

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Jay Lien
144 Sunset Point Dr.
Friday Harbor, WA 98250

Valerie Gorder, trustee of VFG QPRT
154 Sunset Point Dr.
Friday Harbor, WA 98250

File No.: PSJ000-11-0011

Request: Shoreline Substantial Development Permit

Parcel No: 450251006, 450251009 & 450251010

Location: Lots 9 and 10 of Sunset Point Addition
San Juan Island

Summary of Proposal: Beach stairs

Shoreline Designation: Rural Residential

Hearing Date: January 11, 2012

Application Policies and Regulations: Shoreline Master Program

Decision: Approved subject to conditions.

S.J.C. COMMUNITY

FEB 15 2012

DEVELOPMENT & PLANNING

1 on Lots 9 and 10 of the Sunset Point Addition and be used by Lot 6¹ of the same
2 subdivision. Lot 9 is undeveloped and the other two lots have homes on them. At an
3 8.6 high tide, only Lot 10 has a beach. Lot 9 has a rocky cliff that drops sharply into
4 the water. The Gorder house and guest house are on Lot 6. While there is access to
5 the water from Lot 6 the shoreline is rocky and there is no beach. There are no
6 mapped eroding or unstable bluffs at the location of the proposed stairs. There is
7 exposed rock cliff near the water. The main part of the stairs is proposed to be
8 located on Lot 10 with the upper entry on Lot 9.

9 In its application materials, Ex. 1, the Applicants state that the size of the stairs is
10 necessary so as to comply with International Residential Code standards for stair
11 construction including rise and run widths as well as landing requirements. The
12 Examiner finds this assertion credible as there is no incentive to make the stairs larger
13 than necessary. The stairs do include a landing for kayaks, but this is only a minor
14 portion of the structure with a corresponding significant increase in functionality.
15 The stairs are also proposed and conditioned to be stained in a natural tone that will
16 blend into the woody bank vegetation. Finally, the impacts of the stairs are minimized
17 from a cumulative impact standpoint by providing joint use to two single-family
18 homes. Given these circumstances and the steep slopes associated with the site of the
19 stairs it is determined that the stairs have been designed to blend in with the natural
20 surroundings to the extent feasible to reduce visual impacts. The grade of the slopes
21 and the vegetation at the site depicted in the Ex. 1 photographs do not reveal any
22 terrain or vegetation that could be used to further conceal the stairs.

23 The Applicants presented uncontroverted evidence that an existing pathway is too
24 dangerous for use.

25 4. Characteristics of the Area. The lot is in a developed residential
neighborhood.

5. Adverse Impacts of Proposed Use. There are no adverse impacts
discernable from the record. According to the staff report, the proposal will not
encroach into any critical areas. In order to minimize impacts to shoreline habitat,
the Applicants propose to limit vegetation removal only to the extent necessary to
build the project and to restore vegetation to all disturbed areas that are not in contact
with the beach access structure. The slopes that the stairs traverse are mapped as
stable and are not feeder bluffs. The stairs will not extend waterward of the ordinary
high water mark and for this reason no impacts to aquatic resources are anticipated.
The stair design does not suggest any significant aesthetic impacts for the reasons
discussed in Finding of Fact No. 3 and also because other beach access structures are
also visible in the vicinity.

¹ The staff report at page 2 notes that Lot 6 consists of “Lots 6, 7 8 and a portion of 5 of the Sunset Point Addition.”

CONCLUSIONS OF LAW

Procedural:

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

Substantive:

2. Shoreline Designation. The subject property is designated as Rural Residential. The shoreline also qualifies as a shoreline of statewide significance under the Shoreline Management Act, Chapter 90.58 RCW.

3. Permit Review Criteria. SJCC 18.50.020(G)(3)(f) provides that in order for a beach access structure to be considered exempt from a shoreline substantial development permit it must be less than 15 feet in height. Since the proposal is more than 15 feet in height it is not exempt. SJCC 18.50.300(B)(2) provides that beach access structures are allowed in the rural residential shoreline environment if they are consistent with applicable policies and regulations of the San Juan County Shoreline Master Program. 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 applicable policies and regulations are quoted in italics below and applied through conclusions of law.

RCW 90.58.020 Use Preferences

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

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

RCW 90.58.020(1)

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.

1 **RCW 90.58.020(2)**

2 *Preserve the natural character of the shoreline;*

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

5 **RCW 90.58.020(3)**

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

7 7. The project will provide long term beach access with no corresponding significant
8 adverse impacts.

9 **RCW 90.58.020(4)**

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

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

12 **RCW 90.58.020(5)**

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

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

15 **RCW 90.58.020(6)**

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

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

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

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

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

12. SJCC 18.20.140 defines a “normal appurtenance, shoreline” as “*a structure or*
development that is necessarily connected to the use and enjoyment of a single-family
residence and which is expressly defined in WAC 173-27-040 and in Chapter 18.50
SJCC, for purposes of exemption from shoreline substantial development permit
requirements in accordance with WAC 173-27-040(g).” SJCC 18.50.020(G)(3)(f)

1 provides that in order for a beach access structure to be considered an exempt
2 development it must be less than 15 feet in height. Since the proposal is more than 15
3 feet in height it is not exempt.

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

6 13. Between the three lots, only Lot 10 has a beach. From Lot 9, the beach
7 can only be accessed by stairs, since Lot 9 has a rocky cliff that drops sharply into the
8 water. An existing trail is too dangerous for use.

9 **SJCCP(B)(3), Section 5(J)(4):** *Beach access stairs or ramps should be encouraged
10 to be connected to existing docks, as opposed to separate structures for beach access
11 and vessel moorage.*

12 14. There is no dock.

13 **SJCCP(B)(3), Section 5(J)(5):** *Beach access stairs or ramps on shorelines that are
14 known or demonstrated to be eroding bluffs, unstable bluffs, eroding beaches, or
15 exposed cliffs will require design and engineering which will assure that no
16 significant visual or environmental impacts will be created.*

17 15. There are no mapped eroding or unstable bluffs. There is an exposed rock
18 cliff near the water. For the reasons discussed in Finding of Fact No. 3 the proposal
19 is engineered to reduce visual impacts to the extent that can be reasonably required.
20 The aesthetics of the structure will not be significantly adverse as there are already
21 other beach access structures in the vicinity.

22 **SJCCP(B)(3), Section 5(J)(6):** *All beach access structures should be located and
23 designed to blend in with the natural surroundings to the extent feasible to reduce
24 visual impacts. Existing vegetation and terrain features should be used whenever
25 possible for screening.*

16. For the reasons discussed in the second paragraph of Finding of Fact No.
3, the proposal is consistent with the policy quoted above.

SJCCP(B)(3), Section 5(J)(7): *In order to minimize the visual and environmental
impacts of additional development along the shoreline, it is appropriate to establish
size, dimensional, and design limitations for all beach access structures. It is also
appropriate to use size, dimensional, and design standards as benchmarks for
determining when a pedestrian beach access structure would qualify as "exempt"
development.*

17. SJCC 18.50.020(G)(3)(f) sets an exemption for beach stairs as
contemplated by the policy quoted above. There do not appear to have been any
regulations that set maximum dimensions for beach access structures. However, that

1 is an issue that pertains to the contents of the County's shoreline regulations and is
2 not germane to the proposal's compliance with those regulations. Further, the
3 dimensions of the stairs have been minimized as determined in Finding of Fact No. 3.

4 **SJCCP(B)(3), Section 5(J)(8):** *Beach access structures should not extend below the
5 ordinary high water mark (OHWM) and should not impede public access to public
6 tidelands.*

7 18. The stairs are not proposed to extend below the OHWM.

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

12 19. The stairs will be constructed in accordance with the International
13 Residential Code to assure stability. In order to minimize impacts to shoreline
14 habitat, the Applicants propose and the project is conditioned to limit vegetation
15 removal only to the extent necessary to build the project and to restore vegetation to
16 all disturbed areas that are not in contact with the beach access structure. The slopes
17 that the stairs traverse are stable and are not feeder bluffs. The stairs will not extend
18 waterward of the ordinary high water mark and for this reason no impacts to aquatic
19 resources are anticipated. The stair design does not suggest any significant aesthetic
20 impacts for the reasons discussed in Finding of Fact No. 3 and also because other
21 beach access structures are also visible in the vicinity.

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

26 20. Staff have determined that the proposed structure will not be located upon feeder
27 or unstable bluffs.

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

31 21. The structure is not located below the OHWM.

32 DECISION

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

35 1. The structure shall be as drawn on the survey dated July 13, 2007.

- 1 2. No part of the beach access structure shall be permanently located
2 seaward of the OHWM. A small, two or three-step drawbridge apparatus
3 maybe used but only placed in the down positions during a time when a
4 person is actually using those steps.
- 5 3. Excavated materials shall not be dumped over the bank nor removed from
6 the site without prior approval from CDPD.
- 7 4. Construction shall not be commenced until all relevant appeal periods
8 have run.
- 9 5. If during excavation or development of the site an area of potential
10 archaeological significance is uncovered, all activity in the immediate
11 vicinity of the find must be halted immediately and the administrator
12 notified at once.
- 13 6. Development under this permit shall commence within two years of the
14 date of permit approval and shall be substantially complete within five
15 years thereof or the permit shall become null and void.
- 16 7. Failure to comply with the terms of this permit may result in its revocation.
- 17 8. Immediately after construction is completed, the owner shall request that
18 CDPD perform and inspection and entry to the owner's property shall be
19 authorized for that purpose.
- 20 9. Vegetation shall only be removed necessary to construct the project and
21 all disturbed areas shall be restored to preconstruction condition with
22 native vegetation to the extent re-vegetation does not interfere with the
23 proposal structure or its use.
- 24 10. The stairs shall be stained in a tone that blends in with the surrounding
25 environment.

Dated this 13th day of February 2012.



Phil 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

1 Depending on the subject matter, this decision may be appealable to the San Juan
2 County Superior Court or to the Washington State shorelines hearings board. State
3 law provides short deadlines and strict procedures for appeals and failure to timely
4 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.

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