

**DECISION OF THE HEARING EXAMINER  
CITY OF BAINBRIDGE ISLAND**

In the Matter of the Appeal of

**CLAES AND JENNIFER HAGSTROMER**

**COD 0000297**

from a Code Enforcement Decision of  
the Director, Planning and Community  
Development Department, Regarding Alleged  
Violations of the Shoreline Master Program  
[BIMC 16.20]

**BACKGROUND**

The Director affirmed an enforcement action regarding alleged violations of shoreline regulations, including the following actions in the Native Vegetation Zone without shoreline permit(s): construction of wood deck, construction of a rock retaining wall; clearing of native vegetation, and setting up an above-ground swimming pool. The property owner appealed the Director's decision.

At request of the Appellants, the Hearing Examiner held a prehearing conference with the Appellant and representatives of the Director on February 16, 2006. The appeal hearing was held on June 29, 2006. Parties represented at the hearing were the Director, Planning and Community Development Department (PCD or Department), by Rosemary Larson, Attorney for the City, and the Appellant, Claes Hagstromer, *pro se*. Following receipt of post-hearing submittals, the record was closed on August 7, 2006, by the Hearing Examiner's Order [Exhibit 48] regarding those submittals.

After due consideration of all the evidence in the record, the following shall constitute the findings, conclusions, and decision of the Hearing Examiner on this appeal.

**FINDINGS**

Subject Property

1. Claes and Jennifer Hagstromer own the residential property addressed as 11295 Wing Point Drive which is the subject of this appeal [second page, Exhibit 7]. The residence, built in 1975, is located on the top of the bluff which is inclined steeply down to the north shore of Eagle Harbor. [Exhibit 29]
2. In 1997, there were landslides that involved a large area of the slope on the Hagstromers' property, as well as a large area of the slope to the northwest [see whitish areas in Exhibit 32C]. A large wood crib wall was constructed as part of slope stabilization efforts [the slide area and this wall are visible on the upper part of the bluff in aerial photographs; see Exhibits 2F and 2G and Exhibit 3]. A permit was issued for

slide repair [see note on Complaint Form, Exhibit 7]. A wooden stairway extending down the slope provides access to the beach and a rock bulkhead [see in foreground photo, Exhibit 2D], apparently built in 1992, lines the shore. [Exhibit 7; Exhibit 29; Exhibit 34; Exhibit 35; Testimony of Hagstromer]

3. In 2001 the Hagstromers began living at the subject property and their purchase of it was complete in December 2002. [Testimony of Hagstromer]

4. The property has a Semi-Rural designation under the City's Shoreline Master Program. The first fifty feet of the property's shoreline, measured landward from the Ordinary High Water Mark, is a Native Vegetation Zone (NVZ) [see BIMC 16.12.150, Table 4-2].

#### Prior Complaint

5. In June 2005, the City received a complaint that the bluff ("embankment") had been stripped bare of vegetation. [see last 4 pages of Exhibit 7] When Mr. Hagstromer was contacted as part of the City's investigation of the complaint, he advised the code enforcement officer that he maintained the bank by trimming the vegetation low once a year.

6. The complaint was closed after the code enforcement officer conducted a site investigation (June 16, 2005) and the property owner was required to submitted and implement a restoration plan. The restoration plan committed to revegetation of 240 sq. ft. of the NVZ in the southwest corner of the property where the vegetation had been removed. The file notes that before the matter was closed, the property owner had been "informed of the shoreline rules." [See last 4 pages of Exhibit 7.]

7. The restoration plan [see PCD "Worksheet" and page following in Exhibit 7] proposed by the Hagstromers and approved by PCD in July 2005, included two trees (Sitka Willow) and eight shrubs (flowering currant, wild rose, pampas grass and Coast Silktassel). According to Mr. Hagstromer, the plants were planted per plan, but were then removed when the wood deck was constructed in this location.

#### Enforcement Action

8. Approximately three months after the prior complaint was closed, another complaint regarding this property was received. As logged by PCD on September 20, 2005, it was reported that "homeowner has chained logs to make a bulkhead, built a deck, brought in sand, constructed a rock wall, constructed a barbecue, brought in a pool, and has stripped the vegetation from his property and the neighbor's property." [Exhibit 7, page 1]

9. In the investigation of this complaint, PCD staff found no current permits associated with any of the actions cited in the complaint. [Exhibit 7; Exhibit 8]

10. On October 27, 2005 the City's Code Enforcement Officer issued a Letter of Violation [Exhibit 9] to Claes and Jennifer Hagstromer for alleged violations of the Shoreline Master Program at residential property addressed as 11295 Wing Point Drive. The letter advised that the City had received a complaint "regarding un-permitted items

and construction in the native vegetation zone” on their property. The actions cited as in violation of the shoreline regulations were: removal of native vegetation, installation of a wood deck, construction of a rock retaining wall, and clearing an area for a patio. The letter advised that a retaining wall requires a Shoreline Conditional Use Permit and, depending upon their size, the deck and patio “may require a Shoreline Substantial Development Exemption”. All “un-permitted items” were to be removed and a restorations plan submitted, or appropriate permits applied for within 30 days.

11. As provided in BIMC 1.26.070, the Hagstromers asked the PCD Director to review the October 27, 2006 enforcement action [see Exhibit 11 and Exhibit 10]. The Director ‘s review meeting was held on November 8, 2005, and after that meeting the Director advised the Hagstromers (by letter dated December 21, 2005 [Exhibit 13]) that he was affirming the notice of violation. As corrective actions for the violations, the Director instructed the Hagstromers to apply for exemptions or permits for the structures noted in the notice of violation. The Director advised that: 1) the wood deck and the patio would each “require a shoreline exemption permit”; 2) the disturbed native vegetation zone must be replanted; 3) the retaining wall and swimming pool were not permitted uses, but structures not specifically prohibited could be permitted if they met the criteria for conditional uses. [Staff Report, Exhibit 28; Appeal, Exhibit 14; Testimony of Preston; Testimony of Hagstromer]

#### Appeal of Director’s Review

12. On January 4, 2006, the Hagstromers appealed the Director’s decision to affirm the enforcement action [Exhibit 14]. The appeal acknowledged that they would seek an exemption for the wood deck, but asked that the Hearing Examiner to specify conditions for that exemption as a part of the appeal decision. The appeal also asserted that the rock retaining wall and the swimming pool should not need conditional use permits and that the removal of vegetation and clearing for the patio should be allowed as normal maintenance and repair.

13. The appeal hearing was scheduled for February 9, 2006 [Exhibit 18]. When the Hearing Examiner granted Appellants’ request for a pre-hearing conference, the hearing was canceled and the pre-hearing conference held on February 16, 2006. [Exhibits 15, 17].

14. At the pre-hearing conference [Exhibit 21] it was agreed that the appeal hearing would be held in abeyance to keep the appeal “alive” while the Appellants met with PCD so that the issues subject to appeal could be distinguished from issues related to permit applications. PCD committed to inform the Hagstromers as to what permits/exemptions would be required.

15. The pre-application meeting was held on March 7, 2006 and after that meeting, on March 30, 2006, PCD staff provided written follow-up [Exhibit 23] summarizing the discussion of permit requirements for the entire project (*i.e.*, remodeling the existing house and constructing a new retaining wall, in addition to obtaining “after-the-fact permits for structures” in the Native Vegetation Zone that were the subject of the notice

of violation. The Hagstromers were advised that they would need to apply for permits if they intended to move forward on their project.

16. A month later, having not heard from Appellants regarding either submittal of a permit application or a request to schedule the appeal hearing, PCD sent a letter [Exhibit 24] setting May 19, 2006 as a deadline for the Hagstromers to initiate either of those actions.

17. On May 19, 2006, the Hagstromers requested that the Hearing Examiner schedule the appeal hearing. The appeal hearing was rescheduled to be held on June 29, 2006 and required notice of hearing was given [Exhibit 27].

### Hearing and Argument

18. There is no dispute about the facts of this situation. The Appellants and the Director agree that the Hagstromers, without permit or letter of exemption, constructed a wood deck, constructed a rock wall, set up an above-ground swimming pool, cleared vegetation and established a patio. All these actions took place within the native vegetation zone. (The clearing extended beyond the Hagstromers' property and they removed vegetation from within the native vegetation zone of a neighboring property.) The Hagstromers also built-in a barbecue in the rock retaining wall; although mentioned in the complaint, this was not called out as separate violation. [Testimony of Hagstromer; Testimony of Preston]

#### Deck

19. The Hagstromers built a wood deck with an area of approximately 120 sq. ft., in the southwestern corner of the subject property. Located landward and above the rock bulkhead, the deck is a few feet landward of the line of Ordinary High Water, entirely within the Native Vegetation Zone of this property. [Exhibit 2D; Exhibit 29; Testimony of Hagstromer]

20. The Hagstromers built this structure in the summer of 2005, sometime after the close of the prior complaint [see Finding 6]. The deck occupies the area that was designated for restoration as remediation for the previously cited violation [see Finding 7]. Mr. Hagstromer testified that this area had been planted consistent with the restoration plan and then the plants were removed when the deck was built. Mr. Hagstromer further testified that these plants were replanted elsewhere "to the north", but provided no evidence as to the specific location. [Exhibit 2D; Exhibit 7, diagram and plant list attached to "Worksheet"; Exhibit 29; Testimony of Hagstromer]

21. The Appellants and the Director agree that this deck, at 120 sq. ft. or less, could be exempt from Shoreline Substantial Development Permit (SSDP) requirements [see Finding 38]. Appellants acknowledge that they must request and obtain the exemption, but want the Hearing Examiner decide what, if any, conditions would attach to that exemption.

#### Rock Wall:

22. In 2005 the Hagstromers also built a rock retaining wall [see light colored stone wall, left center in Exhibit 2C and right center in Exhibits 2b and 2D] near the base of the toe of the bluff that descends to the beach, landward of the flat area that comprises most of the NVZ. The wall, approximately 82 ft. in length from east to west (including the southeastern most part of the wall that appears to extend onto the neighboring property), is 6 ft. tall. For the westernmost 15 ft. the wall is 2 ft. high and is approximately 3 ft. high next to the easterly side of the deck. [Exhibit 29; Exhibits 2b and 2D]

23. This rock wall is landward of the bulkhead and entirely within the Native Vegetation Zone [see “Existing Rock Wall”, Exhibit 29]. There is no record of any permits being sought or obtained for the construction of this wall.

24. Appellants contend that a Shoreline permit is not required for this wall because retaining walls in steep slopes are allowed without permit. The “Retaining Wall Requirements” information sheet [Exhibit 42] notes that “No permit will be required for retaining walls not over 4’0” and that “A permit will be required for retaining walls or portion thereof over 4’0”; these walls are “required to be engineered”. The Appellants argue that only a building permit is needed and it is needed only for the part of the wall over 4 ft. high and, because there are these building standards, there can be no Shoreline permit requirement(s).

#### Clearing the Native Vegetation Zone:

25. As the corrective action for closing the prior complaint [see Findings 6 and 7], appellants were to revegetate (with native plants according to an approved native plan) 240 sq. ft. of the NVZ that they had cleared. This part of the NVZ has not been planted and maintained in native plants as per the approved plan. Instead, the wood deck currently occupies the area identified for restoration.

26. The Hagstromers cleared the entire NVZ on their property and continued that clearing “all the way” onto the adjacent Kitsap County property. Mr. Hagstromer testified that the vegetation cleared was “mostly” invasive and non-native plants (specifically mentioning ivy, blackberry, and weeds) and that this was “regular maintenance”. The area of the bluff between the rock retaining wall [see Finding 22] and the permitted wood retaining wall farther upslope, has also been cleared of vegetation [see Exhibits 2C and 2D]. The western part of the NVZ flat area is covered by the wood deck and the remainder is covered with sand and/or gravel and used as a patio [see Exhibit 2A]. Except for a couple of trees and a few plants just behind the bulkhead [see in Exhibit 2D] there is no evidence of any vegetation in the NVZ.

27. The flat area behind the bulkhead appears to have been created when a former owner constructed the bulkhead. The 1992 plans for the bulkhead [Exhibit 35] show level “sand fill” proposed to be placed behind the bulkhead on what was then “beach grass” on a slight slope extending waterward from the toe of the bluff. (Application was made for bulkhead construction [Exhibit 35], but there is no record that the Washington Department of Fisheries’ objection [see March 9, 1992 letter in Exhibit 35] to the bulkhead was resolved.)

28. An aerial photo taken in 1992 [Exhibit 32A] shows the shoreline before the construction of the bulkhead. The area slated for “sand fill” [see Finding 27] appears to be covered with vegetation. (The Appellants’ expert identified green areas as having some type of low-lying vegetation; native, non-native cannot be determined [Testimony of Curtis].) In a 1995 aerial photo [Exhibit 32B], that flat area appears to be covered with sand (*i.e.*, it has the same light gray color as the sand of the beach, not the darker color that denotes vegetation). In the 1997 aerial photo [Exhibit 32] large white areas evidence the slide activity that occurred that year [see Finding 2]. Aerial photos indicate that in later years some type of vegetation was growing in the flat area between the bulkhead and the toe of the bluff [in 2000, see Exhibit 2H, 2G and Exhibit 32D; in 2001, see Exhibit 32E; in 2002, see Exhibit 32F].

29. The Appellants contend that the flat area (which comprises almost the entire NVZ) has been maintained as a cleared area since 1992 so that it need not be maintained in native vegetation.

Above-ground Swimming Pool:

30. In 2004 the Hagstromers installed an above-ground swimming pool in the southwestern portion of the NVZ [see Exhibits 32G and 2F]. At that time, most of the NVZ, from the bottom of the beach stair to the bulkhead, across the much of the beach frontage, appears cleared of vegetation (*i.e.*, is gray like the beach sand). In 2002 this same area was covered with vegetation of some sort [see in Exhibit 32F]. Mr. Hagstromer’s testimony that they never brought in sand or gravel is not credible in light of this photographic evidence [Exhibits 32G and 2F compared to 32F].

31. The pool, although temporary (*i.e.*, it is drained and removed off-season), is, at 15 ft. in diameter, larger than the deck which now occupies the southwest portion of the NVZ (where the pool had been in September 2004 [see Exhibit 2F]). No plants, native or otherwise, could survive under the pool during its use 3-4 months in summer. (The swimming pool has been set up and used in the NVZ in 2004, 2005, and 2006.)

32. Appellants contend that the pool is not a “*structure*” regulated by the Shoreline Master Program, but an exempt “*appurtenance*” for recreational use associated with the residence.

Bainbridge Island Municipal Code

33. The Shoreline Master Program, Chapter 16.12 of the Bainbridge Island Municipal Code, regulates land use and development in the City’s shoreline.

34. BIMC 16.12.030 includes the following definitions:

11. “**Appurtenance**” means a structure or development which is necessarily connected to the use and enjoyment of a single-family residence. “**Normal appurtenance**” means a garage, boat house, deck, driveway, utilities, fences, and grading which does not exceed 250 cubic yards...

52. “**Development**” means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; pile driving; placing of obstructions; or

any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters of the state...

70. **“Exemption”**...certain developments are exempt...from the substantial development permit process...An activity that is exempt...must still be carried out in compliance with policies and standards of the Act and the local master program. Conditional use and/or variance permits may also still be required even though the activity does not need a substantial development permit...

119. **“Nonconforming development”** means a shoreline use or structure which was lawfully constructed or established prior...and which no longer conforms ...

122. **“Normal maintenance”** means those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition...

176. **“Structure”** means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water...

35. The “Clearing and grading” regulations of the shoreline code, at BIMC 16.12.060.C, provide (emphasis added) that:

1. Clearing and grading shall be permitted landward of the native vegetation zone when associated with a permitted shoreline use; provided, that upon completion of construction, remaining cleared areas shall be replanted within the first applicable planting season...

36. The “Native vegetation zone” (NVZ) section of the shoreline code, at BIMC 16.12.090, provides (emphasis added) that:

A. *Definition and Purpose.* The native vegetation zone is a required vegetation buffer encompassing all uplands from the OHWM to the dimension specified for that particular shoreline environment. Its purpose is to protect and enhance the Island’s natural character, water quality, native plant communities, and wildlife habitat along the shoreline.

B. *Applicability.* The native vegetation zone provisions apply to all shoreline development, uses, and activities, including those which do not require a shoreline permit, and to existing development...

C. *Regulations.*

1. A vegetation buffer, called a native vegetation zone, shall be maintained immediately landward of the OHWM...

2. Existing native vegetation within this zone shall remain unless specifically allowed to be altered or removed...

3. New plantings in this zone shall be native plant species, or other approved species...

4. Removal of nonnative plants and plants on the state noxious weed list shall be allowed within the native vegetation zone.

\* \* \*

6. No clearing, grading, or construction may be undertaken within the native vegetation zone unless specifically provided for in this section or in Part VI, Specific Shoreline Use Regulations.

\* \* \*

37. The Native Vegetation Zone in the Semi-Rural shoreline environment is required to be 50-ft. wide, as measured from the OHMW. [BIMC 162.12.150, Table 4-2]

38. Regarding residential development in the shoreline, BIMC 16.12.260 provides that:

*A. ...All development in the shoreline jurisdiction must comply with the Shoreline Management Act...and the master program. While an individual owner-occupied, single-family residence and its “normal appurtenances” are exempt...they must comply with this section and other provisions of the master program...*

*In some circumstances a conditional use permit is required for developments which are exempt from the SSDP...*

*Residential development is subject to...provisions for a native vegetation zone adjacent to and landward of OHWM...clearing and grading restrictions, public access requirements, environmentally sensitive areas provisions...*

*B. Regulations – General.*

\* \* \*

*9. No accessory structures shall be located within the required native vegetation zone, except a stairway to the beach, a tram, a pier or dock, a boat house, permeable decks less than 30 inches in height above grade, and fences...*

*14. In the...semi-rural...environments, permeable (slatted) decks of 120 square feet or less that do not exceed 30 inches in height above grade shall be permitted... It shall also be considered a normal appurtenance to residential development not requiring a shoreline substantial development permit...*

*15. ...hand-installed steps to the beach, or as part of a trail system, shall be permitted in the native vegetation zone.*

39. Development within the shoreline, is required to have a permit or an exemption and BIMC 16.12.360.A provides (emphasis added) that:

*3. Any person wishing to undertake substantial development or exempt development on shorelines shall apply to the director for an appropriate shoreline permit or a statement of exemption.*

\* \* \*

40. Regarding a “Statement of Exemption”, BIMC 16.12.360.B (emphasis added), requires as follows:

*1. No exempt development, use or activity shall be undertaken...unless a statement of exemption has been obtained from the director.*

\* \* \*

*5. ...The director shall condition statements of exemption to ensure the exempt development or activity complies with the Shoreline Management Act and the master program.*

*6. In the case of development subject to the policies and regulations of the master program, but exempt from the substantial development, permit process,*

*shoreline management requirements may be made conditions of the building permits and/or other permits and approvals...*

*\* \* \**

41. BIMC 16.12.380.A provides that: “Where a development includes several uses or activities and one or more uses or activities require a shoreline conditional use permit, all uses and activities shall be processed and decided following the shoreline conditional use procedures.” Uses that are not specified as permitted or conditional use, “may be authorized as conditional uses” where an applicant demonstrates that there are, in addition to meeting the standard SCUP criteria, “extraordinary circumstances” that would “preclude reasonable economic use of the property...”

42. Regarding “Nonconforming development” (i.e., uses or structures which were lawfully established or constructed prior to the effective date of the master program, but which do not conform to present regulations), BIMC 16.12.390.A.1 provides (emphasis added) that:

*1. Nonconforming Uses.*

*a. Nonconforming uses shall not be altered or expanded in any way that increases the nonconformity.*

*b. If a nonconforming use is discontinued for 12 consecutive months, any subsequent use shall be conforming.*

*c. A nonconforming use cannot be changed to another nonconforming use.*

43. In considering appeals from “administrative decisions, departmental rulings and interpretations...”, BIMC 2.16.130.F authorizes the Hearing Examiner to: affirm the Director's decision, affirm with modifications, reverse the decision, or remand it to the Director. That section of the Code also requires that the Hearing Examiner give “substantial weight to the decision of the department director.”

## CONCLUSIONS

1. The Hearing Examiner has jurisdiction to hear and decide appeals of the Director’s administrative decisions regarding alleged violations and, pursuant to the mandate of BIMC 2.16.130 [see Finding 43], in making that decision, must give substantial weight to the decision of the department director. To overcome the substantial weight accorded the Director, an appellant has to show that the Director's decision is clearly erroneous. Under this standard of review, the Director can be reversed if the Hearing Examiner is left with the definite and firm conviction that a mistake has been made.

2. The Appellants made or caused made physical changes within the jurisdiction of the Shoreline Master Program (BIMC Chapter 16.12) on their property at 11295 Wing Point Drive. The Director correctly cited violations regarding the following activities that were undertaken within the Native Vegetation Zone without having obtained shoreline permit or exemption:

- Construction of a wood deck in Native Vegetation Zone.
- Construction of a rock retaining wall in Native Vegetation Zone.

- Clearing vegetation and having a patio in Native Vegetation Zone.
- Placing above-ground swimming pool in Native Vegetation Zone.

3. Deck: It is likely that the Director could determine that this structure is exempt and issue a Letter of Exemption to that effect. However, it is a violation to have constructed the deck without first obtaining that exemption. The corrective action regarding the deck is for the Hagstromers to remove the deck or, if they want to have the deck remain, obtain a shoreline substantial development permit exemption for it (or obtain a SCUP if combined in application for other actions that require a SCUP).

4. Rock Wall: It is a violation to have constructed the rock retaining wall in the NVZ without obtaining a shoreline permit. The wall, over 4 ft. tall, is not exempt from permit requirements. A retaining wall of smaller size may be exempt from other permit requirements, but (as a structure in the NVZ) would still require a Shoreline Conditional Use Permit. The corrective action is for the Hagstromers to remove the wall or, if they want to have the wall remain, apply for and obtain a Shoreline Conditional Use Permit for it.

5. Clearing NVZ and Patio: The entire NVZ has been cleared and the flat area of the NVZ landward of the bulkhead is covered by the wood deck, a gravel patio, and the above-ground swimming pool. The slope above the rock retaining wall, including a small area within the NVZ, has also been cleared, as was part of the adjacent property. The Appellants' argument is that not having native vegetation and using the area as a "front yard", created a nonconforming "use" back in 1992. This is not a persuasive argument as vegetation was clearly present in subsequent years. Even if that dubious theory is accepted, the development the deck, gravel patio, and swimming pool in the NVZ would be an expansion of that non-conformity. Development within the NVZ (deck, gravel patio, and swimming pool) all give rise to the requirement to maintain (here, plant and maintain) native vegetation. The required corrective action is for the NVZ that has been cleared to be revegetated with native vegetation.

6. The above-ground swimming pool is a "structure" placed in the NVZ without a permit to do so. The pool is not a "normal appurtenance" [see Finding 34] and is subject to shoreline permit requirements. (Further, the pool, with its size and impact, cannot reasonably be argued, as Appellants' do, to be equivalent to non-structural, unregulated items like "a chair" and "children's' toys".) As above-ground swimming pools are not expressly specified as permitted or prohibited, it could be considered for a Shoreline Conditional Use Permit (with additional criteria). The appropriate corrective action is to remove the above-ground swimming pool and not allow its return, until and unless a Shoreline Conditional Use Permit is approved for its location in the NVZ.

7. The Director has not been shown to have erred. The Director's decision regarding the violations is no mistake and should be affirmed and the corrective actions enforced.

## **DECISION**

The Director's administrative decision regarding the subject violations is **AFFIRMED**. If the property owners fail to, within thirty (30) days of this decision, take the four corrective actions enumerated below, the Director may pursue civil and/or criminal penalties provided for in BIMC 1.26.090 and 1.26.100, and/or seek any additional relief or assistance in accomplishing the corrective actions, including that provided for in BIMC 1.26.110.

### **Required Corrective Actions**

**The property owners, Claes and Jennifer Hagstromer shall, within thirty (30) days of the date of this decision, take the following four enumerated corrective actions:**

**1. Deck:**

- (a) Remove the deck; **OR**,
- (b) If this is the only structure that Appellants want to have in the NVZ, apply for a Shoreline Substantial Development Exemption; **OR**,
- (c) If the Appellants want to have other, non-exempt development(s) in the NVZ (*e.g.*, rock retaining wall, above-ground swimming pool), apply for a Shoreline Conditional Use Permit that includes the deck [see Finding 41].

**2. Rock Wall:**

- (a) Remove the rock retaining wall from the NVZ; **OR**,
- (b) Apply for a Shoreline Conditional Use Permit that includes the rock retaining wall in the NVZ.

**3. Clearing Vegetation from the NVZ:**

Submit a satisfactory revegetation/restoration planting plan to the Director **AND** by the end of the next planting season after the Director's approval of the planting plan, revegetate as per the plan approved by the Director. (The actual planting is not subject to the 30 day deadline noted above.)

**4. Above-ground Swimming Pool:**

Remove the pool from the shoreline. Note: The owners may include the pool in a Shoreline Conditional Use Permit application, but the pool must be removed within the 30 day deadline and may not be located in the NVZ until and unless a SCUP for it is properly issued.

Entered this 28th day of August 2006.

- signed in original -  
\_\_\_\_\_  
Meredith A. Getches  
Hearing Examiner

**CONCERNING FURTHER REVIEW**

NOTE: It is the responsibility of a person seeking review of a Hearing Examiner decision to consult applicable Code sections and other appropriate sources, including State law, to determine his/her rights and responsibilities relative to appeal.

Request for judicial review of this decision by a person with standing can be made by filing a land use petition in Superior Court within 21 days in accordance with the Land Use Petition Act, Revised Code of Washington (RCW), Chapter 36.70C.