

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Thomas Bailey and Allison Nelson
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S.J.C. COMMUNITY

AUG 28 2013

File No.: PSJ000-13-0009

DEVELOPMENT & PLANNING

Tax Parcel No.: 272511007

Request: Shoreline Substantial Development Permit

Location: 84 Perch Tree Lane, Orcas Island

Summary of Proposal: Beach stairs

Shoreline Designation: Rural Farm Forest

Hearing Date: August 14, 2013

Application Policies and Regulations: Shoreline Master Program

Decision: Approved subject to conditions.

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

12 **RCW 90.58.020 Use Preferences**

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

20 4. As discussed in the findings of fact, there are no adverse impacts associated with
21 the proposal. The proposal will have no impact on public navigation since it is
22 located landward of the ordinary high water mark and will enhance shoreline access
23 for the applicants. The criterion is satisfied.

24 **RCW 90.58.020(1)**

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

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

RCW 90.58.020(2)

Preserve the natural character of the shoreline;

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

RCW 90.58.020(3)

Result in long term over short term benefit;

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

RCW 90.58.020(4)

Protect the resources and ecology of the shoreline;

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

2 **RCW 90.58.020(5)**

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

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

5 **RCW 90.58.020(6)**

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

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

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

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

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

16 12. SJCC 18.20.140 defines a “normal appurtenance, shoreline” as “*a structure or*
17 *development that is necessarily connected to the use and enjoyment of a single-family*
18 *residence and which is expressly defined in WAC 173-27-040 and in Chapter 18.50*
19 *SJCC, for purposes of exemption from shoreline substantial development permit*
20 *requirements in accordance with WAC 173-27-040(g).” SJCC 18.50.020(G)(3)(f)*
21 *provides that in order for a beach access structure to be considered an exempt*
22 *development it must be less than 15 feet in height. Since the proposal is more than 15*
23 *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. The applicants propose to use an existing pathway to access the stairs.

24 **SJCC 18.50.300(A)(1):** *Every application for a substantial development permit for*
25 *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.

1 14. As determined in the findings of fact, the proposal will not affect bank
2 stability, vegetation removal is minimal, visual impacts are minor and the proposal is
3 stable.

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

8 15. The staff report notes that the bank is not a feeder bluff.

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

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

13 DECISION

14 As conditioned, the proposed project is consistent with all the criteria for a shoreline
15 substantial development permit. The proposal is approved as proposed in Ex. 6,
16 subject to the following conditions:

- 17 1. Disturbed areas shall be revegetated with native vegetation.
- 18 2. Construction or substantial progress toward any remaining construction of the
19 project for which a shoreline permit is granted must be undertaken within two years
20 after the permit approval.
- 21 3. All development authorized by a shoreline permit shall be completed within five
22 years of the date of permit approval or the permit shall become null and void.
- 23 4. Upon completion of construction, the applicant or agent will contact the
24 permitting department, CDPD, for an inspection.
- 25 5. All debris entering the water or shoreline area shall be removed immediately and
disposed of in a legal manner.
6. A Stormwater Management Plan and a Construction Pollution Prevention Plan
shall be approved by the County prior to the construction of the stairs.
7. No viewing deck shall be constructed at the top of the stairs.

Dated this 27th day of August 2013.


Phil A. Olbrechts

County of San Juan Hearing Examiner

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

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4 Hearing examiner decisions become effective when mailed or such later date in
5 accordance with the laws and ordinance requirements governing the matter under
6 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.

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

9 Depending on the subject matter, this decision may be appealable to the San Juan
10 County Superior Court or to the Washington State shorelines hearings board. State
11 law provides short deadlines and strict procedures for appeals and failure to timely
12 comply with filing and service requirement may result in dismissal of the appeal. See
13 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.

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