

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

II. APPLICABLE LAW, RELEVANT CODE PROVISIONS.

The pending application was accepted and reviewed under provisions of the County’s Shoreline Master Program that were in effect in December of 2016, when the applicant filed complete application materials for the two shoreline permits.

Jurisdiction: Under SJCC 18.80.110 and 18.80.020, at Table 8.1, the Hearing Examiner is given the authority to hold open-record pre-decision public hearings and issue decisions regarding shoreline permits, including shoreline substantial development permits, shoreline conditional use permits, and shoreline variances.

Burden of Proof: Under SJCC 18.80.010(A), “Shoreline Permits” are specifically listed as “Project Permits” covered by the provisions of SJCC Chapter 18.80 re: application, notice, review and appeal requirements for the County’s Unified Development Code, which is found in Title 18 of the SJCC and includes Chapter 18.50, the County’s Shoreline Master Program. SJCC 18.80.040(B) reads as follows:

“[t]he burden of proof is on the project permit applicant. The project permit application must be supported by evidence that it is consistent with the applicable state law, County development regulations, the Comprehensive Plan, and the applicant meets his burden of proving that any significant adverse environmental impacts have been adequately analyzed and addressed.”

Standard of Review: SJCC 2.22.210(H) explains that: “for an application to be approved, a preponderance of the evidence presented at the hearing must support the conclusion that the application meets the legal decision criteria that apply.”

Requirement and Review Criteria for a Shoreline Substantial Development Permit: “Substantial Development” is defined in RCW 90.58.030(3)(e) and SJCC 18.20.190. There is no dispute that the pending project meets the definition for a ‘substantial development.’ Substantial developments proposed in shoreline areas of San Juan County require a Substantial Development Permit. See SJCC 18.50.020(E)(2)(“No substantial development may be undertaken unless a valid shoreline substantial development permit is first issued by the County...”). The approval criteria for a Shoreline Substantial Development Permit application is set forth in SJCC 18.80.110(H), which reads

1 as follows:

2 **18.80.110(H). Criteria for Approval of Substantial Development Permits.** A shoreline
3 substantial development permit shall be granted by the County only when the applicant
4 meets his burden of proving that the proposal is:

- 5 1. Consistent with the policies of the Shoreline Management Act and its implementing
6 regulations, Chapter 90.58 RCW and Chapter 173-27 WAC, as amended;
- 7 2. Consistent with the policies and regulations of the Shoreline Master Program in Chapter
8 18.50 SJCC;
- 9 3. Consistent with this chapter;
- 10 4. Consistent with the applicable sections of this code (e.g., Chapter 18.60 SJCC);
- 11 5. Consistent with the goals and policies of the Comprehensive Plan; and
- 12 6. All conditions specified by the hearing examiner to make the proposal consistent with
13 the master program and to mitigate or avoid adverse impacts are attached to the permit.

14 ***Requirement and Review Criteria for a Shoreline Conditional Use Permit:*** There is no
15 dispute that the Project requires a Shoreline Conditional Use Permit, for several reasons,
16 including: the expansion of nonconforming uses are specifically included as a conditional
17 use at SJCC 18.80.100(J)(1)(b); the Project is a commercial development permitted by
18 conditional use only (*See* SJCC 18.50.220(B)(2)); and the proposed cabins will be less than
19 100 feet from the ordinary high water mark (*See* SJCC 18.50.220(B)(2)).

20 The County's specific, unambiguous review criteria for a Shoreline Conditional Use Permit
21 is set forth in SJCC 18.80.110(J)(4)¹, which reads as follows:

22 **18.80.110(J)(4) Criteria for Approval of Shoreline Conditional Uses.** Uses which are classified
23 or set forth in the Shoreline Master Program as conditional uses may be authorized by the County
24 provided the applicant can demonstrate all of the following:

- 25 a. The proposed use is consistent with the policies of RCW 90.58.020 and the policies of the
26 Shoreline Master Program;
- b. The proposed use will not interfere with the normal public use of public shorelines;

¹ SJCC 18.80.110(J)(4) is among the very few provisions outside of Chapter 18.50 SJCC that are specifically

1 c. The proposed use of the site and design of the project is compatible with other permitted uses within the area;

2 d. The proposed use will cause no unreasonably adverse effects to the shoreline environment in which it is to be located;

3 e. The cumulative impacts of additional requests for like actions in the area, or for other locations where similar circumstances exist, shall not produce substantial adverse effects to the shoreline environment, e.g., the total of the conditional uses shall remain consistent with the policies of RCW 90.58.020 and the Shoreline Master Program; and

6 f. The public interest will suffer no substantial detrimental effect.

7
8 ***No Net Loss Requirement.*** SJCC 18.35.025(A)(1) provides that uses or structures legally located within shoreline areas before County critical area regulations were adopted may be redeveloped or modified if the redevelopment or modification is consistent with Chapter 18.50 SJCC and the project proposal will result in no net loss of shoreline ecological functions.²

11 ***Review Criteria for the Department of Ecology:*** Finally, if the Examiner approves or denies the Shoreline Permit, such decision must be forwarded to the Department of Ecology and the Attorney General, for state review and any appeals of the Shoreline Permit, in accord with Washington Shoreline Management regulations found in WAC 173-27-130. This Decision is subject to review and approval, approval with conditions, or denial by the Washington Department of Ecology within thirty days of submittal by the County. WAC 173-27-130, and -200. Ecology's review criteria for Shoreline Substantial Development and Shoreline Conditional Use Permits are found at WAC 173-27-150 and WAC 173-27-160. The San Juan County review criteria for the requested shoreline permits are consistent with and substantially similar to those that will be used by the Department of Ecology.

18 III. RECORD.

19 The Record for the matter includes all application materials and exhibits marked and numbered during the course of the public hearing. Copies of all materials in the record and a digital audio recording of the open-record hearing conducted for this application are maintained by the Community Development Department.

22 _____
23 ² SJCC 18.35.025(A)(2) includes another basis to allow for redevelopment or modification of legal nonconforming shoreline uses and structures, but for purposes of the pending applications, the applicant relies solely on compliance with the "no net loss" provisions found in SJCC 18.35.025(A)(1).

1 This matter was initially set for hearing in June of 2017, at which time County staff
2 issued a Staff Report (Exhibit 1) dated May 23, 2017, which included 26 additional
3 exhibits, numbered and described as Exhibits 2 through 27 on page 14 of the original Staff
4 Report, and on page 17 of the Staff Report – Addendum. Shortly before the initial hearing
5 date, Friends of the San Juans submitted a lengthy (54-page), detailed comment letter,
6 raising a number of issues, questioning how the project design and proposed mitigation
7 measures comply with applicable codes and regulations (Ex. 31). The applicant and county
8 staff jointly requested a continuance, which was granted by the Hearing Examiner, to allow
9 for sufficient time to address topics raised in Friends’ comment letter.

10 Earlier this year, the applicant submitted revised application materials, intended to
11 modify the project design so as to fully demonstrate compliance with applicable codes and
12 regulations, particularly those raised in comments that served as a basis to delay the initial
13 public hearing. Staff reviewed the revised application materials and issued a Staff Report –
14 Addendum, dated February 14, 2018, which included 23 new exhibits, numbered and
15 described as Exhibits 28 through 51 on page 17 of the Addendum.

16 **Exhibits:** Without objection, both the initial Staff Report, the Staff Report –
17 Addendum, and all exhibits attached and referenced therein, numbered 1 through 51, were
18 accepted by the Examiner as part of the Record. At the public hearing, several additional
19 items were accepted and entered into the record, specifically: Ex. 52, a letter supporting the
20 proposal, from Mr. Warburton, a longtime neighbor who owns the property just east of the
21 North Beach Inn; Ex. 53, an Addendum to the applicant’s Critical Areas Report, dated Feb.
22 22, 2018, from Beth Tate, Marine Biologist with Jen-Jay Inc.; and Ex. 54, a supplemental
23 comment letter from Kyle Loring, Staff Attorney for Friends of the San Juans, dated Feb.
24 21, 2018.

25 **Hearing Testimony:** The following individuals presented testimony under oath at
26 the duly noticed open record public hearing held on February 28, 2018:

1. Lee McEnery, Planner III for San Juan County, who prepared the Staff Report for the pending application;
2. Jeff Otis, the applicant’s Agent and Land Use Consultant;
3. Craig Gibson, the applicant, President of Gibson’s North Beach Inn, Inc.; and
4. Kyle Loring, Staff Attorney, Friends of the San Juans.

Ms. McEnery opened the hearing with a summary of the Staff Report, the staff process in reviewing the matter and consideration of comments received, concluding with

1 their recommendation to approve both permits, subject to conditions. The applicant, Mr.
2 Gibson, was present at the hearing, with his land use consultant, Mr. Otis. The applicant
3 team and county staff were both provided an opportunity to respond to the limited, but
4 focused, public comments made by Mr. Loring during the hearing, after which time the
5 hearing closed.

6
7 Upon consideration of all the evidence, testimony, codes, policies, regulations and
8 other information contained in the file, the undersigned Examiner issues the following
9 Findings, Conclusions, and Decision.

10 IV. FINDINGS OF FACT.

11 Based on the record, the Examiner issues the following findings of fact:

12 1. Any statements contained in a previous or following sections of this Decision that
13 are deemed to be Findings of Fact are hereby adopted as such and incorporated by
14 reference.

15 2. In this matter, the Gibson family business submitted the pending shoreline permit
16 applications to expand and modify their existing North Beach Inn operation, to add six (6)
17 small cabins, each with 1,000 square feet or less. The new cabins and associated
18 improvements would be developed in areas between existing cabins on the site. *Staff*
19 *Reports; Ex. 37, final, revised Critical Areas Assessment for the project, dated January 9,*
20 *2018, at pages 8 and 9, Project Description.*

21 3. Currently, the North Beach Inn complex features thirteen (13) small cabins, a main
22 lodge, several other buildings, a gravel boat ramp, an access roadway and parking areas that
23 connect and serve the existing cabins, most all of which is located within the regulated
24 shoreline area. *Id.*

25 4. There is no dispute that the property was developed long before the County's
26 Shoreline Master Program was adopted, and the North Beach Inn is a legal, non-
conforming development in the shoreline area.

5. The Gibson family has owned the property since 1911, using 'tent-cabins' on the
beach for visiting guests beginning in or about 1916, adding most of the existing wood
cabin structures and lodge building by the 1930s, all on Orcas Island in San Juan County.
Id.

6. The final, revised project site plan is depicted at two places in the record, with

1 duplicates appearing as a stand-alone item in Exhibit 35, five pages; and as part of Exhibit
2 37, at Appendices 1-5. The revised site plans are dated 1/14/18.

3 7. The applicant's Critical Areas Report, prepared by Jen-Jay, Inc., has been revised
4 several times, to address comments received regarding various aspects of the project. The
5 initial version, from 2016, appears as Ex. 17; an updated version, dated June 12, 2017, is
6 included as Ex. 28; and the final version is included in the Record as Exhibit 37, dated
7 January 9, 2017 (44 pages). While the Jen-Jay reports credibly summarize construction
8 practices, design features, replanting plans, and other environmentally responsible
9 considerations taken into account in the project application materials, unlike many such
10 reports, none of them included a short summary statement, formally declaring the qualified
11 expert's conclusion that the project, as conditioned or designed, will or will not result in a
12 net loss of shoreline ecological functions. At page 23, the Report reads: *"The above
13 critical areas habitat narrative contains information with regards to critical areas
14 potentially impacted by project activities. These include water quality/quantity and fish
15 and wildlife habitats. No net loss of San Juan County Fish and Wildlife Habitat and
16 Conservation Areas is expected."*

17 8. To eliminate any uncertainty or confusion on the subject, the applicant submitted an
18 Addendum to the Jen-Jay Critical Areas Report, Exhibit 53, dated February 22, 2018 and
19 signed by Marine Biologist, Beth Tate, which reads in relevant part: *"Through my
20 analysis, I was able to determine that no net loss would occur to shoreline ecological
21 functions due to the proposed project. The [revised] proposal adequately addressed and
22 incorporated protection measures to critical areas and no mitigation was deemed
23 necessary."* (Emphasis added).

24 9. At the public hearing, county staff and applicant representatives credibly
25 summarized materials included in the record that demonstrate how the proposal satisfies
26 applicable approval criteria. No one spoke in opposition to the project or offered any legal
or factual basis that would serve as a basis to deny either application.

10. Instead, Mr. Loring provided sincere, credible and focused comments, seeking to
ensure that any conditions of approval for the shoreline permits specifically include terms
memorializing shoreline protection/mitigation measures summarized in the Jen-Jay Critical
Areas Report. Mr. Loring correctly noted that plant-replacement, pier and post construction
methods, and monitoring the effectiveness of any replanted vegetation, are not voluntary
measures suggested in the critical areas report, but are essential requirements that must be
satisfied in order to ensure that there will be no net loss of shoreline ecological functions.
The Examiner finds that Mr. Loring is correct, so the conditions of approval have been
modified to include appropriate language designed to memorialize recommendations and
measures described in the Critical Areas Report.

25 FINDINGS OF FACT, CONCLUSIONS OF LAW AND
26 DECISION – APPROVING SHORELINE
SUBSTANTIAL DEVELOPMENT AND
CONDITIONAL USE PERMITS FOR THE GIBSON'S
NORTH BEACH INN EXPANSION PROJECT –
PSJ000-16-0005

GARY N. MCLEAN
SAN JUAN COUNTY HEARING EXAMINER

1 11. No one offered any testimony or evidence from qualified professionals to rebut the
2 recommendations provided in the Jen-Jay Critical Areas Assessment, Ex. 37, and its “no net
3 loss” determination summarized in Exhibit 53.

4 12. The Jen-Jay report explains that: *“All proposed cabins will be built on pier-and-
5 post foundations to limit disturbance to the tree roots and archaeological sites known to
6 exist in the vicinity, and to protect the structures from possible unexpected flooding.” Ex.
7 37, at page 9.* At the hearing, Mr. Otis asked that this be limited to cabins that are in the
8 flood zone. The Examiner respectfully disagrees, and finds that a condition of approval
9 should be included to ensure that all foundations are constructed using the pier-and-post
10 method, for the reasons mentioned in the Jen-Jay report.

11 13. On the issue of tree removal and replacement, the Jen-Jay report explains that:
12 *“Approximately ten (10) trees will be removed for the purposes of cabin and parking area
13 construction. Eight (8) of these trees are 110 feet landward of the [ordinary high water]
14 mark, within the tree protection zone. As mitigation, at least thirty-five (35) native trees
15 (Douglas Fir and Sitka Spruce) will be planted, along with other native vegetation.
16 Twenty-eight (28) of these new trees will be planted within 110 feet of the ordinary high
17 water mark to replace the removed trees and improve ecological function in the near shore
18 environment. Trees will be protected from herbivory³ and watered regularly until they are
19 established.”* In his written comments, and his comments at the public hearing, Mr. Loring
20 sincerely and credibly asked that any conditions of approval be written to ensure adequate
21 monitoring to confirm the survival of replanted vegetation. He correctly explained that
22 without monitoring to see that replanted trees and shrubs survive, there is no way to
23 confirm that they are “established”. The Examiner agrees with Mr. Loring, and that
24 surviving, thriving, and well-established new trees and new shrubs are certainly needed to
25 ensure that the number of large-trees removed from the site and their replacement with
26 much smaller, though more numerous trees and plants, will not result in a net loss of
27 shoreline ecological functions and values. Accordingly, conditions of approval have been
28 supplemented to achieve this objective.

29 14. The Examiner finds that some aspects of the proposal will reduce the existing
30 nonconformity of the current resort, particularly the upgrades and modifications that will be
31 made to the sewage waste disposal system used by the Inn. For instance, along the
32 shoreline, there are now fourteen (14) existing septic systems, with their own tanks and
33 drainfields. This poses obvious environmental and health risks given their exposure to

34 ³ Herbivory – defined by dictionary.com as “the eating of plants, especially ones that are still living.” In this
35 setting, presumably a reference to protecting new plant materials from serving as deer-food.

1 potential underwater conditions in the event of an extreme windstorm generating dangerous
2 waves and high tides. 14 tanks with 14 fields each present their own risks, and needs, for
3 regular maintenance and cleaning, all of which increase the possibility of spills and
4 contaminants leaking in the shoreline area. As part of this Project, the existing 14 septic
5 systems will be abandoned in accord with County Health Department requirements, to be
6 replaced with a new sewage system designed to serve the existing and new cabins. The
7 new sewage system will be designed to move effluent from the cabins into two proposed
8 drain fields that will be located approximately 800 feet upland, with sewage lines running
9 along the existing roadway landward or the ordinary high water mark. Similarly, overhead
10 powerlines will be undergrounded to improve safety and reliability for the power system
11 infrastructure serving the property. *Ex. 37, page 9; Ex. 35, site plans.*

12 15. The applicant's summary of project revisions, included in the record as Exhibit 33,
13 the Staff Report – Addendum, the Jen-Jay report (Ex. 37), and testimony by applicant
14 witnesses at the public hearing, constitutes substantial and credible evidence demonstrating
15 the project can be accomplished so as to minimize or prevent any adverse environmental
16 impacts, through construction and thereafter.

17 16. The revisions to the initial project design reflect a good-faith effort by the applicant
18 to work with Mr. Loring and his organization, as well as other agencies and entities that
19 submitted written comments regarding various aspects of the project. These revisions
20 resulted in a much more environmentally-sensitive project, including but not limited to the
21 following improvements: the new cabins will be setback an additional 24 feet from the
22 shoreline, from the previous 75 to 91 feet; the sewer line has been redesigned to run along
23 the existing access road on the landward side of the cabins instead of using the beachfront
24 maintenance road, which is on the seaward side of the cabins; new trees will be planted
25 between each of the cabins; the wetland buffer has been increased; tree removal has been
26 minimized; and impervious surfaces have been reduced. *See details of project revisions,
provided in Ex. 33.*

17 17. Substantial evidence in the record fully supports the analysis, findings, and
18 recommendation of approval provided in the Staff Report – Addendum. Conditions of
19 approval have been modified and supplemented to memorialize requirements that are
20 necessary to ensure no net loss of shoreline ecological functions will result from the project.
21 Further, the applicant is fully aware of the fact that the County will not issue any building
22 or other construction related permits associated with the Project until such time as the
23 applicant has obtained an archaeological excavation permit from the Washington
24 Department of Archaeology and Historic Preservation (*See Exhibit 40, letter explaining
DAHP requirement for archaeological excavation permit under RCW 27.53*); that the
25 County Fire Marshall has authority to impose requirements based on Fire Codes; that the
26 development must comply with the Stormwater Management Plan for the project (Ex. 18);

25 FINDINGS OF FACT, CONCLUSIONS OF LAW AND
26 DECISION – APPROVING SHORELINE
SUBSTANTIAL DEVELOPMENT AND
CONDITIONAL USE PERMITS FOR THE GIBSON'S
NORTH BEACH INN EXPANSION PROJECT –
PSJ000-16-0005

GARY N. MCLEAN
SAN JUAN COUNTY HEARING EXAMINER

1 and that the development must satisfy code requirements applicable to frequently flooded
2 areas (*See SJCC Ch. 15.12 and SJCC 18.35.075*). Based on the record and applicable law,
3 conditions of approval have been included as part of this Decision that are reasonable and
4 capable of being accomplished.

5 18. Public notice regarding the shoreline permit applications was provided in accord
6 with law. (*Staff Reports; Exhibits 27, 50*). The public hearing provided an opportunity for
7 interested parties to share their thoughts, support, questions, and concerns about the
8 proposed project.

9 ***Environmental review.***

10 19. County staff determined that the project, if designed and constructed in compliance
11 with applicable county shoreline codes and development regulations, would not result in
12 any probable, significant, adverse environmental impacts. The County issued a
13 Determination of Non-Significance (DNS) for the proposal on or about January 18, 2017.
14 *Ex. 14*. No one appealed or questioned the DNS. The revised project design is even more
15 environmentally friendly, so the DNS stands unchallenged without need for modification to
16 issue this Decision.

17 20. Even with the DNS issued for the proposal, this project has been thoroughly vetted
18 for compliance with stringent environmental protection measures found in applicable
19 County Shoreline codes and policies. Again, the unrebutted qualified expert report in the
20 record confirms that this project will result in No Net Loss of shoreline ecological
21 functions. (*Ex. 37 and 53*).

22 ***Compliance with applicable codes and shoreline policies.***

23 21. The Analysis provided in the Staff Reports and Mr. Otis's comprehensive summary
24 of project revisions (*Ex. 33*) credibly explains how the project has been designed and can be
25 constructed in compliance with applicable county shoreline and development regulations,
26 including without limitation those found in SJCC 18.50.110.H.

27 22. The Record includes credible, unrebutted and substantial evidence that, as
28 conditioned, the application meets requirements to approve the Substantial Development
29 Permit. (*See initial Staff Report, at page 11; Staff Report – Addendum, pages 13-14,*
30 *analysis of compliance with Criteria for Approval of SDP found in SJCC 18.80.110.H*); *all*
31 *application materials, particularly Ex. 33, and Ex. 37; Testimony of Mr. Otis; Testimony of*
32 *Ms. McEnery*).

1 23. The Record includes credible, un rebutted and substantial evidence that, as
2 conditioned, the application satisfies all approval criteria for the requested Shoreline
3 Conditional Use Permit. (See initial Staff Report, at pages 12 and 13; Staff Report –
4 Addendum, at pages 14 and 15; Ex. 33, particularly summary statement of criteria with
5 CUP approval criteria on page 8; Ex. 37; Testimony of Mr. Otis; Testimony of Ms.
6 McEnery).

7 24. Finally, the University of Washington Friday Harbor Lab office submitted written
8 comments focused on the original application materials, which included a request that was
9 reiterated by Mr. Loring at the public hearing, seeking a condition of approval that would
10 prohibit future shoreline armoring measures to protect the new cabins addressed in this
11 matter. Ex. 25; Testimony of Mr. Loring. Obviously, this application seeks approval of
12 construction activities that will occur quite close to sea level, on a wave-exposed shoreline.
13 Given this reality, the UW Friday Harbor Labs' written comment letter included the
14 following passage: "I would like to see the County put condition on this permit to ensure
15 that the applicant in the future may NOT apply for a shoreline armoring permit, using the
16 survival of these new cabins as a reason. It needs to be clear to the applicant that they are
17 deliberately building structures in harm's way..." While County shoreline regulations do
18 not prohibit all shoreline stabilization measures, some of which are called armoring, the
19 applicant should be fully aware that the County's recently updated Shoreline codes will
20 apply to any future applications for such activities.

21 25. The following provisions of the County's shoreline regulations should be noted, as they
22 may present issues as to whether and how the new cabins have been located and designed to
23 avoid the need for future shoreline stabilization, or if they have been set back sufficiently to
24 ensure that stabilization will not be necessary for at least 75 years.

25 SJCC 18.35.130.G.3. [Additional Standards for Shoreline Stabilization Measures]

26 a. In order to avoid the individual and cumulative net loss of ecological functions
attributable to shoreline stabilization, the following standards shall apply to shoreline
stabilization measures:

- i. New development on bedrock shorelines should be located and designed to avoid the need
for future shoreline stabilization to the extent feasible.
- ii. New development on all shorelines other than bedrock shall be set back sufficiently to
ensure that shoreline stabilization is unlikely to be necessary during the life of the structure
(minimum 75 years), as demonstrated by a geotechnical analysis.

21 This finding does not serve as a basis to deny the pending applications, or to condition them
22 as requested by public comments. Instead, the Examiner finds and concludes that any
23 future requests for shoreline armoring or other stabilization measures must comply with
24 applicable county and state shoreline regulations in effect at such time, and that such
25 request may very well be denied, if future decision makers determine that the new cabins

1 were not located, designed and/or setback in a manner that complies with the above-
2 reference code provisions.

3 26. Except as modified herein, all statements of fact and findings included in the Staff
4 Report – Addendum, Applicant’s letter summarizing project revisions (Ex. 33), and the
5 final Critical Areas report for the project (Ex. 37) are adopted by the Examiner as findings
6 of fact supporting this Decision.

7 V. CONCLUSIONS OF LAW.

8 1. Based on the record, particularly the County’s recommendation of approval with
9 conditions, and the applicant’s input as reflected in the Staff Report and supporting
10 exhibits, includes substantive, credible and convincing proof that the pending Shoreline
11 permit applications satisfy all applicable approval criteria, including without limitation
12 those found at SJCC 18.80.110(H) and (J)(4).

13 2. The state’s Shoreline Management Act (“SMA”) and the regulatory policies
14 established thereunder, including those adopted by the County and approved by the
15 Department of Ecology, does/do not prohibit all development in the shoreline. Rather, its
16 purpose is to allow careful development of shorelines by balancing public access,
17 preservation of shoreline habitat and private property rights through coordinated planning.
18 *Overlake Fund v. Shoreline Hearings Bd. (State Report Title: Overlake Fund v. Shorelines*
19 *Hearings Bd.)*, 90 Wash. App. 746, 761, 954 P.2d 304, 312 (1998).

20 3. When it approved the County’s Shoreline Master Program, the Department of
21 Ecology approved San Juan County’s decision to permit expansion, redevelopment, and
22 modification of legal non-conforming developments located in the shoreline area. In so
23 doing, both the County and DOE recognized that the area in which this proposal is located
24 is an already-developed area, and that use of existing developed areas in the shoreline
25 should generally reduce pressure to develop untouched shoreline areas. In an ideal world,
26 we might well choose to preserve all shorelines in a natural, undisturbed state. But the
Shoreline Management Act, DOE and the County understand that, in a practical world,
development pressures exist and permitting a range of uses is necessary to accommodate
those pressures. *Overlake*, 90 Wash. App. 746, 762-63.

4. As noted earlier, a final local government decision approving a Shoreline
Substantial Development Permit and a Shoreline Conditional Use Permit must be filed with
and is subject to review and approval, approval with conditions, or denial by the
Washington Department of Ecology. WAC 173-27-130, and -200. The record established

1 during the open-record public hearing process provides credible, un rebutted evidence and
2 recommendations that are (and should be) more than sufficient to satisfy the DOE approval
3 criteria for the Shoreline permit addressed herein.

4 5. As conditioned, the proposal will result in no net loss of shoreline functions and
5 values. The requested permits are fully supported by evidence in the record and meet all
6 applicable approval criteria. No one offered any credible information or evidence that
7 would justify denial. Therefore, the requested shoreline permits should be approved.

8 6. Any finding or other statement contained in a previous section of this Decision that is
9 deemed to be a Conclusion of Law is hereby adopted as such and incorporated by reference.

10 VI. DECISION, CONDITIONS OF APPROVAL.

11 Based on the record, and for the reasons set forth above, the Shoreline Substantial
12 Development and Conditional Use Permits (collectively referenced as "Shoreline Permits"
13 or "Shoreline Permit") for the Gibson's North Beach Inn Expansion Project are approved,
14 subject to the following conditions of approval:

15 1A. The Shoreline Permits issued in this Decision authorize the development
16 of 6 (six) small new cabins and associated improvements substantially in
17 accord with as the revised application materials for File No. PSJ000-16-
18 0005;

19 1B. The project scope, footprints, alignment, construction and design aspects
20 for the 6 (six) new cabins and associated infrastructure improvements shall
21 be in substantial compliance with design details included in the preliminary
22 site plan drawings included in the record as *Exhibit 35*;

23 1C. All new cabins will be built on pier-and-post foundations to limit
24 disturbance to the tree roots and archaeological sites known to exist in the
25 vicinity, and to protect the structures from possible unexpected flooding.
26 *See Ex. 37, at page 9.*

1D. Consistent with the Replanting Plan included in the record as Exhibit 38,
at least thirty-five (35) native trees (Douglas Fir and Sitka Spruce) will be
planted, along with other native vegetation. Twenty-eight (28) of these new
trees will be planted within 110 feet of the ordinary high water mark to
replace trees removed to accommodate the Project and to improve ecological

1 function in the near shore environment. Trees will be protected from
2 herbivory and watered regularly until they are established. The Director
3 shall have full authority and discretion to order corrective action, which may
4 include replacement or restoration measures, if any existing trees or
5 significant vegetation on the project site that are not specifically designated
6 for removal as part of these Permits are for some reason removed or
seriously damaged during any part of the construction process for any aspect
of this Project (due to significant root system cutting or damage, damage
caused by heavy equipment, damage cause by storage of construction
materials and the like).

7 2. All development authorized by these shoreline permits shall be consistent
8 with local, state and federal standards applicable to any aspect of the project,
9 and the applicant shall comply with all professional report conclusions and
10 recommendations submitted in connection with these Shoreline Permits and
11 associated approvals issued by the San Juan County for this project, as
12 approved, referenced, relied-upon, and/or modified by the County. Further,
13 the applicant shall obtain any associated permit, license, or approval required
by any state, federal, or other regulatory body with jurisdiction over aspects
of the project; and any conditions of other regulatory agency permits,
licenses, approvals or leases required for the project shall be considered
conditions of approval for this shoreline permit.

14 3. Prior to issuance of any building permit associated with the Project, the
15 applicant must provide the Director with a current certificate of water
availability to serve the entire Project.

16 4. The new sewer system described in the application materials shall be
17 fully constructed and approved by applicable inspectors and authorities prior
18 to connection and use by any building served by the new sewer system. As
19 each new cabin is constructed, they shall be connected to the new sewer
system, in compliance with applicable County and State health regulations
for such services.

20 5. The Project shall be developed in compliance with applicable provisions
21 of the County's Fire Code, as applied and interpreted by the County Fire
22 Marsall, including without limitation provisions regarding adequate fire-
23 flow, water supply, storage, hydrant placement, emergency access, and the
24 like.

1 6. All building permits issued for the new cabins shall be subject to
2 compliance with SJCC 18.35.075, re: Frequently Flooded Areas, and SJCC
Chapter 15.12, Flood Hazard Control Regulations.

3 7. The proposed development shall comply with the approved Stormwater
4 Plan for the project, included in the Record as Exhibit 18.

5 8A. Vegetation planting between the cabins, as proposed in the site plans
6 shown in Exhibit 35, and in the replanting and maintenance plan described
7 in Exhibit 38, shall occur incrementally with the construction of each cabin.
8 As determined by the Director, the plantings associated with each new cabin
shall be completed prior to issuance of any certificate of occupancy for such
cabin or during the next growing season, whichever the Director deems to
provide the greatest opportunity for plant-survival.

9 8B. Given the extent of significant, large trees that will be removed as part
10 of project construction, a 5-year monitoring period shall be required for and
11 commence with verified completion of each series of plantings that occur as
12 cabins are constructed. For example, if two cabins are built and replantings
13 occur in connection with their construction, a 5-year monitoring period will
14 commence with respect to such trees and vegetation once such replanting
15 activities are confirmed in writing by the Director. Each successive series of
16 replanting activities will be subject to a separate 5-year monitoring period to
17 determine viability of such plant materials. The Director has discretion to
18 review and approve a written monitoring plan, to be submitted by the
19 applicant, prior to commencement of the first monitoring period. Such
20 monitoring plan shall include, but not be limited to, a requirement that the
21 applicant submit current photos of each group of new plantings made on the
22 site to the Director, on at least an annual basis, for 5 (five) years, to
demonstrate plant survival and viability. Any plants identified in the
replanting and maintenance plans for the project (see Exhibits 35 and 38),
that die or fail to thrive for at least 5 (five) years after planting, must be
replaced with comparable plant material, subject to review, inspection, and
approval by the Director or her designee. All replanted areas shall be subject
to on-site inspection during regular business hours by County staff or other
qualified professionals, as deemed necessary by the Director, provided the
Director shall endeavor to coordinate such inspections with the applicant so
as to minimize any disturbance to guests or visitors at the resort.

23 9. Immediately after construction is completed for any building or major
24 element of the Project, the owner shall provide an accurate as-built drawing,

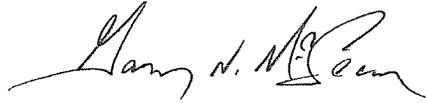
1 prepared by a qualified professional, to the Department of Community
2 Development for review and approval; and the owner shall request that the
3 Department perform an inspection of such completed item. All as-built
drawings and requests for inspections shall include the permit number for
this Project, which is: PSJ000-16-0005.

4 10. The County will not issue any building or other construction related
5 permits associated with the Project until such time as the applicant has
6 obtained an archaeological excavation permit from the Washington
7 Department of Archaeology and Historic Preservation. See Exhibit 40, letter
explaining DAHP requirement for archaeological excavation permit under
RCW 27.53.

8 11. Failure to comply with any terms or conditions of this combined
9 Shoreline Substantial Development and Shoreline Conditional Use Permit
10 may result in its revocation. Failure to comply with these Conditions of
11 Approval shall be grounds for rescission of the Shoreline Permit. As
12 provided in SJCC 18.80.110(L), captioned "Rescission of Shoreline
13 Permits," any shoreline permit may be rescinded by the hearing examiner
14 pursuant to RCW 90.58.140(8), upon the finding that the permittee has failed
to comply with the terms and conditions thereof. In addition, if the
permittee is denied any other permit or authorization required by a state or
federal agency with jurisdiction over aspects of the Project, the underlying
shoreline permit may be rescinded.

15 12. Development authorized by this permit shall commence within two years
16 of the date of approval and shall be substantially complete within 7 (seven)
years or the permit shall be deemed null and void.

17 ISSUED this 14th Day of May, 2018

18
19 

20
21 _____
Gary N. McLean
22 Hearing Examiner
23
24

Effective Date, Appeals, Valuation Notices

1 Hearing Examiner decisions become effective when mailed or such later date in accordance with the laws and
2 ordinance requirements governing the matter under consideration. SJCC 2.22.170. Before becoming
3 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/or SJCC 18.80.110.

4 Decisions of the Hearing Examiner are final and not subject to administrative appeal to the San Juan County
5 Council, unless the County council has adopted, by ordinance, written procedures for the discretionary review
of such decisions. See Section 4.50 of the San Juan County Home Rule Charter and SJCC 2.22.100.

6 Depending on the subject matter, this decision may be appealable to the San Juan County Superior Court or to
7 the Washington State Shorelines Hearings Board. State law provides short deadlines and strict procedures for
8 appeals and failure to timely comply with filing and service requirements may result in dismissal of any
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 confer with advisors of their choosing, possibly
including a private attorney.

9 Affected property owners may request a change in valuation for property tax purposes, notwithstanding any
10 program of revaluation.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
DECISION – APPROVING SHORELINE
SUBSTANTIAL DEVELOPMENT AND
CONDITIONAL USE PERMITS FOR THE GIBSON’S
NORTH BEACH INN EXPANSION PROJECT –
PSJ000-16-0005**

**GARY N. MCLEAN
SAN JUAN COUNTY HEARING EXAMINER**