SAN JUAN COUNTY
HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant:	University of Washington Friday Harbor Labs c/o Cameron Fisher Ecology and Environment 720 Third Avenue, Suite 1700 Seattle, WA 98104
File No.:	PSJ000-12-0006
Request:	Shoreline Substantial Development Permit
Parcel No:	350123001
Location:	University of Washington Friday Harbor Labs San Juan Island
Summary of Proposal:	Underwater Scientific Equipment
Shoreline Designation:	Conservancy and Aquatic
Hearing Date:	November 14, 2012
Application Policies and Regulations:	SJCC 18.50 Shoreline Master Program
Decision:	Approved subject to conditions.

BEFORE THE HEARING EXAMINER FOR THE COUNTY OF SAN JUAN

Phil Olbrechts, Hearing Examiner

RE: University of Washington Friday Harbor Labs Shoreline Conditional Use Permit (PSJ000-12-0006)	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION**

INTRODUCTION

The Applicant has applied for approval of a shoreline conditional use permit to provide a platform for educational tools by installing a submarine power and communication cable system that will allow testing of submerged scientific devices. The permit is approved with conditions.

TESTIMONY

Lee McEnery, San Juan County planner, summarized the staff report. Ms. McEnery noted that Applicant is asking to place a submarine power and communication cable system for scientific devices into the water column. There are two ends with one terminating at about 98-115 feet and the other at 120 feet. The maximum depth is 130 feet. The project is consistent with the regulations and the Staff has recommended approval.

In response to the Hearing Examiner, Ms. McEnery stated the cable will not be lying on the seafloor. She stated at the bottom there will be an anchor. There will not be a buoy. The test equipment will be floating in the water except for one instrument which will cycle up and down the cable. The project will not interfere with marine traffic. There are no surface piercing structures and the devices will be at least 16 feet below the lowest tide. The Applicant could place marker buoys at the cable end and along its path if the Coast Guard requires them to.

Fred Ellis, building and grounds supervisor of Friday Harbor Labs (FHL), testified on behalf of the Applicant. Mr. Ellis stated project is best summarized in Ex. 2. The project involves a cable that goes from an existing pump house down into the water. The cable will be housed in an existing steel conduit that extends from the bottom of the pump house down into the water. This project is a prototype for a deep ocean profiler that will eventually be used off the coast of Oregon. Friday Harbor Labs are testing it out first here. The location has several advantages. The testing will give

valuable data on ocean acidification and the labs will be able to use these connections once the test is completed.

In terms of marker buoys, Mr. Ellis stated nobody moors in this location because it is exposed. As long as nobody moors there, they won't feel the need to place marker buoys. They will have the Coast Guard mark the location on their charts. There is no need at this point to mark them because they won't be in the navigational channel. The only thing that floats is the current profiler which is a sort of sea going elevator that moves up and down with the current. The cable will be laid in a way that will ensure it will not move and scrub the seafloor. The bottom there is mud. The cable will sit in the mud. The Applicant could pin them into position if need be.

The Applicant has obtained permits from the US Army Corp of Engineers (Corp), the US Coast Guard, the Department of Fish and Wildlife (DFW) and has been issued a DNS by the County SEPA Responsible Official. The project is benign and is expected to create no adverse impacts. The County received a comment from a tribe regarding noise vibrations. The project will emit sounds, but at frequencies outside the hearing range of marine mammals. No impacts are anticipated to marine mammals or fisheries. The equipment being used is standard in the field. This type of equipment is used globally and has a long history. The devices will be in the water for about a year. The cable will stay for its entire useful life, about 20 years.

EXHIBITS

The October 16, 2012 Staff Report and attached "application materials" are admitted.

FINDINGS OF FACT

Procedural:

1. Applicant. The applicant is the University of Washington Friday Harbor Labs.

2. Hearing. The Hearing Examiner conducted a hearing on the subject application on November 14, 2012 at 10:00 am in the Islander's Bank Annex.

Substantive:

3. Site and Proposal Description. The Applicants propose to provide a platform for educational tools by installing a submarine power and communication cable system that will allow testing of scientific devices. The test bed will include two electro-optic cables bundled together extending about 600 feet out from the FHL pump house. One cable will terminate between 98-115 feet of depth and the other at about 120 feet of depth. The lines will not be in the main navigation channel or water craft activities areas. Scientific devices will be connected to the cables so they can

transmit data. The devices will sit on or slightly above the seafloor. According to the Applicant (Ex. 2), "these instruments will provide unprecedented data access to scientists and the general public via the FHL website."

This proposal is part of a larger use categorized as Institutional. Institutional uses are prohibited in the Aquatic designation unless they are water dependent. Testing devices located on the seafloor are water dependent, therefore subject to approval of a shoreline substantial development permit. Part of the proposal also lies on the land, in a Conservancy designation so is subject to approval of a shoreline conditional use permit.

4. Characteristics of the Area. The grounds of the Friday Harbor Labs total 475 acres. The entire property is largely wooded and its buildings are well-isolated from their neighbors, aside from the visible development on the shoreline. The lab buildings, dorms, dining halls, office, parking and maintenance facilities are concentrated in the south part of the property, linked by small drives that provide internal access. The site is also served by a large dock system.

The proposal lies within Friday Harbor, the body of water, and the land use designation is Conservancy in the shoreline and Aquatic beyond the ordinary high water mark. Development on the Labs property predates land use regulations but over the years changes to the facilities have received appropriate land use approvals.

5. Adverse Impacts of Proposed Use. There are no adverse impacts associated with the proposal. There will be no visible sign of the cable or testing equipment on the shoreline or on the surface of the water. The cable will be housed within an existing steel conduit extending from the bottom of an existing pump house down into the water. The testing equipment will lie on the ocean bottom or float within the water column very close to the bottom. No equipment will be within 16 feet of the surface within the navigational channel. The Applicant will apprise the US Coast Guard about the location of the cables and ask them to add them to navigational charts. The Applicant does not anticipate the need for marker buoys at the cable ends or along its length, but they will provide them if requested by the Coast Guard or if during the course of operations, there are any impacts to boat traffic. No impacts to boat traffic are anticipated. The Applicant testified they had received a comment letter from a tribe expressing concern about noise vibrations. The instruments will emit high frequency noise vibrations, but at frequencies well outside the hearing of marine mammals. This test equipment is standard equipment that has been used globally for many years. No impacts to marine mammals, fisheries or listed species are anticipated. The Applicant testified the bottom end of the cable will be held in place by an anchor. The project has been reviewed by multiple agencies include the Corp, DFW and the US Coast Guard. No seafloor scouring or impacts from the anchor are anticipated.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. The Hearing Examiner issues a final decision on shoreline conditional use permits, subject to approval by the Washington State Department of Ecology. Section 3.70 of the San Juan County Charter; RCW 90.58.140(10).

Substantive:

2. Zoning Designations. The subject property is designated as Institutional (I) and the shoreline designation is Aquatic for the waterward portion and Conservancy for the landward portion.

3. Permit Review Criteria. SJCC 18.50.260(B)(7) provides that institutional uses are prohibited in the aquatic environment unless they are water dependent. The project proposes to install scientific water quality testing devices, a clear water dependent use. SJCC 18.50.260(B)(5) provides that institutional uses are allowed in the Conservancy environment with a shoreline conditional use permit. The general criteria for shoreline conditional use permits require consistency with the policies of the San Juan County Shoreline Master Program. Master Program policies for institutional uses are specifically implemented in SJCC 18.50.260(A). The requirements of SJCC 18.50.260(A), the policies of the Master Program (located in Section B, Element 3 of the San Juan County Comprehensive Plan), the policies of the Shoreline Management Act (RCW 90.58.020) and the general criteria for shoreline conditional use permits (governed by SJCC 18.80.110(J)) are quoted below in italics and applied through corresponding conclusions of law.

SJCC 18.80.110(J)(4): *Uses which are classified or set forth in the Shoreline Master Program as conditional uses may be authorized by the County provided the applicant can demonstrate all of the following:*

a. The proposed use is consistent with the policies of RCW 90.58.020 and the policies of the Shoreline Master Program;

4. As discussed more specifically below, the proposed use is consistent with the policies of RCW 90.58.020 and the policies of the Shoreline Master Program.

SJCC 18.80.110(J)(4)(b): *The proposed use will not interfere with the normal public use of public shorelines;*

5. As discussed in Finding of Fact No. 5, the proposed project is completely housed in an existing steel conduit. No portion of the project will be in the navigation channels and the entire cable will be placed at least 16 feet below low tide. The criterion is satisfied.

SJCC 18.80.110(J)(4)(c): *The proposed use of the site and design of the project is compatible with other permitted uses within the area;*

6. As discussed in Finding of Fact No. 5, the cable will be housed inside an existing steel conduit. No portion of the project will be visible on land or on water. The criterion is satisfied.

SJCC 18.80.110(J)(4)(d): *The proposed use will cause no unreasonably adverse effects to the shoreline environment in which it is to be located;*

7. As discussed in Finding of Fact No. 5, there are no significant environmental impacts associated with the proposal. The criterion is satisfied.

SJCC 18.80.110(J)(4)(e): *The cumulative impacts of additional requests for like actions in the area, or for other locations where similar circumstances exist, shall not produce substantial adverse effects to the shoreline environment, e.g., the total of the conditional uses shall remain consistent with the policies of RCW 90.58.020 and the Shoreline Master Program; and*

8. The proposal is composed of only a cable and scientific instruments almost completely located at the seafloor. The project is unique and is temporary. No cumulative adverse impacts can be reasonably anticipated.

SJCC 18.80.110(J)(4)(f): *The public interest will suffer no substantial detrimental effect.*

9. There are no significant adverse impacts associated with the proposal and the proposal furthers important academic research. The public interest will suffer no detrimental effect.

SJCC 18.50.260(A)(2): *Proposed institutional developments shall be consistent with any applicable comprehensive waterfront or subarea plans;*

10. According to the Staff Report, there are no subarea plans that apply to the property.

SJCC 18.50.260(A)(3): *Only water-dependent or water-related institutional development shall be permitted within shoreline jurisdiction. They shall be consistent or compatible with existing use of neighboring shoreline areas;*

11. The water quality scientific testing equipment and cable are water-dependent. SJCC 18.20.230 expressly identifies marine research installations as water dependent uses. As discussed in Finding of Fact No. 5 and the Conclusions of Law above, the proposal is consistent and compatible with existing uses of neighboring shoreline areas.

San Juan County Comprehensive Plan ("SJCCP") Policy 3.5.G(3): *Preference should be given to locating new institutional development on those parts of the shoreline where institutional development already exists.*

12. The proposal will run scientific testing equipment within an existing steel conduit connected to the laboratory pump house. The proposal is consistent with the policy.

SJCCP Policy 3.5.G(4): *The height and bulk of any proposed institutional structures should be designed, to the extent practical, to accommodate the proposed use and to minimize the obstruction of views from the surrounding area, and consideration should be given to compatibility with the scale and use of surrounding developments.*

13. No new structures are proposed.

SJCCP Policy 3.5.G(5): *Prohibit the location of institutional development on sensitive and ecologically valuable shorelines such as natural accretion shoreforms, wetlands, and wildlife habitat areas, and on shores inherently hazardous for such development such as flood and geologically hazardous areas, and steep or unstable slopes in accordance with the Environmentally Sensitive Areas Overlay District.*

14. As noted in Finding of Fact No. 5, the project does not encroach upon any environmentally sensitive areas because the cable runs within an existing conduit. As further discussed in Finding of Fact No. 5, the sea bottom at this location is sitly mud. The Corp, DFW and the Coast Guard have reviewed this permit and no impacts to the seafloor are anticipated. There is nothing in the record to suggest that the proposal would affect any sensitive or ecologically valuable shoreline.

SJCCP Policy 3.5.G(6): *Design institutional facilities to minimize adverse impacts on other shoreline uses and on shoreline resources.*

15. As previously discussed, the project is compatible with adjoining uses and it will not create any significant adverse impacts to shoreline uses or resources.

SJCCP Policy 3.5.G(7): *Parking facilities should be placed inland, away from the water's edge and recreational beaches, and where necessary should be screened to minimize their visual impact on shorelines, and should include measures to control surface runoff and prevent pollution of nearby water bodies.*

16. No parking is presented as part of the proposal and no parking within shoreline jurisdiction is authorized by this decision.

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.

17. The proposal has no significant adverse impacts while facilitating important research on environmental impacts to shoreline resources. The proposal is consistent with the general purpose of the Shoreline Management Act.

RCW 90.58.020(1)

Recognize and protect the statewide interest over local interest;

18. The proposal facilitates research on ocean current and water quality conditions while creating no discernible adverse impacts of its own. The proposal is consistent with the policy.

RCW 90.58.020(2)

Preserve the natural character of the shoreline;

19. As previously noted the landward portion of the cable will be housed in an existing steel conduit. The project will have no visible components. The proposal will not create any significant change to the natural character of the shoreline.

RCW 90.58.020(3)

Result in long term over short term benefit;

20. As previously noted, the project will facilitate research on ocean current and water quality conditions while not creating any significant adverse impacts. The proposal will provide long term benefit over short term benefit.

RCW 90.58.020(4)

Protect the resources and ecology of the shoreline;

21. The proposal is designed to protect the resources and ecology of the shoreline by running the cable inside the existing conduit.

DECISION

The application is consistent with all applicable policies and criteria and is approved as conditioned below:

1. This permit allows the placement of cables and testing devices as discussed in the application materials and as detailed in the attached drawings.

2. The Applicant will provide marking buoys, if required, by the US Coast Guard.

3. If during the course of normal operations, impacts to the seafloor from movement of the cable are discovered, the cable shall be pinned in place.

4. All debris entering the water or shoreline area shall be removed immediately and disposed of in a legal manner.

5. Development authorized by this permit shall commence within two years of the date of approval and shall be substantially complete within five years or the permit shall become null and void.

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

7. Upon completion of the project the Applicant shall allow and request staff to do a site visit to verify compliance with this decision.

Dated this 30th day of November, 2012.

Emily Terrell, Hearing Examiner Pro Tem
for Phil Olbrechts
County of San Juan 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.