

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND FINAL DECISION

Applicant(s): Lonesome Cove Resort Inc.
c/o Greg Vik
PO Box 1607
Bellevue, WA 98009

Agent: Francine Shaw
Law Offices of Stephanie O'Day
PO Box 2112
Friday Harbor, WA 98250

File No.: PSJ000-11-0012

Parcel Nos: 361812001

Location: 416 Lonesome Cove Road
San Juan Island

Summary of Proposal: Application for expansion of existing resort and buffer
reduction of Category II wetland.

Land Use Designation: Rural Residential

Public Hearing: February 8, 2012

Application Policies and Regulations: Shoreline Master Program, SJCC 18.50
SJCC 18.30.150(E)(4)

Decision: The proposal is approved with conditions and
modifications.

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

Phil Olbrechts, Hearing Examiner

RE: Lonesome Cove Resort Inc.	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION.
Shoreline Substantial Development Permit and Wetland Buffer Reduction	
PSJ000-11-0012	

INTRODUCTION

The Applicant requests a shoreline substantial development permit to expand the Lonesome Cove Resort by adding eleven new vacation cabins, 25 new parking stalls, a pedestrian foot bridge across a seasonal stream and a desalination plant. The Applicants also request a 50% foot buffer reduction to the downslope buffer of a Category II wetland. The shoreline substantial development permit is approved and the buffer reduction is approved in part if staff determines that the areas necessary for proposed cabin units 10 and 11 cannot be accommodated by buffer averaging.

TESTIMONY

Julie Thompson, San Juan County planner, submitted an email admitted as Ex. 6 from Frank Lacy dated February 7, 2012. In response to questions from the Examiner, Ms. Thompson noted that the buffer reduction request is part of the application subject to review by the Examiner. She also noted that the Department of Ecology did not express any concerns over the buffer reduction request and staff is recommending approval given that nothing was going to be built within the buffer. She also stated that there is no alternative to the buffer because so much of the site is encumbered already by buffers.

Francine Shaw, Applicant's representative, noted that the resort has been in existence since the 1940's on 9.2 acres and that it currently accommodates eight cabins in addition to a caretaker residence and private library. The proposal involves the addition of eleven cabins and a footbridge over a seasonal stream to access the cabins.

The stream is not protected by the critical areas ordinance. The "stream" is probably man made and was designed to drain the property. A conference facility with a daylight basement and desalination plant is also proposed. The site has a Category II wetland. A buffer reduction is requested for the downward slope side of the wetlands

1 from the required 75 feet to 37.5 feet. Wetland regulations currently proposed by San
2 Juan County include a provision for reduced buffers on the downward slopes of
3 wetlands since those areas do not drain into the adjoining wetland. A stormwater
4 plan and archaeology report have been completed. The Applicant is currently
5 pursuing an amendment to the flood plain map in order to avoid unnecessary flood
6 plain regulations that would require the floor of the proposed buildings to be built 1.5
7 feet above grade. Ms. Shaw submitted five 8x11 photographs of Yurts that are used at
8 Lakedale Resort. The photographs were admitted as Ex. 7.

9 Stephanie Johnson O'Day, Applicant's legal representative, emphasized that the
10 resort is very low-key and strongly recommended a site visit. She noted that the
11 conference room will only be used for family gatherings and other low-key get
12 events. She noted that an archaeological study had to be done because Native
13 Americans used to use the area during summers for fishing. She noted that the
14 project included several issues, including shorelines, parking, wetlands, and
15 archaeology. A small buffer reduction is requested and is really only necessary for
16 Cabins 10 and 11. The other reduction is for an existing orchard and not critically
17 necessary. Ms. Johnson O'Day submitted two 10x17 aerial photographs of the
18 project site, admitted as Exhibits 8 and 9. She noted that Lacys bought their shoreline
19 property in the 1980s and the southern property in the 1990s. She identified the
20 location of the septic system at the northeast corner of Limestone Road and
21 Lonesome Cove Road.

22 Jack Cory, Applicant's septic designer, testified that he's designed septic systems
23 throughout San Juan County, including the system used by the Lacys. Systems
24 designed in the waterfront area are problematic due to inadequate soils so
25 pretreatment is often required. It's difficult to get more than 18 inches of suitable
soil. For that reason, a mound system was installed for Lonesome Cove and there
have been problems with that system. The mound system is located on the northeast
side of the Lonesome Cove waterfront property. For these reasons the new proposed
drainfield location (Limestone Road/Lonesome Cove Road intersection) away from
the waterfront was investigated. 15-20 test holes were dug with an excavator and the
entire property was covered with suitable soils (sand) to depths of six feet. Mr. Cory
couldn't dig any deeper and only needed four feet of sand for a standard septic
system. He noted that the County health department was very happy with the new
location because the current system had instances of failure and had necessitated a
couple repairs. The current system was probably installed 20 years ago. He testified
that there was no chance of leakage of sanitary waste into the Sound from the
proposed location given the long distance from the shoreline. He noted that any
discharge that made it that far would be completely treated and no longer contain
sanitary waste contaminants. He noted that the six feet is more than sufficient to
completely treat the effluent and that if you were to consider lateral movement of
thousands of feet to the shoreline there is no question it would be completely treated.
The proposed location has the best septic soils Mr. Cory has found in the last ten
years. Any discharge of oil in the area as asserted by Mr. Lacy has nothing to do with
septic systems and has no relation to potential septic contamination. Mr. Cory noted

1 that there are four different levels of soils considered for septic systems and the level
2 at the proposed site is the most suitable for septic systems and is extremely rare. Mr.
3 Cory is licensed by the state board of engineers and surveyors to design on-site septic
4 systems. He has been designing septic systems since 1973.

5 Ms. Johnson O'Day noted the road going through the Lacy property has a 40 foot
6 easement that Lonesome Cove can use. The owners would be willing to widen it and
7 place some turn outs. The Applicant needs to work on the road anyway to place a
8 septic line through it. Ms. Thompson noted that the adequacy of the road had not
9 been evaluated by staff, as it hadn't been raised as an issue until Mr. Lacy's letter.
10 Ms. Thompson noted that Public Works and the Fire Marshal should be consulted on
11 the adequacy of the road.

12 In response to Examiner questions, Ms. O'Day noted that the desalination lines will
13 need to go across mowed grass because there is no alternative route to the shoreline.
14 The desalination is necessary because the existing wells never received approval by
15 the state health department and it was discovered they have salt water intrusion. The
16 desalination facility may be the sole source of water supply.

17 The Examiner then conducted a site visit with Ms. Shaw and Ms. Thompson.

18 EXHIBITS

19 Exhibits 1-5 identified on the 1/26/12 staff report were admitted into evidence during
20 the hearing, in addition to the following additional exhibits:

21 Exhibit 6: 2/7/12 email from Frank Lacy to Julie Thompson

22 Exhibit 7: Five 8x11 photographs of Yurts

23 Exhibit 8: Aerial photo of Lonesome Cove and Lacy properties

24 Exhibit 9: Aerial photo of vicinity

25 FINDINGS OF FACT

Procedural:

1. Applicant. The Applicant is Lonesome Cove Resort Expansion.
2. Hearing. The Hearing Examiner conducted a hearing on the subject application on February 8, 2012.

Substantive:

3. Site and Proposal Description. The Applicant requests a shoreline substantial development permit to expand the Lonesome Cove Resort by adding eleven new vacation cabins, 25 new parking stalls, a pedestrian foot bridge across a seasonal stream and a desalination plant. The Applicant also requests a 37.5 foot

1 buffer reduction to the downslope (shoreward) buffer of a Category II wetland. The
2 resort is located upon a 9.27 acre parcel.

3 This is an existing resort that has been developed as it currently is configured since
4 the early 1950's. There are seven units, an office, a dock, and several outbuildings.
5 The site slopes gently to the water. A large Category II wetland occupies
6 approximately 4.1 acres on the southern part of the site, away from the current
7 development. The view is across Spieden Channel toward Spieden Island.

8 The proposed conference room will serve resort patrons and is not intended for use by
9 the general public. Uses that are foreseen are events such as family reunions with
10 family members renting cabins and having gatherings within the conference room.
11 Other types of uses will include professional retreats, wedding receptions, etc, all
12 predicated on participants renting the cabins.

13 The Applicant also proposes to abandon the existing mound septic system and
14 construct a new system south of the project site on a parcel located at the northeast
15 corner of the intersection of Limestone Point Road and Lonesome Cove Road.

16 The proposed cabins will have a building footprint of approximately 500 square feet,
17 will consist of both one and two bedroom units, and will be one or two stories tall.
18 None of the units will exceed 35 feet in height. In the alternative, the Applicant is
19 considering substituting camping yurts (as depicted in Ex. 7) instead of the cabins. If
20 they go with the yurts, there are some building code requirements that may mean the
21 exact location of the yurts will not be the same as shown on the site plan. Building
22 codes require each individual yurt to be separated from all other structures by at least
23 30 feet.

24 4. Characteristics of the Area. The neighborhood is rural and residential in
25 nature.

5. Adverse Impacts of Proposed Use. As conditioned there are no adverse
impacts associated with the proposal. Impacts are addressed as follows:

A. Traffic. An adjoining property owner, Frank Lacy, strongly objects in Ex. 6 to the
adequacy of Lonesome Cove Road to serve the development. The adequacy of
the road was not evaluated by staff and a site visit by the Examiner confirms that
the road is narrow and unpaved. The easement for the road is 40 feet wide, which
leaves plenty of room for necessary improvements. The proposal will be
conditioned for evaluation and mitigation by San Juan County Public Works and
by the Fire Marshall for adequacy in terms of capacity and emergency access.

B. Septic. Mr. Lacy also expressed concern over potential contamination of his well
and property by the proposed septic system. Septic systems are comprehensively
regulated by state and local regulations and Mr. Lacy has not submitted any
evidence that those regulations are inadequate to protect his property and water

1 source from contamination. Beyond this the Applicant presented highly
2 compelling evidence from John Corey that there is no risk of contamination from
3 the system. Mr. Corey is a highly experienced and licensed on-site septic system
4 designer who testified that the septic system drain field will be placed upon some
5 of the most suited soils of San Juan County composed of at least six feet of sand.
6 Mr. Corey noted that only four feet of sand is necessary for the most basic septic
7 system and that there is no chance that any septic contaminants would migrate
8 beyond the drain field. There was no evidence to contradict his testimony and it
9 is determined there is no reasonable risk of contamination from the proposed
10 system.

11 C. Water Rights. In Ex. 6 Mr. Lacy also questions whether the proposal will
12 interfere with this water rights. The Applicant proposes a desalination system that
13 will probably decrease their use of well water and thereby increase the availability
14 of water to Mr. Lacy. The proposal will be conditioned on the Applicant
15 demonstrating an adequate water supply prior to issuance of building permits.

16 D. Wetland Buffer Reduction. Staff recommend approval of the buffer reduction
17 apparently in part because they believe no construction will occur within the
18 buffer area. Staff also noted that the Department of Ecology expressed no
19 objection to the reduction. At hearing Ms. Shaw noted that the reduction is
20 downslope from the wetland and that regulations currently proposed by San Juan
21 County would reduce buffers by 50% in downslope areas. Staff's statement that
22 no construction will occur within the buffer area is contradicted by comments
23 made by the Applicant at the hearing and the topographic survey in Ex. 3, which
24 establish that proposed Cabins 10 and 11 will be constructed within the buffer
25 area. The fact that the cabins will be downslope of the wetland and that currently
proposed regulations wouldn't require a buffer certainly supports a determination
that the wetland will not be adversely affected by the proposal, but more expert
analysis is necessary to counter the legislative findings, based upon best available
science, that support the 75 foot buffers imposed by currently existing wetland
regulations. The proposal will be conditioned on further review by a qualified
expert on whether the buffer reduction is adequately mitigated.

26 E. Archaeological Resources. The project site has been identified as
27 archaeologically significant and has been subject to an archaeological assessment
28 that recommends monitoring during ground disturbance. This will be made a
29 condition of approval.

30 F. Shoreline Environmental Resources. The project does not involve any work
31 waterward of the ordinary high water mark except for a portion of the desalination
32 lines, which will be located on the existing dock and will not discharge any saline
33 water within 16 feet of eelgrass beds. There is no evidence or reasonable
34 inference to be made from the proposal that it will adversely affect shoreline
35 environmental resources. Indeed, the relocation of the septic system (with its

1 history of failures) away from the shoreline will likely result in a net positive
2 impact on the shoreline environment.

- 3 G. Drainage. Drainage has been adequately addressed through the preparation and
4 implementation of a drainage plan. A drainage plan was submitted to a storm
5 water technician for his review. He approved the plan as submitted, with the
6 condition that when the project is complete, the engineer of record, or another
7 qualified engineer, shall inspect the best management practices after they are
8 installed and verify that they are sized and installed per the engineer's design and
9 in compliance with the Storm Water Management Manual for Western
10 Washington. The conditions of the stormwater plan will be made a condition of
11 approval.

12 **CONCLUSIONS OF LAW**

13 **Procedural:**

- 14 1. Authority of Hearing Examiner. SJCC18.80.110(E) authorizes the hearing
15 examiner to conduct hearings and issue final decisions on shoreline substantial
16 development permit applications. The requested buffer reduction is consolidated with
17 the Examiner's review as required by the Regulatory Reform Act, Chapter 36.70B
18 RCW.

19 **Substantive:**

- 20 2. Shoreline Designation. The subject property is designated Rural
21 Residential.

- 22 3. Zoning Designation. The subject property is zoned Rural Farm Forest.

- 23 4. Permit Review Criteria. SJCC 18.80.110(H) establishes the criteria for
24 approval of shoreline substantial development permits. The criteria include the
25 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. The applicable
policies and regulations are quoted in italics below and applied through conclusions
of law.

26 **RCW 90.58.020 Use Preferences**

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

1 5. The proposal mitigates all adverse impacts to the shoreline as determined
2 in Finding of Fact No. 5 while increasing public use and enjoyment of the shoreline.
The policy is met.

3 **RCW 90.58.020(1)¹**

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

5 6. For the reasons identified in Conclusion of Law No. 5 the policy is met.

6 **RCW 90.58.020(2)**

7 *Preserve the natural character of the shoreline;*

8 7. The proposal adds to an existing development without any appreciable
9 change in topography or any other change in the natural character of the shoreline.

10 **RCW 90.58.020(3)**

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

12 8. For the reasons identified in Conclusion of Law No. 5 the policy is met.

13 **RCW 90.58.020(4)**

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

15 9. As determined in Finding of Fact No. 5 there are no adverse impacts
16 associated with the proposal and the policy is met.

17 **RCW 90.58.020(5)**

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

19 10. By increasing the number of cabins the proposal will increase the number
20 of people who will have access to the shoreline. Beyond this the Applicant cannot be
legally required to provide for any further public access.

21 **RCW 90.58.020(6)**

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

23 11. By increasing the number of cabins the proposal will increase the number
24 of people who can use the shoreline for recreational activities. Beyond this the
Applicant cannot be legally required to provide for any further public recreational
activities.

25 ¹ RCW 90.58.020(1)-(6) applies to shorelines of statewide significance. Section 3.4.F of the San Juan
County Comprehensive Plan identifies all saltwater surrounding the islands of San Juan County as
shorelines of statewide significance. The policies of 90.58.020(1)-(6) are mirrored in the policies of
Section 3.4.F of the Comprehensive Plan and for the reasons provided in assessment of RCW
90.58.020, the Examiner also finds consistency with the policies of Section 3.4.F.

1 **SJCC 18.50.050: Archaeological and historic resources.**

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

9 *B. All development permits will contain a special provision advising the permit*
10 *holder that if during excavation or development of the site an area of potential*
11 *archaeological significance is uncovered, all activity in the immediate vicinity of the*
12 *find must be halted immediately, and the administrator must be notified at once...*

13 *D. Prior to issuance of a permit in areas known to contain archaeological artifacts,*
14 *the county requires that the developer provide for a site inspection and written*
15 *evaluation by an archaeologist. Significant archaeological data or artifacts must be*
16 *recovered before work begins or resumes on a project...*

17 *F. Archaeological sites located both in and outside the shoreline jurisdiction are*
18 *subject to Chapter 27.44 RCW (Indian Graves and Records) and Chapter 27.53 RCW*
19 *(Archaeological Sites and Records) and must comply with Chapter 25-48 WAC*
20 *(Archaeological Excavation and Removal Permit) as well as the provisions of this*
21 *code.*

22 12. An archaeological assessment has been conducted as required by the regulations
23 quoted above. Monitoring as recommended in the report will be made a condition of
24 approval. The conditions will also incorporate the requirement of SJCC 18.50.050(B)
25 and require compliance with the regulations identified in SJCC 18.50.050(D). As
conditioned, the requirements of SJCC 18.50.050 are satisfied.

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

21 13. The entire shoreline of the parcel is available for patrons to use as are the dock
22 and ramp. There is a grassy area down near the office that is used for both passive and
23 active recreation.

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

14. No draining or filling of water bodies or natural wetlands is proposed.

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

1 15. The only part of the proposal that will be constructed over-water will be a
2 portion of the desalination lines, which will be integrated into the existing dock. The
3 lines are water dependent as defined by SJCC 18.20.230 because they require a
4 shoreline location because of their intrinsic nature (i.e. they need to collect saltwater).

5 **SJCC 18.50.220(A)(6):** *Parking areas associated with commercial developments*
6 *shall be subject to the policies and regulations of SJCC 18.60.120, Parking, and*
7 *18.50.340, Transportation facilities.*

8 16. Parking complies with the regulations identified above as outlined below.

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

11 17. Drainage has been adequately mitigated and pollutants will not be carried into
12 the Sound as determined in Finding of Fact 5(G).

13 **SJCC 18.50.220(B)(3):** *Rural Residential and Rural Farm Forest. Commercial*
14 *development is prohibited, except that the alteration, modification or expansion of*
15 *small resorts, camps or commercial facilities associated with a commercial marina,*
16 *lawfully existing prior to the effective date of this code, may be allowed subject to the*
17 *policies and regulations of this SMP.*

18 18. The proposal is an expansion of a small resort as authorized by the criterion
19 above.

20 **SJCC 18.50.090(A):** *Parking is prohibited on structures located over water.*

21 19. No parking is proposed on structures located over water.

22 **SJCC 18.50.090(B):** *Parking facilities must be designed and landscaped to minimize*
23 *adverse impacts upon adjacent shoreline and abutting properties. Landscaping must*
24 *consist of native vegetation and be planted before completion of the parking area in*
25 *such a manner that plantings provide effective screening within three years of project*
completion and through maturity of the species.

26 20. SJCC 18.60.160(G) provides detailed landscaping requirements that satisfy the
27 requirement above. A condition of approval will require the submission and staff
28 approval of a landscaping plan that conforms to the requirements of SJCC
29 18.60.160(G) and SJCC 18.50.090(B).

30 **SJCC 18.50.090(C):** *Parking facilities serving individual buildings on the*
31 *shoreline must be located landward from the principal building being served, except*
32 *when the parking facility is within or beneath the structure and adequately screened*
33 *or where an alternative location would result in a lesser environmental impact on the*
34 *shoreline.*

1 21. Parking for most of the new units is located adjacent to and landward of the
2 cabin. Parking for units 4, 5, 6 and 7 is seaward of the units, but landward of existing
3 development. Parking for units 5 and 6 could not be placed next to the units because
4 of the seasonal stream that would have to be crossed to get to these units. However,
5 the parking area serving units 2, 3, 4, 5, 6 and 7 will be located behind several units
6 and probably will not be visible from afar. New parking to serve the conference room
7 will be located landward of that building.

8 **SJCC 18.50.090(D):** *Parking facilities for shoreline activities must provide safe
9 and convenient pedestrian circulation within the parking area and to the shoreline.*

10 22. The low on-site traffic and extensive open space provide for pedestrian friendly
11 circulation that is well integrated with the parking facilities to provide for safe and
12 convenient pedestrian circulation.

13 **SJCC 18.50.090(D):** *Parking facilities shall be designed to prevent
14 contamination of water bodies from surface water runoff. Parking facilities must be
15 provided with the best available technologies and include a maintenance program that
16 will assure proper functioning of all drainage facilities to prevent degradation of
17 surface water quality.*

18 23. According to the staff report, the storm water plan for the proposal takes the
19 parking areas into account and diverts this runoff into narrow filter strips, culverts and
20 biofiltration swales.

21 **SJCC 18.50.340(C)(1):** *Parking areas shall not be located on shorelines unless it can
22 be shown that the parking area is an essential accessory to a permitted use and that it
23 could not feasibly be located on the upland site.*

24 24. Parking spaces are required by SJCC Table 6.4. That table requires one parking
25 stall per guest room plus one stall per employee for hotels/motels. Conference rooms
are not listed specifically, so the applicant used one stall for every 100 square feet as is
required for entertainment facilities. The required number of parking spaces is 18 for
the cabins, six for employees, and 12 for the 1,200 sq. ft. conference room, for a total
of 36 spaces. As shown on the topographic survey, Ex. 3, the parking spaces are
located as far landward as possible without encroaching into the Category II wetland
and its buffer or the seasonal stream adjacent to units 5 and 6.

SJCC 18.50.340(C)(2): *Parking areas permitted on the shorelines shall be located
landward of the uses they are designed to serve, unless an alternative orientation
would reduce the adverse impacts. They shall be no larger than is absolutely
necessary and, where appropriate, shall be screened from view.*

25 25. The parking spaces are landward of the uses they are designed to serve taken
from the viewpoint of the development as a whole as opposed to individual units. As

1 discussed in Conclusion of Law No. 28 below, most of the parking already has
2 adequate screening except for parking proposed on the east side, where screening will
3 be required as a condition of approval.

4 **SJCC 18.50.340(C)(3):** *Upland parking areas serving shoreline uses shall be linked
5 to those uses by safe, pedestrian accesses.*

6 26. A small part of the conference room and employee parking areas are in the
7 upland area and they provide safe pedestrian access.

8 **SJCC 18.50.340(C)(4):** *Parking is prohibited over water.*

9 27. No parking is proposed over water.

10 **SJCC 18.50.340(C)(5):** *Parking facilities shall be designed and landscaped to
11 minimize adverse impacts to adjacent shorelines and properties. Landscaping shall
12 consist of native vegetation or species contained in an approved landscape plan.
13 Vegetation shall be planted in the planting season prior to completion of the parking
14 area. Plantings must provide effective screening within three years of project
15 completion and through maturity of the species.*

16 28. The parking area south of the resort office, for employees and the conference
17 room, will be well screened by the existing vegetation to the west. The applicant also
18 agrees to retain existing native vegetation along the shoreline and perimeter of the site
19 and retain the apple trees along the east side of the parking area located south of the
20 resort office. The parking area proposed along the east property line will require the
21 addition of new landscaping since this area does not include enough existing
22 vegetation to satisfy this code requirement.

23 **San Juan County Comprehensive Plan (“SJCCP”) Section B, Element 3, 5.D.1:**
24 *Commercial development on the shorelines should consist of uses which are water-
25 oriented and/or uses which will provide an opportunity for substantial numbers of
people to enjoy the shorelines. Commercial development in shoreline areas should be
encouraged in descending order of preference as follows:*

- 26 a. *Water-dependent uses;*
- 27 b. *Water-related uses;*
- 28 c. *Water-enjoyment uses.*

29 29. The resort exists and provides water dependent recreational activities to resort
30 patrons.

31 ~~**SJCCP(B)(3)(5)(D)(2):** *Prohibit non-water-oriented commercial uses. A non-
32 water-oriented use may become a water-enjoyment use by providing meaningful
33 physical or visual public access to the shoreline. Physical access is preferred if
34 practical.*~~

1 30. The resort will continue to provide physical or visual public access to the
2 shoreline resulting in water-enjoyment uses. The dock and ramp will continue to
provide the opportunity to participate in water-dependent uses.

3 **SJCCP(B)(3)(5)(D)(4):** *The height and bulk of any proposed commercial structures*
4 *should be designed, to the extent practical, to accommodate the proposed use and to*
5 *minimize the obstruction of views from the surrounding area, and consideration*
6 *should be given to compatibility with the scale and use intensity of surrounding*
7 *developments.*

8 31. No new structure will exceed 35 feet in height above average grade pursuant to
9 RCW 90.58.320. The cabins will have a footprint of approximately 500 square feet.
Several of the cabins on the southeast side of the property will include a second story
loft and deck to provide additional views over the top of existing development. The
site visit and site plan do not reveal any potential view impacts to adjoining properties.

10 **SJCCP(B)(3)(5)(D)(5):** *Place parking facilities inland, away from the water's edge*
11 *and recreational beaches, and where necessary, screen parking facilities to minimize*
12 *their visual impact on shorelines, and include measures to control surface runoff and*
13 *prevent pollution of nearby water bodies.*

14 32. As previously concluded, the parking of the proposal will be located landward
from the shoreline and will be screened and drainage is adequately addressed by a
stormwater management plan.

15 **SJCCP(B)(3)(5)(D)(6):** *In applying conditions to a shoreline permit in order to*
16 *ensure consistency with this Master Program, recognize that different approaches can*
17 *accomplish the same purpose and the most expensive is not necessarily the only*
18 *effective means to obtain compliance.*

19 33. It appears that the Applicant has been very proactive in ensuring that the project
is consistent with shoreline regulations and it is presumed that the Applicant has done
this in a cost effective manner.

20 **SJCC 18.50.350(A)(1):** *In shoreline areas, utility transmission lines, pipelines, and*
21 *cables must be placed underground unless demonstrated to be infeasible. Further,*
22 *such lines must utilize existing rights-of-way whenever possible. Proposals for new*
23 *corridors in shoreline areas involving water crossings must fully substantiate the*
24 *infeasibility of existing routes.*

25 34. The desalination utility lines are proposed to be located underground until
they connect with the resort dock. There is no right of way that could be used to
connect the desalination plant to the dock. No water crossings are proposed beyond
connecting to the dock.

1 **SJCC 18.50.350(A)(2):** *Utility development must, through coordination with*
2 *government agencies, provide for compatible multiple use of sites and rights-of-way.*
3 *Such uses include shoreline access points, trails, and other forms of recreation and*
4 *transportation systems, providing such uses will not unduly interfere with utility*
5 *operations or endanger public health and safety.*

6 35. There are no other utilities that could be combined with the desalination
7 lines given the location of the proposal and the dependence of the desalination line on
8 the shoreline.

9 **SJCC 18.50.350(A)(3):** *Sites disturbed for utility installation must be stabilized*
10 *during and following construction to avoid adverse impacts from erosion.*

11 36. As conditioned.

12 **SJCC 18.50.350(A)(4):** *Immediately following the completion of utilities installation*
13 *or maintenance projects on shorelines, disturbed areas must be restored to project*
14 *configurations, replanted with local vegetation, and the vegetation maintained until it*
15 *is firmly established.*

16 37. As conditioned.

17 **SJCC 18.50.350(A)(5):** *Utility lines, pipes, stations, plants, and other apparatus*
18 *shall not be installed in shoreline areas unless there is no feasible alternative.*

19 38. There is no feasible alternative – the project is dependent upon acquisition
20 of seawater.

21 **SJCC 18.50.350(A)(6):** *Utility lines shall be installed underground. Desalination*
22 *intake and discharge lines shall be located underground wherever feasible, except for*
23 *that portion located underneath or along any docks, piers, walkways, stairs, or other*
24 *shoreline improvements located on the site.*

25 39. As proposed.

SJCC 18.50.350(A)(8): *Where installation of utility lines, pipes, or other apparatus*
in shoreline areas is approved, clearing shall be confined to that which is absolutely
necessary to permit the installation and to prevent interference by vegetation once the
system is in operation.

40. As determined during the site visit, there is no vegetation lying in the
proposed path of the desalination lines.

SJCC 18.50.350(9): *Where utility lines, pipes, or other apparatus must cross*
shoreline areas, they shall do so by the route which will cause the least damage to the
shoreline, both physically and visually.

1 41. The pipes will cause inconsequential damage to the shoreline given they
2 will traverse an already cleared area and the route is direct and therefore appears to be
3 the least damaging. Since the pipes will largely be underground, there are no
significant visual impacts associated with the proposal.

4 **SJCC 18.50.350(A)(10):** *Drainage and surface runoff from utility installation areas*
5 *shall be controlled so that pollutants will not be carried into water bodies.*

6 42. As conditioned.

7 **SJCC 18.50.350(A)(11):** *Applications for outfalls and underwater pipelines that*
8 *transport substances harmful or potentially harmful to aquatic life or water quality*
9 *shall not be approved unless the applicant has demonstrated that no significant*
10 *adverse impacts will result. Desalination and reverse osmosis brine discharge is not*
considered to be potentially harmful to aquatic life or water quality provided all
required state and federal requirements are met.

11 43. The project is for desalination and is conditioned on meeting all required
12 state and federal requirements.

13 **SJCC 18.50.350(B)(1):** *Desalination lines must be located along existing paths,*
trails, or connected to existing docks and beach access structures wherever feasible.

14 44. There is no existing path that leads from the desalination plant to the dock.
15 The lines will have to traverse an already cleared area though an underground trench,
16 but will then be located along an existing boat ramp to its connection point with the
dock.

17 **SJCC 18.50.350(B)(2):** *Desalination and reverse osmosis systems on shorelines that*
18 *are known or demonstrated to be eroding bluffs, unstable bluffs, eroding beaches, or*
19 *exposed cliffs, will require design and engineering which will assure that no*
20 *significant visual or environmental impacts will be created and that effects on the*
natural shoreline conditions will be minimized.

21 45. According to the Applicant in Ex. 3, the Coastal Zone Atlas shows the
22 shoreline to be stable and rocky.

23 **SJCC 18.50.350(B)(3):** *All desalination and reverse osmosis production equipment*
24 *and necessary pumping equipment, utility connections, and pipelines must be located*
25 *and designed to blend in with the natural surroundings to the extent feasible to*
reduce visual impacts. Existing vegetation and terrain features must be used
whenever possible for screening.

46. The project will for the most part not be visible at the shoreline so the
criterion met. According to the Applicant in Ex. 3, the desalination plant will be

1 located will be located in the daylight basement under the conference room and will
2 not be visible outside the building. The piping will be underground and the saltwater
3 pump will be located beneath the dock.

4 **SJCC 18.50.350(B)(4):** *Desalination and reverse osmosis facilities must not
5 impede public access to public tidelands or materially interfere with normal public
6 use of public waters.*

7 47. All of the desalination facilities will be enclosed in a building,
8 underground or under a dock. There will be no impediment to public shoreline
9 access.

10 **SJCC 18.50.350(B)(5):** *Desalination and reverse osmosis systems will not be
11 allowed for the purposes of providing the primary water supply within new
12 subdivisions and short subdivisions. Such facilities may be allowed for the purpose of
13 supplying water for an established community water system.*

14 48. A new subdivision is not involved.

15 **SJCC 18.50.350(B)(6):** *Desalination intake and discharge lines shall be located
16 underground wherever feasible, except for that portion located underneath or along
17 any docks, piers, walkways, stairs, or other shoreline improvements located on the
18 site.*

19 49. The intake and discharge lines will be underground, except under the dock
20 as authorized by the criterion.

21 **SJCC 18.50.350(B)(7):** *Desalination and reverse osmosis brine discharge is not
22 considered to be potentially harmful to aquatic life or water quality provided all
23 required state and federal requirements are met.*

24 50. The project will be conditioned to satisfy all applicable regulations.
25 According to the Application materials, the design already complies with these
regulations and has been designed to avoid any discharge within 16 feet of eelgrass
beds.

SJCC 18.50.350(B)(8): *All desalination and reverse osmosis installations shall
comply with the following regulations:*

*a. The intake and discharge lines must be trenched, run, or located together except
where necessary to provide adequate separation between intake and discharged
water.*

*b. The intake and discharge lines must be engineered so as to not materially interfere
with normal public use of public tidelands or navigation. The intake point shall not
float on the surface.*

1 *c. Intake and discharge lines must not be placed through or over any known or*
2 *discovered archaeological resources, unless the location is approved by the*
3 *Washington Office of Archaeology and Historic Preservation.*

4 51. It is unclear if the utility lines are configured as required by SJCC
5 18.50.350(B)(8)(a) so this will be made a condition of approval. For purposes of
6 SJCC 18.50.350(B)(8)(b), it has already been concluded above that the desalination
7 facilities will not interfere with shoreline access and the Applicant writes in the
8 application materials, Ex. 3, that the intake point shall not float on the surface. For
9 SJCC 18.50.350(B)(8)(c) the Applicant writes in Ex. 3 that the desalination lines will
10 be located outside the archaeological buffer zone.

11 **SJCC 18.50.350(C)(2)(Rural Residential):** *Utility facilities shall be permitted in*
12 *the urban environment subject to the policies and regulations contained in this master*
13 *program.*

14 52. As discussed in the preceding conclusions of law, the proposal is
15 consistent with the policies and regulations of the shoreline master program.

16 **SJCC 18.30.150(E)(3):** *Buffer Width – Decreasing. Decreasing of required buffer*
17 *widths will be allowed only if the applicant demonstrates that all of the following*
18 *criteria are met:*

19 *a. Buffer width averaging pursuant to subsection (E)(2) of this section is*
20 *not possible due to site characteristics;*

21 *b. A decrease is necessary to accomplish the purposes of the proposal and*
22 *no reasonable alternative is available;*

23 *c. The wetland contains variations in sensitivity due to existing physical*
24 *characteristics, and reduction from standard buffer widths will occur only adjacent to*
25 *the area of the wetland determined to be the least sensitive;*

d. Decreasing width will not adversely affect the wetland functional
values:

e. In no instance will the buffer width be reduced by more than 50 percent
of the standard buffer width; and

f. If a portion of a buffer is to be reduced, the remaining buffer area will
be enhanced, using native vegetation and fencing where appropriate to improve the
functional attributes of the buffer and to provide additional protection for wetland
functions and values. A proposal to enhance a buffer shall not be used as justification
to reduce an otherwise functional standard buffer width, unless such buffer reduction
complies with all other criteria for reducing buffer widths.

53. The Applicant has requested a 50% buffer reduction along the shoreward side of
the on-site Category II wetland. Applying the criteria quoted above, the buffer
reduction is approved for cabin units 10 and 11 subject to the conditions identified in
this Conclusion of Law.

1 The staff report does not contain an assessment of the buffer width reduction request
2 and the Applicant testified at the hearing that the buffer reduction is only necessary to
3 accommodate cabin units 10 and 11 as opposed to a buffer reduction for the entire
4 shoreward side of the wetland as originally requested by the Applicant. For this
5 reason it is difficult to determine whether buffer averaging may not accomplish the
6 needs of the Applicant by increasing the shoreward side of the wetland buffers at
7 points away from units 10 and 11. A condition of approval will require staff to explore
8 this option. It is also highly debatable whether “no reasonable alternative” exists to
9 avoid the buffer reduction. In this case the Applicant could simply forego the addition
10 of units 10 and 11 and still have ample reasonable use of its property. Since staff and
11 no one else has contested this point the Examiner will not press it any further.
12 However, this case should not be seen as setting the precedent that buffer reductions
13 are available anytime a developer is unable to extract maximum development potential
14 from their property.

9 At hearing Ms. Shaw made a compelling argument that the reduction is proposed on
10 the downslope portion of the wetland buffers and is, therefore, at the least sensitive
11 portion of the wetland. There is no evidence in the record, other than the downslope
12 aspect, to support a finding that decreasing the buffer width will not adversely affect
13 wetland functional values. Given that wetland buffers are based upon best available
14 science, there is insufficient evidence to overcome the legislative justification for the
15 buffers. An evaluation of wetland impacts will be made a condition of approval. The
16 Applicants are proposing 17,000 square feet of enhancement. The conditions of
17 approval will require that this enhancement is sufficient to mitigate the impacts of
18 buffer reduction.

16 DECISION

17 The application for a shoreline substantial development permit is approved and buffer
18 reduction is provisionally approved, subject to the following conditions:

- 19 1. The Applicant originally requested buffer reduction for the entire shoreward side
20 of the Category II wetland and at hearing noted that the reduction is only
21 necessary to accommodate proposed cabin units 10 and 11. Given that only a
22 portion of the buffer needs to be reduced, it is unclear whether the option of buffer
23 averaging has been investigated as required by SJCC 18.30.150(E)(3)(a). Staff
24 shall investigate whether the area needed for cabin units 10 and 11 can be
25 accommodated by buffer averaging, perhaps by increasing the buffer at the area
south of the office and south of cabin units 7 and 8.
2. If staff determines that buffer averaging will not provide the area needed to
accommodate cabin units 10 and 11, the 50% wetland buffer reduction is
approved to the extent necessary to accommodate proposed cabin units 10 and 11
along with the associated driveway of unit 10. The Applicant shall delineate the
area of the reduction necessary for this purpose, subject to the approval of staff.
3. The Applicant shall hire a qualified professional to evaluate whether the proposed

1 buffer reduction will adversely affect wetland functions. If any adverse impacts
2 are reasonably likely the professional shall determine whether the buffer
3 enhancement proposed by the Applicant is sufficient to mitigate the impacts and if
4 not, the professional shall prepare a mitigation plan that will apply to the
5 proposal. The findings and conclusions of the professional shall be subject to the
6 approval of staff.

- 7 4. The desalination facilities shall comply with all applicable state and local
8 regulations as required by SJCC 18.50.350(B)(7).
- 9 5. San Juan County Public Works shall evaluate the adequacy of Lonesome Cove
10 Road and require improvements as necessary to accommodate the traffic
11 generated by the proposal in conformance with San Juan County street standards.
- 12 6. The proposal shall comply with all recommendations in the Applicant's drainage
13 plan.
- 14 7. If during excavation or development of the site an area of potential
15 archaeological significance is uncovered beyond that already assessed for this
16 permit, all activity in the immediate vicinity of the find must be halted
17 immediately, and the administrator must be notified at once.²
- 18 8. Archaeological sites located both in and outside the shoreline jurisdiction are
19 subject to Chapter 27.44 RCW (Indian Graves and Records) and Chapter 27.53
20 RCW (Archaeological Sites and Records) and must comply with Chapter 25-48
21 WAC (Archaeological Excavation and Removal Permit) as well as the provisions
22 of the San Juan County Code.
- 23 9. Construction shall not be commenced until all relevant appeal periods have run.
- 24 10. The recommendations contained in the archaeological report will be followed.
- 25 11. A parking layout plan and a landscaping plan shall be approved by this
department prior to issuing any new building permits for this project. The
landscape plan shall satisfy the requirements of SJCC18.60160(G) and
18.50.090(B). Landscape screening shall be included along the east property
line as required by SJCC 18.50.340(C)(5).
12. Contact the Fire Marshal's office to discuss emergency vehicle access, on-site
water storage for fire protection, and the potential Building Code requirement to
protect the new cottages with automatic fire sprinklers. In addition, yurts may be
required to be constructed with State Fire Marshal approved fire resistant fabric,
depending upon their size.
13. No building permits will be issued prior to installation of the new septic system.
14. No building permits will be issued without certificates of water availability, with
the exception of the conference room that may be issued to house the treatment
plant.
15. Development under this permit shall commence within two years of the date of
permit approval and shall be substantially complete within five years thereof or
the permit shall become null and void.

² The archaeological assessment may already require this, but the assessment is not in evidence.

- 1 16. Failure to comply with any terms or conditions of this permit may result in its
2 revocation.
3 17. Sites disturbed for desalination facility installation must be stabilized during and
4 following construction to avoid adverse impacts from erosion.
5 18. Immediately following the completion of desalination facility installation,
6 disturbed areas must be restored to project configurations, replanted with local
7 vegetation, and the vegetation maintained until it is firmly established.
8 19. Drainage and surface runoff from desalination facility installation areas shall be
9 controlled so that pollutants will not be carried into water bodies.
10 20. The intake and discharge lines of the desalination facility must be trenched, run,
11 or located together except where necessary to provide adequate separation
12 between intake and discharged water.
13 21. The Applicant shall schedule a site inspection with staff upon completion of the
14 project to verify compliance with this decision and applicable regulations.

15 Dated this 24th day of February, 2012.

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Phil Olbrechts
County of San Juan Hearing Examiner

Effective Date, Appeal Right, and Valuation Notices

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

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

Depending on the subject matter, this decision may be appealable to the San Juan County Superior Court or to the Washington State Shorelines Hearings Board. State law provides short deadlines and strict procedures for appeals, and failure to timely comply with filing and service requirement may result in dismissal of the appeal. See RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to promptly review appeal deadlines and procedural requirements and consult with a private attorney.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

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