

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant: David Milne
18727 114th PI SE
Snohomish, WA 98290

Agent Jeff Otis
393 Bobbyann Road
Eastsound, WA 98245

File No.: PSJ000-12-0016

Request: Shoreline Substantial Development Permit

Parcel No: 152950043

Location: 1047 Chinook Way, Center Island

Summary of Proposal: Beach stairs

Shoreline Designation: Rural Residential

Hearing Date: January 9, 2013

Application Policies and Regulations: Shoreline Master Program

Decision: Approved subject to conditions.

S.J.C. COMMUNITY

JAN 29 2013

DEVELOPMENT & PLANNING

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

3 Phil Olbrechts, Hearing Examiner

4 RE: David Milne	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION.
5 Shoreline Substantial	
6 Development Permit (PSJ000-12-0016)	

7 **INTRODUCTION**

8 The Applicant seeks approval of a Shoreline Substantial Development Permit to
9 authorize stairs for beach access. The proposal is approved subject to conditions.

10 **TESTIMONY**

11 Lee McEnery stated that the application is for a shoreline substantial development
12 permit to construct stairs leading down the subject property's bank. It is an after-the-
13 fact application as the stairs already exist; however, staff recommends approval as
14 there is no issue with the stairs. The stairs will ultimately lead to a dock that the
15 applicant is also requesting to build. The stairs are more than fifteen feet high, thus
16 the permit is necessary.

17 Jeff Otis, on behalf of the Applicant, noted that no geotechnical report was completed
18 because the banks are stable and have no signs of erosion. There will be no
19 vegetation removal, and the footing of the stairs do not go beyond the ordinary high
20 water mark. The site is not a feeder bluff.

21 **EXHIBITS**

22 Exhibit 1: 12/19/12 Staff Report

23 Exhibit 2: Application materials.

24 **FINDINGS OF FACT**

25 **Procedural:**

1. Applicant. The Applicant is David Milne.
2. Hearing. The Hearing Examiner conducted a hearing on the subject
application on January 9, 2013.

1 **Substantive:**

2 3. Site and Proposal Description. The Applicant seeks after-the-fact
3 approval for stairs to the water constructed on the bank of lot 43, Center Island. Lot
4 43 is developed with a single-family residence. The Assessor's field sheets indicate
5 that the stairs were built sometime after 2007. It is hoped that they will provide
6 access to a dock (proposed separately in PSJ000-12-0007) to be shared by the
7 Applicant and the neighbor Accurso. The stairs are proposed as shown in design
8 drawings and elevations included in the shoreline application, Ex. 2.

9 4. Characteristics of the Area. The lot is in located in an area characterized
10 by rural residential development. An existing dock is located within view to the
11 northeast.

12 5. Adverse Impacts of Proposed Use. There are no adverse impacts
13 discernable from the record. According to the staff report, vegetation removal is not
14 substantial because the bank is not highly vegetated, visual impacts are not significant
15 because development is visible along this stretch of shoreline and structural stability
16 is ensured by the stable bank. There is no expectation for erosion as the bank is not a
17 bluff. The stairs also end above the ordinary high water mark, so no impacts to sub-
18 tidal shoreline habitat or water quality are anticipated.

19 **CONCLUSIONS OF LAW**

20 **Procedural:**

21 1. Authority of Hearing Examiner. The Hearing Examiner, after conducting an
22 open-record public hearing, is authorized to issue a final decision on shoreline permit
23 applications. SJCC18.80.110(E).

24 **Substantive:**

25 2. Shoreline Designation. The subject property is designated as Rural Residential.

3. Permit Review Criteria. Stairs that exceed \$6,416 in fair market value and exceed
fifteen feet in height require a shoreline substantial development permit. See SJCC
18.50.020(G)(3)(f) and 18.50.020(F)(1). Presumably the fair market value exceeds
the exemption level and the design drawings, Ex. 2, show the stairs as higher than
fifteen feet in height. Consequently, a shoreline substantial development permit is
required. 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
Municipal Code and Comprehensive Plan. The applicable policies and regulations
are quoted in italics below and applied through conclusions of law.

RCW 90.58.020 Use Preferences

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

4. As discussed in the findings of fact, there are no adverse impacts associated with the proposal. The proposal will have no impact on public navigation and will enhance shoreline access for the Applicant. The criterion is satisfied.

RCW 90.58.020(1)

Recognize and protect the statewide interest over local interest;

5. The project is of modest scale with no significant adverse impacts. The criterion is satisfied.

RCW 90.58.020(2)

Preserve the natural character of the shoreline;

6. The project will not change the natural character of the shoreline beyond some nominal modifications to the shoreline bank.

RCW 90.58.020(3)

Result in long term over short term benefit;

7. The project will provide long term beach access without corresponding significant adverse impacts.

RCW 90.58.020(4)

Protect the resources and ecology of the shoreline;

8. There are no significant impacts to resources or ecology anticipated.

RCW 90.58.020(5)

Increase public access to publicly owned areas of the shorelines;

9. No public access is included in the proposal nor could it be legally required.

RCW 90.58.020(6)

Increase recreational opportunities for the public in the shoreline;

10. No public recreation is included in the proposal nor could it be legally required.

1 **San Juan County Comprehensive Plan Section B, Element 3 (“SJCCP(B)(3)”)**,
2 **Section 5(J)(1):** *Beach access structures are allowed only as accessories to an*
3 *existing single-family residence, as access to a common shoreline area in a*
subdivision or multi-family residential development, or for a public or private
recreational facility.

4 11. The proposal is accessory to a single-family residence as authorized by the
5 criterion.

6 **SJCCP(B)(3), Section 5(J)(2):** *Beach access structures which are normal*
7 *appurtenances to a single-family residence as defined in the Shoreline Management*
8 *Act and the Unified Development Code are exempt from shoreline permit*
9 *requirements.*

10 12. SJCC 18.20.140 defines a “normal appurtenance, shoreline” as “*a structure or*
11 *development that is necessarily connected to the use and enjoyment of a single-family*
12 *residence and which is expressly defined in WAC 173-27-040 and in Chapter 18.50*
13 *SJCC, for purposes of exemption from shoreline substantial development permit*
14 *requirements in accordance with WAC 173-27-040(g).” SJCC 18.50.020(G)(3)(f)*
15 *provides that in order for a beach access structure to be considered an exempt*
16 *development it must be less than 15 feet in height. Since the proposal is more than 15*
17 *feet in height it is not exempt under this provision..*

18 **SJCCP(B)(3), Section 5(J)(3):** *The use of existing paths or trails should be*
19 *encouraged in preference to either beach assess stairs or ramps.*

20 13. There are no existing paths or trails available to the Applicants.

21 **SJCC 18.50.300(A)(1):** *Every application for a substantial development permit for*
22 *a nonexempt beach access structure shall be evaluated on the basis of multiple*
23 *considerations, including but not necessarily limited to the potential impacts on bank*
24 *stability, the extent of vegetation removal, visual impacts, and structural stability.*

25 14. As determined in the findings of fact, the bank is stable, vegetation
removal is minimal, visual impacts are minor and the proposal is stable.

SJCC 18.50.300(A)(2): *Beach access structures which can reasonably be expected*
to interfere with the normal erosion accretion process associated with feeder bluffs
shall not be permitted. All beach access structures must comply with the bank
stability requirements of SJCC 18.50.330(B)(2).

15. The staff report notes that the bank is not a bluff and no erosion is anticipated.

1 **SJCC 18.50.300(A)(3):** *Beach access structures shall not be located below the*
2 *ordinary high water mark (OHWM) unless connected to an exempt or permitted*
3 *structure.*

4 16. The stairs are not located below the ordinary high water mark.

5 **DECISION**

6 As conditioned, the proposed project is consistent with all the criteria for a shoreline
7 substantial development permit. The proposal is subject to the following conditions:

- 8 1. Construction or substantial progress toward any remaining¹ construction of the
9 project for which a shoreline permit is granted must be undertaken within two years
10 after the permit approval.
11 2. All development authorized by a shoreline permit shall be completed within five
12 years of the date of permit approval or the permit shall become null and void.
13 3. Upon completion of construction, the applicant or agent will contact the
14 permitting department, CDPD, for an inspection.
15 4. All debris entering the water or shoreline area shall be removed immediately and
16 disposed of in a legal manner.

17 Dated this 24th day of January 2013.

18 

19 Phil Olbrechts
20 County of San Juan Hearing Examiner

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

22 Hearing examiner decisions become effective when mailed or such later date in
23 accordance with the laws and ordinance requirements governing the matter under
24 consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be
25 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

¹ It is recognized that since this is an "after-the-fact" permit application and that no further construction
may be necessary.

1 Depending on the subject matter, this decision may be appealable to the San Juan
2 County Superior Court or to the Washington State shorelines hearings board. State
3 law provides short deadlines and strict procedures for appeals and failure to timely
4 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.

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