

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

In the Matter of the Application of

**RICK AND MARYANN KIRKBY**

**SCUP13608**

for Shoreline Permits for Beach Access  
Stairway and Rock Bulkhead

**BACKGROUND**

The Applicants are seeking shoreline permits for an existing access stairway to the beach and a new rock bulkhead in the Semi-Rural shoreline environment. The Hearing Examiner held public hearing on this matter on August 24, 2006. Parties represented at the hearing were: the Director, Planning and Community Development (PCD or Department), by Joshua Machen, Senior Planner; and, the Applicants, Rick and MaryAnn Kirkby, *pro se*.

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 application.

**FINDINGS**

**EXISTING CONDITIONS**

Site

1. The 0.54 acre site, addressed as 4676 NE Eagle Harbor Drive [tax parcel 352502-2-079-2006], is high-bank waterfront located on the south shore of Eagle Harbor. The property is generally rectangular in shape and measures approximately 200 feet north-south and 124 feet east-west. [Exhibit 11, Application; Exhibit 43, Staff Report]
2. The site is zoned R-2, residential with two units per acre; the Comprehensive Plan designation is OSR-2, Open Space Residential, two units per acre. The City's Shoreline Master Program designates the upland as Semi-Rural. [Exhibit 43, Staff Report]
3. Vegetation in the upland portion of the site where the residence is located, consists primarily of grass lawn and landscaped trees and shrubs. Near the edge of the slope there is a very large (72-inch diameter) cedar tree and the stump of a 36-inch diameter fir. There are mature cedars, maples and alders on the slope west of the subject site. Vegetation on the slopes consists of scattered, young alder and maple trees with a moderately dense understory of ivy, blackberry, sword ferns and small shrubs. The small trees display the "J" curvature indicative of soil movement. [Exhibit 6]

4. The property does not have any shoreline toe protection. The adjacent properties to both the east and west have rock bulkheads. These bulkheads have created a “pocket beach” at the site. The neighbor to the east, Raymond Keeney, notes that there are many bulkheads in this vicinity and, in the past, it was only the property without a bulkhead that was damaged by slides. He expressed concern for both his property and the Kirkbys’ property. [Exhibit 6; Exhibit 29; Exhibit 43, Staff Report; Testimony Machen]

#### Structures

5. The Kirkby residence, built on the upper, gently- to moderately sloping (10-25% slopes) southern portion of the site, is back approximately 60 feet from the edge of the bluff. A deck, extending about 13 feet further north, is approximately 10 feet from a relic drainage gully that has eroded back from the face of the slope. A patio and fire pit, located at the top of the slope, is about 5 feet from the gully. Several buried tanks for the septic system are located near the northeast corner of the patio, within approximately 20 feet of the edge. [Exhibits 6 and 14]

6. Below the patio is the beach access stairway consisting of three angled stair runs and three landings, with an estimated area of 360 sq. ft. The application is for an after-the-fact SCUP for this stairway. [Exhibits 6 and 14; Testimony Machen]

7. There is 10-inch diameter corrugated metal pipe exposed at grade near the gully. The pipe extends to the beach below where it discharges onto a rock “pad”. (In a visit in February 2005, the rate of discharge was observed to be about 2 gallons per minute.) The subject proposal includes removing this pipe and replacing it. See Findings 25-27. [Exhibits 6 and 43]

#### Slope and Beach

8. In the upper part of the bluff, slope inclinations are on the order of 50 to 100%; the lower 10-15 feet of the bluff is near vertical. The total elevation change is approximately 70 vertical feet. A relic drainage gully cuts deeply into the bluff (toward the Kirkby residence) near the center of the site. The beachfront slope and the beach show signs of long-term wave erosion, including an indented shoreline (“pocket beach”), and erosion at the high water contact with the bank, creating an undercut zone. The beach is almost void of sand or gravel and the silt/clay has formed a hard surface. Minor sand and gravel accumulation on the east and evidence of scour and erosion on the west, indicate westerly net shore drift which is consistent with the reported drift direction. [Exhibits 2 and 6]

9. There is evidence of ongoing slides. Due to the steep slope angles and the surface and groundwater conditions, there is a high potential for future landslide activity. [Exhibit 6] The eastern portion of the slope is retreating in a southeasterly direction. Just upslope from the fence located at the crest of the bluff, there is a substantial drop in the level of the yard. Between September 2005 and June 2006, the Applicants’ geotechnical engineer observed a change in the height of this scarp from 6-8 inches, to 8-12 inches. The scarp failure extends noticeably onto the neighboring (Keeney) property. [Exhibits 6; 31; and 36]

10. The slope on the subject property is actively eroding due to surface saturation, groundwater seepage, and wave action. The estimated “factor of safety” for the Kirkby property indicates that slide activity could affect the septic system in 10-15 years and the structural elements of the residence itself in 60-80 years. The residence's two-story deck footings in the west-central portion of the site (now 13 feet from the top of the slope), could be at risk after the next colluvial slide event (which could extend 6-7 feet back from the slope). There is soil creep actively occurring all along the slope, and a substantial slide occurred in January 2006. The neighboring Keeney residence to the east is so near the top of the retreating slope that any additional slide activity could place that structure “at immediate risk.” [Exhibit 31 and 36]

11. The geotechnical examination found no evidence of past or incipient deep-seated rotational slides, but notes that on-going erosion at the toe of the bluff would “contribute to ongoing toppling and surficial slides on the slope.” A proper bulkhead would stop the toppling erosion of the undermined silt and clay soils at the toe and contribute to the stabilization of the upper bluff. The geotechnical engineer testified at hearing that the slides on the upper slope cannot be “divorced” from the toe erosion occurring on the beach. [Exhibit 6; Testimony Peterson]

#### **APPLICATION**

12. On October 26, 2005, the Department received an application for a shoreline exemption for the proposed new bulkhead. During the PCD review, it was determined that the bulkhead did not qualify for an exemption and a shoreline substantial development permit (SSDP) would be required. [Exhibit 9; Exhibit 43, Staff Report; Testimony Machen]

13. An application for a SSDP for a 124-ft. long bulkhead and a SCUP for the existing beach access stairway was submitted on December 23, 2005 [Exhibit 11]. The application also includes the replacement of an old corrugated metal stormwater drainage pipe. The application was deemed complete as of January 19, 2006 [Exhibit 16].

14. As a “normal appurtenance” to residential use, a beach stair generally does not require a Shoreline Conditional Use Permit (SCUP) unless it has a footprint greater than 120 sq. ft. [see BIMC 16.12.260.B.16]. The Department determined that the existing beach access stairway, with footprint of 360 sq. ft., required a SCUP.

#### **Beach Access Stairway**

15. The existing access stairway [see photos, Exhibit 14] to the beach was built without permits. The subject application is for an after-the-fact permit for the existing structure. [Staff Report, Exhibit 43; Testimony of Machen]

16. The open-tread, wood stairway extends from the crest of the slope north of the residence, down to the beach. The stairway has stairs approximately 3 feet wide, changes direction at three small landings, and terminates a few feet landward of the Ordinary High Water Mark (OHWM). Linear distance is 90 feet and total area is 360 sq. ft. [Site Plan, Exhibit 2; SEPA Checklist, Exhibit 4; Application, Exhibit 11; Exhibit 23]

17. The stairway is well-screened by fairly dense native vegetation which flanks it [see photos, Exhibit 14] and effectively obscures views of it from off the site. (The Staff

Report [Exhibit 43, page 10] indicates that the stairway is compatible with the residential setting, but some parts of it may be visible from Eagle Harbor.)

18. A final small section of stairs would be added at the bottom of the slope, behind the bulkhead landward of the OHWM.

19. The stairway was examined as part of the geotechnical consultants' site reconnaissance [Exhibit 6]. It was determined that installation had not reduced the stability of the slope, but the stairway will require on-going maintenance as downslope creep continues. While the stairway installation caused only minor disturbance, additional plantings and erosion control were recommended to restore the area to equal or better than "pre-stair" conditions.

#### Bulkhead

20. The proposed rock bulkhead would be 124 feet long, extending from the neighboring rock bulkhead at the eastern property boundary, parallel to the shoreline landward of the OHMW near the toe of the bluff. The proposal includes installation of a diffuser for the replacement drainage pipe [see below]. [Exhibits 7, 11, 15; Testimony of Powell; Machen]

21. The plans call for the bulkhead to be constructed of large "A" and "B" rocks (3-7 tons and 1-3 tons respectively), with the base rocks keyed into the beach approximately 3 feet below grade and the rest stacked to a maximum 7 ft. above beach grade. The bulkhead would extend waterward of the toe of the bank a maximum of 6 feet and quarry spalls would be placed behind the bulkhead, with filter fabric placed between the spalls and the toe of the bank. A "T" diffuser would be included to safely distribute the discharged water behind the bulkhead so that there would be no direct flow onto the beach or into the waters of Eagle Harbor. All equipment and materials would be brought by barge. [Exhibits 5, 7, 11, 15; Testimony of Powell]

22. The Director recommends that the linear extent of the bulkhead be limited to 70 feet. The geotechnical engineer, who has examined the site several times since February 2005, has concluded that installation of a bulkhead across the eastern 70 feet of the toe of the slope would help stabilize the slope and slow down the continuing colluvial failures. This bulkhead would stop toe erosion and provide a catchment for a stabilizing debris berm to slow down colluvial failures (especially slowing the colluvial response to recent toe failure). By buttressing the slope, the bulkhead is expected to slow slope retreat and consequently to decrease the immediate threat to the Keeney residence. In connection with the proposed stormwater drainage pipe replacement [see below], the bulkhead would also reduce the risk of erosion and landslide activity associated with stormwater and groundwater discharge in the area of the drainage pipe and outfall. [Exhibits 31 and 36]

23. A Hydraulic Project Approval (HPA) has been issued by the Washington Department of Fish and Wildlife (WDFW) for construction of "70 linear feet of new rock bulkhead" [Exhibit 41]. The HPA's 30 conditions include construction per approved plans (as modified by HPA conditions) and biologist certification approved by

WDFW for work from October 15 through March 1. A Joint Aquatics Resources Permit Application [Exhibit 5] was filed on December 12, 2005.

24. The geotechnical engineer found that a rock bulkhead is the “most viable and practicable method” to buttress the slope here. Specifically, “soft” bulkhead techniques were concluded to not be practical due to the hard clay surface and the high littoral sediment movement due to the exposed clay. An entire “beach” would have to be created here for a soft bulkhead to be effective. A rock bulkhead would provide for wave dissipation similar to that of the neighboring bulkheads; soft bank protection would not. [Exhibits 6 and 43]

#### Drainage Pipe

25. The 10-inch corrugated metal drainage pipe on the Kirkbys’ property collects and discharges groundwater and runoff from a five-acre drainage basin. Groundwater is collected by a series of buried pipes and gravel curtain drains. The existing pipe is exposed at the ground surface, extends over the face of the slope, and discharges onto a rock pad on the beach at the bottom of the slope. The pipe has some joints wrapped in duct tape to prevent or reduce leaks and the area along the route of the pipe has been observed to have saturated soils and is experiencing accelerated soil creep. The Public Works Department and the Applicants’ geotechnical consultant have recommended replacement of the existing pipe due to its state of minimal repair and possible leakage which could contribute to soil creep and increase the risk of slides. The geotechnical consultant has advised that the pipe is in need of remediation and that replacement should be “a first priority.” [Exhibits 4; 6; 22 and 36; Testimony Machen; Kirkby]

26. An 8-inch diameter HDPE (high density polyethylene) pipe is the replacement proposed. This hard plastic pipe is heat-welded together (which substantially reduces the risk of joint failure) and its flexibility makes it a much better material than metal on this slope which has on-going movement. [Exhibits 11; and 43; Testimony of Machen]

27. A “T” diffuser (also called a “dissipater”) would be installed at the northern end of the pipe in the spalls behind the proposed bulkhead. The “T” would diffuse or spread the discharged water so as to prevent erosion of the toe of the bank and/or direct discharge to the beach or to the waters of Eagle Harbor. [Exhibits 2; 11; and 15; Testimony Powell]

28. With the bulkhead limited to 70 feet in length, the drainage pipe would need to be rerouted. In the original proposal [see Exhibit 2], the new pipe was to extend down the face of western side of the slope in about the same place as the existing pipe. At the beach the pipe would be approximately 20 feet from the western property line. As conditioned, the bulkhead would not extend this far west and the pipe would have to be rerouted to the east in order to end up behind the 70-ft. long bulkhead. The geotechnical engineer anticipates no significant geotechnical impacts from changing the pipe’s location and notes that the replacement pipe, connected at the point originally proposed, could be routed across the surface of the slope, coordinated with the alignment of the stairs, and then routed to the back of the bulkhead, where the diffuser would be installed. [Exhibits 2, 36 and 43; Testimony of Machen; Powell]

## **DIRECTOR'S REVIEW AND RECOMMENDATION**

29. Notice of Application by mail and publication was given on January 25, 2006 [Exhibit 18], and was properly posted at the site. The Director received a comment letter from a neighbor in support of the application [Exhibit 27] and a letter from Mr. Keeney [Exhibit 29] whose adjacent property would be protected by the proposed bulkhead.

30. The state Office of Archeology and Historic Preservation noted [Exhibit 25] that a recorded archaeological site is within ¼ mile and requested that an archaeological monitor be present during construction and that all work be stopped and the agency notified if any archaeological resources were found to be present. The Suquamish Tribe requested that an archaeologist review the project and provide a resource assessment [Exhibit 26].

31. Having concluded that the proposal would not have significant adverse environmental impact, the Director issued a Mitigated Determination of Non-Significance (MDNS) [Exhibit 37] on July 12, 2006. Notice of the right to appeal that SEPA threshold determination was included in the MDNS. The MDNS was not appealed. [Exhibit 43, Staff Report; Testimony Machen]

32. The Director considered the proposal relative to the City's Shoreline Management Master Program [see Finding 36]; Shoreline Master Program (SMP) regulations (BIMC 16.12.040, General Regulations; BIMC 16.12.050, Archaeological and Historic Resources; BIMC 16.12.060, Clearing and Grading; BIMC 16.12.070, Environmental Impacts; BIMC 16.12.080, Environmentally Sensitive Areas; BIMC 16.12.090, Native Vegetation Zone; BIMC 16.12.260, Residential Development; BIMC 16.12.290, General shoreline modifications provisions; BIMC 16.12.310, Shoreline armoring; BIMC 16.12.360, Permits or exemptions required; BIMC 16.12.380, Shoreline Conditional Use Permit criteria); Geologically hazardous areas, BIMC 16.20.08; and, R-2 zoning provisions, BIMC 18.30.020.C.

33. BIMC 16.20.080.C provides requirements for development in geologically hazardous areas. The stairway would meet the requirements of BIMC 16.20.080.C regarding erosion control, minimizing disturbance, location, design, and landscaping. [Exhibit 43, Staff Report; Testimony of Machen]

34. The conditions of approval that the Director recommends for the stairway are necessary and appropriate to ensure consistency with shoreline policies, applicable shoreline land use regulations, and to mitigate potential environmental impacts. [Exhibit 43, Staff Report; Testimony of Machen]

35. The Director concluded that, to be consistent with the BIMC 16.12.310.B.5 restriction that bulkheads be allowed only where existing development is threatened, the proposed bulkhead should be conditioned to limit its length to 70 feet, not the 124 feet proposed. The bulkhead should be limited to the length necessary to decrease risk to the Keeney residence and not extend the entire length of the Kirkbys beach. Limiting the bulkhead to a length of 70 feet is a reasonable and appropriate condition, consistent with the Shoreline Master Program [BIMC 16.12.310.B.5].

36. As determined by the Director [Exhibit 43, Staff Report, pages 7-9], the proposal, with the recommended conditions, would be consistent with the policies of the Shoreline Management Master Program (SMMP). The Director's analysis is hereby adopted by reference and is summarized below.

**Section III (A) Archaeological and Historic Resources:** Only minor excavation would occur as part of this project and since the property is a high bank waterfront, the likelihood of archaeological or historic resources is diminished. The proposed SEPA condition [Condition 11] would ensure that if resources are uncovered they would be preserved.

**Section III (B) Clearing and Grading:** Construction of the stairway appears to have had little impact on the slope or on water quality. The construction of the bulkhead would have temporary construction impacts, as would the replacement/relocation of the stormwater tightline. However, both structures would help protect against future erosion of the shoreline bank.

**Section III (C) Environmental Impacts:** The stairway, the stormwater tightline, and the bulkhead, as conditioned, would be designed and constructed in a manner having minimal environmental impact. The construction of the shoreline stairway caused only minor ground disturbance and the stairway is now almost entirely concealed by the shoreline vegetation. The replacement stormwater tightline of HDPE pipe (hard plastic pipe with sections heat welded) would have reduced the risk of joint failure and leakage on the slope. As conditioned [Condition 3], the bulkhead would be limited to that portion of the site where it is needed to protect the neighboring residence and the existing drainfield on the subject property.

**Section III (D) Environmentally Sensitive Areas:** The bluff on the subject property is considered a geologically hazardous area. The construction of the stairway avoided many of the trees and larger shrubs on the slope, thus maintaining stability of the slope. As indicated in the geotechnical report [Exhibit 6, page 6], the continued existence of the stairway would not have a significant impact on the long term stability of the slope. The new tightline and bulkhead would also help to prevent accidental discharge of water on the slope and long term erosion of the toe of the slope.

**Section III (E) Native Vegetation Zone:** The stairway was placed in a manner that has had minimal disturbance of the native vegetation. Likewise, the replacement and relocation of the stormwater tightline and the installation of 70 feet of bulkhead would have little effect on the native vegetation. Further, Condition 1 requires replanting of native vegetation for any disturbance of the native vegetation zone.

**Section IV (C), Semi-Rural Environment:** The development of a stairway and bulkhead for the support of a single-family residence is consistent with the policies of the Semi-Rural environment.

**Section V (K) Residential Development:** The stairway is in accordance with the residential policy as it blends in with the existing vegetation [required to be maintained by Condition 1] and is conditioned [Condition 12] to be stained or painted only with neutral colors.

**Section VI (A) General Shoreline Modification:** The subject property is not currently protected by a bulkhead, revetment or other structural armoring. The absence of structural armoring here has resulted in overhanging vegetation and erosion of the toe of the slope forming a “pocket beach”. While the house on the subject property is not currently threatened, the residence on the property to the east is only a few feet from the edge of the bank. Due to the angle of the slope, the type of substrate and wave energy, nonstructural shoreline protection alternatives would not be effective or prudent. As conditioned [Condition 3], armoring on the subject property would be the minimum necessary to provide protection to the threatened development.

37. The Director’s analysis and determination [Exhibit 43, Staff Report, pages 9-10] that, as conditioned, the proposal would meet the criteria for approval of a Shoreline Conditional Use Permit [BIMC 16.12.380.C; see Finding 45], is hereby adopted by reference and is summarized below.

a. **Will be consistent with the policies of RCW 90.58.020 and the policies of the Master Program:** See discussion of the applicable Shoreline Master Program policies in Finding 36.

b. **Will not interfere with the normal public use of the public shorelines:** The stairway does not interfere with public use of the shoreline. Flanked by vegetation, the stairway [Exhibit 14; Testimony Machen] has had minimal visual impact in the shoreline. As conditioned [Condition 1], a vegetation management plan would be required to ensure that native vegetation screening is maintained on the slope. The proposed bulkhead would be located at the toe of the bluff, aligned with existing bulkhead; not where it could interfere with normal public access.

c. **Compatible with other permitted uses within the area:** The stairway, while partially visible from Eagle Harbor, is compatible with the surrounding single-family development. [See also “b” above and Conditions 1 and 12].

d. **No unreasonably adverse effects to the shoreline environment designation in which it is located:** As conditioned to avoid and mitigate impacts [Conditions 1-11], there would be no unreasonable adverse environmental impacts.

e. **Public interest would suffer no substantial detrimental effect:** The stairway altered the appearance of the shoreline bank was altered, but the native planting has helped (and would continue) to maintain natural character of the shoreline [Condition 1].

- f. **Consistent with Zoning Ordinance and Comprehensive Plan:**  
The proposed stairway is an accessory structure permitted in the R-2 zone as part of single-family residential use. There are no general or specific restrictions regarding stairways in the Comprehensive Plan.

#### HEARING

38. Notice of the Hearing Examiner's public hearing on the SCUP application was properly given with posting, mailing, and publication completed by August 9, 2006 [Exhibit 42]. Hearing was held on August 24, 2006.

39. During the public hearing, the Department's representative testified regarding the Staff Report and the Director's recommendation, including conditions [Testimony Machen]. The Applicants' witnesses contributed information about the proposal and the subject property. The Applicants did not object to the Director's recommended conditions. [Testimony of Kirkby; Peterson; Powell] No members of the public commented.

#### BAINBRIDGE MUNICIPAL CODE (BIMC)

40. The Shoreline Master Program, BIMC Chap. 16.12, regulates development in the shoreline. BIMC 16.12.260 (emphasis added) provides that

*A. Applicability. 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 from the requirement that a substantial development permit (SSDP) be obtained from the local government...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...*

\* \* \*

*B. Regulations – General.*

*1. Residential development shall be permitted in the rural, semi-rural, and urban environments...*

\* \* \*

*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....*

41. BIMC 16.12.030.A.11 defines "Appurtenance" to mean "a structure...which is necessarily connected to the use and enjoyment of a single-family residence". Appurtenances must be landward of the ordinary high water.

42. The regulations for residential development in the shoreline, at BIMC 16.12.260.B. 5 and 16, require that a 50-ft. wide native vegetation zone be preserved in the semi-rural environment and that stairways with an area exceeding 120 sq. ft. are required to have a shoreline conditional use permit.

43. BIMC 16.12.310 addresses shoreline armoring (revetments and bulkheads) and provides (in pertinent parts; emphasis added) as follows:

*A. Applicability. The Shoreline Management Act exempts from the substantial development permit (SSDP) process the construction or repair of a normal, protective revetment or bulkhead when it is necessary to protect an existing single-family residence. Even when exempt, however, these structures must comply with all applicable master program regulations. A statement of exemption for an individual, single-family residence must be obtained from the city before commencing construction of any bulkhead or revetment.*

*B. Regulations – General.*

*1. ...bulkheads are permitted uses in the rural, semi-rural, and urban environments where there are...bulkheads...within approximately 100 feet on either side of the property.*

*\* \* \**

*5. ...bulkheads may be allowed only when evidence is presented which conclusively demonstrates that the following conditions exist:*

*a. Serious wave erosion threatens an existing development or land;*

*\* \* \**

*c. That use of natural materials and processes and nonstructural solutions to bank stabilization are unworkable in protecting existing development.*

44. BIMC 16.12.380.C applies to all applications for shoreline conditional use permits and provides, in pertinent part, as follows:

*1. Uses classified as conditional uses may be authorized; provided, that the applicant can demonstrate all of the following:*

*a. The proposed use would be consistent with the policies of RCW 90.58.020 or its successor and the policies of the master program.*

*b. The proposed use would not interfere with the normal public use of the public shorelines.*

*c. The proposed use of the site and design of the project would be compatible with other permitted uses within the area.*

*d. The proposed use would cause no unreasonably adverse effects to the shoreline environment designation in which it is located.*

*e. The public interest suffers no substantial detrimental effect.*

*f. The proposed use is consistent with the provisions of the zoning ordinance...and the comprehensive plan...*

45. 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.”

46. BIMC 16.12.350.B.1.a provides that the Hearing Examiner has the authority to: Approve, approve with conditions, or deny...shoreline conditional use permit applications after a public hearing and after considering the findings and recommendations of the director, which shall be given substantial weight....

## CONCLUSIONS

1. The Hearing Examiner has jurisdiction to hear and decide this matter and is required to give the Director's recommendation substantial weight.
2. Appropriate notices of the application and the public hearing were given and all relevant evidence was considered.
3. This application is before the Hearing Examiner for decision because the beach access stairway has a footprint of 360 sq. ft. and beach access stairways over 120 sq. ft. require a Shoreline Conditional Use Permit (SCUP). The bulkhead and drainage pipe/tightline portions of the proposal are considered with the SCUP application pursuant to BIMC 16.12.380.A [see Finding 45].
4. Because the stairway is already in place, its effects can be observed and it is clear that it was constructed without appreciable adverse effects and that the design and appearance have no adverse visual impact. The stairway is flanked by vegetation so that the structure is well-screened and Condition 1 would require continued maintenance of slope vegetation as appropriate for the Native Vegetation Zone. The stairway meets all the SCUP criteria for approval, and the SCUP should be approved.
5. Bulkheads are permitted (with SSDP) in this shoreline environment if there is an existing bulkhead within 100 feet. Here, bulkheads are adjacent on both sides of the subject property. The bulkhead would improve the "factor of safety" for both the Kirkbys' property and for the adjacent Keeney property where the residence could be at risk in the next slide event. To avoid or mitigate significant adverse impact and to be consistent with shoreline goals and policies, the bulkhead is properly conditioned to limit its length to 70 feet.
6. As conditioned, the proposal would: be consistent with the policies of the Shoreline Management Master Program; comply with the regulations of applicable provisions of the Shoreline Master Program (including meeting the criteria for approval of a Shoreline Conditional Use Permit); and, mitigate or avoid significant adverse environmental impacts. All the conditions are necessary and appropriate for the approval of the application and the application can and should be approved with those conditions.

## Decision

The application of Rick and MaryAnn Kirkby for Shoreline Conditional Use and Shoreline Substantial Development Permits for a wooden stairway to the beach, a rock bulkhead, and a replacement drainage pipe, are hereby **APPROVED WITH CONDITIONS 1-15** that follow in Appendix A.

Entered this 21<sup>st</sup> day of September 2006.

-signed in original-

Meredith A. Getches  
Hearing Examiner

### **Concerning Further Review**

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

The decision of the Hearing Examiner is the final decision of the City in this matter. The Washington State Department of Ecology (DOE) reviews decisions of this type and the City shall notify DOE of this decision to initiate that review. Within 30 days of notification, DOE is to approve, approve with condition or deny a Shoreline Conditional Use Permit approved by the City. The DOE decision is appealable to the Washington State Shorelines Hearings Board as provided by RCW 90.58.180 (or its successor); to be timely, petition for review must be filed within the 21-day appeal period [see BIMC 16.12.380].

## APPENDIX A

### Conditions of Approval

SCUP13608

4676 Eagle Harbor Drive

#### SEPA Conditions

1. To mitigate the aesthetic impact of the stairway on the shoreline bluff and to ensure future stability, water quality, and wildlife habitat, **a vegetation management plan shall be submitted** concurrent with the after-the-fact building permit application. This plan will include, at a minimum, the following items:
  - a. A **planting plan for the restoration** of any disturbed areas within the 50-foot native vegetation zone.
  - b. **Maintenance schedule, to ensure on-going health of vegetation** across the bluff face and the native vegetation zone. Minor trimming of vegetation may occur to prevent interference of the use of the staircase and to preserve views as long as the trimming does not threaten the health of the vegetation.
  - c. **A three-year maintenance assurance** shall be provided to ensure the establishment and health of the landscaping in accordance with BIMC 18.85.090D.
2. In order that the replacement pipe be routed to the beach sufficiently east so as to end up behind the 70 ft. long bulkhead [see Condition 3], the design of the **stormwater replacement pipe (tightline) shall be revised** by a licensed civil engineer to the satisfaction of the Director and consistent with the City's stormwater discharge structures requirements,. This HDPE pipe should, after connecting at or near the point upslope originally proposed, be routed across the surface of the slope, coordinated with the alignment of the stairs, then routed to the back of the bulkhead where the diffuser is to be installed. The replacement pipe shall be installed consistent with the revised design and in a manner that minimizes disturbance to the slope and slope vegetation. Prior to the replacement of the stormwater tightline and outfall, the applicant shall obtain **approval for an outfall design from the Washington Department of Fish and Wildlife**.
3. To limit the impacts of a **rock bulkhead** on fish and wildlife habitat, the bulkhead construction **shall be limited to the eastern portion of subject property**. The bulkhead shall extend **east-west not further than 70 feet** from the neighboring bulkhead near the subject property's eastern property line.
4. To protect juvenile Chinook salmon residing in nearshore areas, **work waterward of the actual ordinary high water line shall not be permitted from March 15 through June 14**.
5. The **waterward face of the bulkhead** shall be located no further waterward than necessary, but in any case **not more than six feet from the toe of slope**.
6. In order to minimize the likelihood that erosion will expose the bulkhead footing/undermine the base of the bulkhead, necessitating additional waterward encroachment for repairs, **the footing/base of the bulkhead should be buried a minimum of 18 inches below beach grade**.
7. To mitigate the adverse impact the bulkhead could have on sediment supply to the beach, the applicant is **required to nourish the beach with 25 cubic yards of sand and gravel**.

The nourishment should be of similar size to the material in the surrounding bluffs. The work shall be completed in compliance with the Army Corp of Engineers programmatic consultation of October 13, 2000.

8. Extreme care shall be taken to **prevent petroleum products, chemicals, or other toxic or deleterious materials from entering the water** and degrading water quality. If a spill does occur, or if oil sheen or any distressed or dying fish are observed in the project vicinity, work shall cease immediately and Washington Department of Ecology shall be notified. Contact: Northwest Regional Spill Response Section at (206) 649-7000.
9. To mitigate the impact on the beach habitat, **no stock piling of materials shall occur on beach; all foreign materials shall be removed** from beach; existing driftwood located on the site may be temporarily relocated during construction, but it shall be replaced on the site in a natural condition following construction.
10. To prevent adverse environmental impacts to existing water quality, **best management practices** (BMPs) for all shoreline construction activities shall be followed at all times, such that soil and beach sand erosion is prevented from degrading water quality on a temporary and permanent basis.
11. Applicant is required to **stop work** and immediately notify the Department of Planning and Community Development and the Washington State Office of Archaeology and Historic Preservation **if any historical or archaeological artifacts are uncovered** during excavation or construction.

#### **Non-SEPA Conditions**

12. The **stairway** and all its attendant features shall be colored or painted with **neutral, non-reflective, flat greens, browns or tans, so as to blend with the native bluff soils and vegetation** and obscure the stairway from surrounding views.
13. An after-the-fact **building permit shall be secured for the stairway**. A professional engineer licensed in the State of Washington with expertise in such features, shall stamp the plans of the existing staircase and/or it shall be modified in accordance with the engineer's recommendation.
14. **A professional engineer with expertise in geotechnical issues shall complete the "Permit Issuance" and "Certification for Final Inspection"** portions of the City form for construction in geologically hazardous areas, prior to building permit issuance.
15. An **indemnification/hold harmless agreement** for the stairway on the shoreline bluff shall be duly executed in a form approved by the City Attorney, pursuant to BIMC 16.20.090.C.2.g.