicle parking or travel and no staging of equipment shall take place over any part of the septic system.

D. All areas disturbed during construction of the stair tower shall be restored to prevent erosion and other environmental impacts.

Dated this 1st day of August, 2012.

A handwritten signature in black ink, reading "Thomas R. Bjorgen", written over a horizontal line.

Thomas R. Bjorgen

Thurston County Hearing Examiner



Project No. 2011102012 SSDP
 Appeal Sequence No.: _____

Check here for: **RECONSIDERATION OF HEARING EXAMINER DECISION**

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

Check here for: **APPEAL OF HEARING EXAMINER DECISION**

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW _____
 on this _____ day of _____, 20____, as an APPELLANT in the matter of a Hearing Examiner's decision rendered on _____, 20____, by _____ relating to _____

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1. Zoning Ordinance _____
2. Platting and Subdivision Ordinance _____
3. Comprehensive Plan _____
4. Critical Areas Ordinance _____
5. Shoreline Master Program _____
6. Other: _____

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

STANDING

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

APPELLANT NAME PRINTED _____

SIGNATURE OF APPELLANT _____

Address _____

Phone _____

Please do not write below - for Staff Use Only:

Fee of \$595.00 for Reconsideration or \$820.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Resource Stewardship Department this _____ day of _____, 20____.

THURSTON COUNTY

PROCEDURE FOR RECONSIDERATION AND APPEAL OF HEARING EXAMINER DECISION TO THE BOARD

NOTE: THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 33.21C.075 and TCC 17.09.160. TCC 17.09.160(K).

A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Resource Stewardship Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

C. **STANDING** All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

D. **FILING FEES AND DEADLINE** If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$595.00** for a Request for Reconsideration or **\$820.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Permit Assistance Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.