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BEFORE THE HEARING EXAMINER FOR
SAN JUAN COUNTY
S.J.C. STATE OF WASHINGTON

JUN 8 0 2008

In Re:)	
08APL002)	FINDINGS OF FACT,
Robert and Dorothy Wayne)	CONCLUSIONS OF LAW and
Appeal of Administrative Decision)	ORDER
Re: Parcel No. 463621009)	
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FINDING OF FACT

1. This case involves an administrative appeal of the denial of a building permit application. The San Juan County Community Development and Planning Department Director denied the building permit application by means of two letters dated January 14, and January 22, 2008.
2. The administrative appeal was properly filed and a public hearing was held June 4, 2008. Notice of the hearing was published March 5, 2008, the site was posted on April 4, 2008, and the notice was mailed on May 1, 2008.
3. The essence of the Director's decision involved three conclusions:
 1. There was no specific authority to permit removal of trees in the shoreline area to facilitate moving of a house;
 2. Removal of the trees would violate the Shoreline Master Program (SMP) by failing to maintain proper screening, and
 3. The tree removal would negatively impact nearshore habitat.
4. The Waynes' request for a building permit involved the placement of a home that had previously been located on waterfront property in Seattle. The home is to be placed located outside the 200 foot shoreline jurisdiction line on a 4.36 acre site at the south end of Garrison Bay. The house is too large to be moved over San Juan Island roads and thus must be barged from its current location to the shoreline of the Wayne property and offloaded directly onto the site. At high tide a sufficient draft exists to allow this to happen.
5. The area involved in the house move on the Wayne property is considered an archeological sensitive location. An archeological study was prepared and approved by the State of Washington Office of Archeology and the relevant tribes.
6. An obstacle to the house moving is the necessity of removing six trees within the shoreline (200 foot) area. The trees were characterized by the owner and a neighbor as "dead or dying". There is no contrary evidence in this record.
7. The survey drawing located at page 18 of the record appears to require the removal of eight trees. The appeal letter and the testimony given at the hearing restricted tree removal to six trees. That is the appropriate number of trees under consideration.
8. In the staff report dated April 8, 2008 a reference is made to marine habitat protected areas as being "just up the bay". The unchallenged evidence in this case is that the shoreline at low tide

1 is mud flat for a significant area. There was no evidence that the provisions of SJCC 18.30.160
2 apply to this case.

- 3 9. The undisputed evidence in this record is that the trees are either already dead or soon to be so.
4 Additionally, they do present an issue of danger to members of the public who use the area.
5 There was no specific evidence that a natural process of falling or blowdown would benefit the
6 nearshore environment.
- 7 10. Any conclusion herein which may be deemed a finding is hereby adopted as such.

8 CONCLUSIONS OF LAW

- 9 1. The hearing examiner has jurisdiction over the appeal and the parties hereto.
- 10 2. Proper Notice was given in compliance with local and state requirements.
- 11 3. Appeal of an administrative determination takes place in a public hearing before the hearing
12 examiner under SJCC 18.80.140. The standard of review in an administrative determination
13 appeal is found at SJCC 18.10.030(D)(4) which states:

14 The party appealing a code interpretation or administrative determination or decision
15 shall have the burden of presenting the evidence necessary to prove to the hearing
16 examiner that the administrator's interpretation, determination or decision was clearly
17 erroneous.

- 18 4. Under the clearly erroneous standard the determination is to be overturned only if the hearing
19 examiner, after reviewing all of the evidence, "... is left with the definite and firm conviction that
20 a mistake has been committed." *King County v. Washington State Boundary Review Board*,
21 122 Wn 2d 648, 661 1993. As noted above the burden of convincing the hearing examiner rests
22 with the appealing party.
- 23 5. The Director claimed his lack of authority to approve the clearing of the trees under the SMP
24 provision of SJCC 18.50.060 which allows such clearing and grading activities only under
25 limited conditions not applicable to this set of facts. However, subsection (C) of that provision
26 exempts tree removal as follows:

27 "Tree removal permitted in a *development approval* is exempt from the regulations in
28 this section." (italics supplied)

- 29 6. Under SJCC 18.20.040 a "development" includes the relocation of any structure. A
30 "development permit" means a County permit of "approval" required for a project and
31 specifically includes a building permit.
- 32 7. This request is for a building permit to relocate an existing structure on ground outside SMA
33 and SMP jurisdiction. Because the building permit is a "development approval" the restrictions
34 on tree removal within the shoreline area are exempt from oversight under SJCC 18.50.060(C).
- 35 8. The Director also relied upon SJCC 18.50.330(B)(8). Under these facts the proposed tree
36 removal does not meet the definition of "shoreline development" found in RCW 90.58.030, WAC

1 173-27-030(6) or SJCC 18.20.190 all of which define a shoreline development as follows:

2 "...means a use consisting of the construction or exterior alteration of structures; dredging;
3 drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of
4 pilings; placing of obstructions; or any project of permanent or temporary nature which
interferes with the normal public use of the surface of the waters overlying lands subject to
Chapter 9.58 RCW at any stage of water level...

5 Therefore, SJCC 18.50.330(B)(8) does not apply.

6 9. There is insufficient evidence in this record that the habitat protection provisions of SJCC
18.30.160 apply.

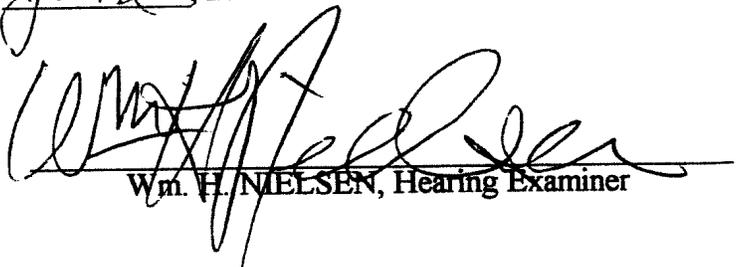
7 10. Mr. and Mrs. Wayne are the prevailing parties in this appeal.

8 11. Any finding herein which may be deemed a conclusion is hereby adopted as such.

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10 **DECISION**

11 The administrative determination denying the building permit to located the house on the property
12 through barging is reversed. The Waynes are allowed to remove six dead or dying trees as indicated in
13 their application and appeal photos to facilitate the installation of their home on a location outside
shoreline jurisdiction.

14 DATED this 29th day of June, 2008.

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16 
17 Wm. H. NIELSEN, Hearing Examiner

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19 **Appeal**

20 Any appeal of this decision shall be to Superior Court pursuant to the Land Use Petition Act,
21 Chapter 36.70 RCW, within 21 days of the issuance of the decision. See Home Rule Charter, Section
22 3.70.
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