

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

Applicant: Stanley and Valerie Piha  
8360 SE 46<sup>th</sup> St.  
Mercer Island, WA 98040

File No.: PSJ000-11-0004

Request: Shoreline Substantial Development Permit

Parcel No: 250150003

Location: 381 Port Stanley Road  
Lopez Island

Summary of Proposal: Beach stairs

Shoreline Designation: Rural Residential

Hearing Date: May 11, 2011

Application Policies and Regulations: Shoreline Master Program

Decision: Approved subject to conditions.

S.J.C. COMMUNITY

JUN - 1 2011

DEVELOPMENT & PLANNING

1                                   **BEFORE THE HEARING EXAMINER FOR THE COUNTY**  
2                                   **OF SAN JUAN**

3                                   Phil Olbrechts, Hearing Examiner

4                   RE: Stanley and Valerie Piha	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION.</b>
5                   Shoreline Substantial	
6                   Development Permit (PSJ000-11-0004)	

7                                   **INTRODUCTION**

8                   The Applicant seeks approval of a Shoreline Substantial Development Permit to  
9                   authorize a set of stairs for beach access. The proposal is approved subject to  
10                  conditions.

11                                  **TESTIMONY**

12                  Julie Thompson, senior planner, testified that the project meets all code criteria. In  
13                  response to questions from the Examiner she noted that there was no on-site beach  
14                  access, but that there was beach access through other private property in the vicinity.

15                  Bob Query, permit agent, noted that there are stairs on the two adjacent properties,  
16                  but those property owners weren't interested in granting an easement to share use of  
17                  the stairs. He also noted that issuance of an HPA is probably imminent because DOE  
18                  has recently requested a copy of the SEPA determination and that appears to be the  
19                  last step before issuing an approval of the permit.

20                                  **EXHIBITS**

21                  Exhibits 1-5 in the "Exhibits for Piha Beach Access Structure" attached to the 4/26/11  
22                  staff report are admitted into the record. In addition an April 28, 2011 letter from  
23                  Bruce Creps was admitted into the record during the May 11, 2011 hearing as Exhibit  
24                  6 and an April 27, 2011 letter from the Department of Fish and Wildlife as Exhibit 7.

25                                  **FINDINGS OF FACT**

**Procedural:**

1.           Applicant. The Applicants are Stanley and Valerie Piha.
2.           Hearing. The Hearing Examiner conducted a hearing on the subject  
application on May 11, 2011.

**Substantive:**

1 3. Site and Proposal Description. The Applicants propose to construct beach  
2 stairs across the bank of their waterfront lot on Lopez Island. The stairs appear to  
3 cover approximately 50 linear feet in three sections of varying slopes and extend to a  
4 vertical distance of roughly 20 feet. This design is proposed to provide a stable  
5 location and acceptable access slope at the top of the stairs, and to create acceptable  
6 access and overcome instability presented by the current steep and eroding  
7 surrounding slope. No work is proposed waterward of the ordinary high water mark.

8 The subject parcel is 0.75 acres in size, located along the Shoal Bay at the north end  
9 of Lopez Island. It is a medium-bank waterfront parcel. The upland portion is  
10 relatively flat. A three-bedroom single-family residence is under construction on the  
11 property. The parcel is well-screened at the top of the bank with only a few trees  
12 back toward the road.

13 The bank of the property is steep, approaching a 100% grade near the top. Overall  
14 the bank rises to what appears to be 25 feet over a 60 foot run as depicted in the  
15 Exhibit 2 site plans.

16 4. Characteristics of the Area. The lot is in a developed residential  
17 neighborhood.

18 5. Adverse Impacts of Proposed Use. There are no adverse impacts  
19 discernable from the record. As discussed in the Ex. 3 March 15, 2011 report from  
20 the Applicants' civil engineer, the stairs have been designed to maintain the stability  
21 of the bank. Aesthetic impacts are nominal as there is nothing to suggest that the  
22 project will encroach into any views of the shoreline and the structure is relatively  
23 nominal in scale. In their comment letter, the Creps state that alternative access to the  
24 beach is available, but this is only through adjoining private property and the property  
25 owners have not been willing to allow the Applicants to use that access. The Creps  
do not identify what problems they believe to be associated with construction and use  
of the stairs, so it is not possible to further respond to their concerns.

## CONCLUSIONS OF LAW

### **Procedural:**

1. Authority of Hearing Examiner. The Hearing Examiner, after conducting an  
open-record public hearing, renders a final decision on shoreline permit applications.  
SJCC18.80.110(E).

### **Substantive:**

2. Shoreline Designation. The subject property is designated as Rural Residential.  
The shoreline also qualifies as a shoreline of statewide significance under the  
Shoreline Management Act, Chapter 90.58 RCW.

1 3. Permit Review Criteria. The costs of the development presumably exceed those  
2 of the exemption levels set in WAC 173-27-040(2)(a) so the project must acquire a  
3 shoreline substantial development permit. SJCC 18.80.110(H) establishes the criteria  
4 for approval of shoreline substantial development permits. The criteria include the  
5 policies of the Shoreline Management Act (Chapter 90.58 RCW), the policies and use  
6 regulations of the San Juan County Shoreline Master Program, and the requirements  
7 of the San Juan Municipal Code and Comprehensive Plan. The applicable policies  
8 and regulations are quoted in italics below and applied through conclusions of law.

6 **RCW 90.58.020 Use Preferences**

7 *This policy (Shoreline Management Act policy) is designed to insure the development*  
8 *of these shorelines (of the state) in a manner which, while allowing for limited*  
9 *reduction of rights of the public in the navigable waters, will promote and enhance*  
10 *the public interest. This policy contemplates protecting against adverse effects to the*  
11 *public health, the land and its vegetation and wildlife, and the waters of the state and*  
12 *their aquatic life, while protecting generally public rights of navigation and corollary*  
13 *rights incidental thereto.*

11 4. As discussed in the findings of fact, there are no adverse impacts associated with  
12 the proposal. The proposal will have no impact on public navigation and will  
13 enhance shoreline access for the Applicant. The criterion is satisfied.

14 **RCW 90.58.020(1)**

15 *Recognize and protect the statewide interest over local interest;*

16 5. The project is of modest scale with no significant adverse impacts. The criterion is  
17 satisfied.

18 **RCW 90.58.020(2)**

19 *Preserve the natural character of the shoreline;*

20 6. The project will not change the natural character of the shoreline beyond some  
21 nominal modifications to the shoreline bank.

22 **RCW 90.58.020(3)**

23 *Result in long term over short term benefit;*

24 7. The project will provide long term beach access with corresponding significant  
25 adverse impacts.

26 **RCW 90.58.020(4)**

27 *Protect the resources and ecology of the shoreline;*

28 8. There are no significant impacts to resources or ecology anticipated.

1 **RCW 90.58.020(5)**

2 *Increase public access to publicly owned areas of the shorelines;*

3 9. No public access is included in the proposal nor could it be legally required.

4 **RCW 90.58.020(6)**

5 *Increase recreational opportunities for the public in the shoreline;*

6 10. No public recreation is included in the proposal nor could it be legally required.

7 **San Juan County Comprehensive Plan Section B, Element 3 (“SJCCP(B)(3)”)**,  
8 **Section 5(J)(1):** *Beach access structures are allowed only as accessories to an*  
9 *existing single-family residence, as access to a common shoreline area in a*  
10 *subdivision or multi-family residential development, or for a public or private*  
11 *recreational facility.*

11 11. The proposal is accessory to a single-family residence as authorized by the  
12 criterion.

12 **SJCCP(B)(3), Section 5(J)(2):** *Beach access structures which are normal*  
13 *appurtenances to a single-family residence as defined in the Shoreline Management*  
14 *Act and the Unified Development Code are exempt from shoreline permit*  
15 *requirements.*

15 12. SJCC 18.20.140 defines a “normal appurtenance, shoreline” as “*a structure or*  
16 *development that is necessarily connected to the use and enjoyment of a single-family*  
17 *residence and which is expressly defined in WAC 173-27-040 and in Chapter 18.50*  
18 *SJCC, for purposes of exemption from shoreline substantial development permit*  
19 *requirements in accordance with WAC 173-27-040(g).” SJCC 18.50.020(G)(3)(f)*  
20 *provides that in order for a beach access structure to be considered an exempt*  
21 *development it must be less than 15 feet in height. Since the proposal is more than 15*  
22 *feet in height it is not exempt.*

20 **SJCCP(B)(3), Section 5(J)(3):** *The use of existing paths or trails should be*  
21 *encouraged in preference to either beach access stairs or ramps.*

22 13. There are no existing paths or trails available to the Applicants.

23 **SJCC 18.50.300(A)(1):** *Every application for a substantial development permit for*  
24 *a nonexempt beach access structure shall be evaluated on the basis of multiple*  
25 *considerations, including but not necessarily limited to the potential impacts on bank*  
*stability, the extent of vegetation removal, visual impacts, and structural stability.*

1 14. A Design and Proposed Construction Approach report was prepared by a  
2 professional engineer and is included with the application materials in Exhibit 3.  
3 Bank stability will not be impacted by this set of stairs. The top and the bottom will  
be anchored, as will other points along the way. The staircase does not rest on the  
ground and allows light and rainwater to penetrate.

4 **SJCC 18.50.300(A)(2):** *Beach access structures which can reasonably be expected*  
5 *to interfere with the normal erosion accretion process associated with feeder bluffs*  
6 *shall not be permitted. All beach access structures must comply with the bank*  
*stability requirements of SJCC 18.50.330(B)(2).*

7 15. The staff report notes that the structure is in an area of feeder bluffs but it is not  
8 expected to interfere with the erosion accretion process necessary to protect the  
shoreline.

9 **SJCC 18.50.300(A)(3):** *Beach access structures shall not be located below the*  
10 *ordinary high water mark (OHWM) unless connected to an exempt or permitted*  
11 *structure.*

12 16. The structure is not located below the ordinary high water mark.

13 **DECISION**

14 As conditioned, the proposed project is consistent with all the criteria for a shoreline  
15 substantial development permit. The proposal is subject to the following conditions:

- 16 1. Disturbed areas shall be revegetated with native vegetation.  
17 2. Construction or substantial progress toward construction of a project for which a  
18 shoreline permit is granted must be undertaken within two years after the permit  
19 approval.  
20 3. All development authorized by a shoreline permit shall be completed within five  
21 years of the date of permit approval or the permit shall become null and void. A  
22 permittee may request a time extension before the permit expires by making a written  
23 request to the administrator, stating the reasons.  
24 4. Upon completion of construction, the applicant or agent will contact the  
25 permitting department, CDPD, for an inspection.

26 Dated this 26th day of May 2011.

27   
28 Phil Olbrechts  
29 County of San Juan Hearing Examiner

30 **Effective Date, Appeal Right, and Valuation Notices**

1 Hearing examiner decisions become effective when mailed or such later date in  
2 accordance with the laws and ordinance requirements governing the matter under  
3 consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be  
4 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.

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

8 Depending on the subject matter, this decision may be appealable to the San Juan  
9 County Superior Court or to the Washington State shorelines hearings board. State  
10 law provides short deadlines and strict procedures for appeals and failure to timely  
11 comply with filing and service requirement 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.

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