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AFTER RECORDING RETURN TO:
SKAGIT COUNTY HEARING EXAMINER
302 SOUTH FIRST STREET
MOUNT VERNON, WA 98273

DOCUMENT TITLE: ORDER ON SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT
SL 99 0292

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPELLANT: MARK and LAURA JENNINGS

ASSESSOR PARCEL NO: P112655

ABBREVIATED LEGAL DESCRIPTION:
4142 Clark Point Road, Guemes Island, a portion of Section 26, Township 36 North,
Range 1 East, W.M., Skagit County, Washington

SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON

In the Matter of:)	
Application of Mark and Laura Jennings)	No: SL 99-0292
for a SHORELINE SUBSTANTIAL)	
DEVELOPMENT PERMIT to Construct a Stairs/)	Finding of Fact,
Boardwalk combination Down a Shoreline Bluff)	Conclusions of Law,
To the Beach.)	And Order.
)	

THIS MATTER, an application for a Shoreline Substantial Development Permit, came on regularly before the San Juan Hearing Examiner in a public hearing on September 8, 1999. The Skagit County Planning and Permit Center presented its Staff Report. Linda Attaway, landscape architect, appeared for the Jennings (applicants). Members of the public were given an opportunity to testify.

Testimony was heard, exhibits were entered and argument was made. On the basis, thereof, the following is entered:

FINDINGS OF FACT

1. Mark and Laura Jennings seek a shoreline substantial development permit to construct a stairs/boardwalk down the bluff to the beach below their residence.
2. The project location is at 4142 Clark Point Road on the northwest shore of Guemes Island, within a portion of Sec. 26, T36N, R1E, W.M.
3. The project site is situated on the shoreline of the Bellingham Channel in a Rural shoreline environment designation.
4. The purpose of the project is to provide access from the applicants' new home to the beach. The alignment of the project roughly follows an existing trail. The last flight or stairs ends 40 feet east of the ordinary high water mark (OHWM).
5. The proposed beach access traverses a densely forested slope that is approximately 90 feet high facing westward. Through logged near the turn of the century, the slope has been permitted to revegetate naturally since. All trees, snags and existing vegetation will be retained by the proposal. Habitat impacts will be minimal.

6. A fish and wildlife site assessment and a geotechnical report were prepared in relation to the proposal by Shannon and Wilson. The latter report made recommendations for earthwork operations including site preparation, excavation, and structural fill placement and compaction.

7. The project involves "minor new construction" as that term is used in the regulations for the State Environmental Policy Act (SEPA). See WAC 197-11-800(1). It is therefore exempt from SEPA's procedural requirements.

8. The Skagit County Shoreline Management Master Program (SMP) establishes criteria and standards for the issuance of shoreline permits.

9. Under SMP 9.02 a Shoreline Substantial Development Permit shall be granted only when the proposed development is consistent with:

- a. Policies and regulations of the Skagit County Shoreline Master Program; and
- b. Applicable policies enumerated in RCW 90.58.020 in regard to shorelines of the state and shorelines of statewide significance; and
- c. Regulations adopted by the Department of Ecology pursuant to the Act (WAC 173-14).

10. The Examiner finds that the policies of the Shoreline Management Act (RCW 90.58.020) considered independently, are adequately carried out in this case by application of the policies and regulations of the local master program. The shorelines in question are not shorelines of statewide significance.

11. Chapter 173-14 WAC has been superseded by Chapter 173-27 WAC. This chapter contains the Department of Ecology's Permit regulations. The review criteria set forth therein for Substantial Development Permits are substantially the same as those set forth at SMP 9.02.

12. The instant proposal is a permitted use in the Rural environment, subject to the general regulations. The Staff Report analyses the application for consistency with the substantive requirements of the master program, as set forth in SMP 7.13, Residential Development.. The Examiner concurs with this analysis and adopts the same. The Staff Report is incorporated herein as though fully set forth.

13. No written comments from members of the public were received on this application. No members of the public testified. No consulted agencies objected.

14. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the parties and the subject matter of this proceeding.

2. The requirements of SEPA have been met.

3. The findings support a conclusion that the proposed development is consistent with the applicable SMP criteria for the approval of a Shoreline Substantial Development permit, if conditioned as follows:

a. The project shall be constructed in accordance with the application and accompanying materials, including in particular the site diagram submitted.

b. All other required permits and approvals shall be obtained. Any conditions contained in other permits or approvals shall be deemed conditions of this Substantial Development Permit and complied with as such.

c. The permittee shall utilize Best Management Practices for Site Erosion and Spill Control.

d. The permittee shall comply with the "Construction Considerations" set forth in Shannon & Wilson geotechnical report, dated May 5, 1999.

e. All construction related debris shall be disposed of properly and legally. Any debris that enters the water shall be promptly removed.

f. The project must be started within two (2) years of the date of approval or the shoreline permit will become void.

g. Failure to comply with all conditions of the issued permit may result in its revocation.

4. Any finding herein which may be deemed a conclusion is hereby adopted as such.

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ORDER

The Shoreline Substantial Development Permit is APPROVED, subject to the conditions set forth in Conclusion 3 above.

Wick Dufford
Wick Dufford, Hearing Examiner

Date of Action: September 27, 1999

Copies transmitted to Applicant 9/27/99

Attachment: Staff Report and Findings

RECONSIDERATION/APPEAL

This decision shall become final five (5) dates from the date of this Order unless a request for reconsideration or an appeal is filed in accordance Section 13.01 of the Skagit County Shoreline Management Master Program.

After the decision becomes final, review may be sought from the State Shorelines Hearings Board pursuant to the provisions of RCW 90.58.180.

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1 REVIEWING AUTHORITY: Skagit County Hearing Examiner
2
3 PUBLIC HEARING DATE: August 25, 1999
4
5 APPLICATION FOR: Shoreline Substantial Development Permit #PL 99-
6 0292.
7
8 APPLICATION DATE: May 7, 1999
9
10 APPLICANT: Mark & Laura Jennings
11 1419 7th Ave.
12 Seattle, WA 98119
13

14 P#'s 112655
15

16 PROJECT DESCRIPTION: The proposal is to construct a stairs / boardwalk combination
17 down the bluff to the beach below. At the terminus, the stairs are 40 feet landward of the
18 Ordinary High Water Mark (OHWM).
19

20 PROJECT LOCATION: The proposed project is located at 4142 Clark Point Road
21 Guemes Island within a portion of Section 26, Township 36 North, Range 1 East, W.M.,
22 Skagit County. The subject proposal is located on the shoreline of the Bellingham
23 Channel designated Rural Residential under the Shoreline Master Program.
24

25 RECOMMENDATION: **Approval with conditions stated at the end of the report.**
26

27 EXHIBITS:
28

- 29 1. Staff report
- 30 2. May 7, 1999, Shorelines Substantial Development application, site diagrams, photos,
31 and CAO checklist and JARPA application.
- 32 3. March 28, 1999, Letter of Completeness.
- 33 4. May 6, 1999 Fish & Wildlife Site Assessment prepared by Shannon-Wilson.
- 34 5. May 1999, Geo technical report prepared by Shannon- Wilson.
35

36 STAFF FINDINGS:
37

- 38 1. The application has been advertised in accordance with Section 9.04 of the Skagit
39 County Shoreline Master Program (SMP) and WAC 173-14-070.
40
- 41 2. The subject properties are zoned Rural Reserve in the Skagit County Comprehensive
42 Plan and Rural in SCC 14.04.112 Zoning Ordinance. This proposal complies with
43 all policies and regulations in these regulations. The site is designated as Rural in the
44 Skagit County Shoreline Management Master Program (SCSMMP).
45
- 46 3. Staff has determined the subject proposal meets the definition of Substantial
47 Development as defined in SMP Chapter 3.03. Therefore, the subject proposal

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shall be reviewed under SMP Chapter 7.13, Residential Development, which most accurately addresses the subject proposal.

4. No comments have been received regarding the proposal.

5. The application is exempt from the State Environmental Policy Act procedures of review as stated in WAC 197-11-800(1)(a).

6. The applicant was required to obtain a Fish and Wildlife Site Assessment and a Geotechnical report as required by SCC14.06.210&500 (Skagit County Critical Areas Ordinance). These reports identified minimal negative impact to the environment and recommends restricting access to certain portions of the property.

7. Skagit County Public Works has no objections to this proposal.

8. The following inserts are from Chapter 7.13 Residential Development of the SCSMMP with *italics* representing staff notes.

7.13(1)(A)

(7) Natural resources, processes, and other uses

Residential development, if permitted on shorelines, should not significantly damage, diminish, or adversely affect:

a. Estuaries, natural wetlands, and marshes.

b. Prime agricultural land.

c. Natural resources such as but not limited to, sand and gravel deposits, timber, or natural recreational beaches.

d. Fish, shellfish, and wildlife habitats, migratory routes, and spawning areas.

e. Water quality and quantity.

f. Geohydraulic processes and accretion shoreforms.

g. Archaeological and historic sites.

h. Scenic vistas.

(8) Hazardous areas

Residential development and accessory uses should be located, designed, constructed, and maintained to avoid, or if necessary, withstand 100

year frequency flooding and storm tides or surges without becoming hazards and without the placement of extensive structural defense works.

The geotechnical/fish & wildlife reports prepared by Shannon & Wilson did not identify significant negative effects on natural areas by the proposal.

C. Location

(1) Existing and designated areas

New substantial developments should locate in existing developed areas or in officially designated residential areas providing development in these areas is consistent with this program.

(2) Geohydraulics

Residential development should be located: so as not to interfere with geohydraulic

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processes.

b. inland from feeder bluffs, drift sectors, and accretion shore forms.

c. to avoid or minimize the need for shore defense, stabilization, and flood protection works.

d. to utilize and protect the integrity of the shore resources for the benefit of present and future residents and users.

(4) Geologically hazardous, sensitive, and unique areas

Shoreline areas subject to geologic hazards such as, but not limited to, bank and bluff sluffing, failure, or excessive erosion, and other shorelines sensitive to adverse impact from development should not be subject to residential development.

These areas, if a part of development ownership, should be reserved for less intense, nondevelopmental uses.

The proposal requires locating on cliff because it is shoreline dependent.

(4) Geohydraulics

Residential development should be designed:

a. so as not to interfere with geohydraulic processes and shore forms.

b. to avoid or minimize the need for shore defense, stabilization, and flood protection works.

c. to utilize and protect the integrity of the shore resources for the benefit of present and future residents and users.

(7) Accessory uses, unless clearly shoreline dependent (such as docks and floats), should be set back from shoreline areas, be reasonable in size and purpose, and be compatible with onsite and adjacent structures, uses, and natural features.

The proposal is clearly shoreline dependent and would setback 40 feet from the Ordinary High Water Mark (OHWM) which is 5 feet more than the 35 foot minimum required for accessory uses.

(10) Construction and maintenance

All phases of construction and land maintenance activities should be scheduled and designed to minimize and control all runoff, erosion, and other potential adverse water quality and quantity impacts.

(11) Aesthetics

All residential development structures, accessory uses, and facilities should be arranged and designed so as to preserve views and vistas to and from shorelines and water bodies and be compatible with the aesthetic values of the area.

E. Impacts

(1) Review of proposed residential developments should adhere to applicable local, state, and federal environmental impact statement (EIS) procedures and guidelines.

(2) Residential developments and activities should mitigate adverse impacts to the shoreline and aquatic environment and to adjacent and nearby land and water uses.

Staff have identified no adverse impacts to the shoreline.

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1 **2. REGULATIONS**

2 (3) Rural

3 a. Residential development is permitted subject to the General and Tabular Regulations.

4 b. Alterations of the natural topography, the shore water interface, and vegetation of the
5 site shall be minimized to that extent necessary to the placement of the residence.

6 **B. General**

7 (3) Accessory uses and facilities

8 Accessory facilities common to residential development shall meet the setback
9 requirements of Table RD, EXCEPT for docks, floats, boat launch ramps, and other uses
10 determined to be shoreline dependent. For docks, floats, and ramps, see "Piers and
11 Docks," Chapter 7.

12
13 *The proposal meets the minimum setbacks for accessory uses of 35 feet that is listed in*
14 *table RD.*

15
16 (4) Hazardous and unstable areas

17 b. Residential structures and accessory facilities are prohibited on accreting, eroding,
18 slumping, or geologically unstable shorelines and where extensive shore defense and/or
19 flood or storm protection structures would be necessary. Proposals for such development
20 shall meet shoreline setbacks, other than those of Table RD, that are deemed suitable to
21 site conditions by the Planning Department.

22 c. All land based accessory development shall be no greater than fifteen (15) feet in
23 height. Over the water accessory development is limited to ten (10) feet in height.
24 Height shall be measured from the average elevation occupied by the structure to highest
25 point of structure.

26
27 *Geotechnical engineering has been provided in order to reduce the possibility of a*
28 *hazardous situation.*

29
30 **RECOMMENDATION**

31
32 Based on the above findings, the Skagit County Planning and Permit Center would
33 recommend for **Approval** of the afore stated permits, subject to the following conditions:

34
35 1. All development, construction, and use of the site shall be consistent with the
36 policies, regulations, and permit requirements of the Shoreline Management Act
37 and the Skagit County Shoreline Master Program (whether or not specifically
38 outlined in this staff report); and any other applicable local, state, or federal
39 regulations and/or permit requirements.

40
41 2. The applicant shall utilize the Best Management Practices for Site Erosion and
42 Spill Control as utilized by the Washington State Department of Transportation in
43 protecting the waterward side of the dike to ensure that no fill falls below to the
44 estuarine area.

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1 3. Approval of shoreline permit is contingent upon written approval by the Washington
2 State Department of Ecology.

3
4 4. The applicant shall meet all the recommendations as expressed in the May, 1999
5 Geotechnical report prepared by Shannon & Wilson Inc.

6
7 5. The applicant shall meet all the recommendations as expressed in the May 6, 1999
8 Fish & Wildlife Site Assessment prepared by Shannon & Wilson Inc.

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13 Prepared By: DD

14 Approved By:

15 Date: September 21, 1999

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