

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant: San Juan County Parks

Agent: Quin Clements, PE
PO Box 1132
Freeland, WA 98249

File No.: PSJ000-12-0008

Request: Shoreline Substantial Development Permit

Parcel No: 250241001

Location: Lopez Island

Summary of Proposal: Park Improvements

Shoreline Designation: Conservancy

Hearing Date: 12/12/12

Application Policies and Regulations: San Juan County Shoreline Master Program

Decision: Approved subject to conditions.

S.J.C. COMMUNITY

JAN 04 2013

DEVELOPMENT & PLANNING

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

3 Phil Olbrechts, Hearing Examiner

4 RE: San Juan County Parks 5 Shoreline Substantial 6 Development Permit 7 (PSJ000-12-0008)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION.
--	---

8 **INTRODUCTION**

9 The Applicant has applied for approval of improvements to Odlin Park, specifically
10 the realignment of a park road, the relocation of camp sites and the enhancement of
11 wetlands. The application is approved subject to conditions.

12 **TESTIMONY**

13 Julie Thompson stated that the staff report contains all relevant information regarding
14 this project. Staff recommends approval of the proposal. San Juan County does not
15 require a variance or reasonable use exception to fill wetlands. The Department of
Ecology reviewed the proposal and approved all aspects.

16 Donna Wuthnow, Parks and Recreation Director, testified that the proposal will
17 establish greater public safety by separating vehicle traffic from pedestrian traffic.
18 Additionally, the proposal will reduce the number of vehicles on the shoreline and
19 improve the stormwater treatment area. This project is a park renovation as opposed
20 to a new development. Currently, the campground entrance road spans across the
21 waterfront area, but the proposal moves the road 300 feet from the shoreline. The
22 staff report provides a site plan that illustrates the road shift. The county will remove
the shoreline road and organize the day-use parking area. Moreover, three additional
parking spaces will be added to the day-use parking lot. The county will complete
wetland mitigation in the area where they plan to remove an old building. The
campground has both tent and RV camping. The number of RV campsites will not
increase, but the number of vehicle-accessible tent campsites will be reduced.

23 **EXHIBITS**

24 The documents identified in the exhibit list attached to the 11/30/12 staff report were
25 admitted into the record during the hearing.

FINDINGS OF FACT

1 **Procedural:**

2 1. Applicant. The Applicant is the San Juan County Parks Department.

3 2. Hearing. The Hearing Examiner conducted a hearing on the subject
4 application on December 12, 2012 at or about 10:00 am in the Islander's Bank Annex
5 in Friday Harbor.

5 **Substantive:**

6 3. Site and Proposal Description. The Applicant has applied for approval of
7 improvements to Odlin Park, specifically the realignment of a park road, the
8 relocation of camp sites and the enhancement of wetlands. The application is
9 approved subject to conditions.

10 The primary intent of the project is to move the existing campground access road
11 away from the shoreline camp sites and day use areas to improve safety by limiting
12 pedestrian and vehicular interaction. As part of this improvement, a new day use
13 parking facility will be created to formalize the parking area and further limit
14 vehicular overflow into the day use areas. In conjunction with this work, select
15 shoreline campsites bordering the day use area will be re-established as walk-in camp
16 sites further limiting vehicular movement and, where feasible, campsites will be
17 moved inland away from the shoreline to help re-establish the natural shoreline
18 environment.

19 The scope of the project is difficult to determine from the application materials.
20 From the testimony of the Applicant, it appears that there will be no increase in RV
21 spaces and the number of vehicle accessible camping sites will be reduced. It is
22 unclear whether there will be any increase in the total number of campsites, although
23 it appears unlikely as the application materials just identify moving campsites and
24 converting them from vehicle accessible to pedestrian accessible. There is no
25 mention in the application materials of increasing the number of camp sites.

Odlin has been a county park since 1926. It is used for both day use and overnight
camping. There is a baseball diamond near the beach. There are both forested and
cleared areas in the park. The site slopes in multiple directions with an overall
gradient towards the north. The eastern portion of the site slopes to the west and
northwest in the range of 10% to 30%. The south and central portions of the site are
relatively level with grades ranging from 5% to 15%. The northern portion of the site
is relatively flat.

4. Characteristics of the Area. Upright Channel borders the north and west
shoreline. To the south is approximately 100 acres of forested public land. Ferry
Road provides the east boundary, and there is residential development on the other
side of that.

1 5. Adverse Impacts of Proposed Use. There are no adverse impacts
2 associated with the proposal. Overall, the proposal is expected to substantially
3 improve upon impacts currently created by the proposal by improving wetland
4 functions, removing impervious road surface from the shoreline and improving upon
5 pedestrian safety by reducing vehicle/pedestrian interaction.

6 The portion of the proposal most meriting scrutiny is impacts to wetlands. It is very
7 difficult to determine from the application materials precisely what portions of the
8 wetlands will be affected by the proposal. Filling of wetlands appears to be proposed
9 as part of the road relocation. According to the wetland mitigation report, Ex. 4,
10 5,749 square feet of a category III wetland will be graded and filled for a road
11 relocation. 1,218 square feet of this area is forested and 5,531 square feet is emergent
12 and mowed regularly as part of the parks ball fields. 154 square feet of the wetland
13 will be disturbed by shading caused by the placement of a pedestrian boardwalk.
14 34,826 square feet of wetland mitigation is proposed as compensation for these
15 impacts, composed of wetland creation adjacent to the category III wetland, re-
16 establishment in an area of the wetland that has been hydrologically separated,
17 rehabilitation in other areas and wetland enhancement in an area where intensive
18 moving has turned wetland into lawn in an area overrun with canary grass. Given
19 that 97% of the adversely affected portions of the wetland are highly disturbed
20 campsite and playfields, the mitigation report concludes that the 5:1 mitigation will
21 serve to maintain and/or increase structural diversity and species richness and will
22 greatly increase the water quality improvement and wildlife habitat functions. A
23 monitoring program is also proposed to ensure that the mitigation functions as
24 intended and additional mitigation is required should performance standards not be
25 achieved.

Moving the access road inland from the shoreline will reduce pedestrian and
vehicular interaction, thereby improving pedestrian safety. Moving the impervious
surface of the roadway away from the shoreline should also help to improve water
quality and improve shoreline habitat.

No other impacts to shoreline environmental resources are reasonably anticipated
from the proposal. No work waterward of the ordinary high water mark is proposed
and the nature of the project does not suggest any significant impact to shoreline
processes. Further, the construction drawings in Ex. 3 contain numerous erosion
control measures. Since there is no evidence in the record on the adequacy of these
erosion control measures, the project will be conditioned to require staff to verify that
the measures are sufficient to protect shoreline resources from adverse impacts.

Kevin Laurie Naylor, adjoining property owners, submitted a letter expressing several
concerns over the proposal, including water quality, noise pollution, air pollution and
traffic. All of these concerns appear to be premised upon the understanding of the
Naylor's that the proposal will increase park use. Since it does not appear that
number of camp or RV sites will be increased, it does not appear that the park will

1 generate any increase in use. Given this factor, there is nothing in the record to
2 suggest that the proposal will result in an exacerbation of any of the impacts
3 identified by the Naylors.

4 CONCLUSIONS OF LAW

5 **Procedural:**

6 1. Authority of Hearing Examiner. The Hearing Examiner has the authority
7 to review and issue final decisions on applications for shoreline substantial
8 development permit applications. SJCC18.80.110(E).

9 **Substantive:**

10 2. Shoreline Designation. The subject property is designated as
11 Conservancy.

12 3. Comprehensive Plan. The subject property is designated as Rural
13 Industrial.

14 4. Permit Review Criteria. SJCC 18.50.020 requires a shoreline substantial
15 development permit for any development within the shoreline jurisdiction (200 feet of
16 the shoreline) exceeding \$2,500 in fair market value and it is presumed that the
17 proposed improvements exceed this amount. No exemptions apply to this project.
18 SJCC 18.80.110(H) establishes the criteria for approval of shoreline substantial
19 development permits. The criteria include the policies of the Shoreline Management
20 Act (Chapter 90.58 RCW), the policies and use regulations of the San Juan County
21 Shoreline Master Program, and the requirements of the San Juan County Municipal
22 Code and Comprehensive Plan. As noted in SJCC 18.50.010(A), Element 3 of the
23 San Juan County Comprehensive Plan comprises the policies of the San Juan County
24 Shoreline Master Program. The applicable policies and regulations are quoted in
25 italics below and applied through conclusions of law.

26 **RCW 90.58.020 Use Preferences**

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

34 5. The policy is met. As determined in Finding of Fact No. 5, the proposal
35 does not create any significant adverse impacts, including impacts to shoreline
resources and public navigation.

1 **RCW 90.58.020(1)¹**

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

3 6. The statewide interest is protected due to the absence of any significant
4 adverse impacts as determined in Finding of Fact No. 5.

5 **RCW 90.58.020(2)**

6 *Preserve the natural character of the shoreline;*

7 7. The relocation of the access road landward should serve to enhance the natural
8 character of the shoreline. The extensive enhancement and wetland creation proposed
9 for the project should also serve to enhance the natural character of the shoreline.

10 **RCW 90.58.020(3)**

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

12 8. The proposal will allow for safer public shoreline use while providing an
13 overall benefit in terms of environmental impacts. The long term interest is definitely
14 served by the proposal.

15 **RCW 90.58.020(4)**

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

17 9. As determined in Finding of Fact No. 5, the proposal protects the
18 resources and ecology of the shoreline and will ultimately enhance them.

19 **RCW 90.58.020(5)**

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

21 10. Public access will be improved in terms of safety.

22 **RCW 90.58.020(6)**

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

24 11. It does not appear that the proposal will result in an increase in shoreline
25 use, but it will provide for safer shoreline use.

SJCC 18.50.050(A): *When an application for a development permit is received for
an area known to be archaeologically significant, the County will not take action on*

¹ 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 *the application and the applicant will not initiate any excavation or development*
2 *activity until the site has been inspected by a qualified archaeologist. No application*
3 *will be delayed more than 10 working days for such an inspection. If the application*
4 *is approved by the County, conditions will be attached reflecting the*
5 *recommendations of the archaeologist regarding preservation or protection of the*
6 *site.*

7 12. There is an archaeological site labeled “45SJ271” at the project site that has
8 archaeological significance. The proposal has been revised to avoid any ground
9 disturbing activities at this site. An archaeological study has been prepared to avoid
10 impacts to the archaeological site and the report has recommended a monitoring plan
11 to ensure that no archaeological resources are adversely affected. The conditions of
12 approval will require conformance to the monitoring plan.

13 **SJCC 18.50.050(B):** *All development permits will contain a special provision*
14 *advising the permit holder that if during excavation or development of the site an*
15 *area of potential archaeological significance is uncovered, all activity in the*
16 *immediate vicinity of the find must be halted immediately, and the administrator must*
17 *be notified at once. Activities authorized by the permit will not be delayed more than*
18 *five working days for a finding of significance by the administrator, following the*
19 *administrator’s receipt of notification, unless the permit holder agrees to an*
20 *extension of that time period.*

21 13. As conditioned.

22 **SJCC 18.50.050(D):** *Prior to the issuance of a permit in areas known to contain*
23 *archaeological artifacts and data, the County requires that the developer provide for*
24 *a site inspection and written evaluation by an archaeologist. Significant*
25 *archaeological data or artifacts must be recovered before work begins or resumes on*
26 *a project.*

27 14. As noted in the staff report an archaeological study has been conducted
28 and no work will be done within any area known to contain archaeological artifacts
29 and data.

30 **SJCC 18.50.070(A):** *The location, design, construction, and management of all*
31 *shoreline uses and activities must protect the quality and quantity of surface and*
32 *ground water adjacent to the site and must adhere to the policies, standards, and*
33 *regulations of applicable water quality management programs and related regulatory*
34 *agencies.*

35 15. No water quality impacts are anticipated. As noted in Finding of Fact No.
36 5, the water quality functions of the wetlands will be improved as a result of proposed
37 mitigation and the impervious surfaces of the current access road will be moved

1 further inland. All new road construction will be subject to the County's stormwater
standards, which have been legislatively deemed adequate to protect water quality.

2 **SJCC 18.50.070(B):** *Solid waste disposal and liquid waste treatment facilities are*
3 *prohibited on shorelines. Solid and liquid wastes, biosolids, and untreated effluents*
4 *shall not be allowed to enter any bodies of water or to be discharged onto land.*

5 16. No solid waste disposal facilities or liquid waste treatment facilities are
6 proposed.

7 **SJCC 18.50.070(C):** *The release of oil, chemicals or hazardous materials onto land*
8 *or into the water contrary to state or federal law is prohibited. Equipment for the*
9 *transportation, storage, handling, or application of such materials in association with*
10 *a lawful shoreline use of such equipment shall be suspended until the deficiency has*
11 *been satisfactorily corrected.*

12 17. No release of materials as contemplated in the criterion above is proposed.

13 **SJCC 18.50.070(D):** *All shoreline uses and activities shall be located, designed,*
14 *constructed, and managed in a manner that minimizes adverse impacts to*
15 *surrounding land and water uses and must be aesthetically compatible with the*
16 *affected area.*

17 18. As determined in Finding of Fact No. 5, the proposal will not result in any
18 significant adverse impacts, including impacts to adjoining properties. Since the
19 proposal does not involve any improvements that would result in increases in park
20 use or in any activities that would create adverse impacts, no adverse impacts to
21 adjoining uses are anticipated.

22 **SJCC 18.50.070(E):** *All shoreline uses and activities must utilize effective erosion*
23 *control methods during construction and operation. Proposed methods must be*
24 *included in the project description submitted with any permit application.*

25 19. Erosion control measures are included in the construction drawings, Ex. 3,
for the proposal.

SJCC 18.50.070(F): *All shoreline uses and activities must be located, designed,*
constructed, and managed to avoid disturbance or and minimize adverse impacts to
fish and wildlife resources, including spawning, nesting, rearing and habitat areas,
and migratory routes.

20. The SEPA checklist identifies several species of endangered fish and
wildlife in the vicinity of the proposal. A biological assessment was prepared for the
project but was not submitted into the record. The checklist references proposed
stormwater best management practices to protect wildlife. It appears that these best
management practices are listed in the construction drawings for the proposal

1 included in Ex. 3. The proposal will be condition to require compliance with any
2 mitigation measures recommended in the biological assessment.

3 **SJCC 18.50.070(G):** *All shoreline uses and activities must be located, designed,*
4 *constructed, and managed to minimize interference with natural shoreline processes*
5 *such as water circulation, sand and gravel movement, erosion, and accretion.*

6 21. The construction drawings propose several erosion control measures that should
7 prevent any impacts related to erosion, sand and gravel movement and accretion.
8 Given that all work will be conducted landward of the ordinary high water mark, no
9 other impacts to shoreline processes is reasonably anticipated.

10 **SJCC 18.50.070(H):** *Land clearing, grading, filling, and alteration of natural*
11 *drainage features and land forms must be designed to prevent maintenance problems*
12 *or adverse impacts to adjacent properties or shoreline features.*

13 22. Nothing in the record reasonably suggests that the proposal in conjunction with
14 County stormwater and other development standards could result in any maintenance
15 problems or adverse impacts to adjacent properties or shoreline features.

16 **SJCC 18.50.070(G):** *All shoreline developments must be located, constructed, and*
17 *operated so as not to be a hazard to public health and safety.*

18 23. Nothing in the record reasonably suggests that the proposal would constitute a
19 hazard to public health and safety. As determined in Finding of Fact No. 5, the
20 proposal will in fact improve public safety.

21 **SJCC 18.50.070(H):** *All shoreline uses and activities must be located and designed*
22 *to minimize or prevent the need for shoreline defense and stabilization measures and*
23 *flood protection works, such as bulkheads, other bank stabilization, landfills, levees,*
24 *dikes, groins, jetties, or substantial site regrades.*

25 24. The proposal will not create any need for shoreline stabilization or shoreline
defense. The proposal involves the displacement of impervious surface away from the
shoreline, which should reduce the need for any shoreline stabilization or defense.

SJCC 18.50.070(I): *Herbicides and pesticides may not be applied to or allowed to*
directly enter water bodies or wetlands unless approved for such use by the
appropriate agencies.

25. As conditioned.

SJCC 18.50.080: *When located in an environmentally sensitive area overlay district*
or its buffer, shoreline uses and activities must be located, designed, constructed, and
managed in accordance with the applicable requirements of SJCC 18.30.110 through
18.30.160, environmentally sensitive areas.

1 26. The projects encroachment into a Category III wetland triggers compliance
2 requirements with SJCC 18.30.110 through 18.30.160. The proposed wetland
3 mitigation in Ex. 4 satisfies these requirements. SJCC 18.30.150(H)(2) authorizes
4 compensatory mitigation for wetland encroachments, with a priority for in-kind and
5 on-site compensation. SJCC 18.30.150(H)(2) requires 3:1 compensation for forested
6 wetlands and 1:5 compensation for emergent wetlands. The ratios must be doubled if
7 enhancement is used instead of replacement. The wetlands affected by the proposal
8 are composed of 1,218 square feet of forested wetlands and 5,531 square feet of
9 emergent wetlands. The total enhancement/replacement ratio is 5:1 and is on-site and
10 in-kind, which exceeds the required ratios of SJCC 18.30.150(H)(2). The proposed
11 mitigation complies with SJCC 18.30.110 through 18.30.160.

8 **DECISION**

9 The proposed park improvements are approved as proposed in the application
10 materials and construction drawings subject to the following conditions:

11 1. All debris entering the water or shoreline area shall be removed
12 immediately and disposed of in a legal manner. The Applicant shall use best
13 management practices to prevent erosion as determined necessary by planning
14 staff.

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

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

20 5. The proposal shall be subject to the recommendations and monitoring
21 requirements of the archaeological report prepared by Cultural Resources
22 Consulting for the project.

23 6. The proposal shall be subject to the recommendations of the biological
24 assessment prepared for the project.

25 7. If during excavation or development of the site an area of potential
archaeological significance is uncovered, all activity in the immediate vicinity of
the find must be halted immediately, and the community development and planning
department (CDPD) must be notified at once. Activities authorized by the permit
will not be delayed more than five working days for a finding of significance by the
CDPD, following the CDPD's receipt of notification, unless the permit holder
agrees to an extension of that time period.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

8. Herbicides and pesticides may not be applied to or allowed to directly enter water bodies or wetlands unless approved for such use by the appropriate agencies.

Dated this 2nd day of January, 2013.



Phil Olbrechts
County of San Juan Hearing Examiner

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Right of Appeal

An appeal of this decision may be filed with the Washington State Shoreline Hearings Board as governed by RCW 90.58.180, which provides, **in part**, as follows:

(1) Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may, except as otherwise provided in chapter 43.21L RCW, seek review from the shorelines hearings board by filing a petition for review within twenty-one days of the date of filing as defined in RCW 90.58.140(6)...

Reference should be made to RCW 90.58.180 in its entirety as well as the practice rules of the Shoreline Hearings Board for all the requirements that apply to filing a valid appeal. Failure to comply with all applicable requirements can result in invalidation (dismissal) of an appeal.

Change in Valuation

Notice is given pursuant to RCW 36.70B.130 that property owners who are affected by this decision may request a change in valuation for property tax purposes notwithstanding any program of revaluation.