



SAN JUAN COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT

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**SUPPLEMENTAL STAFF REPORT
FOR PERMIT # PSJ000-12-0019
Whaleback LLC
STAFF REPORT TO THE HEARING EXAMINER**

HEARING DATE: May 23, 2018
REPORT DATE: May 30, 2018
PROJECT PLANNER: Erika Shook, AICP, Director
FILE #: PSJ000-12-0019
PROJECT DESCRIPTION: After the fact substantial shoreline development permit for a shoreline stabilization structure and associated mitigation.
STAFF RECOMMENDATION: Additional conditions requiring mitigation plan and provisional use permit for wetland impacts

On May 18, 2018, prior to the May 23, 2018 hearing, additional information (Exhibit 36) was submitted with the application that shows that the proposed shoreline stabilization structure would be located within wetland and stream buffers. The following are the regulations that apply to placement of the shoreline stabilization structure within wetland and stream buffers.

I. Applicable wetland and stream protection requirements

A. Wetland Protection Standards – SJCC 18.35.100

Based on Figure 1 of Exhibit 36, the proposed shoreline stabilization structure is located within the habitat and water quality buffer of Wetland B, which is a Category III wetland. Wetland B is subject to the critical area regulations found in SJCC 18.35.100 Protection Standards. SJCC 18.35.100.A.3 allows for habitat buffer averaging, however it limits the reduction in the habitat buffer to no more than 25%, or 27.5 feet of a 110 foot buffer. It appears that the proposal would not meet the criteria for buffer averaging.

A shoreline stabilization structure is not a use or activity that is specifically addressed in SJCC 18.35.100.C Table 18.35.100-4 which spells out the uses and activities allowed in wetlands and wetland buffers. SJCC 18.35.100.C Table 18.35.100-4(v) allows “Other uses that will not adversely impact wetland functions and values considering best available science” in the buffer by provisional or conditional use permit, depending on an impact analysis conducted pursuant to SJCC 18.80.090.D Table 8.2. Based on Table 8.2 (Attachment A), the proposed shoreline stabilization structure would have two medium impacts and the remainder would be low impact. Therefore a provisional use permit is allowed provided that the impacts to the wetland buffer can be mitigated. The following is required for the proposal:

- 1) Provisional use application; and
- 2) Mitigation plan meeting the requirements of SJCC 18.35.040 that demonstrates that the proposal as mitigated will not adversely impact wetland functions and values.

Structures, Uses and Activities Allowed in Wetlands and Wetland Buffers		
Activity	Allowed within Wetland	Allowed within Wetland Buffers
(3) All vegetation overhanging streams, ponds, lakes, wetlands, and marine waters is retained; and (4) Trees greater than or equal to 12 inches dbh are retained; and (C) Any adverse impacts to critical areas or their buffers are mitigated in accordance with SJCC 18.35.040 .		
v. Other uses that will not adversely impact wetland functions and values, considering the best available science.	P/C ¹	P/C ¹

¹ "P/C" means provisional or conditional use permit depending on the level of impacts (see SJCC [18.80.090](#)).

² Drainfields shall not be located within 300 feet of a natural heritage wetland.

B. Fish and Wildlife Habitat Conservation Area protection standards – SJCC 18.35.130

Figure 1 also shows that the shoreline stabilization structure is located within the habitat buffer and tree protection zone of a Type Ns stream. The stream is a Fish and Wildlife Habitat Conservation Area subject to the critical area regulations found in SJCC 18.35.130 Protection standards for aquatic fish and wildlife habitat conservation areas (FWHCAs). The requirements include a Tree protection zone and a Water Quality Buffer.

Tree Protection Zone Evaluation Area

Type of Water Body ¹	Tree Protection Zone Evaluation Area (measured horizontally)
Type F (Type 2 or 3) streams, lakes, ponds designated as FWHCAs, and marine waters (Type S) designated as FWHCAs	110 feet from ordinary high water mark or bank full width ²
Type Np (Type 4) streams	50 feet from bank full width
Type Ns (Type 5) streams	30 feet from bank full width
Type Ns (Type 5) streams flowing less than 6 months per year	Stream banks must be vegetated

¹ Stream types under both the new and old classification systems shown (see WAC [222-16-030](#) and [222-16-031](#)).

² Within urban growth areas, this may be reduced to 50 feet if adverse impacts are identified and mitigated in accordance with SJCC [18.35.040](#).

Pursuant to SJCC 18.35.130 Table 18.35.130-3(v) and Subsection G, shoreline modifications are allowed in conformance with Chapter 18.50 SJCC. Conformance with SJCC 18.50 SJCC was provided as part of the initial application because the shoreline stabilization structure is located within the tree protection zone and water quality buffer for the saltwater FWHCA on the site. Provided mitigation is proposed or required with the shoreline permit that addresses the stream buffer impacts, the proposal would be consistent with the requirements of SJCC 18.35.130. A provisional use permit is not required for the stream buffer impacts.

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Activity	Aquatic FWHCA (the area within the water)	Buffer
18.35.020 through 18.35.050 .		
u. Structures, uses and activities allowed pursuant to an approved variance (see SJCC 18.80.100).	YES	YES
v. Shoreline modifications in conformance with Chapter 18.50 SJCC and subsection (G) of this section.	YES	YES
w. Other uses that will not adversely impact the functions and values of aquatic FWHCAs, considering the best available science.	P/C ¹	P/C ¹

¹ "P/C" means provisional or conditional use permit depending on the level of impacts (see SJCC [18.80.090](#)).

II. Recommendation

Staff recommends the following additional conditions related to the new information submitted:

- 1) A provisional use permit application shall be submitted for the shoreline stabilization that addresses wetland buffer impacts as required by Chapter 18.35 SJCC; and
- 2) A mitigation plan meeting the requirements of SJCC 18.35.040 shall be submitted that demonstrates that the proposal as mitigated will not adversely impact wetland **and** stream functions and values.

Attachment A to DCD Supplemental Staff Report

SJCC 18.80.090

D. Determination Whether the Conditional Use Permit Process Will Be Required. The director shall use Table 8.2, below, as a guide to evaluate the impacts of the proposal. If any impact is “high” and is not mitigated to medium or low impacts, then the application must be processed as a conditional use as per SJCC [18.80.100](#). If “medium” impacts cannot be mitigated, then the director may require the application to be processed as a conditional use as per SJCC [18.80.100](#). In making this determination the director will consider the number of impact areas above the middle range of the medium impact category and the relative magnitude of those impacts. If a conditional use permit is not required, or if the impacts as determined from Table 8.2 are “low,” the application shall be processed as a provisional use under the procedures set forth in SJCC [18.80.080](#).

How to Use This Table

This table is intended as guidance for the director when making decisions per SJCC [18.80.090](#) for provisional/conditional uses, which were formerly referred to as discretionary uses (noted with a “P/C” or “D” in Tables 18.30.030 and 18.30.040).

An application that has:

- all low-impact uses is processed under the provisional use procedures of SJCC [18.80.080](#).
- one or more high-impact uses – If the high-level impacts are not mitigated to low or medium level, the application is processed under the conditional use procedures of SJCC [18.80.100](#).
- one or more medium-impact uses – An application with medium-impact uses may be processed using either the provisional use or conditional use procedures of this code, as determined by the director.

Note: Intensity, severity, and cumulative impact of the proposed uses will enter into the determination of which procedures will be used.

For air, water, or soil pollution, the Washington Department of Ecology (WDOE) may require any person proposing a new, changed, or existing discharge, disposal or emission to evaluate the potential for the discharge to cause a violation of applicable standards and regulations; certain state and federal permits and approvals also require additional information development. Depending on the proposed uses, the County may require an applicant to confer with the WDOE, and may use the results of any analysis, testing, or other information developed by or for WDOE or other agencies in determining the appropriate impact level and permit procedures.

Determination of the suitability of mitigation measures will include, among other things, the risk of “upset conditions” (the risk that the mitigation measures will fail, be overwhelmed, or exceed allowed discharges), and the potential severity of the impact should mitigation be ineffective or fail.

Table 8.2. Guidance for Administrative Review of Impacts for the Assignment of Applications to Provisional Use or Conditional Use.

Impact Parameter	Level of Impact ⁽¹⁾		
	Low	Medium	High
Critical Areas (see SJCC 18.35.020 through 18.35.140)			
Geologically hazardous areas	No effect on Category I or II	Effect on Category II	Effect on Category I
Frequently flooded areas	None affected	No reduction in flood abatement volume	Reduces flood volume of 100-year floodplain
Regulated wetlands or fish and wildlife habitat conservation areas	No impact	Mitigable impact	Any impact that cannot be mitigated
Air Pollution			
Air pollutants and emission rates (as defined in WAC 173-400-030 , emission rates and performance standards WAC 173-400-040 through 173-400-115)	Normal for SFR/EQ ⁽²⁾ (including meeting requirements of Chapter 173-433 WAC)	> 1 SFR/EQ; <i>or</i> Pollutant types or emission levels require registration with WDOE and a new source review per WAC 173-400-110	> 3 SFR/EQ; <i>or</i> A new source review reveals: – Major source (potential for emission of 100 tons of any regulated pollutant); <i>or</i> – Potential to emit 25% of a significant emission as defined in WAC 173-400-030 ; <i>or</i> – Pollutants will be emitted which will affect an area that is in nonattainment of National

Impact Parameter	Level of Impact ⁽¹⁾		
	Low	Medium	High
			Ambient Air Quality Standards (WAC 173-400-030 and 173-400-113); or – Hazardous pollutants (per WAC 173-400-075 , and 40 CFR, Part 61) will be emitted
	(Note: Emissions standards in Chapter 173-400 WAC may not be exceeded)		
Class I areas (national parks, or national wilderness areas)	No visibility impairment	No visibility impairment	Emissions contribute to any visibility impairment
Airport visibility	No visibility reduction	No visibility reduction	Emissions increase or promote haze or fog
Scenic open space, and scenic viewpoints or view corridors identified on open space maps	No discernable change	Minor effect on visibility (sight distance, contrast, or color) or scenic qualities	Materially reduces visibility (sight distance, contrast, or color) or scenic qualities
Scenic and property value impacts from personal wireless service facilities (also see lighting section below).	Facility within height limit of land use designation or disguised or camouflaged as an allowable exemption to the height standard.	Facility ≤ 75 feet, exceeding height limit of land use designation and not disguised as an allowable exemption to the height standard.	Facility > 75 feet that is not disguised or camouflaged as an allowable exemption to the height standard

Groundwater Pollution

Groundwater pollutants (as defined in WAC 173-200-030 through 173-200-050 , 40 CFR Part 141 , and WAC 246-290-310)	No measurable discharge of pollutants to groundwater	< 25% of criteria in WAC 173-200-040 and 173-200-050 , 40 CFR Part 141 , and WAC 246-290-310	The cumulative pollutant load will exceed early warning values (if established per WAC 173-200-070); or
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Impact Parameter	Level of Impact ⁽¹⁾		
	Low	Medium	High
			≥ 25% of criteria in WAC 173-200-040 and 173-200-050 , 40 CFR Part 141 , and WAC 246-290-310
	(Note: The most stringent of the following criteria may not be exceeded: <ul style="list-style-type: none"> WAC 173-200-040 and 173-200-050 <ul style="list-style-type: none"> 40 CFR Part 141 WAC 246-290-310) 		
Adopted watershed or other plan with groundwater prescriptions	In conformance with requirements and guidelines of adopted plan	Not conforming with guidelines (<i>i.e.</i> , measures recommended but that exceed requirements)	Not conforming with requirements set forth in the adopted plan
Groundwater in national and state parks and national wildlife refuges	No degradation	No degradation	Any degradation of groundwater quality (WAC 173-200-030)

Surface Water Pollution

Surface water pollutants (as defined in WAC 173-201A-030 through 173-201A-050)	Not measurable	< 25% of criteria in WAC 173-201A-040 through 173-201A-110	≥ 25% of criteria in WAC 173-201A-040 through 173-201A-110
Nonpoint and stormwater pollution (all applicable best management practices must be in place; WAC 173-201A-160)	Not measurable	< 25% of criteria in WAC 173-201A-040 through 173-201A-110	≥ 25% of criteria in WAC 173-201A-040 through 173-201A-110
	(Note: The maximum criteria in WAC 173-201A-040 for acute and chronic toxicity for fresh water and marine waters may not be exceeded.)		
	(Note: The max. criteria in WAC 173-201A-050 through 173-201A-110 may not be exceeded.)		

Impact Parameter	Level of Impact ⁽¹⁾		
	Low	Medium	High
Surface water classifications (defined in WAC 173-201A-030 and 173-201A-120 through 173-201A-140)	Maintains standards in WAC 173-201A-030	The cumulative deterioration from present condition to the next lower classification < 25%	The cumulative deterioration from present condition to next lower classification ≥ 25%
	(Note: Minimum standards in WAC 173-201A-030 for turbidity, dissolved oxygen, temperature, pH, coliforms, etc. may not be exceeded)		
Pollutant accumulation in sediment	No accumulation of pollutants	The cumulative pollutant load < 25% of criteria in WAC 173-204-320 through 173-204-340	The cumulative pollutant load ≥ 25% of criteria in WAC 173-204-320 through 173-204-340
	(Note: The maximum criteria in WAC 173-204-320 through 173-204-340 for pollution of fresh water and marine sediments may not be exceeded.)		
Adopted watershed or other plan	In conformance with requirements and guidelines of adopted plan	Not conforming with guidelines (i.e., measures recommended but that exceed requirements)	Not conforming with requirements set forth in the adopted plan
Total phosphorus entering a lake or reservoir	Concentration < 0.01 mg/Liter	Concentration < 0.05 mg/Liter	Concentration ≥ 0.05 mg/Liter ⁽³⁾

Soil Pollution

Soil Contamination (by the placement or disposal of contaminated fill, soil, spoils, solid waste, contaminated water or other liquids, or other materials or substances) ⁽⁴⁾	No detectable wastes governed by WAC 173-303-070 through 173-303-100 and 173-303-120 (including dangerous, extremely hazardous, toxic, infectious, radioactive, ignitable,	One or more of these substances are detectable, and < 25% of criteria in WAC 173-303-090 through 173-303-120	One or more of these substances are detectable, and ≥ 25% of criteria in WAC 173-303-090 through 173-303-120
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Impact Parameter	Level of Impact ⁽¹⁾		
	Low	Medium	High
	corrosive, reactive, persistent, or putrescible substances)		
	(Note: Criteria of Chapter 173-303 WAC may not be exceeded, and all requirements of Chapter 173-303 WAC must be met.)		
Change in soil pH	Change < 0.2 units	Change ≤ 0.5 units	Change > 0.5 units

Storm Drainage and Erosion

Runoff increase (equivalent to that produced by indicated amounts of impervious surface)	≤ 4,000 square feet of total impervious surface area	between 4,000 and 12,000 square feet of total impervious surface area; <i>or</i> between 1,000 and 5,000 square feet of total impervious parking surface area	> 12,000 square feet of total impervious surface area; <i>or</i> > 5,000 square feet of total impervious parking surface area
Erosion	No measurable changes	More than one acre will be cleared or graded, but potential offsite effects are mitigable	More than 3 acres exposed at one time; <i>or</i> Area has high erosion potential; <i>or</i> Offsite effects are not completely mitigable

Utilities Usage and Demand

Solid waste quantity generated (not including waste legally disposed of outside the County)	≤ average generated by 1 SFR/EQ ⁽²⁾	≤ 2 times the average generated by 1 SFR/EQ without mitigation	> 2 times the average generated by 1 SFR/EQ without mitigation
Sanitary sewerage (demand on community system capacity)	≤ 1 SFR/EQ demand on system capacity	> 1 SFR/EQ demand on system capacity	Service demand exceeds 3,400 gallons/day
Water quantity	≤ the amount required for 1 SFR/EQ	≤ the amount required for 3 SFR/EQ	> the amount required for 3 SFR/EQ

Impact Parameter	Level of Impact ⁽⁴⁾		
	Low	Medium	High
Electricity quantity	≤ the amount required for 1 SFR/EQ	≤ the amount required for 3 SFR/EQ	> the amount required for 3 SFR/EQ

Noise and Odor

Sound level (increase in 1-hour average background sound level in local areas outside the boundary of the project area)	≤ 2 dBA	≤ 5 dBA	> 5 dBA; modifiers: extended duration; very low or high frequency; or sharp, penetrating pitch
Change in odors beyond property boundary	None discernible	Any discernible obnoxious odor	Any discernible obnoxious odor lasting 15 minutes or longer per day

Traffic⁽⁵⁾

Passenger vehicle trips generated/day⁽⁶⁾	5 round trips	6 to 19 round trips	20 or more round trips
Vehicle type (gross vehicle weight = GVW) using road	< 10,000 pounds GVW	< 20,000 pounds GVW	≥ 20,000 pounds GVW

Visual Quality

Lighting⁽⁷⁾	Pathway lighting 36 inches or lower at average 1 foot-candle or less and no direct illumination beyond property boundary	Fixture height > 3 feet; <i>or</i> Average > 1 foot-candles; <i>or</i> Any direct illumination beyond property boundary	Fixture height ≥ 20 feet; <i>or</i> Average > 10 foot-candles; <i>or</i> Any direct illumination beyond property boundary
Parking	≤ 2 new spaces	3 to 9 new spaces	≥ 10 new spaces
Visible outdoor storage⁽⁸⁾	≤ 500 square feet	≤ 1,000 square feet	≥ 1,000 square feet
Lot coverage⁽⁹⁾	≤ 5,000 square feet	≤ 10,000 square feet	> 10,000 square feet

Miscellaneous and Unforeseen Impacts

Impact Parameter	Level of Impact ⁽¹⁾		
	Low	Medium	High
[Appropriate parameter]	≤ 1 SFR/EQ	≤ 3 SFR/EQ	> 3 SFR/EQ

Notes:

1. As used in this table, the term “impact” refers to adverse impacts. These impact levels are for the individual project, except as indicated. In making an assignment to low, medium, or high, and in assigning the application to processing under provisional or to conditional use procedures, the director may consider the cumulative impact of other, like impacts at the site, cumulative impact to the receiving sites or resources from this project and other sources, the intensity and severity of the impact to the receiving site or resources, and the suitability of mitigation measures.
2. “SFR/EQ” = a single-family residence or equivalent. This is based on allowable uses in the applicable land use designation (e.g., in a residential area a single-family residence would be used for comparison while in a commercial designation the typical commercial use would be used).
3. U.S. Environmental Protection Agency, 1986. Quality criteria for water, EPA 440/5-86-001.
4. Dangerous and extremely hazardous wastes are defined at WAC [173-303-040](#), and designated in WAC [173-303-070](#) through [173-303-100](#) and [173-303-120](#), as amended, and the SJC Solid Waste Ordinance, 17-96, as amended. Excluded and exempted wastes are defined at WAC [173-303-071](#) through [173-303-073](#).
5. Trips, type of vehicle, and nature of access combine to create level of impact.
6. Round trips per day guidelines are based on access to the activity being provided by paved major or minor collector roads. If access is by major collector roads only, the trips per day should be moved one impact category lower. If access is by road classified as a minor collector road or lower, the trips per day should be moved one impact category higher, e.g., if an activity generates 15 round trips per day and has access from a major collector road, the impact is low; if it has access from a minor collector road or lower, the impact is high.
7. Vehicle lights and required lighting for personal wireless service facilities included.

8. Visible from adjoining properties.
9. "Lot coverage" is described in SJCC [18.60.050](#).

(Ord. [26-2012](#) § 25; Ord. [10-2012](#) § 26; Ord. 26-2002 § 6; Ord. 15-2002 § 9; Ord. 12-2001 § 8; Ord. 14-2000 §§ 7(AAA), 8(C); Ord. 2-1998 Exh. B § 8.9)