

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant(s): Snug Harbor Associates LLC
723 Hanna Park
Edmonds, WA 98020-2619

Agent: Francine Shaw
P.O. Box 2112
Friday Harbor, 98250

File No.: PSJ000-14-0016

Request: Shoreline Substantial Development Permit and Shoreline
Conditional Use Permit.

Parcel No: 463532001

Location: 1997 Mitchell Bay Road
San Juan Island

Summary of Proposal: Marina Expansion and Redevelopment

Shoreline Designation: Rural Residential/Conservancy

Public Hearing: April 27, 2015

Application Policies and
Regulations: San Juan County Shoreline Master Program

Decision: Denied.

S.J.C. COMMUNITY

MAY 27 2015

DEVELOPMENT & PLANNING

1 **BEFORE THE HEARING EXAMINER FOR THE COUNTY**
2 **OF SAN JUAN**

3 Phil Olbrechts, Hearing Examiner

4 RE: Snug Redevelopment 5 Shoreline Substantial 6 Development Permit 6 (PS000-14-0016)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION. S.J.C. COMMUNITY MAY 27 2015
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7 **INTRODUCTION**

8 Snug Harbor Associates has applied for approval of a shoreline substantial
9 development permit and conditional use permit to redevelop the Snug Harbor Marina.
10 The applications are denied.

11 The applications are denied because they propose the redevelopment of a marina in
12 the Aquatic shoreline environment of the proposal. Marinas are prohibited in the
13 Aquatic shoreline environment of the proposal because that environment takes on the
14 prohibitions of marina development of the abutting Conservancy environment. The
15 marina is a nonconforming use. Nonconforming uses arguably may be expanded if
16 they do not increase the degree of nonconformity. The applicant proposes to increase
17 the length and size of the marina as well as increase the number of moorage slips. All
18 of these actions increase the degree of nonconformity in the Aquatic shoreline
19 environment.

20 It is recognized that the marina is aging and needs to be upgraded; that modern
21 boating needs may dictate larger moorage slips; and that the applicant is required by
22 the state to move the marina waterward if it's redeveloped. For these reasons, the
23 applicant may find it worthwhile to investigate whether it could acquire a variance to
24 applicable nonconforming use provisions.

25 If the applicant reapplies for marina development, it needs to provide more
information on the flushing characteristics of Mitchell Bay. There is not enough
information in the record of this application to draw any firm conclusions on the
issue. Mitchell Bay is small and largely enclosed with the marina taking up a
significant portion of its surface area. Friday Harbor Labs and project opponents
have certainly not presented any conclusive evidence, but they have presented enough
information to raise a serious concern over whether it would be appropriate to cram
more boats into the small enclosed Mitchell Bay with its sensitive shoreline
Conservancy designation. Testimony that tidal motions may be attributable to a see-
saw effect within the bay along with the topography of the bay and its narrow and
shallow entrance support the contention that flushing is not good,

1 as does the Friday Harbor point that the bay is lined with soft mud. There needs to be
2 some expert analysis of the flushing characteristics of the bay and how that relates to
3 water quality to provide reasonable assurance that more boating activity and moorage
4 is appropriate in the proposed location.

5 SUMMARY OF TESTIMONY

6 Julie Thompson, San Juan County senior planner, summarized the proposal. Ms.
7 Thompson agreed with the Friends of the San Juans recommendations except for a
8 pump out facility, which would not work with the septic system at the project site.
9 Ms. Thompson stated that the current regulations don't require a pump out facility.
10 Ms. Thompson also confirmed that that Rosario Resort did have more grating.

11 Eric Nelson, applicant, explained the need for the improvements. He noted that the
12 width of the slips can't accommodate modern boats. There's additional width in the
13 new design. The Washington State Department of Natural Resources has required the
14 marina to be moved further out. He noted that the marina is in bad condition and is
15 rotting and breaking apart. Mr. Nelson noted that the marina accommodates a
16 significant amount of permanent moorage but that he would not want to see
17 permanent moorage made a requirement. Pump out isn't possible because the
18 existing septic system cannot accommodate that use. The manufacture of the septic
19 system advised that they would void the warranty if the system were used for pump
20 out because of the chemicals used in boat waste systems. As to impacts on
21 navigation, the aerial photographs show there's plenty of room for navigation.

22 Dan Jankelson, applicant expert, noted that 140 depth readings had been made
23 throughout the channel. These soundings show that the outer edge of the marina lies
24 at -8 to -9 MLLW, which is the deepest waters of the bay except for the neck of the
25 bay. There is 300 to 400 feet of navigable channel area that's between -7 to -9
MLLW. DNR required the waterward extension of the marina. DNR prohibits floats
from grounding. The finger floats will have a minimum of 33% functional grating at
60% light permeability, the wider floats will have 50% functional grating at 60% light
permeability. Any additional grating would be completely blocked by the underlying
floats. Existing piling is all creosote treated pile.

26 Francine Shaw, applicant's agent, noted the marina extends across three shoreline
27 environments. Marinas are allowed in the Rural Residential designation, which is
28 from the OHWM landward. Waterward of the OHWM to extreme low tide (ELT) is
29 the conservancy designation, where marinas are prohibited. Waterward of ELT is the
30 aquatic environment where marinas are allowed. DOE WACs prohibit expansion of
31 nonconforming structures unless local nonconforming provisions are adopted. San
32 Juan County has adopted its own nonconforming use provisions and allows expansion
33 of nonconforming uses with a shoreline conditional use permit. The footprint in the
34 conservancy environment will not be changed. The ramp will be extended out in
35 response to DNR requirements but it will be grated. Currently the fixed pier and ramp

1 is in the conservancy environment and a ramp and fixed pier will be the only
2 structures in the conservancy environment in the new proposal as well.

3 Ms. Shaw also noted that having to build an additional pump out facility on the
4 shoreline would cause problems because it's an archaeological sensitive site. She
5 also noted that Roche Harbor pump out facilities located around the corner. As to
6 views, Ms. Shaw noted that there are numerous docks built in the area. The proposed
7 facility does have lights that shine outward and the applicant would be willing to have
8 the lights shielded. Ms. Shaw emphasized that 37 creosote pilings would be removed
9 by the proposal and that it would involve the addition of 5,767 of grating where none
10 currently exists, which is a little less than half the footprint of the marina. The floats
11 will be encased so that no materials will escape.

12 Gerald Rasmussen, neighboring property owner, noted that when he first moved in
13 years ago the bay was full of wildlife and that wildlife has been in serious decline.
14 He thinks a pump house is necessary because not everyone can be trusted to travel to
15 Roche Harbor.

16 Kenneth Balcomb, neighbor, has seen many changes in bay. He doesn't have any
17 problem with the proposal.

18 Dave Zygocki, moved in a few weeks ago as neighbor and is opposed to the project.
19 He felt notice and the opportunity to review new information was insufficient.

20 Lee Wehmeyer, neighbor, disagreed with the applicant's characterization of the bay
21 as not pristine. He noted that the noise from big boats damages the summer. He
22 wanted to know if Roche Harbor would allow boats from the proposal to pump out.
23 He noted that the salinity of the applicant's reverse osmosis facility may not make it
24 possible for organisms to grow on rocks recommended by tribe. He noted there's no
25 evidence on the flushing of the bay.

Mark Vincent, noted he can see the filament of the dock lights from his house and the
light has polluted the night sky.

Mike Pickett, noted that currently the distance between the docks and the shallow
water on the other side is 450 feet. Their extending 110 feet into that, then with boats
taking up space that takes up a third of the navigable area. He believes this could
cause accidents.

Jim Pound, lives about 200 yards from the marina, hasn't heard wild parties at night.
The pump out station at Roche Harbor is free and he often uses it.

Rob Howard, who lives adjacent to marina, disagrees that the bay is not pristine. He
noted that during low tides there is very little room for navigation into the opening of
the bay and that opening the marina to more boats invites disaster.

1 Jim Rice, has lived on San Juan Island for a decade, supports the proposal and is a
boat owner, he's never seen illegal discharges from boats at the marina.

2 Jonathan Kryan, noted that most of the existing floats are encapsulated in plastic. He
3 noted that the report states that the water at the marina isn't deep enough, yet it's been
4 fine for 50 years. He noted that there's no evidence supporting that the area has good
5 flushing action. The bay is an isolated lake at low tide --- it's not possible that it
6 could have any flushing action during that time. The marina should be built within its
7 current footprint.

8 Richard Moore noted that the expansion is a material change in the scope of the
9 marina. He noted that the amount of moorage available under the new proposal
10 would be 64,000 square feet verses 42,000 square feet under the existing marina.
11 This will mean more and bigger boats.

12 Captain Jim Maya noted that boats that want to refuel have to go to Roche Harbor
13 anyway so it wouldn't be difficult to go there for pump out. The tide charts submitted
14 by the applicant have been used for years and he uses them all the time. The entry
15 point to the bay is very restrictive (shallow) and will limit the size of the boats
16 coming in. He often has to go through the point with his motors up to avoid
17 grounding. He's had intimate knowledge of the marina since 1988 and new floats
18 have only been brought in once.

19 Tom Cogan, a tenant of the marina with a 33 foot boat, confirmed you have to go to
20 Roche Harbor to refuel and that's when you refuel. It's free. You typically pump out
21 when you refuel. A pump out probably wouldn't even be used in Snug Harbor since
22 there's no fuel station there. He noted that the current slips are too narrow, that since
23 he has a 33 foot boat only a 22 foot boat would fit beside his boat within the dual
24 slips of the marina. It's also difficult to navigate moorage within the narrow confines
25 of the slips. The slips cannot be used the way they were intended because they're too
narrow.

Ken Christensen, manager of Snug Harbor Resort, testified that the marina is way
past the time it needs to be redeveloped.

Rob Howard noted that if you increase the width of the slips you're going to attract
larger vessels.

Kyle Loring, Friends of the San Juans, acknowledged that the provision of
community dock moorage helps reduces the need for individual docks. The steel
pilings, enclosed floats and grating are all beneficial but typical of any new dock
development. Nonconforming uses can only be expanded pursuant to a conditional
use permit. He noted that current comprehensive plan policies (3.5.C.21) pump out
facilities. He noted that there are no scientific studies that have shown that grating
serves as effective mitigation, but that it is pushed by state agencies and Rosario was
able to do 100% grating. He noted the location of underlying floats and other opaque

1 structures could change so 100% grating is important. He noted that requiring
2 permanent moorage for a conditional use over public lands would be reasonable
3 given that the mitigating environmental benefits of the proposal include reducing
4 demand for individual floats. He noted that under the San Juan code the aquatic
5 designation assumes the restrictive requirements of the adjoining landward shoreline
6 designation and because of this marinas are prohibited in the Aquatic environment.

7 Torry Johnson noted there was a dock at Snug Harbor in 1962. He suggested that the
8 applicant use a mobile tank for pump out. He noted that the boats are noisy at the
9 marina. He noted that the project materials are inaccurate when they state there is no
10 commercial or private shell fishing in the bay. He noted that at least four boats
11 regularly go crabbing in the bay. When crab season is open there are crab pots
12 everywhere. As a resident of Mitchell Bay he's seen sanitary waste in the bay.

13 Athlene Schneider, who lives in the front of the bay, testified that the marina had a
14 street light at beginning of the ramp that beamed straight into her home. She's been
15 in the bay since 1942. At that time it was full of eelgrass. There's no longer any
16 eelgrass. There's no longer any shrimp.

17 Rosa Zygocki lives directly across the bay from the project site. She believed the
18 environmental review was cursory and did not consider long term impacts. Flushing,
19 ecosystems and navigation were not adequately reviewed.

20 Mr. Rasmussen noted that Mr. Marble noted that flushing was limited within the bay.

21 Ms. Thompson, County planner, noted that the desalination plant was approved
22 separately.

23 Eric Nelson, applicant, testified that the Roche Harbor pump out facility is partially
24 publicly funded and that's why it's free to the public. He reiterated it was DNR
25 requirements that dictated the waterward displacement of the marina. He noted there
isn't sufficient room for more than two boats within each proposed berth.

Mr. Nelson, applicant expert, testified that the rising and lowering tides mean that
water from Mosquito Pass is entering and leaving the bay.

Carol Liu testified that Mr. Marble had said that the University of Washington had
done a flushing study and found that the bay flushes from within but doesn't
exchange water with Mosquito Pass. The entrance to the bay is too small to allow for
any flushing.

Ms. Shaw, applicant agent, testified that the boats would range in size from kayaks to
48 feet and the larger boats will only be allowed to moor in the deeper parts of the
marina facility. She noted that there may be some shell fishing going on, but the
information provided by the applicant concerns protected shellfish beds and DNR
does not identify any such protected beds in the bay.

1 Mr. Howard noted that DNR had informed him that the marina only had to provide
2 one foot of depth clearance as opposed to seven feet as asserted by the applicant. Ms.
3 Shaw responded that Mr. Howard was referring to stewardship guidelines (voluntary)
as opposed to regulatory guidelines.

4 An applicant representative noted that the applicant is working on removing all
5 overhead lights in the resort and that the light at the dock ramp was placed by an
6 electrician and was not intended to be that type of light by the applicant.

7 EXHIBITS

- 8 Exhibit No. 1 Staff report dated April 16, 2015.
9 Exhibit No. 2 Request for review.
10 Exhibit No. 3 MDNS
11 Exhibit No. 4 Application materials.
12 Exhibit No. 5 Biological evaluation.
13 Exhibit No. 6 Marine vegetation survey.
14 Exhibit No. 7 HPA approval.
15 Exhibit No. 8 Agency comment letters (WDFW (4/15/15), DOE (4/23/15 and
16 1/30/15) and Friday Harbor Labs(2/25/15))
17 Exhibit No. 9 Public comment letters:
18 Email 3/20/15 Ed Laurnen
19 Email 3/22/15 Mike Pickett
20 Letter 3/12/15 Larry Culver
21 Letter 3/12/15 Scott Hensrude
22 Email 3/11/15 Todd Eckstrom
23 Letter 3/8/15 Center for Whale Research, Ken Balcomb
24 Letter 3/10/15 Jeffery Leach and Denise Rundle
25 Email 3/10/15 Craig and Jody VanderYacht
Email 3/11/15 James Pound
Email 3/5/15 Andy Derksema
Letter 3/19/15 Skagit River System Cooperative
Letter 2/19/15 Captain James Mead Maya
Letter 2/17/15 Steadfast Financial Partners
Letter 3/2/15 Bob Clemence
Email 3/2/15 Tom Cogan
Email 3/2/15 Randy Hein
Letter 3/2/15 Greg Sutherland
Letter 2/20/15 Captain Spencer and Rachel Damico
Letter 3/3/15 Pat O'Day
Letter 3/5/15 Nancy Cates
Email 3/7/15 Johannes Krieger
Letter 2/11/15 Gerald and Patricia Rasmussen
Letter 2/12/15 Gene Bucksbaum

- 1 Letter 2/20/15 Sherri Johnson
2 Letter 2/22/15 Dale Marble
3 Letter 2/11/15 Robb and Kim Howard
4 Letter 2/20/15 Robb and Kim Howard
5 Petition
6 Letter 3/6/15 Lloyd Martindale
7 Email 4/21/15 Chip Holland
8 Email 4/23/15 Terry Johnson
9 \ Letter 4/27/17 Lloyd Martindale
10 Email correspondence between Gerald Rasmussen and Sam Gibboney
11 Pictures (2) 4/21/15 Torry Johnson
12 Letter 2/20/15 Torry Johnson
13 Letter 4/13/15 Friends of the San Juans
14 Letter 3/3/15 Larry Hemmerich
15 Letter 2/15 Gerald Rasmussen
16 Exhibit No. 10: Applicant Response to agency and public comments
17 Email 4/24/15 Francine Shaw
18 Email 4/16/15 applicant
19 Exhibit No. 11 (none)
20 Exhibit No. 12: Revised site plan (five 8x11 pages) with additional grating in
21 response to HPA requirements.
22 Exhibit No. 13: Aerial depiction.
23 Exhibit No. 14: 8x11 photo of existing facility.
24 Exhibit No. 15: Additional site plans (2).
25 Exhibit No. 16 Tidal chart depicting extreme low tides
Exhibit No. 17 7/29/76 letter from Dick Grout
Exhibit No. 18 Moore Size Comparison between existing and proposed marina

FINDINGS OF FACT

Procedural:

1. Applicant. The applicant is Snug Harbor Associates LLC.
2. Hearing. The Hearing Examiner conducted a hearing on the subject application on April 27, 2015. The hearing was left open through May 1, 2015 to comment on exhibits submitted by the applicant. Applicant reply was due by May 5, 2015.

Substantive:

3. Site and Proposal Description. Snug Harbor Associates have applied for approval of a shoreline substantial development permit to redevelop the Snug Harbor Marina. The marina is old and in various stages of deterioration, and is in need of modernization. It is also located in an area where water depth is too shallow. The proposed improvements include replacing all existing floats, providing more floats for additional moorage, removing 37 existing creosote piles and moving the marina

1 about 100 feet seaward into deeper water to prevent grounding of inland floats and
2 boats with larger drafts at Extreme Low Tide (-4 tidal elevation).

3 Some of the decking and floor joists on the existing fixed wooden pier need to be
4 replaced. These elements will be replaced as necessary with matching materials. The
5 existing 4' x 40' aluminum framed and wooden decked gangway ramp will be
6 completely removed and replaced with a new 5' x 80' ramp constructed of welded
7 aluminum with a light penetrating fiberglass grated decking. The new ramp will
8 connect to a new 10' x 40' wooden gangway float. The remaining float system will
9 connect to a new 10' x 40' wooden gangway float. The remaining float system will be
10 constructed from ACZA-treated timber supported by rotationally-molded foam-filled
11 sealed polyethylene floatation drums with decking including both ACZA-treated
12 timber and light penetrating fiberglass grating.

13 The existing marina consists of the following elements:

- 14 • 55 moorage slips ranging from 16' to 48' in length;
- 15 • 12 kayak moorage slips;
- 16 • 526' of side tie moorage which can accommodate up to four 32' to 48' boats and
17 fourteen 20' to 32' boats;
- 18 • Fixed wooden pier;
- 19 • 4' x 40' aluminum framed and wooden decked ramp;
- 20 • Ramp landing float;
- 21 • 37 creosote piles;
- 22 • Un-encapsulated Styrofoam float tubs;
- 23 • 9,939 sq. ft. footprint; and
- 24 • Non-functional fuel pump which is to be removed.

25 The proposed marina will consist of the following elements:

- 66 moorage slips for boats ranging between 22' and 48' in length;
- 13 kayak moorage slips at 2' x 15';
- 572' of side tie moorage which can accommodate up to six 32' to 48' boats and
thirteen 20' to 32' boats;
- Existing fixed pier;
- A new 5' x 80' aluminum ramp with the entire deck constructed of light
penetrating grating;
- A new 10' x 40' ramp landing float;
- A new moorage float system consisting of:
 - 8' x 261' main walkway float
 - 6' x 156' 6" secondary walkway float
 - 6' x 170' secondary walkway float
 - 6' x 208' secondary walkway float
 - Seven 4' x 22' finger floats

- 1 – Four 4' x 28' finger floats
- 2 – Four 4' x 32' finger floats
- 3 – Four 4' x 36' finger floats
- 4 – Five 6' x 48' finger floats
- 5 – Thirteen 2' x 15' kayak finger floats
- 6 • Twenty-three 10" diameter galvanized steel piles;
- 7 • Ten 12" diameter galvanized steel piles;
- 8 • Numerous rotationally-molded foam-filled sealed polyethylene floatation drums;
- 9 and
- 10 • A total footprint of 12,445 sq. ft. (an increase of 2,517 sq. ft. over existing
- 11 conditions.

12 As a result of requirements for HPA approval, the applicant has added grating to its
 13 original proposal for a final design depicted in Ex. 12, which includes the following
 14 amount of grating:

- 15 • The replacement ramp shall have grating covering 100% of the surface area of the
 16 structure. To meet ADA requirements this grating shall have 47% open area.
- 17 • Replacement floats less than or equal to six feet in width shall have grating
 18 installed on at least 33% of the surface area of the structure.
- 19 • Replacement floats greater than six feet in width shall have grating installed on at
 20 least 50% of the surface area of the structure.
- 21 • Floatation shall be located under a solid decked area only. Grating shall contain
 22 at least 60% open area. The grated area should not be used for storage purposes.

23 4. Nonconforming Use Status. Although there was some conflicting
 24 testimony as to when the currently existing marina was first built, it is uncontested
 25 that the facility was built prior to 1976, when San Juan County first started requiring
 shoreline permits as asserted in the applicant's regulatory analysis, Ex. 4.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. SJCC18.80.110(E) grants the hearing
 examiner authority to hold hearings and issue decisions on shoreline permits.

Substantive:

2. Shoreline Designation. The subject property is designated as rural
 residency/conservancy. Where a dual designation is shown, the first designation
 applies landward of the OHWM, the second from the OHWM to the line of extreme
 low tide (ELT), and the Aquatic environment applies seaward of the ELT line. At the

1 marina, the ELT has been measured as -3.8 feet according to sheet 3 of 10 of the
2 marina plan. Currently the marina dock and part of the ramp are the only parts of the
3 marina that extend through the conservancy environment. No other portion of the
4 marina will extend into the Conservancy environment as a result of the proposed
5 redevelopment.

6 3. Permit Review Criteria. A shoreline substantial development permit is required
7 because the redevelopment qualifies as substantial development that does not qualify
8 under any exemption to the requirements for a shoreline substantial development t
9 permit. SJCC 18.80.110(H) establishes the criteria for approval of shoreline
10 substantial development permits. The criteria include the policies of the Shoreline
11 Management Act (Chapter 90.58 RCW), the policies and use regulations of the San
12 Juan County Shoreline Master Program, and the requirements of the San Juan County
13 Municipal Code and Comprehensive Plan.

14 A shoreline conditional use permit is required because the redevelopment involves
15 expansion of a nonconforming marina in the conservancy and aquatic shoreline
16 environments. Shoreline conditional use criteria are governed by SJCC
17 18.80.100(D)¹. In addition expansions to nonconforming uses must also meet the
18 criteria imposed by SJCC 189.40.310(F).

19 4. Marina Prohibited in Conservancy Environment. SJCC 18.50.190(K)(4) provides
20 that marinas are not permitted in the conservancy environment.

21 5. Marina Prohibited in Aquatic Environment. Marinas are prohibited in the aquatic
22 environment of this proposal.

23 The SMP has arguably conflicting provisions on whether marinas are authorized in
24 the aquatic environment in which the proposal will be located. SJCC
25 18.50.190(K)(6) expressly provides that “*marina facilities, docks and boat launches
which are shoreline dependent*” are permitted in the aquatic environment, but
“*subject to ... the regulations by environment applicable to the abutting
environment*”.(emphasis added). As noted in Conclusion of Law No. 2, the abutting
shoreline environment is conservancy. As determined in Conclusion of Law No. 4,
marinas are prohibited in the conservancy environment.

¹ There is a little ambiguity as to whether a shoreline conditional use permit is required or a conditional
use permit is required under the County’s zoning code. Conditional use permits under the zoning code
have different review standards than the conditional use permits governed by the County’s shoreline
regulations. The shoreline nonconforming use provisions reference SJCC 18.50.310(F), which
requires a “conditional use permit”. SJCC 18.50.310(F) is a zoning code provision in which its
reference to “conditional use permit” is usually directed at the conditional use permit requirements of
the zoning code as opposed to a shoreline conditional use permit. Whether a shoreline or zoning
conditional use permit is required is ultimately not of significance, because either permit would have to
be denied as failing to comply with the additional conditional use permit criteria imposed by SJCC
18.50.310(F).

1 The common/plain meaning of “subject to” is that the list of authorized uses in the
2 aquatic environment are subject to any prohibitions in the abutting conservancy
3 environment. In this case the relevant prohibition happens to be marinas. To
4 interpret this situation otherwise would result in property owners with
5 conservancy/aquatic designations to have the right to construct new marinas in the
6 aquatic environment but with no physical means of connecting the marina to their
7 shoreline. Although such a dichotomy might make more sense in nonconforming use
8 situations such as this one, one would expect nonconforming use issues to be directly
9 addressed in the County’s SMP nonconforming use provisions as opposed to
10 addressed in such an ambiguous fashion in the regulations by environment. Also, the
11 “regulations by environment”, SJCC 18.50.190(K), are limited to brief lists of uses
12 allowed and prohibited for each shoreline environment. If the list of uses for the
13 aquatic environment were not intended to be modified or limited by the uses
14 prohibited in other shoreline environments, the “subject to” clause would have
15 virtually no regulatory effect. A final consideration is the environmental sensitivity
16 of the conservancy environment. An marina abutting a Conservancy environment is
17 likely to attract a lot of near shore boating and other activity, not to mention
18 discharges from the boats in the marina, which is inconsistent with the objectives of
19 protecting conservancy environments from environmental harm.

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6. Marina Qualifies as Nonconforming Use. As determined in Finding of Fact No.
4, the existing marina was constructed prior to 1976, when San Juan County first
started requiring shoreline permits. There is nothing in the record to reasonably
suggest that the marina was initially constructed in violation of any applicable
development or use standards. Consequently, the marina qualifies as both a
nonconforming use and a nonconforming structure under SJCC 18.20.140.

7. Shoreline Nonconforming Uses May Be Expanded, Modified and Intensified
Pursuant to SJCC 18.50.310(F). SJCC 18.50.310(F) governs the
expansion/enlargement/intensification of the existing marina as a nonconforming use.

SJCC 18.80.120(D) provides that shoreline nonconforming uses and structures are to
be governed by Chapter 18.50 SJCC, SJCC 18.80.110 and WAC 173-27-080. WAC
173-27-080(3) prohibits the expansion or enlargement of nonconforming uses.
However, the preamble to WAC 173-27-080 provides that it only applies when
nonconforming use and development standards don’t exist in the applicable shoreline
master program. San Juan County has provisions governing the expansion of
nonconforming uses and structures, so WAC 173-27-080 doesn’t apply to the
proposal. Specifically, SJCC 18.80.110(K) includes² SJCC 18.40.310(F) as applying

² SJCC 18.80.110(K) doesn’t directly state that SJCC 18.40.310(F) applies to shoreline nonconforming
uses, but rather states “See SJCC 18.40.310(F)” after identifying other code provisions that govern
shoreline nonconforming uses. It is very difficult to determine what this reference to SJCC
18.40.310(F) was intended to signify. Absent intending it as applying to shoreline nonconforming
uses, there is no other discernible reason why the County Council would have included it. In any

1 to shoreline nonconforming uses and structures. Since this provision governs the
2 expansion, modification and intensification of shoreline uses and structures, it applies
3 to the proposal.

4 8. The Proposal Fails to Meet the SJCC 18.50.310(F) standards for
5 Expansion/Modification/Intensification of a Nonconforming Use. The proposal fails
6 to meet the requirements for expansion/modification/intensification of a
7 nonconforming use. Consequently, the existing marina cannot be redeveloped as
8 proposed.

9 SJCC 18.40.310(F)(1) provides that in addition to meeting the standards of a
10 conditional use permit, the proposal must also not create or increase nonconformance
11 with the standards of the code. As determined in Conclusion of Law No. 5, the
12 marina is prohibited in the Aquatic shoreline environment. Within this prohibited
13 area, the footprint of the marina will be increased from 9,939 square feet to 12,445
14 square feet³, the number of moorage slips will increase from 55 to 66 and extends the
15 marina about 100 feet waterward from the shoreline. There is no question that all of
16 these modifications increase the degree of nonconformity with the prohibition of any
17 marina facility in the Aquatic and Conservancy environments. The proposal fails to
18 comply with SJCC 18.40.310(F)(1) and no conditional use permit can issue to
19 authorize the proposed expansion/modification/intensification (it does all three) of the
20 existing marina.

21 9. The Proposal Fails to Comply with the Criteria for Shoreline Substantial
22 Development Permit. As previously noted, the criteria for a shoreline substantial
23 development permit includes consistency with the County's Shoreline Master
24 Program ("SMP"). The "regulations by environment" of SJCC 18.50.190(K) are part
25 of the SMP. As determined in Conclusion of Law No. 5, marinas are prohibited in
the Aquatic environment, which is where the applicant proposes to redevelop and
expand its existing marina. As determined in Conclusion of Law No. 8, the proposal
does not meet the criteria for expansion of a nonconforming use. There is no other
provision in the code that otherwise permits the expansion of a prohibited use in the
Aquatic environment. Consequently, the proposal is not consistent with the
requirements of SJCC 18.50.190(K) and does not qualify for issuance of a shoreline
substantial development permit.

DECISION

The application is denied because marinas are prohibited in the Aquatic shoreline

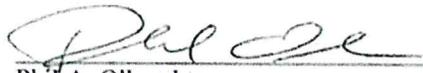
event, if SJC 18.40.310(F) doesn't apply, then WAC 173-27-080 applies by default and under that
regulation the proposal would still have to be denied.

³ Richard Moore submitted evidence, Ex. 18, that the square footage of moorage was increased from
44,000 square feet to 66,000 square feet. Under either Mr. Moore's measurements or those provided
by the applicant (used in the COL No. 8), the increase in size is significant enough to trigger
noncompliance with SJCC 18.40.310(F).

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environment of the proposal (see Conclusion of Law No. 5) and the applicant's expansion doesn't comply with shoreline nonconforming use provisions.

Dated this 22nd day of May 2015.


Phil A. Olbrechts

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 requirement 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.