

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicants: San Juan County Public Works
PO Box 729
Friday Harbor, WA 98250

File No.: PSJ000-10-0001

Request: Shoreline Substantial Development Permit

Parcel No: 462353124

Location: San Juan Island

Summary of Proposal: An application to construct public docks at Roche Harbor
for outer islander access

Land Use Designation: Urban Shoreline

Public Hearing: Held May 6, 2010

Application Policies and Regulations: SJCC18.50.190 SMP Boating Facilities
SJCC18.80.110 Shoreline Permit Procedures
RCW90.58 Shoreline Management Act

Decision: The application is approved subject to conditions.

S.J.C. COMMUNITY

MAY 21 2010

DEVELOPMENT & PLANNING

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

3 Phil Olbrechts, Hearing Examiner

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RE: San Juan County Public Works	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION.
Shoreline Substantial Development Permit (PSJ000-10-0001)	

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7 **INTRODUCTION**

8 The applicant has applied for approval of a Shoreline Substantial Development
9 Permit to construct a proposed 2-user dock. The Examiner approves the permit
10 subject to conditions.

11 **TESTIMONY**

12 No testimony was provided.

13 **EXHIBITS**

- 14 Exhibit #1: Staff Report dated April 19, 2010 by Lee McEnery
15 Exhibit #2: Shoreline Permit Application
16 Exhibit #3: SEPA DNS dated February 24, 2010
17 Exhibit #4: Eelgrass Survey dated August 27, 2009
18 Exhibit #5: Joint Aquatic Resources Permit Application
19 Exhibit #6: Email from Colin Huntmer dated March 2, 2010
20 Exhibit #7: Letter from Dept. of Archaeology dated March 2, 2010
21 Exhibit #8: Roche Harbor permit dated May 19, 2003

22 **FINDINGS OF FACT**

23 **Procedural:**

- 24 1. Applicant. The applicant is San Juan County Public Works.
25 2. Hearing. The Hearing Examiner conducted a hearing on the subject
application on April 1, 2010.

Substantive:

3. Site and Proposal Description. The applicant requests a shoreline
substantial development permit for construction consisting of a pier, ramp, and float

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1 to provide temporary moorage for residents of the outer islands. The Comprehensive
2 Plan identifies Roche Harbor as a location for such a County dock. The dock will
3 consist of a 45' by 10' pier, 45' by 4' ramp, and a 60' by 8' float. These will be
4 located east of and next to a boat launch ramp that is privately owned by Roche
5 Harbor. The dock will extend 150' total length and cover 1,100 square feet. The
6 ramp and floats have been designed to allow light penetration.

7 The proposed dock site is in an area that has throughout history experienced
8 disturbance and commerce. It is now a busy marina, was formerly a log dump and
9 log rafting area, and was part of the historic lime kiln and shipping business since the
10 late 1800's.

11 In addition, the project will be constructed from the water, with the piles being
12 driven by barge. There is no upland grading activities, and no grading permit is being
13 obtained. There will be no access roads or other facilities built with the project.

14 4. Characteristics of the Area. The proposal is located at the Roche Harbor
15 Resort, on San Juan Island. The land use designation is Urban in the shoreline and
16 Aquatic beyond the ordinary high water mark. The bank east of the proposed dock
17 was used in years past as a log dump and rafting area, prior to the expansion of the
18 marina in the late 1990's. No eelgrass was found in the vicinity, and the applicant has
19 been in contact with the Department of Archaeology regarding the site.

20 5. Adverse Impacts of Proposed Use. The Examiner finds that the proposed
21 project will have no significant adverse impacts. The project will be located adjacent
22 to a heavily used marina. The added boat traffic will be insignificant compared to
23 what is already there. Also, there is not eelgrass at the site and the structure design
24 incorporates grating in order to mitigate any shading impacts. As designed, there is
25 no evidence in the record that the project will have any adverse environmental or
other impacts. Additionally, the project was issued a Determination of Non-
significance (DNS) for SEPA, on February 24, 2010.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. The Hearing Examiner issues a final decision on
shoreline substantial development permits. SJCC18.80.110(E).

Substantive:

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

3. Comprehensive Plan and Zoning Designations. The subject property is
designated as Urban shoreline and Aquatic beyond the ordinary high water mark.

4. Compliance with Notice Requirements. City staff advertised the application in
accordance with RCW 90.58.140, WAC 173-27-110 and the San Juan County County

1 Code Sections 18.80 and 18.50. Notice of the Public Hearing and SEPA Appeal for
2 the project was properly published, posted on-site, and noticed to parties of record
and adjacent property owners, on February 24, 2010. No letters or comments were
received during the comment period.

3 5. Permit Review Criteria. The San Juan County Code (“SJCC”) governs the
4 policies and criteria for shoreline permit review including the shoreline substantial
5 development permit that is the subject of this Decision. SJCC 18.80.110(H)
establishes the criteria for approval.

6 The applicable shoreline policies, use regulations, and criteria are quoted (in italics)
7 and addressed below.

8 **RCW 90.58.020 Use Preferences**

9 *This policy (Shoreline Management Act policy) is designed to insure the development*
10 *of these shorelines (of the state) in a manner which, while allowing for limited*
11 *reduction of rights of the public in the navigable waters, will promote and enhance*
12 *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.

13 6. The policy is satisfied. The project will not interfere with public access to the
14 shoreline or interfere with navigation of water areas, and will actually increase overall
15 access and enjoyment. The proposal has been thoroughly mitigated to ensure that it
16 will not have any adverse impacts upon the shoreline environment. The proposal is to
provide public access to the area for outer islanders.

17 **RCW 90.58.020(1)**

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

19 7. The policy is satisfied. The project has been thoroughly mitigated to address all
20 adverse impacts and the statewide interest in the preservation of the shoreline and
surrounding habitats is protected, in addition to the local interest of providing outer
islanders access to the area.

21 **RCW 90.58.020(2)**

22 *Preserve the natural character of the shoreline;*

23 8. The policy is satisfied. The project includes plans to construct a dock of
24 approximately 1,100 square feet in size, using County and State approved building
25 techniques. The site has been thoroughly studied, and building materials have been
chosen to preserve both the character of the shoreline and habitats in the water.
Through these activities, the natural character of the shoreline will be preserved.

RCW 90.58.020(3)

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

2 9. The policy is satisfied. The purpose of the application is to provide access to the
3 marina for outer islanders by way of boat, which is a long term goal of the County,
4 and has even been addressed in the Comprehensive Plan. As such, the long-term
5 public benefits of the project will outweigh any short-term benefits.

6 **RCW 90.58.020(4)**

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

8 10. The policy is satisfied. All adverse environmental impacts have been
9 thoroughly addressed and mitigated and, therefore, the resources and ecology of the
10 shoreline are adequately protected. The SEPA responsible official issued a
11 Determination of Non-Significance on February 24, 2010.

12 **RCW 90.58.020(5)**

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

14 11. The project will provide much needed public access to the shoreline, specifically
15 for those that reside on the outer islands within San Juan County.

16 **RCW 90.58.020(6)**

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

18 12. The addition of the dock will provide outer island residents access to the public
19 shoreline, as well as access to the rest of the Harbor and surrounding area. Access
20 will be by boat, and as such recreational opportunities for the public will be increased.

21 **San Juan County Code Regulations**

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

24 13. There have been no adverse impacts raised by this project. The decking material
25 will include grating that allows light to penetrate, to best preserve the underwater
26 habitat.

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

29 14. The proposed design of the dock takes into full consideration the existing
30 configuration of the existing marina. Additionally, the area was specifically
31 designated for the construction of this dock system in the Comprehensive Plan.

32 **SJCC 18.50.190(B)(3):** *All boating facilities shall comply with the design criteria
33 established by the State Department of Fish and Wildlife relative to disruption of
34 currents, restrictions of tidal prisms, flushing characteristics, and fish passage to the*

1 *extent that those criteria are consistent with protection of the shore process corridor*
2 *and its operating systems.*

3 15. This shall be a condition of approval.

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

7 16. Although mooring buoys are preferred, the proposed system is the most
8 appropriate for use on this site. The dock will provide shoreline access to numerous
9 residents of other islands in the vicinity.

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

12 17. As stated above, although moorage floats are preferred, the choice of a pier is a
13 more desirable action for this project.

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

19 18. There does not appear to be an impact to littoral drift as this location is not in a
20 drift sector. Also, the water quality is not expected to change. No impacts on fish
21 and wildlife are anticipated since grating is provided for the passage of light and there
22 is no eelgrass under the proposed structure. The structure will also not impact
23 navigation, as it will be located within an established marina designed for such
24 boating traffic.

25 **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.

19. No structures have been proposed.

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

20. The proposal has been designed to meet all of the design standards stated.

SJCC 18.50.190(G)(2)(c): *the maximum dimensions for a joint-use community dock*
(including the pier, ramp, and float) associated with more than two single-family
residences shall not exceed 2,000 square feet in total area. In addition, the length of
the dock (including the pier, ramp, and float) may not extend more than 300 feet in
length seaward of the ordinary high water mark. If a variance is granted to allow a

1 dock exceeding these dimensions, its construction may only be authorized subject to
2 the regulations for a marina.

3 21. The proposed pier will be approximately 1,100 square feet, and its total length is
4 only 150 feet.

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

7 22. The dock has been designed for use of the outer island residents to access the
8 area. Such use has been designated within the Comprehensive Plan for this specific
9 area. As such, the pier will be the minimum necessary to accomplish the intended
10 use.

11 **SJCC 18.50.190(G)(3):** *Docks shall be set back a minimum of 10 feet from side
12 property lines. However, a joint use community dock may be located adjacent to or
13 upon a side property line when mutually agreed to by contract or by covenant with
14 the owners of the adjacent property. A copy of such covenant or contract must be
15 recorded with the County auditor and filed with the approved permit to run with the
16 title to both properties involved.*

17 23. This is a community dock, and side property lines are not at issue.

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

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

- 21 *1. Consistent with the policies of the Shoreline Management Act and its
22 implementing regulations, Chapter 90.58 RCW and Chapter 173-27 WAC, as
23 amended;*
- 24 *2. Consistent with the policies and regulations of the Shoreline Master Program
25 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);*
- 5. Consistent with the goals and policies of the Comprehensive Plan; and*
- 6. All conditions specified by the hearing examiner to make the proposal
consistent with the master program and to mitigate or avoid adverse impacts are
attached to the permit.*

26 24. As discussed in depth above, in the evaluation of individual code sections and
27 regulations, all of the above elements have been met, and the project is consistent
28 with the applicable policies, goals, and regulations. The dock was originally
29 envisioned and planned for in the Comprehensive Plan, and the location within Roche
30 Harbor was chosen. The area is already a busy marina as it has been dating back to
31 the 1800's; leaving little concern over impacts on navigability, water quality, and

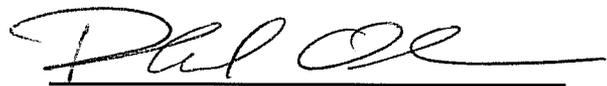
1 shoreline interference. The permit is consistent with all of the above sections and
2 provisions.

3 **DECISION**

4 The proposed project is consistent with all the criteria for a shoreline substantial
5 development permit. The proposal is approved subject to the following conditions:

- 6 1. The permit allows the construction of a public dock for temporary moorage of
7 outer island residents and for public recreational use, in accordance with the
8 application materials.
- 9 2. All debris entering the water or shoreline area shall be removed immediately and
10 disposed of in a legal manner.
- 11 3. If archaeological resources are encountered during construction, all work shall
12 stop immediately and the Department of Archaeology and Historic Preservation
13 shall be contacted immediately.
- 14 4. Development authorized by this permit shall commence within two years of the
15 date of approval and shall be substantially complete within five years or the
16 permit shall become invalid.
- 17 5. All boating facilities shall comply with the design criteria established by the State
18 Department of Fish and Wildlife relative to disruption of currents, restrictions of
19 tidal prisms, flushing characteristics, and fish passage.
- 20 6. Failure to comply with any terms or conditions of this permit may result in its
21 revocation.

22 Dated this 19th day of May 2010.

23 
24 Phil Olbrechts
25 County of San Juan Hearing Examiner

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

27 Hearing examiner decisions become effective when mailed or such later date in
28 accordance with the laws and ordinance requirements governing the matter under
29 consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be
30 subject to review and approval by the Washington Department of Ecology pursuant to
31 RCW 90.58.140, WAC 173-27-130 and SJCC 18.80.110.

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

4 Depending on the subject matter, this decision may be appealable to the San Juan
5 County Superior Court or to the Washington State shorelines hearings board. State
6 law provides short deadlines and strict procedures for appeals and failure to timely
7 comply with filing and service requirement may result in dismissal of the appeal. See
8 RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to
9 promptly review appeal deadlines and procedural requirements and consult with a
10 private attorney.

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