

1 **BEFORE THE HEARING EXAMINER FOR JEFFERSON COUNTY**

2 Irv Berteig, Hearing Examiner

3 **RE:** Application by David S Van ) **File No. SDP02-00020**  
4 Etten Revocable Trust for a )  
5 Shoreline Conditional Use & )  
6 Substantial Development Permit to )  
7 construct a staircase in a ) **FINDINGS, CONCLUSIONS,**  
8 "Conservancy" designated site. ) **AND DECISION**  
9 )  
10 )  
11 )  
12 )  
13 )  
14 )  
15 )  
16 )

17 **BACKGROUND**

18 The Applicant is proceeding with several permits to allow  
19 development of this property for single-family use. The shoreline  
20 permit requires a shoreline Conditional Use as well as a Substantial  
21 Development Permit because a staircase is an unlisted use in the  
22 Shoreline Management Master Program but is permitted as residential  
23 development under zoning.

24 **PROCEDURAL INFORMATION**

25 **Notices:** **Mailed:** May 1, 2002  
26 **Posted:** May 14, 2002  
27 **Publication:** May 15, 2002 (Port Townsend-  
28 Jefferson County Leader).

29 **Site Visit:** June 18, 2002.

**Open Record Hearing Date:** June 18, 2002.

The hearing was opened at 1:00 p.m. in the Courthouse Lower Level  
Conference Room. After the procedures were explained, testimony was  
accepted. A verbatim recording of the public hearing was made. The  
tape is maintained in the Jefferson Permit Center file.

**Participants:**

Kevin Russell, Associate Planner

Tuscan Windorn, Designer, representing the Applicant

1 No other parties were present to testify.

2 **The Hearing Examiner closed the public hearing at 1:18 p.m.**

3 **TABLE OF EXHIBITS:**

LOG ITEM	DOCUMENT	DATE
1	Staff Report	6/6/2002
2	Master Land Use Application	4/16/2002
3	Environmental Checklist	4/16/2002
4	JARPA Application	4/16/2002
5	Jefferson County Small Parcel Erosion and Sediment Control Plan	4/16/2002
6	Stormwater Calculation Sheet	4/17/2002
7	Tillman Engineering Letter	4/17/2002
8	Certification of Mailing Type III Notice and Pending SEPA Determination	5/1/2002
9	Affidavit of Posting Notice of Hearing	5/14/2002
10	Affidavit of Posting Notice of Application and Pending SEPA Determination	5/7/2002
11	Parcel Information	4/16/2002
12	Application Substantially Complete Letter	4/30/2002
13	Letter to Agencies	4/30/2002
14	Project Plans	4/16/2002

16  
17 **FINDINGS OF FACT**

18 1. On or about April 16, 2002, Tuscan Windorn, as representative of  
19 David & Jeannine Van Etten, filed an application to construct a wooden  
20 staircase to access the beach from the top of an approximate 12-foot  
21 steep shoreline bluff. However, the submitted design proposes to  
22 cantilever 6.5 feet and suspend the stairs from the top of the bank so  
23 it will not touch down directly on the beach. The cantilevered stairs  
24 will be the over the Ordinary High Water Mark (OHWM).

25 2. The project site is legally described as parcel number 921 051  
26 009 in Section 05, Township 29 North, Range 01 East, WM, located off  
27 Smith Road, Nordland WA 98358.

28 3. Pursuant to the SMMP, the site, which is on the west shore of  
29 Marrowstone Island on Kilisut Harbor, is designated "Conservancy."

1 4. The Jefferson County Comprehensive Plan designates the subject  
2 parcel and parcels in the immediate vicinity as "Rural Residential"  
3 with a density of one dwelling unit per five acres.

4 5. A pre-application consultation was conducted on-site with the  
5 Applicant, Anne Shaffer (Washington Department of Fish and Wildlife),  
6 and Kevin Russell (Jefferson County staff) on January 8, 2002.

7 6. A Threshold Determination of Non-Significance per WAC 197-11-355  
8 was issued. The comment period expired on May 22, 2002. No comments  
9 were received.

10 7. The Staff Report contains additional facts regarding development  
11 approvals, permits required, decisions made to date and applicable  
12 Jefferson County Ordinances. The Staff Report also contains findings  
13 regarding the project. The Examiner has reviewed that report, raised  
14 questions in public hearing and now determines that the Staff Report  
15 is accurate.

16 8. The Applicant's representative, Tuscan Windorn, testified that  
17 the Staff recommended conditions were acceptable.

#### 18 19 **REVIEW CRITERIA**

20 The Jefferson County Shoreline Management Master Program [SMMP]<sup>1</sup>  
21 constitutes the main policy document and review criteria.  
22 SMMP Section 6.20 assigns to the Hearing Examiner the responsibility  
23 to apply the SMMP and the Shoreline Management Act. The following  
24 sections of the SMMP are specifically applicable to the proposal;  
25 additional policies and performance standards may also apply:

26 Section 4.103 Conservancy  
27 Section 4.202 Conditional Use  
28 Section 5.160 Residential Development

29 <sup>1</sup> Adopted March 7, 1989 and last amended February 6, 1998, and will be  
codified as Section 5 in the Jefferson County Unified Development Code.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18

## CONCLUSIONS OF LAW

1. The matter before the Examiner is one part of a single-family development proposal for this 0.6-acre lot, limited to the staircase project. Separate—but related—reviews include a *Site Plan Approval Advance Determination, Wet Season Evaluation, and Pre-Building Permit* review.

2. The proposed design is sensitive to the slope and beach. The cantilever design has received proper structural engineering review.<sup>2</sup>

3. Given the steepness of the bluff, the concept of avoiding beach and bluff contact by the stair structure is a valid solution. The Washington Department of Fish & Wildlife, following on-site review, appears to support the approach.

4. The Staff Report contains a detailed analysis of the proposal's compliance with adopted County Policies and Regulations. The Examiner now adopts the "Staff Comments" that accompany Staff Findings and Conclusions 2 through 13 at pages 3 - 11 as his own Conclusions.

19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

## DECISION

Based upon the testimony presented at the Public Hearing, a site visit by the Examiner on June 3, 2002, the documents and exhibits admitted into the record, and the above Findings of Fact and Conclusions of Law, it is hereby the decision of the Hearing Examiner that the Shoreline Conditional Use Substantial Development permit application by the David S Van Etten Revocable Trust, be **APPROVED** for this project subject to the following conditions:

1. Prior to issuance of the Jefferson County Building Permit, the applicant will be required to submit the following:

---

<sup>2</sup> Log Item 7. Engineering review by Ryan Tillman, P.E.

1 a. A small parcel Drainage and Erosion Control Plan as  
2 required by the Jefferson County UDC and described in  
3 UDC 3.6.10.f. Once the subject permit has been  
4 issued, the applicant shall fully implement the  
5 provisions of the submitted Drainage and Erosion  
6 Control Plan,

7 b. A re-vegetation plan that indicates native plant  
8 species to be used for the purpose of shore bank  
9 retention, locations of plantings, and timelines for  
10 planting.

11 2. Proper disposal of construction debris must be on land in  
12 such a manner that debris cannot enter the water body or  
13 cause water quality degradation of state waters.

14 3. All lumber and other materials treated with preservative  
15 shall be sufficiently cured to minimize leaching into the  
16 water or shore bed, in accordance with the Best Management  
17 Practices approved by the Washington Department of Fish  
18 and Wildlife.

19 4. In order to minimize visual impact, the stairway shall be  
20 constructed to harmonize with the local shoreline  
21 environment to the maximum extent practicable.

22 5. Construction shall be in substantial compliance with the  
23 site plans submitted to Jefferson County during the permit  
24 process as they exist now or are hereafter amended by  
25 Jefferson County and/or the Washington State Department of  
26 Ecology.

27 6. No fill or other material may be placed in the waters or  
28 intertidal areas of Jefferson County.

29 7. Work within the jurisdiction of the Shoreline Program  
other than as described above shall receive separate  
review from this office.

8. Substantial progress towards completion of the project  
shall be performed within two years of the issuance of the  
permit.

9. Prior to construction, the proponent shall contact the  
Jefferson County Department of Community Development at  
(360) 379-4450 with estimated project timelines for  
monitoring and plan compliance.

- 1 10. Prior to the onset of construction, the applicant shall  
2 provide the Department of Community Development with the  
3 name and address of the contractor carrying out the  
4 project.
- 4 11. In order to limit the proliferation of similar stair  
5 structures the subject area, the applicant is strongly  
6 encouraged to investigate utilizing this structure as a  
7 joint use/joint ownership facility with neighboring  
8 property owners.
- 8 12. The applicant shall comply with the provisions of  
9 Hydraulic Project Approval to be issued by WDFW.
- 10 13. Prior to commencing development activity, the proponent is  
11 responsible for informing the US Army Corps of Engineers  
12 (COE) in order for COE to determine whether a Department  
13 of the Army permit or review is required. Generally,  
14 review is required for construction and dredging in or  
15 around navigable waters of the US and for work or fill in  
16 hydrologically connected wetlands. Contact the US Army  
17 Corps of Engineers, Seattle District Regulatory Branch, PO  
18 Box 3755, Seattle WA 98124, (206) 764-3495, for more  
19 information.

16 **DATED this 20<sup>th</sup> day of June 2002.**

18 

20 **Irv Berteig**  
21 **Jefferson County Hearing Examiner**  
22 ib

23 Transmitted by the Jefferson Count Permit Center to the following:

24 DATE TRANSMITTED: *June 24, 2002*

25 Tuscan Windorn, 1038 Jackson Street, Port Townsend, WA 98368

26 David & Jeannine Van Etten, 13 Village East Court, Petaluma, CA 94954

27 Ryan Tillman, P.E., PO Box 1375, Port Hadlock, WA 98339