

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND FINAL DECISION

Applicant(s): Cliff Island LLC
16810 SE 224th St.
Kent, WA 98042-7204

Agent: Jeff Otis
393 Bobbyann Road
Eastsound, WA 98245

File No.: PSJ000-14-0014

Parcel Nos: 362444001

Location: Cliff Island

Summary of Proposal: Application for shoreline substantial development permit
for a single-user dock

Shoreline Designation: Conservancy

Public Hearing: January 15, 2015

Application Policies and Regulations: Shoreline Master Program.

Decision: Approved with Conditions.

S.J.C. COMMUNITY

FEB 03 2015

DEVELOPMENT & PLANNING

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

3 Phil Olbrechts, Hearing Examiner

4 RE: Cliff Island LLC	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION.
5 Shoreline Substantial	
6 Development Permit (PSJ000-14-0014)	

7 **INTRODUCTION**

8 The applicant proposes single-user dock that will serve as the sole dock for Cliff
9 Island, an island owned in its entirety by the applicant. The application is approved
10 subject to conditions.

11 **TESTIMONY**

12 Lee McEnery, San Juan County Department of Community Development,
13 summarized the proposal.

14 Mr. Campbell, applicant, testified that Cliff Island LLC is composed of his family.
15 He noted that the proposed dock is necessary to access Cliff Island. He has owned
16 the island for nine years and leased it for many years prior to that, but can only access
the island during good weather with the current buoy. Using the buoy in the dark,
during heavy winds or rain is very difficult.

17 Mr. Otis, applicant's agent, identified why the proposed dock location is the most
18 environmentally compatible on the island and why the proposal wouldn't have
19 endangered fish. He noted that there was no need for float stops because the water
level would never be below the float stop elevation.

20 **EXHIBITS**

21 Attachments 1-17 are referenced in the staff report as attachments and were admitted
22 into the record during the hearing. In addition, the following exhibits were also
admitted during the hearing:

23 18. Staff report.

24 19. Comment letter from WSF dated 1/8/15.

20. Email from Derek Arendt dated 1/12/15

25 21. Email from Orcas Fire Chief dated 1/12/15.

22. 8x11 Color aerial photograph of Cliff Island.

23. 8x11 Color photograph of shorelines of Cliff Island.

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DEVELOPMENT & PLANNING

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2 **FINDINGS OF FACT**

3 **Procedural:**

- 4 1. Applicant. The applicant is Cliff Island LLC.
5 2. Hearing. The Hearing Examiner conducted a hearing on the subject application on January 15, 2015.

6 **Substantive:**

7 3. Site and Proposal Description. The applicant proposes a single-user dock
8 that will serve as the sole dock for Cliff Island, an island owned in its entirety by the
9 applicant. The dock is composed of a 4' x 40' pier, a 3'8" x 40' ramp (with an
10 overhead gangway/ramp lift), and an 8' x 40' float, and pilings at each end of the
11 float. The dock will be located on the north side of the island within a small cove.
12 The dock will be 626 square feet and will terminate 115 feet from the ordinary high
13 water mark. The decking is grated for light permeability and the dock is oriented
14 north-south to minimize shading effects. The proposal is located in the western-most
15 cove on the north shore of Cliff Island, on tax parcel 362444001. The island is
16 developed with a home and several outbuildings.

17 4. Characteristics of the Area. The property is located on an outer island,
18 and is not accessible by land.

19 5. Adverse Impacts of Proposed Use. There are no significant adverse
20 impacts associated with the proposal. The entire island is owned by the applicant so
21 there would be no adverse view impacts on other property owners. About 10% of the
22 area under the proposed float will be occupied by kelp, which is protected fish habitat
23 under the County's critical area regulations. For this reason the applicant had a
24 biological assessment prepared by Shannon and Wilson, Inc., Ex. 10. The assessment
25 concluded that the proposal will have no adverse impacts on kelp and that the dock
may actually increase the amount of kelp by adding more hard surfaces to the
shoreline, which is necessary for kelp growth. The proposed grating for the dock
along with its north-south orientation help minimize shading impacts created by the
proposal. The biological assessment also noted there are is no eelgrass at the
proposed location and ultimately concluded that the proposal would not result in any
net loss of ecological function to kelp or eelgrass. An addendum to the biological
assessment also assessed potential impacts to all other protected species and habitat at
the project area and found no adverse impacts. Ex. 11. There is no evidence to the
contrary nor does anything in the record suggest any deficiencies in the biological
assessment. The applicant has also prepared marine mammal monitoring plan
designed to prevent any adverse impacts to marine mammals during pile driving,
compliance of which is made a condition of approval. It is determined that the
proposal will not create any adverse impacts to any protected species or habitat.

1 Archaeological resources have been discovered on the east side of the island but none
2 have been found at the proposed dock location. Compliance with an Inadvertent
3 Discovery Plan, submitted as Exhibit 16, should provide adequate protection against
4 any impacts to archaeological resources. The proposal will be located outside
5 navigation channels in a private cove so no significant impacts to public navigation
6 are anticipated. Similarly, the remote location on an island entirely owned by the
7 applicants should not have any appreciable impacts to scenic views. There is no
8 evidence of impacts to littoral drift because the site does not lie in a drift sector and
9 water quality is not expected to be impacted as the dock lies in an active passage with
10 good flushing action.

11 The staff report also determined that the proposal is located within a fish and wildlife
12 conservation area protected by the County's critical area regulations, specifically
13 SJCC 18.30.160(E)(7). The staff report concluded that these standards are met by the
14 project, which further evidences that the proposal will not create any significant
15 adverse impacts to environmental resources.

16 6. Suitability of Location. The proposed dock location on Cliff Island is the most
17 environmentally compatible and feasible location for a dock on the island. Waters off
18 the west end of the island are not feasible due to sub-tidal rock hazards that present
19 safety risks for ingress and egress. The east and south side of the island is exposed to
20 heavy boat traffic wakes. On the north end there are only two coves ideally suited for
21 a dock. The proposed cove has sufficient depth for a dock and the other cove does
22 not. Further, the other cove has more kelp than the proposed location.

23 7. Alternative Means of Access. There is no adequate or feasible alternative means
24 of access other than the proposal. The island is currently accessed by a dinghy and
25 mooring buoy. This form of access can only be used in fair weather conditions,
which is not considered adequate or feasible. The island is not served by the ferries.
There is no other dock on the island and the entire island is owned by the applicant.

8. Minimum Length and Width. The proposed dock is the minimum width and
length necessary to serve Cliff Island. The intended use is residential, recreational in
nature, but also has the nature of a transportation facility because it provides the only
dry access. The 4' width of the pier and ramp allow use of a hand cart. The overall
115' length provides that the float will not ground. The 40' float length also provides
space for a second boat, for a guest or employees.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. Shoreline Substantial Development permit
applications are reviewed and processed by Development Services Department staff,

1 and The Hearing Examiner, after conducting an open-record public hearing, renders a
2 decision on the shoreline permit. SJCC18.80.110(E).

3 **Substantive:**

4 2. Shoreline Designation. The subject property is designated as Conservancy.

5 3. Permit Review Criteria. SJCC 18.50.190(G)(4) requires shoreline substantial
6 development for docks serving single-family residences, unless exempt. SJCC
7 18.80.110(H) establishes the criteria for approval of shoreline substantial development
8 permits. The criteria include the policies of the Shoreline Management Act (Chapter
9 90.58 RCW), the policies and use regulations of the San Juan County Shoreline
10 Master Program, and the requirements of the San Juan County Municipal Code and
11 Comprehensive Plan. As noted in SJCC 18.50.010(A), Element 3 of the San Juan
12 County Comprehensive Plan comprises the policies of the San Juan County Shoreline
13 Master Program.

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

16 **RCW 90.58.020 Use Preferences**

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

24 4. The project will not interfere with public access to the shoreline and will increase
25 overall shoreline access and enjoyment for the applicant. The proposal has been
thoroughly mitigated to ensure that it will not have any adverse impacts upon the
shoreline environment. The dock will be located in a cove of a private island outside
of navigation channels, so impacts to public navigation are anticipated to be
insignificant.

RCW 90.58.020(1)

Recognize and protect the statewide interest over local interest;

5. The project has been thoroughly mitigated to address all adverse impacts and as
such the statewide interest in the preservation of the shoreline and surrounding
habitats is protected, in addition to the local interest of assuring adequate access to
County residents.

RCW 90.58.020(2)

Preserve the natural character of the shoreline;

1 6. The policy is met. The dock will be somewhat hidden in a small cove and is the
2 minimum size necessary to provide adequate and feasible access to the island.

3 **RCW 90.58.020(3)**

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

5 7. The proposal provides needed access while doing no significant harm to the
6 environment. Consequently, it results in long term over short term benefit.

7 **RCW 90.58.020(4)**

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

9 8. All adverse environmental impacts have been thoroughly addressed and mitigated
10 as determined in Finding of Fact No. 5, consequently the resources and ecology of
11 the shoreline have been adequately protected.

12 **RCW 90.58.020(5)**

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

14 9. The project does not pertain to a publicly owned area of the shoreline.

15 **RCW 90.58.020(6)**

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

17 10. The proposal will provide increased private recreational opportunities on the
18 shoreline, but as the shoreline area in question is not public, no further public use of
19 the shoreline will result.

20 **San Juan County Code Regulations**

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

23 11. As determined in Finding of Fact No. 5, the proposal will not create any
24 significant adverse impacts to the shoreline environment.

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

12. As determined in Finding of Fact No. 6, the proposal is located at the most
environmentally compatible location on the island. The dock is located away from
heavy boat traffic wakes and in an area that minimizes impacts to kelp. Its northern
location also facilitates a north-south orientation for the dock, which minimizes
shading impacts. The criterion is met.

1 **SJCC 18.50.190(B)(3):** *All boating facilities shall comply with the design criteria*
2 *established by the State Department of Fish and Wildlife relative to disruption of*
3 *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.

4 13. The proposal will have to acquire hydraulic permit approval from the
5 Department of Fish and Wildlife (“WDFW”), which assures compliance with WDFW
6 design criteria. As noted in the application materials, the dock has already been
7 designed to meet WDFW design standards, one of the more notable of which is
8 grating on the pier to reduce shading impacts.

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

12 14. Although mooring buoys are preferred, the proposed system is the most
13 appropriate for use on this site. As determined in Finding of Fact No. 7, mooring
14 buoys only provide access in fair weather conditions.

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

17 15. As stated above, although moorage floats are preferred, the choice of a dock is a
18 more desirable action for this project since mooring buoys and (and hence
19 presumably floats as well) cannot be used in poor weather at this location.

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. As determined in Finding of Fact No. 5, no significant adverse impacts are
anticipated from the proposal and this takes into account all of the factors in the
criterion quoted above.

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 on the dock have been proposed.

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

1 18. The proposal has been designed to meet all of the design standards stated as noted
2 in the staff report and design drawings, except that float stops have not been included
3 as required by SJCC 18.50.190(D)(4). The applicant's agent testified that float stops
4 are not necessary since water depth will never cause the float to ground out but the
5 examiner has no authority to waive SJCC 18.50.190(D)(4) absent a variance. The
6 float stops will be made a condition of approval.

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

12 19. The proposed dock is 626 square feet in area, well below the 700 square foot
13 maximum for single-user docks. The dock also does not extend beyond 115 feet from
14 the ordinary high water mark. The criterion above is met.

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

17 20. The proposal is the minimum width and length necessary for the proposed use, as
18 determined in Finding of Fact No. 8.

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

25 21. There are no side property lines.

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

22. The current permit is under evaluation as a result of this code section.

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

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

1 23. As determined in Finding of Fact No. 6, existing facilities are not adequate or
2 feasible for use as required by SJCC 18.50.190(G)(5)(a).

3 **DECISION**

- 4 1. This permit allows the construction of a single user dock as shown on the attached
5 plans.
- 6 2. Boats moored at residential docks shall not be used for commercial overnight
7 accommodations.
- 8 3. Use of the dock for regular float plane access and moorage shall not be allowed.
- 9 4. Pilings must be structurally sound prior to placement in the water.
- 10 5. Chemically treated piles, floats or other structural members in direct contact with
11 the water shall comply with state and federal regulations.
- 12 6. Pilings employed in piers or any other structure shall have a minimum vertical
13 clearance of one foot above extreme high water.
- 14 7. All floats shall include stops to keep the bottom off tidelands.
- 15 8. The proposed dock shall maximize light penetration with deck grating, orientation
16 and minimized size.
- 17 9. Floats shall remain in the water year round to allow growth of kelp on their sides,
18 increasing habitat.
- 19 10. Compliance with all applicable San Juan County codes is required.
- 20 11. When plastics or other non-biodegradable materials are used in a float, pier or dock
21 construction, full containment features are required.
- 22 12. Overhead wiring and plumbing are prohibited. Other structures on piers, ramps
23 and floats shall be limited to 3' in height.
- 24 13. If used, dock lighting shall be designed to shine downward, be low wattage and
25 shall not exceed a height of 3' above the dock surface.
14. Materials used in dock construction shall be of a color and finish that will blend
visually with the background. If metal is used it must be treated to comply with
this requirement.

- 1 15. All debris entering the water or shoreline area shall be removed immediately and
disposed of in a legal manner.
- 2 16. During construction of the dock, compliance is required with the following Marine
3 Mammal Monitoring Plan measures (July 2014, JenJay Diving):
4 a. Visual monitoring for SRKW and Humpback whales in Deer Harbor by an
approved Marine Mammal Observer (MMO) on land surrounding waters of San
5 Juan Channel.
6 b. Land-based monitoring shall occur during daylight hours before, after and during
pile driving.
7 c. Land-based monitoring south and southwest of the project site 30 minutes prior to
and during pile driving by an MMO with field glasses, radio connected to pile
8 driver and notebook for recording mammal sightings.
9 d. MMO duties include watching for, identifying marine mammals, recording
numbers, distances and reactions to this construction activity.
10 e. If MMO identifies marine mammals in the area prior to or during pile driving,
activity will halt immediately and resume after mammals have left surrounding
11 area.
- 12 17. If the property is divided in the future, joint-use and access to the dock (subject to
reasonable terms) shall be automatically conferred to owners. In the event
13 agreement on reasonable terms and conditions for use cannot be reached or
otherwise resolved, or in the event the owner declares by action or deed that joint
14 use is no longer available, this permit shall immediately be deemed rescinded after
notice and an opportunity to cure is provided by the County, and the dock shall be
15 removed from the shoreline.
- 16 18. Immediately after construction is completed, the owner shall request that
17 Community Development and Planning perform an inspection.
- 18 19. Development authorized by this permit shall commence within two years of the
date of approval and shall be substantially complete within five years or the permit
19 shall become null and void.
- 20 20. Failure to comply with any terms or conditions of this permit may result in its
21 revocation.
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21. Float stops shall be added to the proposal as required by SJCC 18.50.190(D)(4).

Dated this 2nd day of February 2015.



Phil A. 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.