



200405260023

Skagit County Auditor

5/26/2004 Page

1 of

7 10:12AM

AFTER RECORDING RETURN TO:  
SKAGIT COUNTY HEARING EXAMINER  
302 SOUTH FIRST STREET  
MOUNT VERNON, WA 98273

DOCUMENT TITLE: ORDER ON SHORELINE PERMIT SL 03 0334

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: COMMONWEALTH LIMITED PARTNERSHIP  
% KENDALL GENTRY

ASSESSOR PARCEL NO: P#: 73637

LEGAL DESCRIPTION: The proposed consists of lots 32 & 33 of the Gibraltar Annex and is located south and adjacent to 14481 Jura Way Lane, Anacortes, WA; within Section 17, Township 34 north, Range 2 east, W.M., Skagit County, Washington.

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**Applicant:** Commonwealth Limited Partnership  
C/o Kendall Gentry  
504 E. Fairhaven Avenue  
Burlington, WA 98233

**File No:** PL03-0334

**Requests:** Shoreline Substantial Development and Variance Permit

**Location:** Lots 32 and 33 of the Gibraltar Annex, bordering on Similk Bay, adjacent to 14481 Jura Lane, on Fidalgo Island.. The proposed improvements are within a portion of Sec. 17, T34N, R2E, W.M.

**Shoreline Designation:** Rural Residential

**Summary of Proposal:** To excavate approximately 1,100 cubic yards of soil to facilitate construction of a single-family residence. The excavation will extend to within three feet of the Ordinary High Water Mark (OHWM) and will allow for a daylight basement. The waterward face of the residence will be approximately 50 feet from the OHWM. Patios and accessory uses will extend to within 35 feet of the OHWM.

**Public Hearing:** After reviewing the report of the Planning and Permit Center, the Hearing Examiner conducted a public hearing on April 28, 2004.

**Decision:** The application is approved, subject to conditions.



200405260023  
Skagit County Auditor

5/26/2004 Page 2 of 7 10:12AM

## FINDINGS OF FACT

1. Commonwealth Limited Partnership (through Kendall Gentry) seeks a Shoreline Substantial Development and Variance Permit to excavate approximately 1,100 yards of soil within 50 feet of the Ordinary High Water Mark (OHWM) of Similk Bay.

2. The application is made in connection with construction of a two-story single-family residence with a daylight basement. The construction of a residence and up to 250 cubic yards of related grading are exempt from shoreline development permit requirements. The excavation contemplated here goes beyond merely grading and, in any event, far exceeds the exempted amount. Thus a permit is required. The application is made on behalf of Charles and Janis Morris.

3. The site is Parcel #P73637, Lots 32 and 33 of the Gibraltar Annex, on Fidalgo Island. The property is within a portion of Sec. 17, T34N, R2E, W.M. The property is zoned Rural Intermediate. The environment designation under the Skagit County Shoreline Master Program (SMP) is Rural Residential.

4. The subject site is undeveloped. Most of the properties surrounding the site are developed with single-family residences. There is a house at 14481 Jura Lane, immediately adjacent to the north. The lot to the south is vacant.

5. The site is essentially rectangular and contains approximately 16,000 square feet, being about 100 feet wide and 160 feet deep. The short dimension is along the waterfront. The natural slope of the land is downward from west to east toward the water.

6. At a much earlier time the property was apparently modified by excavating the upper slope and placing the material down slope on the eastern portion of the site to create a bench. At present the site rises near vertically roughly 14 feet from the Ordinary High Water Mark (OHWM) to the bench. The bench occupies about 8,000 square feet and then the rear or west side of the lot rises gradually another 18 feet.

7. The applicant wishes to build a residence that meets the standard 50-foot shoreline setback and complies with the height and site coverage requirements. The proposal is for excavation to remove existing fill from within the shoreline setback and to create a daylight basement behind the setback.

8. A Geotechnical Evaluation by J. B. Scott and Associates indicates that the filled eastern portion of the site is unstable. The geologist believes that the soil was placed on an unprepared slope covered with vegetation. The decomposing vegetation has resulted in the development of an organic layer that is likely to serve as a failure plane for landslides. To correct the landslide hazard the geotechnical report recommends removal of the fill soil.



9. The western portion of the site support conifers and appears to be stable. The excavation within the shoreline area will both stabilize the slope and make it possible to build a house on the property by inserting it into the hillside. The use of daylight basements is common in the area.

10. The project also includes what is termed "soft-engineered" shoreline protection. Instead of a standard vertical concrete residential bulkhead, Earth Systems Science, Inc. has designed a more natural structure of logs and boulders to be placed along the bank seaward of the excavation area.

11. The end result will consist of a house that is located approximately 50 feet from the OHWM with patios not more than 30 inches above grade extending to within 35 feet of the OHWM. Seaward of the patios, the area will be designated as a Protected Critical Area. The majority of the slope in front of the house will be replanted with native vegetation in order to restore and enhance the ecological structure of the shoreline buffer along the bay. The planting program will include the removal of invasive non-native English ivy.

12. A Fish and Wildlife Assessment was prepared for the project, concluding that if the planting plan is carried out, the shoreline impacts will be effectively mitigated. In light of the recommendations of the Geotechnical Evaluation and the Fish and Wildlife Assessment, the County staff concluded that the requirements of the Critical Areas Ordinance will be met.

13. Over the course of the review process, consultations among the Department of Ecology, the County and the applicant's consultants resulted in significant improvements toward making the project more environmentally friendly -- particularly in relation to the shore protection plans

14. A Mitigated Determination of Non-Significance (MDNS) under the State Environmental Policy Act (SEPA) was issued on May 29, 2003. The MDNS, which was not appealed, contained the following conditions:

- a. Temporary erosion/sedimentation control measures, as approved by the Skagit County Department of Public Works shall be in place prior to any grading activities pursuant to Skagit County Code (SCC) 14.32, Drainage Ordinance. Temporary erosion/sedimentation control measures shall remain in place until completion of the project.
- b. The project shall comply with noise limitations and light requirements as per SCC 14.16.840-5 and SCC 14.16.840-3, respectively.
- c. The public right-of-way shall be kept clean. Tracking of mud and debris from the site will not be allowed.



d. The applicant shall comply with Northwest Air Pollution Authority requirements.

e. Disturbance to shoreline areas and associate 50 foot buffer shall be minimized. Any disturbance to shorelines and associate buffer shall be mitigated as per the recommendations in the fish and Wildlife Assessment report by Earth Systems Science, Inc., dated April 22, 2003.

15. The Staff has reviewed the application in light of the relevant policies and regulations of the local Shoreline Master Program (SMP) and determined that, as conditioned, the proposal will be consistent with the program's requirements.

16. The requested excavation must receive a variance from the SMP because it constitutes a type of non-water-dependent development in the shore setback. The criteria for a Shoreline Variance are set forth at SMP 10.03. For developments landward of the OHWM the requirements are:

- (a) That the strict application of the bulk dimensional or performance standards set forth in this Master Program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by this Master Program.
- (b) That the hardship described above is specifically related to the property and is the result of unique conditions such as irregular lot shape, size or natural features and the application of this Master Program and not, for example, from deed restrictions or the applicant's own actions.
- (c) That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation.
- (d) That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the same area and will be the minimum necessary to afford relief.
- (e) That the public interest will suffer no substantial detrimental effect.

In the granting of variance permits, consideration is to be given to the cumulative impact of additional requests for like actions in the area.

17. The Staff has reviewed the application in light of the above criteria and determined that, under all the circumstances, the proposal meets the requirements for a variance. The Examiner concurs in the Staff analysis of this project in light of both the policies and regulations of the SMP and the variance criteria of the SMP, and hereby adopts this analysis. The Staff Report is by this reference incorporated herein as though fully set forth.



18. In particular, the Examiner notes that the project will effectively remove a geologic hazard that has been present on the site for many years and that the implementation of the mitigation plan will restore the ecology of the shoreline and result in a net benefit to this public resource.

18. There was no adverse public comment. Five neighbors signed a statement in support of the variance request.

19. Any conclusion herein which may be deemed a finding is hereby adopted as such.

### CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the persons and the subject matter of this proceeding.

2. The requirements of SEPA have been met.

3. The project, as conditioned, is consistent with the policies of the Shoreline Management Act, the permit regulations of the Department of Ecology, and the relevant polices and regulations of the local SMP. It meets the standards for issuance of a Shoreline Substantial Development Permit. SMP 9.02(1)

4. The project satisfies the relevant criteria for the granting of a Shoreline Variance. SMP 10.03(1)

5. The following conditions should be imposed:

(1) The project shall be constructed as described in the application materials, except as the same may be modified by these conditions.

(2) The applicant shall obtain a County Building Permit and all other necessary approvals. A copy of this decision shall be submitted with the building permit application.

(3) The applicant shall comply with all of the conditions set forth in the MDNS for this proposal.

(4) The applicant shall carry out the recommendations in the Geotechnical Evaluation and the Fish and Wildlife Assessment prepared for this project. This includes the recommendations of the "Addendum Addressing the Soft Armoring Redesign and Mitigation Measures," dated February 25, 2004.

(5) In the building permit process, the application must submit an elevation certificate in order to demonstrate compliance with flood hazard requirements.



(6) A copy of an approved Protected Critical Area easement, recorded at the County Auditor's Office shall be submitted to the Planning and Permit Center referencing file number PL03-0334 with the building permit application.

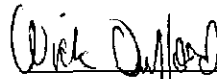
(7) The project shall be completed commenced within two years of Department of Ecology approval and finished within five years thereof, or the permit shall become void.

(8) Failure to comply with any of the conditions of this permit may result in its revocation.

6. Any finding herein which may be deemed a conclusion is hereby adopted as such.

### DECISION

The request Shoreline Substantial Development and Variance Permit is approved, subject to the conditions set forth in Conclusion 5 above.



Wick Dufford, Hearing Examiner

Date of Action: May 18, 2004

Date Transmitted to Applicant: May 18, 2004

### RECONSIDERATION/APPEAL

As provided in the Skagit County Shoreline Master Program, Section 13.01, a request for reconsideration may be filed with the Planning and Permit Center within five (5) days after the date of this decision. The decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with the Planning and Permit Center within five (5) days after the date of decision, or decision on reconsideration, if applicable.

### DEPARTMENT OF ECOLOGY REVIEW

If the decision to grant the Variance becomes final at the County level, the Department of Ecology must approve or disapprove it, pursuant to RCW 90.58.140.



200405260023  
Skagit County Auditor

5/26/2004 Page

7 of

7 10:12AM