

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND FINAL DECISION**

Applicant(s): Albert Jensen and Sons Inc.  
1293 Turn Point Road  
Friday Harbor, WA 98250

Agent: Jack Cory  
P.O. Box 38  
Friday Harbor, WA 98250

File No.: PSJ000-11-0010

Parcel Nos: 351341005

Location: 1293 Turn Point Road  
Friday Harbor, WA 98250

Summary of Proposal: Application for addition of stormwater detention pond to existing marina.

Land Use Designation: Rural Industrial

Public Hearing: February 8, 2012

Application Policies and Regulations: Shoreline Master Program, SJCC 18.50

Decision: The proposal is approved.

S.J.C. COMMUNITY

FEB 28 2012

DEVELOPMENT & PLANNING

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

3 Phil Olbrechts, Hearing Examiner

4 RE: Albert Jenson and Sons Inc.

5 Shoreline Substantial  
6 Development Permit  
7 PSJ000-11-0010

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND FINAL DECISION.**

8 **INTRODUCTION**

9 The Applicant requests a shoreline substantial development permit to construct a  
10 stormwater detention pond for a marina constructed in 1910. The permit application  
11 is approved.

12 **TESTIMONY**

13 In response to questions from the Examiner, the Applicant's representative noted that  
14 runoff to the pond comes off from activities associated with boat work.

15 **EXHIBITS**

16 All exhibits identified in the "Exhibits for Albert Jensen and Sons Pond", submitted  
17 by staff, are admitted into the record.

18 **FINDINGS OF FACT**

19 **Procedural:**

- 20 1. Applicant. The Applicant is Albert Jensen and Sons Inc.  
21 2. Hearing. The Hearing Examiner conducted a hearing on the subject  
22 application on February 8, 2012.

23 **Substantive:**

- 24 3. Site and Proposal Description. The Applicant proposes to construct a  
25 lined pond to serve as a stormwater detention pond for a marina constructed in 1910  
on the shoreline of Friday Harbor. The marina is part of a boat works operation that  
repairs, maintains, hauls out and stores boats. The proposed pond will collect and

1 then evaporate all stormwater that falls onto the property in order to become a non-  
2 discharge site.

3 4. Characteristics of the Area. The property to the west is also a marina. To  
4 the south and east are developed and undeveloped residential properties.

5 5. Adverse Impacts of Proposed Use. There are no adverse impacts  
6 associated with the proposed use. Since the marina was constructed in 1910, it does  
7 not have modern stormwater controls such as a stormwater detention pond. The pond  
8 will collect contaminated waters from the boat works operations, which before were  
9 apparently discharged directly into the Puget Sound. As noted in the staff report, the  
10 pond will be constructed in accordance with applicable stormwater control  
11 regulations. The proposal will certainly benefit the environment overall by  
12 reducing discharges of contaminated stormwater into Puget Sound. The pond will  
13 have minimal or no aesthetic impacts, since it will be located near the rear of the boat  
14 works operations and will be minimally visible from the shoreline. The pond will not  
15 adversely affect any views since as depicted in elevation drawings, Ex. 4, it does not  
16 involve any structures or equipment of any significant height.

## 11 CONCLUSIONS OF LAW

### 12 **Procedural:**

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

### 16 **Substantive:**

17 2. Shoreline Designation. The subject property is designated as Urban.

18 3. Zoning Designations. Rural Industrial.

19 4. Permit Review Criteria. SJCC 18.50.190(K)(1) authorizes marinas in  
20 Urban designated shorelines subject to the policies and regulations of the shoreline  
21 master program. SJCC 18.50.020(E)(2) requires a shoreline substantial development  
22 permit for all substantial development within 200 feet of a shoreline. SJCC 18.20.190  
23 defines a substantial development as any development that exceeds \$2,500 in fair  
24 market value. The proposal is presumed to be over \$2,500 in value and is within 200  
25 feet of the shoreline of Friday Harbor. 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 County Municipal Code and Comprehensive Plan. The applicable  
policies and regulations are quoted in italics below and applied through conclusions  
of law.

1 **RCW 90.58.020 Use Preferences**

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

9 5. The proposal will improve Puget Sound water quality with no  
10 corresponding adverse impacts. The pond will be constructed on land (see site plan  
11 in engineering report, Ex. 4), so there will be no impact to navigation. The policy is  
12 met.

13 **RCW 90.58.020(1)<sup>1</sup>**

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

15 6. As previously noted the proposal improves water quality with no  
16 corresponding adverse impacts. Improving water quality is of statewide interest. The  
17 policy is met.

18 **RCW 90.58.020(2)**

19 *Preserve the natural character of the shoreline;*

20 7. The proposed pond will be built in a level area that is already heavily  
21 developed with the boat works operation and will have no identifiable impact on the  
22 natural character of the shoreline .

23 **RCW 90.58.020(3)**

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

25 8. The project is designed for the sole purpose of protecting water quality,  
which is a long term benefit.

**RCW 90.58.020(4)**

*Protect the resources and ecology of the shoreline;*

9. The project is designed for the sole purpose of protecting water quality,  
which directly protects the resources and ecology of the shoreline.

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<sup>1</sup> 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(5)**

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

3 10. Public access is not affected or related to the proposal and no public  
4 access mitigation can legally be required of the Applicant.

5 **RCW 90.58.020(6)**

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

7 11. Recreational opportunities are not directly affected or related to the  
8 proposal and no mitigation for recreation can legally be required of the Applicant.

9 **SJCC 18.50.190(H)(3):** *All service facilities within or associated with a marina shall  
10 include provisions to prevent pollutants from entering the water.*

11 12. The primary purpose of the proposal is to prevent pollutants from entering  
12 the water.

13 **SJCC 18.50.190(H)(8):** *Marinas shall be designed to minimize their adverse effects  
14 on the scenic qualities of the shorelines.*

15 13. The detention pond will have nominal aesthetic impacts as determined in  
16 the Findings of Fact.

17 **SJCC 18.50.190(H)(9):** *Surface runoff from marina areas shall be controlled so that  
18 pollutants will not be carried into water bodies.*

19 14. The purpose of the proposal is to control and contain surface water runoff.

20 **Comp. Plan Element 3, Section (5)(C) Boating Facilities (1):** *Locate, design and  
21 construct boating facilities to minimize adverse effects upon, and to protect all forms  
22 of aquatic, littoral or terrestrial life including animals, fish, shellfish, birds and plants,  
23 their habitats and their migratory routes.*

24 15. As determined in the Findings of Fact, there are no significant adverse  
25 effects associated with the proposal.

**Comp. Plan Element 3, Section (5)(C) Boating Facilities (2):** *The location, design,  
configuration and height of boathouses, piers, ramps, and docks should both  
accommodate the proposed use and minimize obstructions to views from the  
surrounding area.*

16. As determined in the Findings of Fact, the pond will have no impacts on  
views.

1 **Comp. Plan Element 3, Section (5)(C) Boating Facilities (4):** *Boating facilities*  
2 *should be designed to optimize the trade-offs between the number of boats served and*  
3 *the impacts on the natural and visual environments.*

4 17. The proposal will reduce water quality impacts, thereby further optimizing  
5 the trade-offs between number of boats served and environmental impacts.

6 **Comp. Plan Element 3, Section (4)(C) Environmental Impacts (Purpose):** *The*  
7 *SMA is concerned with the potential environmental impacts of shoreline uses and*  
8 *modification activities. Shoreline and water quality degradation caused by the*  
9 *introduction of contaminants such as petroleum products, chemicals, solid waste,*  
10 *domestic or industrial wastewater and sediment from erosion are issues which must be*  
11 *addressed.*

12 18. The purpose of the proposal is to address and mitigate introduction of  
13 contaminants.

### 14 DECISION

15 The application is approved subject to the following condition:

- 16 1. The Applicant shall schedule a site inspection with staff upon completion of the  
17 project to verify compliance with this decision and applicable regulations.

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19 Phil Olbrechts  
20 County of San Juan Hearing Examiner

21 *Hearing Examiner decision date, February*  
22 *23, 2012, per Phil Olbrechts, HEX.*  
23 *LY.*

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**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.