

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS, AND DECISION**

Applicant(s): Erik and Jennifer Johnson  
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File No.: PSJ000-15-0002

Request: Shoreline Substantial Development Permit

Parcel No: 352641005

Location: 67 Loon Point Lane, San Juan Island

Summary of Proposal: Application for a shoreline substantial development permit  
for proposed marine railway

Land Use Designation: Rural Farm Forest shoreline

Public Hearing: April 21, 2016

Application Policies and Regulations

- SJCC 18.35.110-140 Fish and wildlife habitat conservation areas
- SJCC 18.50.190 Shoreline master program - boating facilities
- SJCC 18.80.020 Application requirements
- SJCC 18.80.030 Public notice of applications and comment
- SJCC 18.80.050 SEPA implementation rules
- SJCC 18.80.110 Shoreline permit and exemption procedures

Decision: Approved subject to conditions

S.J.C. DEPARTMENT OF

JUN 02 2016

COMMUNITY DEVELOPMENT



- b) Application cover sheet, dated October 29, 2015
  - c) Aerial photo of vicinity, dated October 2015
  - d) Existing site plan, dated October 2015
  - e) Proposed site plan, dated October 2015
  - f) Marine railway components, dated October 2015 (2 pages)
  - g) Project description and regulatory analysis, dated December 2015 (14 pages)
  - h) SEPA checklist, dated December 2015 (15 pages)
  - i) Fairbanks Biological Evaluation, dated December 10, 2015 (42 pages)
3. SEPA Determination of Non-Significance, issued January 20, 2016
  4. Legal notice information (9 pages)
  5. Department of Natural Resources letter to Johnsons, dated March 9, 2016
  6. Department of Natural Resources letter to Johnsons, dated October 2, 2015
  7. Department of Natural Resources letter to Johnsons, dated June 19, 2015
  8. Department of Natural Resources email to Lee McEnergy, dated June 24, 2015
  9. HPA, dated February 16, 2016 (6 pages)
  10. Applicant Representative Shaw email to McEnergy in response to University of Washington Friday Harbor Labs comments, dated January 19, 2016
  11. University of Washington Friday Harbor Labs comment letter, dated January 15, 2016
  12. Koll letter, restriction AFN 101659 and January 14, 2016 email from McEnergy (5 pages)
  13. Center for Biological Diversity's Petition Secretary of Commerce, dated August 1, 2013 (to list Pinto Abalone to Endangered Species Act)
  14. Chris Fairbanks letter to Department of Natural Resources, dated September 24, 2015
  15. Preliminary Eelgrass and Macroalgae Survey, dated November 2, 2014
  16. Johnson Residential Use Marine Rail Biological Evaluation and Essential Fish Habitat Assessment prepared by Chris Fairbanks, dated December 10, 2015
  17. Johnson Marine Rail Facility Response to comments from Department of Natural Resources, dated September 10, 2015

Upon consideration of the testimony and exhibits submitted at the open record public hearing, the Hearing Examiner enters the following findings and conclusions:

#### **FINDINGS**

1. The Applicants requested a shoreline substantial development permit (SSDP) and shoreline conditional use permit (SCUP) to authorize the construction of a marine railway on top of an existing concrete boat ramp at 67 Loon Point Lane, San Juan Island.<sup>1</sup> The

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<sup>1</sup> The subject property is known as Tax Parcel No. 352641005. *Exhibits 1 and 2.*

4.81-acre subject property fronts Griffin Bay, a tributary of the San Juan Channel. In addition to the concrete ramp, the site contains a mooring buoy. *Exhibits 1, 2, and 2g.*

2. The subject property and surrounding shoreline parcels are developed with single-family residences. *Exhibit 2g.* The shoreline consists of a bedrock bluff with bedrock, boulder, cobbles, and some gravel extending from the bluff to the subtidal zone; there is little or no sediment on the site substrate. No eelgrass is present, but there is a patchy distribution of kelp. *Exhibit 2i.* According to DCD Staff, the project site is known potential habitat for red sea urchin and other marine species. Upland portions of the property are identified as a Category II geohazard due to subclass “e” soils, known to be highly erodible. No spawning habitat or eelgrass beds were found on or near the proposed development. The entire County of San Juan is considered a Southern Resident killer whale, salmon, and bald eagle migration route. There are no identified protected riparian habitats or wetlands on the property. *Exhibit 2g.*
3. The Applicants have proposed the marine railway system to moor their 21-foot boat when use of the existing buoy is not safe due to weather and during periods when they are away from the property. The proposed 132- by five-foot marine railway system would be constructed on top of an existing concrete boat ramp with rails extending from approximately Extreme High Tide (EHT = 11.15 tidal elevation) seaward to the inner margin of a kelp bed at a water depth of -2.5 MLLW in order to allow access to the railway at most tidal levels. The rails are 1.5 inches wide at the base and would stand six inches high from the seafloor. As explained in the Applicant's narrative, the landward 61 feet of the 92-foot long concrete boat ramp is in good condition, but the seaward 31 feet is broken and in disrepair. The proposal would remove the broken concrete section and all underlying imported material, leaving the newly exposed substrate restored to a natural condition. Some excavation would be required to remove the 378 square foot portion of broken concrete and to restore the seafloor back to native substrate. No fill and no re-vegetation are proposed, but it is anticipated that kelp would quickly attach to the restored substrate once construction is complete. The marine railway would be directly attached to the end of the good concrete and supported by galvanized steel posts set on one-square-foot pads to be attached to the restored native substrate by drilling and bolting. A maximum of 30 pins/posts would be required to secure the rails to the seafloor; however, it is expected that only six pairs of pins would be required. An electric pulley (winch) system is proposed at the landward end of the marine railway to haul the boat out of the water. Electrical lines would be extended from the crawl space beneath the residence through conduit to the location of the proposed winch. No lighting is proposed. The existing ramp is located in a natural depression. The boat resting in the cradle at the top of the railway would be at least partially screened from surrounding parcels by topography. *Exhibits 2, 2d, 2e, and 2g.*
4. The railway would be built from a kit of prefabricated galvanized pieces to be assembled on-site. Individual track sections would be joined with hardware using a combination of hand tools and portable power tools. The concrete-mounted sections of the rail system would be positioned over the retained good concrete and rotary hammer anchored into

place. The free-standing rail sections would either be assembled in place, or assembled above the concrete based track sections, floated into position, and secured in place utilizing the supporting leg posts. The boat carriage, track sections, and supports would be made of galvanized steel assembled with stainless steel hardware. The supporting bunks for the boat would be made of carpet-covered lumber. The galvanized steel guide on stems mounted to the boat carriage would be covered with PVC pipe. *Exhibits 2e, 2f, and 2g.*

5. Access for installation would be on foot from the parking area. No upland vegetation removal is proposed. All work performed would be in, on, or above the rail system corridor. All equipment and materials staging is proposed above extreme high tide; there would be no need for equipment washouts. Construction debris would be removed from the site daily and disposed of legally. All installation equipment would be kept in good working order and will only be running when required. Assembly and installation would be performed during approved work windows in daylight hours to commence no sooner than one hour after sunrise and no later than one hour before sunset. Assembly and installation is projected to last a maximum of one week. *Exhibits 2 and 2g.*
6. All proposed improvements would be located within 200 feet of and over the waters of Griffin Bay. The subject property's land use designation for the purposes of the San Juan County Shoreline Master Program (SMP) is Rural Residential in the upland, Rural Farm Forest in the shoreline, and Aquatic beyond the ordinary high water mark (OHWM). Pursuant to SJCC 18.50.190.K.3, construction of a marine railway in the Rural Farm Forest Shoreline Environment is allowed upon approval of a shoreline conditional use permit. The regulations for the Aquatic Environment are silent on construction of a marine railway system. The Applicant consulted with the Department of Community Development, which agency determined that since a boat launch is allowed in this environment and that a boat ramp and marine railway system are substantially similar uses, a marine railway can be permitted in the Aquatic Environment. The project is subject to the shoreline substantial development permit criteria because it is not an exempt project pursuant to SJCC 18.50.020.F and the project's cost exceeds the exemption standard. *Exhibits 1 and 2g; McEnery Testimony.*
7. Pursuant to the County's Comprehensive Plan, the Rural Farm Forest Shoreline Environment is intended to protect agricultural and timber lands, and to maintain and enhance the rural low density character of the County's shoreline while providing protection from expansion of mixed use and urban types of land uses. This shoreline environment allows for private recreational facilities if they do not conflict with agricultural and forestry activities. *Comprehensive Plan Element 3.3.C - Rural Farm Forest Environment; Exhibit 2g.*
8. The proposed marine railway system is a water dependent accessory use to the Applicants' single-family residence. The primary use of their boat is for recreational purposes. *Exhibit 2g.*

9. Because the property is situated in an area of bedrock, boulders and cobble, the Applicant requested a waiver from the requirement to submit a geotechnical report with the application. Planning Staff accepted the application as complete without one. *Exhibits 1 and 2g.*
10. A marine vegetation survey was conducted in the vicinity of the project on November 1, 2014, documenting *Fucus* (brown algae sea grass), *Ulva* (green algae sea lettuce), and *Laminaria* (kelp) observed to be attached to the rocky substrate. *Laminaria*, which is considered a priority species by Washington Department of Natural Resources, was observed at a water depth of -2.5 feet MLLW. *Gracilaria* (red algae) was observed at the depth of -15 feet. To minimize impacts to kelp species, the proposed rails would end at the inner margin of the kelp bed at -2.5 MLLW. Individual *Laminaria* plants may be disturbed during installation, but the bedrock substrate would not be altered and *Laminaria* would be able to reattach after the railway is in place. *Exhibits 14 and 15; Shaw Testimony.*
11. In support of both state and local permit processes, the Applicant retained a consultant to prepare a biological evaluation (BE) and essential fish habitat (EFH) assessment, dated December 10, 2015. The BE determined that the project would result in short term impacts during construction, including disturbance of marine algae, potential accidental petroleum spill, and localized increase in turbidity associated with the removal of the nonnative gravel under the broken portion of the concrete ramp; however, no long term impacts are projected. The report recommended conservation measures to avoid and minimize short term impacts, including: restricting construction to approved work windows; implementation of stormwater best management practices from the Stormwater Management Manual for Western Washington; preparation and implementation of a stormwater pollution prevention plan; removal of broken ramp in the dry; use of mechanical and manual shovels to remove the underlying nonnative gravel; assembly of the rails in the dry; reseeded and mulching any disturbed upland areas; and removal of equipment after construction, returning the site to pre-project conditions where possible. The BE considered these impacts in the context of all Endangered Species Act (ESA) listed species and associated critical habitats that could be affected, including: marbled murrelet, Bull trout, Chinook salmon, Steelhead, Bocaccio, Canary rockfish, Yelloweye rockfish, Humpback whale, and southern resident killer whale. The permanent seaward portion of the marine railway would extend no more than six inches above the seafloor and would not create a barrier to the passage of whales or salmon along the shoreline of this site. The BE concluded that if the proposed mitigation measures are implemented, the project is not likely to adversely affect any listed species and that the project will not adversely modify the critical habitat of any listed species. *Exhibits 2i and 16.*
12. The Department of Natural Resources (DNR) indicates the site as potential habitat for the nearly extinct pinto abalone and for Bull kelp. The state agency denied the Applicants' initial June 2015 request for an aquatic lease, determining the project would not be in the state's interest due to impacts to these species. In September, the Applicants revised the proposal to remove broken concrete from the ramp, remove two irregular sections of

concrete north and south of the ramp, and to terminate the railway at the inner edge of the kelp bed. On October 2, 2015, DNR determined the proposal was acceptable. At one point DNR had required the Applicants to prepare an assessment of pinto abalone habitat and an intensive census of population within the project site. However, as the pinto abalone is not listed as an ESA species, the petition for its listing was rejected at the federal level, and it is functionally extinct in San Juan County, DNR is no longer requiring a pinto abalone survey or monitoring. In March 2016, DNR indicated that information already submitted about the type and location of submerged aquatic vegetation was sufficient and no further kelp inventory would be required. *Exhibits 5, 6, 7, and 8; Shaw Testimony.*

13. The proposal includes removal of the broken concrete ramp measuring 31 by 10 feet, or 310 square feet, and removal of an additional 68 square feet of irregular concrete area near the seaward end of the ramp. It is expected that six pairs of pins would be needed to support the railway, with each pin attached to the substrate atop one square foot of concrete, or 12 square feet. The total restored area would be approximately 366 square feet. *Exhibits 1, 2e, and 2g.*
14. The project would not adversely impact navigation, as the railway would not extend into the navigation channel. Though visible to one neighbor, the railway would not be in the direct sight of other properties. The railway itself would not appear very different from the existing concrete ramp; the proposal would not alter public views of the from the shoreline significantly. The tidelands underlying the seaward 90 feet of the 132-foot long marine railway system are public; however, the size and location of the railway would not significantly impede access to public tidelands. *Exhibits 1 and 2.*
15. Griffin Bay is not known to have poor flushing activity. There is no longshore drift in this area. The site is not located in littoral drift sector and is exposed to tidal action. The Washington Department of Ecology's Coastal Zone Atlas shows this site as being in an area where no appreciable drift cells exist. The site is not a Class I beach. *Exhibits 1 and 2g.*
16. The Applicant submitted a joint aquatic resources permit application (JARPA) to the Washington Department of Fish and Wildlife (WDFW) for the purpose of obtaining hydraulic project approval (HPA). The HPA was approved February 16, 2016, with an expiration date of December 31, 2017. The conditions imposed in the HPA include: work timing limitations; pre-construction plan approval; pre- and post-construction WDFW notification; pre- and post-construction photographs; fish kill and/or water quality problem notification; provisions controlling equipment staging; sediment, erosion, and pollution containment during construction; restrictions on stockpiling materials; instruction on demobilization and cleanup; an affirmative requirement to stop the railway at the inner edge of the existing kelp bed at a depth of -2.5 MLLW; and an affirmative requirement to restore 366 square feet of substrate to a native condition. *Exhibit 9.*

17. The Applicant asserted that the proposal would not create erosion problems because there would be no upland ground disturbance. Temporary marine sedimentation from removal of the broken concrete sections of the boat ramp/underlying material and attaching the marine rails to the seafloor, but sediments are expected to settle once construction is complete, typically after the first tidal swing. No pollution or water quality impacts are expected to result from the project because it would be built with non-pollution generating materials and the railway itself would not release any waste products. *Exhibit 2g.*
18. Based on the proposed restoration of the intertidal zone, the Applicant asserted that future like actions required to adhere to similar restoration requirements would result in a net increase in habitat rather than any cumulative negative impact. Because of this, the Applicant submitted that the public interest would not experience substantial detrimental effect. *Exhibit 2g; Shaw Testimony.*
19. Pursuant to the State Environmental Policy Act (SEPA), San Juan County Department of Community Development assumed lead agency status for review of the proposal's environmental impacts. In reaching the environmental threshold determination, the Responsible Official reviewed the complete application materials, the SEPA checklist, dated December 20, 2015, and other materials on file with the Department. A determination of non-significance (DNS) was issued January 20, 2016. No comments were received on the SEPA threshold determination. *Exhibits 1 and 3.*
20. The application was submitted December 21, 2015. Notice of the application was mailed to surrounding owners of property within 300 feet and posted on-site. Notice of application was published on June 10, 2015 and notice of revised application was published on January 20, 2016. *Exhibits 1 and 4.* The application was on hold from February through October 2016 as the Applicant and Department of Natural Resources resolved issues related to the aquatic lease. Notice of the application was sent to public agencies for comment, including Washington Department of Fish and Wildlife (WDFW), Washington Department of Natural Resources (DNR), and University of Washington Friday Harbor Labs. *Exhibit 1.*
21. Friday Harbor Laboratories submitted comments dated January 5, 2016, questioning the need for the proposal, suggesting the Applicants could use other existing boat ramps. The comment expressed no concerns regarding substantial environmental impacts and indicated that the Applicants' biological evaluation was "reasonably done" but questioned the lack of pinto abalone survey. *Exhibit 11.* The Applicant representative addressed Friday Harbor Labs' concerns, noting that the SMP doesn't require justification for the proposal, but only a showing of no adverse environmental impact. *Exhibit 10.*
22. One public comment on the original application was received from Thomas Koll, adjacent property owner, who indicated that the real estate contract through which the Applicants purchased their parcel prohibited any structure from being developed within

100 feet of the OHWM. *Exhibit 12*. Subsequently, the Applicants revised the proposal to remove the boathouse. After Staff notified Mr. Koll that the boathouse would not be built, no further comment was received. *Exhibit 1*.

23. Planning Staff submitted that the proposal is compatible with other permitted uses in the vicinity, because boating facilities are commonly associated with residential uses. Staff opined that the application materials demonstrate that the project would not adversely impact the environment and that cumulative impacts from other similar requests are not likely because marine railways are low profile, generating far fewer impacts than docks. Upon review of the complete application materials, Planning Staff determined that with the recommended conditions the proposal can comply with all applicable criteria in the Unified Development Code, the Comprehensive Plan, and the Shoreline Master Program. *McEnergy Testimony; Exhibit 1*. The Applicant representative waived objection to the recommended conditions. *Shaw Testimony*.

## CONCLUSIONS

### Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for conditional use permit pursuant to Chapter 36.70.970 of the Revised Code of Washington and Chapters 2.22 and 18.80 of the San Juan County Code.

### Criteria for Review

#### *Shoreline Substantial Development Permit*

Pursuant to SJCC 18.80.110.H, a shoreline substantial development permit shall be granted only when the applicant meets the burden of proving that the proposal is:

1. Consistent with the policies of the Shoreline Management Act and its implementing regulations, Chapter 90.58 RCW and Chapter 173-27 WAC, as amended;
2. Consistent with the policies and regulations of the Shoreline Master Program in Chapter 18.50 SJCC;
3. Consistent with this chapter;
4. Consistent with the applicable sections of this code (e.g., Chapter 18.60 SJCC);
5. Consistent with the goals and policies of the Comprehensive Plan; and
6. All conditions specified by the hearing examiner to make the proposal consistent with the master program and to mitigate or avoid adverse impacts are attached to the permit.

#### *Shoreline Conditional Use Permit*

Pursuant to SJCC 18.80.110(J.4), compliance with the following six criteria is required for approval of shoreline conditional use permits:

- a. The proposed use is consistent with the policies of RCW 90.58.020 and the policies of the Shoreline Master Program;
- b. The proposed use will not interfere with the normal public use of public shorelines;
- c. The proposed use of the site and design of the project is compatible with other permitted uses within the area;
- d. The proposed use will cause no unreasonably adverse effects to the shoreline environment in which it is to be located;
- e. The cumulative impacts of additional requests for like actions in the area, or for other locations where similar circumstances exist, shall not produce substantial adverse effects to the shoreline environment, e.g., the total of the conditional uses shall remain consistent with the policies of RCW 90.58.020 and the Shoreline Master Program; and
- f. The public interest will suffer no substantial detrimental effect.

**Applicable Provisions of the San Juan County Shoreline Master Program**

*SJCC 18.50.140 View protection.*

- A. Shoreline uses and activities must be designed and operated to avoid blocking or adversely interfering with visual access from public areas to the water and shorelines except as provided for in SJCC 18.50.130.
- B. The vacation of public road ends and rights-of-way which provide visual access to the water and shoreline may be allowed only in accordance with RCW 36.87.130 and local rules.
- C. In providing visual access to the shoreline, the natural vegetation shall not be excessively removed either by clearing or by topping.
- D. In order to limit interference with views from surrounding properties to the shoreline and adjoining waters, development on or over the water shall be constructed only as far seaward as necessary for the intended use.
- E. Development on or over the water must be constructed of materials that are compatible in color with the surrounding area.

*SJCC 18.50.190 Boating facilities (including docks, piers, and recreational floats)*

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- B. General Regulations.
  1. Boating facilities shall be designed to minimize adverse impacts on marine life and the shore process corridor and its operating systems.
  2. Boating facilities shall be designed to make use of the natural site configuration to the greatest possible degree.
  3. All boating facilities shall comply with the design criteria established by the State Department of Fish and Wildlife relative to disruption of currents, restrictions of tidal prisms, flushing characteristics, and fish passage to the extent that those criteria are consistent with protection of the shore process corridor and its operating systems.
  4. Areas with poor flushing action shall not be considered for overnight or long term moorage facilities.

5. In general, only one form of moorage or other structure for boat access to the water shall be allowed on a single parcel: a dock or a marine railway or a boat launch ramp may be permitted subject to the applicable provisions of this code. (A mooring buoy may be allowed in conjunction with another form of moorage.) However, multiple forms of moorage or other structures for boat access to the water may be allowed on a single parcel if:
  - a. Each form of boat access to water serves a public or commercial recreational use, provides public access, is a part of a marina facility, or serves an historic camp or historic resort; or
  - b. The location proposed for multiple boat access structures is common area owned by or dedicated by easement to the joint use of the owners of at least 10 waterfront parcels.

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D. Regulations – General Design and Construction Standards.

1. Pilings must be structurally sound prior to placement in the water.
2. Chemically treated or coated piles, floats, or other structural members in direct contact with the water shall be as approved by the Environmental Protection Agency.
3. Pilings employed in piers or any other structure shall have a minimum vertical clearance of one foot above extreme high water.
4. All floats shall include stops which serve to keep the bottom off tidelands at low tide.
5. When plastics or other nonbiodegradable materials are used in float, pier, or dock construction, full containment features in the design of the structures shall be required.
6. Overhead wiring or plumbing is not permitted on piers or docks.
7. New boathouses or covered moorages are prohibited on floats, piers, and docks. Other structures on floats, piers, and docks shall be limited to three feet in height.
8. A pier shall not extend offshore farther than 50 feet beyond the extreme low tide contour.
9. Dock lighting shall be designed to shine downward, be of a low wattage, and shall not exceed a height of three feet above the dock surface.
10. All construction-related debris shall be disposed of properly and legally. Any debris that enters the water shall be removed promptly. Where feasible, floats shall be secured with anchored cables in place of pilings.
11. Materials used in dock construction shall be of a color and finish that will blend visually with the background.

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I. Regulations – Boat Launches (including marine railways).

1. Boat launching ramps and marine railways shall be designed so as not to obstruct longshore drift.
2. Residential Launch Ramps. Boat launching ramps may be permitted for individual residences where the upland slope within 25 feet of the OHWM does not exceed 25 percent and where substantial cutting, grading, filling, or defense works are not necessary.
3. Boat launching ramps, minor accessory buildings, and haul out facilities shall be designed to be in character and scale with the surrounding shoreline.

4. Boat launching ramps and marine railways shall not be permitted on Class I beaches or where their presence would interrupt driftways feeding Class I beaches.
5. Marine railways for boat launching shall be located on existing grade, avoiding landfill where feasible, and shall not obstruct public access to and along the shoreline and across publicly-owned tidelands. When a boat is hauled out of the water, it shall be screened if it remains on the marine railway. A boathouse at the landward end of a marine railway, above the OHWM, is allowed in conjunction with a marine railway subject to the general regulations of this SMP.

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K. Regulations by Environment.

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3. Rural Residential and Rural Farm-Forest. Boat launches, marine railways, and boathouses associated with them may be allowed as conditional uses only. Other boating facilities serving single-family residences, and community docks, shall be permitted in these environments subject to the policies and regulations of this SMP. Marinas shall not be permitted; however, the expansion or alteration of a marina legally established prior to the effective date of this code may be allowed subject to the policies and regulations of this SMP.

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6. Aquatic. Marina facilities, docks, and boat launches which are shoreline dependent shall be permitted in the aquatic environment subject to the policies and regulations of this SMP and to the regulations by environment applicable to the abutting shoreline area. Where a proposed boating facility abuts more than one shoreline environment, the policies and regulations of the most restrictive abutting environment shall govern.

*SJCC 18.35.025 Critical areas – Applicability*

These overlay districts provide regulations for land use, and development and vegetation removal in critical areas and areas adjacent to critical areas as established in SJCC 18.35.055 through SJCC 18.35.140.

- A. Applicability to Uses and Structures within the Shorelines of the State. Notwithstanding any provision in this code to the contrary, any use or structure legally located within shorelines of the state that was established or vested on or before the effective date of the County's development regulations to protect critical areas shall be regulated consistent with RCW 36.70A.480(3)(c). Such uses or structures may continue as a conforming use and may be redeveloped or modified if the redevelopment or modification is consistent with Chapter 18.50 SJCC and either:

- (1) the proposed redevelopment or modification will result in no net loss of shoreline ecological functions; or
- (2) the redevelopment or modification is consistent with SJCC 18.35.020 through 18.35.140.

If the applicant chooses to pursue option (1), the application materials for required project or development permits must include information sufficient to demonstrate no net loss of shoreline ecological functions. For purposes of this subsection, an agricultural activity that does not expand the area being used for the agricultural activity is not a

redevelopment or modification. For purposes of this subsection, “agricultural activity” has the same meaning as defined in RCW 90.58.065.<sup>2</sup>

*SJCC 18.35.125 General protection standards for all FWHCAs.*

- A. Lighting. Exterior lighting fixtures must be shielded and the light must be directed downward and away from streams, lakes, ponds designated as FWHCAs, the marine shoreline, and habitat of specific animals protected under this section.
- B. Final Inspections and Financial Guarantees. Unless exempt under SJCC 18.35.020 through 18.35.050, all development activities, vegetation removal and other site modification requiring a project or development permit must have a final inspection to verify compliance with approved plans and the requirements of this section. The property owner shall notify the department when the work is complete and ready for inspection. For permitted projects that are not complete at the time that any associated building construction is completed, or for those that do not occur in conjunction with a permitted structure, the director may require a financial guarantee and associated agreement in conformance with Chapter 18.80SJCC.<sup>3</sup>

*SJCC 18.35.130, Protection standards for aquatic FWHCAs*

Pursuant to Table 18.35.130-3 (v), shoreline modifications are permitted within FWHCAs and their buffers in conformance with Chapter 18.50 SJCC and subsection (G) of this section.

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- G. Standards and Requirements for Shoreline Modifications. Shoreline modifications, including shoreline stabilization measures, are allowed within and over aquatic FWHCAs and their buffers subject to this section and Chapter 18.50 SJCC. These requirements remain in effect until they are replaced with an approved comprehensive update of the Shoreline Master Program. Unless specifically allowed by this section and Chapter 18.50SJCC, construction of new shoreline modifications is prohibited.

- 1. General Standards.

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- b. Mitigation Sequencing. Per WAC 173-26-201(2)(e), adverse impacts associated with new, expanded or replacement shoreline modifications must be mitigated consistent with the requirements of SJCC 18.35.020 through 18.35.050 and the following mitigation sequence:
  - i. Avoiding the impact altogether by not taking the action or part of the action.
  - ii. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts.
  - iii. Rectifying the impact by using appropriate technology or by repairing, rehabilitating or restoring the affected environment.

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<sup>2</sup> (Ord. 1-2015 § 1; Ord. 2-2014 § 6; Ord. 26-2012 § 21; Ord. 15-2005 § 3; Ord. 2-1998 Exh. B § 3.6.4. Formerly 18.30.110(B))

<sup>3</sup> (Ord. 1-2015 § 3; Ord. 2-2014 § 10; Ord. 29-2012 § 1; Ord. 12-2001 § 4; Ord. 2-1998 Exh. B § 3.6.9. Formerly 18.30.160(D))

- iv. Reducing or eliminating the impact over time by preservation and maintenance operations.
- v. Compensating for the impact by replacing, enhancing or providing substitute resources or environments.
- vi. Monitoring the impact and compensation projects and taking appropriate corrective measures.

### **Conclusions Based on Findings**

1. As conditioned, the proposed beach access structure and mooring buoy would be consistent with the Shoreline Management Act (SMA). The policy of the SMA, as set forth in RCW 90.58.020, is to “provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses.” This policy “contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.” *RCW 90.58.020*. The County's Shoreline Master Program was developed to regulate shoreline development consistent with the requirements of the Act. Pursuant to the County's SMP, marine railways are allowed in both the Aquatic and Rural Farm Forest shoreline environments as conditional uses, detailed in conclusion 3 below. Compliance with the recommendations of the biological evaluation and the mitigation measures imposed in the HPA would ensure that adverse effects to the waters of the state would be avoided. *Findings 3, 4, 5, 6, 8, 10, 11, 13, 16, 17, and 23*.
2. The proposal is consistent with the applicable SMP provisions relating to marine railways and thus with the criteria for SSDP approval. As conditioned, there would not be a significant impact to views of or from the shoreline. One adjacent parcel would have the project in a direct line of sight; however, because the railway is built on top of an existing concrete ramp and would be conditioned to be finished in colors or finishes that would blend with the backdrop, there would be no adverse impact to that neighbor, or the public generally. Design of the project included review of potential marine habitats and avoidance of a known kelp bed at the lower seaward edge of the existing ramp. In building atop an already disturbed area, the project makes wise use of existing site conditions. Griffin Bay is not an area with poor tidal flushing. The railway would be the only form of moorage on-site, except for the allowed mooring buoy. Conditions of the instant permit and of DNR and WDFW permit processes would ensure that all construction materials and equipment are selected and managed to avoid and minimize potential impacts to the marine environment. No pier, dock, boathouse, or lighting are proposed. No cutting and filling are proposed. The site is not a Class I beach, and the project would not impact longshore drift. The railway would stand six inches tall from the substrate and would not impede public use of the public tidelands. Materials submitted by the Applicant, including an eelgrass and microalgae survey and a biological evaluation, effectively demonstrate that the project would result in no net loss of shoreline ecological function. The proposal would restore 366 feet of previously impacted substrate to a natural condition, resulting in a potential net benefit to shoreline habitat. No vegetation removal is proposed. The project was designed to avoid a kelp

bed and, as conditioned, minimize all potential impacts while restoring the native substrate. *Findings 2, 3, 4, 5, 6, 8, 10, 11, 12, 13, 14, 15, 16, 17, 21, and 23.*

3. As conditioned, the project complies with the criteria for shoreline conditional use approval. The project's consistency with the SMA and the SMP are detailed in the conclusions above. The shoreline on this site is private property. The proposal would not impede public access to the public tidelands waterward of the private property. As a water dependent recreational accessory use and as conditioned, the project is compatible with surrounding existing and permitted development. The record demonstrates no adverse impact to the shoreline environment; in fact, the project should result in a net benefit to habitat in the immediate vicinity. If additional proposals were similarly conditioned to require restoration of previously impacted areas, the cumulative result would be net environmental benefit. There is no evidence of detriment to the public in the record. *Findings 2, 3,4, 5, 6, 8, 10, 11, 12, 13, 14, 16, 17, 18, 21, and 23.*
4. Notice and other procedural requirements were performed consistent with the requirements of SJCC 18.80. Compliance with 18.60 would be ensured through the building permit/inspection process, as applicable. Planning Staff indicated the proposal is consistent with the Comprehensive Plan. The project was reviewed for compliance with SEPA; the issued DNS was not challenged. *Findings 7, 19, 20, 21, 22, and 23.*

#### **DECISION**

Based on the preceding findings and conclusions, the requested shoreline substantial development and shoreline conditional use permits for the construction of a marine railway atop an existing concrete boat ramp at 67 Loon Point Lane, San Juan Island is **APPROVED** subject to the following conditions applicable to the Applicants, agents, and successors:

1. This permit allows the construction of a marine railway as shown in the attached approved site plan, built on an existing concrete boat ramp on tax parcel 352641005, at 67 Loon Point Lane, San Juan Island.
2. Materials used in construction shall be of a color and finish that will blend visually with the background. If metal is used it must comply with this requirement.
3. All debris entering the water or shoreline area during construction shall be removed immediately and disposed of in a legal manner.
4. Development authorized by this permit shall commence within two years of the date of approval and shall be substantially complete within five years or the permit shall become null and void.
5. Immediately after construction is completed, the owner shall request that the Department of Community Development perform an inspection.

Dated May 31, 2016.

By:



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Sharon A. Rice  
San Juan County Hearing Examiner

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

Hearing examiner decisions become effective when mailed or such later date in accordance with the laws and ordinance requirements governing the matter under consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be subject to review and approval by the Washington Department of Ecology pursuant to RCW 90.58.140, WAC 173-27-130 and SJCC 18.80.110.

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

Depending on the subject matter, this decision may be appealable to the San Juan County Superior Court or to the Washington State Shorelines Hearings Board. State law provides short deadlines and strict procedures for appeals and failure to timely comply with filing and service requirements may result in dismissal of the appeal. See RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to promptly review appeal deadlines and procedural requirements and consult with a private attorney.

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