

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

Applicant: Jasper Point LLC

S.J.C. COMMUNITY

Agent Keith Dearborn  
2183 Sunset Ave. SW  
Seattle, WA 98116

JAN 04 2013

DEVELOPMENT & PLANNING

File No.: PSJ000-11-0008

Request: Shoreline Substantial Development Permit

Parcel No: 140624007

Location: Lopez Island

Summary of Proposal: Float

Shoreline Designation: Rural Farm Forestry

Hearing Date: 12/12/12

Application Policies and Regulations: San Juan County Shoreline Master Program

Decision: Approved subject to conditions.

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

Phil Olbrechts, Hearing Examiner

RE: Jasper Point LLC	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION.</b>
Shoreline Substantial Development Permit (PSJ000-11-0008)	

**INTRODUCTION**

The Applicant has applied for approval of a shoreline substantial development permit to construct an L shaped moorage float consisting of a 40' x 8' float connected to a 12' x 8' perpendicular float. The float would have no physical connection to dry land and could only be accessed by dingy. The application is approved.

**TESTIMONY**

Lee McEnery, lead planner, stated that the Hearing Examiner previously issued a decision denying a moorage float at Jasper Point that was appealed to the Hearings Board. The Board offered mediation services, and the parties agreed on a new proposal. The new proposal consists of an 8x40 float, and staff recommends approval of the new plan.

Keith Dearborn, on behalf of Applicant, was present to address any questions.

**EXHIBITS**

The documents identified as attachments at page 2 of the 10/17/12 staff report, in addition to the staff report itself, are admitted into the record.

**FINDINGS OF FACT**

**Procedural:**

1. Applicant. The Applicant is Jasper Point LLC.
2. Hearing. The Hearing Examiner conducted a hearing on the subject application on December 12, 2012 at 10:00 am in the Islander's Bank Annex in Friday Harbor.

**Substantive:**

1 3. Site and Proposal Description. The Applicant has applied for approval of  
2 a shoreline substantial development permit to construct an L shaped moorage float  
3 consisting of a 40' x 8' float connected to a 12' x 8' perpendicular float. The float  
4 would have no physical connection to dry land and could only be accessed by dingy.  
The float will be configured and located as depicted in the site plans attached to the  
10/17/12 staff report.

5 At approximately the same location in 2011, the Applicant proposed a float anchored  
6 by three piers. That application was denied by Examiner decision dated 1/3/12. The  
7 Applicant and County subsequently submitted their case to mediation offered by the  
8 Shoreline Hearings Board. The Applicant and County came to agreement on a new  
9 proposal, that involved removal of the pilings and replacement of the "I" shaped float  
with the currently proposed "L" shaped float that would be located in approximately  
the same location as the previously proposed "I" shaped float. The current proposal  
is about a third of the length of the previous denied proposal.

10 4. Characteristics of the Area. As determined in the 1/3/12 decision of this  
11 case, the proposal will located within a cove that is within a 4700 foot pocket of  
12 shoreline that is undeveloped by any PRF. The nearest PRF is located on property to  
the south.

13 5. Adverse Impacts of Proposed Use. As previously noted, the proposal is  
14 located in approximately the same location as the proposal that as denied by the  
15 1/3/12 Examiner decision. Consequently, the site specific impacts are determined to  
be the same and no adverse impacts are associated with the proposal.

16 As with the proposal denied on 1/3/12, the current proposal will not be located over  
17 any eelgrass. A newly commissioned survey for the current proposal shows the  
18 nearest eelgrass as at least 25 feet away. As noted for the prior proposal, at the  
19 project site there is no documented littoral drift, water circulation and water quality  
20 should be more than adequate with the somewhat exposed location, fish and wildlife  
21 are not expected to be affected, the proposal does not lie in a navigable channel and  
22 public access to the shoreline is not a significant issue since there are no public lands  
23 in proximity to the site. For the prior proposal, the 12/14/11 staff report<sup>1</sup> notes that  
there is bald eagle habitat nearby. The project will be conditioned upon compliance  
with applicable bald eagle regulations. Beyond bald eagle impacts, there is no  
evidence in the record to create any reasonable inference that project as a single  
proposal would have any significant adverse impact on shoreline processes or  
ecological resources.

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25 <sup>1</sup> The 12/14/11 staff report of the prior proposal is deemed admitted into the record as it was  
incorporated by reference into the 10/17/12 staff report in Finding of Fact No. 2.

1 Unlike the prior proposal, there are no significant adverse aesthetic impacts  
2 associated with the proposal. The prior proposal included three pilings that would  
3 extend 15 feet above the water level during MLLW. The prior proposal was also  
4 three times longer than the current proposal. The currently proposed float will only  
5 be a few inches above water level, will replace an existing float and will be obscured  
6 from view by the high banks of the surrounding cove. The net impact to aesthetics  
7 will be insignificant.

8 The most significant difference in impacts is the elimination of cumulative impacts.  
9 The prior proposed use of pilings to anchor the float constituted a unique type of  
10 docking facility that had the characteristics of both a dock and float that was not  
11 addressed in the County's shoreline regulations and would have provided a potential  
12 loop hole to the County rigorous dock regulations. If that facility had been approved  
13 without application of dock requirements, it could have resulted in the circumvention  
14 of the County's dock regulations and the proliferation of pilings throughout County  
15 shorelines. By contrast, the current proposal does not appear to significantly deviate  
16 from the type of float design contemplated in the County's shoreline float  
17 requirements. Consequently, no significant adverse cumulative impacts are  
18 anticipated.

## 12 CONCLUSIONS OF LAW

### 13 **Procedural:**

14 1. Authority of Hearing Examiner. The Hearing Examiner has the authority  
15 to review and issue final decisions on applications for shoreline substantial  
16 development permit applications. SJCC18.80.110(E).

### 17 **Substantive:**

18 2. Shoreline Designation. The subject property is designated as Rural Farm  
19 Forestry.

20 3. Comprehensive Plan and Zoning Designations. The subject property is  
21 designated as Rural Farm Forest.

22 4. Permit Review Criteria. SJCC 18.50.190(K)(3) permit boating facilities  
23 serving single family residences in Rural Farm Forest shoreline designations subject  
24 to the policies and regulations of the SMP. SJCC 18.20.020 defines boating facilities  
25 to include floats. SJCC 18.50.020 requires a shoreline substantial development  
permit for any development exceeding \$2,500 in fair market value and it is presumed  
that the proposed moorage float exceeds this amount. No exemptions apply to this  
project. SJCC 18.80.110(H) establishes the criteria for approval of shoreline  
substantial development permits. The criteria include the policies of the Shoreline  
Management Act (Chapter 90.58 RCW), the policies and use regulations of the San  
Juan County Shoreline Master Program, and the requirements of the San Juan County

1 Municipal Code and Comprehensive Plan. As noted in SJCC 18.50.010(A), Element  
2 3 of the San Juan County Comprehensive Plan comprises the policies of the San Juan  
3 County Shoreline Master Program. The applicable policies and regulations are  
4 quoted in italics below and applied through conclusions of law.

5 **RCW 90.58.020 Use Preferences**

6 *This policy (Shoreline Management Act policy) is designed to insure the development*  
7 *of these shorelines (of the state) in a manner which, while allowing for limited*  
8 *reduction of rights of the public in the navigable waters, will promote and enhance*  
9 *the public interest. This policy contemplates protecting against adverse effects to the*  
10 *public health, the land and its vegetation and wildlife, and the waters of the state and*  
11 *their aquatic life, while protecting generally public rights of navigation and corollary*  
12 *rights incidental thereto.*

13 7. The policy is met. As determined in Finding of Fact No. 5, the proposal  
14 does not create any significant adverse impacts, including impacts to shoreline  
15 resources and public navigation.

16 **RCW 90.58.020(1)<sup>2</sup>**

17 *Recognize and protect the statewide interest over local interest;*

18 8. The statewide interest is protected due to the absence of any significant  
19 adverse impacts as determined in Finding of Fact No. 5.

20 **RCW 90.58.020(2)**

21 *Preserve the natural character of the shoreline;*

22 9. The float will be somewhat hidden and only rise a small distance above water  
23 level. No significant impact to the natural character of the shoreline is anticipated.

24 **RCW 90.58.020(3)**

25 *Result in long term over short term benefit;*

10. The proposal will allow for reasonable shoreline access to the Applicant  
with minimal adverse environmental impacts. The criterion is met.

**RCW 90.58.020(4)**

*Protect the resources and ecology of the shoreline;*

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<sup>2</sup> RCW 90.58.020(1)-(6) applies to shorelines of statewide significance. Section 3.4.F of the San Juan County Comprehensive Plan identifies all saltwater surrounding the islands of San Juan County as shorelines of statewide significance. The policies of 90.58.020(1)-(6) are mirrored in the policies of Section 3.4.F of the Comprehensive Plan and for the reasons provided in assessment of RCW 90.58.020, the Examiner also finds consistency with the policies of Section 3.4.F.

11. As determined in Finding of Fact No. 5, the proposal protects the resources and ecology of the shoreline.

**RCW 90.58.020(5)**

*Increase public access to publicly owned areas of the shorelines;*

12. Access to the proposed dock will be on private shoreline. As a result, it will not impact public access to a publicly owned area of the shoreline.

**RCW 90.58.020(6)**

*Increase recreational opportunities for the public in the shoreline;*

13. The proposal is private and does not affect public recreation. Consequently, no increased public opportunities can be constitutionally required of the Applicant.

**San Juan County Comprehensive Plan Policy 3.5.C(1)-(5) Boating Facilities:**

1. *Locate, design and construct boating facilities to minimize adverse effects upon, and to protect all forms of aquatic, littoral or terrestrial life including animals, fish, shellfish, birds and plants, their habitats and their migratory routes.*
2. *Protect beneficial shoreline features and processes including erosion, littoral or riparian transport and accretion shoreforms, as well as scarce and valuable shore features including riparian habitat and wetlands.*
3. *The location, design, configuration and height of boathouses, piers, ramps, and docks should both accommodate the proposed use and minimize obstructions to views from the surrounding area.*
4. *Boating facilities should be designed to optimize the trade-offs between the number of boats served and the impacts on the natural and visual environments.*
5. *In providing boating facilities, the capacity of the shoreline site to absorb the impact should be considered.*

14. Given that the proposal creates no significant adverse environmental impacts and provides for a minimum reasonable shoreline access as previously discussed, the policies above are met.

**San Juan County Code Regulations**

**SJCC 18.50.190(B)(1):** *Boating facilities shall be designed to minimize adverse impacts on marine life and the shore process corridor and its operating systems.*

15. As determined in Finding of Fact No. 5, there are no significant adverse impacts associated with the proposal, including impacts to marine life and shore processes. The criterion is satisfied.

**SJCC 18.50.190(B)(2):** *Boating facilities shall be designed to make use of the natural site configuration to the greatest possible degree.*

16. The proposal is designed to be hidden within a cove while also providing for separation from eelgrass. The criterion is met.

**SJCC 18.50.190(B)(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.*

17. As conditioned.

**SJCC 18.50.190(B)(4):** *Areas with poor flushing action shall not be considered for overnight or long term moorage facilities.*

18. According to the staff report for the prior proposal, the area has excellent flushing action.

**SJCC 18.50.190(B)(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.*

19. The proposal will result in no more than one form of moorage as the proposal involves the removal of the existing moorage float.

**SJCC 18.50.190(B)(6):** *Structures on piers and docks shall be prohibited, except as provided for marinas in subsection (H) of this section.*

20. No structures are proposed.


## DECISION

The proposed moorage float is approved subject to the following conditions:

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1. This permit allows the placement of cables and testing devices as discussed in the application materials and as detailed in the attached drawings.
2. All debris entering the water or shoreline area shall be removed immediately and disposed of in a legal manner.
3. 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.
4. Failure to comply with any terms or conditions of this permit may result in its revocation.
5. The proposal shall comply with all applicable bald eagle regulations taking into account the proximity of bald eagle habitat identified in the 12/14/11 staff report of the prior proposal.
6. 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.

Dated this 31<sup>st</sup> day of December, 2012.

  
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Phil Olbrechts  
County of San Juan Hearing Examiner



**Right of Appeal**

An appeal of this decision may be filed with the Washington State Shoreline Hearings Board as governed by RCW 90.58.180, which provides, **in part**, as follows:

*(1) Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may, except as otherwise provided in chapter 43.21L RCW, seek review from the shorelines hearings board by filing a petition for review within twenty-one days of the date of filing as defined in RCW 90.58.140(6)...*

Reference should be made to RCW 90.58.180 in its entirety as well as the practice rules of the Shoreline Hearings Board for all the requirements that apply to filing a valid appeal. Failure to comply with all applicable requirements can result in invalidation (dismissal) of an appeal.

**Change in Valuation**

Notice is given pursuant to RCW 36.70B.130 that property owners who are affected by this decision may request a change in valuation for property tax purposes notwithstanding any program of revaluation.