

**BEFORE THE HEARING EXAMINER
FOR SAN JUAN COUNTY**

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In the Matter of the Appeal filed by)
)
FRIENDS OF THE SAN JUANS, a)
Washington not-for-profit)
corporation,)
Appellants,)
)
of a Building Permit and associated)
Shoreline Exemption issued for a)
structure on Orcas Island along the)
western shores of East Sound, issued)
by the **SAN JUAN COUNTY**)
DEPARTMENT OF COMMUNITY)
DEVELOPMENT,)
)
Respondent,)
)
SPINDRIFT LLC,)
)
Applicant)
_____)

File No. PAPL00-17-0011
Building Permit No. BUILDG-17-0123

DECISION

S.J.C. DEPARTMENT OF
APR 16 2018
COMMUNITY DEVELOPMENT

I. SUMMARY OF DECISION.

None of the issues raised in the written appeal statement were supported by sufficient evidence or legal authority needed to satisfy the appellants' burden of proof. Instead, the Record includes credible and substantial evidence to support the challenged building permit and shoreline exemption. Accordingly, the pending appeal must fail.

II. APPLICABLE LAW.

Jurisdiction.

In this matter, the appellants, Friends of the San Juans, appeal a building permit and

1 associated shoreline exemption issued by San Juan County officials to remove and replace a
2 deteriorating structure with a new structure on the same footprint. County Building Permit
3 No. BUILDG-17-0123 was issued on October 3, 2017, along with an associated shoreline
4 exemption to authorize construction of a new structure in the shoreline area extending 40-
5 feet seaward from the Ordinary High Water Mark (OHWM) on a parcel of property
6 identified as tax parcel no. 260121007. *Staff Report, page 2.* Building permits are
7 addressed in Title 15 of the County Code. SJCC 2.22.100(A)(3) explains that the Hearing
8 Examiner shall conduct public hearings, prepare a record thereof, and enter findings of fact
9 and conclusions based upon those facts, for appeals of matters arising pursuant to SJCC
10 Title 15 (building and fire codes). Decisions of the hearing examiner shall represent the
11 final decision in such matters. *Id.*

12 The Examiner's jurisdiction is further supported by SJCC 18.80.140(A)(1), which
13 grants the Hearing Examiner specific authority to review and consider appeals of
14 development permits, such as the building permit challenged in this appeal. Under SJCC
15 18.20.040 "D", the term "Development Permit" is defined to include "a County permit or
16 approval required for a project, including but not limited to building and other construction
17 permits," among other things.

18 ***Standing.***

19 Neither of the respondents to this appeal, the County or the applicant, raised any
20 issues questioning the appellant's standing in this matter. The appellant had a full and fair
21 opportunity through the appeal hearing process to develop a full evidentiary record seeking
22 to support the issues raised in their appeal.

23 ***Open-Record Appeal.***

24 As provided in SJCC 18.80.140(A)(1), appeals to the hearing examiner of
25 development permits are "open-record" appeals.

26 ***Burden of Proof on Appellant, Standard of Review.***

SJCC 2.22.210.H provides that "For an administrative decision to be reversed or
modified, the appellant has the burden by a preponderance of the evidence to show that the
legal decision criteria are erroneously applied by the decision maker."

III. RECORD.

The Record for the matter includes all application materials, the written appeal
statement submitted by the appellant, exhibits marked and numbered during the course of
the public hearing, and lengthy post-hearing briefs from the parties. Copies of all materials
in the record and a digital audio recording of the open-record hearing conducted for this

1 appeal are maintained by the Community Development Department. The Record includes a
2 Staff Report, dated January 10, 2018, prepared to address issues raised in this appeal, which
3 included 7 exhibits, including Ex. 4, the Department's staff report dated September 25,
4 2017 for the unchallenged SEPA determination issued for the project under File No.
5 PSEPA0-17-0006, with 14 attachments. 17 additional exhibits were entered into the record
6 during the public hearing, ending with Ex. 24.

7
8 At the appeal hearing, Kyle Loring, Attorney for Friends of the San Juans,
9 represented the appellant; Julie Thompson, Planner III in the Department of Community
10 Development, represented the respondent Department; and Pat Schneider, an attorney from
11 the Foster Pepper law firm, represented respondent/applicant Spindrift LLC.

12 All witnesses who appeared at the appeal hearing offered testimony under oath, and
13 party representatives were given wide-latitude to question witnesses called by other parties,
14 because as explained at the prehearing conference for the appeal, witnesses were to be
15 called just once, absent extraordinary good cause or for rebuttal purposes. The appellant
16 relied on questioning of the County Planner primarily responsible for reviewing and issuing
17 the challenged shoreline exemption, Ms. Thompson, and rigorous cross examination of
18 applicant witnesses. The Department's representative at the hearing, Ms. Thompson, did
19 not call any witnesses. The applicant's attorney, Mr. Schneider, called several witnesses on
20 behalf of the applicant, Spindrift LLC, seeking to demonstrate how the challenged building
21 permit and shoreline exemption were supported by sufficient evidence and that they
22 satisfied applicable codes and policies. Applicant's witnesses included: Jeff Otis,
23 Applicant's land use consultant who prepared/coordinated the permit application materials;
24 James Harriott, P.E., Applicant's structural engineer; Dan Wicline, Applicant's architect;
25 and Brian Langstraat, an applicant representative who owns the parcel adjacent to site, and
26 whose father owns Spindrift LLC and the parcel that is the site of the challenged permit.

Upon consideration of all the evidence, testimony, codes, policies, regulations, and
other information contained in the file, including without limitation post-hearing briefs, the
undersigned Examiner issues the following findings, conclusions and Decision.

IV. FINDINGS OF FACT.

1. Any statements of fact or findings set forth in previous or subsequent portions of
this Decision that are deemed to be findings of fact are hereby adopted and incorporated
herein as such.

2. On or about May 1, 2017, the applicant, Spindrift LLC, submitted applications for a
demolition permit (identified as BPDEMO-17-0015) and a building permit (identified as
BUILDG-17-0123) to demolish an existing structure and replace it with a new structure.
(*Staff Report, page 2*).

1 3. The small structure at issue is located on a portion of the shoreline, on the western
2 shore of East Sound, on Orcas Island. The property address is 195 Raintree Lane, located
3 off Dolphin Bay Road, and is identified as San Juan County Tax Parcel No. 260121007.
4 The parcel is about 5.2 acres, and has about 175 feet of medium bank waterfront with a
5 mature forest buffer. A much-larger single-family structure/residence and garage are also
6 located on the parcel, more than 200 feet upland from the shoreline, outside the shoreline
7 jurisdiction. (*Ex. 4, Staff Report dated Sept. 25, 2017, approving SEPA review and*
8 *shoreline exemption for the project*).

9 4. The SEPA Checklist submitted by the applicant describes the proposal as follows:

10 The proposed project includes the removal and replacement of an existing residential
11 accessory building in the same footprint. Additionally, a significant amount of existing,
12 ecologically prohibitive foundational structure will be removed. These include:

- 13 • Several creosote-treated timber piles
- 14 • Concrete footing and stairs associated with the existing lower deck
- 15 • Non-native rock and log cribbing serving as foundation to the existing lower deck
- 16 • A rock-supported concrete wall on the east side of the building with associated
17 non-native rock

18 [...]

19 (*Ex. 4, Attachment 4, SEPA Checklist, at page 3 of 17, item 11*).

20 5. There is no dispute that portions of the existing structure and deck are located over
21 water. Accordingly, the Department required SEPA review of the project, which was
22 assigned File No. PSEPA0-17-0006.

23 6. On June 28, 2017, following consideration of Applicant's SEPA Checklist and
24 other relevant information in the project file, including a Biological Evaluation from Jen-
25 Jay, dated May 23 2017 that provided a Marine Mammal Monitoring Plan, the Department
26 issued a Mitigated Determination of Non-Significance (MDNS) for the proposal "to repair
and renovate an existing residential accessory structure and associated deck in the exact
overwater footprint on the Spindrif LLC property located at 195 Raintree Lane on Orcas
Island." (*Ex. 4, Attachment 3, MDNS*). The MDNS included 14 mitigation measures to
minimize the potential direct and indirect impacts associated with the proposed project. *Id.*

7. There is no dispute that the Department complied with all applicable notice
requirements for the challenged approvals. Notice of the application and the MDNS both
issued on or about June 28, 2017. (*Ex. 4, pages 2 and 10; Ex. 4, Attachment 3, MDNS, and*
Attachments 8, 9, confirming public notice, posting, and publication).

8. The Department received two written comments regarding the project, one from Mr.
Loring, on behalf of the appellant, Friends of the San Juans (*Ex. 4, Attachment 6, letter*
dated July 19, 2017), and the other from Dr. Megan Dethier, with the UW Friday Harbor

1 Labs (Ex. 4, Attachment 7, letter dated July 7, 2017).

2 9. There is no dispute that no one appealed the MDNS issued for the project.

3 10. As noted above, the Department issued Building Permit No. BUILDG-17-0123 on
4 October 3, 2017, along with an associated shoreline exemption, to authorize construction of
5 a new structure in the shoreline area extending approximately 40-feet seaward from the
6 Ordinary High Water Mark (OHWM) on the Spindrift property. (Staff Report, page 2; Ex.
7 4).

8 11. As explained in the Department's challenged decision, provided in Exhibit 4, the
9 Department concluded that:

10 "The proposed development is authorized as a shoreline exemption pursuant to WAC
11 173-27-040(2)(b) as normal maintenance and repair of an existing non-conforming
12 structure." (Ex. 4, at page 10).

13 12. On or about October 16, 2017, Appellant, Friends of the San Juans, filed the instant
14 written appeal. The appeal lists five specific grounds for appeal, abbreviated and
15 summarized¹ as follows:

16 1. **Setbacks.** The project conflicts with applicable shoreline setback requirements,
17 citing SJCC 18.50.330.D.1 and D.2;

18 2. **Height.** The new structure will be too tall, at over 28 feet, citing SJCC
19 18.50.330.B.14;

20 3. **Demolition, not Repair.** The demolition of a nonconforming structure
21 extinguishes authorization to maintain a structure, so new development must comply
22 with current codes; asserts that the proposal is not normal maintenance and repair,
23 citing WAC 173-27-080, SJCC 18.80.110.K, and SJCC 18.50.330.D.2;

24 4. **Utilities.** New utility line development associated with the project does not
25 qualify for any exemption and requires a shoreline substantial development permit,
26 citing SJCC 18.50.020.E.2; and

5. **Cumulative Impacts.** The cumulative impacts of similar exceptions would be
inconsistent with the SMA and SMP.

13. The appeal moved forward to hearing, following a pre-hearing telephone conference
that occurred in the weeks before.

14. At the hearing, Ms. Thompson offered un rebutted testimony that the Department
reviewed the application materials and other relevant information and determined that the

¹ The written appeal speaks for itself, and this list is not intended to and should not be construed to limit the

1 structure in question is an “accessory structure,” and she did not withdraw her
2 determination that the structure qualifies for the cited shoreline exemption, because the
3 proposal constitutes normal repair of a structure under the referenced regulation, WAC 173-
4 27-040(2)(b).

5 15. It is undisputed that the Department’s challenged decision relied upon the shoreline
6 exemption found in WAC 173-27-040(2)(b), which reads in relevant part as follows
7 (emphasis added):

8 (2) The following developments shall not require substantial development permits:
9 * * *

10 (b) Normal maintenance or repair of existing structures or developments, including damage
11 by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a
12 decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to
13 restore a development to a state comparable to its original condition, including but not
14 limited to its size, shape, configuration, location and external appearance, within a
15 reasonable period after decay or partial destruction, except where repair causes substantial
16 adverse effects to shoreline resource or environment. Replacement of a structure or
17 development may be authorized as repair where such replacement is the common method
18 of repair for the type of structure or development and the replacement structure or
19 development is comparable to the original structure or development including but not
20 limited to its size, shape, configuration, location and external appearance and the
21 replacement does not cause substantial adverse effects to shoreline resources or
22 environment;

23 16. At the appeal hearing, the appellant relied on legal arguments, and thoroughly
24 questioned each witness called by the applicant. In the end, the Record is comprised of
25 credible, substantial, and unrebutted testimony by Ms. Thompson, Mr. Otis, Mr. Harriott,
26 and Mr. Wicline, that establish how the existing structure is in a state of disrepair in a
location where replacement is the common method of repair for the type of structure in
question. Further, the Record, particularly the application materials and design illustrations
for the replacement structure, comprise credible, substantial and unrebutted evidence that
establishes how the replacement structure will be comparable to the original structure.

27 27. The appellant did not offer any expert reports or professional studies to support their
28 appeal or rebut County staff findings and determinations, or professional reports included in
the application file. The appellant did not call any experienced land use consultant,
structural engineer, or architect, to question the credible and substantial testimony of the
applicant’s consultant, engineer, and architect, all of whom offered unrebutted testimony
that established how removal and replacement of the existing structure constitutes the
common/typical method of repair for a dilapidated shoreline structure like the one at issue
in this appeal. (*Testimony of Mr. Otis; Mr. Harriott; and Mr. Wicline*).

29 28. Jeff Otis, the applicant’s land use consultant, offered credible and unrebutted
30 testimony that explained how overwater structures, similar to the one in question,

1 deteriorate over time and that replacement is the best way to repair such structures. He
2 highlighted various aspects of the existing structure and conditions that are problematic for
3 the environment, and offered his professional opinion that the replacement project proposed
4 by the applicant would actually benefit the environment, by removing several
5 environmental hazards presented by the existing structure, and replacing it with a more
6 environmentally-responsible design. *(See Exs. 17 through 23, photos of the existing
7 structure, and its problematic 'foundation', including concrete, logs, and piled rock that
8 block water flow, tires in water, and creosote materials; and Ex. 24, illustration showing
9 current in-water structure vs. proposed in-water structural footprint).*

10 29. Mr. Harriott, the applicant's structural engineer, offered his credible and unrebutted
11 professional engineering opinions regarding the condition of the existing structure, and how
12 structures such as this are commonly repaired by replacement, because of the over-water
13 nature of the structure, and the irregularities and deficiencies in the existing building. He
14 prepared Exhibit 24, which depicts the current in-water vs. proposed in-water structural
15 footprint for the project. He credibly explained how the existing structure has serious
16 lateral-load deficiencies that could cause the structure to be torn apart in a severe wind
17 storm; that an earthquake could dislodge the existing 'wedge' structure, causing damage;
18 and that the existing wooden wedge beneath the enclosed space is unusual. Under cross-
19 examination he explained that designing a new structure that would be in compliance with
20 current building codes is the appropriate means to ensure that the replacement structure will
21 not be irregular, or wear-out too soon, noting that newly built structures designed to comply
22 with current building codes should last fifty years, and that some could last 100 years, but
23 that would be pushing it.

24 30. In any event, there is no dispute that the existing structure has serious engineering
25 deficiencies that require repair.

26 31. Dan Wicline, the applicant's architect, offered credible and unrebutted professional
architectural design opinions regarding aspects of the existing structure and the proposed
replacement structure. He emphasized that the goal of his client, the applicant, is to
"recreate" what is there, within the same footprint and massing. In designing the proposed
replacement structure, he noted his client's direction to return all but the existing structural-
space back to nature. Mr. Wicline testified about his site visit to the existing structure, and
offered pictures, including Exs. 25, 32 and 33, showing the condition of the interior space,
with exposed wiring, a water supply line, a drain pipe (for a toilet and wastewater) that
would discharge directly to the shoreline/open water below the structure, poor insulation,
and other deficiencies. He noted that there is no kitchen in the structure, and that he
considers it to be an accessory structure used for recreational purposes. He offered his
professional opinion that replacement is the typical, most common method of repair for a
structure like the one at hand.

32. Brian Langstraat owns a neighboring property located inland, and uphill from the

1 shoreline structure at issue in this appeal. He purchased his property in or about 2005. Mr.
2 Langstraat testified that he is very familiar with the structure and its condition, because he
3 and his family have used the structure over the years, with permission of the previous
4 owner. He explained that his father owns Spindrift LLC, which purchased the property at
5 issue at some point in 2016. Having heard questions and suggestions throughout the
6 hearing process that the structure, or any replacement structure, should not be allowed to
7 continue in the present shoreline location, Mr. Langstraat calmly and respectfully testified
8 that he and his father intend to continue using the structure in its present location by
9 repairing it, somehow, and that the building is not going away.

10 33. There was no testimony or evidence, or discussion of applicable legal authority, that
11 would support an abatement action to order removal of the existing structure as part of this
12 appeal. To the contrary, the Record includes substantial evidence establishing how the
13 proposed project will replace the existing, environmentally-problematic, structure, with a
14 structure that is designed to meet current building codes, with a smaller in-water footprint,
15 and a size, shape, configuration, location, and appearance that is comparable to the original
16 structure.

17 34. No one offered any testimony or evidence to show that the replacement structure
18 would cause substantial adverse effects to the shoreline resources or the environment. The
19 MDNS issued for the project, and the mitigating measures included therein, were not
20 appealed.

21 35. After the hearing concluded, the appellant submitted a post-hearing brief, the
22 applicant submitted a response, and the appellant submitted a reply, all as authorized and
23 within the timeframe announced by the Examiner.

24 36. The Examiner carefully considered appellant's legal arguments raised in the post-
25 hearing briefs. In the end, there are no facts to support a finding that the challenged
26 determination by the Department was in error. Quite the opposite, as detailed above, all of
the un rebutted testimony in the Record demonstrates how the proposed project is precisely
the type of undertaking that qualifies for the shoreline exemption for repair of a
nonconforming structure by means of replacement under WAC 173-27-040(2)(b).

37. The appellant argues that the Department's determination is not entitled to any
deference because the Department's interpretation allegedly conflicts with other provisions
of the SMA and SMP. (*Reply brief, at page 11*). However, this argument fails to recognize
that an exemption is just that – an exemption from otherwise applicable regulations, such as
some of those cited by the appellant in their briefs and in their appeal statement. More
significantly, the appellant's arguments overlook the fact that the cited exemption includes
explanatory language that explains, among other things, that "Replacement of a structure
or development may be authorized as repair where such replacement is the common
method of repair for the type of structure or development and the replacement structure

1 or development is comparable to the original structure or development including but not
2 limited to its size, shape, configuration, location and external appearance and the
3 replacement does not cause substantial adverse effects to shoreline resources or
4 environment. The Department is entitled to deference on the issue of whether replacement
is the common method of repair for the type of structure at issue, as well as the other
determinations required to weigh a request for an exemption allowed under WAC 173-27-
040(2)(b)(2).

5 38. The record is absent any credible or convincing proof that the existing structure in
6 question *is not* the “type of structure” for which replacement is the common method of
7 repair. The appellant offered no evidence that would contradict or rebut evidence in the
8 Record that establishes that this is, in fact, the type of structure for which replacement is the
common/typical means of repair. Without such proof, the appeal must fail.

9 39. Again, this is not an abatement action. Instead, the Staff Report issued as the ‘letter
10 of exemption’ needed for the project (*Ex. 4*), credibly and sufficiently explains how the
11 project satisfies all applicable requirements needed to obtain the requested shoreline
12 exemption. All findings, analysis, and statements of fact included in the Department’s Staff
Report issued granting the challenged exemption (*Ex. 4*) are hereby adopted as findings of
fact by the Examiner supporting this Decision.

13 40. Appellant’s first two issues raised in their appeal, generally regarding setbacks and
14 height, must fail because they seek to apply some of the very regulations from which the
15 project is exempt by application of the shoreline exemption challenged in this very appeal.
Tacking on requirements in that manner would constitute swallowing the exemption itself.

16 41. Appellant’s third issue must fail, because it ignores the plain language of the cited
17 regulation granting the exemption. Replacement of a structure or development may be
18 authorized as repair where such replacement is the common method of repair for the type
of structure. Appellant offered no evidence to show that the “replacement” proposed in
this matter is not the common method of repair for the type of structure that it is.

19 42. Appellant’s fourth issue essentially argues that the lack of a current connection to
20 power, water or other utility services renders proposed connections in the replacement
21 structure improper, and unauthorized without a separate shoreline permit for such work.
22 Evidence in the record establishes that the current structure has exposed wiring, water
23 pipes, and drainage pipe(s), all of which appear to be inoperable. Regardless of their
24 condition, the Examiner finds that the structure is an accessory residential structure, for
25 which utility services are normal appurtenances. This is consistent with WAC 173-27-
040(2)(g) (“*On a statewide basis, normal appurtenances include a garage; deck; driveway;*
utilities [...]), and SJCC 18.50.020.G. There is no factual or legal basis to conclude
otherwise. Appellant’s request to apply various shoreline codes, from which this project is
exempt by operation of the approved exemption, would undermine the very purpose of the

1 exemption granted for the structure.

2 43. Finally, the appellant's arguments about cumulative impacts were not supported by
3 any evidence or authority in the record. Speculation is not sufficient to show how any
cumulative impacts would support revocation of the challenged exemption.

4 44. All of the available evidence in the record shows that the Department regularly and
5 consistently applies the shoreline exemption in a manner similar to the current
6 circumstances. The Department has a long-standing practice of allowing replacement of
nonconforming shoreline structures as the common means of repair for such overwater
structures.

7 45. The Examiner takes official notice of a Legal Opinion issued in 2007 by the San
8 Juan County Prosecutor's Office years ago, which has been referenced and included in the
9 record for previous appeals before the Hearing Examiner, including PAPL00-17-007. The
10 2007 Legal Opinion and testimony by DCD staff in that appeal, as well as Ms. Thompson's
11 testimony in the instant appeal, establishes that it has long been the County's policy to
12 construe codes to allow replacement of non-conforming structures located in most shoreline
13 areas. Further, the applicant properly directs attention to the fact that the County's
Shoreline codes were recently amended, and finally approved by the Department of
Ecology, and that the recent amendments essentially ratify and confirm longstanding
County policy, by allowing replacement of most non-conforming structures that are located
in a shoreline area.

14 46. Among the facts and circumstances that support the challenged exemption is the fact
15 that the County has had the same policy for a number of years – to allow for the
16 replacement of nonconforming structures in the shoreline area – and the County Council
17 never took action to reverse it. Again, in the latest update of the County's shoreline codes,
18 the new code includes express language that specifically authorizes replacement of
nonconforming structures in a shoreline area. *See Ord. No. 01-2016, which includes newly
updated shoreline regulations regarding replacement of nonconforming structures.*

19 47. The facts weigh heavily against the appellant's arguments. They support the
20 challenged determination to approve the requested exemption, as issuing a building permit
21 in this situation is fully consistent with prior county interpretations and applications
involving similarly situated structures and proposals.

22 48. Credible and substantial evidence in the Record supports the challenged
23 determination made by the Department. The Examiner is not left with the impression that
any mistake has occurred.

24 49. The appellant failed to satisfy its burden of proof. Accordingly, the appeal must be
25 denied.

1
2 50. The Staff Report prepared for this appeal (*Ex. 1*) includes a brief discussion and
3 analysis of how the challenged decision is supported by facts and an appropriate application
4 of the available exemption to such facts. All statements of fact contained in the Staff
5 Report are all incorporated by reference herein as findings of fact by the Hearing Examiner
6 supporting this Decision.

7 V. CONCLUSIONS OF LAW.

8 1. Based on testimony and evidence in the Record, including without limitation all
9 findings set forth above, the Examiner concludes that the challenged decision granting a
10 shoreline exemption is fully supported by substantial and credible evidence. The exemption
11 was not issued by mistake. The exemption was not clearly erroneous, but was instead a
12 reasonable and accurate application of facts to the relevant shoreline exemption and long-
13 standing County policies at issue.

14 2. The appellant failed to satisfy its burden of proof to prevail in this appeal.

15 3. For the specific reasons articulated in the Director's Staff Report (*Ex. 4*), and for the
16 additional reasons set forth herein, all as thoroughly supported by the record established in
17 this appeal, the challenged shoreline exemption granted for Building Permit No. BUILDG-
18 17-0123, issued on or about September 25, 2017, should be and is hereby affirmed in its
19 entirety.

20 4. A basic rule of statutory construction is that a long-standing interpretation given a
21 statute or ordinance by officials charged with its administration is highly persuasive with
22 regard to legislative intent in enacting the statute or ordinance and, consequently, the
23 meaning of the statute or ordinance."²

24 5. A legislative body, including a County Council, is presumed to be familiar with its
25 prior enactments and official interpretations of same.³ And, where a legislative body leaves
26 an enactment unchanged in the face of a decision interpreting such enactment, courts can
conclude that if the legislative body wanted to change terms of its enactment it would have
expressly amended relevant language to do so rather than leave it unchanged.⁴

6. In this matter, testimony established that it has long been the County's policy to
construe codes to allow replacement of non-conforming structures located in most shoreline

² 6 McQuillin Mun. Corp. § 20:45 (3d ed.)(citations omitted).

³ *Leonard v. City of Bothell*, 87 Wash. 2d 847, 853 (1976); *State v. George*, 161 Wash. 2d 203, 211, 164 P.3d 506, 510 (2007); *State v. Ose*, 156 Wash. 2d 140, 148 (2005).

⁴ *Friends of Snoqualmie Valley v. King Cnty. Boundary Review Bd.*, 118 Wash. 2d 488, 496-97 (1992).

1 areas. (*Testimony of Ms. Thompson; Ex. 4, pages 4 and 5*). The County's new Shoreline
2 codes were recently amended, and finally approved by the Department of Ecology, and the
3 recent amendments essentially ratify and confirm longstanding County policy, by allowing
4 replacement of most non-conforming structures that are located in a shoreline area.

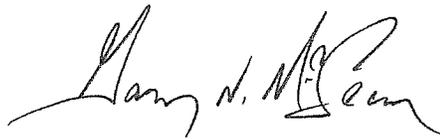
5 7. These facts weigh heavily against the appellant's arguments. They support the
6 challenged exemption, as issuing a building permit in this situation is fully consistent with
7 prior county interpretations and applications involving similarly situated structures and
8 proposals.

9 8. Any legal conclusions or other statements made in previous or following sections of
10 this document that are deemed conclusions of law are hereby adopted as such, and are
11 incorporated herein by this reference.

12 **VI. DECISION.**

13 Based on evidence included in the record for this appeal, appellant failed to meet its
14 burden of proof. Accordingly, the pending appeal is respectfully denied and the challenged
15 shoreline exemption determination is affirmed.

16 ISSUED this 13th Day of April, 2018

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Gary N. McLean, Hearing Examiner

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Effective Date, Appeals, 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/or SJCC 18.80.110.

Decisions of the Hearing Examiner are final and not subject to administrative appeal to the San Juan County Council, unless the County council has adopted, by ordinance, written procedures for the discretionary review of such decisions. See Section 4.50 of the San Juan County Home Rule Charter and 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 any 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 confer with advisors of their choosing, possibly including a private attorney.

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