

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicants: Gary and Antoinette Franklin
PO Box 2122
Friday Harbor, WA 98250

Agent: Pauli Gavora
Gavora Inc. **S.J.C. COMMUNITY**
PO Box 2838
Friday Harbor, WA 98250 **MAY 29 2008**

File No: HE26-08 (07SJ022) **DEVELOPMENT & PLANNING**

Request: Shoreline Substantial Development Permit (SSDP); and
Shoreline Conditional Use Permit (SCUP)

Location: 978 Boundary Point Road
San Juan Island

Parcel No: 362841001

Summary of Proposal: This is a request to install a cable tram from the top of the slope at the residential location to a platform on the shoreline which would then be attached to a boat lift for dinghy storage as well as a mooring buoy for a 36 foot boat.

Shoreline Designation: Conservancy

Public Hearing: After reviewing the report of the Community Development and Planning Department a public hearing was held on May 7, 2008.

Applicable Policies and Regulations: RCW 90.58 Shoreline Management Act (SMA)
SJCC 18.50 Shoreline Master Program (SMP)
SJCC 18.80.110 Criteria for SSDP and SCUP
WAC 173-27-160 Criteria for unnamed shoreline use

Decision: Denial of the SSDP; denial of the SCUP.

Findings of Fact

1. Applicants are building a home on their lot which is a 3.85 acre waterfront parcel overlooking San Juan Channel on the east side of San Juan Island. The waterfront side of the parcel includes a 220 foot vertical bank running the length of the property. The surrounding neighborhood is rural and residential in nature. Mr. and Mrs. Franklin wish to gain access to the water and to moor their 36 foot boat.
2. The specific request is to install a boat lift attached to a platform which would be accessed by a cable tram. The tram would span the first 200 feet from the top of the slope and landing and accessing a 12 foot by 14 foot platform landing area located at the +14 foot MLLW. Waterward of the landing area (on a rocky outcrop) will be an 8 foot by 20 foot platform. At the seaward end of the platform a pair of 8 inch heavy wall galvanized piling supports will be drilled into the rock. At the outer edge of the structure will be an electric boatlift with two 4 inch guide piles that support the lift cradle. A mooring buoy is to be used for the boat with a dinghy used by the lift and platform.
3. The shoreline designation is conservancy and below the ordinary high water mark (OHWM) the shoreline is one of statewide significance.
4. On January 30, 2008 the Department of Fish and Wildlife approved the Hydraulics Permit Application. There is a bald eagle management plan in effect on the Franklin parcel.
5. A cable tram and a boatlift are not uses specifically identified in the SMP. Thus a SCUP is required.
6. The total area of the proposed deck, tram, landing and platform is 388 square feet. The pier does not extend more than 115 seaward of the OHWM. The proposal is located more than 10 feet from either side of the lot line.
7. The cable tram is located on private property, not on public shorelines. The landing platform and pier are designed to be low impact and are situated very near the bank. One tree less than 12 inches in diameter will have to be removed. Several trees will be trimmed, but there will be no removed path of vegetation. The cable car will be suspended at 10-15 feet above grade which is well below the canopy of surrounding trees. The car itself will be camouflaged in color and materials.
8. There will be no impact to shore processes or littoral drift. There will not be extensive alteration of the land-water interface. The shoreline in the area is rocky, not sandy. Water circulation will not likely be affected. This is not an identified area of forage fish habitat. The project is not in the navigable part of the waterway. The area is not a feeder bluff. There is no public access to the

shoreline at this location. There are no plans for commercial accommodations. There are no plans for use of a float plane. The project has been designed to meet design and construction standards of SJCC.

9. As demonstrated particularly in petitioner's exhibit #1 there will be very little visual impact from this project. It will certainly have much less visual impact than the project approved roughly 950 feet to the northwest that is on property now owned by the Greens, originally owned by the Millers. That development includes a rail system and boathouse and has a much more visual impact than the Franklin's.
10. The Miller approval was reviewed by the Department of Ecology and approved with additional conditions. One of the conditions was that the system be made available to current and future owners of the two neighboring waterfront parcels. That type of future joint use agreement would not likely be approved under current County standards.
11. The Miller approval in 2003 is the only similar project in the County. The Franklin application is the second.
12. The shoreline where the pier is proposed to be located is steep and more than 200 feet high. Stairs to the beach area are not feasible. There is no bank to store a dinghy upon so use of the mooring buoy for the 36 foot boat is precluded without the pier and lift for a dinghy.
13. Four local marinas were contacted in January 2008. None were found to be reasonably available except for perhaps a 9-month wait at the Port of Friday Harbor. There are no available private facilities on any nearby parcels. The terrain would make access from adjacent lots very difficult. No neighbors were interested in sharing a boating facility. There is no realistic expectation of a joint-use facility for this parcel.
14. This second request for a tram, pier and mooring buoy tie-up for a 36 foot boat located in a high bank area since the SMP adoption does not demonstrate a significant concern for cumulative impacts. Historically, purchasers of high bank lots were not likely to expect to have beach access and boat moorage capabilities. This would be particularly true on San Juan Island, which has many marina and moorage sites and a significant road system. As the cost of installing a project of this nature begins to be more feasible versus finding moorage off property, more and more requests are likely. While the visual impact of the Franklin project is minimal, the potential cumulative visual impacts will be substantial rather than minimal.
15. A Determination of Non-Significance was issued on December 19, 2007.

16. Notice of hearing was published December 26, 2007, posted January 20, 2008 and mailed February 4, 2008. A public hearing was held on May 7, 2008.
17. The staff report is incorporated herein by reference as though fully set forth. The analysis and factual statements contained in the staff report are adopted as a finding herein.
18. Any conclusion herein which may be deemed a finding is hereby adopted as such.

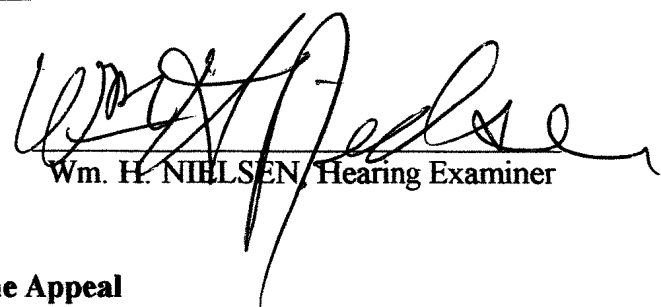
Conclusions of Law

1. The Hearing Examiner has jurisdiction over the persons and subject matter of this proceeding.
2. Proper notice was given in compliance with local and state requirements.
3. The proposal has complied with the requirements of the State Environmental Policy Act.
4. The criteria for approval of a SSDP is found in SJCC 18.80.110(H). The criteria for SCUP's are found in (J)(4). The burden of showing compliance with the criteria is on the applicant.
5. Among the requirements for the SSDP are compliance with the SMA and WAC 173-27. Under the SMA a boating facility for a single user is not one of the limited instances that will allow alteration of the natural condition of the shorelines of the state. Compliance with the SMA policies is one of the SCUP criteria.
6. There is a strong preference for a joint-use dock and pier facility for the granting of a SSDP. That criterion cannot be met under the facts of this proposal.
7. The applicants have not sustained their burden of showing no substantial adverse effects to the shoreline environment from potential cumulative impacts.
8. The applicants have not sustained their burden of showing compliance with the criteria for a SSDP or a SCUP.
9. Any finding herein which may be deemed a conclusion is hereby adopted as such.

Decision

The request for a shoreline substantial development and a shoreline conditional use permit is denied.

DONE this 29th day of May, 2008.



Wm. H. NIELSEN, Hearing Examiner

Shoreline Appeal

Any appeal of the shoreline substantial development permit shall be made to the Washington State Shoreline Hearings Board pursuant to RCW 90.58.180 and the rules adopted by said hearings board.