

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

3                                   Phil Olbrechts, Hearing Examiner

4                   RE: Washington State Ferries	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION.</b>
5                   Shoreline Substantial	
6                   Development Permit (PSJ000-13-0007)	

7                                   **INTRODUCTION**

8                   The applicant requests approval of a shoreline substantial development permit for some  
9                   minor improvements to the Lopez Island ferry terminal. The improvements are primarily  
10                  designed to make the terminal more accessible for persons with disabilities, as required by  
11                  the American with Disabilities Act (“ADA”). Improvements include handicap access to  
12                  the walkway to the ferry terminal; restriping of the parking area to provide for handicap  
13                  stalls that are compliant with ADA regulations; the addition of a prefabricated ADA  
14                  waiting structure; and the restriping of the holding lanes for the addition of sidewalks. The  
15                  permit application is approved subject to conditions.

16                                  **TESTIMONY**

17                  Julie Thompson, senior San Juan County planner, testified that the application is to add  
18                  disability access to the Lopez Island ferry terminal. WA State Ferries is attempting to  
19                  comply with Americans with Disabilities Act (ADA) regulations. An access will be built,  
20                  the walking area will be better delineated from the parking lot, and several parking spaces  
21                  will be added. Staff recommends approval of the application. No impervious area will be  
22                  added around the parking lot; instead, the applicant will restripe the lot.

23                                  **EXHIBITS**

24                  All three exhibits identified in the exhibit list of the attached to the July 2, 2013 staff report  
25                  were admitted into the record at the hearing.

**FINDINGS OF FACT**

**Procedural:**

1.                  Applicant. The applicant is Washington State Ferries.
2.                  Hearing. The Hearing Examiner conducted a hearing on the subject  
application on July 18, 2013 at 10:00 am in the San Juan County Council hearing  
chambers in Friday Harbor, San Juan Island.

1 **Substantive:**

2 3. Site and Proposal Description. This project is designed to improve compliance  
3 Americans with Disabilities Act of 1990 (ADA) requirements for access and safety at the  
4 Lopez Island ferry terminal. Specific improvements are identified in the introduction of  
5 this decision and depicted in the site plan of Exhibit 3. Currently, the terminal is situated  
6 on a steep slope with no existing sidewalks. The existing ADA parking spaces do not meet  
7 current ADA standards and there is no accessible route to the trestle from the parking area.  
8 This project will enable passengers with mobility disabilities to park in the lower parking  
9 lot in ADA compliant stalls, wait in a heated waiting room adjacent to the ADA parking  
10 stalls, traverse the distance to the trestle on a compliant access ramp, and access the ferry  
11 with the walk on passengers. Additionally, this project will improve overall pedestrian  
12 safety with the addition of a pedestrian walkway from the terminal building to the upper  
13 parking area along the holding lanes. No in-water work is proposed.

14 4. Surrounding Area. All improvements are along the Lopez Island shoreline.  
15 Landward of the shoreline is a Land Bank preserve and there does not appear to be any  
16 developed areas within view.

17 5. Adverse Impacts of Proposed Use. There are no significant adverse impacts  
18 associated with the proposal. No new impervious surface will be created by the proposal  
19 and any changes in draining caused by regarding are addressed through the County's  
20 stormwater standards during building permit review. No wetlands are located at the  
21 project site. There is no in-water work so the natural movement of surface water will not  
22 be affected. The shoreline waterward of the proposed accessory waiting area, which is  
23 only 144 square feet in area, is heavily vegetated and will be obscured from view from  
24 adjoining waters. 71 cubic yards will be excavated to reduce grade of the parking area,  
25 which is also obscured from shoreline waters by the vegetation that obscures the waiting  
area. Overall, the proposal will provide a significant public benefit by facilitating and  
enhancing public access to the shoreline for persons with disabilities as well as the rest of  
the public through the addition of sidewalks to the holding lanes.

19 **CONCLUSIONS OF LAW**

20 **Procedural:**

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

24 **Substantive:**

25 2. Shoreline Designation. The subject property is designated as Conservancy.

3. Zoning Designation. The subject property is designated as Rural General.

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

9 **RCW 90.58.020 Use Preferences**

10 *This policy (Shoreline Management Act policy) is designed to insure the development of*  
11 *these shorelines (of the state) in a manner which, while allowing for limited reduction of*  
12 *rights of the public in the navigable waters, will promote and enhance the public interest.*  
13 *This policy contemplates protecting against adverse effects to the public health, the land*  
14 *and its vegetation and wildlife, and the waters of the state and their aquatic life, while*  
15 *protecting generally public rights of navigation and corollary rights incidental thereto.*

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

20 **SHORELINE MANAGEMENT ACT POLICIES**

21 **RCW 90.58.020(1)<sup>1</sup>**

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

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

27 **RCW 90.58.020(2)**

28 *Preserve the natural character of the shoreline;*

29 7. The proposal will not result in any significant change to the appearance of the  
30 project area except for the reduction in grade for a handful of parking stalls and the  
31 addition of a modest waiting area that will not be visible from shoreline waters. Given  
32 these minor alterations to the shoreline, the natural character of the shoreline can be  
33 considered preserved.

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<sup>1</sup> 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.

1 **RCW 90.58.020(3)**

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

3 8. The project enhances public shoreline access with no corresponding  
4 significant adverse impacts. The proposal results in both long term and short term benefit.

5 **RCW 90.58.020(4)**

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

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

9 **RCW 90.58.020(5)**

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

11 10. The project enhances access to the shoreline via enhanced access to a  
12 Washington State Ferry terminal as well as the shorelines adjacent to that terminal.

13 **RCW 90.58.020(6)**

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

15 11. The proposal makes Washington State Ferry use at Lopez Island more  
16 accessible to the public, which in turn makes Lopez Island, along with its many shoreline  
17 recreational opportunities, more available to the public.

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

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

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

13. No filling of wetland is proposed.

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

14. As conditioned.

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

3 15. As conditioned.

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

7 16. The proposal is not a “new” public transportation facility. Even if it did qualify as  
8 “new”, it satisfies the requirement by the installation of the sidewalks and access ramps  
9 that facility access to the ferry terminal and adjoining shoreline.

10 **SJCC 18.50.340(C)(1):** *Parking areas shall not be located on shorelines unless it can*  
11 *be shown that the parking area is an essential accessory to a permitted use and that it*  
12 *could not feasibly be located on the upland site. Parking areas designed to serve ferry*  
13 *terminals shall be permitted on the shorelines.*

14 17. The criterion is satisfied. The proposed parking area modifications serve a ferry  
15 terminal.

16 **SJCC 18.50.340(C)(2):** *Parking areas permitted on shorelines shall be located*  
17 *landward of the uses they are designed to serve, unless an alternative orientation would*  
18 *reduce the adverse impacts. They shall be no larger than is absolutely necessary and,*  
19 *where appropriate, shall be screened from view.*

20 18. The parking area is landward of the ferry terminal, is minimal in size and is  
21 obscured from shoreline waters by shoreline vegetation.

22 **SJCC 18.50.340(C)(3):** *Upland parking areas serving shoreline uses shall be linked to*  
23 *those uses by safe, pedestrian accesses.*

24 19. The proposal includes new sidewalks and access ramps to provide for safe  
25 pedestrian access to the ferry terminal and associated facilities from parking and ferry  
holding areas.

**SJCC 18.50.340(C)(4):** *Parking is prohibited over water.*

20. No parking is proposed over water.

**SJCC 18.50.340(C)(5):** *Parking facilities shall be designed and landscaped to*  
*minimize adverse impacts to adjacent shorelines and properties. Landscaping shall*  
*consist of native vegetation or species contained in an approved landscape plan.*  
*Vegetation shall be planted in the planting season prior to completion of the parking*

1 area. Plantings must provide effective screening within three years of project  
2 completion and through maturity of the species.

3 21. The parking areas area already landscaped with native vegetation.

4 **SJCC 18.50.340(E)(1):** *Ferry terminals and their related parking areas shall be*  
5 *located, designed, and constructed to minimize their impacts on shoreline natural*  
6 *resources and systems.*

7 22. As determined in FOF No. 5, the proposed terminal improvements will not create  
8 any significant adverse impacts, including impacts to shoreline natural resources and  
9 systems.

10 **SJCC 18.50.340(E)(2):** *Subsection (B) of this section applies to ferry terminals.*

11 23. Section B regulates the construction of new roads. Given that the proposed  
12 improvements only involve restriping and some re-grading of existing paved areas with  
13 no increase in impervious surface, the only applicable Section B standard is SJCC  
14 18.50.340(B)(8), which requires drainage control in order to prevent discharge of  
15 pollutants into adjoining waters. Compliance with SJCC 18.50.340(B)(8) shall be made  
16 a condition of approval.

17 **SJCC 18.50.340(I)(5):** *Conservancy. Pedestrian trails shall be permitted in the*  
18 *conservancy environment. Roads and parking areas serving permitted uses shall be*  
19 *permitted where no feasible alternative exists; ferry terminals may be permitted as*  
20 *conditional uses where it can be shown that no feasible alternative exists and that the*  
21 *public interest clearly would be better served by construction of the facility. ..*

22 24. The staff report takes the position that a conditional use is not required for the  
23 ferry terminal improvements because the existing ferry terminal was constructed prior  
24 to the adoption of shoreline regulations requiring a conditional use permit for a ferry  
25 terminal at the project site. The status of the terminal as a legal nonconforming use  
allows for its continued use as well as limited repairs and expansion. *See WAC 173-27-*  
*080. However, its status as a nonconforming use is usually not construed as exempting*  
*it from any permits that would otherwise be required for new improvements, such as a*  
*conditional use permit. Nothing in this decision should be construed as authorizing the*  
*proposed improvements without approval of a separate shoreline conditional use permit.*  
*This decision expressly does not address the issue of whether a shoreline conditional*  
*use permit is required for the proposal.*

## DECISION

1  
2 The shoreline substantial development permit for the proposed Lopez Island ferry terminal  
3 improvements, as described in this decision and Ex. 3, is approved subject to the  
4 conditions below:

- 4 1. The Applicants shall obtain all other required permits and abide by the conditions  
5 thereof.
- 6 2. Construction shall not be commenced until all relevant appeal periods have run.
- 7 3. Development under this permit shall commence within two years of the date of  
8 permit approval and shall be substantially complete within five years thereof or the  
9 permit shall become null and void. A permittee may request a time extension before  
10 the permit expires by making a written request to the administrator, stating the  
11 reasons.
- 12 4. Failure to comply with any terms or conditions of this permit may result in its  
13 revocation.
- 14 5. The Applicants shall schedule a site inspection upon completion in order to  
15 provide staff an opportunity to verify consistency with the proposed project design and  
16 the conditions of approval.
- 17 6. Disturbed areas shall be revegetated with native vegetation.
- 18 7. All overburden, debris, and other waste material resulting from the construction  
19 of transportation facilities shall be disposed of in a fashion which will prevent their  
20 entry into any water body.
- 21 8. Excess construction materials shall be removed from the shoreline immediately  
22 following completion of the construction project.
- 23 9. If not required or made unnecessary by subsequent permit review, the applicant  
24 shall submit an erosion control plan for staff approval prior to construction.
- 25 10. If not required or made unnecessary by subsequent permit review, the applicant shall  
submit a drainage plan for staff approval prior to construction that ensures that  
drainage and surface water runoff from re-graded areas shall be controlled so that  
pollutants will not be carried into water bodies as required by SJCC 18.50.340(B)(8).

Dated this 1st day of August, 2013.

  
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

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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.