

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS, AND DECISION**

Applicant(s): Washington State Ferries  
PO Box 330310  
Seattle, WA 98133-9710

in care of agent  
Dan Drahn, Boundary Water  
PO Box 897  
Lopez, WA 98261

File No.: PSJREV-15-0001

Request: Revision to Shoreline Substantial Development Permit  
PSJ000-13-0007

Parcel No: 263632002000, 263632001000, and 263650013000

Location: Lopez Island Ferry Terminal

Summary of Proposal: An application for a revision to an approved shoreline  
substantial development permit in order to extend North  
Lopez Service (NLS) water system to the terminal and add  
a fire hydrant at the end of Penny Lane

Shoreline Designation: Conservancy

Public Hearing: June 18, 2015

Application Policies and Regulations: SJCC 18.50.350 Utilities  
WAC 173-27-100 Revisions to Permits  
SJCC 18.80.110(M) Procedures for Revisions to  
Shoreline Permits

Decision: Approved subject to conditions



### **Exhibits:**

The following exhibits were admitted in the record:

1. Department of Community Development Staff Report to the Examiner, dated May 14, 2015
2. Request for review
3. Application materials including: application form, project narrative, overall project limits plan, a Penny Lane plan, a San Juan County GIS aerial photograph of the property with project elements drawn in, and two color photographs of the project area
4. UW - Friday Harbor Labs comments, dated April 20, 2015
5. Hearing Examiner decision for PSJ000-13-0007, issued August 1, 2013

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. On August 1, 2013, shoreline substantial development permit (SSDP) PSJ000-13-0007 was approved. The SSDP authorized improvements to the Lopez Island Ferry Terminal intended to bring the facility into compliance with the Americans with Disabilities Act of 1990 (ADA) regarding access and safety requirements. Specific improvements included: the ADA-accessible terminal building; grading and parking revisions; paving, curb, and gutter; underground electrical extensions; ADA access for the walkway to the ferry terminal; restriping of the parking lot to create ADA-compliant stalls; and restriping the holding lanes to allow installation of ADA-compliant sidewalks. Construction of these improvements is currently underway. *Exhibits 3 and 5; Taylor Testimony.*
2. The instant request would revise the previous approval by adding to it the extension of North Lopez Service water to within 50 feet of the new terminal building and add a fire hydrant at the end of Penny Lane near the lower parking area. The proposed water line would be six-inch HDPE piping buried in a three-foot trench in an existing easement within 200 feet of the ordinary high water mark of Harney Channel. The shorelands adjacent to Harney Channel are subject to the Washington State Shoreline Management Act as implemented through the San Juan County Shoreline Master Program (SMP). The SMP designates the affected shoreline as a Conservancy shoreline environment. *Exhibits 1 and 3.*
3. Water has never been available at the ferry terminal before. There is a commercial business at or near the terminal with a history of failure, and lack of water is believed to have contributed to the failures over time. Approval of water system extension could lead to further extension to serve the business location, providing additional services to ferry patrons. *Taylor Testimony; Exhibit 1.*

4. Except for the fire hydrant, all proposed improvements would be placed underground. Penny Lane was originally built as a subdivision road but is now restricted to foot traffic. Only areas within right-of-way would be disturbed. Clearing would be confined to that which is absolutely necessary to permit utility installation. As proposed, soils would be stabilized during construction to prevent erosion, and all excavated materials would be returned to the trench alignment. As an underground utility, the proposal would be required to comply with Minimum Requirement 2 of the Stormwater Management Manual. Disturbed areas would be returned to their prior condition upon project completion and/or reseeded. Drainage and surface runoff from utility installation areas would be controlled to prevent pollutants from being carried into any source of water, and after construction is completed all stormwater runoff from the project area would continue to infiltrate in the same manner as before. *Exhibits 1 and 3.*
5. According to the Applicant, the proposed water line route is the most efficient and in fact the only feasible means to connect to the ferry landing from any point in the NLS water system. The water line would be located well away from shoreline areas. *Exhibits 1 and 3.*
6. No over water construction, desalination lines, underwater cables are proposed, underwater pipelines, or outfalls are proposed. Ground area coverage and height would only be increased in the form of the fire hydrant; all other elements of the proposal would be underground. No additional landscaping is proposed. *Exhibits 1 and 3.*
7. The use authorized pursuant to the original permit would not be changed. The proposed revision addresses a safety issue: the availability of water onsite in case of fire. *Exhibits 1, 3, and 5.*
8. The application was submitted on March 23, 2015. Notice of hearing was published in a newspaper of general circulation on April 15, 2015, and was posted on-site and mailed to owners of property within 300 feet of the exterior boundaries of the site on May 6, 2015. The County received no comments on the proposal. *Exhibit 1; Thompson Testimony.*
9. Friday Harbor Labs submitted comments indicating they had no concerns about the proposal and that the project seemed justified. *Exhibit 4.*
10. Upon review of the complete application materials, Planning Staff submitted that development as proposed in compliance with County regulations relating to utility construction and stormwater management would prevent any possible environmental impacts from approval. Staff noted that although no new conditions of approval are recommended, the revised SSDP would remain subject to the conditions in the August 2013 permit (PSJ000-13-0007). *Thompson Testimony; Exhibit 1.*

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## CONCLUSIONS

### **Jurisdiction**

The Hearing Examiner has jurisdiction to decide applications for revisions to approved shoreline permits pursuant to San Juan County Code 2.22.100(1) and 18.80.110(M), and Revised Code of Washington 36.70.970.

### **Criteria for Review**

#### ***Revisions to Approved Shoreline Permit***

Pursuant to SJCC 18.80.110(M), when an applicant seeks to revise a shoreline permit, an application in a form prescribed by the administrator together with detailed plans and text describing the proposed changes shall be filed with the administrator. Following receipt of this information, the administrator shall schedule a public hearing on the request.

1. The administrator shall ensure that notice of the hearing is published in a newspaper of general circulation within the County prior to the hearing. The administrator shall submit to the hearing examiner all of the written documents referred to above. At the beginning of the hearing, the recommendation of the administrator shall be read into the record.
2. If the hearing examiner determines that the proposed changes are within the scope and intent of the original permit, as defined by WAC 173-27-100(2), the revision shall be granted.
3. If the hearing examiner determines that the proposed changes are not within the scope and intent of the original permit, then the applicant must apply for a new shoreline permit.
4. Any permit revision approved by the hearing examiner shall become effective immediately. Within eight days of the hearing examiner's action, the approved revision shall be submitted to the Washington Department of Ecology. In addition, the administrator shall submit a copy of the examiner's decision to all parties of record to the original permit action.
5. Appeals shall be in accordance with WAC 173-27-220 and SJCC 18.80.140.

Pursuant to WAC 173-27-100(2), "Within the scope and intent of the original permit" means all of the following:

- a. No additional over water construction is involved except that pier, dock, or float construction may be increased by five hundred square feet or ten percent from the provisions of the original permit, whichever is less;
- b. Ground area coverage and height may be increased a maximum of ten percent from the provisions of the original permit;
- c. The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under a variance granted as the original permit or a part thereof;
- d. Additional or revised landscaping is consistent with any conditions attached to the

- original permit and with the applicable master program;
- e. The use authorized pursuant to the original permit is not changed; and
  - f. No adverse environmental impact will be caused by the project revision.

***San Juan County Shoreline Master Program - Applicable Regulations***

**SJCC 18.50.350 Utilities**

**A. Regulations—General**

1. In shoreline areas, utility transmission lines, pipelines, and cables must be placed underground unless demonstrated to be infeasible. Further, such lines must utilize existing rights-of-way whenever possible. Proposals for new corridors in shoreline areas involving water crossings must fully substantiate the infeasibility of existing routes.
2. Utility development must, through coordination with government agencies, provide for compatible multiple uses of sites and rights-of-way. Such uses include shoreline access points, trails, and other forms of recreation and transportation systems, providing such points, trails, and other forms of recreation and transportation systems, providing such uses will not unduly interfere with utility operations or endanger public health and safety.
3. Sites disturbed for utility installation must be stabilized during and following construction to avoid adverse impacts from erosion.
4. Immediately following the completion of utilities installation or maintenance projects on shorelines, disturbed areas must be restored to project configurations, replanted with local vegetation, and the vegetation maintained until it is firmly established.
5. Utility lines, pipes, stations, plants, and other apparatus shall not be installed in shoreline areas unless there is no feasible alternative.
6. Utility lines shall be installed underground. Desalination intake and discharge lines shall be located underground wherever feasible, except for that portion located underneath or along any docks, piers, walkways, stairs, or other shoreline improvements located on the site.
7. Underwater cables which must cross shorelines shall be installed underground from the water line to the tree line, unless otherwise authorized by the County. The County shall authorize variances from this regulation only for good cause.
8. Where installation of utility lines, pipes, or other apparatus in shoreline areas is approved, clearing shall be confined to that which is absolutely necessary to permit the installation and to prevent interference by vegetation once the system is in operation.

9. Where utility lines, pipes, or other apparatus must cross shoreline areas, they shall do so by the route which will cause the least damage to the shoreline, both physically and visually.
10. Drainage and surface runoff from utility installation areas shall be controlled so that pollutants will not be carried into water bodies.
11. Applications for outfalls and underwater pipelines that transport substances harmful or potentially harmful to aquatic life or water quality shall not be approved unless the applicant has demonstrated that no significant adverse impacts will result. Desalination and reverse osmosis brine discharge is not considered to be potentially harmful to aquatic life or water quality provided all required state and federal requirements are met.

B. Regulations—Desalination (not applicable)

C. Regulations by Environment.

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3. Conservancy. Utility transmission, distribution, or collection facilities are permitted in the conservancy environment subject to the policies and regulations contained in this master program; provided, that the applicant can demonstrate that no feasible alternative exists, and that the utility line shall follow a route which will minimize the adverse impacts on the physical and visual resources of the area. Desalination and reverse osmosis systems shall be permitted in the conservancy environment subject to the policies and general regulations contained in this master program.

### **Conclusions Based on Findings**

1. Notice was duly given, and the required hearing was conducted and attended by an Applicant representative. *Findings 3 and 8.*
2. The proposed additional improvements are within the scope of the original permit in that in providing fire suppression, safety is enhanced for all persons attending the ferry terminal including ferry customers with disabilities. No overwater construction is involved. No portion of the proposed additional improvements would be taller than the fire hydrant and only the fire hydrant would be above ground. The proposed water line and fire hydrant do not require variance from any dimensional standard of the underlying land use designation or shoreline environment regulations. No additional landscaping is proposed or required. The additional improvements do not change the nature of the use authorized by PSJ000-13-0007. Compliance with County building, utility, and stormwater management regulations would prevent any environmental impacts from construction and operation of the proposed improvements. *Findings 1, 2, 6, 7, 9, and 10.*

3. The water line extension and fire hydrant constitute a utility project that does not amount to substantial development requiring a separate permit. *Findings 1, 2, 9, and 10.*
4. The proposal is consistent with the SMP's utility regulations. The water line would be buried underground and, within the shoreline jurisdiction, located wholly in existing right-of-way. Excavated soils would be protected during installation and then backfilled into the trench. Disturbed areas would be returned to pre-installation conditions and reseeded where not paved or graveled. The ferry terminal is by its nature located at the water's edge, meaning there is no alternative to running a water line into the shoreline environment if fire protection is to be provided. No desalination, underwater cables, underwater pipelines, or outfalls are proposed. The proposed utility is set back from the shoreline. *Findings 2, 4, 5, 6, 7, and 8.*
5. The proposal is consistent with applicable SMP regulations governing development in the Conservancy shoreline environment. The Applicant has attested and no evidence in the record contradicts that the proposed water line extension is the only feasible means of providing a water supply for the purpose of fire protection. The water line would be buried in a graveled trench within existing right-of-way, set back sufficiently from Harney Channel to prevent any impacts to the water body from its operation. Construction would be required to comply with County building, utility, erosion control, and stormwater management standards, as well as the conditions of the 2013 SSDP approval. *Findings 2, 3, 5, 6, 8, and 10.*

### **DECISION**

Based on the preceding findings and conclusions, the request to revise approved shoreline substantial development permit PSJ000-13-0007 to allow extension of North Lopez Service (NLS) water system service to the Lopez Island Ferry terminal and to add a fire hydrant at the end of Penny Lane is **APPROVED** subject to compliance with the conditions of the original permit.

**Revised and reissued July 29, 2015.<sup>1</sup>**

By: 

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Sharon A. Rice  
San Juan County Hearing Examiner

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<sup>1</sup> This decision was revised and reissued on July 29, 2015 in order to correct the appeal instructions at the end of the document. No other changes were made.

**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.