SAN JUAN COUNTY
HEARING EXAMINER

FINDINGS, CONCLUSIONS, AND DECISION

Applicant(s):	J. Starr Farish PO Box 370 Eastsound, WA 98245
Agent:	Jeff Otis Otis Land Use Consulting 393 Bobbyann Avenue Eastsound, WA 98245
File No.:	PSJ000-17-0001
Request:	Shoreline Substantial Development Permit
Parcel No(s):	271451012
Location:	118 Main Street, Eastsound, Orcas Island
Summary of Proposal:	An application for shoreline substantial development permit
Shoreline Designation:	Eastsound Urban
Public Hearing:	April 20, 2017
Application Policies and Regulations:	SJCC 18.35.460 Eastsound subarea land use regulations SJCC 18.35.470 Eastsound village district development standards SJCC 18.50.025 Critical areas - applicability SJCC 18.80.110 Shoreline permit procedures SJCC 18.50.050 Archaeological and historical resources SJCC 18.35.080 Critical aquifer recharge areas
Decision:	Approved subject to conditions

S.J.C. DEPARTMENT OF
MAY 16 2017
COMMUNITY DEVELOPMENT

BEFORE THE HEARING EXAMINER
FOR SAN JUAN COUNTY

In the Matter of the Application of	)	
	)	NO. PSJ000-17-0001
J. Starr Farish	)	
	)	
for approval of a	)	**Outlook Inn**
shoreline substantial development permit to	)	
construct hotel units and meeting room	)	
at 118 Main Street, Eastsound, Orcas Island	)	

S.J.C. DEPARTMENT OF
MAY 16 2017
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SUMMARY OF DECISION

The request for a shoreline substantial development permit to replace an existing residential structure with five hotel units and a meeting room associated with the existing Outlook Inn at 118 Main Street, Eastsound, Orcas Island is **APPROVED** subject to compliance with conditions.

SUMMARY OF RECORD

Request:
J. Starr Farish (Applicant) requested a shoreline substantial development permit to replace an existing residential structure with five hotel units including deck and patio areas and a meeting room associated with Outlook Inn at 118 Main Street, Eastsound, Orcas Island.

Hearing Date:
The San Juan County Hearing Examiner held an open record public hearing on the request on April 20, 2017.

Testimony:
At the open record public hearing, the following individuals presented testimony under oath:

Julie Thompson, Planner, San Juan County Department of Community Development
Jeff Otis, Applicant Representative
Charles Carver
Kyle Loring, Friends of the San Juans

Exhibits:
The following exhibits were admitted in the record:

A. Department of Community Development Staff Report, dated April 7, 2017 and the following attachments:
   1. Request for agency review
   2. Determination of Non-Significance

3. Environmental checklist
4. Application packet, including:
    a. Land use project application, dated received January 6, 2017
    b. Project narrative, January 4, 2017
    c. Conceptual elevations
    d. Project profile plan view
    e. Preliminary foundation plan
    f. Site plan
    g. Eastsound Sewer and Water District letter confirming capacity, December 5, 2016
    h. Email regarding fire sprinklers, from Paul Kamin, Eastsound Water Users Association. December 8, 2016
    i. Memorandum from County Prosecuting Attorney's Office regarding parking credits available to the site, October 13, 2015
5. Applicant information regarding compliance with critical aquifer recharge area standards - Outlook Inn chemical safety data sheets
6. Approved Stormwater Plan prepared by Hart Pacific Engineering revised November 2016
7. Agency comment letters:
    a. UW Friday Harbor Labs, February 11, 2017
    b. Samish Indian Nation, Tribal Historic Preservation Officer, February 13, 2017
    c. Lummi Nation, Culture Department, March 1, 2017
    d. San Juan County Stormwater Engineer, January 13, 2017
    e. Eastsound Planning Review Committee March 2, 2017 Meeting Minutes
8. Public comment from Joe Symons, March 26, 2017
9. Legal ad
10. Notification requirements
11. Wessen & Associates summary letter re: Archaeological resources, dated November 21, 2016
12. Email from Department of Archaeology and Historic Preservation re: what type of permit will be required, dated April 6, 2017
13. Draft Flood Insurance Rate Map

14. Completed Archeological Site Alteration & Excavation Permit application, submitted by the Applicant's consultant to Department of Archeology and Historic Preservation, March 23, 2017

Upon consideration of the testimony and exhibits submitted at the open record public hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. J. Starr Farish (Applicant) requested a shoreline substantial development permit (SSDP) to replace an existing residential structure with five hotel units and a meeting room associated with Outlook Inn at 118 Main Street, Eastsound, Orcas Island.[1] *Exhibits A and A.4; Otis Testimony.*

2. The 0.23-acre subject property is located on Main Street along the waterfront in Eastsound. The shoreline on-site is protected by an eight- to 10-foot rock wall that extends to the beach. The property is developed with a 1,851 square foot residential structure that has service from Eastsound Sewer and Water District. The existing roof is composed of metal, cedar shingles, and asphalt shingles. Other existing improvements include a 674 square foot driveway and parking area on the west side, a yard and landscaped area located between the parking area and the cottage, and a lawn on the east side. Existing impervious surface totals 2,525 square feet. Currently stormwater runoff from all imperious surfaces (including driveway and parking area) flows southeast into Fishing Bay. Roof runoff is conveyed south to the beach in two four-inch drainpipes built into the rock wall. A small amount of runoff from portions of the sidewalk surface enters the stormdrain system downstream catch basins and is conveyed to the nearby outfall located adjacent to the east side of the property. *Exhibits A and A.4; see aerial site photo at Exhibit 14, page 3.*

3. The neighborhood is commercial in nature. Adjacent development includes the Outlook Inn to the north, office uses to the west, and a County park to the east. The parcel's southern boundary abuts East Sound. *Exhibit A.*

4. The subject property has a land use designation of Eastsound Village Commercial. The shoreline is designated Eastsound Urban. Regulated critical and sensitive areas on-site include a FEMA flood zone, critical aquifer recharge area, fish and wildlife habitat conservation area, and a known archaeological site. The parcel is subject to the jurisdiction of the Eastsound Subarea Plan and the Shoreline Master Program. *Exhibit A.*

5. Pursuant to San Juan County Code (SJCC) 18.50.220.B.7, commercial development is permitted in the Eastsound Urban shoreline environment subject to compliance with the Eastsound Waterfront Access Plan (EWAP). As established in the Eastsound Subarea Plan and SJCC 18.50.220.B.7, all existing uses and structures subject to the EWAP are deemed conforming development because of the physical and visual access provided

[1] The subject property is also known as Tax Parcel Number 271451012. *Exhibit A.*

through the EWAP. In the Eastsound Subarea Plan Village Commercial district, hotel/motel is as an allowable use. *SJCC 18.30.460.* All allowable uses listed in the Eastsound Subarea Plan are subject to the terms of the EWAP, including setbacks and building envelopes among other items. *Exhibit A; SJCC 18.50.220.B.7.* The EWAP establishes setbacks required for the parcel as follows: at least five feet from front lot boundary, at least five feet from the ordinary high water mark (OHWM) for structures (while decks are allowed to extend to any bulkhead line), and at least five feet from any side lot boundary. *SJCC 18.30.480 Table 10.*

6. The proposal would remove the existing 1,851 square foot residential structure and replace it with a single 3,963 square foot (including deck and patio areas) commercial structure containing five hotel units and a meeting room as part of the Outlook Inn, an existing hotel across the street. The proposal would use pin-piles to anchor the structure along the bulkhead in order to float the building above known archeological resources underlying the property. Through the center of the structure the foundation would be continuous reinforced concrete footing on geotech fabric located above the undisturbed midden layer. The height of the proposed structure would be 21 feet above grade. The building would occupy slightly less than 40% of the lot. Proposed setbacks are: nine feet from Main Street to the north, five feet from the OHWM to the south, nine feet from the west lot line, and 37 feet from the east lot line. Proposed decks would extend to the bulkhead line. Total site area covered by structures, parking, and driveways would be 4,878 square feet. Approximately 5,141 square feet, or 51 %, of the site would remain as undeveloped open space. No outdoor storage is proposed. Water, sewer, and private utility connections already exist to the property. *Exhibits A, 4.b,4.f, 4.g, and 11.*

7. The project would increase impervious surface area on-site by 2,353 square feet. The majority of the increase (2,112 square feet) would be increased roof area. The proposed roof would be surfaced with a non-polluting (non-galvanized or leaching) surface. Roof runoff is proposed to continue to discharge into Fishing Bay via the existing drainpipes in the rock wall at the shoreline. Total parking area on-site is proposed to be reduced from 674 to 368 square feet. Runoff from the revised parking area and the sidewalk is proposed to flow along Main Street, to the nearby outfall located adjacent to the east side of the property. The east side of the property would remain open and landscaped with lawn. *Exhibits A, 4.b, and 4.f.*

8. There is a small amount of existing woody vegetation along the site's shoreline on top of the bulkhead that is proposed for removal. The proposed new structure goes up to the bulkhead. The Agent indicated that there is not expected to be room for additional plantings in the shoreline area. Some vegetation on the west side would be retained and new plantings would be provided along the street. The design of the proposed structure, limited to 21 feet in height above grade, uses pitched roofs with lower sections to allow views through the property. Open areas on the west and east sides would be retained, allowing views along the ground. The Agent testified that the Eastsound Planing Review Committee approved the proposal as being consistent with the applicable Eastsound

design review standards established at SJCC 18.30.670.B. *Jeff Otis Testimony; Exhibits 4.b, 4.d, and 7.e.*

9. The subject property is not adjacent to any residential development and does not trigger the screening requirement established in SJCC 18.30.470 for commercial development abutting residential uses. The proposal includes trees to be planted provided along the street frontage and the side property lines. *Exhibits A and 4.b.*

10. The County's off-street parking standards require one parking space per guest room for a total of five spaces. The parking standards do not establish a number of stalls required specifically for the proposed meeting room, but within the category for hotels and motels, the standards require one parking space per 300 square feet of additional space required for other uses contained within the hotel. A total of six off-street parking stalls are required. Because the property has four parking credits, only two additional spaces are called for. The Outlook Inn currently has 65 parking spaces available, while according to the parking standards it requires 54 for its existing configuration. The two required parking stalls can be provided at the Inn across the street, which is also practice as most of the people who would use the meeting room would be staying at the Inn. *Exhibits A and 4; SJCC 18.30.630-Table 22.*

11. The Applicant submitted a stormwater management plan designed per the Washington State Department of Ecology's Stormwater Management Manual for Western Washington, 2005, which was approved by the County's Stormwater Engineer. The plan recommended best management practices for control of sedimentation and pollution during and after construction, including a construction stormwater pollution prevention plan (SWPPP), permanent on-site stormwater management BMPs for infiltration, dispersion, and retention of stormwater runoff on-site to the maximum extent feasible. *Exhibits A, 4, 6, and 7.d; Julie Thompson Testimony.*

12. With regard to the presence of regulated critical and sensitive areas on-site (FEMA flood zone, critical aquifer recharge area, fish and wildlife habitat conservation area), the existing development on the subject parcel triggers the critical areas provisions that apply. Pursuant to SJCC 18.35.025.A, any use or structure legally located within shorelines of the state established before the effective date of the County's development regulations to protect critical areas "may continue as a conforming use and may be redeveloped or modified if the redevelopment or modification is consistent with Chapter 18.50 SJCC and either: (1) the proposed redevelopment or modification will result in no net loss of shoreline ecological functions; or (2) the redevelopment or modification is consistent with SJCC 18.35.020 through 18.35.140."

13. The Applicant elected to pursue option (1) above. The fish and wildlife habitat conservation area (FWHCA) in the site's shoreline is salmon habitat. The project's potential adverse impacts to salmon habitat include increases in sedimentation and pollutants, primarily during construction. The Applicant proposes to prevent sedimentation and control temporary pollutants from construction vehicles through

implementation of best management practices (BMPs) for stormwater controls during construction, including: preventing mud, sediment, and debris from entering Main Street; installing silt fences to prevent sediments from entering the bay; installing protection around the catch basin inlets to prevent coarse sediments from entering the drainage system; stabilizing all disturbed soils; removal/proper disposal of construction contaminants (e.g., oil, construction debris, roofing); and dewatering as necessary to ensure that clean water enters drainage systems. Cut and fill slopes are proposed to be designed and constructed to minimize erosion. The approved permanent stormwater control plan proposes to collect and convey roof runoff to outfalls in the rock wall along the shoreline. A "tee" diffuser is proposed to disperse energy at each drain pipe outlet. The project reduces pollution generating impervious surfaces by 306 square feet, reducing the contaminants discharged to the bay over the existing condition. Runoff from the proposed 368 square foot parking area, upland of the building, would flow north and discharge to the existing street stormwater system. Roof runoff would be increased in volume (due to larger roof area) but decreased in the potential to leach contaminants into stormwater from the use of non-polluting roofing materials. The Applicant asserted, and Planning Staff accepted, that proper implementation of stormwater BMPs would result in no increase in pollutants or sediment within the FWHCA and thus in no net loss in ecological function of the shoreline. *Exhibits A, 4.b, and 6; Jeff Otis Testimony; Julie Thompson Testimony.*

14. According to the Draft Flood Insurance Rate Maps (FIRMs), the subject property is in a designated special flood hazard area. The static base flood elevation is shown to be 16 feet; the lowest elevation for the proposed building is 19 feet. County Staff determined that no Base Flood Elevation certificate is required. *Exhibits A and 13; SJCC 18.35.075.*

15. To address the critical areas regulations for the protection of the critical aquifer recharge area (the entire County), the Applicant submitted the Outlook Inn Housekeeping Chemical Safety Data Sheets. The cover states that aside from laundry detergent, chemicals would not be stored in the proposed units. A spill cleanup plan is provided. *Exhibit 5.* County Staff accepted this documentation in satisfaction of the requirements of SJCC 18.35.080. *Exhibits A and 7.d.*

16. Planning Staff determined that the proposal complies with the permit requirements and criteria established in SJCC Chapter 18.80 and with applicable sections of the UDC. *Exhibit A.*

17. Element 3 of the Comprehensive Plan establishes goals and policies for shoreline development. Section 3.3.H1 establishes that the purpose of all Eastsound shoreline environments is to ensure consistency with the Eastsound Subarea Plan. Applicable policies of the plan include provisions for substantial visual and physical access to the shoreline through the EWAP; consistency with commercial use and development specified in the Eastsound Subarea Plan and the SMP; protection of archaeological and historic resources; provisions for landscaping, open space, parking, setbacks and height; and drainage and stormwater pollution control. In Policy 3, the Subarea Plan encourages

new commercial development to locate in areas where commercial uses already exist. The Applicant and the Planning Staff note that the project is proposed in an area of existing commercial development. *Exhibit A.*

18. San Juan County assumed lead agency status for review of the proposal's environmental impacts pursuant to the State Environmental Policy Act (SEPA). A determination of non-significance (DNS) was issued February 8, 2017. No comments were received on the DNS. *Exhibits A and 2; Julie Thompson Testimony.*

19. The application was submitted January 6, 2017 and determined to be complete on January 26, 2017. Notice of the application was published on February 8, 2017, and mailed to surrounding property owners and posted on-site on February 10, 2017. *Exhibits A, 9, and 10.*

20. On March 8, 2017 notice was sent to the following agencies for comment including Washington State Department of Ecology, Washington Department of Natural Resources, the Samish Indian Tribe, the Lummi Nation, UW Friday Harbor Labs, Eastsound Planning Review Committee, San Juan County Public Works Stormwater Engineer, and San Juan County Fire Marshal. *Exhibits A and 1; Julie Thompson Testimony.*

21. One public comment submitted expressed concern about loss of public visual access to East Sound and lack of public awareness of the project. *Exhibit 8.*

22. UW Friday Harbor Labs provided submitted comments indicating the opinion that the Applicant's responses to the environmental checklist were lacking in detail and clarity as to energy conservation, archaeological concerns, and tree and vegetation removal. However, they submitted that the project would not likely have environmental impacts to marine resources making specific note that vegetation above the bulkhead should be preserved. They expressed concern of the new housing decks being cantilevered over the top of the bank but noted the design element is not prohibited. *Exhibits A and 7.a.*

23. The County Stormwater Engineer approved the stormwater site plan and stormwater prevention plan. *Exhibits A and 7.*

24. The Samish Indian Tribe agreed with the archaeologist's recommendation for additional testing. *Exhibits A and 7.b.*

25. The Lummi Nation Tribal Historic Preservation Office submitted comments noting that the property is within recorded archeological site 45SJ239, that an archeological excavation permit would be required, and requesting a site visit with interested parties. *Exhibit A and 7.c.*

26. The subject property is located wholly within the boundaries of recorded archeological site 45SJ239, a late pre-historic settlement area known to contain human remains. Based on site surveys and studies conducted in 2008, 2013, and 2015 (among others), it is

known that the site contains a layer of introduced fill 12 to 30 inches in depth overlying archeological deposits that range from 20 to greater than 40 inches in thickness. While the upper portions of the deposits are known to be disturbed, the lower portions are intact. The proposal would develop the structure in the center of the site with a foundation including a row of 11 pin piles, eight inches in diameter, along the southern site boundary near the existing rock wall in order to support the structure above the resources with minimal disturbance. According to the Applicant's archeological consultant, who acknowledged that design included significant effort to reduce the potential for impacts, the 11 pin piles and the septic tank are the only project components proposed to penetrate the fill material and potentially impact archeological resources in the deposit layer below. The archeology consultant noted that better understanding of the deposits below the proposed project is required in order to establish whether intact archeological resources would be impacted and the likely parameters of the potential impact. The Washington State Department of Archaeology and Historic Preservation (DAHP) concurred that further study is needed and requires approval of an archaeological excavation permit that includes sonicores, analyzing core sediments, and monitoring all ground disturbing activities. *Exhibits 11 and 12.* Additional archaeological inspection would be needed where the pin-pile foundations are proposed in order to verify avoidance of intact cultural resources. If cultural resources are found, data recovery would be necessary in the area proposed to be disturbed. At the request of the Lummi Nation Tribal Historic Preservation Office, interested parties conducted a site visit on April 5, 2017. Lummi tribe members stressed that any artifacts found need to remain on-site. The record includes the submitted the DAHP archeological site alteration & excavation permit application, which is in process. *Testimony of Jeff Otis; Exhibit 14.*

27. The Eastsound Planning Review Committee discussed the proposal with members and the public at their March 2, 2017 meeting, reporting no input on the plan. *Exhibits A and 7.e.*

28. At hearing, public comment was offered by an individual who sits on the advisory committee for open space for Eastsound visioning process, but who testified as an individual, who thinks this project will enclose waterfront for commercial use. He testified that this is opposed to future thinking and said he has a hard time imagining the proposed structure won't obstruct the view corridor, resulting in a private takings of public view. He argued that the Outlook Inn has room for expansion upland wished the proposed building could be sited elsewhere, asserting that the view preserved would benefit the Inn itself. *Charles Carver Testimony.*

29. Friends of the San Juan presented public comment expressing concern about maintaining same level of vegetation in the shoreline for the protection of the fish and wildlife habitat conservation area. Kyle Loring testified that the proposal would result in the loss of a tree/shrub area to the detriment of salmon habitat and contended that the impacts of replacing existing vegetation with a structure were not addressed in the Applicant's materials. He disagreed with this proposal being processed as a nonconforming existing

use and requested that more vegetation be required in the shoreline. *Kyle Loring Testimony.*

30. In response to public comment, Planning Staff testified that there is no basis to require additional planting due to the fact that the parcel is already developed and that the materials submitted by the Applicant adequately demonstrate no net loss, satisfying the requirement of SJCC 18.35.025.A. Decks are allowed to extend to the bulkhead line. Staff noted that the proposal complies with EWAP design standards and was approved by the Eastsound Design Review Committee. *Julie Thompson Testimony.*

31. In response to public comment, the Applicant agent noted that the project would maintain a large area to the east of the structure, with a 37-foot setback, to retain the exiting view corridor in that location which is currently in lawn. The proposed structure is keeping an overall low profile and is reducing roof heights between the units to maximize shoreline views from upland locations. Three trees on the west property line are being maintained and more trees being added to the site than are currently there. The agent contended that no net loss is demonstrated through the proposed minimization of polluting surfaces and sedimentation control measures, converting to a non-polluting roof, reducing on-site parking area, and installing diffusers at the existing shoreline discharge, all of which would result in net ecological function benefits. *Jeff Otis Testimony.*

32. Upon review of the entire record including public comment, Planning Staff recommended approval with conditions. *Julie Thompson Testimony; Exhibit A.* The Applicant waived objection to conditions. *Jeff Otis Testimony.*

CONCLUSIONS

Jurisdiction:

The Hearing Examiner is granted jurisdiction to hear and decide applications for shoreline substantial development permits, pursuant to Chapter 36.70.970 of the Revised Code of Washington and Chapters 2.22 and 18.80 of the San Juan County Code.

Criteria for Review:

Criteria for Approval of Substantial Shoreline Development Permits

Pursuant to SJCC 18.80.110(H), a shoreline substantial development permit shall be granted by the County only when the applicant meets the burden of proving that the proposal is:

1. Consistent with the policies of the Shoreline Management Act and its implementing regulations, Chapter 90.58 RCW and Chapter 173-27 WAC, as amended;

2. Consistent with the policies and regulations of the Shoreline Master Program in Chapter 18.50 SJCC;

3. Consistent with this chapter;

4. Consistent with the applicable sections of this code (e.g., Chapter 18.60 SJCC);

5. Consistent with the goals and policies of the Comprehensive Plan; and

6. All conditions specified by the hearing examiner to make the proposal consistent with the master program and to mitigate or avoid adverse impacts are attached to the permit.

Additional Applicable Regulations:

Applicable Development Standards.

The property is within the jurisdiction of the Eastsound Subarea Plan and the Shoreline Master Program. Pursuant to the Eastsound Subarea Plan, Village Commercial District (SJCC 18.30.460), a hotel/motel is listed as an allowable use. According to SJCC 18.50.220(B)(7), commercial development in the Eastsound Urban shoreline environment, all allowable uses listed in the Village Commercial designation of the Eastsound Subarea Plan are permitted within this designation, in accordance with the terms of the Eastsound Waterfront Access Plan (EWAP). Commercial structures and facilities are required to adhere to the setbacks and building envelopes provided for in the waterfront access plan.

SJCC 18.30.470 Site Development and Performance Standards for the Village Commercial district.

1. Building Height: Maximum 35 feet

2. Building Setbacks. Building setbacks for existing, expanded, new, or replacement structures on properties in the Eastsound waterfront access plan are set forth therein. Building envelopes and setbacks are shown on Figure 130-6 of the Eastsound Subarea Plan. Land use and shoreline permits for the urban shoreline designation may also be subject to easements and agreement with San Juan County.

   Eastsound Waterfront Access Plan for Tax Parcel No. 271451012

Front (Main Street)	5 feet or the existing footprint
Rear (East Sound shoreline)	5 feet from the OHWM for structures (decks may project to any bulkhead line)
Left (east)	5 feet
Right (west)	5 feet

3. Outdoor Storage. Storage area must be screened from view from public roads and shoreline.

4. Utilities. Underground.

5. Open Space (area not occupied by buildings, parking and driveways). Ten percent of the lot shall be open space exclusive of any street front pedestrian easement. Open space is to be maintained in natural condition or landscaped. Applications to specify open space and identify landscape features. Open space is required for all new and expanded developments and shall be visible from public street.

6. Lot Coverage. Buildings larger than 5,000 square feet in net use building area shall not exceed 65 percent of the lot. Lot coverage is the area covered by buildings, parking and driveways and does not apply to single family residential development in village commercial.

7. Landscaping. Screening shall be required between residential and nonresidential developments. Parking areas shall be landscaped in accordance with SJCC 18.30.630 and other landscaping required in this section shall comply with standards in SJCC 18.30.670(D).

SJCC 18.30.630 Off-street parking.

B. Village Commercial District

1. Off-street parking within the village commercial district required for any new use or building shall be located at the side or rear of the use or building served: parking spaces required for expansion of an existing use or a change of use within an existing building in that district shall be located at the side(s) or rear of the building if possible. This requirement does not apply on lots less than 100 feet in width or where existing buildings would make it infeasible.

2. If the parking area is within the village commercial district but abuts the village residential/institutional district boundary, a view-obscuring barrier at least six feet high shall be provided at the district boundary; provided, that a lower barrier may be authorized if the director finds it adequate to screen commercial parking and structures from residential uses.

SJCC 18.30.670 Design standards.

A. Eastsound Design Review Committee.
(n/a)

B. Design Standards.

1. Design Standards. Design standards apply to all buildings in the village commercial and village residential/institutional districts with the exception of single-family residences. The following standards apply except as specifically provided in subsection (C) of this section.

2. Walls of buildings in excess of 40 feet in length that front on a public street shall be broken with an offset or setback of at least four feet for every 40 feet. Roof planes shall have corresponding offsets.

3. Exterior wall surfaces shall be ship lap horizontal siding, cedar shingles, vertical or horizontal tongue and groove siding, board and batten siding, or rough-sawn textured panels with applied battens. However, other materials may be used for surface area, which does not exceed 10 percent of the total wall surface area of the building, for decorative details.

4. Roof slopes shall not be less than 6 to 12 nor more than 12 to 12 for the principal roof of a building. Secondary roofs of porches, dormers and appurtenances shall not be less than 3 to 12. Flat roofs are allowed but shall not be closer than 18 feet to any eave.

5. Sloped roof surfaces shall be cedar shakes, cedar shingles, composition shingles, or metal roofing. Color shall be subdued gray or an earth tone.

6. Any change from a single-family residential use of a dwelling unit to an allowed nonresidential use is exempt from these standards unless exterior structural alteration is required or proposed for the change of use.

SJCC 18.30.690 Exterior lighting.
Exterior lighting shall be energy-efficient and shielded or recessed so that direct glare and reflections are contained within the boundaries of the lot. Exterior lighting shall be directed downward and away from adjoining properties and public rights-of-way. No lighting shall blink, flash, or be of unusually high intensity or brightness. All lighting fixtures shall be appropriate in scale, intensity, and height to the use they are serving. Any lighting installed in parking areas shall be of direct cutoff design so that the source is not visible from adjacent property. Decorative lighting shall be limited to incandescent lamps with a maximum of 25 watts per bulb and 500 watts overall. An exception to the exterior lighting standards applies to holiday lighting between October 15th and February 15th.

SJCC 18.35.025 Critical areas—Applicability.
These overlay districts provide regulations for land use, and development and vegetation removal in critical areas and areas adjacent to critical areas as established in SJCC 18.35.055 through 18.35.140.

A. Applicability to Uses and Structures within the Shorelines of the State. Notwithstanding any provision in this code to the contrary, any use or structure legally located within shorelines of the state that was established or vested on or before the effective date of the County's development regulations to protect critical areas shall be regulated consistent with RCW 36.70A(3)(c). Such uses or structures may continue as a conforming use and may be redeveloped or modified if the redevelopment or modification is consistent with Chapter 18.50 SJCC and either: (1) the proposed redevelopment or modification will result in no net loss of shoreline ecological functions; or (2) the redevelopment or modification is consistent with SJCC 18.35.020 through 18.35.140. If the applicant chooses to pursue option (1), the application materials for required project or development permits must include information sufficient to demonstrate no net loss of shoreline ecological functions.

SJCC 18.35.075 Frequently flooded areas.
A. This section applies to all areas of special flood hazards within the jurisdiction of San Juan County as identified by the Federal Insurance Administration on its Flood Insurance Rate Maps (FIRMs), now existing or as later amended, which are hereby adopted by reference and declared to be part of this code. The director shall maintain the most current FIRMs on file

at the department. Where differences exist between the FIRMs and conditions in the field, conditions in the field control.

B. Protection Standards. All developments in areas of special flood hazards must first meet the requirements of the San Juan County Code including any subarea or activity center plans and the San Juan County health and building codes adopted in Chapters 13.04 and 15.04, respectively. When allowed, such developments shall also meet the requirements for floodproofing or construction as detailed in Chapter 15.12 SJCC, Flood Hazard Control Regulations.

SJCC 18.35.080 Critical aquifer recharge areas.

A. Purpose. The purpose of this section is to assure a safe and adequate water supply by protecting the quantity and quality of water available for recharge of the County's aquifers. The quality of groundwater in an aquifer is inextricably linked to its recharge area. An aquifer's vulnerability to contamination is the combined effect of hydrogeological susceptibility to contamination and the contamination loading potential. Because of the hydrogeologic characteristics listed in subsection (B) of this section, all of the land area of San Juan County is classified as highly susceptible. High vulnerability is indicated by activities that contribute to the risk of contamination, such as those listed in subsection (E) of this section. In addition to the requirements of this chapter, groundwater protection is addressed in the following sections of the san Juan County Code:

1. Chapter 8.06 SJCC, Water Wells and Water Systems;

2. Chapter 8.16 SJCC, On-Site Sewage Disposal;

3. SJCC 18.60.030, Wastewater disposal; and

4. SJCC 18.60.070, Storm drainage standards.

D. Plan Review. Prior to approval, the department shall review plans for commercial, industrial, public and institutional facilities for conformance with this section. To facilitate this review, the applicant shall provide a list of the quantities and types of chemicals that will be used, proposed spill containment plans, and a plan for disposal of waste materials.

SJCC 18.50.050 Archaeological and historic resources.

A. When an application for a development permit is received for an area known to be archaeologically significant, the County will not take action on the application and the applicant will not initiate any excavation or development activity until the site has been inspected by a qualified archaeologist. No application will be delayed more than 10 working days for such an inspection. If the application is approved by the County, conditions will be attached reflecting the recommendations of the archaeologist regarding preservation or protection of the site.

B. All development permits will contain a special provision advising the permit holder that if during excavation or development of the site an area of potential archaeological significance is uncovered, all activity in the immediate vicinity of the find must be halted immediately, and the administrator must be notified at once. Activities authorized by the permit will not be delayed more than five working days for a finding of significance by the administrator, following the administrator's receipt of notification, unless the permit holder agrees to an extension of that time period.

C. All development proposed for location adjacent to sites which are included in the state or national registers of historic places, or are determined to be eligible for listing, must be located so as to complement the historic site. Development which degrades or destroys the historical character of such sites is not permitted.

D. Prior to the issuance of a permit in areas known to contain archaeological artifacts and data, the County requires that the developer provide for a site inspection and written evaluation by an archaeologist. Significant archaeological data or artifacts must be recovered before work begins or resumes on a project.

E. In the event that unforeseen factors constituting an emergency as defined in RCW 90.58.030 necessitate rapid action to retrieve or preserve archaeological artifacts or data, the project may be exempted from the permit requirements of these regulations. The County shall notify the Washington Department of Ecology, the State Attorney General's Office, and the Washington Office of Archaeology and Historic Preservation of such a waiver in a timely manner.

F. Archaeological sites located both in and outside the shoreline jurisdiction are subject to Chapter 27.44 RCW (Indian Graves and Records) and Chapter 27.53 RCW (Archaeological Sites and Records) and must comply with Chapter 25-48 WAC (Archaeological Excavation and Removal Permit) as well as the provisions of this code.

G. Archaeological excavations are allowed subject to the provisions of this master program and applicable state laws.

H. Identified historical or archaeological resources must be considered in park, open space, public access, and site planning, with access to such areas designed and managed so as to give maximum protection to the resource.

SJCC 18.50.220 Commercial development.

A. General Regulations.

1. Applications for commercial development shall include a detailed statement explaining the nature and intensity of the water dependency or orientation of the proposed activity. Such statement shall include at least the following:

    a. Nature of the commercial activity;

b. Need for shoreline frontage;

c. Proposed measures to enhance the relationship of the activity to the shoreline; and

d. Proposed provision for public visual or physical access to the shoreline.

2. Commercial resorts and campgrounds shall provide adequate access to water areas for their patrons and adequate on-site recreation facilities so that such resorts and campgrounds will not be dependent on nor place undue burdens on public recreational facilities.

3. The draining or filling of water bodies or natural wetlands for commercial developments shall not be permitted except as a conditional use.

4. Only those commercial uses which are water-dependent, such as boat fueling stations, shall be permitted to be located over the water.

5. All structures shall be set back a safe distance behind the tops of feeder bluffs.

6. Parking areas associated with commercial developments shall be subject to the policies and regulations of SJCC 18.20.090, Parking, and 18.50.340, Transportation facilities.

7. Ports and marinas shall be equipped to contain and clean up oil, gasoline, and other polluting spills.

8. Drainage and surface runoff from commercial areas shall be controlled so that pollutants will not be carried into water bodies.

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.

10. The processing of agricultural and aquacultural products for sale constitutes commercial or industrial development, as determined by the administrator. Provisions for the sale of such products constitutes commercial development.

B. Regulations by Environment.

...

7. Eastsound Urban. Same as urban, except as provided for in the Eastsound Waterfront Access Plan (EWAP), (Resolution 29-1996) Figure 130-6, commercial structures and facilities shall adhere to the setbacks and building envelopes provided for in the waterfront access plan. All existing uses and structures subject to the EWAP are deemed conforming development because of the physical and visual access provided through the EWAP, pursuant to SJCC 18.50.100. All allowable uses listed in the village commercial designation of the Eastsound Subarea Plan are permitted within this designation, in accordance with the terms of the EWAP.

Conclusions Based on Findings:

1. As conditioned, the proposal would be consistent with the Shoreline Management Act (SMA). The policy of the SMA, as set forth in RCW 90.58.020, is to "provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses." 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." *RCW 90.58.020.* Pursuant to the County's Shoreline Master Program, commercial development is permitted in the Eastsound Urban shoreline environment subject to compliance with the Eastsound Waterfront Access Plan (EWAP). Hotel/motel uses are allowed in the Eastsound Subarea Plan Village Commercial district, subject to the terms of the EWAP, including setbacks and building envelopes among other items. The application materials submitted demonstrate compliance with EWAP and the design was approved by the Eastsound Planning Review Committee. The project site is a developed parcel, and with the exception of the County door to the east, the shoreline in the vicinity is developed. Despite the removal of a small amount of vegetation from above the bulkhead along the shoreline, the application materials demonstrate no net loss of shoreline ecological functions through providing improved stormwater runoff management. The proposal was reviewed for compliance with the requirements of the State Environmental Policy Act and a determination of non-significance was issued. Compliance with the conditions imposed herein would ensure that adverse effects to the waters of the state are avoided. *Findings 2, 3, 4, 5, 6, 7, 8, 11, 13, 18, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32.*

2. The proposal satisfies applicable Shoreline Master Program policies and regulations as follows. Commercial uses are allowed in the Eastsound Urban shoreline environment, subject to compliance with the setbacks and building envelopes provided for in the Eastsound waterfront access plan (EWAP). All proposed setbacks satisfy or exceed the minimum setbacks required in SJCC 18.30.470. The requirement to demonstrate the need for waterfront location is satisfied by the site's inclusion in the EWAP, through tideland dedication and public access provisions of the Plan. With regard to public shoreline view preservation, the project would restrict building height to 21 feet above grade, with lower roof heights between units to maximize water views from upland locations. A 37-foot setback on the east side of the structure over a lawn proposed to be retained would provide a water view corridor from the street. The Eastsound Planning Review Committee approved the proposed design without modification. The subject property is within a recorded archeological site. A site visit including representatives of interested tribes was conducted. The Applicant has filed an archeological site alteration and excavation permit with the Washington Department of Archeology and Historic Preservation; conditions would make County approval subject to the requirements of that state permit, if approved. The design of the structure is intended to avoid archeological resources to the maximum extent possible through the use of pin pile foundation support along the shoreline. The proposal complies with the standards for commercial development in the Shoreline Master Program at SJCC 18.50.220. Again, the proposal restricts structure height and provides an eastern setback far in excess of minimums to

provide a view corridor. The east setback area, in lawn, would be available to hotel patrons for shoreline enjoyment. No overwater development is proposed, and the site does not contain feeder bluff. Existing parking in the shoreline jurisdiction on-site would be reduced by half and placed upland of the building. The submitted stormwater management plan was approved by the County Stormwater Engineer. No signs were proposed. Conditions would ensure compliance with signage and lighting standards. The project does not involve a marina or any agricultural or aquacultural product processing. *Findings 2, 3, 4, 5, 6, 7, 8, 11, 13, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32.*

3. Critical areas protection requirements are satisfied. The materials submitted demonstrate compliance with SJCC 18.35.025.A.1's requirement for no net loss of shoreline ecological function, allowing the existing nonconforming structure to be redeveloped. The project would reduce existing on-site parking area and the majority of increased impervious surface would result from roof runoff free from contamination sources. Runoff dispersion at the shoreline would be improved over the existing condition with the addition of "tee" diffusers at the outlets. Conditions would ensure compliance with the approved stormwater management plan and stormwater pollution prevention plan to prevent impacts during and after construction. The proposed structure would be three feet higher in elevation than the static base flood elevation on-site and no Base Flood Elevation certificate is required. The Applicant submitted, and the County accepted, a pollution prevention control plan addressing the protection of the underlying critical aquifer recharge area. *Findings 2, 6, 7, 8, 11, 12, 13, 14, 15, 29, 30, 31, and 32.*

4. The proposal complies with the permit requirements and criteria established in SJCC Chapter 18.80 and with applicable sections of the UDC. The project would be consistent with applicable policies of the Eastsound Subarea Plan. The project would comply with the applicable site development and performance standards for the Village Commercial district, including building height, required setbacks, and lot coverage maximum. Underground utility connections already exist. Because the site is not adjacent to residential uses, no screening is required; however the existing trees along the west property line would be retained. Off-street parking is provided across the street at the Outlook Inn. No signs were proposed; any signage would be required to comply with SJCC 18.30.660. Exterior lighting would be required to comply with standards at SJCC 18.30.690. The design as proposed complies with the design review standards imposed in SJCC 18.30.670 and received approval of the Eastsound Planning Review Committee. *Findings 4, 5, 6, 9, 10, 11, 16, 17, 19, 20, 30, 31, and 32.*

DECISION

Based on the preceding findings and conclusions, the requested shoreline substantial development permit for improvements to replace an existing residential structure with five hotel units and a meeting room associated with the existing Outlook Inn at 118 Main Street, Eastsound, Orcas Island is **APPROVED** subject to the following conditions:

1. Construction shall not be commenced until all relevant appeal periods have run.

2. Compliance with the approved Stormwater Management Plan in Exhibit 6 is required.

3. An Archaeological Excavation Permit from the Washington State Department of Archaeology and Historic Preservation shall be obtained prior to submitting a building permit application and all conditions of that permit shall be complied with.

4. The building permit application shall provide proof of compliance with the critical aquifer recharge area requirements in Exhibit 5.

5. Any signage shall to comply with SJCC 18.30.660. Exterior lighting shall comply with standards at SJCC 18.30.690.

6. Development under this permit 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.

7. Failure to comply with any terms or conditions of this permit may result in its revocation.

Decided May 16, 2017.

By:

Sharon A. Rice
San Juan County 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 requirements 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.