

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Seattle Yacht Club
1807 E. Hamlin St.
Seattle, WA 98112

Agent Simon Little
BC&J Architecture
197 Parfitt Way SW, Suite 120
Seattle, WA 98110

File No.: PSJVAR-12-0002

Request: Shoreline Substantial Development Permit

Parcel No: 462251001

Location: Henry Island

Summary of Proposal: BBQ Shelter for Yacht Club

Shoreline Designation: Conservancy

Hearing Date: July 11, 2012

Application Policies and Regulations: San Juan County Shoreline Master Program

Decision: Approved subject to conditions.

S.J.C. COMMUNITY

JUL 30 2012

DEVELOPMENT & PLANNING

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

Phil Olbrechts, Hearing Examiner

RE: Seattle Yacht Club Shoreline Substantial Development Permit (PSJVAR-12-0002)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION.
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INTRODUCTION

The Applicants have applied¹ for approval of a Shoreline Substantial Development Permit to construct a 44x28 open air pavilion BBQ shelter 115 feet from the ordinary high water mark on Henry Island. The application is approved subject to conditions.

TESTIMONY

Lee McEnery, senior San Juan County planner, stated that the only impervious surface associated with the proposal is its roof. Building permits will be required. Currently, the area is open, and nothing will be cleared in order to build the shelter. The area is uphill from the dock (noted on the aerial photo, exhibit 3).

EXHIBITS

Exhibit 1: application materials

Exhibit 2: site plan

Exhibit 3: aerial photo

Exhibit 4: 6/6/12 letter from WA Department of Archaeology

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DEVELOPMENT & PLANNING

¹ The applicant has in fact applied for a shoreline variance to construct the shelter. Staff converted the application to a shoreline substantial development permit application after determining a variance was not necessary. As shown in the conclusions of law, the Examiner agrees with this assessment. It is unclear from the record if the application was advertised as a substantial development permit as opposed to a shoreline variance. The agenda for the hearing still describes it as a variance application. Since the Examiner's decision would not be binding upon any persons challenging the permit due to lack of proper notice, the Examiner will leave it up to the County to determine whether the notice for the hearing was adequate or whether another hearing should be held.

FINDINGS OF FACT

Procedural:

1. Applicant. The Applicant is the Seattle Yacht Club.
2. Hearing. The Hearing Examiner conducted a hearing on the subject application on July 11, 2012 at 10:00 am in the Islander's Bank Annex in Friday Harbor.

Substantive:

3. Site and Proposal Description. The Applicants have applied for approval of a Shoreline Substantial Development Permit to construct a 44x28 open air pavilion BBQ shelter 115 feet from the ordinary high water mark on a shoreline parcel on Henry Island. The permanent shelter is designed to replace a make-shift tent. The subject property is owned by the Seattle Yacht Club and used as a boating outstation for temporary and transient use by the Club's 3,200 members. In order to accommodate social gatherings that do not fit onto the boats of the members, the make-shift tent is erected annually 35 feet from the ordinary high water mark ("OHWM"). Yacht Club members consider the tent unsightly and unreliable in times of bad weather.

The subject property consists of a utility building, two large docks, lawn meadow, pickle ball court, caretaker residence and forested area at the western extents. The primary use of the subject property is recreational. The caretaker residence is only there to take care of the property so that it can be used for the recreational pursuits of the 3,200 members of the Seattle Yacht Club.

4. Characteristics of the Area. The shoreline property is surrounded by residential property on all three sides.

5. Adverse impacts. There are no adverse impacts associated with the proposal as conditioned. The pavilion will be located in an area that is already cleared and there will be no loss of shoreline habitat or disruption of shoreline habitat. The pavilion is relatively small and will be hidden amongst several large trees. It will not create any significant view impacts and will in fact be an improvement aesthetically over the tent it replaces, which is located in an open area only 35 feet from the ordinary high water mark. The aesthetics of the pavilion is further enhanced by the absence of any walls and the use of building materials that visually blend with the surroundings. The project also will not create any vehicular traffic as it is accessed by boat. The aerial photographs show that the surrounding lots are large and heavily wooded, indicating that more likely than not there will be no noise problems associated with the proposal.

The proposal could make the use of the facility more popular for large gatherings. It is unclear from the record if the project site is served by adequate water supply,

1 sewage, and solid waste disposal for the gatherings that the pavilion may attract. The
2 conditions of approval require the Applicant to demonstrate to staff that the proposal
is served by adequate public services.

3 The Washington State Department of Archaeology and Historic Preservation has also
4 commented in Ex. 4 that the project site has a high potential for archaeological
5 resources. The proposal is conditioned to require an archaeological survey to be
6 completed prior to the commencement of any ground disturbing activities.

7 **CONCLUSIONS OF LAW**

8 **Procedural:**

9 1. Authority of Hearing Examiner. Shoreline Substantial Development
10 permit applications are reviewed and processed by Development Services Department
staff, and the Hearing Examiner, after conducting an open-record public hearing,
renders a decision on the shoreline permit. SJCC18.80.110(E).

11 **Substantive:**

12 2. Shoreline Designation. The subject property is designated as Rural Farm
13 Forestry.

14 3. Shoreline Designation. The subject property is designated as
15 Conservancy. .

16 4. Permit Review Criteria. SJCC 18.50.320(B)(4) authorizes recreational
17 uses in the Conservancy shoreline environment if the use is of a nature and intensity
18 consistent with the objectives of the conservancy environment. 3.3.E of the County's
19 Comprehensive Plan provides that the purpose of the Conservancy environment is to
20 protect shoreline resources while accommodating public use. The negligible impacts
21 of the proposed use are consistent with this objective. SJCC 18.20.180 defines
22 "recreational development" as parks and facilities for camping, indoor and outdoor
sports, and similar developments. The primary purpose of the subject property is
recreational development and should be processed as an application for recreational
use. Since the proposal is presumably valued over the Shoreline Management Act
exemption levels it qualifies as a substantial development and a shoreline substantial
development permit is required.

23 SJCC 18.80.110(H) establishes the criteria for approval of shoreline substantial
24 development permits. The criteria include the policies of the Shoreline Management
25 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 Municipal
Code and Comprehensive Plan. As noted in SJCC 18.50.010(A), Element 3 of the
San Juan County Comprehensive Plan comprises the policies of the San Juan County

1 Shoreline Master Program. The applicable policies and regulations are quoted in
2 italics below and applied through conclusions of law.

3 **RCW 90.58.020 Use Preferences**

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

11 4. The project will not adversely affect shoreline resources while enhancing
12 access to the shoreline and waters of the state. The policy quoted above is met.

13 **RCW 90.58.020(1)²**

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

15 5. The project will not adversely affect shoreline resources while enhancing access
16 to the shoreline and waters of the state. The policy quoted above is met.

17 **RCW 90.58.020(2)**

18 *Preserve the natural character of the shoreline;*

19 6. As identified in Finding of Fact No. 5 the proposal will blend into the surrounding
20 environment and will be fairly hidden from the shoreline. It will not otherwise have
21 any impact on the natural character of the shoreline.

22 **RCW 90.58.020(3)**

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

24 7. The project will not adversely affect shoreline resources while enhancing access
25 to the shoreline and waters of the state. The policy quoted above is met.

RCW 90.58.020(4)

Protect the resources and ecology of the shoreline;

8. As determined in Finding of Fact No. 5, the proposal will not significantly
adversely affect the resources and ecology of the shoreline.

² 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.

1 **RCW 90.58.020(5)**

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

3 9. The proposal will serve to enhance access for the 3,200 members of the Seattle
4 Yacht Club. No additional public access could be legally required of the Applicant.

5 **RCW 90.58.020(6)**

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

7 10. The proposal will serve to increase recreational opportunities for the 3,200
8 members of the Seattle Yacht Club. The Applicant could not be legally required to
9 provide recreational opportunities to other members of the public.

10 **San Juan County Code Regulations**

11 **SJCC 18.50.320(A)(1):** *Recreational areas shall be designed to take optimum
12 advantage of and to enhance the natural character of the shoreline area.*

13 11. The proposal is designed to enhance the enjoyment of the natural character of the
14 shoreline of Seattle Yacht Club members. The proposal will otherwise not negatively
15 impact natural character. The criterion is met.

16 **SJCC 18.50.320(A)(2):** *Parking areas associated with shoreline recreational areas
17 must be (a) located inland away from the water and beaches, (b) designed to control
18 surface runoff, (c) prevent the pollution of water bodies, and (d) subject to the
19 provisions of SJCC 18.50.090, Parking, and SJCC 18.50.340, Transportation
20 facilities. Safe access from parking areas to recreational areas shall be provided by
21 means of walkways or other suitable facilities.*

22 12. No parking is proposed or required of the proposal.

23 **SJCC 18.50.320(A)(4):** *Intensive recreational development, including overnight
24 camping areas and recreational vehicle or trailer parks, shall be permitted only where
25 water supply, sewage, and solid waste disposal can be provided to meet public health
regulations without adversely affecting the natural resources and features of the area.*

13. The proposal does not qualify as intensive development. Further, the presence of
a caretaker residence suggests that water, sewer and solid waste disposal are at least
partially available. The proposal is conditioned for staff to ensure that urban services
are adequate..

SJCC 18.50.320(A)(5): *Drainage and surface runoff from recreational areas shall
be controlled so that pollutants will not be carried into water bodies.*

1 14. According to the testimony of staff the proposal will not create any impervious
2 surface except for the roof. Run-off from the roof should not produce any pollutants.

3 **SJCC 18.50.320(A)(6):** *Recreational facilities which normally require the use of*
4 *large quantities of chemical fertilizers and herbicides, such as golf courses and*
5 *playing fields, shall not be located on shoreline areas unless adequate provisions can*
6 *be made for the protection of water areas from drainage and surface runoff.*

7 15. Nothing about the proposal suggests the use of fertilizers or herbicides.

8 **San Juan County Comprehensive Plan Element 3, Section (5)(L) Recreational**
9 **Development :**

10 1. *Preference should be given to developments which provide for recreational*
11 *activities and improvements facilitating public access to the shoreline.*

12 2. *Avoid the concentration of use pressures at a few points in providing access to*
13 *recreational areas, wherever possible, by combining areas and linear access systems,*
14 *such as parking areas and pathway easements.*

15 3. *Consider the impact a proposed recreational site would have on the natural*
16 *resources and environmental quality of the area.*

17 4. *Protect the county's limited supply of shoreline areas suitable for recreational use*
18 *from inappropriate uses, such as parking areas. Permit roadside view areas in*
19 *suitable locations.*

20 5. *Control the use of motorized vehicles on shorelines.*

21 6. *Permit intensive recreational developments only where the public health can be*
22 *protected without undesirable alteration of the site.*

23 7. *Control drainage and surface runoff from recreational areas.*

24 8. *Require privately and publicly owned recreational facilities to provide adequate*
25 *water supply, fire protection, waste control, and to otherwise meet public health,*
26 *safety, and general welfare standards.*

27 9. *Encourage the development of privately owned commercial recreational uses to*
28 *provide well rounded recreational opportunities in order to relieve some of the*
29 *pressures on publicly owned recreation facilities.*

30 10. *Review any proposed recreational activity or development, public or private for*
31 *consistency with the County Comprehensive Plan, including this Shoreline Element.*

32 16. As noted previously, the proposal enhances public access and recreational
33 opportunities for Seattle Yacht Club members. It doesn't appear there's any way to
34 further reduce use pressures and the proposed location is optimal due to its distance
35 from the shoreline and its visual integration into the surrounding trees. Impacts on
36 natural resources and environmental quality have been considered in Finding of Fact
37 No. 5 and have been determined to be negligible. The proposal maximizes the use of
38 the County's limited supply of shoreline by retaining it for recreational and largely
39 undeveloped purposes. The proposal will not generate any dry land motor vehicle
40 activity. The use is not intensive and no drainage impacts are anticipated. The
41 proposal is conditioned for staff to consider any increased need for urban services.

1 The privately owned facility provides an alternative moorage location to the heavily
2 used public moorage areas of the County. All relevant shoreline policies and
3 regulations have been considered in this decision.

4 **DECISION**

5 The proposal as depicted in Ex. 1 satisfies all applicable policies and regulations and
6 the request for a shoreline substantial development permit is approved, subject to the
7 following conditions:

- 8 1. The Applicant shall demonstrate to the satisfaction of staff that the project site is
9 served by adequate water supply, sewage, and solid waste disposal for the type of
10 gatherings that the proposal may attract.
- 11 2. An archaeological survey should be completed, submitted to and approved by the
12 Washington State Department of Archaeology and Historic Preservation prior to
13 commencement of any ground disturbing activities on the site.
- 14 3. Immediately after construction is completed, the owner shall request that
15 Community Development and Planning perform an inspection and authorize entry on
16 the owner's property for that purpose.
- 17 4. Failure to comply with any terms or conditions of this permit may result in its
18 revocation.

19 Dated this 26th day of July, 2012.

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21 Phil Olbrechts
22 County of San Juan Hearing Examiner
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1 **Right of Appeal**

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

4 *(1) Any person aggrieved by the granting, denying, or rescinding of a*
5 *permit on shorelines of the state pursuant to RCW 90.58.140 may, except*
6 *as otherwise provided in chapter 43.21L RCW, seek review from the*
7 *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)...

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

12 **Change in Valuation**

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