

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant(s): San Juan County Public Works
915 Spring Street
Friday Harbor, WA 98250

File No.: PSJ000-14-0002

Request: Shoreline Substantial Development Permit

Parcel No: County road

Location: Portions of Deer Harbor Road and Channel Road on Orcas Island

Summary of Proposal: Guardrails.

Land Use Designation: Rural Farm Forest and Deer Harbor Hamlet Residential

Public Hearing: June 9, 2014

Application Policies and Regulations: San Juan County Shoreline Master Program

Decision: Approved subject to conditions.

S.J.C. COMMUNITY

JUN 26 2014

DEVELOPMENT & PLANNING

1 **BEFORE THE HEARING EXAMINER FOR THE COUNTY**
2 **OF SAN JUAN**

3 Phil Olbrechts, Hearing Examiner

4 RE: San Juan County Public Works	5 FINDINGS OF FACT, CONCLUSIONS 6 OF LAW AND FINAL DECISION.
7 Shoreline Substantial	
8 Development Permit 9 (PSJ000-14-0002)	

10 **INTRODUCTION**

11 The applicant requests approval of a shoreline substantial development permit to install guardrails along Deer Harbor Road and Channel Road on Orcas Island. The permit application is approved subject to conditions.

S.J.C. COMMUNITY

12 **TESTIMONY**

JUN 26 2014

13 Ms. Thompson stated that this application is for guard rails to be installed on Deer Harbor Road and Channel Road for safety reasons.

DEVELOPMENT & PLANNING

14 In regard to how these rails might interfere with pedestrians who walk along the road, Mr. Sundstrom stated that there was not a walkway along the road currently, thus there was not really pedestrian traffic along the road that would be impacted.

15 **EXHIBITS**

16 All five exhibits identified in the exhibit list of the attached to the May 27, 2014 staff report were admitted into the record at the hearing.

17 **FINDINGS OF FACT**

18 **Procedural:**

- 19
- 20 1. Applicant. The applicant is San Juan County Public Works.
 - 21 2. Hearing. A hearing was held on the subject application on June 9, 2014 at 22 10:00 am in the San Juan County Council hearing chambers in Friday Harbor, San Juan 23 Island.

24 **Substantive:**

- 25 3. Site and Proposal Description. San Juan County Public Works proposes to install safety guardrails in two locations on existing County roads on Orcas Island. One will be

1 along Deer Harbor Road near mile post 1.75 heading north. The other will be along
2 Channel Road beginning at mile post 0.45 heading west.

3 4. Surrounding Area. All improvements are within Orcas Island shoreline
4 jurisdiction.

5 5. Adverse Impacts of Proposed Use. There are no significant adverse impacts
6 associated with the proposal. The applicant testified that the guardrails will not impede or
7 obstruct any pedestrian access in the areas in which they will be installed. No other
8 impacts can be reasonably inferred from the record. The staff report notes that the
9 guardrail will not interfere with the natural flow of water and there is nothing to suggest
10 otherwise. There are no wetlands in the project area.

11 CONCLUSIONS OF LAW

12 **Procedural:**

13 1. Authority of Hearing Examiner. The Hearing Examiner, after conducting an
14 open-record public hearing, is authorized to issue a final decision on shoreline substantial
15 development permits. SJCC18.80.110(E).

16 **Substantive:**

17 2. Shoreline Designation. Rural Farm Forest and Rural.

18 3. Zoning Designation. The subject property is designated as Rural Farm Forest
19 and Deer Harbor Hamlet Residential.

20 4. Permit Review Criteria. The costs of the development presumably exceed
21 those of the exemption levels set in WAC 173-27-040(2)(a) so the project must acquire a
22 shoreline substantial development permit. SJCC 18.80.110(H) establishes the criteria for
23 approval of shoreline substantial development permits. The criteria include the policies of
24 the Shoreline Management Act (Chapter 90.58 RCW), the policies and use regulations of
25 the San Juan County Shoreline Master Program, and the requirements of the San Juan
Municipal Code and Comprehensive Plan. The applicable policies and regulations are
quoted in italics below and applied through conclusions of law.

26 **RCW 90.58.020 Use Preferences**

*This policy (Shoreline Management Act policy) is designed to insure the development of
these shorelines (of the state) in a manner which, while allowing for limited reduction of
rights of the public in the navigable waters, will promote and enhance the public interest.
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.*

1 5. As determined in Finding of Fact No. 5, there are no adverse impacts
2 associated with the proposal while at the same time the proposal provides for safer
3 vehicular travel along the shoreline. The policy is met.

3 **SHORELINE MANAGEMENT ACT POLICIES**

4 **RCW 90.58.020(1)¹**

5 *Recognize and protect the statewide interest over local interest;*

6 6. As determined in Finding of Fact No. 5, there are no adverse impacts
7 associated with the proposal while at the same time the proposal enhances and facilitates
8 access to the shorelines for persons with disabilities as well as the rest of the general
9 public. The policy is met.

9 **RCW 90.58.020(2)**

10 *Preserve the natural character of the shoreline;*

11 7. The proposal will not result in any significant change to the appearance of the
12 project area. Given these minor alterations to the shoreline, the natural character of the
13 shoreline can be considered preserved.

13 **RCW 90.58.020(3)**

14 *Result in long term over short term benefit;*

15 8. The project provides for safer vehicular travel along the shoreline with no
16 corresponding significant adverse impacts. The proposal results in both long term and
17 short term benefit.

17 **RCW 90.58.020(4)**

18 *Protect the resources and ecology of the shoreline;*

19 9. As determined in Finding of Fact No. 5 there are no significant adverse
20 impacts associated with the proposal.

20 **RCW 90.58.020(5)**

21 *Increase public access to publicly owned areas of the shorelines;*

22 10. The proposal provides for safer vehicular access to the shoreline without any
23 corresponding reduction in any other type of access.

24 _____
25 ¹ RCW 90.58.020(1)-(6) applies to shorelines of statewide significance. Section 3.4.F of the San Juan
County Comprehensive Plan identifies all saltwater surrounding the islands of San Juan County as
shorelines of statewide significance. The policies of 90.58.020(1)-(6) are mirrored in the policies of
Section 3.4.F of the Comprehensive Plan and for the reasons provided in assessment of RCW
90.58.020, the Examiner also finds consistency with the policies of Section 3.4.F.

RCW 90.58.020(6)

1 *Increase recreational opportunities for the public in the shoreline;*

2 11. The proposal does not affect shoreline recreation, except to make access to
3 the shorelines safer.

4 **SJCC 18.50.340(A)(1):** *Transportation facilities located in shoreline areas must be*
5 *designed and maintained to prevent erosion and to permit the natural movement of*
6 *surface water.*

7 12. As determined in FOF No. 5, the proposal will not affect the natural movement of
8 surface water. The proposal will be conditioned to prevent erosion.

9 **SJCC 18.50.340(A)(2):** *The filling of wetlands for the construction of transportation*
10 *facilities is not permitted unless it can be clearly shown that no feasible alternative*
11 *exists.*

12 13. No filling of wetland is proposed.

13 **SJCC 18.50.340(A)(3):** *All overburden, debris, and other waste material resulting*
14 *from the construction of transportation facilities shall be disposed of in a fashion which*
15 *will prevent their entry into any water body.*

16 14. As conditioned.

17 **SJCC 18.50.340(A)(4):** *Excess construction materials shall be removed from the*
18 *shoreline immediately following completion of the construction project.*

19 15. As conditioned.

20 **SJCC 18.50.340(A)(5):** *Where appropriate, provisions for pedestrian access to or*
21 *along the water shall be included in the plans for all new public transportation*
22 *facilities.*

23 16. The proposal is not a “new” public transportation facility.

24 **SJCC 18.50.340(B):** *Regulations – Roads (Public and Private).*

25 4. *Cut and fill slopes shall be stabilized and, where appropriate, planted with native*
26 *vegetation.*

27 5. *Roadside brush shall be controlled by mechanical rather than chemical means.*

28 8. *Drainage and surface runoff from roads and road construction or maintenance*
29 *areas shall be controlled so that pollutants will not be carried into water bodies.*

30 17. As conditioned.

1 **SJCC 18.50.340(I): Regulations by Environment.**

2 *1. Urban. Transportation facilities shall be permitted in the urban environment, subject*
3 *to the policies and regulations contained in this master program.*

4 *2. Rural. Same as urban; ...*

5 *...*

6 *4. Rural Farm-Forest. Same as conservancy.*

7 *5. Conservancy. Pedestrian trails shall be permitted in the conservancy environment.*

8 *Roads and parking areas serving permitted uses shall be permitted where no feasible*
9 *alternative exists; ...*

10 18. The proposed guardrails will be located in the Rural Farm Forest and Rural
11 shoreline environments. As determined in the staff report, the proposal is consistent
12 with all applicable shoreline regulations and policies. The guardrails are located in the
13 only feasible location, given they will be located in areas necessary to provide for safe
14 passage on existing roads.

15 **DECISION**

16 The shoreline substantial development permit for the proposed guardrails is approved
17 subject to the conditions below:

18 1. The Applicants shall obtain all other required permits and abide by the conditions
19 thereof.

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

21 3. Development under this permit shall commence within two years of the date of
22 permit approval and shall be substantially complete within five years thereof or the
23 permit shall become null and void. The permittee may request a time extension before
24 the permit expires by making a written request to the administrator, stating the
25 reasons.

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

28 5. The Applicants shall schedule a site inspection upon completion in order to
29 provide staff an opportunity to verify consistency with the proposed project design and
30 the conditions of approval.

31 6. Disturbed areas shall be revegetated with native vegetation.

32 7. All overburden, debris, and other waste material resulting from the construction
33 of transportation facilities shall be disposed of in a fashion which will prevent their
34 entry into any water body.

35 8. Excess construction materials shall be removed from the shoreline immediately
36 following completion of the construction project.

37 9. Cut and fill slopes shall be stabilized and, where appropriate, planted with native
38 vegetation.

39 10. Roadside brush shall be controlled by mechanical rather than chemical means.

40 11. Drainage and surface runoff caused by the improvements and the construction
41 thereof shall be controlled so that pollutants will not be carried into water bodies.

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Dated this 22nd day of June, 2014.


Phil A. Olbrechts

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 requirement 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.