

**SAN JUAN COUNTY  
HEARING EXAMINER**

**ADMINISTRATIVE APPEAL**

Appellant: Orca Dreams, LLC  
P.O. Box 928  
Friday Harbor, WA 98245

Applicant: Stephanie Johnson O'Day  
PO Box 2112  
Friday Harbor, WA 98245

Request: Appeal of County letter regarding tree removal plan

Parcel No: 353344008 and 35334005

File No.: PAPL00-14-0005

Location: 1657 Yacht Haven Road, San Juan Island

Hearing: None.

Decision: Appeal dismissed.

S.J.C. COMMUNITY

MAR 17 2015

DEVELOPMENT & PLANNING



- 1 arguing that the information they supplied in their tree removal plan was  
2 sufficient to be reviewed under the CAO that was in effect when they applied, as  
3 opposed to the CAO that applies to it now.
- 4 5. The Appellant appealed the termination of review by letter dated November 5,  
5 2014.
  - 6 6. By email exchange on February 10, 2015, the appellant and San Juan County  
7 agreed to treat the appellant's argument for vested rights in its November 5, 2015  
8 appeal as a motion for partial summary judgment on the vested rights issue. The  
9 County's staff report, dated February 6, 2015, was agreed to be considered a  
10 response to that motion. The appellants submitted a reply on February 12, 2015.  
11 There was no oral argument.
  - 12 7. A ruling on the summary judgment motion was issued February 17, 2015. The  
13 summary judgment decision ruled that the tree and vegetation plan had not vested  
14 to the County's critical area regulations at the time a complete application was  
15 filed.
  - 16 8. The county filed a motion for summary judgment on the remaining issues on  
17 February 17, 2015. The applicant submitted a memorandum dated February 20,  
18 2015, which was construed as a response to the motion. The County requested an  
19 opportunity to reply to the response and a response deadline was set for February  
20 28, 2015. After the February 28, 2015 deadline had passed the County noted it  
21 had elected not to submit a reply.
  - 22 9. The record is deemed closed as of February 28, 2015, the due date of the County  
23 reply.

#### 24 Exhibits

25 The following documents are admitted and were considered in this appeal  
proceeding:

1. November 1, 2014 Appeal of Administrative Determination Rejecting Tree  
Removal Plan, including all attachments (39 pages total).
2. February 6, 2015 Staff Report on PAPL00-14-0005 from Sam Gibboney,  
including all attachments.
3. February 12, 2015 Orca Dreams Reply to Staff Report, including all  
attachments.
4. Email chain dated 2/10/15 containing prehearing order from examiner on  
partial summary judgment and agreement by parties to partial summary  
judgment review process.
5. February 17, 2015 Summary Judgment Ruling.
6. February 17, 2015 County Motion for Summary Decision
7. February 20, 2015 memo from Applicant re "Proposed Vegetation Removal",  
including all attachments.
8. Email chain from examiner to parties dated 2/27/15
9. Email chain from Sam Gibboney to Stephanie O'Day dated 3/4/15 re  
Honeywell tree plan appeal.
10. All other emails between the parties to this appeal and the examiner.

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**Legal Analysis**

San Juan County has requested summary judgment on all remaining issues given the partial summary judgment ruling issued on February 17, 2015. For completeness, all issues in the appellant’s November 6, 2014 appeal will be quoted in italics in the order of appeal and addressed through corresponding conclusions of law:

**Appeal Issue B(1):** *The Tree Removal Plan is a “Project Permit” by Definition.*

1. Tree Removal Plan is not a “Project Permit”. The appellant’s tree removal plan is not a project permit. Administrative approvals for modest development activities involving limited discretionary decision making are not considered project permits under the San Juan County “project permit” definition. SJCC 18.20.160 notes in its definition of “project permit” that “[b]uilding, driveway and other approvals are not project permits for this UDC”. A tree removal plan is a modest development approval in line with the building and driveway “approvals” identified in the definition. Also, the requirement for the tree removal plan, SJCC 18.50.330(B)(8), doesn’t characterize a tree removal plan as any type of project permit application. Most important, classifying a tree removal plan as a “project permit” application would subject it to numerous processing requirements (such as notices of application and determinations of completeness) that would ultimately slow down its review, which is directly opposite of the intended purpose of those processing requirements. The County definition of “project permit” is designed to exclude simple administrative determinations from “project permit” processing requirements that would make their review unnecessarily complicated and lengthy. Tree removal plans qualify as those types of simple approvals.

**Appeal Issue B(2):** *The County failed to Comply with RCW 36.70B and SJCC 18.80.020(D).*

2. The County Didn’t Fail to Comply with RCW 36.70B and SJCC 18.80.020(D). Since the tree removal plan is not a project permit application, RCW 36.70B and SJCC 18.80.020(D) do not apply. Even if they did, the County still did not fail to comply. The appellant correctly notes that project permit applications are deemed complete if a determination of completeness is not timely issued. The tree removal plan may well be deemed complete if it were a project permit application. Whether or not the tree removal plan was complete has not material bearing on the processing of the tree removal plan or the validity of the County’s return of the plan. As determined in the 2/17/15 partial summary judgment motion, tree removal plans do not vest. The tree removal plan application didn’t vest regardless of whether or not it was ever deemed complete. Further, as acknowledged by the applicant in its appeal statement, the County can still request additional information after an application is deemed complete.

**Appeal Issue B(3):** *A Complete Permit Application Vests under SJCC.*

1 3. Complete Permit Applications Don't Vest Under SJCC. As determined in the  
2 2/17/15 partial summary judgment ruling, the SJCC has no provision that extends  
vesting to permit applications.

3 **Appeal Issue B(4):** *San Juan County Policies Regarding Vested Applications.*

4 4. Public Notices Regarding Vested Rights Didn't Create Vesting Laws. As  
5 determined in the 2/17/14 partial summary judgment ruling, public notices and  
6 statements regarding the vesting of the critical areas ordinance did not supersede or  
7 create a local vesting program for San Juan County. Even if it did under principles such  
as equitable estoppel, the hearing examiner has no jurisdiction to consider such  
arguments. *See Chaussee v. Snohomish County Council*, 38 Wn. App. 630 (1984).

8 **Appeal Issue B(5):** *What Regulations Must the Orca Dreams Tree Removal Comply?*

9 5. The Tree Removal Plan must Comply with Critical Areas Ordinance adopted that  
10 went into Effect March 31, 2014. As determined in the 2/17/15 partial summary  
11 judgment ruling, the tree removal plan is not subject to vesting. Therefore, until it is  
12 approved, it is subject to the most currently adopted development standards. For the  
critical areas ordinance, this would be the ordinance that went into effect on March 31,  
2014.

13 **Appeal Issue B(6):** *What Must the Shoreline Tree Removal Plan Illustrate?*

14 6. The Appellants Have Not Provided Sufficient Information in Their Tree Removal  
15 Plan. As determined in Finding of Fact No. 4, the appellant did not provide sufficient  
16 information for review of their tree removal plan under the newly adopted CAO. The  
17 administrative record is disappointingly sparse on this issue, as both the County and the  
18 appellant didn't specifically identify what information was missing and how completion  
of the new application form requested by the County would provide that missing  
information. However, at no point has the appellant ever contested (1) the County  
19 position that the information the appellant provided was insufficient to evaluate  
compliance with the newly adopted CAO or (2) that the County's additional request for  
20 information (primarily requesting that the appellant fill out a newly prepared application  
form) would have supplied the necessary information. It is unlikely that the appellant  
21 could have contested those positions, given that the stricter CAO requirements would  
likely entail review of a significant amount of additional information and the new  
22 application form prepared as a result of the new CAO was likely designed to extract that  
needed information.

23 **Appeal Issue B(7):** *Orca Dreams has 90 Days to Respond to CD&P.*

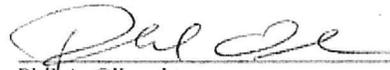
24 7. Orca Dreams Did not Have 90 Days to Respond to CD&P. The appellants assert  
25 that SJCC 18.80.020(D)(4) required CD&P to give the appellants 90 days to respond to

1 the requested additional information. SJCC 18.80.020(D)(4) does not apply to the tree  
2 removal plan because it isn't a project permit.

### 3 **Ruling**

4 Summary judgment is granted in favor of the County. The appeal is denied. None of  
5 grounds of appeal identified in the appellant's November 6, 2014 appeal merit reversal or  
6 modification of the October 17, 2014 determination by Sam Gibboney to reject the  
7 appellant's tree removal plan.

8 Dated this 16<sup>th</sup> day of March 2015.

9   
10 Phil A. Olbrechts

11 County of San Juan Hearing Examiner

### 12 **Effective Date, Appeal Right, and Valuation Notices**

13 Hearing examiner decisions become effective when mailed or such later date in  
14 accordance with the laws and ordinance requirements governing the matter under  
15 consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be  
16 subject to review and approval by the Washington Department of Ecology pursuant to  
17 RCW 90.58.140, WAC 173-27-130 and SJCC 18.80.110.

18 This land use decision is final and in accordance with Section 3.70 of the San Juan  
19 County Charter, such decisions are not subject to administrative appeal to the San Juan  
20 County Council. See also, SJCC 2.22.100

21 Depending on the subject matter, this decision may be appealable to the San Juan County  
22 Superior Court or to the Washington State Shorelines Hearings Board. State law  
23 provides short deadlines and strict procedures for appeals and failure to timely comply  
24 with filing and service requirement may result in dismissal of the appeal. See RCW  
25 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.