

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND FINAL DECISION

Applicant(s):	DBA, LLC P.O. Box 437 Olga, WA 98279	
Agent:	Jeff Otis 393 Bobbyann Road Eastsound, WA 98245	
File No.:	PSJ000-14-0007	
Parcel Nos:	160224004 (boathouse) and 160212003 (massage studio)	
Location:	Doe Bay Resort Orcas Island	
Summary of Proposal:	Application for shoreline substantial development permit and conditional use permit for improvements to Doe Bay Resort.	
Land Use Designation:	Rural Farm Forest	
Public Hearing:	July 14, 2014	S.J.C. COMMUNITY
Application Policies and Regulations:	Shoreline Master Program.	AUG 01 2014
Decision:	Approved with Conditions.	DEVELOPMENT & PLANNING

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

3 Phil Olbrechts, Hearing Examiner

4 RE: Doe Bay Resort 5 Shoreline Conditional Use 6 Permit and Shoreline 7 Substantial Development 8 Permit (PSJ000-14-0007)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION S.J.C. COMMUNITY AUG 01 2014
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9 **INTRODUCTION**

DEVELOPMENT & PLANNING

10 The applicant seeks approval of a shoreline conditional use permit and shoreline
11 substantial development permit for some improvements to the Doe Bay Resort,
12 located at Doe Bay on Orcas Island. The proposed improvements involve two
13 buildings. The applicant proposes to add a second story to an existing boathouse and
14 to convert the interior space to meeting and lodging space. A boat ramp connecting
15 to the boathouse will also be repaired. The applicant also seeks after the fact approval
16 for the construction of a small building for a massage studio. A shoreline conditional
17 use permit is required for the proposal because shoreline conditional use permits are
18 required for commercial development in the Rural shoreline designation. The
19 shoreline substantial development permit and shoreline conditional use permits are
20 approved with conditions.

21 **TESTIMONY**

22 Lee McEnery, senior San Juan County planner, summarized the proposal. She noted that
23 a permit for a similar use several years had been approved but the permit lapsed. The
24 project site is made up of seven parcels. The massage studio is on a parcel with other
25 buildings that cumulatively total more than 5,000 square feet. She noted that an SJCC
provision limits the amount of building space on the parcel to 5,000 square feet. She
noted that the situation could be remedied by a lot line adjustment. The boathouse will
be a combination of meeting and lodging space. The lodging space was assessed as a
vacation rental, but it turns out that they want to authorize more people to be allowed to
stay in the lodging area than would be allowed by vacation rental standards.
Consequently, Ms. McEnery referred Mr. Otis to the building department to work out a
floor plan that would enable the building department to assess the amount of people
allowed in the lodging area under the building codes. The commercial standards in the
shoreline area don't address lodging type uses so it's unclear what's allowed. The project
appears to be located in the FEMA flood zones, but these maps are imprecise. The

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1 County has adopted a policy on how to interpret the FEMA maps during building permit
2 review. Ms. McEnergy believes the floodplain issues are best addressed during building
3 permit review.

4 Joe Botherton, owner of Doe Bay. He bought it about 12 years ago. He has invested
5 over a million dollars in the resort. The resort employs 50 people. The boathouse
6 permits lapsed because the building inspector red tagged the project due to some rafter
7 issues. The boathouse is a key area on the 38 acre resort with the boathouse in the
8 middle. He noted that his construction work goes by the higher of his standard or the
9 County standard, that the resort is an "eco-freak" kind of place and his guests expect the
10 resort to be highly eco-friendly. On the floodplain issue, this issue was a surprise
11 because his lenders and insurers have told him no flood insurance is required. On the
12 massage building issue, he noted that Jeff Otis has proposed an alternative to a lot line
13 adjustment that would result in the same density limits. For the boathouse, he would like
14 to be able to move it a few feet from the shoreline in order to provide space to make it
15 more handicap accessible.

16 Jeff Otis, applicant's representative, noted that he would like the option of moving the
17 building to setback the building a few feet. Mr. Otis noted that whether or not the project
18 is in the floodplain affects design, which is why he would like the issue addressed in the
19 shoreline decision. Mr. Otis requested a notice on title restricting development in lieu of
20 a lot line adjustment to meet the 5,000 square foot requirement.

21 Ms. McEnergy stated that staff would not have any problem with the applicant moving the
22 boat building landward a few feet.

23 EXHIBITS

24 The following exhibits were admitted during the hearing:

- 25 Exhibit 1: Staff Report
- Exhibit 2: Application with attached application materials
- Exhibit 3: Examiner Decision HE 51-98
- Exhibit 4: Email from Jeff Otis to Lee McEnergy dated June 25, 2014
- Exhibit 5: SJCC 18.30.200
- Exhibit 6: Email from Lee McEnergy to Shireene Hale dated July 10, 2014
- Exhibit 7: Policy for flood hazard area determinations.
- Exhibit 8: July 2, 2014 email from Jeff Otis to Shireene Hale.
- Exhibit 9: Expired Building permit for former boathouse improvements
- Exhibit 10: July 2, 2013 email from Doe Bay Water Users Association to Jeff Otis
- Exhibit 11: Map entitled "Erosive Soils and Floodzones"
- Exhibit 12: Aerial photograph entitled "FEMA Zones"
- Exhibit 13: Assessor Map of project parcels
- Exhibit 14: No exhibit.
- Exhibit 15: Assessor records on project parcels
- Exhibit 16: July 10, 2014 email from David Eubanks to Lee McEnergy

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2 **FINDINGS OF FACT**

3 **Procedural:**

- 4 1. Applicant. The applicant is DBA LLC.
- 5 2. Hearing. A hearing was held on July 14, 2014 at 10:00 at the Islander
6 Bank annexation on San Juan Island.

7 **Substantive:**

8 3. Site and Proposal/Appeal Description. The applicant seeks approval of a
9 shoreline substantial development permit and shoreline conditional use permit for
10 some improvements to the Doe Bay Resort, a 28 acre resort facility located at Doe
11 Bay on Orcas Island. The improvements are composed of expanding and converting
an existing boathouse to lodging and meeting space. After-the-fact approval is also
sought for the construction of a small building for a massage studio.

12 Doe Bay Resort is a small resort that was initially constructed in 1920 and predates all
13 shoreline regulations. Resort facilities include 37 rental lodging units composed of
14 cabins, yurts, geodesic domes, two hostel private rooms and six hostel beds, 32
15 campsites, 10 overflow sites, two mooring buoys, a restaurant, a small store, a spa, a
yoga studio, massage cabins, staff housing and kitchen, and parking facilities. These
facilities are spread over seven parcels that comprise the 28 acre resort.

16 The existing boathouse building is very close to the water on a concrete foundation
17 that forms a bulkhead and incorporates a concrete ramp to the beach. That ramp
18 would also undergo repair, staying within the same dimensions. The proposal would
19 double the floor area of the boathouse by adding a second story, add a 7'-deep deck on
20 the entire seaward side of the second story, and add under-floor kayak stowage
accessed from the water side of the building. The profile drawings show that the
second story deck extends seaward of the existing foundation/bulkhead. The ramp
extends a bit further seaward than the foundation/bulkhead.

21 The massage studio is a small building (224 square feet) 13.5 feet tall, with electricity
22 but no water or bathroom. It is situated near a stream but outside Critical Area
Ordinance buffers. It is not expected to draw much business from outside the resort.

23 4. Characteristics of the Area. The neighborhood is rural and residential with
24 varied lot sizes, some development on the shoreline, some larger agricultural upland
lots.

25 5. Adverse Impacts of Proposed Use. As proposed and conditioned, there
are no significant adverse impacts associated with the proposed expansion.

1 The proposal is fully compatible with other permitted uses in the area. The proposal
2 involves two modest improvements to a 28 acre site that probably won't even be
3 noticeable to neighboring properties and also won't make any significant difference
4 to the overall intensity of the resort. The proposed increase in height of the boathouse
5 will be the most noticeable difference from an aesthetic standpoint, but will not block
6 any views of adjoining properties from other owners and will be situated in a heavily
7 wooded area such that it will not noticeably detract from the natural character of the
8 shoreline. The massage building is located several hundred feet landward of the
9 shoreline in a heavily wooded area that probably is not visible to adjoining properties.
10 Lighting impacts are adequately addressed by the conditions of approval, which
11 require lighting to direct glare and reflections within the boundaries of the parcel and
12 away from adjoining properties and public rights-of-way.

13 The staff report concludes that the resort is adequately served by all needed public
14 facilities and there is no reason to conclude otherwise given the long-time existing
15 operations and the minor nature of the proposed improvements. Sufficient public
16 facilities were found to exist for similar boathouse improvements (that were never
17 built) in HE 51-98, Ex. 3. The staff report also notes that plentiful parking for the site
18 already exists and that the proposal will not increase the need for parking. The staff's
19 conclusion on parking is not immediately apparent given that a conversion of a
20 boathouse to meeting space would normally be considered to generate additional
21 parking demand, but strongly supportive of the staff position is that sufficient parking
22 was also found to exist in HE 51-98, while as noted previously similar boat house
23 improvements were also proposed.

24 The proposal is located within an aquifer recharge area, but the proposal doesn't
25 involve any activities regulated by the County's aquifer recharge regulations. The
proposal may also be located within a floodplain, but any impacts to the floodplain
will be addressed during building permit review.

CONCLUSIONS OF LAW

Procedural:

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

Substantive:

2. Shoreline Designation. Rural.

1 3. Review Criteria. It is undisputed that the improvements are within shoreline
2 jurisdiction (200 feet of the ordinary high water mark) and are not subject to any
3 exemptions¹. Consequently, the applicant must acquire a shoreline substantial
4 development permit. SJCC 18.80.110(H) establishes the criteria for approval of
5 shoreline substantial development permits. The criteria include the policies of the
6 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
County Municipal Code and Comprehensive Plan. As noted in SJCC 18.50.010(A),
Element 3 of the San Juan County Comprehensive Plan comprises the policies of the
San Juan County Shoreline Master Program.

7 A shoreline conditional use permit is also required for the proposal because SJCC
8 18.50.220(B)(2) requires conditional use permits for any commercial development
9 within the Rural shoreline designation. SJCC 18.80.110(J)(4) governs the review
criteria for shoreline conditional use permits.

10 There were two code compliance issues raised during the hearing that do not involve
11 shoreline policies or regulations. The most significant of these issues was the
12 proposal's compliance with SJCC 18.30.200(C)(2), which requires that commercial or
13 industrial building area within any parcel may not exceed 5,000 square feet in the Doe
14 Bay activity center, which is where the subject property is located. It is uncontested
15 that the proposed massage studio is located on a lot with commercial space that
16 exceeds 5,000 square feet. Since adjoining resort parcels have less than 5,000 square
17 feet of commercial building space, the code compliance problem can be remedied by a
18 lot line adjustment. In lieu of a lot line adjustment the applicant proposes to place a
19 covenant on one of the adjoining parcels that restricts additional commercial
development. The applicant's covenant proposal is reasonable and would satisfy the
purpose of SJCC 18.30.200(C)(2). Unfortunately, the examiner does not have the
authority to waive the requirements of SJCC 18.30.200(C)(2) on the basis that its
purpose has been achieved. The 5,000 square foot requirement of SJCC
18.30.200(C)(2) can only be waived by a variance approval and no such application
has been made for this project. The applicant will have to do a lot line adjustment.

20 Another non-shoreline related code compliance issue raised during the hearing was
21 whether the boathouse is located within a floodplain. This issue should be resolved
22 during building permit review. If the proposed boathouse is in fact located within a
23 floodplain, floodplain regulations would require some modest changes to the floor
elevation of the building which would not result in any significant change in overall
project design. Staff have developed significant expertise in interpreting and applying
the County's floodplain regulations, which is traditionally assessed during building

24 _____
25 ¹ Staff consider the boat ramp repairs to be exempt but note that the applicant has consolidated those
repairs with the other improvements of the proposal in order to avoid having to pay a separate
processing fee for the exemption. Such a separate review would probably be prohibited anyway, since
WAC 173-27-040(1)(d) requires that if a portion of a development is not exempt, then the entire
development must be considered nonexempt.

1 permit review. It is not necessary to review floodplain compliance during this
2 shoreline review. The approval of the shoreline permits should be construed as
3 authorizing any changes in floor elevation required by the County's floodplain
regulations as well as any minor landward displacement of the building to facilitate the
change in elevation.

4 All applicable shoreline policies and regulations are quoted in italics below and
5 applied through conclusions of law.

6 **RCW 90.58.020 Use Preferences**

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

11 8. The policy is met. As determined in Finding of Fact No. 5, the proposal
12 does not create any significant adverse impacts, including impacts to shoreline
resources and public navigation.

13 **RCW 90.58.020(1)²**

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

15 9. The statewide interest is protected due to the absence of any significant
16 adverse impacts as determined in Finding of Fact No. 5.

17 **RCW 90.58.020(2)**

18 *Preserve the natural character of the shoreline;*

19 10. The modest sized improvements located within the relatively large 28 acre project
20 site will not create any significant difference to the natural landscape of the already
developed shoreline.

21 **RCW 90.58.020(3)**

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

23 11. The proposal will provide facilities for guest enjoyment of the shoreline
with minimal corresponding adverse impacts. The policy is met.

24 _____
25 ² RCW 90.58.020(1)-(6) applies to shorelines of statewide significance. Section 3.4.F of the San Juan
County Comprehensive Plan identifies all saltwater surrounding the islands of San Juan County as
shorelines of statewide significance. The policies of 90.58.020(1)-(6) are mirrored in the policies of
Section 3.4.F of the Comprehensive Plan and for the reasons provided in assessment of RCW
90.58.020, the Examiner also finds consistency with the policies of Section 3.4.F.

1 **RCW 90.58.020(4)**

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

3 12. As determined in Finding of Fact No. 5, the proposal will not create any
4 significant adverse impacts, which includes impacts to the resources and ecology of
5 the shoreline.

6 **RCW 90.58.020(5)**

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

8 13. The commercial facility is private and no public access through it can be
9 legally imposed.

10 **RCW 90.58.020(6)**

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

12 14. The proposal will enhance recreational opportunities for resort guests, but
13 beyond this the proposal cannot be conditioned to provide recreational opportunities
14 for the greater public.

15 **SJCC 18.50.220(A)(1):** *Applications for commercial development shall include a*
16 *detailed statement explaining the nature and intensity of the water dependency or*
17 *orientation of the proposed activity. Such statement shall include at least the*
18 *following:*

- 19 *a. Nature of the commercial activity;*
- 20 *b. Need for shoreline frontage;*
- 21 *c. Proposed measures to enhance the relationship of the activity*
22 *to the shoreline; and*
- 23 *d. Proposed provision for public visual or physical access to the*
24 *shoreline.*

25 15. The required information is provided in Ex. 2.

SJCC 18.50.220(A)(3): *Commercial resorts and campgrounds shall provide*
21 *adequate access to water areas for their patrons and adequate on-site recreation*
22 *facilities so that such resorts and campgrounds will not be dependent on nor place*
23 *undue burdens on public recreational facilities.*

24 16. The boat ramp, mooring buoys, kayaks, and extensive shoreline frontage
25 available to all resort guests provides for adequate water access.

SJCC 18.50.220(A)(4): *The draining or filling of water bodies or natural wetlands*
for commercial developments shall not be permitted except as a conditional use.

17. No draining or filling of water bodies or wetlands is proposed.

SJCC 18.50.220(A)(5): *Only those commercial uses which are water dependent, such as boat fueling stations, shall be permitted to be located over the water.*

18. No over-water construction is proposed.

SJCC 18.50.220(A)(6): *All structures shall be set back a safe distance behind the tops of feeder bluffs.*

19. The massage studio is located far from the bluff and the setback of the existing boathouse will not change, although the applicant testified they may move the boathouse further landward a few feet. The criterion is met.

SJCC 18.50.220(A)(6): Parking areas associated with commercial developments shall be subject to the policies and regulations of SJCC 18.60.120, Parking, and 18.50.340, Transportation facilities.

20. As determined in Finding of Fact No. 5, the proposal is served by adequate parking.

SJCC 18.50.220(A)(8): *Drainage and surface runoff from commercial areas shall be controlled so that pollutants will not be carried into water bodies.*

21. Drainage will be addressed during building permit review.

SJCC 18.50.220(A)(9): *Signs associated with commercial developments shall comply with the policies and general regulations of SJCC 18.40.370 through 18.40.400 and SJCC 18.50.120.*

22. No signs are proposed.

SJCC 18.50.220(B)(2): *Commercial development which will not significantly alter the character of the area shall be permitted in the rural environment only by conditional use and subject to the policies and regulations contained in this SMP. Such development would include, but not necessarily be limited to, farm produce sales, activities directly related to the commercial fishing industry, small campgrounds, and other low intensity recreational facilities. All other commercial development shall be permitted by conditional use only. Except as provided for in subsection (A)(4) of this section, all commercial structures and facilities shall be set back at least 100 feet from the OHWM unless otherwise provided for by conditional use.*

23. The requested improvements are relatively minor in the context of the 28 acre Doe Bay resort and for this reason will clearly not significantly alter the character of
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1 the area. The location of the boathouse within 100 feet of the OHWM is appropriate
2 for this proposal since the improvement will be a second floor addition to an existing
3 building where there would be no significant view or aesthetic impacts. In this regard
4 the shoreline access benefits of the boathouse improvements far outweigh negative
5 impacts and the proximity to the shoreline is justified. Since the proposal involves a
6 commercial facility a conditional use permit is required and the applicant will be
7 granted the permit by this decision. The criterion is met.

8 **SHORELINE CONDITIONAL USE PERMIT**

9 **SJCC 18.80.110(J)(4):** *Uses which are classified or set forth in the Shoreline Master
10 Program as conditional uses may be authorized by the County provided the applicant
11 can demonstrate all of the following:*

12 *a. The proposed use is consistent with the policies of RCW 90.58.020 and the policies
13 of the Shoreline Master Program;*

14 24. As determined above, the proposed use is consistent with the policies of RCW
15 90.58.020 and the policies of the Shoreline Master Program.

16 **SJCC 18.80.110(J)(4)(b):** *The proposed use will not interfere with the normal public
17 use of public shorelines;*

18 25. The improvements are located on land on private property and so will not
19 interfere with public use of the shorelines. The minor nature of the improvements
20 will also not interfere with resort guest use of the shorelines and will in point of fact
21 enhance guest enjoyment of the shorelines.

22 **SJCC 18.80.110(J)(4)(c):** *The proposed use of the site and design of the project is
23 compatible with other permitted uses within the area;*

24 26. As determined in Finding of Fact No. 5, the proposal, including its design, is
25 compatible with surrounding uses. The minor nature of the improvements in such a
large resort area would also be compatible with any other permitted uses in the area
as well.

SJCC 18.80.110(J)(4)(d): *The proposed use will cause no unreasonably adverse
effects to the shoreline environment in which it is to be located;*

27. As discussed in Finding of Fact No. 5, there are no significant environmental
impacts associated with the proposal. The criterion is satisfied.

SJCC 18.80.110(J)(4)(e): *The cumulative impacts of additional requests for like
actions in the area, or for other locations where similar circumstances exist, shall not
produce substantial adverse effects to the shoreline environment, e.g., the total of the
conditional uses shall remain consistent with the policies of RCW 90.58.020 and the
Shoreline Master Program; and*

1 28. The proposed improvements are very minor in relation to the amount of property
2 encompassing the resort area. Improvements that create such a minor increase in
3 intensity would not create any adverse cumulative impacts, even if authorized for
multiple other similar uses in the area.

4 **SJCC 18.80.110(J)(4)(f):** *The public interest will suffer no substantial detrimental*
5 *effect.*

6 29. There are no significant adverse impacts associated with the proposal and the
7 proposal furthers economic development and shoreline access and enjoyment for
resort guests. The public interest will suffer no detrimental effect.

8 DECISION

9 The subject shoreline substantial development permit and conditional use permit
10 applications for the proposal as described in Ex. 2 and this decision are approved as
11 conditioned below because they are consistent with all applicable permit review
12 criteria for the reasons identified in the conclusions of law above. The conditions of
approval are as follows:

- 13 1. Upon the determination by the Director of CD&P that any conditions of approval
14 have been violated, following issuance of a Notice of Violation, the Director of
CD&P may, in addition to its other code enforcement remedies, revoke the
conditional use permit.
- 15 2. Development under the shoreline substantial development portion of this permit
16 shall commence within two years of the date of permit approval and shall be
substantially complete within five years thereof or the permit shall become null
and void.
- 17 3. The applicant shall acquire approval of a lot line adjustment in order to secure
18 compliance with SJCC 18.30.200(C)(2) for the parcel containing the massage
building.
- 19 4. Exterior lighting shall be energy efficient and shielded or recessed so that direct
20 glare and reflections are contained within the boundaries of the parcel. It shall be
directed downward and away from adjoining properties and public rights-of-way.
The language of SJCC 18.60.170 (lighting) applies to this proposal.
- 21 5. Immediately after construction is completed, the owner shall request that
22 Community Development and Planning perform an inspection and grant access to
23 the subject property for that purpose.

24 Dated this 31st day of July, 2014.


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.

RIGHT OF RECONSIDERATION

Parties to this hearing have a right to request reconsideration as outlined in SJCC 2.22.210(O).