

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND FINAL DECISION**

Applicant(s):	Diller Associates P.O. Box 459 Lopez, WA 98261	S.J.C. COMMUNITY DEC 09 2013
Agent:	Francine Shaw P.O. Box 2112 Friday Harbor, WA 98250	DEVELOPMENT & PLANNING <i>Corrected Decision</i>
File No.:	PSJ000-12-0003; PAPL00-12-0002	S.J.C. COMMUNITY
Parcel Nos:	252241002, 003, 004, 008 and 010	DEC 10 2013
Location:	130 Normandy Lane Lopez Island	DEVELOPMENT & PLANNING
Summary of Proposal:	Application for shoreline substantial development permit and conditional use permit for proposed expansion of Lopez Islander Resort; SEPA Appeal	
Land Use Designation:	Marine Center LAMIRD, Village Commercial	
Public Hearing:	October 21, 2013	
Application Policies and Regulations:	Shoreline Master Program, Conditional Use Permit, State Environmental Policy Act.	
Decision:	Approved with Conditions.	



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

3 Phil Olbrechts, Hearing Examiner

4 RE: Islander Resort Expansion 5 Conditional Use Permit, 6 Shoreline Substantial 7 Development Permit and 8 SEPA Appeal (PSJ000-12-0003 and 9 PAPL00-12-0002)	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</b>
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10 **INTRODUCTION**

11 The applicant has submitted applications for a shoreline substantial development  
12 permit and a conditional use permit to expand the currently existing Lopez Islander  
13 Resort, located at 130 Normandy Lane on Lopez Island. An appeal has been filed by  
14 project opponents to a Determination of Nonsignificance (“DNS”) issued for the  
15 proposal on April 9, 2013. The shoreline permit is for the placement of a kayak/bike  
16 rental store to be placed along the shoreline of Lopez Island. The conditional use  
17 permit is for the expansion of the resort complex as a whole, which includes the  
18 addition of kayak/bike rental shop, the addition of 15 tent camp sites, after-the-fact  
approval for ten transient RV camp sites, demolition of five existing cabins and their  
replacement with nine 800 square foot new cabins, the addition of a 2048 square foot  
maintenance and repair shop and the addition of two new restroom buildings. The  
shoreline and conditional use permits are approved. The appeal of the DNS is denied  
and the issuance of the MDNS is sustained as is.

19 This is an application where neighborhood organization and concern has made a  
20 significant difference in project design and conditions. The applicant is to be  
21 commended in their efforts to accommodate the concerns of neighboring property  
22 owners, most significantly in their voluntary agreement to reduce the number of  
23 cabins and camp sites originally proposed as well as adding water and sewage  
disposal service for the RV sites. It is also recognized that the applicants had already  
made design revisions prior to the hearing in response to neighborhood concerns as  
outlined at page 1 of the applicant’s December 19, 2012 project narrative, Ex. 4.

24 Most project opponents strongly advocated that the proposal should be denied.  
25 Denial would not be legally tenable given that the proposal is zoned for the types of  
use proposed and there were no impacts that could not be mitigated to acceptable  
levels. Many opponents believed that the proposal should be denied because the

1 applicant has allegedly established that it cannot be trusted to comply with permitting  
2 conditions or County regulations. Although there is no Court of Appeals decision  
3 that addresses the issue, it has been the examiner's experience that superior courts do  
4 not allow permit decisions to be based upon the trustworthiness of permit applicants.  
5 This judicial position is understandable, given that for several reasons a land use  
6 hearing is not an appropriate forum to evaluate the character of a permit applicant.  
7 The project opponent focus on code compliance issues is more appropriately directed  
8 at the effectiveness of County code compliance regulations and resources as well as  
9 enforcement mechanisms built into permitting conditions. The conditions of this  
10 decision have been designed to assure compliance to the extent possible. Most  
11 notably, no occupancy or construction of camp sites or cabins is authorized until the  
12 applicant demonstrates to the satisfaction of staff that all required infrastructure is  
13 completed as proposed and conditioned. The decision is also subject to revocation  
14 should the applicant fail to comply with required conditions of approval.

9 In addition to the character of the applicants, another major issue beyond the scope of  
10 this review that was raised by project opponents was the economic feasibility of the  
11 proposal. The review of the permitting decisions covered by this decision is legally  
12 required to be limited to permitting and appeal criteria. Those criteria are focused  
13 upon ensuring that the proposal does not adversely affect other property owners and  
14 residents as well as environmental resources. None of those review criteria authorize  
15 a hearing examiner or any other government decision maker to base a permitting  
16 decision on the economic viability of a proposal.

14 Two more appropriate issues of concern from project opponents were smoke and  
15 duration of cabin tenancy. The applicant has volunteered significant project  
16 modifications to address concerns over smoke. The applicant originally proposed 37  
17 camp fire sites concentrated in the northeast corner of the project site. The applicant  
18 has reduced that number to seven camp fire sites spread over the 15 acre islander  
19 resort site. Although there is no precise scientific analysis of what impacts would be  
20 associated with these seven camp sites, the amount of smoke generated by these camp  
21 sites would clearly be less than that would be generated in the fireplaces of 60 homes  
(roughly what would be allowed for a residential subdivision at the site) on the same  
22 15 acre site. It is unlikely that any smoke analysis or mitigation has ever been  
23 required for a subdivision of that size in any Washington State municipality and there  
24 is nothing in the record to justify such actions here.

22 As to duration of cabin tenancy, this concern is mitigated to a large extent by the  
23 applicant's reduction of the total number of cabins for the project. There is no  
24 regulatory basis for limiting cabin tenancy and the conditions of this decision place  
25 no such limitation. Single-family homes are allowed on the subject property outright  
under its current zoning designation. If the cabins were occupied year round as  
single-family homes, they would easily fall below the four dwelling unit/acre  
maximum density that applies to the project site. Opponent concerns over the  
stewardship of long term tenants were either based upon stereotypes of the economic

1 class of the tenants or the character of the property owner. Neither factor serves as a  
2 defensible basis for project mitigation.

### 3 TESTIMONY

4 Note: *This hearing summary is provided as a courtesy to those who would benefit*  
5 *from a general overview of the public testimony of the hearing referenced above. The*  
6 *summary is not required or necessary to the decision issued by the Hearing Examiner.*  
7 *No assurances are made as to completeness or accuracy. Nothing in this summary*  
8 *should be construed as a finding or legal conclusion made by the Examiner or an*  
9 *indication of what the Examiner found significant to his decision.*

#### 10 Public Testimony (3 minute option)

11 James Falconer stated that he is a resident of Lopez Island. He utilizes the bay for  
12 boating, kayaking, and fishing. He uses Fisherman Bay Road to travel around the  
13 island. He believes the subject application requires a comprehensive review before  
14 any permits are issued by the county. The permit should be denied for three reasons.  
15 First, the application does not meet the code's mandatory criteria. Second, it  
16 proposes continued recreational vehicle use which is prohibited in the county code.  
17 Finally, the county should not have accepted the application in light of the  
18 outstanding code violations on the property. Mr. Falconer has consulted Richard  
19 Grout, a former San Juan County Planning Director, and Peter Eglick, a land-use  
20 lawyer, in regard to the application and submitted their comments on the permit.

#### 21 SEPA APPEAL

##### 22 Appellant Testimony

##### 23 Mr. Behan

24 On April 9, 2013, the Community Development and Planning Department (CD&P)  
25 issued a determination of mitigated non-significance regarding the Islander Lopez  
Resort expansion. The county reviewed application materials submitted by the  
applicant and determined the expansion would have no environmental impacts. The  
application did not provide proper, quantifiable information about potential impacts.  
The application did not give information such as how much stormwater runoff would  
be created, how much solid waste would be generated, whether noise levels would  
increase, how much would air pollution increase, or how much sewage would need  
to be treated. Answers to these questions are needed before any accurate SEPA  
determination should be issued. The appellants have three major areas of concern.  
First, they believe the density of development is far too great. 27 tent sites, 15  
cabins, 10RV sites, and all the other amenities are too much for the small 5-acre  
resort. Second, Normandy Lane is too narrow for the safe passage of RVs traveling  
in opposite directions or a fire engine. Finally, the interior roads of the project are  
inadequate for emergency vehicle access.

1 On June 10, 2013, the Community Development and Planning Department addressed  
2 the appellant concerns by citing the mitigation conditions listed in the SEPA review.  
3 The first mitigation addressed the concern over Normandy Lane's narrowness. The  
4 mitigation requires that the road be paved. The appellants argue that the CD&P has  
5 inaccurate information about the width of Normandy Lane. Normandy Lane is not  
6 24.5' wide. He submitted a photograph of the road with an RV on the gravel portion  
7 of it. On average, Normandy Lane is 16' wide which is not enough room for two  
8 RVs to pass each other. The San Juan County Fire Marshall, Steve Marler, asserted  
9 that Normandy Lane is 24.5' wide, but, according to the applicants, his information  
10 is inaccurate. The CD&P also offered a mitigation condition regarding emergency  
11 vehicle "No Parking" signs. The appellants contend that these signs will not ensure  
12 interior travel lanes are free from obstruction. He submitted a photograph of a  
13 vehicle parked on a path in the forest labeled "existing access" on the site plan. An  
14 emergency vehicle would be unable to travel through the access the vehicle depicted.  
The CD&P recommended denial of the SEPA appeal, claiming two of the concerns  
would be mitigated; however, the appellants argue these mitigations are based on  
incorrect information and would be ineffective. Additionally, the CD&P ignored the  
issue of development density. This permit needs to have an environmental impact  
statement completed in order to ensure there will be no significant impacts.  
Currently, the application suffers from a lack of information. WAC 197-11-335  
requires a county to make SEPA determinations based on information sufficient to  
evaluate the environmental impacts. The CD&P currently has insufficient, and  
mostly absent, information.

15 In regard to the width of Normandy Lane, Mr. Behan believes there is sufficient  
16 space to expand the road to 24.5' and pave the road at that width.

#### 17 Applicant Testimony

#### 18 Stephanie O'Day

19 Stephanie O'Day, representing the Diller family, testified that the original  
20 application was submitted in May, 2012. There was an initial SEPA appeal, and, in  
21 August, 2012, the Dillers held a public meeting to hear concerns over the project.  
22 The Dillers addressed these concerns by creating a new site plan. Subsequently, the  
23 application was updated and resubmitted, and the county issued a MDNS at the  
24 beginning of 2013. When the new application was submitted, it included a  
stormwater plan, a water analysis, and a sewer capacity analysis. The MDNS on  
April 9, 2013 did not have any conditions, but it did say the mitigation measures  
were adequately addressed.

25 In regard to traffic analysis, a traffic analysis was completed and is included as part  
of the staff report. Additionally, Public Works approved the traffic analysis that was  
submitted. This letter of approval is included in the staff report.

1 In regard to the traffic flow on site, Normandy Lane and Mariner Lane are both  
2 completely on the Diller property. The new traffic plan has one-way traffic  
3 throughout the resort. The roads through the camping sites are one-way roads. The  
4 RV section of Normandy Lane is two-way. Portions of Normandy Lane are paved  
5 (approximately halfway up the road) and the Dillers plan to pave the rest of the road.  
6 The pavement will be 24.5' wide. Mariner Drive is not paved, but, as part of the new  
7 site plan, it will be paved to a 20' width. In addition, stop signs will be placed  
8 throughout the resort. Some of the interior roads will remain unpaved, but the  
9 county has not asked for any dust analysis.

10 In regard to off-site parking, the Islander Resort owns a parking lot near the ferry  
11 terminal in Anacortes and allows people to park there so they do not have to bring  
12 their vehicles on the ferry. The resort offers a shuttle to the parking lot. It would be  
13 inappropriate to require tourists to leave their cars at the parking lot. The  
14 Washington State Ferry noted that the expansion of the resort will not negatively  
15 affect the ferry system.

16 In regard to water usage, the Islander Resort has existed since 1945 and obtained a  
17 series of water rights. There are three different water rights. Water rights are  
18 permanent rights to use a certain amount of the aquifer in an area. The Islander has  
19 kept up their water rights usage to maintain their current levels. The appellants must  
20 show the county made an erroneous determination, and, in this case, they have failed  
21 to do so. Ms. O'Day submitted the September 25, 2013 sewer analysis that Mr.  
22 Daniel Drahn prepared for the Fisherman Bay Sewer District. This public sewer  
23 district serves the Islander Resort property. In the record, there is an email that states  
24 the district has the capacity to serve the expansion.

#### 25 Daniel Drahn

Daniel Drahn, civil engineer, stated that he has lived on Lopez Island since 1993. He began work on the Islander project in 2008. Currently, there is a 43,000 gallon concrete reservoir and single-well serving the resort. The new water plan completely separates the water and sewer connections, adds valves to the water system, and, overall, brings the water system up to current code. The proposed water system plan was approved in 2012. The Department of Health approved the Islander for 84 ERUs (an ERU is 178 gallons per day). Based on the current application, Mr. Drahn estimates the Islander will use 65 ERUs. This estimate includes the planned hotel. Originally, Mr. Drahn was concerned that the site was served by a single-well; however, the well was recently tested and found to be capable of handling 78 ERUs a day. The Department of Health will require regular meter readings and back-up power for pumps. The Department of Ecology (DOE) and Department of Health (DOH) have a cooperative agreement which states that the DOH will not approve a water plan that exceeds water rights. The ERU averages are based on 8-month usage because the Islander is a seasonal resort. In Mr. Drahn's opinion, there should be no problem obtaining water in the summer months.

1 In regard to the sewer, Mr. Drahn has met with the superintendent of the Fisherman  
2 Bay Sewer District to review the sewer plan. The sewer district is concerned with  
3 quantity and quality. He noted that the sewer district uses a different quantity for  
4 their ERU estimation (150 gallons) than the water analysis. The Islander has an  
5 allotment of 50 ERUs with the sewer district at this time. Last year, the Islander  
6 used 39 ERUs. The projected use at full build-out is estimated between 48 and 58  
7 ERUs. These numbers are created by comparing water and sewer use. The range  
8 means that the Islander possibly may exceed its current allowed use, thus the  
9 Islander is proposing to reevaluate these use numbers once the largest building is  
10 constructed and used during a peak month. It is possible for the Islander to ask for  
11 additional ERUs from the Fisherman Bay Sewer District if the numbers exceed the  
12 allowed 50 ERUs. In regard to quality, the planned sewer renovations will meet the  
13 Fisherman Bay Sewer District design qualifications. Each sewer branch will be  
14 designed to meet its estimated volume of use.

9 In regard to stormwater, the development will increase runoff; however, it is difficult  
10 to calculate stormwater quantity because it must include flows upstream of the  
11 Islander. The quantity evaluation must include the culverts that already exist along  
12 Fisherman Bay Road. To address increased stormwater quantity, the new plan  
13 includes a long-term infiltration trench drain. This drain diverts the runoff to a ditch-  
14 line that runs to a culvert. The plan shifts more flow to a culvert with more capacity  
15 than the current one. In regard to quality of the stormwater, the project is large and  
16 includes a fair amount of impervious surfaces such as parking lots. To deal with the  
17 build-out, the plan is to use the best management practices (BMPs) established in the  
18 Washington State Stormwater Manual. The Islander will use three different types of  
19 BMPs, including a filter strip, bio-filtration, and soil infiltration ditches. In regard to  
20 the flooding of the current culvert across Normandy Road, Mr. Drahn noted that  
21 there are actually two culverts. The culvert that floods is the one along the  
22 driveways on Normandy Road, and it floods because driveway culverts are very  
23 small and constrained. It is the county's decision which culverts need to be  
24 improved.

19 Mr. Drahn noted that the water system plan has been approved by the state. The  
20 sewer separations have not been reviewed by Fisherman Bay Sewer District, yet. In  
21 regard to RV waste, RVs are self-contained units. The Islander will not have a place  
22 for RV waste to be dumped. Stephanie O'Day added there will be bathroom  
23 facilities with restrooms and showers in two locations on the site.

22 Under cross-examination by Mr. Behan, Mr. Drahn stated that the pump and well  
23 servicing the Islander are high-functioning. The resort expansion will not negatively  
24 affect the use of the well.

25 Under cross examination by Beverly Zapalac, Mr. Drahn testified that the water  
calculations include provisions for fire. 10,000 gallons of the 23,000 gallon tank are  
reserved at all times.

1 Stephanie O'Day

2 Ms. O'Day reiterated that there is a 43,000 gallon tank for fire services, and,  
3 additionally, the Fire Marshall approved the use of the swimming pool for combating  
4 fires. The local fire chief and Fire Marshall helped set the standards for the interior  
5 roads on the site and approved the site plan. The applicant is not against placing "No  
6 Parking" signs on Mariner Drive. In regard to smoke, the cabins will have EPA  
7 approved fire places. The outside campgrounds will have fire rings. The Rules of  
8 Conduct for the Islander require that any logs placed in camp fires must be  
9 purchased from the resort to meet EPA requirements. In regard to noise, Ms. O'Day  
10 is unaware of generator sound levels, but the Islander does enforce quiet hours from  
11 10pm-8am. The resort is willing to prohibit large generators, and most RVs use  
12 batteries.

13 Under questioning by Ann Behan, Ms. O'Day noted that the Dillers plan on  
14 designating an on-site manager to enforce noise rules. There will be a hotline to  
15 contact a resort representative with concerns. The resort does not have a history of  
16 noise violations.

17 Francine Shaw

18 Ms. Shaw, representing applicant, noted that the Rules of Conduct state that, if a  
19 camper violates any of the rules, the camper will be asked to leave the resort. There  
20 will be a 24/7 camp manager during the busy season.

21 Appellant Rebuttal

22 Mr. Behan

23 In the county's SEPA determination, staff failed to address the impacts of the project  
24 on the site and surrounding areas. The county must assess the impacts of this  
25 development before allowing the project to move forward

SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT HEARING

26 Julie Thompson

27 Ms. Thompson, Community Development and Planning, stated the project is to  
28 expand the Islander Lopez Resort on Lopez Island. The expansion includes new  
29 campsites, new cabins, new RV sites, and a kayak building. The staff report refers to  
30 the RV sites as an after-the-fact permit, but the applicant has not been using the sites  
31 since the application process began. There are no other outstanding code violations  
32 associated with the resort. The CD&P Department does not review water and sewer  
33 line systems; instead, the State Department of Health is responsible for that review  
34 process. Each district that provides the systems also review development plans. In  
35 regard to trash on the property, the applicant has enclosed and increased the number  
of trash receptacles. There are no individual trashcans on the site, only enclosed  
dumpsters. A fenced enclosure will cover the dumpsters. In regard to the road  
paving requirement, the right-of-way for Normandy Land is 24.5'. If there are utility

1 lines preventing the pavement of 24.5', the applicant will need to accommodate these  
2 lines. Mariner Road will be one-way for resort traffic and two-way for people who  
3 live in the area. Signage will direct campers as to which roads to use for the resort.  
In regard to preventing resort traffic from entering the surrounding neighborhoods,  
the roads are public and the county does not maintain them.

#### 4 Applicant Testimony

##### 5 Stephanie O'Day

6 Ms. O'Day testified that the property is 15.75 acres. The Lopez Islander Resort is  
7 located between Normandy Lane and Mariner Road. The resort has five tax parcels  
8 associated with it. The shoreline environment is urban which is unusual for the  
9 Island. Resorts and camps are allowed in this land-use designation upon approval of  
10 a conditional use permit. There is an archaeological buffer zone and FEMA report  
11 associated with the land. The archaeological buffer zone report contains several  
12 conditions with it including that an archaeologist must be present when any ground is  
13 disturbed in particular areas. The staff report includes a resort history because it is an  
14 interesting land development. The resort was first built in 1945. Eventually, a  
15 restaurant was built on the property, but it burnt down soon after. The resort was  
16 named the Ebb Tide Resort and run by Dick Navarre during the early 70s. In 1974,  
17 the Burkes purchased the property and turned it into a 12-month resort, rather than a  
18 12-week resort. The resort was expanded sometime after 1980. The marina was  
19 expanded in 1992 with 40 more boat slips and more hotel rooms. In 1997, the Dillers  
purchased the resort after it went into bankruptcy. Because of all of the owners, the  
resort is very eclectic in its build-up. The Dillers have cleaned up the resort and now  
wish to expand it in a cohesive way. Presently, the resort has a 60-slip marina,  
restaurant and bar, pool, poolhouse, a hotel building, 5 cabins, and 12 campsites.  
The seven-room motel has been approved by the CD&P Department. The building  
permit has already been issued, but the motel has not been built. Fisherman's Bay  
Sewer District must approve the sewer capacity before the motel can be built. The  
San Juan Islands have been growing in popularity as tourist destinations. Resorts are  
becoming more popular on the Islands. The Islander Resort needs updating to ensure  
it can properly serve the expanding tourist population.

##### 20 Francine Shaw

21 Ms. Shaw, planner for the applicant, stated that the Dillers have been working on this  
22 project for over two years. They have taken into account neighbor concerns and  
23 needs of the greater community when planning the resort expansion. For instance,  
24 the expansion calls for the addition of fifteen tent sites. Several of these campsites  
25 will be ADA accessible through a paved pathway. Each campsite will be 800sqft in  
area and will be limited to 4 people per site. At the north of the property, there will  
be a bathroom facility and dumpster. The site includes 10 RV parking spots.

1 will be accessed from Normandy Lane. The RV sites will provide water but not  
2 electricity. The five existing cabins will be demolished, and fifteen new cabins will  
3 be built. The cabins will be approximately 768sqft. The cabins will have one  
4 bedroom, a kitchen, a living room, and a dining area. The cabins will be accessed  
5 from existing parking via foot pathways. There will be a 2,048 sqft maintenance  
6 shop. The two new bathroom facilities will not include showers because shower  
7 stalls are available at the existing pool house. A kayak shop will be built across  
8 Fisherman Bay's Road to avoid having to carry kayaks across the busy road.

6 According to Ms. Shaw, in regard to smoke, the applicant is willing to use propane  
7 stoves in the cabins to limit the amount of smoke released from the site. The RV  
8 sites will include 30" fire pit rings. Because of the residential development to the  
9 east, the applicant is proposing to build a fence along the access lane RVs would use  
10 to exit the resort. The fence will be a noise-barrier and landscaping will provide a  
11 visual barrier. The campsites will be in the south-central area of the property.  
12 Originally, the applicant proposed using port-a-potties, but these are not allowed in  
13 the Fisherman Bay Sewer District. Instead, the planned site includes two bathroom  
14 facilities that will be 296ft in area. There will be several areas with enclosed trash  
15 receptacles. Currently, the resort has a class A water system via a well with several  
16 water rights. The new plan would require 65 ERUs a day and the existing water  
17 system can support up to 78 ERUs a day. The site includes a 43,000 gallon water  
18 storage tank near the center of the property. The system will require improvements.  
19 There is no threat of any salt-water entering the well based on testing. In regard to  
20 sewer, currently, the system uses 43 ERUs. Future build-out will result in using 48-  
21 58 ERUs which may require an additional 8 ERUs to be permitted through the  
22 Fisherman Bay Sewer District. In regard to drainage, there was a drainage plan  
23 approved in 2009. The plan was updated in 2012 to be specific to full expansion  
24 build-out. Public Works approved this stormwater plan in December, 2012. The  
25 culvert off of Normandy Lane is near capacity, and, in order to ease the burden on  
this culvert, the drainage plan redirects stormwater to a different culvert. There will  
be a net reduction in drainage to the culvert on Normandy Lane as a result of the  
build out. In regard to fire prevention, Ms. Shaw met with Steve Marler, the Fire  
Marshall, to discuss the project. He required that both Normandy and Mariner Lane  
be 24.5' in width. Additionally, all one-way roads within the resort must be 12' wide  
and must have a clearance of 13'6". "No Parking" signs will be placed on all the  
interior roads to ensure emergency vehicle access. The roads will be designed to  
handle two-axel vehicles. In regard to traffic, a traffic analysis was completed by  
Geraldyn Reinart. The analysis found that, after full build-out, at peak use, there will  
be 360 new daily trips. The greatest impact will be on Fisherman Bay Road which  
will continue to operate at level C, despite the additional trips. San Juan County  
allows roads to operate at levels from A to C. The applicant will add stop signs in  
certain areas. Washington State Ferry is not concerned with impacts on its service  
levels. Lopez Islander Resort has a parking lot at the ferry terminal so campers do  
not have to bring their vehicles on the ferry. In regard to smoke, EPA approved  
fireplaces will be used in the cabins. It is not the smoke that causes pollution, but  
what is being burnt; therefore, the Rules of Conduct will require campers to purchase

1 all firewood on the resort. In regard to views, there will be construction on site, but  
2 the development will not disrupt views of Fisherman's Bay. The landscaping along  
3 the RV area will provide a buffer for the residential development to the east of the  
4 site. In regard to the kayak building being moved to the westside of Fisherman Bay  
5 Road, the building will be in view, but it is a very small structure. Finally, the tent  
6 campsites and half of the RV sites will be set against trees to screen them. The  
7 Dillers do not wish to remove any trees when placing the campsites.

8 In regard to the campground rules, all speed limits will be 5mph. This will help  
9 lower dust levels and promote safety. Quiet hours will be 10pm to 8am even though  
10 WAC only requires 10pm to 7am. Television radios and other noise-making  
11 equipment will not be permitted. No firearms will be allowed. Fires must be  
12 maintained properly. Children will not be allowed to wander the property. There  
13 will be a maximum stay of 14 days at the resort. There will be occupancy limits for  
14 each of the campsite forms. Pets will be under the responsibility of their owners and  
15 will be required to be on leashes. Campers will be responsible for their own trash.  
16 Campers will be required to purchase all materials for burning from the resort.  
17 Finally, if the sheriff is called on any camper, the camper will be required to leave  
18 the resort. Campers who violate the regulations will be required to leave as well.  
19 The Dillers plan on hiring a resort manager, but, occasionally, the on-call person for  
20 the resort hotline will just be a resort employee. Campers will be required to sign the  
21 rules when using the resort.

#### 22 Daniel Drahn

23 Under questioning by the hearing examiner, Mr. Drahn stated that the drainage plan  
24 is based on 100-year storm capacities. The net result of the culvert across Normandy  
25 Lane will not necessarily be lower than it is today.

#### 26 Stephanie O'Day

27 Under questioning by the hearing examiner, Ms. O'Day noted that all analysis done  
28 by Ms. Shaw was done for full build-out including the twenty room hotel. The  
29 shoreline substantial permit was required because of the kayak building. Everything  
30 else in the expansion is outside the shoreline area.

31 ----

32 Under questioning by Karen Smith, Julie Thompson confirmed that the Islander had  
33 stopped using the RV sites on the property.

34 Under questioning by Karen Smith, Tom Diller noted that he has not decided  
35 whether he will create a new employment position for a camp manager or give the  
36 responsibilities to existing staff. At this time, the Dillers do not plan to hire  
37 additional staff, but they may reevaluate this decision. In regard to landscaping on  
38 the northside of the property, they will be adding extensive screening on the  
39 northside of the property. One of the new bathroom facilities will be 60-70' from  
40 Normandy Lane.

1 Under questioning by the hearing examiner, Julie Thompson stated the county has  
landscaping buffer requirements for commercial sites abutting residential sites, but  
2 the requirement does not apply to this project. This requirement is listed in 18.60.

3 Under questioning by Karen Smith, Francine Shaw stated that she is unaware if the  
Fire Marshall visited the site before issuing approval. In regard to maximum stays,  
4 RVs and tents will be allowed to stay a maximum of 14 days. There is no maximum  
stay for the cabins, currently.

5 Tom Diller, property owner, noted that he is not against a condition limiting the  
6 maximum rental period of the cabins; however, he often does rent the cabins for  
longer periods during the winter months.

7 Jim Ghiglione, Lopez Island Fire Chief, testified that the San Juan Fire Marshall,  
8 Steve Marler, did visit the resort in early October.

9 In regard to the swimming pool, Mr. Drahn stated that pools naturally loses water by  
10 itself due to splash and overflow from use. The water drained from the pool goes to  
the culvert off of Fisherman Bay Road.

11 In regard to cleaning products, Tom Diller stated that the products are disposed of  
12 via the regular trash system. The products used are normal, everyday household  
ones.

13 Mr. Drahn added that, in regard to the sewer, the Islander, during peak months, is not  
14 at full sewer capacity. When Mr. Drahn met with Chris Arnold from Fisherman Bay  
15 Sewer District, Mr. Arnold did not mention any sewer capacity limits. There are  
engineering ways to address sewer capacity concerns such as extra tanks, larger  
16 tanks, and various pumps.

#### 17 Public Comments

18 Chris Arnold, Superintendent of the Fisherman Bay Sewer District, stated the  
19 Islander has not been issued a certificate of sewer availability from the District,  
because it does not have adequate services for the expansion. In addition, the  
20 Islander is only approved for 42 ERUs, not 50 as claimed. The property will need to  
make sewer line improvements to handle any increase in sewage quantity because it  
21 is running at 100 percent capacity for collection already. There is a chance the  
Fisherman Bay District cannot handle adding any ERUs to the Islander's availability.  
22 No adequate engineering study has been submitted by the applicant in regard to this  
23 matter.

24 Stephanie O'Day noted that the Fisherman Bay Sewer District is a public facility  
25 which is regulated by the State of Washington. The District is required to serve  
individuals within its district. There is a rift between Fisherman Bay and the Dillers  
regarding payment of the ERUs. The Islander has 50 ERUs of availability as of 5  
years ago.

1 Suzanne Roumey testified that she lives across Normandy Lane from the Islander.  
2 During busy times, such as July 4<sup>th</sup>, she experiences an increase in odor from her  
3 sewer line. She is concerned over any potential, additional hookups to the current  
4 sewer system and feels that major improvements are necessary.

5 George Leboutillier, who lives at 2606 Fisherman Bay Road and has experience as a  
6 commercial builder, requested further clarification of some specific items. He  
7 requested more detailed information regarding the water and sewage at the  
8 campground, and expressed concern over explanations regarding water capacity,  
9 grey water, and sewage. He also requested specific answers regarding the following  
10 items: Whether the presence of RVs on ferries would impinge on ferry service for  
11 cars, whether or not cabins would be rented for longer than 14 days, and whether  
12 there was a clear reason for the location of the kayak shop. He reiterated that he felt  
13 that there were many details that had not been explained fully and clearly, and  
14 therefore led to questions as to whether or not the community would benefit from the  
15 campground.

16 Ms. McCallum requested clarification as to whether the campground would be  
17 adding new staff, and questions whether it would be feasible for the campground to  
18 do as it proposed without hiring more staff.

19 In response, Mr. Diller stated that their plan was to realign staff and then monitor the  
20 situation. Their goal is to not add staff, but if they have to, then they will. Staff that  
21 would be hired will come from the community.

22 Mr. Behan

23 (Mr. Behan illustrated his comments with images from Exhibits 1-10)

24 Mr. Behan lives in close proximity to the campsite and stated that the campground  
25 would only be an asset if it is a first rate facility. The proposal is an environmental  
disaster for both neighborhood and campground, and that based on the design, the  
campground will not bring a profit. The campground layout as it exists (Exhibit 1)  
shows no way to add campsites in a profitable way and the Islander should have  
fewer instead of more campsites. The campsites will be too close together to provide  
and enjoyable and safe camping experience. Mr. Behan used a 33 foot measurement  
in the courtroom to illustrate the proximity of campers. He noted that the density of  
campers will create a “social and financial disaster”. Other than design, management  
is an issue at the campground. Using photographs from 2006, 2010, 2012, and 2013  
(from Exhibits 1 – 10) to illustrate, he noted that trash and environmental issues  
demonstrate that the campground is poorly managed, does not follow code, and does  
not act as a good neighbor. In 2010 the campground had turned into a “de facto  
residential trailer park.” Neighbors have complained since 2004 and nothing was  
done. An unpermitted building was constructed and the owners ignored order to  
remove the building for months. The campground was ordered in 2010 to stop RV  
camping and to stop advertising itself as an RV campground, but they did not  
comply. He noted that all legal action against the campground was dismissed this

1 year, and believes that this will allow the poor behavior to continue; he requests that  
2 the permit be denied.

3 Mr. Behan also commented in the proposal for Normandy Lane, stating that the road  
4 was not the required width and that the plans as submitted do not meet code  
5 requirements. His written statement was entered as Exhibit 18.

6 Beverly Zapalac stated that her comments were based on SJCC 18.80.020, the  
7 project permit application that she located online. She noted the following concerns:  
8 First, there were no excavating materials listed for the shed and cabins; where will  
9 these materials go? Second, there were no easements shown; are there any? Third,  
10 the timeline for excavation needs to be more flexible to allow for weather  
11 contingency. Finally, who will be responsible for maintaining Normandy Lane and  
12 Mariner Road after project completion? She is waiting to receive a copy of a site  
13 plan.

14 Barbara Andrews testified that she lives behind the Islander and expressed concerns  
15 with both landscaping and buildings on the campground property blocking the views  
16 of Fisherman's Bay for neighbors and others enjoying the area. Two fir trees were  
17 planted five years ago on the campground property which have now grown to a  
18 height which disrupts the view. Is the applicant willing to remove or trim the trees to  
19 allow for a view of the bay? Can the existing bicycle shed be replaced and built to a  
20 height that would not further block views? Is the applicant willing to properly finish,  
21 screen and add a walkway along Normandy Lane?

22 Stephanie O'Day responded that they would consider plans for the trees and that they  
23 had already planned for some type of landscape screening along Normandy Road.  
24 The Dillers want those using the campground to be able to enjoy the views as well.  
25 Ms. Andrews written comments (letter dated October 18<sup>th</sup>) were entered as Exhibit  
19.

18 Dennis Ryan stated that he was concerned with the lack of consideration for design  
19 in the plan for the Islander. The site would become too dense to maintain the  
20 atmosphere that campers would be looking for and there would be too much paving.  
21 The need for eight-foot fencing illustrates the poor design and the ideas that the  
22 campground won't fit in to its surroundings. He is also concerned with changes in  
23 traffic circulation due to the plan having an external effect on traffic.

22 Tim Burtmass testified that he has worked with Washington State Ferry for a number  
23 of years beginning in 1970. He has lived on Lopez for 36 years and has witnessed  
24 the increase in ferry traffic over the years. The applicant's contention that ferries  
25 will not be impacted by the project is incorrect. Yes, the ferry terminals and boats  
will not change, but the people of Lopez will suffer from the increase in users.  
Typically, traffic with tourists will be concentrated on Friday afternoons and  
Sundays. RVs take up more than one space on a ferry, further increasing volume.  
Even on a Lopez-only boat, 4 RVs would take 20 percent of the boat's capacity.

1 Rich Stracham stated that the owners of the Islander cannot be trusted to maintain  
2 any conditions set upon the expansion. Once county attention is removed from the  
3 project, old habits will return. Complaints to the county will be taken on a case-by-  
4 case basis, and the county does not have the resources to act as overseer of the  
5 property. He has applied for a conditional use permit in the past and ensured that he  
6 understood the community's needs throughout the process. By listening to the  
7 community, Mr. Stracham received much more support than dissent in his own  
8 permit hearing years ago. The Dillers have not received one positive comment  
9 which demonstrates the lack of collegiality on the Dillers part. He submitted written  
10 materials as exhibit 20.

11 Sam Olson noted that the traffic analysis which calculated 360 trips-a-day probably  
12 does not account the total number of additional cars on the ferry. The ferry system  
13 will be affected by the expansion. From 6:20am to 4:30pm, there are only 4 boats  
14 that reach Lopez Island, and only one of those boats is Lopez Island-only. He asked  
15 if there would be a prohibition on dogs in the campground.

16 Tom Diller responded that there is no plan to prohibit dogs on the campground.  
17 Stephanie O'Day added that there will be receptacles for dog waste, and campers  
18 will be expected to clean up after their animals.

19 Stephanie Buffum, Executive Director of Friends of the San Juan, stated she camps  
20 frequently in many different forms. Friends is pro-camping resorts when they are  
21 done sensibly and with respect to the environment. This project has not been well-  
22 planned and requires more time to ensure all concerns are handled with thought and  
23 care. The expansions will double the capacity of the Islander. The county cannot  
24 issue a permit to a property that is subject to notice of a violation. Shoreline  
25 Substantial Development Permits must demonstrate that the site will be served by  
adequate water, sewer, stormwater control, and will not negatively impact adjoining  
properties from unreasonable smoke, dust, and traffic. The Islander has not  
demonstrated that the proposed expansion will be served by adequate drinking water.  
The applicant has not conducted a draw-down test. Typically, requirements have  
been placed for water draw-down tests. On Lopez Island, the freshwater lens is very  
shallow and it is most susceptible to sea-level rise. The applicant needs to conduct a  
draw-down test for the resort and adjoining wells. In regard to sewer, the applicant  
has failed to gain a certificate of availability. In regard to the holding capacity, in  
her experience, a 30' RV holds approximately three days of waste. If RVs are not  
dumping on site, they will dump somewhere such as state parks. The applicant has  
failed to demonstrate ferry traffic will not be impacted by the expansion. The kayak  
facility is actually a bike shop and is not a water-dependent facility. There are other  
opportunities for kayak launches such as the docks owned by the resort. The Lopez  
Islander expansion offers wonderful recreational opportunities, but it needs to be  
further researched and planned to ensure no negative environmental or community  
impacts. All conditions placed on the permit must be measurable, have time periods,  
and have possible remedies if not followed. Some possible provisions include a  
proper method for disposing of RV waste, review of the bathroom facility capacity, a

1 submission of engineered drawings to confirm the resort has sewer capacity,  
complete a water evaluation and draw down test, and require a ferry analysis.

2 Stephanie O'Day submitted an email from Chris Laws (exhibit 27), San Juan Code  
3 Enforcement Officer. The email states there are no outstanding violations, and the  
4 RV issue is to be decided by the hearing examiner. (The record was left open for the  
public to address the issue of code violations presented in the email).

5 Susan Muckle testified that she live on Lopez Island year round and lives .25 miles  
6 north of the resort. She enjoys boating, kayaking, and other recreational activities in  
7 Fisherman Bay. She worries that expansion of the Islander Resort will result in  
8 pollution and contamination of the Bay. She is particularly concerned with the water  
9 and sewer access. Additionally, an increase of 360 trips on Fisherman Bay Road  
will negatively affect her ability to travel around the island. Finally, she wants to  
ensure the county has the ability to enforce any condition placed on the resort via the  
permit.

10 Nicole Southwell stated that her family has lived on Lopez Island for four  
11 generations. As a child, she visited the Island and enjoyed its environment. Over the  
12 years, the Island has developed in ways that respect the environment, but this  
13 expansion does not. Her home is down the street from the resort, and she has  
14 experienced the noise and air pollution from the property. The fire pits and wood  
15 stoves will be a huge detriment to the air quality. It will take a large amount of effort  
16 on the Dillers' part to ensure campers only burn wood purchased from the resort.  
Additionally, her home uses well water, and she does not want her water polluted.  
The permit needs to require a draw-down test and monitoring of neighboring wells.  
There is a legally established history of non-compliance by the Islander. The  
application is incomplete and more review must be conducted before approval.

17 George Lawson noted that he has observed Fisherman Bay for over forty years and  
18 has witnessed the environment be damaged. The resort could be a great facility to  
19 honor the environment. He sees no reason to move the kayak building to the  
20 shoreline. He added that even clean pure wood creates pollution when burned. The  
lighting needs to be subdued. Additionally, he hopes earth-tones will be used for  
cabins.

21 Madrona Murphy, research botanist for KWIAHT, submitted the research  
22 cooperative's comment letter as exhibit 23.

23 Karen Smith stated that she has been a close-neighbor of the resort since 1999. She  
24 submitted county code enforcement documents regarding the bike and kayak facility  
25 (exhibit 24). The resort is not a good neighbor. The property has been covered in  
trash and junk for years. Ms. Smith noted that the county and the Dillers have  
claimed RVs have not being using the property since the code enforcement action  
began in 2010. In June, 2010, the county issued a notice of violation for the resort in  
regard to RVs being on the site. After there was no action, another violation was

1 issued. There have been RVs on the campground in 2012. Ms. Smith submitted a  
2 log of the RVs on the site in the summer of 2012. In 2013, there were RVs  
3 throughout the summer. The resort website suggests RVs are allowed on the site.  
4 When Ms. Smith called the resort, a person she spoke with in the main office  
5 informed her that they still accept RVs on the property. On June 30, 2013, Ms. Smith  
6 witnessed a RV stuck in the middle of Normandy Lane. It took over an hour for that  
7 RV to move from the road. All during the summer of 2013, the resort has been  
8 covered in trash and junk. There was large amounts of garbage along the cabin  
9 buildings as of October 9, 2013. The resort did not remove this trash until several  
10 weeks later. Ms. Smith submitted photographs of the trash from this incident  
11 (exhibit 25). Additionally, she submitted an email describing her experience with  
12 the resort this summer (exhibit 26).

#### 13 Staff Rebuttal

14 Julie Thompson stated that long-term rental becomes a residential use. The property  
15 may not have the density for this type of residential use. The maximum RV length is  
16 36', but it is unclear if that includes car towing. She would like clarification on these  
17 issues by the applicant.

18 Under questioning by the hearing examiner, Ms. Thompson stated there will be 37  
19 campfire sites. In determining these campfires would not create a significant amount  
20 of smoke, the county noted that the resort would be providing seasoned firewood for  
21 camper use. This type of firewood does not create as much smoke.

#### 22 Applicant Rebuttal

23 Tom Diller testified that his family works hard to help the Lopez Island community.  
24 His family wants to create jobs and be a good neighbor while providing a service to  
25 visitors to Lopez Island. He recognizes that there is a disagreement about the history  
of RV use on the property, but hopes this process will help the community move  
forward past this dispute. The RV sites will be held to the 14-day maximum stay  
rule. The cabins have the ability to house tourists for longer periods, but they will  
not become permanent residences. The new placement of the kayak building is a  
better overall design. His family has done the proper analysis regarding water and  
sewer to ensure the community's utilities are not negatively affected by the resort  
expansion.

Stephanie O'Day stated that the Diller family has created a comprehensive plan for  
the resort. The family has listened to all of the neighbor's concerns and made  
concessions to meet the community's needs. Some of these concessions include that  
the traffic pattern changing, fences being added, and the road will be paved to a  
width of 24.5'. In depth analysis and review has been done for every part of this  
project. The sewer system will have the necessary capacity once negotiations with  
Fisherman Bay Sewer District are finalized, and the general infrastructure will  
continue to be updated. This project is in an urban shoreline, village-commercial

1 area. This area is designed for intense development based on the code. This use is  
2 completely appropriate for this site.

### 3 EXHIBITS

4 During the hearing, Exhibits 1-11, as identified in the October 10, 2013 staff report,  
5 were admitted into the record. The following documents were also admitted into the  
6 record during the hearing:

7 Exhibit 12 Daniel Drahn Sewer Analysis dated September 25, 2013

8 Exhibit 13 Daniel Drahn CV and site plan map

9 Exhibit 14 James Male CV

10 Exhibit 15 Behan Powerpoint Presentation

11 Exhibit 16 Mr. Behan written testimony (SEPA Appeal)

12 Exhibit 17 Jimmy Lee Jones Letter dated 10/19/2013

13 Exhibit 18 Mr. Behan written statement (Public Comments)

14 Exhibit 19 Ms. Andrews written statement

15 Exhibit 20 Stracham Comments

16 Exhibit 21 USGS article, "*Is Seawater Intrusion Affecting Groundwater on Lopez  
17 Island*"

18 Exhibit 22 Email from Susan Muckle dated 10/21/13

19 Exhibit 23 KWIAHT comment letter dated 10/20/13

20 Exhibit 24 Code Enforcement documents from Smith

21 Exhibit 25 10 8x11 Pictures of Resort taken by Karen Smith

22 Exhibit 26 Email from Karen Smith 10/21/13 w/ attachments

23 Exhibit 27 Chris Laws email regarding code violations 10/21/13

24 Exhibit 28 SEPA staff report, SEPA appeal

25 Exhibit 29 Letter received 10/28/13 from Bley re tenancy

26 Exhibit 30 10/25/13 email from LeBoutillier regarding smoke and tenancy

27 Exhibit 31 10/24/13 letter from Vandervelde regarding smoke and tenancy

28 Exhibit 32 10/24/13 letter from McMahan regarding smoke and tenancy

29 Exhibit 33 10/23/13 letter from Stracham regarding smoke and tenancy

30 Exhibit 34 10/22/13 letter from Ryan on smoke and tenancy

31 Exhibit 35 10/22/13 email from Andrews regarding tenancy

32 Exhibit 36 10/28/13 applicant written closing and rebuttal

33 Exhibit 37 November 4, 2013 applicant response to smoke and cabin tenancy  
34 comments

35 Exhibit 38 10/30/13 email from Behan

36 Exhibit 39 10/31/13 email from Bley

37 Exhibit 40 10/23/13 letter from Doris Aitken

38 Exhibit 41 11/5/13 email from Peter Eglick

39 A 10/25/13 letter from Male, a 10/29/13 email from Smith and the portions of the  
40 10/22/13 email from Andrews that do not address tenancy are stricken since those  
41 written comments were not limited to smoke and tenancy as required.

## FINDINGS OF FACT

### Procedural:

1. Applicant. The applicant is Diller Associates.
2. Hearing. A hearing was held on October 21, 2013 at 10:00 am on Lopez Island. The hearing record was left open for a written rebuttal and closing from the applicant, due October 28, 2013. The applicant was given an unspecified period of time to provide comment on smoke impacts. The record was also left open through October 28, 2013 for written comment on smoke impacts and tenancy periods for cabin rentals. A reply on these issues was submitted by the applicant on November 4, 2013. At the request of the applicant and public, a site visit was conducted on November 20, 2013. The record was left open through October 29, 2013 for the attorney of Mr. Faulkner to address the status of past code compliance issues of Islander Resort with an unspecified date of reply from the applicant<sup>1</sup>.

### Substantive:

3. Site and Proposal/Appeal Description. The applicant has submitted applications for a shoreline substantial development permit and a conditional use permit to expand the currently existing Lopez Islander Resort, located at 130 Normandy Lane on Lopez Island. An appeal has been filed by project opponents to a Determination of Nonsignificance (“DNS”) issued for the proposal on April 9, 2013. The shoreline permit is for the placement of a kayak/bike rental store to be placed along the Lopez Island shoreline. The conditional use permit is for the expansion of the resort complex as a whole.

This is an existing resort that predates all the regulations. The current configuration was permitted in 1993 by 92SJ051 and 92CU031. The resort is spread over 15.57 acres and is composed of a 65 slip marina<sup>2</sup>, a restaurant and lounge, 2 existing motels, a pool house, 12 camp sites, 5 individual rental cabins, a kayak/bike rental building, a kayak/boat launch, boat storage, a water tank, and associated driveways and parking lots. A building permit application for a third motel for 7 units was issued June 11, 2013. No land use approval is required for the motel.

The applicants are proposing an expansion of the Lopez Islander Resort as depicted in Ex. 36, 10/28/13 revised site plan attachment, subject to the revised rules of conduct attached to Ex. 36, with the following additions:

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<sup>1</sup> Since applicants have the burden of proof in permit applications, they must always be given the final word on any issue.

<sup>2</sup> The marina is presumably not part of the 15.57 acres assigned to the area of the project site in the staff report, but the record is unclear on this.

1. 15 additional tent camp sites, each with metal grill units, two of which are accessible to those with disabilities, and associated gravel parking areas and driveway.
2. After-the-fact approval for 10 transient RV camp sites with electricity, water service hook-ups, holding tank/dump station and associated gravel parking areas and driveways.
3. Demolition of five existing rental cabins and construction of 9 new vacation rental cabins, approximately 800 square feet each, and associated 4 foot wide gravel walkways. The fire places for the cabins will be propane fueled.
4. A 2048 square foot maintenance and repair shop.
5. Four new parking spurs.
6. Two new restroom buildings.
7. Removal of an existing kayak/bike rental building on the eastside of Fisherman Bay Road and construction of a new 512 square foot kayak/bike rental shop on the west side of Fisherman Bay Road on the the Lopez Island shoreline. Currently kayaks are stored on the west side of Fisherman Bay Road along the shoreline adjacent to a boat launch. Under current conditions patrons must cross Fisherman Bay Road to access the kayaks after paying the rental fee in the kayak/bike rental shop located on the east side of the road. The kayak/bike rental building will not be placed adjacent to any feeder bluff.

The SEPA appeal raises just two issues:

1. Economic Viability. The appellant asserts that the density of the proposed camp sites is not economically viable and that the community will be left with “*a derelict collection of decaying cabins and overgrown campsites and RV pads.*”
2. Adequacy of Access Roads. The appellant asserts that interior access roads, including Normandy Lane, do not have sufficient width to accommodate RV or emergency vehicle traffic.

The SEPA appeal also mentions noise, smoke and congestion, but these issues are addressed solely in the context of the economic viability issue, i.e. that the high density of the proposal and its associated impacts will make the resort undesirable to resort patrons. Consequently, the SEPA appeal is not construed as addressing noise, congestion and smoke impacts to neighboring property owners.

4. Characteristics of the Area. The neighborhood is a mix of uses. To the north is Islands Marine Center, a commercial use that sells, services and repairs boats; sells car and boat parts and a wide variety of other objects; and provides long-term and transient moorage at its marina. To the east are developed and undeveloped residential parcels. To the south is residential use and a rock quarry. To the west is Fisherman Bay.

1 5. Adverse Impacts of Proposed Use. As proposed and conditioned, there  
2 are no significant adverse impacts associated with the proposed expansion. Impacts  
3 of particular concern are addressed more specifically below:

4 A. Parking. Parking meets applicable County parking standards, which  
5 presumptively sets an adequate parking standard. Staff asserts that SJCC  
6 18.60.120 requires 130 parking spaces for the project and that 149 are proposed.  
7 This finding is uncontested.

8 B. Aesthetics/Views. The conditions of approval require staff to impose  
9 screening requirements for the perimeter of the project on the east and south as  
10 necessary to protect properties zoned or used for residential use. The applicant is  
11 already proposing screening along the northern border of the project site. The  
12 project site is already heavily wooded, so screening in some circumstances may  
13 not be necessary. There is nothing in the record to suggest that the modest height  
14 of the proposed buildings, mostly located downslope of adjoining homes, will have  
15 any adverse impact upon shoreline views of surrounding property owners. The  
16 proposed kayak/bicycle building is of modest size and its view impacts will be  
17 largely obscured by the surrounding structures, most notably a boat facility the  
18 height of which will dwarf the kayak/bike rental building and the Islander Resort  
19 restaurant, which is several times larger than the kayak/bike rental building.

20 Some concerns were raised about existing trees and view blockage. Mitigation  
21 required of a permit applicant can only be imposed to address adverse project  
22 impacts. *See, e.g., Burton v. Clark County*, 91 Wn. App. 505, 516-17 (1998). The  
23 view impacts of existing trees are not caused by the proposed expansion, so those  
24 impacts are beyond the scope of the subject permit applications.

25 A major issue for neighboring residents is garbage. Several photographs have been  
submitted into the record showing the accumulation of garbage outside containers.  
Neighbors are clearly justified in expressing outrage at the unsightly piles of solid  
waste allowed to accumulate by the applicant. The applicant has gone a long way  
in remedying this problem by providing for the enclosure of solid waste  
receptacles. Further, the conditions of approval will require that the applicant no  
longer allow solid waste to accumulate outside designated receptacles. Another  
condition will require that the rules of conduct be expanded to prohibit littering  
anywhere on resort grounds. Violation of these condition will result in revocation  
of the permits approved by this decision.

C. Noise. Night time noise could be an issue, given that the inhabitants of the  
46 camping/cabin/RV sites will often remain outside into night time hours during  
the summer months. The applicant has sufficiently addressed this issue by rules  
imposing quiet hours from 10pm-8am. The conditions of approval will  
specifically require that the rules issued by the applicant prohibit outdoor  
generators that exceed DOE noise level standards. The proposed rules of conduct

1 prohibit the use of televisions, radios and other equipment that generates noise that  
2 is audible beyond individual camp sites. A condition of approval will also require  
3 the applicant to maintain a 24 hour complaint line so that neighboring property  
4 owners have recourse should these rules not be followed.

5 D. Applicant Compliance Issues. Many opponents believed that the proposal  
6 should be denied because the applicant has allegedly established that it cannot be  
7 trusted to comply with permitting conditions or County regulations. Although  
8 there is no Court of Appeals decision that addresses the issue, it has been the  
9 examiner's experience that superior courts do not allow permit decisions to be  
10 based upon the trustworthiness (or lack thereof) of permit applicants. This judicial  
11 position is understandable, given that for several reasons a land use hearing is not  
12 an appropriate forum to evaluate the character of a permit applicant. The project  
13 opponent focus on code compliance issues is more appropriately directed at the  
14 effectiveness of County code compliance regulations and resources as well as  
15 enforcement mechanisms built into permitting conditions.

16 E. Vibration, dust, smoke, odor, electrical interference. Smoke was a major  
17 area of concern for this proposal, as the the applicant originally proposed 37  
18 campsites to be concentrated in a relatively small area of the project site. The  
19 applicant has reduced that number to seven camp sites spread over the 15 acre  
20 islander resort site. Although there is no precise scientific analysis of what  
21 impacts would be associated with these seven camp fire sites, the amount of smoke  
22 generated by these camp fire sites would clearly be less than that would be  
23 generated in the fireplaces of 60 homes (roughly what would be allowed for a  
24 residential subdivision at the site) on the same 15 acre site. It is unlikely that any  
25 smoke analysis or mitigation has ever been required for a subdivision of that size  
in any Washington State municipality and there is nothing in the record to justify  
such actions here. Grills will also be allowed at the camp sites, but of course the  
grills will typically only be used to prepare meals so their impacts are of much  
shorter duration than those typically associated with camp fires.

Dust is a potential problem with the unpaved interior roads, but those interior roads  
are for the most part separated by several hundred feet from any adjoining private  
residences. There is no reasonable basis to conclude that sufficient dust would be  
generated by traffic on those roads to adversely affect adjoining properties.

There is no element of the expansion that involves any activities that would create  
any significant electrical interference or vibration.

F. Seawater Intrusion. FOSJ submitted a study, Ex. 21, that asserts that the  
removal of groundwater on any location on Lopez Island will increase seawater  
intrusion. The study does not support any finding that the increase in

G.

1 groundwater extraction caused by the proposal would increase seawater intrusion.  
2 The applicant submitted evidence that their well has not been subject to any  
3 seawater intrusion. That is beside the point. The issue is whether an increase in  
4 freshwater extraction from the Lopez Island groundwater system will increase  
5 seawater intrusion overall. The theory of the study is that freshwater lies atop  
6 seawater in the aquifer and as freshwater is extracted its total weight decreases,  
7 thereby enabling an influx of seawater. Although this may be a sound theory, there  
8 is nothing in the record to suggest that the increases in groundwater extraction by  
9 future development on Lopez Island will be significant enough to trigger any  
10 material increase in seawater intrusion. It is particularly noteworthy that the study  
11 found no increase in seawater intrusion between readings taken in 1981 and 1997.  
12 If there is no demonstrated increase in saltwater intrusion caused by Lopez Island  
13 development over that 16 year period, it is not possible substantiate any reasonable  
14 conclusion that the proposed development, even from a cumulative impact  
15 perspective, will result in an increase in seawater intrusion.

10 Seawater intrusion appears to be a valid concern and the article submitted by FOSJ  
11 itself contains several reasonable mitigation measures that could be imposed to  
12 mitigate against intrusion. However, the article also undermines its own  
13 conclusions by presenting data that supports no causal connection between  
14 increased groundwater extraction and seawater intrusion. A more compelling case  
15 has to be made to justify project mitigation. Ultimately, if studies do show some  
16 causal connection, an island-wide legislative fix may be more appropriate than  
17 trying to address the problem piecemeal through the permitting process.

15 H. Water Quality. In two comment letters, Ex. 9 and Ex. 23, KWIAHT raises  
16 concerns about stormwater runoff impacts to water quality, with an emphasis on  
17 copper. There is insufficient evidence to find that current stormwater standards are  
18 insufficient to address the concerns raised by KWIAHT.

18 KWIAHT points out that while copper levels around the islander resort do not  
19 trigger clean up requirements under applicable state regulations, they are higher  
20 than surrounding areas. KWIAHT recommends that the requirements of the 2012  
21 DOE Western Washington Stormwater Manual apply to the project and that no  
22 further increases in impervious surface should occur until more funding is available  
23 to investigate the impacts of these increases on water quality.

22 As with seawater intrusion, KWIAHT raises serious questions about a potential  
23 problem, but there is nothing in the record to suggest that the proposal will  
24 exacerbate that problem. The proposal will already be subject to significant  
25 stormwater runoff mitigation as required by the 2005 DOE Western Washington  
Stormwater Manual. Stormwater regulations have evolved significantly over the  
years and it is likely that the development that contributed to copper and other  
impurities in Fisherman Bay was built before the adoption of the 2005 DOE  
manual in SJCC 18.60.070(A). In order to justify the imposition of the 2012  
manual there would have to be some reasonable indication that the 2005 DOE

1 manual falls short of adequately protecting the Bay against water quality impacts.  
2 Further, since the San Juan County Council has deemed the 2005 DOE manual to  
3 adequately address stormwater impacts by the adoption of the manual, there should  
4 be some showing that there are unique attributes of the Islander Resort  
5 development that the County Council did not take into account when adopting the  
6 2005 manual. In this case there is no reasonable basis to conclude that the 2005  
7 DOE Manual is insufficient to adequately mitigate against water quality impacts of  
8 the proposal.

9  
10 I. Critical Areas. No portion of the proposed expansion will encroach into a critical  
11 area except for an aquifer recharge area and a floodplain. The entire county is in an  
12 aquifer recharge area. The conditions of approval require compliance with county  
13 recharge standards to construction of the maintenance building. No other recharge  
14 standards are triggered by the proposal and there is nothing in the record to suggest  
15 that the County's aquifer recharge area standards are insufficient to protect  
16 groundwater. The proposed kayak/bike rental building will be built within a  
17 floodplain and compliance with floodplain regulations will be enforced during  
18 building permit review.

19  
20 J. Economic Viability. As determined in FOF No. 3, one of the two SEPA  
21 appeal issues is the economic viability of the proposal. The only recognizable  
22 adverse impact of such an issue is the SEPA appellants' assertion that people will  
23 stay away from the proposal in droves, thus resulting in "*a derelict collection of*  
24 *decaying cabins and overgrown campsites and RV pads.*" In short, the alleged poor  
25 business planning for the proposal will result in adverse aesthetic impacts. Such a  
conclusion is highly speculative. If profits are low because campsites are too  
densely packed, it would appear that the prudent course of action would be to  
reduce the number of campsites as opposed to abandoning the resort altogether.  
Further, the RV sites and most of the cabins will be visible to adjoining property  
owners or travelers on Fisherman Bay Road or Normandy Hill Road. Those  
structures will be obscured from the perimeter by numerous trees, the hotel  
facilities and screening that will be placed along the northern property line. In  
addition, the conditions of approval require additional screening along the eastern  
property line if staff determines that existing trees do not obscure the RV sites from  
residential properties locate to the east.

21  
22 K. Archaeological Resources. The proposed location for the new kayak/bike  
23 rental facility is located within an archaeological buffer zone. An archaeological  
24 report was prepared in October 2010, see Ex. 2. Disturbance of archaeological  
25 resources is unlikely since the kayak/bike building will be placed upon an existing  
concrete slab and excavation will be limited to trenching for a power line. In  
order to avoid impacts to archaeological resources the archaeological report  
recommends that that the kayak/bike building be located at the proposed slab  
location and that a professional archaeological monitor be present during all site  
preparation, infrastructure trenching/boring and any other ground disturbing

1 activities. The recommendations of the report are imposed as a condition of  
2 approval of this decision.

3 L. Safety. The relocation of the kayak/bike rental building to the south side  
4 of Fisherman Bay Road should improve the safety of kayak and bike rental  
5 patrons. Under current conditions, anyone kayak rental patrons are forced to  
6 cross Fisherman Bay Road to access their kayaks on the west side of the road  
7 once they've paid the rental fees in the building located on the east side of the  
8 road. The crossing will most likely be done by foot, since parking is available on  
9 the west side of the road adjacent to the kayak launch. Relocation of the  
10 kayak/bike rental building to the same side of the road as the location of the  
11 kayaks and associated launch should prevent these pedestrian road crossings for  
12 patrons that are not staying in the resort.

13 The applicant proposes to place stop signs at road intersections. The access plan  
14 and traffic report has been reviewed by the County public works department and  
15 no safety concerns have been raised. No safety issues are otherwise evident in the  
16 record or reasonably inferred.

17 6. Adequacy of Public Infrastructure/Services. The proposal is served by  
18 adequate public facilities. Areas of specific concern are addressed in more detail  
19 below:

20 A. Adequacy of Roads. One of the primary issues raised by the SEPA  
21 appellants is that the road width of Normandy Lane is not as wide as the 24.5 feet  
22 depicted in the site plan and that interior access roads are not wide enough to  
23 accommodate RVs passing each other in opposite directions.

24 As to accuracy of road width, this decision only approves the project as proposed,  
25 which includes the road widths in the site plan. The applicant would not be  
operating an approved land use if road widths are constructed to different  
dimensions. Further, the conditions of approval will require that staff verify that  
the infrastructure for the proposal is constructed as proposed and as conditioned  
prior to any occupancy of the new campsites. The conditions of approval will also  
require that interior access roads be wide enough to accommodate one way RV  
traffic, as determined by public works staff. All interior access roads, including  
Normandy and Mariner Lanes, are completely on the applicant's property and they  
have plenty of room available to widen the roads as necessary to meet proposed  
road design and conditions of approval.

As to sufficiency of width for RV passing, the applicant is proposing that RV  
traffic only be allowed one way throughout the interior access roads. The  
conditions of approval will require that signage be installed directing RV traffic in  
this manner. Passing of RVs should be a nonissue.

1 The SEPA appellants also were concerned that vehicles would park on along the  
2 one way roads, thus restricting emergency vehicle access. The appellants did not  
3 believe that the posting of “no parking” signs, a required in staff’s recommended  
4 conditions of approval, would prevent persons from parking along the road. In  
5 order to ensure that the “no parking” signs are enforced, the conditions of approval  
6 will require the no parking signs to provide that violators will be subject to  
7 impoundment. The conditions will further require the applicant to actively enforce  
8 the “no parking” requirement. The applicant will have plenty of incentive to  
9 comply with these conditions. Failure to comply will result in revocation of the  
10 permits as well as other code enforcement remedies available to the County.

11 The proposal also meets County level of service (LOS) standards. The applicant  
12 also prepared a traffic report that was authored by a professional traffic engineer  
13 and reviewed and approved by the San Juan Public Works Department. The traffic  
14 report concludes that the proposal would generate 360 new peak season daily trips  
15 and that this traffic generation would not lower level of service for Fisherman Bay  
16 Road (currently at LOS C) or adjoining intersections (currently at LOS B). The  
17 County standard for Fisherman Bay Road is LOS D.

18 B. Adequacy of Water. As noted in Ex. 5, the San Juan County Department  
19 of Health has reviewed the proposal and concluded that its proposed water system  
20 meets all state and county requirements. By letter dated March 5, 2013 the  
21 Washington State Department of Health has also approved the water system  
22 expansion proposed by the applicant. Water use may be less than that  
23 contemplated in the water report since the applicant has subsequently revised the  
24 project design to include a total of 9 cabins as opposed to the 15 contemplated in  
25 the water report that demonstrates adequate water system capacity, see 12/31/12  
Drahn “Updated Water System Expansion Project Report”, Ex. 5. To offset this  
reduction in water use, however, the applicant now proposes to provide for water  
hookups to the RV park. The water report also contemplates that the restrooms  
provided to tent patrons will not include any showers. It is unclear from the record  
whether tent patrons will be allowed to use the showers that serve the pool facility  
or whether the water report contemplated such a use. The conditions of approval  
require the water analysis to be updated to include revisions to the project and to  
include shower use by tent patrons if that will be allowed.

B. Adequacy of Sewer. At the hearing a representative of the Fisherman Bay  
Sewer District indicated that the District may not have adequate capacity in its  
conveyance system to handle the sewage generated by the proposal. Since then the  
applicant has reduced the number of cabins from 15 to 9 and the applicant asserts  
that this reduction will result in sewer demand that is lower than the usage already  
approved for the project site by the FBSD. The conditions of approval will require  
that no site work for the proposed expansion can be initiated without the prior  
approval of the FBSD for any needed sewer capacity and improvements

1 C. Drainage. The applicant's stormwater plan was approved by San Juan  
2 County on December 27, 2012. One outstanding issue was the adequacy of the  
3 culvert located at the intersection of Normandy Lane and Fisherman's Bay Road.  
4 At hearing the applicant's stormwater engineer, Dan Drahn, acknowledged that the  
5 culverts would not have significant capacity to handle significant storm events and  
6 that flooding at the intersection could occur. Mr. Drahn stated that such flooding  
is allowed under County stormwater standards. The conditions of approval will  
require that the applicant to install improvements as reasonably required by County  
staff to address this flooding problem.

7 D. Ferry. The Washington State Ferry has concluded that it can meet the  
8 demand created by the proposed expansion. See "WSDOT Ferry Service Analysis,  
9 attachment to 10/2813 applicant written rebuttal and closing, Ex. 36. During his  
10 testimony, Mr. Burtmass raised some compelling points about the space that RVs  
would take on the ferries to Lopez Island, but the conclusions of WSF officials  
outweigh his conclusions.

11 7. Code Violations. As noted by Chris Laws in Ex. \_\_\_\_\_, there are no  
12 outstanding code violations for the project site except for an issue concerning use  
13 of the project site for RVs. One of the prior code violation actions involved use of  
14 the project site for RV use. That code enforcement action has been dismissed.  
15 Peter Eglick, an attorney for one of the project opponents, argues that the code  
16 enforcement action is still pending because it was dismissed without prejudice.  
17 Mr. Eglick notes that SJCC 18.100.120 requires that a land use application may  
18 not be approved until all pending code enforcement actions have been "corrected"  
19 or subject to an enforceable code enforcement plan. The site is not currently being  
20 used by RVs and has not for several months. It is also clear that, at the least,  
21 County staff will consider the matter "corrected" if the project site is approved for  
22 RV use. However, it is debatable whether the code enforcement action can be  
23 construed as "corrected" prior to the approval of the site for RV use. To remove  
24 all doubt, the conditions of approval require that written documentation be added  
25 to the code compliance file on the RV violation that the matter is considered  
"corrected" by County staff or in the alternative, an enforceable code enforcement  
plan be added that provides that the code violation will be resolved upon land use  
approval for RV use of the project site. This documentation will have to be added  
to the project file prior to the issuance (mailing) of the decision and the shoreline  
and conditional use permit applications will not be considered approved until the  
documentation is added to the file.

## CONCLUSIONS OF LAW

### Procedural:

1. Authority of Hearing Examiner. The hearing examiner is authorized to  
conduct hearings and issue final decisions on conditional use permit applications.

1 San Juan County Code (“SJCC”) 18.80.020 Table 8.1; 18.80.100(C). Shoreline  
2 Substantial Development permit applications are reviewed and processed by  
3 Development Services Department staff, and the Hearing Examiner, after conducting  
4 an open-record public hearing, renders a decision on the shoreline permit.  
5 SJCC18.80.110(E). SJCC 18.80.140, Table 8.3 provides that the hearing examiner  
6 has final decision making authority over SEPA DNS appeals, appealable to the  
7 Shoreline Hearings Board.

8 **Substantive:**

9 2. Zoning and Shoreline Designation. The subject property is designated a  
10 Marine Center Limited Area of More Intense Rural Development, which according to  
11 SJCC 18.30.210 is subject to Village Commercial zoning district standards. The  
12 subject property is also assigned an urban shoreline designation.

13 **SEPA APPEAL**

14 3. Review Standard. There are only two reasons to overturn a SEPA  
15 determination of nonsignificance (“DNS”): (1) there are unmitigated probable  
16 significant adverse environmental impacts; or (2) the SEPA responsible official has  
17 not undertaken an adequate review of environmental factors as required by SEPA  
18 regulations. Each grounds for reversal will be separately addressed below.

19 A. Probable Significant Adverse Environmental Impacts.

20 The primary relevant inquiry for purposes of assessing whether County staff correctly  
21 issued a DNS is whether the project as proposed has a probable significant  
22 environmental impact. See WAC 197-11-330(1)(b). WAC 197-11-782 defines  
23 “probable” as follows:

24 *‘Probable’ means likely or reasonably likely to occur, as in ‘a reasonable  
25 probability of more than a moderate effect on the quality of the  
environment’ (see WAC 197-11-794). Probable is used to distinguish  
likely impacts from those that merely have a possibility of occurring, but  
are remote or speculative. This is not meant as a strict statistical  
probability test.*

If such impacts are created, conditions will have to be added to the DNS to reduce  
impacts so there are no probable significant adverse environmental impacts. In the  
alternative, an environmental impact statement would be required for the project. In  
assessing the validity of a threshold determination, the determination made by the  
City’s SEPA responsible official shall be entitled to substantial weight. WAC 197-  
11-680(3)(a)(viii).

B. Adequate Environmental Review

1 The second reason a DNS can be overturned is if the SEPA responsible official did  
2 not adequately review environmental impacts in reaching his threshold determination.  
3 The SEPA responsible official must make a prima facie showing that she has based  
4 her determination upon information reasonable sufficient to evaluate the impacts of a  
5 proposal. The courts have never actually overturned a local land use decision for  
6 inadequate review<sup>3</sup>. These results provide some insight as to how deferential the  
7 courts have been in applying the adequacy standard, but do not serve to eliminate the  
8 oft-repeated judicial requirement that environmental factors must be adequately  
9 considered to support a threshold determination.

7 As recently as 2010, the courts have ruled that an agency's threshold determination is  
8 entitled to judicial deference, but the agency must make a showing that  
9 "*environmental factors were considered in a manner sufficient to make a prima facie*  
10 *showing with the procedural requirements of SEPA.*" *Chuckanut Conservancy v.*  
11 *Washington State Dept. of Natural Resources*, 156 Wn. App. 274, 286-287, quoting  
12 *Juanita Bay Valley Community Ass'n v. City of Kirkland*, 9 Wn. App. 59, 73 (1973).  
13 In applying this adequacy standard, on several occasions the courts have examined  
14 how thoroughly the responsible official reviewed environmental impacts in addition  
15 to assessing whether a proposal has probable significant adverse environmental  
16 impacts. See, e.g., *Boehm v. City of Vancouver*, 111 Wn. App. 711 (2002), *Moss v.*  
17 *City of Bellingham*, 109 Wn. App. 6 (2001). In *Moss*, for example, the court recited  
18 the prima facie rule and then applied it as follows:

14 *The record indicates that the project received a great deal of review. The*  
15 *environmental checklist was apparently deemed insufficient, and therefore*  
16 *the SEPA official asked for additional information in the form of an EA. The*  
17 *City gathered extensive comments from agencies and the public, held*  
18 *numerous public meetings, and imposed additional mitigation measures on*  
19 *the project before finally approving it. Notably, although appellants complain*  
*generally that the impacts were not adequately analyzed, they have failed to*  
*cite any facts or evidence in the record demonstrating that the project as*  
*mitigated will cause significant environmental impacts warranting an EIS.*

20 109 Wn. App. at 23-24.

21 Given this judicial background, it is difficult to see how an assessment of adequacy  
22 can simply be ignored.

23 WAC 197-11-335 provides that a threshold determination shall be "*be based upon*  
24 *information reasonably sufficient to evaluate the environmental impact of a*

25 <sup>3</sup> However, the courts have recently upheld a Shoreline Hearing Board decision that  
determined that the SEPA review of a county was inadequate. *Spokane County v.*  
*Eastern Washington Growth Management Hearings Bd*, (Wash. App. Div. 3)

1 *proposal*". The standard of review on adequacy, therefore, is that the SEPA  
2 responsible official must make a prima facie showing that she has based his  
3 determination upon information reasonably sufficient to evaluate the impacts of a  
4 proposal.

5 A somewhat confusing facet of the standard requiring adequate review is WAC 197-  
6 11-680(3)(a)(ii). This WAC provision prohibits the appeal of intermediate steps of  
7 SEPA and only allows administrative appeals of threshold determinations and the  
8 adequacy of an EIS. SEPA appellant arguments such as the SEPA checklist is  
9 incomplete or inaccurate arguably seeks a ruling on intermediate steps of SEPA  
10 review, i.e. the adequacy of the checklist. The judicial standard requiring adequate  
11 environmental review was formulated before the adoption of WAC 197-11-  
12 680(3)(a)(ii) in 1984, but as demonstrated in the *Moss* case quoted above it was still  
13 applied to SEPA threshold appeals well after 1984. The courts have yet to address  
14 the arguable conflict between WAC 197-11-680(3)(a)(ii) and the judicial adequacy of  
15 SEPA review standard. The ultimate resolution may be that WAC 197-11-  
16 680(3)(a)(ii) prohibits administrative agencies from assessing adequacy of review but  
17 the courts are still free to do so. Unless and until the issue of whether adequacy of  
18 review is germane to an administrative appeal is judicially resolved, the prudent  
19 approach is to consider the issue as is done currently with cases such as *Moss*. Doing  
20 so will avoid the need for an evidentiary remand should a reviewing court determine  
21 that adequacy is something the Examiner should have considered.

22 Practically speaking, a consideration of the adequacy of review rarely results in a  
23 reversal of a threshold determination. In order to meet its burden of proof on  
24 adequacy, the SEPA appellant must often present the information the SEPA  
25 responsible official should have considered at the SEPA appeal hearing. After the  
information is presented, the SEPA responsible official is often asked whether they  
still believe the project has no probable significant adverse environmental impacts. If  
the responsible official responds that he or she does not see any reason to change the  
threshold determination, the issue of adequate review becomes moot. This result is  
allowed because the courts will consider information or mitigation supporting a  
determination that wasn't reviewed or imposed until after issuance of the threshold  
determination.

Again, the *Moss* decision is instructive on the allowance for this type of post hoc  
rationalization. In *Moss*, the City of Bellingham added SEPA mitigation measures  
after the SEPA responsible official issued the MDNS. The court sustained the MDNS  
on the basis of subsequently imposed mitigation measures as follows:

*Although the DNS was issued prematurely, it is difficult to see how the  
appellants were prejudiced. The city council imposed many additional  
mitigation measures on the project before approving it, thereby making it  
more environmentally friendly than the version in the DNS. Appellants  
suggest that the DNS misled the city council into believing that all of the  
impacts were capable of mitigation, but the record indicates that the project*

1 received a considerable degree of scrutiny. Furthermore, WAC 197-11-350  
2 requires an EIS where a proposal continues to have a significant adverse  
3 environmental impact, even with mitigation measures. While all of the  
4 required mitigation measures should have been imposed before the DNS was  
5 issued, the appellants still have not shown that the approved project, as it  
6 was mitigated, remains above the significance threshold.

7 109 Wn. App. at 25.

8 3. SEPA Appeal Issues Limited to those Raised in Appeal Statement. Appeal issues  
9 are limited to those identified in the Appellants' Notice of Appeal. SJCC  
10 18.80.140(E)(5)(d) requires the Notice of Appeal to identify the grounds of appeal.  
11 This requirement would be undermined if other issues are allowed to be considered.  
12 The Appellants' grounds for appeal are each addressed separately in the proceeding  
13 COLs.

14 4. Economic Viability. The economic viability of a business plan is not by itself  
15 relevant to a SEPA appeal. To the extent that business owners don't adversely affect  
16 their neighbors, they are free to make any poor business decisions they want from a  
17 land use review perspective, including SEPA review. As concluded in COL No. 2, the  
18 standard for SEPA review is (1) whether a proposal creates probable significant  
19 adverse *environmental* impacts; and (2) whether *environmental* factors have been  
20 adequately considered. The economic viability of a business is not an environmental  
21 impact or factor. The SEPA rules define "environment" as:

22 *those elements listed in WAC 197-11-444, as required by RCW  
23 43.21C.110 (1)(f). Environment and environmental quality refer to the  
24 state of the environment and are synonymous as used in these rules and  
25 refer basically to physical environmental quality.*

The elements listed in WAC 197-11-444 include factors such as traffic, noise and  
odor. No mention is made on economic impacts and related to the economic viability  
of the proposed land use. The profitability of the proposed land use is, on its own,  
entirely irrelevant to "physical environmental quality" as referenced in the SEPA  
definition of environment. However, there can be environmental consequences to a  
poorly designed business<sup>4</sup>. Those impacts are addressed in FOF No. 5 and COL No.  
5.

6 5. DNS Sustained. As determined in FOF No. 3, the SEPA appellant raised two  
7 issues in its appeal: (1) adequacy of width of internal roads; and (2) economic

---

8 <sup>4</sup> The references to poor business planning in this decision are not intended to serve as any comment on  
9 the business choices made by the applicant. Since economic performance is not relevant to the  
10 applications of this case, the business choices of the applicant are essentially none of the examiner's  
11 business and no judgment is made regarding them.

1 viability. As to road width, as determined in FOF No. 6 the internal roads are of  
2 adequate width. RV traffic will be one way throughout the project site so there is no  
3 issue of width being sufficient for passing in opposite directions. The 24.5 foot width  
4 of the two-way roads has been reviewed and approved by the County public works  
5 department and it should be sufficient to accommodate two-way automobile traffic.  
6 As determined in FOF No. 5, there are no probable significant environmental impacts  
7 associated with the proposed road widths of the proposal. As to economic viability,  
8 the impacts relevant to a SEPA appeal are aesthetics, as addressed in FOF No. 5. As  
9 determined in FOF No. 5, there are no probable significant aesthetic impacts  
10 associated the economic viability of the proposal.

11 The SEPA responsible official has also adequately considered the environmental  
12 factors associated with road width and economic viability. The environmental  
13 impacts associated with the proposal are fairly simple and the proposal has been  
14 significantly revised (as outlined in the SEPA staff report) and conditioned (in regards  
15 to aesthetic impacts) to address them. The SEPA responsible official considered  
16 environmental factors in a manner sufficient to make a prima facie showing with the  
17 procedural requirements of SEPA. There is nothing evident from the record that the  
18 responsible official should have considered in assessing road width and economic  
19 viability (as it relates to aesthetics) issues.

### 20 SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

21 6. Shoreline Jurisdiction. The applicant and the County have taken the unchallenged  
22 position that the only portion of the proposal subject to a shoreline substantial  
23 development permit is the kayak/bike rental building, because this is the only portion  
24 of the proposal located within the shoreline jurisdiction. Shoreline permit review of  
25 the proposal in this case will be limited to the kayak/bike rental building. However, it  
is noted that at least arguably the shoreline permit should include the impacts of the  
upland development on the shoreline. To cover all bases, it is determined that the  
uplands create no significant shoreline impacts, for the reasons identified in FOF No.  
5.

At least as a general proposition, a proposed development that includes both  
shorelands and uplands is properly reviewed in its entirety for consistency with the  
SMA. See *Merkel v. Port of Brownsville*, 8 Wn. App. 844 (1973). The SMA review is  
limited, however, to those portions of a proposed development that lie within the  
shoreland as defined under RCW 90.58.030 and those portions of a project that may  
have adverse impacts on the shoreland. *Weyerhaeuser v. King County*, 91 Wn.2d 721  
(1979); *Allegra Development Company, Inc. v. City of Seattle*, SHB No. 99-08 (1999);  
*Citizens for Natural Habitat v. Snohomish County*, SHB NO. 00-009 (2000).

Applying the principle enunciated in the preceding paragraph, the SHB in the  
Snohomish County case determined that the Snohomish County SMP applied to the  
impacts of the entirety of a 109 lot subdivision even though the only portion of the

1 subdivision within the 200 foot shoreline jurisdiction was a corner of one proposed  
2 wet pond and an associated underground vault. It is recognized, however, that the  
3 SHB cases addressing this issue have all involved developments involving a “unified”

4 The present case is arguably distinguishable from the Snohomish County case and its  
5 predecessors because the applicant could have applied for the placement of the  
6 kayak/bike rental building in a separate shoreline substantial development permit. The  
7 kayak building is not dependent upon the approval of the proposed Islander Resort  
8 expansion and vice-versa. Applying the San Juan County SMP to the entire Islander  
9 Resort development project under these circumstances would simply encourage the  
10 application of multiple permits to avoid SMP review. Given the judicial and  
11 legislative emphasis upon streamlined permitting, see e.g. Chapter 36.70B RCW, there  
12 is little merit to creating this type of incentive. Further, in the review of shoreline  
13 permits issued for the construction of logging roads within shoreline jurisdiction, an  
14 appellate court has ruled that the logging operations served by the roads, which were  
15 located outside the 200 foot shoreline jurisdiction, were not subject to shoreline  
16 review, because “*only those developments within the shorelines are subject to  
17 regulation by permits.*” *Weyerhaeuser v. King County*, 91 Wn.2d 721, 736 (1979).

18 Since the kayak/bike rental building is a development that can be considered separate  
19 from the rest of the expansion, shoreline review will be limited to that structure only.  
20 Should an appellate court determine that the impacts of the remainder of the expansion  
21 should have been considered in shoreline review, it is determined that the remainder of  
22 the expansion is consistent with all applicable shoreline policies and regulations. As  
23 determined in FOF No. 5, there is nothing in the record to suggest that the remainder  
24 of the expansion will have any significant impact on shoreline resources or the  
25 shoreline environment.

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

**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*

1 *reduction of rights of the public in the navigable waters, will promote and enhance*  
2 *the public interest. This policy contemplates protecting against adverse effects to the*  
3 *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.*

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

6 **RCW 90.58.020(1)<sup>5</sup>**

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

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

10 **RCW 90.58.020(2)**

11 *Preserve the natural character of the shoreline;*

12 10. The modest sized building will not create any significant difference to the natural  
13 landscape of the already developed shoreline.

13 **RCW 90.58.020(3)**

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

15 11. The proposal will allow for safer public shoreline use with minimal  
16 corresponding adverse impacts.

17 **RCW 90.58.020(4)**

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

19 12. As determined in Finding of Fact No. 5, the proposal will not create any  
20 significant adverse impacts to the resources and ecology of the shoreline.

21 **RCW 90.58.020(5)**

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

23 13. Public access will be improved in terms of safety.

24 **RCW 90.58.020(6)**

25 <sup>5</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 *Increase recreational opportunities for the public in the shoreline;*

2 14. The proposal will probably not significantly increase public use of the  
3 shoreline, but will provide for safer shoreline use.

4 **SJCC 18.50.050(A):** *When an application for a development permit is received for  
5 an area known to be archaeologically significant, the County will not take action on  
6 the application and the applicant will not initiate any excavation or development  
7 activity until the site has been inspected by a qualified archaeologist. No application  
8 will be delayed more than 10 working days for such an inspection. If the application  
9 is approved by the County, conditions will be attached reflecting the  
10 recommendations of the archaeologist regarding preservation or protection of the  
11 site.*

12 15. The site is located in an archaeological buffer zone. An archaeological study has  
13 been prepared to avoid impacts to the archaeological site and the report has  
14 recommended a monitoring plan to ensure that no archaeological resources are  
15 adversely affected. The conditions of approval will require conformance to the  
16 monitoring plan.

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

25 13. As conditioned.

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

14. This was done for the archaeological report, which was issued in October,  
2010.

**SJCC 18.50.220(A)(1):** *Applications for commercial development shall include a  
detailed statement explaining the nature and intensity of the water dependency or  
orientation of the proposed activity. Such statement shall include at least the  
following:*

- a. *Nature of the commercial activity;*
- b. *Need for shoreline frontage;*

- 1                   c. *Proposed measures to enhance the relationship of the activity*  
2                   to the shoreline; and  
3                   d. *Proposed provision for public visual or physical access to the*  
4                   shoreline.

5 15, As detailed in the application narrative, Ex. 2, the kayak/bike rental shop is the  
6 only part of this proposal which is in shoreline jurisdiction. The existing shop is  
7 across Fisherman Bay Road from the actual bay itself. The applicant needs to put the  
8 shop on the other side of Fisherman Bay Road because it would be safer for the  
9 business transaction to take place where the kayaks are launched, returned and stored  
10 for security and access reasons. The new location will remove the dangers of  
11 pedestrian traffic crossing Fisherman Bay Road to access the kayaks and launch site.

12 The kayaks are rented not only to resort patrons, but to anyone else who wishes to  
13 rent. This provides the public with both visual and physical access to the shoreline.

14 **SJCC 18.50.220(A)(2):** *Commercial resorts and campgrounds shall provide*  
15 *adequate access to water areas for their patrons and adequate on-site recreation*  
16 *facilities so that such resorts and campgrounds will not be dependent on nor place*  
17 *undue burdens on public recreational facilities.*

18 16. The resort provides adequate access to water areas by providing the kayak rental  
19 service, the large dock for the public and patrons to use, and the water frontage next  
20 to the restaurant where the public and patrons are able to walk.

21 **SJCC 18.50.220(A)(3):** *The draining or filling of water bodies or natural wetlands*  
22 *for commercial developments shall not be permitted except as a conditional use.*

23 17. No draining or filling of water bodies or wetlands is proposed.

24 **SJCC 18.50.220(A)(4):** *Only those commercial uses which are water dependent,*  
25 *such as boat fueling stations, shall be permitted to be located over the water.*

18. The kayak/bike rental building does not involve any over-water construction.

**SJCC 18.50.220(A)(5):** *All structures shall be set back a safe distance behind the*  
*tops of feeder bluffs.*

19. There are no feeder bluffs.

**SJCC 18.50.220(A)(6):** Parking areas associated with commercial developments  
shall be subject to the policies and regulations of SJCC 18.60.120, Parking, and  
18.50.340, Transportation facilities.

20. Parking already exists to serve the rental shop.

1 **SJCC 18.50.220(A)(8):** *Drainage and surface runoff from commercial areas shall be*  
2 *controlled so that pollutants will not be carried into water bodies.*

3 21. Runoff from the relocated rental shop is addressed in the stormwater management  
4 plan.

5 **SJCC 18.50.220(A)(9):** *Signs associated with commercial developments shall comply*  
6 *with the policies and general regulations of SJCC 18.40.370 through 18.40.400 and*  
7 *SJCC 18.50.120.*

8 22. As conditioned.

9 **SJCC 18.50.220(B)(1):** *Urban. Commercial development shall be permitted in the*  
10 *urban environment subject to the policies and regulations of this SMP. Except as*  
11 *provided for in subsection (A)(4) of this section, commercial structures and facilities*  
12 *shall be set back at least 50 feet from the OHWM unless otherwise provided for by*  
13 *conditional use.*

14 23. The proposed setback is 57 feet.

#### 15 **CONDITIONAL USE PERMIT**

16 24. Review criteria. SJCC 18.30.030, as elaborated in COL No. 33, requires a  
17 conditional use permit for expansions of resorts in the VC zone. The criteria for  
18 conditional use permits are governed by SJCC 18.80.100(D), which are quoted below  
19 in italics and applied via corresponding conclusions of law. Since the conditional use  
20 criteria require compliance with applicable provisions of Chapter 18.40 SJCC,  
21 applicable provisions of that chapter is quoted and applied below as well.

22 **SJCC 18.40.110(A)(1):** *Water supplies and sewage disposal facilities adequate to*  
23 *serve the proposed use shall be provided. Occupancy shall not be permitted before*  
24 *water supplies and sewage disposal facilities are approved and installed.*

25 24. As determined in FOF No. 6, the proposal is served by adequate sewer and  
water.

**SJCC 18.40.110(A)(2):** *Use of a County access road or private road for access to*  
*new commercial development shall be permitted only if the applicant demonstrates*  
*that public health, safety, and welfare will be protected, and if traffic and*  
*maintenance impacts to the road are minimized by conditions on the permit.*

25 25. As determined in FOF No. 7 the proposal is served by adequate traffic  
infrastructure and the relocation of the kayak/bike rental building will improve  
pedestrian safety. Further, no significant adverse impacts are associated with the  
proposal as detailed in FOF No. 5, which includes safety impacts. For these reasons,  
the criterion quoted above is met.

1 **SJCC 18.40.110(A)(3):** *No use shall be made of equipment or material which*  
2 *produces unreasonable vibration, noise, dust, smoke, odor, or electrical interference*  
3 *to the detriment of adjoining property.*

4 26. As determined in FOF No. 5, the criterion above is met.

5 **SJCC 18.40.330(A)(1):** *Recreational areas shall be located so as to protect adjacent*  
6 *properties from adverse impacts. Where the proposed recreational use can*  
7 *reasonably be expected to have adverse impacts on adjacent properties, and where*  
8 *existing ground cover, such as trees or shrubs, will not provide an adequate buffer*  
9 *between the recreational area and adjoining properties, screening or fencing will be*  
10 *required.*

11 27. A six foot tall sight obscuring fence is proposed along the west side of the egress  
12 road adjacent to the northeast property line. The rest of the east property line has  
13 fairly dense vegetation. The conditions of approval also require staff to consider  
14 screening along the eastern side of the proposal.

15 **SJCC 18.40.330(A)(2):** Parks and campgrounds in which individual lots or spaces  
16 are to be leased, sold or otherwise transferred are prohibited.

17 28. SJCC 18.20.030 defines a campground as “a facility in which sites are offered for  
18 less than 30 days for persons using tents or other personal, portable overnight  
19 shelters.” Consequently, only the tent and arguably the RV portions of the resort  
20 would be considered a campground. Since use of those portions of the resort are  
21 limited to 14 day periods, their occupancy would not be considered a lease of space as  
22 contemplated in the criterion quoted above.

23 **SJCC 18.40.330(A)(2):** *Parking areas associated with recreational areas shall be*  
24 *located inland away from the water and beaches and shall be designed to control*  
25 *surface runoff and prevent the pollution of nearby water bodies. Safe access from*  
*parking areas to recreation areas shall be provided by means of walkways or other*  
*suitable facilities.*

26 29. Parking for the proposed expansion is all on the east side of Fisherman Bay Road  
27 and away from the water. The stormwater plan dated December 14, 2012 prepared  
28 for this expansion will control stormwater runoff and prevent pollutants from  
29 reaching Fisherman Bay.

30 **SJCC 18.40.330(A)(7):** *No use shall be made of equipment or material which*  
31 *produces unreasonable vibration, noise, dust, smoke, odor, electrical interference to*  
32 *the detriment of adjoining property.*

1 30. As determined in FOF No. 5, as conditioned the proposal will not create any  
unreasonable vibration, noise, dust, smoke, or electrical interference.

2 **SJCC 18.40.330(B)(1):** *Recreational uses which are also commercial enterprises*  
3 *are subject to the site standards for commercial uses, SJCC 18.40.110, in addition to*  
4 *the regulations in subsection (A) of this section.*

5 31. Reviewed above.

6 **SJCC 18.40.330(B)(2):** *Large-scale tourist attractions such as casinos and theme*  
7 *parks (but excluding golf courses) are prohibited. Commercial recreational*  
8 *developments designed primarily as tourist attractions shall not exceed a gross use*  
9 *area of 5,000 square feet.*

10 32. The SJCC does not define a “tourist attraction”. The reference to casinos and  
11 theme parks in the criterion suggests that a tourist attraction is not intended to  
12 include tourist accommodations. Indeed, the allowance for resorts in the VC zone  
could never be practically achieved if resorts were limited to 5,000 square feet in  
area. It is concluded that the criterion quoted above is inapplicable to resorts and  
resort expansions to the extent the resort is limited to tourist accommodations and  
amenities traditionally associated with resorts.

13 **SJCC 18.40.410(A):** *Alteration, modification, or expansion of existing camps and*  
14 *existing small resorts that would expand the scope of services (e.g., adding meal*  
15 *service or new recreational facilities, adding new convention, hotel, or marina*  
16 *facilities), increase the scale of facilities, or add on-site residential housing are*  
17 *subject to the procedures for administrative review of impacts for discretionary uses*  
18 *(see SJCC 18.80.090 and Table 8.2).*

19 33. Table 8.2 is used by the administrator to determine if a proposal will be reviewed  
20 as a provisional or a conditional use permit. If any impact is “high” and cannot be  
21 mitigated to medium or low impacts, then the application must be processed as a  
22 conditional use permit. If “medium” impacts cannot be mitigated, the administrator  
23 may require the application to be processed as a conditional use.

24 Under Storm Drainage and Erosion in the table, it is considered high impact if there is  
25 more than 12,000 square feet of total impervious surface area and more than 5,000  
square feet of total impervious parking area. The Islander currently has 114,796  
square feet of impervious and is proposing to add 52,259 more<sup>6</sup>, putting them well  
For Utilities Usage and Demand, high impact is when you are using more than two  
times the average generated by one single family residence. Since they are proposing

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<sup>6</sup> This figure is based upon the original proposal of 15 cabins and may be somewhat less due to the  
downward revision to 9 cabins.

1 9 cabins and electrical hook-ups for the RVs together with existing uses, they will be well above the limit.

2 Traffic impacts are looked at by trips, type of vehicle, and nature of access. Twenty  
3 or more round trips per day is considered high impact. It is likely that the existing  
4 resort already generates more than twenty round trips per day, so there is another high  
5 impact that cannot be mitigated. There is also a vehicle type component which  
6 concerns vehicle weight. The impact is medium if the weight is between 10,000 and  
7 20,000 pounds and high if the weight is more than 20,000 gross vehicle weight.

8 Under Visual Quality they are also over the threshold for high impacts with more than  
9 ten new parking spaces and lot coverage of more than 10,000 square feet.

10 Given all the high impacts that can't be mitigated, the proposal is being reviewed as a  
11 conditional use.

12 **SJCC 18.80.100(D)(1):** *The proposed use will not be contrary to the intent or*  
13 *purposes and regulations of this code or the Comprehensive Plan;*

14 38. The staff analysis on the above-criterion located at p. 13-15 of the staff  
15 report is incorporated and adopted by this reference as if set forth in full. It is also  
16 noted that SJCC 18.30.030 expressly authorizes RV parks in the VC zone and the  
17 courts provide that zoning code provisions supersede any conflicting comprehensive  
18 plan policies. *See Citizens for Mount Vernon v. Mount Vernon*, 133 Wn.2d 861, 873  
19 (1997) (“A specific zoning ordinance will prevail over an inconsistent comprehensive  
20 plan”).

21 **SJCC 18.80.100(D)(2):** *The proposal is appropriate in design, character and*  
22 *appearance with the goals and policies for the land use designation in which the*  
23 *proposed use is located;*

24 39. The criterion is met. As noted in the staff report, the proposal is located in the  
25 Marine Center LAMIRD, which has been designed to accommodate uses that are more  
intense than those typically allowed in rural land use designations. The proposed use  
is fairly intense, but has been mitigated to provide for compatibility with adjoining  
residential uses.

**SJCC 18.80.100(D)(3):** *The proposed use will not cause significant adverse impacts*  
*on the human or natural environments that cannot be mitigated by conditions of*  
*approval;*

40. As determined in Finding of Fact No. 5, the proposal will not create any  
significant adverse impacts.

1 **SJCC 18.80.100(D)(4):** *The cumulative impact of additional requests for like actions*  
2 *(the total of the conditional uses over time or space) will not produce significant*  
3 *adverse effects to the environment that cannot be mitigated by conditions of approval;*

4 37. The findings of the staff report on this criterion are adopted and  
5 incorporated by this reference as if set forth in full.

6 **SJCC 18.80.100(D)(5):** *The proposal will be served by adequate facilities including*  
7 *access, fire protection, water, stormwater control, and sewage disposal facilities;*

8 38. As determined in FOF No. 6, the proposal is served by adequate facilities  
9 as required by the criterion above.

10 During the hearing the applicant's stormwater engineer testified that occasional  
11 flooding at the Normandy Lane/Fisherman Bay road may occur and that this type of  
12 flooding at driveway intersection has been found acceptable under County  
13 regulations. While this might be true for the County's stormwater manual standards,  
14 the application must still comply with the conditional use criterion above that requires  
15 that the proposal is generally served by adequate stormwater control facilities. It is  
16 also dubious to treat Normandy Lane as a "driveway" considering that it functions as  
17 a private road that serves several private residences. Facilities that cannot prevent  
18 regular flooding of a road intersection that serves several private residences is not  
19 adequate under the criterion above. The conditions of approval will require that the  
20 flooding anticipated for the Normandy Lane/Fisherman Bay road be reasonably  
21 mitigated by stormwater improvements specified by San Juan County Public Works  
22 staff.

23 **SJCC 18.80.100(D)(6):** *The location, size, and height of buildings, structures, walls*  
24 *and fences, and screening vegetation associated with the proposed use shall not*  
25 *unreasonably interfere with allowable development or use of neighboring properties;*

36 39. As determined in FOF No. 5, the proposal will not create any adverse  
37 aesthetic or view impacts. No other interference with neighboring properties as  
38 contemplated from the criterion above is evident from the record.

39 **SJCC 18.80.100(D)(7):** *The pedestrian and vehicular traffic associated with the*  
40 *conditional use will not be hazardous to existing and anticipated traffic in the*  
41 *neighborhood;*

42 40. As determined in FOF No. 5, the proposed relocation of the kayak/bicycle  
43 rental building will improve pedestrian safety and no other adverse safety impacts are  
44 associated with the proposal.

45 **SJCC 18.80.100(D)(8):** *The proposal complies with the performance standards set*  
*forth in Chapter 18.40 SJCC;*

1 45. The Chapter 18.40 SJCC commercial and recreational performance  
2 standards are satisfied as addressed in the preceding conclusions of law.

3 **SJCC 18.80.100(D)(9):** *The proposal does not include any use or activity that would*  
4 *result in the siting of an incompatible use adjacent to an airport or airfield (RCW*  
5 *36.70.547); and*

6 46. There is no airport or airfield adjacent to this property.

7 **SJCC 18.80.100(D)(10):** *The proposal conforms to the development standards in*  
8 *Chapter 18.60 SJCC.*

9 47. The proposal is consistent with applicable Chapter 18.60 SJCC  
10 development standards as outlined in the staff report, incorporated by this reference  
11 as if set forth in full.

### 12 DECISION

13 The subject shoreline substantial development permit and conditional use permit  
14 applications for the proposal as described in this decision are approved as conditioned  
15 below because they are consistent with all applicable permit review criteria for the  
16 reasons identified in the COLs above. The SEPA appeal is denied and issuance of the  
17 DNS sustained for the reasons identified in the COLs above.

- 18 1. Construction shall not be commenced until all relevant appeal periods have run.
- 19 2. The recommendations contained in the archaeological report will be followed.
- 20 3. Plans showing compliance with the standards of SJCC 18.30.140, Critical Aquifer  
21 Recharge areas, shall be required with the building permit application for the  
22 kayak/bike rental shop.
- 23 4. Exterior lighting shall be energy-efficient and shielded or recessed so that direct  
24 glare and reflections are contained within the boundaries of the parcel. Exterior  
25 lighting shall be directed downward and away from adjoining properties and  
public rights-of-way. No lighting shall blink, flash, or be of unusually high  
intensity or brightness. All lighting fixtures shall be appropriate in scale, intensity,  
and height to the use they are serving. Any lighting installed in parking areas shall  
be of direct cutoff design so that the source is not visible from adjacent property.  
Decorative lighting shall be limited to incandescent lamps with a maximum of 25  
watts per bulb and 500 watts overall.
5. Where the 9 cabins will be located, the septic system shall be evaluated to see if it  
is adequate or needs to be upgraded or replaced.
6. An engineering report for the whole project shall be prepared to show the impact  
of increased use for the bar and restaurant, as well as other facilities already  
existing at the resort shall be prepared for the Fisherman Bay Sewer District.
7. If any ground-disturbing activities uncover protected cultural material (e.g., bones,  
shell, stone or antler tools), all activity in the immediate vicinity of the find must  
be halted immediately, and the administrator must be notified at once. Activities

1 authorized by the permit will not be delayed more than five working days for a  
2 finding of significance by the administrator, following the administrator's receipt  
3 of notification, unless the permit holder agrees to an extension of that time period.

- 4 8. If changes occur in the Unified Development Code, the permittee is required to  
5 abide by the standards in effect at the time any building permits applications are  
6 submitted.
- 7 9. Upon the determination by the Director of CD&P that any conditions listed above  
8 have been violated, following issuance of a Notice of Violation, the Director of  
9 CD&P may, in addition to its other code enforcement remedies, revoke the  
10 conditional use permit.
- 11 10. Development under the shoreline substantial development portion of this permit  
12 shall commence within two years of the date of permit approval and shall be  
13 substantially complete within five years thereof or the permit shall become null  
14 and void.
- 15 11. Development authorized through the conditional use portion of this permit shall be  
16 completed within five years from the date of permit approval or the permit shall  
17 become null and void. An extension of up to one year may be granted by the  
18 decision making authority if the permittee demonstrates good cause for an  
19 extension.
- 20 12. Failure to comply with any terms or conditions of the conditional use and shoreline  
21 substantial development permits may result in their revocation by the hearing  
22 examiner.
- 23 13. The applicant shall establish a 24 hour complaint phone number that shall be  
24 distributed to adjoining property owners prior to occupancy. The applicant shall  
25 have someone available 24/7 to act on complaints immediately upon receipt.
- 14 14. Staff shall require the placement of fencing or landscaping as determined  
15 necessary to screen the RV portion of the site from adjoining residences to the  
16 extent that such screening will not interfere with the water views of the residences.
- 17 15. As detailed in FOF No. 7, prior to the distribution and posting of this decision,  
18 staff shall either close the RV complaint file as "all violations corrected" or enter  
19 into an enforceable code enforcement plan that provides that the RV violation file  
20 will be closed upon the authorization the RV use by this decision.
- 21 16. The rules of conduct shall be revised to expressly provide that RVs may not use  
22 large exterior generators. The rules shall be further revised to prohibit littering on  
23 any part of the resort property. The wording of the revisions shall be subject to  
24 staff approval prior to occupancy.
- 25 17. The applicant shall not allow solid waste to accumulate on the resort property  
outside trash receptacles.
- 18 18. As discussed in COL No. 42, the San Juan County Public Works Department shall  
19 require the construction of stormwater improvements as reasonably necessary to  
20 prevent flooding at the intersection of Normandy Lane and Fisherman Bay Road to  
21 ensure for the provision of adequate stormwater facilities as contemplated by  
22 SJCC 18.80.100(D)(5).
- 23 19. All necessary and/or required infrastructure improvements, including sewer as  
24 approved by the FBSD, shall be constructed and subsequently approved by staff

1 prior to the construction of any cabins and prior to the occupancy of the RV sites  
2 or any new tent sites.

3 20. The proposal shall comply with the ten proposed smoke mitigation measures  
4 identified at p. 4 of the applicant's 11/4/13 rebuttal on smoke impacts, Ex. 36.

5 21. Interior one way access roads to the RV sites shall be wide enough to  
6 accommodate one way RV traffic as determined by staff.

7 22. Signs requiring one way traffic shall be placed along the proposed one way roads  
8 as directed by staff. Signs shall also be posted along the one way roads that  
9 prohibits parking along the roads. The applicant shall actively enforce all no  
10 parking requirements. The no parking signs shall provide that violating vehicles  
11 will be impounded, if staff determines that impound services are reasonably  
12 available to the applicant.

13 23. As detailed in FOF 6(B), the applicant's water capacity analysis shall be updated  
14 to incorporate the applicant's revisions to the expansion since the original issuance  
15 of the analysis and specifically address the use of showers by tent patrons if that  
16 has not already been factored into the analysis.

17 24. All business signs posted by the applicant shall comply with the policies and  
18 general regulations of SJCC 18.40.370 through 18.40.400 and SJCC 18.50.120.

19 Dated this 5th day of December, 2013.

20 

21 Phil A. Olbrechts

22 County of San Juan Hearing Examiner

23 **Effective Date, Appeal Right, and Valuation Notices**

24 Hearing examiner decisions become effective when mailed or such later date in  
25 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

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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.

**RIGHT OF RECONSIDERATION**

Parties to this hearing have a right to request reconsideration as outlined in SJCC 2.22.210(O).