

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS, AND DECISION

Applicant(s):	Martin and Susan Leyba 4130 Cedar Avenue Long Beach, CA 90807	S.J.C. DEPARTMENT OF AUG 07 2017 COMMUNITY DEVELOPMENT
File No.:	PSJ000-16-0004	
Request:	Shoreline Substantial Development Permit	
Parcel No:	360134002	
Location:	585 Karen Lane, Orcas Island	
Summary of Proposal:	Application for after the fact shoreline substantial development permit for stairway to beach	
Land Use Designation:	Rural Farm Forest	
Public Hearing:	July 13, 2017	
Application Policies and Regulations	SJCC 18.35.065 Geologically hazardous areas— Protection standards SJCC 18.35.130 Fish and wildlife habitat conservation areas—Protection standards SJCC 18.50.075 Frequently flooded areas SJCC 18.50.300 Pedestrian beach access structures SJCC 18.80.110 Shoreline permit and exemption procedures SJCC 18.35.025 Critical areas - applicability	
Decision:	Approved subject to conditions	

**BEFORE THE HEARING EXAMINER
FOR SAN JUAN COUNTY**

In the Matter of the Application of)
)
Martin and Susan Leyba)
)
)
for approval of a shoreline substantial)
development permit for stairs to the beach)
at 585 Karen Lane, Orcas Island)

NO. PSJ000-16-0004

S.J.C. DEPARTMENT OF

AUG 07 2017

COMMUNITY DEVELOPMENT

SUMMARY OF DECISION

The request for after the fact shoreline substantial development permit to authorize the construction of a beach access stairway for the single-family residence at 585 Karen Lane, Orcas Island is **APPROVED**.

SUMMARY OF RECORD

Request:

Martin and Susan Leyba (Applicants) requested an after the fact shoreline substantial development permit to authorize the construction of a beach access stairway for the single-family residence at 585 Karen Lane, Orcas Island.

Hearing Date:

The San Juan County Hearing Examiner held an open record public hearing on the request on July 13, 2017. On the record, the Applicant agreed to a five business day extension of the decision issuance deadline.

Testimony:

At the open record public hearing, the following individuals presented testimony under oath:

Julie Thompson, Planner, San Juan County Department of Community Development
Martin Leyba, Applicant
Susan Leyba, Applicant

Exhibits:

The following exhibits were admitted in the record:

A. Staff report, dated June 30, 2017, with the following attachments:

1. Request for review
2. Determination of non-significance, issued May 24, 2017
3. Environmental checklist

4. Application materials
5. Geologically hazardous area map
6. Comment letters
7. Legal ad
8. Public hearing notice, with Applicant affidavit of mailing and posting

Upon consideration of the testimony and exhibits submitted at the open record public hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. The Applicants requested after the fact shoreline substantial development permit approval to authorize the installation of a beach access stairway for the single-family residence at 585 Karen Lane, Orcas Island. The property is developed with a home in the shoreline facing President Channel. *Exhibits A and A.4.*
2. The 5.18-acre subject property has a Rural Farm Forest land use designation. It abuts developed residential parcels to the north, south, and east, and President Channel to the west. The neighborhood is characterized by lightly developed shoreline residential lots on the west side of Orcas Island. The site's shoreline is comprised of medium to high bank with a near vertical slope from the top of the bank to the beach. Without a stairway, there is no access to the shoreline on-site. *Exhibits A, A.4, and A.5.*
3. The site contains geologically hazardous areas related to steep slopes and erosion soils, fish and wildlife habitat for protected salmon, and frequently flooded areas, all of which are regulated pursuant to the San Juan County critical areas ordinance (CAO). *Exhibits A and A.5; SJCC 18.35.060, 18.35.075, and 18.35.115.*
4. The Applicants purchased the property in 2013, at which time there was an existing set of stairs to the beach in deteriorating condition that didn't reach all the way to the beach. It is not known when the existing stairs were originally installed. Without checking to see whether permits were required, the Applicants removed the rotted wood and replaced it. As part of the project, the Applicants extended the stairway to the shoreline above the ordinary high water mark to eliminate the hazardous condition that resulted from the existing steep drop-off and placed a small, less than one-half square yard poured-concrete landing on the beach. Four posts/footings were added at the bottom of the structure to stabilize the extension, and hand railings were added to increase safety. The new stairs and platforms are pressure treated lumber with space between the boards such that stormwater runs off between boards and over the sides into vegetated areas. The stairway is about three and a half feet in width, except that two pre-existing platforms are wider than five feet. No filling, grading, or excavation was performed and no vegetation was

removed. The new improvements are located, at their closest, approximately five to twelve feet above the high tide mark; none of the treated lumber interacts with the tide. Currently, the new stairs are fairly visible when viewed from the water. It is expected they will weather over time and become less obvious. A complaint or inquiry to the County led to a code enforcement action regarding the unpermitted shoreline construction (PCI000-16-0074). The instant request is an after-the-fact application to approve the stairs in the shoreline required by the County to correct the code violation. *Exhibits A and A.3; Martin Leyba Testimony.*

5. The improvements are located within 200 feet of and over the waters of President Channel. Shorelands within 200 feet of the ordinary high water mark (OHWM) of Puget Sound on the subject property are designated Rural Farm Forest shoreline environment by the San Juan County Shoreline Master Program (SMP). *Exhibit A; San Juan County Code (SJCC) Chapter 18.50.*
6. The Applicant's improved beach stairs meet the County Code definition of a "beach access structure," which is allowed in the Rural Farm Forest shoreline as an appurtenance to single-family residential development subject to compliance with the shoreline master program (SJCC Chapter 18.50). Beach access structures can be exempt from shoreline regulations under limited circumstances pursuant to SJCC 18.50.020.F. The Applicants' stairs are not exempt because they exceed exemption standards for height and landing size. *SJCC 18.50.300.* Nonexempt beach access structures require a shoreline substantial development permit and must meet all of the general regulations for beach access structures. *SJCC 18.50.020.E.2.*
7. Department of Community Development (Department) Staff conducted a site visit to determine whether the existing stairs have caused adverse impacts to the shoreline. Staff observed no apparent erosion or other impact to the slope, and the new concrete landing on the beach showed no sign of adverse impact to shoreline function. *Exhibit A; Julie Thompson Testimony.*
8. Given their advanced deteriorated condition as evidenced in the application materials, Department Staff presumed the stairs in place at the time of the Applicant's purchase of the site were constructed prior to the 1998 adoption of the County's critical areas ordinance. Per County Code, structures legally developed in the shoreline prior to adoption of the County's critical areas ordinance are allowed to continue as allowed uses and to be redeveloped or modified if certain conditions are met. One method that allows modification of such structures is demonstration by the project proponent that the modification is consistent with San Juan County Code (SJCC) Chapter 18.50 and with SJCC 18.35.020 through 18.35.140. This is the option the Applicants elected to pursue. *Exhibit 1; Julie Thompson Testimony.*
9. Because it contains slopes greater than 50% in grade, slopes greater than 15% in grade, and soils known for erosion, the project location is regulated as a Category I and II geologically hazardous area pursuant to SJCC 18.35.065. Replacement of rotted wood

on the stair treads resulted in no disturbance of the slope. The minimal new ground disturbing construction, consisting solely of the four new footings and the small concrete landing, are at the base of the slope. Department Staff determined that because there was no disturbance to the slope, no after-the-fact geotechnical report was required. *Exhibits A and A.3; Testimony of Martin Leyba and Julie Thompson.*

10. Department Staff reviewed the improvements for compliance with the protection standards applicable to frequently flooded areas (SJCC 18.35.075), specifically the Flood Hazard Control Regulations found in SJCC Chapter 15.12. In A zones (of which the subject property is one), all substantial improvement of any residential, commercial, industrial or other nonresidential structure shall either require the lowest floor of said structure to be elevated to at least one foot above the base flood elevation or be floodproofed as certified by a registered professional engineer. *SJCC 15.12.180.* Staff reviewed the regulations and the installed improvements and determined that the modification to the stairway does not meet the definition of substantial improvement per that chapter and that therefore no floodproofing or engineer certification is required. *Exhibits A and A.4; Julie Thompson Testimony.*
11. The waters off the subject property are documented as habitat for salmon, several subspecies of which are endangered; thus the subject shoreline is considered a fish and wildlife habitat conservation area (FWHCA) regulated pursuant to SJCC Chapter 18.35. *SJCC 18.35.115.A.1.* Development standards established in the CAO require trails, stairs, or walkways constructed in FWHCAs to be designed as follows: to direct sheet flow runoff into adjacent vegetation; not to exceed five feet in width; to be constructed of nontoxic materials; not to include the placement of fill; and for areas within shoreline jurisdiction, to be consistent with requirements of the County's shoreline master program (SMP). *SJCC 18.35.130 Table 18.35.130-3.k.* In review of these standards, the mitigation requirements of SJCC 18.35.130(G) are addressed by the following. The proposal is not located over water. The improvements did not involve vegetation removal from the rock marine bank. The improvements did not shade any known habitats or increase impervious surface (and thus runoff) on the slope, which is rock and already impervious. None of the improvements extend below the OHWM. Because of these facts and considering the site visit, Staff concluded that the application materials have shown that the improvements have resulted in no loss of shoreline function. *Exhibits A and A.4; Julie Thompson Testimony; Martin Leyba Testimony.*
12. The marine bank, composed of rock and hosting the existing stairway for decades, is not known to contain any archeological resources. The subject shoreline is not a feeder bluff. *Exhibit A.*
13. Consistent with the State Environmental Policy Act (SEPA), San Juan County Department of Community Development assumed lead agency status for review of the project's environmental impacts. In reaching the environmental threshold determination, the Responsible Official reviewed the complete application materials and the Applicants' environmental checklist. The SEPA Responsible Official determined that the project's

observed compliance with applicable regulations would ensure there would be no probable, significant, adverse impacts on the environment. A determination of non-significance (DNS) was issued May 24, 2017. No SEPA appeal was filed and the DNS became final. *Exhibits A, A.2, and A.3.*

14. The application was submitted November 18, 2016 and determined to be complete on May 24, 2017. Notice of the application was published on May 24, 2017, mailed to surrounding property owners on June 1, 2017, and posted on-site on June 2, 2017. *Exhibits A and A.7; Julie Thompson Testimony.*
15. Notice of the application was sent to four public agencies for comment: Washington State Department of Ecology (DOE) Shoreline section; Washington Department of Natural Resources; Washington State Department of Fish and Wildlife, and University of Washington Friday Harbor Labs. *Exhibit A.2.*
16. The University of Washington Friday Harbor Laboratories submitted comments dated May 29, 2017 expressing the following (paraphrased) concerns and suggestion. UW Friday Harbor Labs opposes after-the-fact permits from a philosophical standpoint. They expressed concern that the Applicants failed to inquire whether permits were needed, challenged the adequacy/accuracy of the answers given on the environmental checklist, and questioned whether the Applicant's ignored SMP regulations. They requested clarification of the elevation of the concrete at the base of the stairway, stating that photographs appeared to depict it was below the OHWM, and questioned whether the new supporting wood structures and stairs of treated lumber are in the intertidal zone. They expressed concern regarding future requests to expand or modify the stairway due to sea level rise. Finally, UWFHL suggested a temporary ramp would better minimize the impacts to marine resources and would provide a longer-term access to the shore with a result of no permanent footprint on the shoreline. *Exhibit A.6.*
17. The Washington State Department of Fish and Wildlife submitted comments stating they had no objection to the project. *Exhibit A.6.*
18. There was no public comment on the application or the DNS. *Julie Thompson Testimony; Exhibit A.*
19. The Applicants expressed remorse for having acted without permits, having been unaware that any were required. They explained that they have children and grandchildren and that they could not allow the unsafe stairs to the beach to remain on their property for life safety reasons. *Exhibit A.4; Martin Leyba Testimony; Susan Leyba Testimony.*
20. Upon review of the complete application materials, Department Staff determined that the improvements comply with all applicable criteria in the Unified Development Code, the Comprehensive Plan, and the Shoreline Master Program as installed. Staff recommended approval. *Julie Thompson Testimony; Exhibit A.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for conditional use permit pursuant to Chapter 36.70.970 of the Revised Code of Washington and Chapters 2.22 and 18.80 of the San Juan County Code.

Criteria for Review

Pursuant to SJCC 18.80.110.H, a shoreline substantial development permit shall be granted only when the applicant meets the burden of proving that the proposal is:

1. Consistent with the policies of the Shoreline Management Act and its implementing regulations, Chapter 90.58 RCW and Chapter 173-27 WAC, as amended;
2. Consistent with the policies and regulations of the Shoreline Master Program in Chapter 18.50 SJCC;
3. Consistent with this chapter;
4. Consistent with the applicable sections of this code (e.g., Chapter 18.60 SJCC);
5. Consistent with the goals and policies of the Comprehensive Plan; and
6. All conditions specified by the hearing examiner to make the proposal consistent with the master program and to mitigate or avoid adverse impacts are attached to the permit.

Applicable Provisions of the San Juan County Code

SJCC 18.35.025 Critical areas – Applicability

These overlay districts provide regulations for land use, and development and vegetation removal in critical areas and areas adjacent to critical areas as established in SJCC 18.35.055 through 18.35.140.

- A. Applicability to Uses and Structures within the Shorelines of the State. Notwithstanding any provision in this code to the contrary, any use or structure legally located within shorelines of the state that was established or vested on or before the effective date of the County's development regulations to protect critical areas shall be regulated consistent with RCW 36.70A.480(3)(c). Such uses or structures may continue as a conforming use and may be redeveloped or modified if the redevelopment or modification is consistent with Chapter 18.50 SJCC and either: (1) the proposed redevelopment or modification will result in no net loss of shoreline ecological functions; or (2) the redevelopment or modification is consistent with SJCC 18.35.020 through 18.35.140. If the applicant chooses to pursue option (1), the application materials for required project or development permits must include information sufficient to demonstrate no net loss of shoreline ecological functions. For purposes of this subsection, an agricultural activity that does not expand the area being used for the agricultural activity is not a redevelopment or modification. For purposes of this subsection, "agricultural activity" has the same meaning as defined in RCW 90.58.065.

SJCC 18.35.065 Geologically hazardous areas—Protection standards

A. Category I.

1. The following shall be prohibited:
 - a. Structures where the primary occupancy is public assembly, including but not limited to schools, churches, day care centers, hospitals and other medical facilities; and
 - b. Facilities for emergency response and public safety.
2. Applications for required permits and approvals for development and vegetation removal in or within 200 feet of any Category I geologically hazardous area shall be accompanied by a geotechnical report prepared in accordance with SJCC 18.35.070 (geotechnical reports), and demonstrating that:
 - a. The slope is less than 80 percent; and
 - b. There is no hazard or the hazard will be mitigated with appropriate conditions. The geotechnical report shall specify adequate conditions to ensure that proposed modifications to the land will not cause or contribute to instability of the site or adjacent areas.
3. The director may, based on the content of the geotechnical report, waive or approve modifications to the requirements set forth in subsections (A)(4) through (6) of this section.
4. Development shall be located in accordance with the following:
 - a. Structures and improvements shall be sited, designed, and constructed to minimize cut and fill and to retain as much of the natural topographic character of the slope as possible; and
 - b. Structures and improvements shall be located to avoid the most hazard-prone portion of the proposed development area and to preserve vegetation necessary to prevent soil erosion.
5. Where previous human activity has significantly modified natural topography, the County may allow further modification of such slopes if a geotechnical report demonstrates that such activity will result in the same or improved slope stability.
6. To prevent soil erosion and destabilization of slopes, areas that are cleared or graded, and that are not covered with structures or other improvements, must be protected until replacement plantings are established. Temporary erosion and drainage controls may be required unless permanent restoration and protection are timed to ensure slope stability during the wet season.
7. Where concentrated runoff (i.e., runoff that is visible above ground and that is not sheet flow) will be discharged within 50 feet of the boundary of a landslide or erosion hazard area, a geotechnical report, prepared in accordance with SJCC 18.35.070 (geotechnical reports) is required.

B. Category II.

1. Applications for required permits and approvals for development or vegetation removal in or within 200 feet of Category II geologically hazardous areas shall be accompanied by a geotechnical report, prepared in accordance with SJCC 18.35.070 (geotechnical reports).
2. Where concentrated runoff will be discharged within 50 feet of the boundary of a landslide or erosion hazard area, a geotechnical report, prepared in accordance with SJCC 18.35.070 (geotechnical reports), is required.

3. The director may, based on the content of the geotechnical report, waive or approve modifications to the requirements set forth in subsections (B)(4) through (6) of this section.
4. Development shall be located in accordance with the following:
 - a. Structures and improvements shall be sited, designed, and constructed to minimize cut and fill and to retain as much of the natural topographic character of the slope as possible; and
 - b. Structures and improvements shall be located to avoid the most hazard-prone portion of the proposed development area and to preserve vegetation necessary to prevent soil erosion.
5. Where previous human activity has significantly modified natural topography, the County may allow further modification of such slopes if a geotechnical report demonstrates that such activity will result in the same or improved slope stability.
6. To prevent soil erosion and destabilization of slopes, areas that are cleared or graded and that are not covered with structures or other improvements must be protected until replacement plantings are established. Temporary erosion and drainage controls may be required unless permanent restoration and protection are timed to ensure slope stability in the wet season.

SJCC 18.35.070 Geologically hazardous areas—Geotechnical reports

- A. Geotechnical reports shall be prepared, stamped and signed by a qualified professional. These reports must:
 1. Be appropriate for the scale and scope of the project;
 2. Include all geologically hazardous areas and all potentially affected areas in or within 200 feet of the area proposed for development or vegetation removal. If the affected area extends beyond the subject property, the geotechnical analysis may utilize existing data sources pertaining to that area;
 3. Clearly state that the proposed project will not decrease slope stability or pose an unreasonable threat to persons or property either on or off site;
 4. Be adequate to determine compliance with the requirements of the San Juan County Code;
 5. Generally follow the guidelines set forth in the Washington State Department of Licensing Guidelines for Preparing Engineering Geology Reports in Washington (2006). In some cases a letter or abbreviated report may be provided.
- B. The director will review geotechnical reports for completeness and compliance with this section.
- C. A geotechnical report does not expire unless there are changes in proposed land uses or site conditions.

SJCC 18.35.075 Frequently flooded areas.

- A. Applicability. This section applies to all areas of special flood hazards within the jurisdiction of San Juan County as identified by the Federal Insurance Administration on its Flood Insurance Rate Maps (FIRMs), now existing or as later amended, which are hereby adopted by reference and declared to be part of this code. The director shall maintain the most

current FIRMs on file at the department. Where differences exist between the FIRMs and conditions in the field, conditions in the field shall control.

- B. Protection Standards. All development in areas of special flood hazards must first meet the requirements of the San Juan County Code including any subarea or activity center plans and the San Juan County health and building codes adopted in Chapters 13.04 and 15.04 SJCC, respectively. When allowed, such developments shall also meet the requirements for floodproofing or construction as detailed in Chapter 15.12 SJCC, Flood Hazard Control Regulations.

SJCC 15.12.180 A zones.

In A zones, all new construction and substantial improvement of any residential, commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to at least one foot above the base flood elevation, as shown in Figure 15.12.180, or together with attendant utility and sanitary facilities shall:

- A. Be floodproofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
- B. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
- C. Be certified by a registered professional engineer or architect licensed in the state of Washington, that the standards of this subsection are satisfied. Such certifications shall be provided to the local administrator as set forth in SJCC 15.12.090(B).

SJCC 15.12.020 Definitions.

“Substantial improvement” means any repair, reconstruction or improvement of a structure, or series of such improvements in any five-year period, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- 1. Before the first improvement or repair is started; or
- 2. If the structure has been damaged and is being restored, before the damage occurred.

For the purposes of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not the alteration affects the external dimensions of the structure.

The term does not, however, include either:

- 1. Any repair, reconstruction or improvement of a structure made solely to comply with existing state or local health, sanitary or safety code specifications and thereby assure safe living conditions; or
- 2. Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.

SJCC 18.35.130 Table 18.35.130-3k [standards for trails, stairs and raised walkways]

...

- k. The construction of trails, stairs, or raised walkways; provided, that the improvement:
 - i. Is designed to direct sheet flow runoff into adjacent vegetation;

- ii. Does not exceed five feet in width;
- iii. Is constructed of nontoxic materials;
- iv. Does not include the placement of fill;
- v. Is consistent with the applicable requirements of subsection (E) of this section;
- vi. For areas within shoreline jurisdiction, the improvement is consistent with the requirements of Chapter 18.50 SJCC and subsection (G) of this section.

SJCC 18.50.050 Archaeological and historic resources

- A. When an application for a development permit is received for an area known to be archaeologically significant, the County will not take action on the application and the applicant will not initiate any excavation or development activity until the site has been inspected by a qualified archaeologist. No application will be delayed more than 10 working days for such an inspection. If the application is approved by the County, conditions will be attached reflecting the recommendations of the archaeologist regarding preservation or protection of the site.
- B. All development permits will contain a special provision advising the permit holder that if during excavation or development of the site an area of potential archaeological significance is uncovered, all activity in the immediate vicinity of the find must be halted immediately, and the administrator must be notified at once. Activities authorized by the permit will not be delayed more than five working days for a finding of significance by the administrator, following the administrator's receipt of notification, unless the permit holder agrees to an extension of that time period.
- C. All development proposed for location adjacent to sites which are included in the state or national registers of historic places, or are determined to be eligible for listing, must be located so as to complement the historic site. Development which degrades or destroys the historical character of such sites is not permitted.
- D. Prior to the issuance of a permit in areas known to contain archaeological artifacts and data, the County requires that the developer provide for a site inspection and written evaluation by an archaeologist. Significant archaeological data or artifacts must be recovered before work begins or resumes on a project.

SJCC 18.50.300 Pedestrian beach access structures

A "beach access structure" is a set of steps or stairs or a ramp used to provide pedestrian access to the beach. A beach access structure is a normal appurtenance to single-family residence in San Juan County. Beach access structures are only defined as an exempt development under limited circumstances, pursuant to SJCC 18.50.020. All nonexempt beach access structures require a shoreline substantial development permit and must meet all of the general regulations for beach access structures.

A. Regulations.

- 1. Every application for a substantial development permit for a nonexempt beach access structure shall be evaluated on the basis of multiple considerations, including but not necessarily limited to the potential impacts on bank stability, the extent of vegetation removal, visual impacts, and structural stability.

2. Beach access structures which can reasonably be expected to interfere with the normal erosion accretion process associated with feeder bluffs shall not be permitted. All beach access structures must comply with the bank stability requirements of SJCC 18.50.330(B)(2).
3. Beach access structures shall not be located below the ordinary high water mark (OHWM) unless connected to an exempt or permitted structure.

Conclusions Based on Findings

1. The modified beach access structure is consistent with the Shoreline Management Act (SMA). The policy of the SMA, as set forth in RCW 90.58.020, is to “provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses.” This policy “contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.” *RCW 90.58.020*. Beach access structures are an allowed residential appurtenance in the Rural Farm Forest shoreline environment. Although occurring after the fact, the evidence of review of the improved structure offered in the record shows that the replacement of stairs, addition of hand railings, and extension of the stairway down to a small concrete landing on the beach results in no adverse impact to the shoreline environment. The improvements are above the ordinary high water mark and do not interact with the tide. The concrete landing on the beach is too small to result in concentrated stormwater flows that could impact the marine habitat or water quality. *Findings 1, 2, 4, 5, 6, 7, 11, 12, and 20.*
2. The proposal is consistent with the applicable provisions relating beach access structures in the shoreline. No part of the improvements is in or over the water; the extension of the stairway and new concrete landing on the beach are above the high tide mark. The new improvements do not interact with the tide. Replacement of rotted wood stair treads and landings resulted in no disturbance to the slope and no vegetation removal. The addition of hand railings, the lowest section of stairs, and the concrete landing on the beach did not impact the slope. The site is private property and there would be no interference with public shoreline access. The record demonstrates compliance with the applicable critical area regulations. No geotechnical report was required under the code because the slope was not disturbed by the modifications. There is no evidence of impact to the fish and wildlife habitat conservation area. Addressing the use-specific regulations for pedestrian beach access structures in SJCC 18.50.300, the marine bank is solid rock in the project vicinity and is known to be stable. The rock bank contains very little vegetation. Although the new stairs are visible when viewed from the water, they are expected to weather over time and become less obvious. The stair structure holding the new wood stairs and platforms is structurally stable. The marine bank is not a feeder bluff, and no erosion or accretion is expected because the bank is solid rock. Addressing the standards for shoreline modifications at SJCC 18.35.130(G), new components of the stairs and platforms are made of ACZA pressure treated lumber with space between the boards. Stormwater drains freely between and over the edges of the boards into vegetated areas, mimicking the pre-existing stairs. As noted above, the stairway is 3.5 feet wide, except

for two existing platforms predating these regulations that were already wider than five feet. No fill was placed. No streams/stream crossings, roads, culverts, or tree protection zones are implicated. *Findings 3, 4, 6, 7, 8, 9, 10, 11, 12, 17, 19, and 20.*

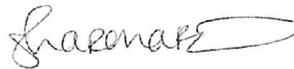
3. Planning Staff indicated the project is consistent with the Comprehensive Plan. Notice and other procedural requirements were performed consistent with the requirements of SJCC 18.80. The project was reviewed for compliance with SEPA and a DNS was issued. The Departments of Natural Resources and Ecology were notified and submitted no comments. The Department of Fish and Wildlife indicated that it had no concerns about the modifications as built. *Findings 2, 13, 14, 15, 17, and 20.*

DECISION

Based on the preceding findings and conclusions, the requested after the fact shoreline substantial development permit to authorize construction of a beach access stairway for the single-family residence at 585 Karen Lane, Orcas Island is **APPROVED** without conditions. However, the Applicants are to take note that all future maintenance and any other development within 200 feet of the ordinary high water mark of Puget Sound must comply with the County's shoreline master program.

Dated August 7, 2017.

By:



Sharon A. Rice
San Juan County Hearing Examiner

Effective Date, Appeal Right, and Valuation Notices

Hearing examiner decisions become effective when mailed or such later date in accordance with the laws and ordinance requirements governing the matter under consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be subject to review and approval by the Washington Department of Ecology pursuant to RCW 90.58.140, WAC 173-27-130 and SJCC 18.80.110.

This land use decision is final and in accordance with Section 3.70 of the San Juan County Charter. Such decisions are not subject to administrative appeal to the San Juan County Council. See also, SJCC 2.22.100.

Depending on the subject matter, this decision may be appealable to the San Juan County Superior Court or to the Washington State Shorelines Hearings Board. State law provides short deadlines and strict procedures for appeals and failure to timely comply with filing and service requirements may result in dismissal of the appeal. See RCW 36.70C and RCW 90.58. Persons

seeking to file an appeal are encouraged to promptly review appeal deadlines and procedural requirements and consult with a private attorney.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.