



COUNTY COMMISSIONERS

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 District One
 Sandra Romero
 District Two
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 District Three

HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
 FOR THURSTON COUNTY**

In the Matter of the Application of)	NO. SSDP-2010104132
)	
Thomas and Lisa Herrick)	FINDINGS, CONCLUSIONS,
)	AND DECISION
For Approval of a)	
Shoreline Substantial Development Permit)	
)	
)	

SUMMARY OF DECISION

The request for a shoreline substantial development permit to allow construction of a new stair tower to replace an existing, failed stair tower connecting the single-family residential property to the adjacent waterfront on Budd Inlet within the Rural Shoreline Environment at 4309 Boston Harbor Road NE, Olympia, Washington is **GRANTED** with conditions.

SUMMARY OF RECORD

Request:

Thomas and Lisa Herrick (Applicants) requested a shoreline substantial development permit to allow construction of a new stair tower to replace an existing, failed stair tower connecting the single-family residential property to the adjacent waterfront on Budd Inlet. The subject property is located within the Rural Shoreline Environment.

Hearing Date:

The Thurston County Hearing Examiner held an open record hearing on the request on January 22, 2013.

Testimony:

At the hearing the following individuals presented testimony under oath:

- Scott McCormick, Associate Planner, Resource Stewardship Department
- Tom Herrick, Applicant
- Lisa Herrick, Applicant
- Ed Rauser

Exhibits:

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

- Exhibit 1 Resource Stewardship Department Staff Report, including the following attachments:
- Attachment a JARPA Application, dated received December 23, 2010
 - Attachment b Email from Tom Herrick, dated January 4, 2013
 - Attachment c Letter from Tom and Lisa Herrick, dated November 13, 2012
 - Attachment d Notice of Application, dated November 2, 2011
 - Attachment e Notice of Public Hearing, dated January 11, 2013 (Publish date)
 - Attachment f Vicinity map (Bing Maps)
 - Attachment g Slope Stability Map (Coastal Zone Atlas)
 - Attachment h Topographical survey by Bracy & Thomas
 - Attachment i Proposed stairway location with dimensions, dated October 25, 2012
 - Attachment j Engineered structural details by MC Squared, dated August 21, 2012 (pages 1 – 2).
 - Attachment k Geotechnical Report by Bradley Noble Geotechnical Services dated September 18, 2002
 - Attachment l Structural Calculations – Beach Access Stairs for Tom Herrick, dated August 21, 2012
 - Attachment m Site Photos (Pic #1 – Pic #12)
 - Attachment n Memorandum from Kevin Chambers, Public Works Department, dated January 13, 2011
 - Attachment o Memorandum from John Ward, Thurston County Health Department, dated January 10, 2011
 - Attachment p Correspondence from Department of Ecology dated January 13, 2011
- Exhibit 2 Color copy of photograph of posted notice

Exhibit 3 11x17 plan set

Exhibit 4 Color photographs of the existing stairway taken by the Applicant (six photos)

Based upon the record developed at hearing, the following findings and conclusions are entered in support of the decision of the Hearing Examiner:

FINDINGS

1. The Applicant requested a shoreline substantial development permit (SSDP) to allow construction of a new stair tower to replace an existing, failed stair tower connecting the single-family residential property to the adjacent waterfront on Budd Inlet. The subject property is located at 4309 Boston Harbor Road NE, Olympia, Washington.¹ *Exhibit 1, pages 1-3; Exhibit 1, Attachment A.*
2. The 3.26-acre waterfront subject parcel, zoned Rural Residential/Resource One Dwelling Unit per Five Acres (RRR-1/5), is located on the eastern shore of Budd Inlet in southern Puget Sound. It is a legally nonconforming lot, subdivided before adoption of the current zoning designation. Surrounding parcels are developed with residences. *Exhibit 1, pages 3-4.*
3. The proposed project site is within the jurisdiction of the Shoreline Master Program for the Thurston Region (SMPTR), which designates the shorelands of the site as Rural Shoreline Environment. Single-family residential development is permitted in the Rural Shoreline Environment. Stair towers are considered residential accessory uses and they are expressly allowed in the Rural Shoreline Environment; however they are considered "development" and are subject to the substantial development permit requirement if their fair market value exceeds the threshold established by the State Legislature at the time of application. The proposal is projected to cost approximately \$80,000 and an SSDP is required. *Exhibit 1, pages 3-5; Exhibit 1, Attachment A.*
4. The site contains an existing trail and stair tower that pre-date the SMPTR, built approximately 40 to 45 years ago. The lower two-thirds of the staircase are no longer useable due to erosion of the bank and damage from weathering. The remaining trail sections, including two bridges, are hazardous and need to be removed. There is no safe, convenient access to the beach from the subject property. *Exhibit 1, pages 1-2; Exhibit 1, Attachments A and M; Exhibit 4.*
5. The proposal would construct an approximately 90-foot combination pathway and stair tower to replace the failing structure. The upper portion of the project would entail redesigning the path. The staircase would start at a height of about 65 feet on the face of

¹ The legal description of the subject property is a portion of Section 35 Township 19 Range 2W Donation Land Claim BILLINGS DLC DAF: BAP ON WLY LN CO RD 920.04F SUE SOUTH OF N LN BILLINGS DLC; W 900F TO POB: S 135.96F; W TO MEANDER LN E SHORE BUDD INLET; NLY; known as Tax Parcel #09120015000. *Exhibit 1, page 1.*

the bluff and would be made of wood according to engineered plans, terminating at a landing about six to ten feet above the beach. The plans call for a four-foot wide wood stairway with four platforms along its length: an eight- by 12-foot platform at the top of the stairs; two six- by six-foot platforms in the middle, and an eight- by 14-foot platform at the base of the stairs. A removable ladder would complete access to the beach, which when lifted would discourage access to the stairway by non-authorized persons and would prevent water damage to the bottom of the access route. Minimal impacts to existing vegetation are proposed, in an effort to retain as much natural slope strength as possible. No impervious surfaces are proposed. In its present condition, the steep, slippery bank would be dangerous to traverse carrying building supplies and tools. The proposal includes bringing supplies for the lower portion of the staircase to the site by barge, which would land on the beach, and placing stone steps at the toe of the bank to allow workers to safely reach the lowest proposed landing with equipment and supplies. *Exhibit 1, pages 2-3; Exhibit 1, Attachments A, B, and C; Exhibit 3; Thomas Herrick Testimony.*

6. As initially proposed, the project included a new bulkhead along the Budd Inlet shoreline. During project review, the Applicants withdrew the bulkhead portion of the proposal. Because the project would not include any in- or over-water work, the project is exempt from review pursuant to the State Environmental Policy Act. *Exhibit 1, pages 3-4; McCormick Testimony.*
7. The marine bluff on-site is 80 to 90 feet tall and designated by the Coastal Zone Atlas of Washington as unstable. Based on these facts, the site of the proposed development is considered a marine bluff hazard area and is regulated pursuant the County's critical areas ordinance (CAO).² Because construction is planned within the marine bluff hazard area, the CAO requires technical reports, including a drainage and erosion control plan, grading plan, revegetation plan, and a geotechnical report. *Thurston County Code TCC 17.15.630(C)(1) and (2); Exhibit 1, page 5.* Consistent with TCC 17.15.630(C)(3), Thurston County Public Works Department waived the requirement for a drainage and erosion control plan and grading plan because the proposal would create insignificant impervious surface and would not require significant grading. The existing drainage system serving the residence on-site effectively reduces water infiltration into the bluff; the replacement stair tower would not disturb the effectiveness of this system. *Exhibit 1, page 5; Exhibit 1, Attachment N.*
8. The Applicants' professionally prepared geotechnical report indicates that the bluff is well vegetated. The report states that although the slope is steep, the overconsolidated soils are relatively stable with only slow erosion by sheet washing, a process that carries

² "Marine bluff hazard area" means the following: 1. Those marine bluffs which have a vertical height of twenty feet or more, and the upland area which lies within two hundred feet of the top of the marine bluff; or 2. Those marine bluffs identified as "unstable" or "intermediate stability" on the maps of the Coastal Zone Atlas of Washington; Volume 8 Thurston County (1980), as amended, and the upland area which lies within two hundred feet of the top of the marine bluff; unless under twenty feet high and determined stable on an individual parcel basis by the review authority (refer to Figure 5). *TCC 17.15.200.*

loosened soils down the bluff face during rainy periods or after freeze-thaw events. The report recommended continued exclusion of stormwater runoff from the impervious surfaces at and around the residence from the bluff and maintenance of vegetation on the bluff face to slow erosion. *Exhibit 1, Attachment K*. Resource Stewardship Staff testified that site visits confirmed the conclusions of the geotechnical report and found the report to satisfy the geotechnical report requirements of the CAO. *McCormick Testimony*.

9. Pursuant to TCC 17.15.615(F), stair towers in marine bluff hazard areas are subject to use-specific performance standards in the General Regulations and the Environmental Designation and Regulations for residential development in the SMPTR. The applicable use-specific performance standards are as follows:
 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.
 12. Stair towers shall be designed to minimize obstructing the views enjoyed by adjoining residences.

SMPTR Section Three.XIV.C.8 and Section Three.XVI.C.11; Exhibit 1, pages 4-5.

10. The Applicant's stair tower was designed by a licensed professional engineer whose qualifications satisfy the requirements of the CAO and the SMPTR. Because the top of the stairway would begin below the top of the bluff, it would not impact the view of any upland property. *Exhibit 3; Exhibit 1, Attachment L; McCormick Testimony; Thomas Herrick Testimony*.
11. In cases where the construction of an access pathway to the shoreline is proposed, the SMPTR allows land clearing and grading within the shoreline buffer after obtaining a shoreline permit so long as vegetation would be removed only within the boundaries of the constructed access pathway *SMPTR, Section Three XVI.D(3)(d)*. The proposal would remove minimal vegetation only within the footprint of the pathway. *Exhibit 1, page 5; Exhibit 1, Attachment A, JARPA; Exhibit 3*.
12. With regard to the four proposed platforms, Resource Stewardship Staff (Staff) contended that the size of each must be minimized to ensure the project would result in as little disturbance to the marine bluff as possible. After consultation with the County's Building Department, Staff determined that the minimum landing for a residential stairway required by the International Residential Code is three feet by three feet. Although this code does not specifically apply to the proposed stair tower, Staff felt it is instructive in setting a minimum functional size for a landing. Staff determined that the proposed platforms are more like decks than landings on a stairway due to their large

dimensions. Decks detached from residences within the shoreline setback are not a listed or allowed use in the SMPTR. Staff recommended that the proposed platforms be reduced in size to minimize impacts to the shoreline buffer and marine bluff, recommending four by four feet at each of the four locations in order to match the width of the stairs, which would simplify construction. *Exhibit 1, page 6; McCormick Testimony.*

13. Thurston County Public Works Development Review Section reviewed the application and plans and determined that as proposed, the project satisfies all requirements of the County's Road Standards and Drainage Design and Erosion Control Manual. Public Works Staff recommended a condition of approval requiring any future permits required for the project to satisfy County road and drainage standards. *Exhibit 1, Attachment N.*
14. The proposal was routed to Thurston County Environmental Health Division (EHD) for review of the project for compliance with County health code requirements. EHD Staff noted that the stair tower would not impact the existing well or septic system on-site and recommended approval. *Exhibit 1, Attachment O.*
15. The Washington State Department of Ecology (DOE) submitted comments regarding an off-site contamination site which does not directly relate to the proposal. DOE also recommended that large woody debris, such as root wads, be added to the beach to dissipate wave energy. *Exhibit 1, Attachment P.*
16. Notice of the public hearing was sent to all property owners within 500 feet of the site and published in The Olympian on January 11, 2013, more than ten (10) days prior to the hearing. Notice was posted on-site on January 10, 2013. *Exhibit 1, page 3; Exhibit 1, Attachment A; Exhibit 2.*
17. At hearing, the Applicant questioned the need to reduce the size of the proposed landing at the bottom of the stairs to be consistent with the width of the stairway. Mr. Herrick testified that the larger platform at the bottom of the stairway was sized to allow storage of kayaks and other boats. He contended that the proposed eight- by 14-foot deck would not be on the beach and not over the water. He noted that other decks of similar or larger sizes have been approved and built in the vicinity and that his proposed lower deck would not be out of place. *Thomas Herrick Testimony.*
18. Noting that kayaks can be stored vertically, Resource Stewardship Staff reiterated that the platform should be reduced to the minimum necessary to reduce impacts to the marine bluff. Staff recommended that if a larger lower deck is allowed, it should be limited to eight by eight feet, consistent with the SMPTR's limit on the width of piers and docks. Finally, Staff acknowledged that larger decks have been approved in the last one to two years, and that protection of the marine bluff through reducing the size of those decks was apparently not an issue in those permit review proceedings. *McCormick Testimony.*

19. At hearing, the neighbor to the north of the subject property testified in support of the proposed stair tower. Mr. Rauser asserted that the proposed lower landing could protect the slope by sheltering it from rain. *Rauser Testimony*.

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for shoreline substantial development permits pursuant to RCW Chapter 36.70, WAC 173-27, and Section One, Part V of the Thurston County Shoreline Master Program.

Criteria for Review

To be approved by the Hearing Examiner, the proposed shoreline substantial development permit must be consistent with:

- A. The policies and procedures of the Shoreline Management Act;
- B. The provisions of applicable regulations; and
- C. The Shoreline Master Program for the Thurston Region.

Washington Administrative Code (WAC) 173-27-150.

(a) Shoreline Management Act

Chapter 90.58 RCW, the Washington State Shoreline Management Act (SMA) of 1971, establishes a cooperative program of shoreline management between the local and state governments with local government having the primary responsibility for initiating the planning required by the chapter and administering the regulatory program consistent with the Act. The Thurston County Shoreline Master Program (SMPTR) provides goals, policies and regulatory standards for ensuring that development within the shorelines of the state is consistent the policies and provisions of Chapter 90.58 RCW.

The intent of the policies of RCW 90.58.020 is to foster “all reasonable and appropriate uses” and to protect against adverse effects to the public health, the land, and its vegetation and wildlife. The SMA mandates that local governments adopt shoreline management programs that give preference to uses (in the following order of preference) that: recognize and protect the statewide interest over local interest; preserve the natural character of the shoreline; result in long term over short term benefit; protect the resources and ecology of the shoreline; increase public access to publicly owned areas of the shorelines; and increase recreational opportunities for the public in the shoreline. The public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state is to be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses that are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline, are to be given preference.

(b) Applicable regulations from the Washington Administrative Code

WAC 173-27-140 Review criteria for all development.

- (1) No authorization to undertake use or development on shorelines of the state shall be granted by the local government unless upon review the use or development is determined to be consistent with the policy and provisions of the Shoreline Management Act and the master program.
- (2) No permit shall be issued for any new or expanded building or structure of more than thirty-five 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.

WAC 173-27-190 Permits for substantial development, conditional use, or variance.

- (1) Each permit for a substantial development, conditional use or variance issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140 (5)(a) and (b).

(c) Shoreline Master Program for the Thurston Region
The following are applicable provisions of the SMPTR:

Section Two -- General Goals and Policies

...

C. Rural Environment

Purpose. The primary purposes of the Rural Environment are to protect areas from urban expansion, restrict intensive developments along undeveloped shore-lines, function as a buffer between urban areas, and maintain open spaces for recreational purposes compatible with rural uses. New developments in a Rural Environment are to reflect the character of the surrounding area.

Definition. The "Rural Environment" designates shoreline areas in which land will be protected from high-density urban expansion and may function as a buffer between urban areas and the shorelines proper. This environment is characterized by low intensity land use and moderate to intensive water use. Residential development does not exceed two dwellings per acre. Visual impact is variable with a moderate portion of the environment dominated by structures of impermeable surfaces. Intensive cultivation and development of the renewable soils, aquatic and forest resources, as well as limited utilization of nonrenewable mineral resources is permitted. Recreational activities and public access to the shoreline are encouraged to the extent compatible with other rural uses and activities designated for this environment.

Goal Statements:

1. Economic Development. Available resources should be utilized consistent with the definition and purpose of the Rural Environment.

2. **Public Access.** The primary goal of this element is to provide adequate public access areas to ensure maximum enjoyment of recreational and scenic opportunities with minimum conflict with other rural uses. It is the intent of this goal to:
 - a. Recognize and protect private property rights consistent with the public interest;
 - b. Prevent the destruction of the more fragile recreation areas through excessive use; and
 - c. Exercise due regard for the safety of the public.
3. **Circulation.** The goal of the Circulation Element in the Rural Environment is to provide facilities that are necessary only for local usage. Trail systems for safe nonmotorized traffic are to be encouraged where compatible with rural uses. Major planned circulation systems shall be located away from shoreline areas whenever possible.
4. **Recreation.** The recreation goal is to assure diverse, convenient and adequate water-related recreational opportunities along the shorelines of the County located in such a way as to minimize conflicts with other rural activities.
5. **Shoreline Use.** Areas for intensive public use should be distributed in such a manner as to avoid concentration of user pressure, to discourage intrusions endangering life or property, and to avoid uses having adverse effects on fragile natural systems.
6. **Conservation.** This goal shall be to have sound management in the conservation of all natural resources within the Rural Environment.
7. **Historical and Cultural Values.** The goal of this element shall be to promote, protect and preserve historical, cultural scientific or educational values on shorelines where these values are acknowledged.
8. **Restoration.** This goal is to restore to a useful or original condition those areas (including waters) which are blighted by present uses, discontinued uses and dilapidated or abandoned structures.

Section Three -- Policies and Regulations For Use Activities

XVI. Residential Development

A. **Scope and Definition:** Activity associated with provision of human dwelling facilities, including subdivision of property, accessory buildings common to residential structures and individual utility services to residential units.

B. Policies

1. Residential development on shorelines and wetlands should be planned with minimum adverse environmental and visual impact.
- ...
7. Removal of vegetation should be minimized and any areas disturbed should be restored to prevent erosion and other environmental impacts.
8. Waste materials from construction should not be left on shorelines or beaches but stored upland.
- ...
10. Residential structures should be located to minimize obstruction of views of the water from upland areas. The intent of this policy is to encourage the retention of views in and through new residential developments. This policy is not intended to prohibit the development of individual shoreline lots simply because it may minimize or eliminate views from upland properties.

11. Residential development along shorelines should be designed and sited to make unnecessary such protective measures as filling, beach feeding, bulkheading, shoreline berms, construction groins or jetties, or substantial grading of the site.

Section Three -- Policies and Regulations For Use Activities

C. General Regulations

1. Residential development over water is not permitted.
 2. "Submerged lands" within the boundaries of any waterfront parcel shall not be used
 3. Residential development proposals shall identify those areas of natural vegetation, retention and erosion control measures.
 4. Residential development shall be arranged and designed to protect views, vistas, aesthetic values to protect the character of the shoreline environment and the views of neighboring property owners.
 5. Residential structures shall not exceed thirty-five (35) feet above average grade unless it can be shown through the variance process that a higher structure will not interfere with visual access to the water from landward or adjacent properties.
- ...
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.
 12. Stair towers shall be designed to minimize obstructing the views enjoyed by adjoining residences.

Section Three -- Policies and Regulations For Use Activities

3. Rural Environment

- ...
- d. 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:
 - (1) A building site has been approved in the buffer area and an erosion control and vegetation protection plan has been approved by the Administrator.
 - (2) The applicant wishes to landscape the area with other vegetation and has an erosion control plan approved by the Administrator.
 - (3) When the construction of access pathway is proposed to the shoreline, vegetation will be removed only within the boundaries of constructed access pathway.

Conclusions Based on Findings

1. As conditioned, the proposal would be consistent with the policies and procedures of the Shoreline Management Act. The proposed pathway and stair tower allowing access to the beach on the waterfront parcel is a “reasonable and appropriate use” of the on-site shorelands. The proposal would not create a new structure on the shoreline but would replace an existing degraded structure with a new, functional one, resulting in no significant change to the character of the shoreline. Conditions would ensure that minimal disruption would occur to vegetation on the marine bluff, and disturbed areas would be revegetated. The project was reviewed by the County's Health Department and no impacts to public health were identified. The replacement stair tower would not impact public shoreline access. The proposed structure would be built below the top of the bluff and would not impact views from upland properties. *Findings 3, 4, 5, 7, 8, 10, 11, 13, and 14.*

2. As conditioned, the proposed stair tower complies with applicable regulations in the Washington Administrative Code. The structure would not protrude above the top of the bluff and no part of it would be 35 feet or taller from grade at any point. There would be no impact to views of the upslope residences. Because it would replace an existing stair way, the view of the bluff from Puget Sound would not significantly change. A condition of approval would ensure compliance with the requirements of WAC 173-27-190. *Findings 4, 5, and 10.*

3. The proposal is consistent with the applicable policies and regulations of the Shoreline Master Program for the Thurston Region. The project would replace a failed, existing access from the top of the bluff to the water. The proposal would result in a structure that is compatible with the character of the surrounding area. Allowing continued access to the shoreline by the upland residence is consistent with the intent of the Rural Shoreline Environment. The project would not interfere with or alter public access to the beach and it would facilitate private access by the upland residence. Environmental impacts have been considered through geotechnical study and would be minimized by conditions of approval. Visual impacts of the replacement stairway would be negligible; no upland residential views would be impacted. Conditions would ensure that vegetation removal is minimized, that disturbed areas are replanted, and that construction materials and waste are removed and properly disposed of. No vegetation would be removed from outside the footprint of the access path. Some rocks would be placed on the beach but no fill would be brought in. No grading, over-water work, or impacts to submerged lands would occur. No portion of the proposal would be greater than 35 feet above grade. The project has been designed by a licensed civil engineer. *Findings 3, 4, 5, 8, 10, 11, 13, and 14.*

4. Regarding the size of the platforms: Although the SMPTR expressly allows stair towers on marine bluffs, it is silent as to landings on such towers. The SMPTR's residential development policies at Section Three, Chapter XVI encourage minimization of vegetation removal (at XVI.B.7) and minimization of view impacts (at XVI.B.10). They encourage shoreline development to be "planned with minimum adverse environmental and visual impact" (at XVI.B.1). The use-specific regulations related to stair towers (at Section Three, Chapter XVI.C.11 and 12) are limited to the issues of engineered design

and minimizing view obstruction. Nothing in the SMPTR's stair tower use specific regulations mandates minimizing the size of any portion of the structure for any purpose other than view protection. The proposed stair tower would not impact views from any upland parcel; view protection is not invoked. Staff asserted that due to the designation of the bluff as an unstable slope, any impact to the slope, including size of structures, must be minimized. Aside from Staff's assertion that the larger platforms would result in "more impact", there is no information in the record explaining what the increase in adverse impacts to the bluff from the larger platforms would be. While no critical areas permit is required, the CAO provisions regulating development of marine bluffs are instructive as to the kinds of development appropriate for marine bluffs. The proposal includes both the stair tower and portions of an at-grade trail. The CAO's marine bluff provisions allow trails and associated recreational appurtenances on marine bluffs, including viewing platforms, without imposing any "minimum size necessary" requirement.³ Staff's recommended compromise of allowing larger platforms subject to a eight- by eight-foot size limit was based on the SMPTR's size restriction for piers and floats. These are over-water structures. No portion of the stair tower would be over water. The proposed stair tower and platforms were designed by a licensed civil engineer. Conditions would ensure that vegetation removal is minimized and that any disturbed areas would be revegetated. The proposed trail and stair tower would be built generally in the footprint of the existing, failed path/stair tower, a previously disturbed area. The record submitted does not support Staff's recommended restriction of platforms on the stair tower to four by four feet or eight by eight feet. The platforms proposed in the plans are allowed. *Findings 4, 5, 7, 8, 10, 11, 12, 17, and 18.*

DECISION

Based upon the preceding findings and conclusions, the requested shoreline substantial development permit allowing construction of a new stair tower to replace an existing, failed access connecting the single-family residential property to the adjacent waterfront on Budd Inlet within the Rural Shoreline Environment at 4309 Boston Harbor Road NE, Olympia, Washington is **GRANTED** subject to the following conditions:

1. Prior to construction, the Applicants shall remove all old, failed sections of the previous stair way not currently useable and restore with native plants and grasses.

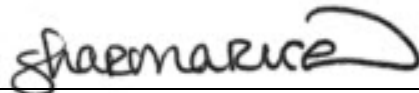
³ Pursuant to TCC 17.15.615.M, Trails and Trail-Related Facilities: Public and private trails and trail-related facilities, such as picnic tables, benches, interpretive centers and signs, viewing platforms, and campsites, may be allowed, and the use of impervious surfaces shall be minimized. Trails and trail related facilities may only be authorized within marine bluff hazard areas and landslide hazard areas subject to the following criteria: 1. Trails and related facilities shall, to the extent feasible, be placed on existing levies, road grades, utility, corridors, or any other previously disturbed areas; 2. Trails and related facilities shall be planned to minimize removal of trees, shrubs, snags and important wildlife habitat; 3. Trail construction and maintenance should utilize the U.S. Forest Service "Trails Management Handbook" (FSH 2309.18, June 1987) and "Standard Specifications for Construction of Trails" (EM-7720-102, June 1984) or similar standards; 4. Viewing platforms, interpretive centers, campsites, picnic areas, benches and access to them shall be designed and located to minimize disturbance; (emphasis added)

2. Prior to or in conjunction with the issuance of any building permit, all regulations and requirements of the Thurston County Environmental Health Department, Thurston County Public Works Department, and the Thurston County Resource Stewardship Department shall be met.
3. 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.
4. Prior to construction the Applicants shall obtain a building permit from the Thurston County Resource Stewardship Department for the stair tower structure. Engineered plans shall be submitted with the building permit application.
5. No beach gravels may be used as backfill.
6. The stair tower shall be designed to minimize obstructing the views enjoyed by adjoining residences and shall not be constructed any higher above the natural topography than necessary to provide the desired shoreline access.
7. Although a stormwater plan is not required and a stormwater permit is not required, the proposed development shall incorporate best management practices for the treatment of stormwater as per the Drainage Design and Erosion Control Manual for Thurston County, as implemented by Thurston County Public Works Department.
8. No discharge of sediments into Puget Sound shall be permitted at any time.
9. There shall be no tree removal on the marine bluff face, from the toe of marine bluff, or from top of bluff during construction of the stair tower and landings. Fallen trees and similar natural debris shall be left in place or relocated in the same general vicinity. Removal of vegetation, particularly woody, deep rooted vegetation shall be avoided to the extent possible.
10. Vegetation removal shall be minimized during construction of the stair way. Any newly disturbed areas must be revegetated with native species of similar size and type as removed and suited to growing on this south facing marine bluff.
11. The following notation shall be placed on the construction documents:

No clearing, grading, filling, or other construction activities shall be allowed within the shoreline jurisdiction except as approved under this SSDP. There shall be no additional clearing or development except where exempted by and when prior authorization is obtained from the Thurston County Resource Stewardship Department.
12. All demolition and construction waste and excess building materials shall be removed from the bluff and the beach and properly disposed of.

13. 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.
14. All development shall be in substantial compliance with the drawings and site plan submitted and made part of this staff report. Any expansion or alteration of this use shall 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.
15. This approval does not relieve the Applicants from compliance with all other local, state and/or federal approvals, permits, and/or laws necessary to conduct the development activity for which this permit is issued. Any additional permits and/or approvals shall be the responsibility of the applicant.
16. 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 required 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 February 5, 2013 by



Sharon A. Rice
Thurston County Hearing Examiner

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 43.21C.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 **\$620.00** 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.



Project No. <u>2010104132</u> 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 \$620.00 for Reconsideration or \$820.00 for Appeal. Received (check box): Initial _____ Receipt No. _____

Filed with the Resource Stewardship Department this _____ day of _____, 20___.