

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

Applicants: Donald and Terrie Iverson  
2018 150<sup>th</sup> Place SE  
Mill Creek, WA 98103

File No.: PSJ000-11-0002

Request: Shoreline Conditional Use Permit

Parcel No: 353633002

Location: 415 Killdeer Lane  
San Juan Island

Summary of Proposal: 4' extension above 35 foot shoreline building height for  
cupola to house horizontal wind generator

Shoreline Designation: Rural Farm Forest

Hearing Date: March 3, 2011

Application Policies and Regulations: SJCC 18.80.110(J); SJCC 18.50.330(B).

Decision: Approved subject to conditions.

**S.J.C. COMMUNITY**

**MAR 22 2011**

**DEVELOPMENT & PLANNING**

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

3                                   Phil Olbrechts, Hearing Examiner

4                   RE: Donald and Terrie Iverson 5                   Shoreline Conditional Use 6                   Permit 7                   (PSJ000-11-0002)	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</b>
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8                                   **INTRODUCTION**

9                   The Applicant has applied for a shoreline conditional use permit to authorize a four  
10                  foot increase over the applicable 35 foot maximum shoreline height for a 14' 6" wide  
11                  cupola designed to house a horizontal wind generator. The permit is approved.

12                                  **TESTIMONY**

13                  Julie Thompson, San Juan County planner, summarized the staff report.

14                  Edward Carr, project architect, testified in favor of the project. He noted that the wind  
15                  generator is of a unique and cutting edge design because the base of the turbine blades  
16                  is horizontal as opposed to vertical. He explained that the additional height is  
17                  necessary to maximize airflow to the blades and also to accommodate flood elevations  
18                  for the home. Mr. Carr testified that the generator would not produce any noticeable  
19                  noise and would not serve as a hazard to birds.

18                                  **EXHIBITS**

19                  The exhibits identified in "Exhibits for Iverson Building Increase", attached to the  
20                  February 18, 2011 staff report, are all admitted into the record.

21                                  **FINDINGS OF FACT**

22                  **Procedural:**

- 23                  1.            Applicant. The Applicants are Donald and Terrie Iverson.
- 24                  2.            Hearing. The Hearing Examiner conducted a hearing on the subject  
25                  application on March 3, 2011 at 10:00 am in the San Juan County Council meeting  
                        chambers.

**Substantive:**

Shoreline Conditional Use Permit

1 3. Site and Proposal Description. The Applicant proposes to construct a 14'  
2 6" wide cupola designed to accommodate a horizontal wind generator on top of a  
3 single-family roof located at the shoreline end of a narrow 7.15 acre waterfront lot. A  
4 conditional use permit is required for the cupola because it extends four feet above  
5 the applicable 35 foot shoreline height limit. This increase in height would better  
6 align the cupola opening with the plane of the roof for the sail and would increase the  
7 height of the cupola opening to match the height of the sail. The tower is the only  
8 part of the house that would exceed the 35' height limit, and the area of the tower that  
9 could be seen from any direction would be 58 square feet.

7 4. Characteristics of the Area. The neighborhood is rural and residential in  
8 nature, with lots of forested land in the upland area. The area within shoreline  
9 jurisdiction is mostly low brush or grass land. The average lot size of the surrounding  
10 1720 acres is 17.75 acres. Site distance to the six neighboring homes ranges from a  
11 431 foot minimum to 2233 foot maximum.

10 5. Adverse Impacts of Proposed Use. There are no adverse impacts  
11 associated with the proposal. The generator will be hidden in a cupola, which is an  
12 attractive architectural feature designed to blend in with the rest of the single-family  
13 home. Views will not be obstructed, as the cupola is not within the view corridor of  
14 the shoreline for any adjoining properties and the large lots of the area and the long  
15 distances to the existing adjoining homes assure significant separation of the cupola  
16 to any adjoining uses. The unique, horizontal design of the turbine blades removes  
17 any issue with noise according to the Applicant's architect. There are also no  
18 discernable adverse impact to shoreline environmental resources. The Applicant's  
19 architect testified that birds would not get caught in the turbine blades and there is  
20 nothing in the record to suggest that the minor height encroachment could have any  
21 other adverse impact on shoreline resources.

## 18 CONCLUSIONS OF LAW

### 19 Procedural:

20 1. Authority of Hearing Examiner. The Hearing Examiner issues a final  
21 decision on shoreline conditional use permits, subject to approval by the Washington  
22 State Department of Ecology. Section 3.70 of the San Juan County Charter; RCW  
23 90.58.140(10).

### 23 Substantive:

24 2. Zoning Designations. The subject property is designated as Rural Farm  
25 Forest and the shoreline designation is Rural Farm Forest.

3. Permit Review Criteria. SJCC 18.50.330(B) provides that the maximum  
height for residential roofs with a pitch exceeding 6:12 is 35 feet and that this height  
may be exceeded with a conditional use permit. The roof for the proposal will have a

1 pitch exceeding 6:12 at 3:12 and a conditional use permit is required because the  
2 copula will extend 29 feet above grade. The criteria for a shoreline conditional use  
3 permit are governed by SJCC 18.80.110(J)(4). Those criteria are quoted below and  
4 applied through corresponding conclusions of law.

5 **SJCC 18.80.110(J)(4):** *Uses which are classified or set forth in the Shoreline Master  
6 Program as conditional uses may be authorized by the County provided the applicant  
7 can demonstrate all of the following:*

8 *a. The proposed use is consistent with the policies of RCW 90.58.020 and the policies  
9 of the Shoreline Master Program;*

10 4. As discussed more specifically below, the proposed use is consistent with the  
11 policies of RCW 90.58.020 and the policies of the Shoreline Master Program.

12 **SJCC 18.80.110(J)(4)(b):** *The proposed use will not interfere with the normal public  
13 use of public shorelines;*

14 5. The only public use with which the proposal could interfere is public visual  
15 access. The minor increase in height encroachment of the proposal should not create  
16 any significant visual impacts.

17 **SJCC 18.80.110(J)(4)(c):** *The proposed use of the site and design of the project is  
18 compatible with other permitted uses within the area;*

19 6. As discussed in Finding of Fact No. 5, the minor height encroachment of the  
20 proposal will not create any significant aesthetic impacts within the context of the  
21 distances to other homes and the large lots of each of those homes, especially given  
22 the integration of the project in the design of the home.

23 **SJCC 18.80.110(J)(4)(d):** *The proposed use will cause no unreasonably adverse  
24 effects to the shoreline environment in which it is to be located;*

25 7. As discussed in Finding of Fact No. 5, there are no significant environmental  
impacts associated with the proposal. The criterion is satisfied.

**SJCC 18.80.110(J)(4)(e):** *The cumulative impacts of additional requests for like  
actions in the area, or for other locations where similar circumstances exist, shall not  
produce substantial adverse effects to the shoreline environment, e.g., the total of the  
conditional uses shall remain consistent with the policies of RCW 90.58.020 and the  
Shoreline Master Program; and*

8. The proposal is modest and has no discernable adverse impacts. No cumulative  
adverse impacts can be reasonably anticipated.

1 **SJCC 18.80.110(J)(4)(f):** *The public interest will suffer no substantial detrimental*  
2 *effect.*

3 9. The project has no associated adverse impacts and provides for an  
4 environmentally compatible form of alternative energy. The public interest is  
5 benefitted by the project.

6 **SJCC 18.50.330(B) Residential Development – Regulations – Location and**  
7 **Design**

8 *14. The maximum permitted height for residential structures is 28 feet. Residential*  
9 *structures are permitted to exceed this height only when the roof has a minimum 6-in-*  
10 *12 pitch which does not extend beyond a maximum height of 35 feet above the*  
11 *existing grade at the base of the structure. Any residential structure which exceeds a*  
12 *height of 35 feet above existing grade, as measured along a plumb line at any point,*  
13 *shall be permitted only as a conditional use. The applicant must demonstrate that the*  
14 *structure will not result in significant adverse visual impacts, nor interfere with*  
15 *normal, public, visual access to the water. The applicant must also demonstrate that*  
16 *there are compensating factors which make a taller structure desirable from the*  
17 *standpoint of the public interest. Artificially created grades to gain height advantages*  
18 *are prohibited.*

19 10. As previously discussed, the project will not create any significant adverse view  
20 impacts to the general public or adjoining property owners. The public interest is  
21 served and compensated by the proposal due to its accommodation for a “clean”  
22 energy source and its accommodation for flood elevations.

23 **RCW 90.58.020 Use Preferences**

24 *This policy (Shoreline Management Act policy) is designed to insure the development*  
25 *of these shorelines (of the state) in a manner which, while allowing for limited*  
26 *reduction of rights of the public in the navigable waters, will promote and enhance*  
27 *the public interest. This policy contemplates protecting against adverse effects to the*  
28 *public health, the land and its vegetation and wildlife, and the waters of the state and*  
29 *their aquatic life, while protecting generally public rights of navigation and corollary*  
30 *rights incidental thereto...Alterations of the natural condition of the shorelines of the*  
31 *state, in those limited instances when authorized, shall be given priority for single*  
32 *family residences and their appurtenant structures, ports, shoreline recreational uses*  
33 *including but not limited to parks, marinas, piers, and other improvements facilitating*  
34 *public access to shorelines of the state, industrial and commercial developments*  
35 *which are particularly dependent on their location on or use of the shorelines of the*  
36 *state and other development that will provide an opportunity for substantial numbers*  
37 *of the people to enjoy the shorelines of the state....*

1 11. The proposal has no significant adverse impacts while facilitating the use of clean  
2 alternative energy. The proposal is also appurtenant to single-family development, a  
3 priority use of the Shoreline Management Act. The proposal is consistent with the  
4 general purpose of the Shoreline Management Act.

5 **RCW 90.58.020(1)**

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

7 12. The proposal facilitates clean alternative energy use while not creating any  
8 adverse impacts of any significance. The proposal is consistent with the policy.

9 **RCW 90.58.020(2)**

10 *Preserve the natural character of the shoreline;*

11 13. As previously noted the proposed float will only be a minor encroachment into  
12 the height limits of the shoreline. The proposal will not create any significant change  
13 to the natural character of the shoreline.

14 **RCW 90.58.020(3)**

15 Result in long term over short term benefit;

16 14. As previously noted, the project will facilitate the production of clean alternative  
17 energy with no associated adverse impacts. The proposal will provide long term  
18 benefit over short term benefit.

19 **RCW 90.58.020(4)**

20 *Protect the resources and ecology of the shoreline;*

21 15. The proposal will have no impact on the resources and ecology of the shoreline.

22 **DECISION**

23 The application is consistent with all applicable policies and criteria and is approved  
24 as conditioned below:

- 25 1. Immediately after construction is completed, the owner shall request that San Juan  
County Community Development and Planning perform an inspection of the  
copula.

Dated this 17th day of March, 2011.

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Phil Olbrechts  
County of San Juan 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.