

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Keith and Carol James
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S.J.C. COMMUNITY

MAY 13 2015

File No.: PSJ000-14-0012

DEVELOPMENT & PLANNING

Request: Shoreline Substantial Development Permit

Location: 209 Hodgson Road, Lopez Island

Summary of Proposal: Beach stairs

Shoreline Designation: Conservancy

Hearing Date: April 27, 2015

Application Policies and Regulations: 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: Keith and Carol James	FINDINGS OF FACT, CONCLUSIONS
5 Shoreline Substantial	OF LAW AND FINAL DECISION.
6 Development Permit	
6 (PSJ000-14-0012)	

7 **INTRODUCTION**

8 The applicants seek an after-the-fact approval of a shoreline substantial development
9 permit to authorize stairs for beach access. The proposal is approved subject to
10 conditions.

11 **TESTIMONY**

S.J.C. COMMUNITY

12 Lee McEnery, senior San Juan County planner, summarized the proposal.

MAY 13 2015

13 **EXHIBITS**

DEVELOPMENT & PLANNING

14 Exhibit 1: 3/16/15 Staff Report

15 Exhibit 2: Application materials.

16 Exhibit 3 Comment letters

17 A. Friday Harbor Laboratories to Lee McEnery, 12/1/14

18 B. Dept. of Archaeology, Gretchen Kaehler to Lee McEnery, 12/24/14

19 Exhibit 4 Geotechnical Administrative Determination, 6/5/14

20 Exhibit 5 Geotechnical Report Waiver, 11/17/14

21 **FINDINGS OF FACT**

22 **Procedural:**

23 1. Applicant. The applicants are Keith and Carol James.

24 2. Hearing. The Hearing Examiner conducted a hearing on the subject
25 application on April 28, 2015 at 10:00 am at Key Bank in Friday Harbor.

1 **Substantive:**

2 3. Site and Proposal Description. The applicants seek an after-the-fact
3 approval of a shoreline substantial development permit to authorize stairs for beach
4 access. The stairs are built on a rocky outcrop where they descend to a landing on a
5 rock. The upper landing (5'x5') leads to descending steps (3'x8') to a mid-landing
6 (5'x12'6", then 5'x5') that turns to a davit-lowered aluminum ramp to the pocket
7 beach. The davit and electric winch are secured to a concrete pad on the top of the
8 bank, west of and adjacent to the upper landing. The davit is angled perpendicular to
9 the bank. The currently existing stairs are wider than authorized by County
10 regulations and will apparently have to be modified to conform to the regulations.

11 The photographs in the applicants' Critical Saltwater Habitat Assessment
12 substantiate the applicant's claim that the stairs are the only safe access to the beach.
13 It appears that a steep bluff runs along the entire shoreline frontage of the subject lot
14 and that the stairs are the only means of safe access to the shoreline.

15 4. Characteristics of the Area. The lot is in located in an area characterized
16 by large lot residential development as shown in the aerial photograph of Ex. 2.

17 5. Adverse Impacts of Proposed Use. There are no adverse impacts
18 associated with the proposal. The proposal is not located over water, does not extend
19 over the ordinary high water mark, does not involve extensive vegetation removal as
20 the bank is rock, does not shade any known habitats, and does not increase
21 impervious surface (and thus increase runoff) as the site is already impervious.

22 The bank at the project site is determined to be stable. The bank upon which the
23 stairs will be located is a Category II geological hazardous area as evidenced by the
24 issuance of a Geotechnical Report Waiver for Category II Geologically Hazardous
25 Areas. The staff report does not identify why the project site qualifies as a
geologically hazardous area. However, it is determined that more likely than not the
bluff upon which the stairs are proposed is stable because (1) it satisfies the numerous
indicia of stability required to qualify for the Waiver as outlined in Ex. 3, and (2) the
staff report notes that the bank is stable because it is made entirely of rock.

The stairs will not create any significant adverse visual impacts. The structure is
relatively modest and takes only a small portion of the applicant's shoreline. As
noted in the staff report, the wood will become weathered and in that process blend
more into the muted colors of the surrounding rock.

The staff report concludes that the stairs are structurally stable because no building
permit is required. This staff conclusion is presumably based upon the premise that
exempt stairs are modest enough in scale to not present any significant life/safety
risks necessitating building permit review. Deference will be given to staff on this

1 determination and it is determined for purposes of this shoreline review that the stairs
2 are stable.

3 The proposal will not adversely affect aquatic habitat or protected species. The
4 Washington State Department of Fish and Wildlife fish spawning map indicates that
5 surf smelt, Pacific sand lance and herring do not use the beach for spawning. A site
6 visit by the applicant's biologist confirmed that the sand is too coarse for spawning.
7 There is a small probability that endangered fish such as Chinook salmon, Canary
8 rockfish or Bocaccio may migrate by the site or that it's habitat may be present.
9 However, the applicant's habitat assessment, Ex. 2, concludes that the proposal will
10 (and did) not have any significant impact on endangered fish or its habitat because all
11 impacts are nominal and above the ordinary high water mark, including shading
12 impacts. Given that the report is written by a qualified biologist and there is no
13 evidence or reasonable inferences to the contrary, the conclusions of the report are
14 taken as verities.

15 Archaeological resources exist on the property. The proposal's location on a stone
16 outcrop call for compliance with inadvertent discovery procedures, as noted in DAHP
17 comment letter of 12/24/2014, Ex. 3. Compliance with these procedures has been
18 made a condition of approval by this decision.

19 CONCLUSIONS OF LAW

20 Procedural:

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

24 Substantive:

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

3. Permit Review Criteria. Stairs that exceed \$6,416 in fair market value and exceed
fifteen feet in height require a shoreline substantial development permit. See SJCC
18.50.020(G)(3)(f) and 18.50.020(F)(1). Presumably the fair market value exceeds
the exemption level and the design drawings, Ex. 2, show the stairs as higher than
fifteen feet in height when the aluminum ramp is lowered. Consequently, a shoreline
substantial development permit is required. SJCC 18.80.110(H) establishes the
criteria for approval of shoreline substantial development permits. The criteria
include the policies of the Shoreline Management Act (Chapter 90.58 RCW), the
policies and use regulations of the San Juan County Shoreline Master Program, and
the requirements of the San Juan Municipal Code and Comprehensive Plan. The

1 applicable policies and regulations are quoted in italics below and applied through
2 conclusions of law.

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 4. As discussed in the findings of fact, there are no adverse impacts associated with
12 the proposal. The proposal will have no impact on public navigation and will
13 enhance shoreline access for the Applicant. The criterion is satisfied.

14 **RCW 90.58.020(1)**

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

16 5. The project is of modest scale with no significant adverse impacts. The criterion is
17 satisfied.

18 **RCW 90.58.020(2)**

19 *Preserve the natural character of the shoreline;*

20 6. The project will not change the natural character of the shoreline beyond some
21 nominal modifications to the shoreline bank.

22 **RCW 90.58.020(3)**

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

24 7. The project will provide long term beach access without corresponding significant
25 adverse impacts.

RCW 90.58.020(4)

Protect the resources and ecology of the shoreline;

8. There are no significant impacts to resources or ecology anticipated.

RCW 90.58.020(5)

Increase public access to publicly owned areas of the shorelines;

9. No public access is included in the proposal nor could it be legally required.

RCW 90.58.020(6)

Increase recreational opportunities for the public in the shoreline;

1 10. No public recreation is included in the proposal nor could it be legally required.

2 **San Juan County Comprehensive Plan Section B, Element 3 (“SJCCP(B)(3)”)**,
3 **Section 5(J)(1):** *Beach access structures are allowed only as accessories to an*
4 *existing single-family residence, as access to a common shoreline area in a*
5 *subdivision or multi-family residential development, or for a public or private*
6 *recreational facility.*

7 11. The proposal is accessory to a single-family residence as authorized by the
8 criterion.

9 **SJCCP(B)(3), Section 5(J)(2):** *Beach access structures which are normal*
10 *appurtenances to a single-family residence as defined in the Shoreline Management*
11 *Act and the Unified Development Code are exempt from shoreline permit*
12 *requirements.*

13 12. SJCC 18.20.140 defines a “normal appurtenance, shoreline” as “*a structure or*
14 *development that is necessarily connected to the use and enjoyment of a single-family*
15 *residence and which is expressly defined in WAC 173-27-040 and in Chapter 18.50*
16 *SJCC, for purposes of exemption from shoreline substantial development permit*
17 *requirements in accordance with WAC 173-27-040(g).” SJCC 18.50.020(G)(3)(f)*
18 *provides that in order for a beach access structure to be considered an exempt*
19 *development it must be less than 15 feet in height. Since the proposal is more than 15*
20 *feet in height it is not exempt under this provision..*

21 **SJCCP(B)(3), Section 5(J)(3):** *The use of existing paths or trails should be*
22 *encouraged in preference to either beach access stairs or ramps.*

23 13. From what can be derived from the administrative record, there are no
24 existing path or trails that can provide safe access to the beach.

25 **SJCC 18.50.300(A)(1):** *Every application for a substantial development permit for*
a nonexempt beach access structure shall be evaluated on the basis of multiple
considerations, including but not necessarily limited to the potential impacts on bank
stability, the extent of vegetation removal, visual impacts, and structural stability.

14. As determined in the Finding of Fact No. 5, the proposal will not affect
bank stability, vegetation removal is minimal, visual impacts are minor and the
proposal is stable.

SJCC 18.50.300(A)(2): *Beach access structures which can reasonably be expected*
to interfere with the normal erosion accretion process associated with feeder bluffs
shall not be permitted. All beach access structures must comply with the bank
stability requirements of SJCC 18.50.330(B)(2).

1 15. The staff report notes that the bank is not a feeder bluff because it is made of
2 solid rock. Consequently, the proposed stairs will not interfere with the normal
3 erosion accretion process associated with feeder bluffs. SJCC 18.50.330(B)(2)
4 directs the preparation of geotechnical reports for unstable residential bluffs. The
5 applicant has qualified for a waiver from this requirement as outlined in Ex. 4 and 5.

6 **SJCC 18.50.300(A)(3):** *Beach access structures shall not be located below the
7 ordinary high water mark (OHWM) unless connected to an exempt or permitted
8 structure.*

9 16. The stairs are not located below the ordinary high water mark.

10 **SJCC 18.50.080:** *When located in an environmentally sensitive area overlay district
11 or its buffer, shoreline uses and activities must be located, designed, constructed, and
12 managed in accordance with the applicable requirements of
13 SJCC 18.35.020through 18.35.140, environmentally sensitive areas.*

14 17. The proposal is consistent with the County's critical area ordinance for the
15 reasons identified in the staff report. Most notably the applicant has acquired a
16 waiver to the geotechnical report of the critical areas ordinance and the conditions of
17 approval require compliance with the dimensional standards that apply to stairs in
18 Fish and Wildlife Conservation Areas.

19 DECISION

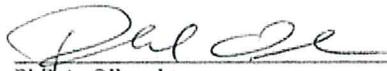
20 As conditioned, the proposed project is consistent with all the criteria for a shoreline
21 substantial development permit. The proposal is subject to the following conditions:

- 22 1. The stairs shall be built of wood so they blend visually with their surroundings.
23 The ramp may be built of metal if it is not reflective. The plan revised 3/5/15 is the
24 approved site plan and the stair design must conform to the site plan.
- 25 2. When not in use the ramp shall be stored in a raised position.
3. Disturbed areas shall be re-vegetated with native vegetation.
4. Because archaeological resources have been documented nearby, inadvertent
discovery procedures shall be followed during construction.
5. All debris entering the water or shoreline area shall be removed immediately and
disposed of in a legal manner.
6. Immediately after construction is completed, the owner shall request that the
Department of Community Development perform an inspection.

1 7. Construction or substantial progress toward construction must be undertaken
2 within two years of permit approval.

3 8. All development authorized by a shoreline permit shall be completed within five
4 years of the approval date.

5
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7 Dated this 11th day of May 2015.

8 
9 Phil A. Olbrechts

10 County of San Juan Hearing Examiner

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

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14 Hearing examiner decisions become effective when mailed or such later date in
15 accordance with the laws and ordinance requirements governing the matter under
16 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.

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

20 Depending on the subject matter, this decision may be appealable to the San Juan
21 County Superior Court or to the Washington State shorelines hearings board. State
22 law provides short deadlines and strict procedures for appeals and failure to timely
23 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.

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