

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant: 6888 LLC c/o Keith Vernon
1000 Dexter Ave. North, #502
Seattle, WA 98109

File No.: PSJ000-11-0003

Request: Shoreline Substantial Development Permit

Parcel No: 261733004

Location: 6888 Deer Harbor Road
Orcas Island

Summary of Proposal: Dock Reconfiguration

Shoreline Designation: Rural Farm Forest

Hearing Date: April 7, 2011

Application Policies and Regulations: San Juan County Shoreline Master Program

Decision: Approved subject to conditions.

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

3 Phil Olbrechts, Hearing Examiner

4 RE: 6888 LLC

5 Shoreline Substantial
6 Development Permit
(PSJ000-11-0003)

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND FINAL DECISION.**

7 **INTRODUCTION**

8 The Applicant seeks approval of a Shoreline Substantial Development Permit to
9 change the configuration and reduce the size of a single-user dock. The proposal is
10 approved subject to conditions.

11 **TESTIMONY**

12 In response to questions from the Examiner, Jeff Otis, Applicant's representative,
13 clarified that the total area of the facility would be less than the area of the existing
14 facility and separation from eelgrass would be increased.

15 Mr. Otis was present in addition to the attorney for the project. There is some
16 Laminaria under the existing pier, but part of this portion of the pier will be replaced
17 by the ramp, which is three feet wide and grated as opposed to the six foot wide
18 existing pier.

19 No one other than the Applicant and staff were present for the hearing.

20 **EXHIBITS**

21 The following documents were admitted at hearing:

- 22 1. Staff report dated March 17, 2011
23 2. Application materials attached to Ex. 1.
24 3. Hydraulic permit ("HPA") approval.
25 4. Army Corps permit approval.

FINDINGS OF FACT

Procedural:

1. Applicant. The Applicant is 6888 LLC c/o Keith Vernon.
2. Hearing. The Hearing Examiner conducted a hearing on the subject
application on April 7, 2011.

{BFP781772.DOC;1\13071.900000\ }

SSDP – San Juan County

1 **Substantive:**

2 3. Site and Proposal Description. The proposal is to reconfigure and reduce
3 the size of an existing dock. An arduous search by staff found that an exemption
4 from a shoreline permit for Warren Kraft was approved in 1974 for dock
5 construction, based on a fair market value less than \$2,500. The dock was built and
6 has remained in the same configuration since then but the current owners wish to
better protect their boats from wakes by placing the float at an angle and mooring on
the protected side.

7 The existing pier would be shortened by 24'9". The ramp would be re-used at the
8 new end of the pier, descending to a new float in line with the ramp. The new float
9 would be 6' x 25'. At its end, another new perpendicular float (4' x 30') would be
10 placed so that a boat can moor on its protected side. Several pilings would be
removed to facilitate the reconfiguration. The new floats would be secured with
anchors rather than pilings. The proposed dock would be about 19' shorter in
seaward length than the existing dock.

11 The existing dock met the criteria for exemption in 1974 and has been in steady use
12 since then. Exemptions are not eligible for revision, as are shoreline permits, so there
13 is no opportunity for revision of a permit.

14 The proposal is to change its configuration (which is not exempt as repair or
15 maintenance) so it is subject to approval of its first shoreline substantial development
16 permit for approval of a boating facility, as a new facility. The existing facility may
be repaired and maintained without a shoreline permit but the subject proposal is
subject to the regulations which apply to Boating Facilities.

17 The components of the proposed dock are:

18 fixed pier- 624 sf

19 ramp- 108 sf

20 floats- 270 sf (6x25, 4x30)

total sf= 1002

length seaward of OHWM – 114'

21 4. Characteristics of the Area. The shoreline of the site is low to medium
22 bank. The properties to the west and north are in different legal ownership, but are
23 held by family members. The neighborhood is one of mixed size lots along and near
24 the County road, which terminates in a dead end nearby to the south. The property
lies along Pole Pass, opposite Crane Island.

25 5. Adverse Impacts of Proposed Use. The proposed modifications to the existing
pier/ramp/float facility will reduce the area of the overwater structure, reduce the
structure area over Laminaria (by replacing coverage of the existing six foot wide pier
with a three foot wide ramp), replace the nongrated float with fully grated floats and

1 increase separation from eelgrass beds. The new configuration will also reduce the
2 extent to which the pier/ramp/float extends waterward by nineteen feet, thus
3 improving navigation and access of public waters. Given these circumstances, the
4 project will reduce environmental impacts over the current structure. Further, as
5 designed and mitigated the record shows no discernable adverse environmental
6 impacts.

7 CONCLUSIONS OF LAW

8 **Procedural:**

9 1. Authority of Hearing Examiner. The Hearing Examiner, after conducting an
10 open-record public hearing, renders a final decision on shoreline permit applications.
11 SJCC18.80.110(E).

12 **Substantive:**

13 2. Shoreline Designation. The subject property is designated as Rural Farm Forest.
14 The shoreline also qualifies as a shoreline of statewide significance under the
15 Shoreline Management Act, Chapter 90.58 RCW.

16 3. Permit Review Criteria. The costs of the development presumably exceed those
17 of the exemption levels set in WAC 173-27-040(2)(a) so the project must acquire a
18 shoreline substantial development permit. SJCC 18.80.110(H) establishes the criteria
19 for approval of shoreline substantial development permits. The criteria include the
20 policies of the Shoreline Management Act (Chapter 90.58 RCW), the policies and use
21 regulations of the San Juan County Shoreline Master Program, and the requirements
22 of the San Juan Municipal Code and Comprehensive Plan. The applicable policies
23 and regulations are quoted in italics below and applied through conclusions of law.

24 **RCW 90.58.020 Use Preferences**

25 *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, the shorter facility improves public access to
the shoreline while also reducing adverse impacts created by the existing facility.
Given these factors, the criterion above is satisfied.

RCW 90.58.020(1)

Recognize and protect the statewide interest over local interest;

1 5. The project improves on environmental impacts and public access, which
2 promotes the statewide interest.

3 **RCW 90.58.020(2)**

4 *Preserve the natural character of the shoreline;*

5 6. The project will not change the natural character of the shoreline.

6 **RCW 90.58.020(3)**

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

8 7. As previously noted, the proposal reduces adverse impacts of the existing dock,
9 which results in long term benefit.

10 **RCW 90.58.020(4)**

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

12 8. The proposal enhances protection of the resources and ecology of the shoreline by
13 increasing separation from eelgrass and reducing coverage over Laminaria.

14 **RCW 90.58.020(5)**

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

16 9. By shortening the length of the existing facility the proposal improves upon
17 existing access to the shoreline.

18 **RCW 90.58.020(6)**

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

20 10. By shortening the length of the existing facility by nineteen feet the proposal
21 improves upon existing access to the shoreline, which in turn increases public
22 recreational opportunities.

23 **San Juan County Code Regulations**

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

11. As discussed in Finding of Fact No. 5 the proposal includes several features that
improve on impacts from the existing facility. The project has also acquire hydraulic
and Army Corps approval, evidencing that it is designed to fully mitigate all
significant adverse impacts. 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.*

1 12. There is nothing in the record to suggest a configuration that is more compatible
2 with the natural site configuration.

3 **SJCC 18.50.190(B)(3):** *All boating facilities shall comply with the design criteria*
4 *established by the State Department of Fish and Wildlife relative to disruption of*
5 *currents, restrictions of tidal prisms, flushing characteristics, and fish passage to the*
6 *extent that those criteria are consistent with protection of the shore process corridor*
7 *and its operating systems.*

8 13. An HPA from the Department of Fish and Wildlife has been issued for
9 this project. See Ex. 3. Approval of an HPA can only be acquired upon a
10 demonstration of consistency with the design criteria of the State Department of Fish
11 and Wildlife.

12 **SJCC 18.50.190(C)(2):** *Mooring buoys shall be preferred over docks and piers on all*
13 *marine shorelines except in the cases of port, commercial, or industrial development*
14 *in the urban environment.*

15 14. The criterion only establishes a preference. The proposal is better than the
16 status quo since its design is more compatible with environmental resources.

17 **SJCC 18.50.190(C)(3):** *Moorage floats, unattached to a pier or float, are preferred*
18 *over docks and piers.*

19 15. See Conclusion of Law No. 14.

20 **SJCC 18.50.190(C)(4):** *Every application for a substantial development permit for a*
21 *dock or pier construction shall be evaluated on the basis of multiple considerations,*
22 *including but not limited to the potential impacts on littoral drift, sand movement,*
23 *water circulation and quality, fish and wildlife, navigation, scenic views, and public*
24 *access to the shoreline.*

25 16. The site is in an area of no appreciable net shore drift; Pole Pass has large
volume water circulation and therefore high water quality; the proposed dock will be
further from eelgrass than the existing dock. Laminaria is listed on the dive survey in
two areas which may underlie the existing dock as 1% cover at transect 30,60 and
10% cover at transect 45,40. One unit of the transect grid is 20' long by 15' wide,
totaling 300 square feet. The 30,60 site will be near the point where the pier will be
truncated and shading will be via the three foot wide ramp as opposed to existing six
foot wide pier. The 45,40 site is further landward where there are no changes to the
dock. Navigation will remain unaffected as the dock is getting smaller. Scenic views
will not substantially change and neither will public access.

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

17. No structures have been proposed.

SJCC 18.50.190(D)(1)-(11): General Design and Construction Standards

18. The proposal has been designed to meet all of the design standards required by SJCC 18.50.190(D)(1)-(11).

SJCC 18.50.190(G)(2)(a): *The maximum dimensions for a dock (including the pier, ramp, and float) associated with a single-family residence shall not exceed 700 total square feet in area. In addition, the length of the dock (including the pier, ramp, and float) may not extend more than 115 feet in length seaward of the ordinary high water mark. Docks exceeding these dimensions may only be authorized by variance.*

19. The proposed dock will be about 1,000 square feet in area, which exceeds the area authorized by the design standard above for single-user docks. However, the area of the proposed facility is less than that of the existing facility. WAC 173-27-080 governs nonconforming use right for shoreline master programs that don't contain any of their own nonconforming use provisions. The San Juan County Shoreline Master Program doesn't include any nonconforming use provisions, therefore WAC 173-27-080 applies. WAC 173-27-080(2) provides that nonconforming uses may be expanded or enlarged provided they do not increase the degree of nonconformity. Staff determined that the project qualifies as a valid nonconforming use because it met the criteria for a shoreline exemption in 1974. As previously noted, the proposal is to reduce the size of the project, which serves to reduce the degree of nonconformity. All new additions to the facility are fully compliant with shoreline requirements, as discussed in other conclusion of law, so that there is no increase in the degree of nonconformity. Although WAC 173-27-080(2) only expressly authorizes expansions and enlargements of nonconforming uses, it would be absurd to not apply it to reductions of nonconforming uses. The project is allowed to exceed the area requirements of SJCC 18.50.190(G)(2)(a) under WAC 173-27-080(2).

SJCC 18.50.190(G)(2)(d): *Maximum length and width of a ramp, pier, or dock shall be the minimum necessary to accomplish moorage for the intended boating use.*

20. The proposed length is nineteen feet less than the length of the existing facility and is authorized as the reduction in size of a nonconforming use for the reasons stated in Conclusion of Law No. 19. The record otherwise does not contain any information on whether the length is the minimum necessary to meet the needs of the Applicant.

SJCC 18.50.190(G)(3): *Docks shall be set back a minimum of 10 feet from side property lines. However, a joint use community dock may be located adjacent to or upon a side property line when mutually agreed to by contract or by covenant with the owners of the adjacent property. A copy of such covenant or contract must be*

1 recorded with the County auditor and filed with the approved permit to run with the
2 title to both properties involved.

3 21. The staff report states that the dock is located more than ten feet from the
4 side property lines and there is no evidence to the contrary.

5 **SJCC 18.50.190(G)(4):** *Development of a dock on a lot intended for single-family
6 residential development shall require a shoreline substantial permit or a statement of
7 exemption issued by the County.*

8 22. The application is for a shoreline substantial development permit.

9 **SJCC 18.50.190(G)(5):** *Applications for nonexempt docks and piers associated with
10 single-family residences shall not be approved until:*

- 11 a. *It can be shown by the applicant that existing facilities are not adequate
12 or feasible for use;*
13 b. *Alternative moorage is not adequate or feasible; and*
14 c. *The applicant shall have the burden of providing the information
15 requested for in subsections (a) and (b) of this section, and shall provide
16 this information in a manner prescribed by the administrator.*

17 23. For the reasons stated in Conclusion of Law No. 19, the project does not
18 have to comply with this criterion.

19 **SJCC 18.80.110(H) Criteria for Approval of Substantial Development Permits**

20 *A shoreline substantial development permit shall be granted by the County only when
21 the applicant meets his burden of proving that the proposal is:*

- 22 1. *Consistent with the policies of the Shoreline Management Act and its
23 implementing regulations, Chapter 90.58 RCW and Chapter 173-27 WAC, as
24 amended;*
25 2. *Consistent with the policies and regulations of the Shoreline Master Program
in Chapter 18.50 SJCC;*
3. *Consistent with this chapter;*
4. *Consistent with the applicable sections of this code (e.g., Chapter 18.60 SJCC);*

1 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.

2 This land use decision is final and in accordance with Section 3.70 of the San Juan
3 County Charter, such decisions are not subject to administrative appeal to the San
4 Juan County Council. See also, SJCC 2.22.100

5 Depending on the subject matter, this decision may be appealable to the San Juan
6 County Superior Court or to the Washington State shorelines hearings board. State
7 law provides short deadlines and strict procedures for appeals and failure to timely
8 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.

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