

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

Applicant: Orcas Vision Preserve  
128 Prospect Street  
Seattle, WA 98109

Agent Rosie Donovan  
1148 NW Leary Way  
Seattle, WA 98107

File No.: PSJ000-14-0017

Request: Shoreline Substantial Development Permit

Location: 131 East Carousel Road

Summary of Proposal: Shoreline Restoration and Enhancement

Shoreline Designation: Forest Reserve

Hearing Date: April 27, 2015

Application Policies and Regulations: Shoreline Master Program

Decision: Approved subject to conditions.

S.J.C. COMMUNITY

MAY 13 2015

DEVELOPMENT & PLANNING

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

3                                   Phil Olbrechts, Hearing Examiner

4                   RE: Orcas Vision Preserve 5                   Shoreline Substantial 6                   Development Permit 7                   (PSJ000-14-0017)	8 <b>FINDINGS OF FACT, CONCLUSIONS 9                   OF LAW AND FINAL DECISION</b> 10 11                   S.J.C. COMMUNITY 12 13                   MAY 13 2015
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14                                   **INTRODUCTION**

DEVELOPMENT & PLANNING

15                   The applicant has applied for a shoreline substantial development permit to restore  
16                   and modify a shoreline, including the removal of a bulkhead, the addition and  
17                   replacement of beach stairs and the removal of a residence from shoreline  
18                   jurisdiction.

19                                   **TESTIMONY**

20                   Julie Thompson, senior San Juan County planner, summarized the proposal, which is  
21                   to re-contour the shoreline back to its natural configuration.

22                   Rosie Donovan, applicant’s representative, testified that the applicant is eager to return  
23                   the pocket beach back to its original state and make it more accessible.

24                   Tina Whitman, Friends of the San Juans, said the project was partially funded by the  
25                   Salmon Recovery Funding Board and as part of that process has been through local  
26                   and state regional technical review for consistency with salmon recovery goals.

27                                   **EXHIBITS**

28                   Exhibits 1-6 identified in the “Exhibits for Orcas Vision Preserve, LLC” were  
29                   admitted into the record at the April 27, 2015 hearing.

30                                   **FINDINGS OF FACT**

31                   **Procedural:**

- 32                   1.           Applicant. The applicant is Orcas Vision Preserve.

1 2. Hearing. The Hearing Examiner conducted a hearing on the subject  
2 application on April 27, 2015 at 10:00 am in Key Bank in Friday Harbor, San Juan  
3 Island.

3 **Substantive:**

4 3. Site and Proposal Description. The applicant has applied for a shoreline  
5 substantial development permit to restore and modify a shoreline, including the  
6 removal of a bulkhead and the addition and replacement of beach stairs. The  
7 resulting shoreline has been designed to be as similar as possible to the natural beach  
8 width, bulk and profile.

9 This proposal involves removing an existing creosoted wood and rip-rap bulkhead  
10 located along the shoreline bank above West Sound on Orcas Island in four phases.  
11 The removal will include soil export to establish a new 2:1 to 2.5:1 slope where the  
12 existing creosote wall and rip-rap are currently located. The re-graded slope will be  
13 replanted with all native species specifically selected for this type of marine  
14 environment. Gravel and beach logs will be added to enhance the beach and provide  
15 ecological services and functions. The new slope will also include a sand-set stone  
16 stair that bisects the planting to provide the home owner access to the restored beach.

17 One of the existing residences will have its upper stair, small grade-level deck, and  
18 lower beach stair replaced within the footprint of the existing residence. Another  
19 residence will also get a new set of stairs leading from the existing deck to the  
20 existing grade. The existing picnic shelter and underground pool house will be  
21 removed and an existing single-family residence within shoreline jurisdiction will be  
22 demolished, to be rebuilt outside shoreline jurisdiction.

23 Approximately 6,500 square feet of existing lawn and 3,000 square feet of existing  
24 rip-rap will be removed and replaced with 6,600 square feet of native planting.  
25 Invasive species will be removed. The lawn will be re-graded and reseeded with  
general lawn grass species. Prior to seeding, new geothermal loops will be added  
under the lawn that will service the proposed main residence. The new lawn will  
feature a slope of 1:5 or less and a 6 foot wide cart path, with a crushed rock or stone  
surface, will provide access to the buildings that ring the great lawn.

26 The size and mix of new materials shall be as similar as possible to the natural beach  
27 sediment, but large enough to resist normal current, wake or wave action at the site.  
28 Dry land mass is not being created. Beach nourishment will include a mix of sand to  
29 medium sized gravel, ranging from approximately 0.04 inch to 1.5 inches, with more  
30 than 40 percent finer than ¼ inch to provide appropriate forage fish spawning  
31 substrate. Coarser material may be included to both mimic natural beach conditions  
32 in this area and to aid in longevity of sediment in the project area.

1 4. Characteristics of the Area. Four Winds Westward Ho summer camp for  
2 children is located to the north. The two twenty-acre parcels to the west are owned  
3 by the applicant and are both in the current use—open space program. Both are  
4 lightly developed. The two parcels to the south, totaling about 50 acres, are similarly  
5 owned and developed. West Sound lies to the west.

6 5. Adverse Impacts of Proposed Use. There are no adverse impacts  
7 associated with the proposal. As would be expected for this type of project, the  
8 project will in fact create significant positive environmental benefit and will further  
9 salmon recovery efforts. As testified by Ms. Whitman, the project has been granted  
10 funding by the Salmon Recovery Funding Board because after rigorous review the  
11 Board has determined that the proposal meets its salmon recovery objectives. The  
12 biological evaluation, which evaluates the removal of the bulkhead and beach  
13 enhancement only, concludes that those actions will improve ecological function of  
14 the shoreline. Unfortunately, the evaluation does not include the impacts of the  
15 proposed stair modifications or other proposed activities. However, the stair  
16 additions are of a modest scale and do not appear to undermine the overall significant  
17 environmental benefits of the project. All other project actions will enhance  
18 ecological function once construction/demolition is complete. Given the nature of the  
19 project and the findings of the biological evaluation it is determined that the proposal  
20 improve upon the ecological function of the shoreline and no net loss of ecological  
21 function will occur. The evaluation includes several conservation measures designed  
22 to minimize adverse impacts, most notably those caused by construction. Those  
23 conservation measures are required as part of the conditions of approval of this  
24 decision. Impacts are more specifically addressed below:

25 A. Water Quality. Water quality will be adequately protected by both the  
conservation measures of the biological evaluation and the applicant's  
pollution control plan, compliance of which is made a condition of approval.  
A Stormwater Pollution Prevention Plan prepared by Pacific Surveying and  
Engineering dated December 9, 2014 in accordance with accepted standards  
of the Washington State Department of Ecology's Stormwater Management  
Manual for Western Washington, 2005 publication and SJCC 18.60.070. The  
plan was approved on February 27, 2015.

B. Littoral Drift. The project site does not experience any littoral drift so no  
adverse littoral drift to adjoining properties is anticipated. The staff report  
notes that GIS data show that there is no appreciable net shore drift in this  
area so adjacent properties should be unaffected. The project site is a pocket  
beach, which is defined as "A beach that is contained between two bedrock  
headlands that essentially functions as a closed system in terms of littoral  
sediment transport" by the Washington State Aquatic Habitat Guidelines  
Program's 2014 Marine Shoreline Design Guidelines. Furthermore, the land  
disturbance activities for this proposal are located above MHHW where the  
tidal inundation is minimal, which lessens the potential for increased turbidity.

1 In addition the specifications for the imported beach nourishment states that  
2 the materials shall be free from dirt, clay, fine sand, and rock fines, which  
3 have the potential to increase turbidity.

- 4 C. Spawning/Nesting/Breeding Habitat. The proposal will not adversely affect  
5 any spawning, nesting or breeding habitat areas. The area is not mapped as an  
6 area of any existing forage fish spawning, nesting, or breeding habitat. Beach  
7 nourishment will occur above and below MHHW following the removal of  
8 scattered rock on the beach—with the sole purpose of restoring the beach to  
9 improve potential forage fish spawning (as well as recreation). The majority  
10 of the bank and beach re-grading occurs above the Mean Higher High Water  
11 (MHHW) elevation of +7.3 feet Mean Lower Low Water (MLLW). The  
12 existing revetment above MHHW and scattered rock below MHHW proposed  
13 for removal currently bury potential surf smelt spawning habitat. No work is  
14 proposed to occur over the spawning habitat, which does not exist at this time.

15 Pacific herring spawning has been documented in the adjacent near shore of  
16 the proposed project, which is more than 100 feet distant from the work area.  
17 A temporary increase of turbidity caused by the proposed project may  
18 temporarily impact spawning behavior where the herring spawn. The Family  
19 Tides Farm Bulkhead Removal and Shoreline Enhancement Biological  
20 Evaluation, dated November 25, 2014, prepared by Fairbanks Environmental  
21 Services, Section 8, contains conservation measures which have been  
22 incorporated into the project proposal to protect and minimize any impact to  
23 the aquatic habitat in the project action area. The positive impacts of the  
24 project would appear to outweigh any temporary impacts.

- 25 D. Visual Impacts. The beach stairs will be integrated into the re-graded and re-  
vegetated bank using 1' x 1'-6" x 3' granite stair tread set into the slope.  
Visually there should be no impacts as they will not be visible from the water  
and there are no railings elevated above the slope. The stairs will not be  
located on a feeder bluff or extend waterward of the ordinary high water mark.

## CONCLUSIONS OF LAW

### Procedural:

1. Authority of Hearing Examiner. The Hearing Examiner, after conducting  
an open-record public hearing, renders a final decision on shoreline permit  
applications. SJCC18.80.110(E).

### Substantive:

2. Shoreline Designation. The shoreline designation is Rural Farm Forest.

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1 3. Permit Review Criteria. Shoreline development projects that exceed  
2 \$6,416 in fair market value require a shoreline substantial development permit. See  
3 SJCC 18.50.020(G)(3)(f) and 18.50.020(F)(1). Presumably the fair market value  
4 exceeds the exemption level given the extensive construction (or deconstruction)  
5 work involved in the proposal. Consequently, a shoreline substantial development  
6 permit is required. SJCC 18.80.110(H) establishes the criteria for approval of  
7 shoreline substantial development permits. The criteria include the policies of the  
8 Shoreline Management Act (Chapter 90.58 RCW), the policies and use regulations of  
9 the San Juan County Shoreline Master Program, and the requirements of the San Juan  
10 Municipal Code and Comprehensive Plan. The applicable policies and regulations  
11 are quoted in italics below and applied through conclusions of law.

### 8 Shoreline Management Act Policies

#### 9 RCW 90.58.020 Use Preferences

10 *This policy (Shoreline Management Act policy) is designed to insure the development*  
11 *of these shorelines (of the state) in a manner which, while allowing for limited*  
12 *reduction of rights of the public in the navigable waters, will promote and enhance*  
13 *the public interest. This policy contemplates protecting against adverse effects to the*  
14 *public health, the land and its vegetation and wildlife, and the waters of the state and*  
15 *their aquatic life, while protecting generally public rights of navigation and corollary*  
16 *rights incidental thereto...Alterations of the natural condition of the shorelines of the*  
17 *state, in those limited instances when authorized, shall be given priority for single*  
18 *family residences and their appurtenant structures, ports, shoreline recreational uses*  
*including but not limited to parks, marinas, piers, and other improvements facilitating*  
*public access to shorelines of the state, industrial and commercial developments*  
*which are particularly dependent on their location on or use of the shorelines of the*  
*state and other development that will provide an opportunity for substantial numbers*  
*of the people to enjoy the shorelines of the state....*

19 4. The proposal has no significant adverse impacts while substantially supporting the  
20 public interest by restoring natural shoreline processes. The proposal is consistent  
21 with the general purpose of the Shoreline Management Act.

#### 21 RCW 90.58.020(1)

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

23  
24 5. The proposal will restore natural shoreline processes with no associated adverse  
25 impacts. The proposal is consistent with the policy.

#### 25 RCW 90.58.020(2)

*Preserve the natural character of the shoreline;*

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1 6. The proposal will restore the shoreline to its natural character.

2 **RCW 90.58.020(3)**

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

4 7. The proposal will restore natural shoreline processes with no associated adverse  
5 impacts. The proposal is consistent with the policy.

6 **RCW 90.58.020(4):** *Protect the resources and ecology of the shoreline;*

7 8. The proposal will restore natural shoreline processes with no associated adverse  
8 impacts. The proposal is consistent with the policy.

9 **RCW 90.58.020(5):** *Increase public access to publicly owned areas of the*  
10 *shorelines;*

11 9. The proposal will not appreciably increase public access, although it will increase  
12 the water area of the shoreline by retracting the ordinary high water mark to its  
13 natural location.

14 **RCW 90.58.020(6):** *Increase recreational opportunities for the public in the*  
15 *shoreline;*

16 10. No public recreation is included in the proposal nor could it be legally required.

### 17 **Beach Enhancement Use Regulations**

18 **SJCC 18.50.370(A)(1):** *Beach enhancement in all environments shall be undertaken*  
19 *only for restoration, enhancement, or maintenance of natural resources.*

20 11. The proposal is primarily designed for the restoration and enhancement of  
21 shoreline resources. The requirement is clearly met.

22 **SJCC 18.50.370(A)(2):** *Beach enhancement may be permitted when the applicant*  
23 *has demonstrated that no significant change in littoral drift will result which will*  
24 *adversely affect adjacent properties or habitats.*

25 12. As determined in Finding of Fact No. 5, there is no significant littoral drift at the  
project site so adjoining properties should not be adversely affected by the proposal.

**SJCC 18.50.370(A)(3):** *Natural Beach Restoration or Enhancement.*

1 a. *Design Alternatives. Design alternatives shall include the best available*  
2 *technology such as:*

3 i. *Gravel berms, drift sills, beach nourishment, and beach enhancement*  
4 *when appropriate;*

5 ii. *Planting vegetation, when appropriate. All plantings must be*  
6 *maintained. Vegetation planted to restore or enhance beaches shall be*  
7 *native plants suited to the habitat characteristics of the site.*

8 b. *Design Criteria. Natural beach restoration or enhancement shall not:*

9 i. *Detrimentially interrupt littoral drift or redirect waves, current, or*  
10 *sediments to other shorelines;*

11 ii. *Result in any exposed groin-like structures; however small “drift sill”*  
12 *groins may be used as a means of stabilizing restored sediment where*  
13 *part of a well planned beach restoration program;*

14 iii. *Extend waterward more than the minimum amount necessary to*  
15 *achieve the desired stabilization;*

16 iv. *Result in contours sufficiently steep to impede easy pedestrian passage*  
17 *or trap drifting sediments;*

18 v. *Create “additional dry land mass”; and*

19 vi. *Disturb significant amounts of valuable shallow water fish or wildlife*  
20 *habitat, unless such habitat is immediately replaced by new habitat that is*  
21 *comparable or better.*

22 c. *Natural Beach Restoration Construction Standards.*

23 i. *The size and/or mix of new materials to be added to a beach shall be as*  
24 *similar as possible to the natural beach sediment, but large enough to*  
25 *resist normal current, wake or wave action at the site.*

ii. *The restored beach shall approximate, and may slightly exceed, the*  
*natural beach width, height, bulk, or profile (but not enough to obviously*  
*create additional dry land mass).*

13. The proposal is well designed to satisfy the design objectives of the criteria quoted above. As identified in Finding of Fact No. 5, sand of the size approximating

1 the natural beach sediment will be added to provide for beach nourishment. A  
2 significant amount of native vegetation will be added, including the replacement of  
3 lawn by native vegetation as outlined in Finding of Fact No. 3. As previously  
4 determined, the proposal will not adversely affect littoral drift. Pedestrian access will  
5 be maintained by the proposed stairs. No part of the project will extend over the  
6 ordinary high water mark or result in any exposed groin-like structures. No land mass  
will be added by the project and no fish or wildlife habitat will be disturbed. The  
project has been designed to be as similar as possible to the natural beach width, bulk  
and profile.

7 **SJCC 18.50.370(A)(4):** *All shoreline modification activities must be in support of an*  
8 *allowable shoreline use that is in conformance with the provisions of this master*  
9 *program. All shoreline modification activities not in support of a conforming shoreline*  
*use are prohibited.*

10 14. The conforming shoreline use is residential development and a boating facility.

11 **SJCC 18.50.370(A)(5):** *Beach enhancement is prohibited within spawning, nesting,*  
12 *or breeding habitat and also where littoral drift of the materials uses adversely effects*  
13 *adjacent spawning grounds or other areas of biological significance.*

14 15. As determined in Finding of Fact No. 5, the proposal will not involve any beach  
15 enhancement within any spawning, nesting or breeding habitat. The project area also  
16 does not experience any significant littoral drift so adjacent areas should not be  
adversely affected by littoral drift of beach nourishment materials.

17 **SJCC 18.50.370(A)(6):** *Beach enhancement is prohibited if it interferes with the*  
18 *normal public use of the navigable waters of the state.*

19 16. No part of the project extends over the ordinary high water mark so no impact to  
navigation is anticipated.

#### 20 **Stair Use Regulations**

21 **SJCC 18.50.300(A)(1):** *Every application for a substantial development permit for*  
22 *a nonexempt beach access structure shall be evaluated on the basis of multiple*  
23 *considerations, including but not necessarily limited to the potential impacts on bank*  
*stability, the extent of vegetation removal, visual impacts, and structural stability.*

24 17. Bank and slope stability are not addressed in the staff report. However,  
25 given that the stairs are composed of granite over a modest slope, it does not appear  
that stability is an issue. As determined in Finding of Fact No. 5, the stairs will not  
create any significant visual impacts. The project will overall involve a significant  
increase in vegetation and native vegetation.

1 **SJCC 18.50.300(A)(2):** *Beach access structures which can reasonably be expected*  
2 *to interfere with the normal erosion accretion process associated with feeder bluffs*  
3 *shall not be permitted. All beach access structures must comply with the bank*  
4 *stability requirements of SJCC 18.50.330(B)(2).*

4 18. The stairs will not be located on a feeder bluff.

5 **SJCC 18.50.300(A)(3):** *Beach access structures shall not be located below the*  
6 *ordinary high water mark (OHWM) unless connected to an exempt or permitted*  
7 *structure.*

8 19. The stairs are not located below the ordinary high water mark.

### 9 **Critical Area Regulations**

10 **SJCC 18.50.080:** *When located in an environmentally sensitive area overlay district*  
11 *or its buffer, shoreline uses and activities must be located, designed, constructed, and*  
12 *managed in accordance with the applicable requirements of*  
13 *SJCC 18.35.020 through 18.35.140, environmentally sensitive areas.*

14 20. The proposal complies with all critical area regulations as outlined in the  
15 staff report. Most notably, the biological evaluation addresses all potential impacts to  
16 protected species and the proposal will create no net loss of shoreline ecological  
17 functions as determined in Finding of Fact No. 5.

### 18 **DECISION**

19 The proposal is consistent with all applicable shoreline policies and regulations as  
20 outlined in the Findings of Fact and Conclusions of Law above. The proposal is  
21 approved with the following conditions:

- 22 1. Timing limitations: In-water work will only be allowed from July 16 through  
23 February 15 for the protection of salmon and bull trout.
  - 24 a. Work below the ordinary high water line shall not occur from March 2  
25 through July 15 of any year for the protection of migrating juvenile salmonids.
  - 26 b. Work below the ordinary high water line shall not occur from February 16  
27 through July 15 of any year for the protection of bull trout.
- 28 2. All work below the MHHW will be conducted 'in the dry' and by hand when  
29 beach is exposed during low-tide events. No heavy equipment will be used below  
30 the MHHW.
- 31 3. A project specific Stormwater Pollution Prevention Plan (SWPPP) with a  
32 Temporary Erosion and Sediment Control Plan (TESCP) has been prepared by  
33 Pacific Survey & Engineers dated October 30, 2014 which outlines permanent  
34 and temporary measures to prevent stormwater pollution. The contractor will  
35 apply this SWPPP for all tasks related to the bulkhead removal and beach

SSDP

1 enhancement project. The following Best Management Practices (BMPs)  
2 described in the Stormwater Management Manual for Western Washington  
3 Volume II; Construction Stormwater Pollution Prevention (Ecology 2012) are  
4 specified as part of the SWPPP:

- 5 ○ C107: Construction Road/Parking Area Stabilization
- 6 ○ C120: Temporary and Permanent Seeding
- 7 ○ C121: Mulching
- 8 ○ C122: Nets and Blankets
- 9 ○ C140: Dust Control
- 10 ○ C200: Interceptor Swale and Dike
- 11 ○ C204: Pipe Slope Drains
- 12 ○ C209: Outlet Protection

13 Alternate BMPs that may be used include:

- 14 ○ C123: Plastic Covering
  - 15 ○ C150: Materials on Hand
  - 16 ○ C235: Straw Wattles
- 17 4. The contractor will have erosion control materials including straw bales, straw  
18 wattles and silt fence on hand (BMP C150) to use as needed to prevent transport  
19 of fine sediment into marine water.
  - 20 5. Element 9 of the SWPPP addresses specific actions to prevent petroleum products  
21 from being discharged into surface waters. The contractor will have oil-absorbent  
22 materials on hand to be used in the event of a petroleum product spill and  
23 measures to avoid petroleum products or other deleterious materials from entering  
24 surface waters will be taken.
  - 25 6. Project area will be landscaped, reseeded and mulched as needed to stabilize  
disturbed soil.
  7. Project activities will be conducted to minimize siltation of the beach area and  
seafloor.
  8. Project activities shall not degrade water quality to the detriment of fish life.
  9. Eelgrass and macroalgae will not be adversely impacted due to any project  
activities.
  10. All construction materials shall be removed from the work site at the end of  
construction.
  11. Cascadia Archaeology recommendations listed in the “Cultural Resources Survey  
and Monitoring for Emergency Septic System Repairs at Family Tides Farm”  
dated September 8, 2014 shall be adhered to during the project.
  12. Common saltwater technical provisions (WAC 220-110-270) shall be strictly  
adhered to during the project.
  13. The project shall comply with all applicable provisions of the Unified  
Development Code, Title 18 San Juan County Code.

Dated this 11th day of May, 2015

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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.