

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND FINAL DECISION

Applicant(s): Edward and Martha Green
849 Boundary Point Road
Friday Harbor, WA 98250

Agent: Paul Gavora
P.O. Box 2838
Friday Harbor, WA 98250

File No.: PSJ000-10-0005

Parcel No.: 362841004

Location: 849 Boundary Point Road
Friday Harbor, WA 98250

Summary of Proposal: The applicant has applied to expand an existing
boatlift by adding a ramp and float for boat moorage.

Shoreline Designation: Conservancy

Land Use Designation: Rural Farm Forest

Existing Land Use: Residential

Public Hearing: October 7, 2010

Application Policies and Regulations: Shoreline Master Program, SJCC 18.50
SJCC 18.50.190
SJCC 18.50.330
SJCC 18.80.110(E) and (H)
Comprehensive Land Use Plan

Decision: The application is denied.

S.J.C. COMMUNITY

OCT 27 2010

DEVELOPMENT & PLANNING

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

3 Phil Olbrechts, Hearing Examiner

4 RE: Edward and Martha Green

5 Substantial Shoreline
6 Development Permit
6 (PSJ000-10-0005)

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

7 **INTRODUCTION**

8 The applicant has applied for approval to expand an existing boatlift by adding a
9 ramp and float for boat moorage. The application is denied.

10 **TESTIMONY**

11 Lee McEnergy introduced the staff report. She clarified that there is probably no other
12 overwater structure in the Fernwood subdivision. She noted that the issue of how to
13 address the requirements of SJCC 18.50.330(E)(4) has been addressed in the Garr
14 decision. In that case, the Examiner did not apply the 18.50.330(E)(4) prohibition on
15 docks because the subdivision had not been made subject to the provision and no
16 common dock area had been designated. As to requirements that lots only have one
17 form of water access, Ms. McEnergy did not think it applied because the skiff/dock
18 proposal could be considered one access structure. As to whether there is alternative
19 moorage available, Ms. McEnergy referenced Finding No. 19 in her staff report. Ms.
20 McEnergy also explained that an alternative design, such as parallel stairs to the base
21 of the skiff, could be used in lieu of a float to facilitate boat access.

22 Pauli Gavora represented the applicants. In response to questions from the examiner,
23 she acknowledged that skiffs can be designed to allow the property owner to remain
24 in the boat during skiff operation and operate it by remote control, thereby avoiding
25 the need for a ladder as necessitated in the subject application. She noted that parallel
26 stairs would probably not work because the water level would higher than the level of
27 the stairs. She also noted that reducing the width of the pier was not feasible, because
28 the pier was built of aluminum and concrete to support the weight of the skiff. Ms.
29 Gavora also addressed the joint use policies and noted that nothing in the County's
30 regulations require single-family homes to be located on parcels for joint use.

31 **EXHIBITS**

32 See Attachments list on page 7 of the staff report dated September 23, 2010, in
33 addition to the following

- 1 Exhibit 13: Joint Use Policy
2 Exhibit 14: Written denials of joint-use participation
3 Exhibit 15: Agency Comments
4 Exhibit 16: Two Aerial photographs
5 Exhibit 17: Three photographs of boat lift and ramp, submitted by applicant
6 10/12/10
7 Exhibit 18: San Juan County Examiner Decision, File No. HE 05-98
8 (97SJ033)

FINDINGS OF FACT

Procedural:

- 8 1. Applicant. The applicants are Edward and Martha Green.
9
10 2. Hearing. The Hearing Examiner conducted a hearing on the subject
11 application on October 7, 2010. The Examiner left the record open for the applicant
12 to submit photographs of the current boat lift and for staff to provide a copy of the
13 Garr decision. Ms. McEnery emailed the Garr decision to the Examiner on
14 October 7, 2010. The applicant emailed three photographs of the lift to staff on
15 October 12, 2010.

Substantive:

- 14 3. Site and Proposal Description. The applicant has proposed expansion of
15 an existing boatlift by adding ramp and float for moorage. The boatlift would remain
16 in place, used primarily for storage during the boat off-season. At the east end of the
17 pier, a platform would be added, from which a new ramp would descend to a new
18 perpendicular float, secured by piles. The entire dock square footage is over 700
19 square feet in area.

18 The applicant's home lies at the top of a steep bank and is distant from the proposal.
19 The waterfront is a high rocky vertical bank leading up to the home site, and with
20 large rocks/boulders at the base. The applicants also own the adjoining property to
21 the south. There is no residence on that site.

21 The original applicants obtained approval in 2003 for a pier with a boat lift at the
22 terminus, a railway leading from the pier uphill to a boathouse, a buoy to use in
23 conjunction with the lift and stairs located north of the pier to be used for launching
24 kayaks. This boat lift and pier to it was built and currently exists at the site. The
25 railway, stairs to the shore, and boathouse were not built however, and that portion of
the original permit has since lapsed.

1 4. Characteristics of the Area. The stretch of San Juan Island shoreline
2 between University Heights and Mineral Heights does not have many docks or access
3 structures as it is steep and rocky, there are few beaches or coves, and there is
4 generally little protection from the weather. The heavier tree cover generally screens
residential development and the distance homes are located from the shore. There is
residential development in all landward directions from the proposal site.

5 5. Adverse Impacts of Proposed Use. As noted in the habitat survey (Ex. 4),
6 no eelgrass will be located underneath the proposed expansion. The float will be
7 extensively grated as shown in Ex. 3 to address shading impacts to potential eelgrass
8 and endangered fish. As proposed, no adverse impacts are discernable from the
9 record. Additionally, the project was issued a Determination of Non-significance
(DNS) for SEPA, on July 7, 2010. The Examiner finds that there are no significant
adverse impacts associated with the proposal.

10 CONCLUSIONS OF LAW

11 **Procedural:**

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

15 **Substantive:**

16 2. Shoreline Designation. The subject property is designated as
17 Conservancy.

18 3. Comprehensive Plan and Zoning Designations. The subject property is
19 designated as Rural Farm Forest, and the existing land use is residential.

20 4. Compliance with Notice Requirements. City staff advertised the
21 application in accordance with RCW 90.58.140, WAC 173-27-110 and the San Juan
22 County Code Sections 18.80 and 18.50. Notice of the Public Hearing and for the
23 project was properly published on July 7, 2010; posted on-site on July 10, 2010, and
24 noticed to parties of record and adjacent property owners, on July 13, 2010. No letters
25 or comments were received during the comment period.

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

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

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 6. The project will not interfere with public access to the shoreline or
12 interfere with navigation of water areas. The proposal has been thoroughly mitigated
13 to ensure that it will not have any adverse impacts upon the shoreline environment.
14 Although they propositioned two neighboring property owners, the applicants were
15 unable to find anyone to sign a joint-use agreement with to construct a new structure.
16 However, there is an existing structure that functions and is currently in use by the
17 applicants. It is unclear whether the construction of the new structure is necessary for
18 the applicant's beneficial use of the property when they have a functioning structure
19 that has already met all approval criteria.

20 **RCW 90.58.020(1)**

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

22 7. The applicant seeks approval of a single user dock that exceeds San Juan
23 County dimensional requirements primarily because of defects in the originally
24 approved design. Allowing a deviance to County regulations based upon
25 inadequacies in design created by the applicant's predecessor does not appear to put
the statewide interest over local interest.

RCW 90.58.020(2)

Preserve the natural character of the shoreline;

8. The addition of the proposal to the existing structure would not
significantly alter the character of the shoreline.

RCW 90.58.020(3)

Result in long term over short term benefit;

9. The applicant currently has access to and use of a functioning dock
structure. As stated, it is not an ideal fit for their needs, but they do use it and it
functions for its necessary purpose. The proposal would simply provide better
functionality and access. Allowing such a proposal would set a precedent for further
single-use docks rather than the preferred joint-use structures, thus creating the

1 potential for more docks to alter the shoreline. As such, the long-term public benefits
2 of the project not will outweigh any short-term benefits.

3 **RCW 90.58.020(4)**

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

5 10. All adverse environmental impacts have been thoroughly addressed and
6 mitigated and, therefore, the resources and ecology of the shoreline are adequately
7 protected.

8 **RCW 90.58.020(5)**

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

10 11. The project does not pertain to a publicly owned area of the shoreline.

11 **RCW 90.58.020(6)**

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

13 12. The project does not pertain to a publicly owned area of the shoreline.

14 **San Juan County Code Regulations**

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

17 13. There have been no adverse impacts raised by the construction proposed
18 by this project. SEPA DNS was issued for the proposal on July 7, 2010.

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

21 14. The existing structure and proposed structure have been designed to
22 conform to the steep nature of the natural terrain. However, it is possible that the
23 existing facility could be modified to better accommodate passengers by adding stairs
24 or a ramp that provides for entry into the floating boat rather than construction of the
25 proposal. So although the current proposal has been designed taking into
consideration the natural site configuration, there are likely modification options
available, that have simply yet to be considered, which would require less alteration
of the site. As such, further evaluation would be needed prior to satisfaction of this
criterion.

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

15. The proposal if approved would be required to meet these design criteria standards as a condition of approval.

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

16. The pier has already been constructed and approved. Under these circumstances the preference for a mooring buoy would not appear to be that significant, given that the additions proposed by the applicant do not appear to create a significant difference in environmental impacts. Since the criterion is a preference and not a mandate, the Examiner finds it appropriate to allow the proposed float under the circumstances of this case.

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

17. As stated above, although moorage floats are preferred, the pier was previously approved, and this proposal includes the addition of a platform and ramp to the existing pier, in addition to a proposed new float.

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

18. The staff report concludes, and there is no evidence to the contrary, that there does not appear to be an impact to littoral drift as this location is not in a drift sector. Also, the shoreline in this area is rocky and steep, not sandy. The pier will also not impact navigation, as it is located close to the shore. In regards to scenic views, the proposed structures are not likely to add any further impact than the existing structure. This is not a public area of shoreline.

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.

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

6 **SJCC 18.50.190(G)(2)(b):** *The maximum dimensions for a joint-use dock (including*
7 *the pier, ramp, and float) associated with two single-family residences shall not*
8 *exceed 1,400 square feet in area. In addition, the length of the dock (including the*
9 *pier, ramp, and float) may not extend more than 200 feet in length seaward of the*
10 *ordinary high water mark. Docks exceeding these dimensions may only be authorized*
11 *by variance.*

12 21. The proposal does not satisfy the criterion above because it exceeds the
13 dimensional requirements for a single user dock.

14 The size of the dock is somewhat at issue. Staff and the applicant differ as to what
15 portions of the dock must be considered in assessing project area. Staff do not include
16 the portions of the ramp that are over the pier and calculates the area as 824 square
17 feet. The applicant does not include the portions of the dock that are landward of the
18 MHW (see Ex. 12), because that is outside the jurisdiction of the Army Corps of
19 Engineers. The Army Corps' jurisdiction is irrelevant to the application of the
20 County's shoreline regulations. The applicant concedes that if the entire pier area is
21 included (while apparently still not including those portions of the ramp that aren't
22 over the pier), the dock is 783 square feet in area. The exact measurements of the
23 dock do not have to be determined for purposes of the regulation quoted above,
24 because it is clear that the dock exceeds the 700 square feet for a single user dock and
25 is well under the 1,400 square feet for a joint use dock. The critical question for this
application, therefore, is whether the dock qualifies as a joint use or single user dock.

The Examiner concludes that the dock is a single-user dock. The 1400 square feet in
area authorized for joint user docks is only allowed under SJCC 18.50.190(G)(2)(b)
for a joint use dock "...associated with more than two single-family residences..."
There is only one home on the two parcels proposed for joint use. There is no
question that the joint use agreement proposed by the applicant fails to meet the
standards for the joint use dimensions of SJCC 18.50.190(G)(2)(b). Nothing in the
prior approval of the dock by DOE (see Ex. 11) suggests that DOE had already
determined that the dock is a joint use dock. DOE required that the dock be offered
for joint use, but this offer was never accepted by the property owner to the north.

The Applicant argues that the dock cannot be modified to meet single user
dimensional standards because it is constructed of materials that cannot be
economically altered. The Examiner has no authority to waive the dimensional
standards for single user docks in this proceeding. Although not necessary, the
criterion above even states that "docks exceeding these dimensions may only be
authorized by variance." The Examiner makes no representations as to whether the

1 proposal meets the criteria for a variance, but is just noting that this is not the
2 proceeding to ask for a modification of mandated bulk and dimensional standards.

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

5 22. It is unclear as to whether the current proposal is the minimum necessary
6 to accomplish moorage. The existing structure is currently under operation at the site,
7 although the applicants have stated that use can often times be difficult due to
8 multiple factors associated with the design of the existing structure. Staff has pointed
9 out that there are additional options available, other than this proposal, that would
10 make the existing facility more usable for the applicant. A redesign of the boatlift
11 could solve many of the applicant's problems. Further evaluation is necessary to
12 determine if the proposal is the minimum necessary.

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

19 23.1 The location of the existing structure and all proposed structures meets
20 these requirements.

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

24 24. The applicant has applied for a shoreline substantial development permit
25 as required.

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

- 20 a. *It can be shown by the applicant that existing facilities are not adequate
21 or feasible for use;*
- 22 b. *Alternative moorage is not adequate or feasible; and*
- 23 c. *The applicant shall have the burden of providing the information
24 requested for in subsections (a) and (b) of this section, and shall provide
25 this information in a manner prescribed by the administrator.*

26 25. Given the difficulties of using the ladder for boat access, the existing
27 facilities are not adequate for use as required by SJCC 18.50.190(G)(5)(a).

1 The application does not satisfy SJCC 18.50.190(G)(5)(b). The applicant states in its
2 annotations of the staff report that alternative moorage does not need to be addressed
3 because the pier already exists. The defective design of the boat lift does not excuse
4 compliance with the alternative moorage requirement. However, the fact that the
5 proposal involves a relatively nominal expansion of existing facilities may lessen the
6 burden on the applicant of establishing inadequate alternative moorage. In *TG*
7 *Dynamics Group II, LLC v. San Juan County*, SHB No. 08-030, the Shoreline
8 Hearings Board noted adequacy or feasibility of existing facilities and alternative
9 moorage must be evaluated in the context of all the relevant considerations related to
10 a particular proposal, including but not limited to potential impacts on littoral drift,
11 sand movement, water circulation and quality, fish and wildlife, navigation, scenic
12 views and public access to the shoreline. In this case, even if the applicant did not
13 have a high burden to show inadequate alternative moorage, the applicant still fails to
14 comply with the criterion because it provided no evidence on alternative moorage.

15 **SJCC 18.80.330(B)(10):** *All new waterfront subdivisions and multifamily residential*
16 *developments shall prohibit moorage facilities other than mooring buoys, but allow*
17 *property owners to seek approval of joint-use moorage facilities to serve the entire*
18 *subdivision or development.*

19 26. As noted in *Beckwith*, HE 05-98 (97SJ033), SJCC 18.80.330(B)(10) only
20 applies when plats are approved. The *Beckwith* decision is consistent with *Chelan*
21 *County v. Nykreim*, 146 Wn.2d 904 (2002). *Nykreim* essentially provides that the
22 deficiencies of a land use permit approval cannot be contested once the appeals
23 period has run. Under *Nykreim*, the County's decision to not require a joint use dock
24 during subdivision review cannot be attacked in subsequent permit review.

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

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

1. *Consistent with the policies of the Shoreline Management Act and its*
implementing regulations, Chapter 90.58 RCW and Chapter 173-27 WAC, as
amended;
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);*
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.

1 27. As discussed in depth above, in the evaluation of individual code sections
2 and regulations, all of the above elements have not been met, and the project is not
3 consistent with the applicable policies, goals, and regulations.

4 **DECISION**

5 The proposed project is not consistent with all the criteria for a shoreline substantial
6 development permit. The proposal is denied.

7 Dated this 26th day of October 2010.

8 

9 Phil Olbrechts
10 County of San Juan Hearing Examiner