

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

Applicant(s): Corey Cookston  
PO Box 47  
Deer Harbor, WA 98243

File No.: PLP000-13-0001

Request: Preliminary Plat

Parcel No: 360150012 and 260752001

Location: Orcas Island

Summary of Proposal: 11 lot Preliminary Plat

Land Use Designation: Hamlet Residential 2 acres/unit (west parcel)  
Hamlet Industrial-B (east parcel)

Hearing Date: July 18, 2013

Application Policies and Regulations: Chapter 18.70 SJCC

Decision: Approved with conditions.

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

3 Phil Olbrechts, Hearing Examiner

4

RE: Cookston  Preliminary Plat (PLP000-13-0001)	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION.</b>
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7 **INTRODUCTION**

8 The applicant has submitted an application for an eleven lot subdivision on Orcas  
9 Island. The preliminary plat is approved subject to conditions.

10 **TESTIMONY**

11 Lee McEnery stated that the application is for a long subdivision permit. The  
12 applicants, Corey and Sandra Cookston, would like to divide two parcels into a total  
13 of eleven lots. The west parcel is designated hamlet-residential (2 acres per unit).  
14 The east parcel is designated hamlet-industrial B which has no separate residential  
15 density. The lots on the east parcel have buildings, and the Cookstons hope to utilize  
16 these buildings for the project. There is a common area proposed which is not  
17 considered a separate lot because it is not residential. The common area cannot be  
18 further divided if the subdivision is approved. The Cookstons would like to split the  
19 division into two phases. The west lots (a-d) would be developed first, followed by  
20 the east lots. Public Works required a traffic study of Cormorant Bay Road. The  
21 applicants submitted a traffic evaluation dated July 10, 2013 (exhibit 6). The study  
22 shows that there is plenty of service on the road for the number of lots proposed in the  
23 subdivision. Impervious surface amounts will be evaluated during final plat approval.

24 **Applicant Testimony**

25 Corey Cookston stated that he agrees with the findings of the staff report. In regard  
to the two buildings on lot 6, one of the buildings will be removed, and the other will  
be modified.

**Public Testimony**

Allison Weir, 375 Cormorant Bay Road, stated she lives near the planned  
subdivision. She is concerned about the increase in density because the area is rural.  
She does not believe there is enough water to support the increase in population.  
People walk along Cormorant Bay Road, and the increase in traffic could cause safety  
hazards.

1 Staff Rebuttal

2 Lee McEnery noted that the surrounding residential uses are zoned hamlet-residential.  
3 The average lot size for the hamlet-residential zoning is 2 acres. The hamlet-  
4 industrial zone does not have an average lot size because residences are only allowed  
as accessory uses. The eleven lots are approximately 5,000sq ft each. The zoning  
designations for the site allow this density.

5 Applicant Rebuttal

6 Corey Cookston testified that he received a water right from the state that guarantees  
7 20 gallons per minute which translates to enough water for 35 houses. The traffic  
8 study found 124 trips per day in 2004, and the road is approved for 175 trips.  
9 Previously, there was a Girl Scout camp at the end of the road which created many  
10 more trips on the road than the subdivision will bring. The goal of the subdivision is  
11 to create a low-impact live-work space. Currently, lots 1-5 have buildings. The new  
12 buildings will be approximately 1,000sq ft per floor. The common area will be used  
13 as the drainage area to address impervious surface issues.

12 **EXHIBITS**

13  
14 Exhibit 1 Staff Report

15 Exhibit 2 Application Materials

16 Exhibit 3 Environmental Checklist

17 Exhibit 4 Public and Reviewing Agency Comments

18 Exhibit 5 Public Works Approval of Traffic Evaluation

19 Exhibit 6 July 10, 2013, Traffic Evaluation

20 Exhibit 7 Final Building Inspection Report

21 Exhibit 8 Public Works Comments on Road Width dated July 12, 2013

22 Exhibit 9 Email from the Cookstons Request for phasing dated July 8

23  
24 **FINDINGS OF FACT**

25 **Procedural:**

1. Applicant. Corey Cookston.

1           2.           Hearing. The Hearing Examiner conducted a hearing on the subject  
2 application on July 18, 2013 in the San Juan County Council meeting chambers in  
3 Friday Harbor.

3           **Substantive:**

4           3.           Site and Proposal Description. The application proposes an eleven lot  
5 preliminary plat located on Orcas Island at the southeast corner of the intersection of  
6 Starling Drive (private) and Cormorant Bay County Road. The most current version  
7 of the preliminary plat, which serves as the basis of this approval, is included in Ex. 8.  
8 The subdivision area is currently divided into two parcels with separate zoning  
9 designations. The west parcel is zoned Hamlet Residential 2 acres/unit and the east  
10 parcel is zoned Hamlet Industrial-B.

11           A portion of the industrially zoned parcel is composed of five relatively small lots  
12 with areas ranging from 3,800 square feet to 5,300 square feet. These five lots are  
13 currently each occupied by one 2,000 square foot two story shop building with each  
14 story being 1,000 square feet in area. The Hamlet Industrial-B zone prohibits  
15 residential use unless it is accessory to a nonresidential use. As a result, the applicant  
16 proposes that the buildings will be used for “live-work” arrangements, with the first  
17 floor dedicated to commercial or manufacturing use and the second floor for  
18 residential use.

19           The subdivision will include the addition of one interior access road, Wapiti Way.  
20 Three man made ponds are located on the west parcel and will be located in a 5.5 area  
21 tract voluntarily dedicated as a common area.

22           4.           Characteristics of the Area. Surrounding land uses are low density  
23 residential.

24           5.           Adverse Impacts of Proposed Use. No adverse impacts are apparent from  
25 the record. There are no critical areas on site except that the area is within an aquifer  
recharge area, as is the rest of San Juan County. The conditions of approval require  
that best management practices be used to control erosion during construction and all  
other public agency review recommendations designed to mitigate adverse impacts  
have been incorporated into the conditions of approval. Infrastructure impacts,  
including traffic impacts, are addressed separately below in Finding of Fact (“FOF”)  
No. 6.

          6.           Adequacy of Public Infrastructure and Services.   Adequacy of  
Infrastructure and Public Services. The proposal will be adequately served by public  
infrastructure. In general, the streets, sidewalks, storm drainage facilities, and sewer  
and water mains will be required to meet the County’s design standards during  
engineering review and shall be required to meet and implement those standards prior  
to final plat approval. These facilities will be reviewed as part of the civil plans to be

1 submitted by the applicant for final plat approval. The following more specifically  
2 addresses other infrastructure and services:

3 A. Water. The subdivision will be served by a community water system. The  
4 San Juan County Department of Health and Community Services has  
5 determined that the water supply for the proposal meets the requirements for  
6 preliminary plat approval. *See Ex. 4*. The conditions of approval require that  
7 design and installation of the community water system will have to be  
8 approved prior to final plat approval.

9 B. Sewer. The San Juan County Department of Health and Community Services  
10 has determined that the on-site designated sewage disposal areas for the  
11 proposal meets the minimum land area requirements as required by state  
12 septic regulations. *See Ex. 4*. Final septic installation will be subject to the  
13 approval of the San Juan County Department of Health and Community  
14 Services as required by County regulations.

15 C. Transportation. A transportation study was conducted for the proposal and  
16 approved by San Juan County Public Works. *See Ex. 5 and 6*. The traffic  
17 study concludes that the Cormorant Bay Road, the access road to the project,  
18 is well below level of service capacity and will remain so after the project is  
19 completed. Public Works also independently reviewed the traffic impacts of  
20 the proposal and recommended several conditions, all of which have been  
21 imposed with this decision, including the dedication of right of way to widen  
22 Cormorant Road and improvements to Lagoon Road and Wapiti Way.

23 D. Sidewalks. There do not appear to be any sidewalks required for the  
24 proposal. However, the only area of sufficient density to reasonably require  
25 sidewalks is for Lots 1-5. The common parking area adjoining those lots  
provides for safe and adequate pedestrian access.

E. Schools. There is no information in the record about adequacy of schools and  
there is also no useful information on schools addressed in the San Juan  
County Comprehensive Plan. Given the small number, and hence de minimus  
impact, of dwelling units proposed and the fact that school impacts are  
typically addressed by school impact fees when necessary, it is concluded that  
adequate provision is made for schools. Aerial photographs do not reveal any  
school facilities within walking distance of the residential (and mixed use)  
lots, so the provision also makes adequate provision for walking to and from  
school.

F. Parks, Trails and Open Space. The proposal includes a voluntary dedication  
of 5.5 acres of open space. Beyond this there is no information in the record  
on the adequacy of parks, trails and open space. The County has adopted a  
detailed parks plan, the *San Juan County Parks, Trails, and Natural Areas  
Plan 2011 - 2016*. This Plan does not reveal any proposed or existing trail

1 routes in the area to which the proposal could be legally made to contribute.  
2 It also appears that San Juan County has not adopted any park impact fees.  
3 Given the small scale of the project, the common area dedication and the  
4 absence of any information suggesting the proposal will create a significant  
5 need for park facilities, it must be determined that the proposal makes  
6 adequate provision for parks, trails and open space.

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8 G. Drainage. A preliminary stormwater plan has been approved by San Juan  
9 County Public Works and approved. Final plans and code compliance will be  
10 done during engineering review prior to final plat approval.

## 11 CONCLUSIONS OF LAW

### 12 Procedural:

13 1. Authority of Hearing Examiner. SJCC18.70.050(E)(1)(b) authorizes the hearing  
14 examiner to hold hearings and issue final decisions on preliminary plat applications.

### 15 Substantive:

16 2. Zoning Designations. The west parcel of the subdivision area is designated  
17 Hamlet Residential 2 acres/unit and the east parcel is designated Hamlet Industrial-B.

18 3. Permit Review Criteria. SJCC 18.70.050(F)(1) sets the criteria for approval of a  
19 subdivision and requires that the application meets the requirements of SJCC  
20 18.70.020 and SJCC 18.70.060; Chapters 18.40, 18.50 and 18.60 SJCC; the policies  
21 and requirements of Chapter 58.17 RCW; the Shoreline Management Act (Chapter  
22 90.58 RCW); the policies in Element 3 of the Comprehensive Plan; the applicable  
23 regulations in Chapter 18.50 SJCC (the Shoreline Master Program); the State  
24 Environmental Policy Act; and the San Juan County Comprehensive Plan. The  
25 application must also satisfactorily address the comments of reviewing agencies and  
be in the public interest.

The application is not located within any shoreline of the state or associated wetland,  
so the Shoreline Management Act and Shoreline Master Program do not apply. All  
conditions recommended by public reviewing agencies have been incorporated into  
the conditions of approval. Applicable regulations are quoted in italics and addressed  
below.

**SJCC 18.70.060(B)(3):** *Conforming to Natural Features and Topography. To the  
greatest degree possible, all subdivisions shall be designed to conform to the natural  
features of the land. Problems such as eroding cliffs or other potentially hazardous  
conditions must be divided with the general welfare and safety of persons and  
property in mind.*

1 4. Staff have concluded that the proposal conforms to the natural features of the  
2 land. The plat map bears this out as the greatest density of lots is concentrated in the  
flattest portions of the site.

3 **SJCC 18.70.060(B)(4): Usable Construction Area.** *All proposed lots shall provide a*  
4 *usable area for the construction of a dwelling unit, approved sewage system, and an*  
*approved water supply.*

5 5. The preliminary plat submitted into the record does not contain any information  
6 on the lot dimensions of the five small lots in HI-B except for the area of each of the  
7 lots, which ranges from 3,800 square feet to 5,300 square feet. No front or side yard  
8 setbacks apply to these lots. More important, a building has already been constructed  
9 for each lot that meets the mixed use design objectives of the applicant. Specifically,  
10 each building is each composed of two stories with each story having an area of 1,000  
11 square feet. The first story will be used for work space and the second for residential  
12 space. Water will be provided to the lots by a community water system and sewage  
13 will be provided by septic systems on and off the lots with necessary easements  
14 recorded as a condition of preliminary plat approval prior to approval of the final plat.  
Given these factors, it is concluded that the five small lots in HI-B provide a usable  
area for construction as required by SJCC 18.70.060(B)(4), with the proviso, as  
conditioned, that the applicant provide verification prior to final plat recording that  
the lots will meet maximum lot coverage standards. The remaining lots in the  
subdivision are all more than a half-acre in size and there is no question that they  
provide sufficient buildable area.

15 **SJCC 18.70.060(B)(5): Division of Lots by Roads.** *Individual lots shall not be*  
16 *divided by roads or road rights-of-way. Where a pre-existing road divides a lot where*  
17 *there is no alternative to such a division the administrator may grant a discretionary*  
*exception.*

18 6. As shown in the preliminary plat, no lots are divided by roads or road right of  
19 way.

20 **SJCC 18.70.060(B)(6): Buffers and Setbacks.** *All subdivisions shall meet the setback*  
21 *requirements and other density, dimension, and open space standards of SJCC*  
*18.60.050, and the landscaping and screening requirements of SJCC 18.60.160.*

22 7. The staff report finds that the proposed preliminary plat satisfies all of the bulk  
23 and density requirements of SJCC 18.60.050 and 18.60.160, except that the small five  
24 lots in the east parcel may not meet the maximum lot coverage requirements of SJCC  
25 18.60.050, Table 6.1. The conditions of approval require verification of compliance  
prior to the commencement of final plat and construction of any subdivision  
improvements. The two buildings shown on Lot 7 of the preliminary plat are within  
the ten foot front setback of Wapiti Drive. The staff report notes that these buildings  
are on skids and will be moved prior to final approval of the final plat. This will be  
made a condition of approval.

1  
2 **SJCC 18.70.060(C): Road and Drainage Standards.**

3 *1. Design and Construction Standards.*

4 *a. All roads serving two or more lots shall comply with the road design*  
5 *and construction standards specified in SJCC 18.60.080(A), (B) and*  
6 *(C).*

7 *b. A drainage analysis shall be performed in conformance with SJCC*  
8 *18.60.070, and drainage systems shall be designed to the standards in*  
9 *subsection (B) of this section and SJCC 18.60.070.*

10 *2. Submittal of Final Plat. Information in drawing form shall be submitted*  
11 *to the administrator to meet the requirements of SJCC 18.60.100 (D).*

12 *3. Responsibility for Road Improvements. The applicant bears the*  
13 *responsibility to make offsite private road improvements necessary to meet*  
14 *the road standards.*

15 8. The proposal is conditioned for compliance with SJCC 18.70.060(C)(1) and (2).  
16 As determined in FOF No. 6, no off-site traffic improvements are necessary to  
17 mitigate the impacts of the proposal.

18 **SJCC 18.70.020(D): Conformity with Other Codes.** *Except for exempt actions under*  
19 *SJCC 18.70.010(C), applications submitted under this section may be approved or*  
20 *approved with conditions if the application conforms to adopted County and state*  
21 *rules and regulations, including, but not limited to:*

- 22 *1. Chapter 43.21C RCW (State Environmental Policy) and San Juan County SEPA*  
23 *Rules;*  
24 *2. Chapter 58.17 RCW (Subdivisions);*  
25 *3. Chapter 36.70A RCW (Growth Management Act);*  
*4. Chapter 36.70B RCW (Local Project Review);*  
*5. San Juan County Unified Development Code (this code);*  
*6. San Juan County board of public health – water and sewer rules and regulations*  
*(SJCC Title 13);*  
*7. San Juan County Comprehensive Plan and Shoreline Master Program and their*  
*official maps.*

9. Staff has reviewed the proposal for compliance with all applicable development standards and policies and found no inconsistencies if recommended conditions of approval are adopted. All staff recommended conditions have been imposed by this decision. A primary issue of concern regarding zoning code compliance is SJCC 18.30.310, which prohibits residential use in the HI-B district unless accessory to a nonresidential use. The subdivision is approved with the condition that the primary

1 use of the lots in the HI-B district will be nonresidential uses authorized in the HI-B  
2 district. The conditions of approval also require that the applicant verify that the west  
3 parcel is at least eight acres in size prior to final plat recording. This is because SJCC  
4 18.30.320, Table 9, limits density to a maximum of one unit per two acres.

5 **RCW 58.17.110(2):** *A proposed subdivision and dedication shall not be approved  
6 unless the city, town, or county legislative body makes written findings that: (a)  
7 Appropriate provisions are made for the public health, safety, and general welfare  
8 and for such open spaces, drainage ways, streets or roads, alleys, other public ways,  
9 transit stops, potable water supplies, sanitary wastes, parks and recreation,  
10 playgrounds, schools and schoolgrounds and all other relevant facts, including  
11 sidewalks and other planning features that assure safe walking conditions for  
12 students who only walk to and from school; and (b) the public use and interest will be  
13 served by the platting of such subdivision and dedication...*

14 10. As determined in FOF No. 6, the proposal is served by adequate infrastructure  
15 and public services as required by RCW 58.17.110(2). The public use and interest  
16 will be served by the proposed preliminary plat because it provides for the reasonable  
17 use of property, provides for a diversity of housing and fully mitigates all adverse  
18 impacts.

## 19 DECISION

20 The proposed preliminary plat as depicted in Ex. 8 and described in this decision and  
21 the application materials is approved subject to the following conditions:

22 1. This preliminary plat has been approved by the responsible county  
23 officials on the premise that each lot will be occupied by no more than one single  
24 family dwelling where residential use is authorized by vested zoning regulations,  
25 along with lawfully related outbuildings. The primary use of the lots proposed in the  
HI-B district zoned portions of the preliminary plat shall be limited to nonresidential  
use authorized in vested HI-B district regulations and residential use is only allowed  
to the extent authorized as an accessory use.

2. The common area tract shall not be further developed except as  
subsequently approved by a plat alteration and/or separate subdivision application.

3. This preliminary long subdivision approval shall expire if the subdivision  
is not recorded within 60 months of the approval date. The final long subdivision  
application shall be submitted to the Community Development and Planning  
Department at least 90 days in advance of the expiration date.

4. Prior to recording, the surveyor shall provide written verification of the  
land area. If the area of land within the west parcel is less than 8 acres inadequate land  
area exists for the subdivision and this preliminary subdivision approval shall be null  
and void.

5. Subdivision roads and any other private road connecting with the  
subdivision road shall be built as specified in SJCC 18.70.060(C)(1) and (2), including  
SJCC 18.60.100.

1           5.       Easements for the use of all off-site roads shall be provided prior to final  
subdivision approval.

2           6.       Maintenance of the roads, well or other water source, water distribution  
3 system, utilities and any commonly held areas shall be through provision of a  
4 maintenance agreement submitted to and approved by the Community Development  
and Planning Department, then recorded with the final subdivision approval. All  
subdivision property owners shall participate in the agreement.

5           7.       Grass or other appropriate vegetation shall be established in the roadside  
6 ditches prior to application for final subdivision approval, to provide bio-filtration of  
stormwater runoff.

7           8.       Drainage from roads shall be controlled using best management practices  
8 provided in SJCC18.60.080 and 100 and in the Western Washington Stormwater  
Management Manual. Compliance with the requirements of the drainage plan is  
required.

9           9.       Easements for off-site sewage systems shall be provided prior to final  
subdivision approval and shall be shown on the final plat.

10          10.       All lots shall be served by a community water system, which shall be  
11 installed, tested and approved by the appropriate authority prior to application for final  
12 subdivision approval. Service shall be extended to the boundary of each lot prior to  
13 final subdivision approval and necessary easements provided prior to final subdivision  
14 approval. Written guarantee of connection shall be provided prior to final subdivision  
15 approval. An easement for utilities shall be drawn on the final plat.

16          11.       A sanitary setback shall be shown on the plat for all wells, unless a  
17 variance is obtained.

18          12.       The proposal must meet the fire protection improvement standards contained  
19 in SJCC 13.08. Fire hydrants shall be installed so that the distance between them shall  
20 not exceed 800 road feet. The hydrant shall provide 500 gallons per minute for 20  
21 minutes. Prior to final subdivision approval, the required hydrants shall be installed,  
22 inspected and approved by the Fire Marshal, or a variance shall be obtained.

23          13.       All survey standards and requirements shall be complied with pursuant to  
24 SJCC 18.70.070F2.

25          14.       Prior to the recording of the final plat the applicant shall establish to the  
satisfaction of staff that Lots 1-5 meets maximum lot coverage standards.

          15.       Prior to the recording of the final plat the applicant shall remove the  
existing buildings on Lot 7 from Wapiti Road right of way and setback areas.

21       **The following conditions shall be shown as restrictions on the face of the plat, in  
22 addition to those restrictions and dedications required by SJCC 18.70.100:**

23          16.       The approved water source for the lots within this subdivision shall be the  
24 community water system. If in the future another source of water is desired for any or  
25 all of the lots within the subdivision, the source shall be approved by Health and  
Community Services for quality and quantity.

          17.       Well sites shall be subject to a sanitary setback.

          18.       Best management practices for controlling erosion and sedimentation shall  
be used during construction of all roads and structures.

19. All utilities shall be placed underground.

1 20. All disturbed areas shall be restored to pre-project configurations,  
2 replanted with local vegetation, and the vegetation maintained until it is firmly  
3 established.

3 21. This subdivision has been approved by the responsible county officials on  
4 the premise that each lot will be occupied by no more than one single family dwelling  
5 and lawfully related outbuildings. No lot shall be otherwise occupied unless the  
6 owner can first demonstrate to the county's satisfaction that the provisions for water  
7 supply, sewage disposal, circulation, lot size and related planning considerations are  
8 adequate to serve the proposed use. Compliance with this provision shall be effected  
9 by written application to the Subdivision Administrator who shall be responsible for  
10 coordinating the review of such requests and for making the required determination.

11 22. Maintenance of the road, the well and the water distribution system  
12 serving the lots in this subdivision is shared equally by the lot owners.

13 23. There may be additional private conditions, covenants or restriction in  
14 addition to those shown on the face of this plat. Such private conditions may not be  
15 shown on plats. Any private deed restrictions are supplemental to the requirements of  
16 this Code. The County shall not be party to any private restrictions.

17 24. If during excavation or development of the site an area of potential  
18 archaeological significance is uncovered, all activity in the immediate vicinity of the  
19 find must be halted immediately, and the Administrator must be notified at once.

20 Dated this 5th day of August 2013.

21   
22 Phil A. Olbrechts

23 San Juan County Hearing Examiner

24 **Effective Date, Appeal Right, and Valuation Notices**

25 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

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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.