

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Joe Brotherton
PO Box 437
Olga, WA 98279

File No.: PSJ000-12-0002

Request: Shoreline Conditional Use Permit

Parcel No: 160212003

Location: 107 Doe Bay Road
Olga

Summary of Proposal: Annual music festival.

Land Use Designation: Activity Center

Hearing Date: June 13, 2012

Application Policies and Regulations: SJCC 18.80.110(J)(4); 18.80.060(E)

Decision: Approved with conditions.

S.J.C. COMMUNITY

JUL 03 2012

DEVELOPMENT & PLANNING

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

3 Phil Olbrechts, Hearing Examiner

4 RE: Doe Bay Resort 5 Shoreline Conditional Use 6 Permit 7 (PSJ000-12-0002)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION
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8 **INTRODUCTION**

9 The Applicant has applied for a shoreline conditional use permit to authorize a yearly
10 music festival. The application is approved.

11 **TESTIMONY**

12 Lee McEnery, senior San Juan County planner, noted that staff is not concerned about
13 lack of sufficient parking for the festival. Staff received a comment letter from Public
14 Works stating that no parking will be allowed on county roads. The county noise
ordinance will be enforced by the sheriff. The property is on two county roads.

15 Jami Mitchell, general manager of Doe Bay Resort, stated that the music festival has
16 been very successful for Orcas in the past. The resort uses water taxis to avoid too
17 many vehicles overcrowding the island. Additionally, Doe Bay has made agreements
18 with various neighbors to ensure sufficient parking. The noise ordinance has been
19 abided for the past four years. Off-duty officers are hired to patrol the event and
20 discourage drinking and driving. EMTs are present for all three days. Neighbors
21 offered their support through comment letters and emails. The festival works in
conjunction with Public Works and the Sheriff's Department to ensure safety and a
successful event. The festival has benefited the island by attracting tourists, but the
festival does not make money itself. In past years, the festival has informed the
Sheriff's, Public Works, and Public Health Department of the event.

22 Fred Klein stated that he hopes the decision recommends a conditional use permit not
23 be required in subsequent years.

24 Julie Wilcum testified that the festival is peaceful and gives jobs to young people.

25 Lee McEnery stated that a permit is required because the festival is a new use of the
existing property. If approved, the festival is allowed to happen every year without
needing a new permit.

Shoreline Conditional Use Permit

1 **EXHIBITS**

- 2 Exhibit 1: staff report
- 3 Exhibit 2: request for review
- 4 Exhibit 3: Application
- 5 Exhibit 4: 5/9/12 email from Brendan Cowan
- 6 Exhibit 5: 6/4/12 Memo from Public Works Department
- 7 Exhibit 6: 5/31/12 email from Liz Hance
- 8 Exhibit 7: 6/4/12 email from Barbara Omalev
- 9 Exhibit 8: 6/8/12 letter from Scott and Judy Whiting

10 **FINDINGS OF FACT**

11 **Procedural:**

- 12 1. Applicant. The Applicant is Joe Brotherton on behalf of Doe Bay Resort.
- 13 2. Hearing. The Hearing Examiner conducted a hearing on the subject application on June 13, 2012 at 10:00 am in the San Juan County Council meeting chambers.

14 **Substantive:**

15 3. Site and Proposal Description. The Applicant proposes a yearly four day music festival to be held at Doe Bay Resort. No development is proposed in conjunction with the event. The Resort is a rustic resort comprised of approximately 38 acres, accommodating thousands of guests every year in campsites, yurts, domes, cabins and houses sited throughout the property. The Resort also has a full service café and general store, a kayak rental facility and multiple restroom and bathing facilities.

16 The festival is “invitation only” and limited to the amount of parking available. Events are primarily scheduled in the Upper Field of the Resort and other locations as outlined in the exhibits attached to Exhibit 3. Main stage events will take place in an enclosed area in the Upper Field, set back approximately 250 feet from the shoreline and buffered by forest. The enclosed festival area appears to be about 100 feet from the shoreline at its closest point.

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

18 5. Adverse Impacts of Proposed Use. The festival has already been held for four years and has a very impressive history of minimizing impacts on adjoining properties. In fact, one of the adjoining neighbors, the Whitings, submitted a letter, Ex. 8, that spoke strongly in favor of the festival. If the festival continues to be as

1 well managed as it has been in the past, it appears unlikely that any further mitigation
2 is necessary to minimize impacts. However, the record is not completely clear on the
3 extent of all festival impacts and additional investigation and potential mitigation may
4 still be necessary. Specific impacts are addressed as follows:

5 1. Parking. The Applicant notes in its application that 163 parking spaces are
6 available on-site. Four neighboring properties are also leased to provide parking.
7 It is unclear from the application materials whether the leased space provides
8 parking in addition to the 163 “on-site” parking spaces or whether that is already
9 factored into the 163 space total. In its application, the Applicant notes that the
10 number of persons invited to attend the festival is based upon the amount of
11 available parking. However, the Applicant doesn’t identify how many people are
12 invited or what standard it uses to assess the adequacy of parking. San Juan
13 County standards should be used to assess the adequacy of parking. SJCC
14 18.60.120 sets the number of parking spaces required for specified uses. Table
15 6.4 of SJCC 18.60.120 sets the minimum number of parking spaces and it appears
16 that the music festival qualifies as an “unnamed commercial use” wherein the
17 number of spaces is determined by the administrator. Pursuant to these
18 regulations, the conditions of approval will require County planning staff to
19 determine how many parking spaces are required for the festival.

20 In its application materials the Applicant also notes that it has worked with
21 County agencies in restricting parking along the roads serving the site to ensure
22 that vehicles only park in areas with sufficient shoulder width. The conditions of
23 approval will require the Applicant to continue this practice.

24 2. Noise. Adjoining neighbors, the Whitings, wrote in Ex. 8 that the Applicant has
25 been very good about stopping noise when the music events were scheduled to
cease. However, the Whitings themselves attend and enjoy the musical festivities.
There is nothing in the record that gives any indication on the noise levels
generated by the festival other than the Whiting observation that “[i]he music
setting is appropriate to the setting, as is the sound level”. The problem with this
scenario is that the Applicant is requesting a permanent permit. Subsequent
owners of the Whiting home, occupants of new residences, or other affected
neighbors, may not enjoy the music as much as the Whitings and may have
problems with the sound levels involved in the festival. San Juan County
regulates noise in Chapter 9.06 SJCC, but these are fairly subjective standards that
would be difficult to enforce, essentially prohibiting noise that is “loud or
unreasonable” between the hours of 10:00 pm and 7:00 am. Noise levels adopted
by the Washington State Department of Ecology under Chapter 173-60 WAC
provide decibel limits for noise levels and provide some objective parameters as
to what constitutes “loud or unreasonable” noise under County noise standards.
The conditions of approval will require that the Applicant adhere to the standards
of Chapter 173-60 WAC should the County receive any complaints regarding
noise levels.

- 1 3. Traffic. County staff testified that the roads serving the facility are adequate to
2 accommodate traffic generated by the festival and there is no evidence to the
3 contrary.
- 4 4. Sanitary Waste. The application notes that the Applicant has sufficient septic
5 capacity to accommodate the festival participants. However, there is no
6 information in the record on whether the sanitary waste facilities on-site meet
7 County health regulations. The project will be conditioned to ensure that the
8 sanitary waste facilities meet County health regulations.
- 9 5. Shoreline Environmental Resources. Since this is a shoreline conditional use
10 permit one would expect that the impact to the shoreline would be a major
11 consideration. However, no adverse impacts are anticipated. The enclosed
12 festival space is apparently about 100 feet from the shoreline and will not involve
13 any alterations to the shoreline. Page 3 of the staff report notes that the festival
14 “won’t cause any adverse impacts to the shoreline”. Without an approximate
15 number of anticipated attendees or any information¹ on how much access these
16 attendees will have to the shoreline, it is not immediately apparent why no
17 shoreline impacts are anticipated. A large number of people at the shoreline could
18 adversely affect shoreline resources by the dumping of large quantities of solid
19 waste or by trampling shoreline habitat. The conditions of approval will require
20 staff to investigate this issue and mitigate as necessary.

CONCLUSIONS OF LAW

Procedural:

- 17 1. Authority of Hearing Examiner. The Hearing Examiner issues a final
18 decision on shoreline conditional use permits, subject to approval by the Washington
19 State Department of Ecology. Section 3.70 of the San Juan County Charter; RCW
20 90.58.140(10).

Substantive:

- 21 2. Zoning Designations. The subject property is designated as Activity
22 Center/Resort Commercial and the shoreline designation is Suburban/Rural.
- 23 3. Permit Review Criteria. The music festival qualifies as a Level III
24 temporary event under SJCC 18.80.060(D)(1), because it involves an annual
25 temporary use. SJCC 18.80.060(D)(1) requires an Applicant for a Type III temporary
event to acquire a project permits according to Tables 3.1 and 3.2. Table 3.1,

¹ The Applicant characterizes the festival area as “enclosed”, but this doesn’t provide much information on how much access, if any, festival attendees will have to the shoreline.

1 footnote 2 notes that uses within or partially within 200 feet of the shoreline are
2 subject to the County's shoreline master program. As discussed in the staff report, a
3 music festival qualifies as an unspecified use in the County's shoreline master
4 program. SJCC 18.50.160(A) requires a shoreline conditional use permit for
5 unspecified uses. In addition to the shoreline conditional use permit, SJCC
6 18.80.060(E) imposes additional standards for Level III permits that must be applied
7 by the Hearing Examiner. The Level III standards, in addition to the criteria
8 necessary for a shoreline conditional use permit, are quoted below and applied
9 through corresponding conclusions of law:

6 SHORELINE CONDITIONAL USE CRITERIA

7 **SJCC 18.80.110(J)(4):** *Uses which are classified or set forth in the Shoreline Master*
8 *Program as conditional uses may be authorized by the County provided the applicant*
9 *can demonstrate all of the following:*

10 *a. The proposed use is consistent with the policies of RCW 90.58.020 and the policies*
11 *of the Shoreline Master Program;*

12 4. As discussed more specifically below, the proposed use is consistent with the
13 policies of RCW 90.58.020 and the specifically applicable policies of the Shoreline
14 Master Program.

15 **SJCC 18.80.110(J)(4)(b):** *The proposed use will not interfere with the normal public*
16 *use of public shorelines;*

17 5. There is nothing in the record to suggest that the music festival will interfere with
18 public use of the shoreline. Large crowd use of the shoreline of Doe Bay could result
19 in the accumulation of solid waste that would affect public use of the shoreline, but
20 the conditions of approval require staff to investigate this issue and mitigate as
21 necessary.

22 **SJCC 18.80.110(J)(4)(c):** *The proposed use of the site and design of the project is*
23 *compatible with other permitted uses within the area;*

24 6. As discussed in Finding of Fact No. 5, all potential adverse impacts are
25 thoroughly mitigated so there should be no compatibility problems.

SJCC 18.80.110(J)(4)(d): *The proposed use will cause no unreasonably adverse*
effects to the shoreline environment in which it is to be located;

7. As discussed in Finding of Fact No. 5, there are no significant environmental
impacts associated with the proposal. The criterion is satisfied.

SJCC 18.80.110(J)(4)(e): *The cumulative impacts of additional requests for like*
actions in the area, or for other locations where similar circumstances exist, shall not

1 *produce substantial adverse effects to the shoreline environment, e.g., the total of the*
2 *conditional uses shall remain consistent with the policies of RCW 90.58.020 and the*
3 *Shoreline Master Program; and*

4 8. As discussed in Finding of Fact No. 5, there are no significant adverse impacts
5 associated with the proposal. The staff report notes that there are only a limited
6 number of other resorts that could stage such an event. Although it doesn't appear
7 that a music festival would have to be limited to resort property, it doesn't appear that
8 there could be an appreciable number of sites that would host outdoor events
9 comparable in scale to that proposed in the subject application. Given the absence of
10 any significant adverse impacts and the paucity of venues available for similar events,
11 it is unlikely that the project would contribute to any significant cumulative impacts.

12 **SJCC 18.80.110(J)(4)(f):** *The public interest will suffer no substantial detrimental*
13 *effect.*

14 9. The project has no associated adverse impacts and provides for significant
15 cultural, recreational, economic (hotels, restaurants, etc.) and entertainment benefits
16 for the San Juan community. The public interest will not suffer any detrimental effect
17 and will in fact benefit significantly from the project.

18 **RCW 90.58.020 Use Preferences**

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

10. The proposal has no significant adverse impacts while substantially supporting the
public interest as outlined in the preceding conclusion of law. No new alterations to
the shoreline are proposed. The proposal is consistent with the general purpose of the
Shoreline Management Act.

RCW 90.58.020(1)

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

2 11. The proposal will not adversely affect shoreline resources while significantly
3 contributing to the public interest. The proposal is consistent with the policy.

4 **RCW 90.58.020(2)**

5 *Preserve the natural character of the shoreline;*

6 12. As conditioned, the natural character of the shoreline will not be affected by the
7 proposal.

8 **RCW 90.58.020(3)**

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

10 13. The proposal will not adversely affect shoreline resources while significantly
11 contributing to the public interest. The proposal is consistent with the policy.

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

13 14. The proposal will have no impact on the resources and ecology of the shoreline.

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

16 15. No public access is included in the proposal nor could it be legally required.

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

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

20 **TEMPORARY EVENT CRITERIA**

21 **SJCC 18.80.060(E):** *Criteria for Approval for Level II and Level III Temporary
22 Uses. A permit shall only be approved by the administrator (Level II) or hearing
23 examiner (Level III) where such decisionmaker makes findings as to the following
24 criteria:*

25 *1. The proposed temporary event or use will not be detrimental to the public health,
safety, or welfare, nor injurious to property or improvements in the immediate
vicinity;*

1 17. As determined in Finding of Fact No. 5, the proposal will not generate any
2 significant adverse impacts, including impacts to property or improvements in the
immediate vicinity. The criterion is met.

3 **SJCC 18.80.060(E)(2):** *The proposed temporary event or use is compatible with the*
4 *purpose and intent of the Comprehensive Plan and this code;*

5 18. The proposed use promotes the arts and economic development without any
6 adverse impacts and is fully compatible with adjoining uses. For these reasons the
7 proposal is compatible with the purpose and intent of the Comprehensive Plan and
this code.

8 **SJCC 18.80.060(E)(3):** *The location, days and hours of operation are specified;*

9 19. The proposal is specifically for four consecutive days per year. The proposal is
10 conditioned on limiting festival hours between 7:00 am and 10:00 pm to provide for
consistency with County noise standards.

11 **SJCC 18.80.060(E)(4):** *The proposed temporary event or use will be conducted*
12 *behind the building setback line, except as otherwise expressly permitted;*

13 20. As conditioned.

14 **SJCC 18.80.060(E)(5):** *Adequate parking and traffic control can be provided in a*
15 *safe manner;*

16 21. Parking and traffic control are addressed in the conditions of approval.

17 **SJCC 18.80.060(E)(6):** *Structures proposed for the event or use comply with*
18 *applicable building and fire codes;*

19 22. The staff report indicates that there is no development associated with the
20 proposal. This is a little difficult to reconcile with other information in the record that
21 establishes that the festival will be “enclosed” and that stages and other structures will
22 be involved. The project will be conditioned for consistency with the standard quoted
above such that any structures added to the resort for the festival will comply with
building and fire codes.

23 **SJCC 18.80.060(E)(7):** *The proposed temporary event or use will not cause noise,*
24 *light, or glare which will cause unreasonable adverse impacts to surrounding land*
25 *uses. No use shall be made of equipment or material which produces unreasonable*
vibration, noise, dust, smoke, odor, or electrical interference to the detriment of
adjoining property;

23. As conditioned.

1 **SJCC 18.80.060(E)(8):** *Any proposed use of public right-of-way is authorized by the*
2 *County engineer;*

3 24. As conditioned.

4 **SJCC 18.80.060(E)(9):** *Either the property on which the event or use is located will*
5 *be restored to the condition it was in prior to the use within a specified time (Level*
6 *II), or the condition of the property will be as specified in the permit (Level III);*

7 25. The proposal is conditioned on returning the property to its pre-event
(immediately prior to the 2012 festival) condition.

8 **SJCC 18.80.060(E)(10):** *Evidence of financial responsibility in a form acceptable to*
9 *the administrator is provided when required by the administrator to assure*
10 *compliance with the conditions of permit approval;*

11 26. As conditioned.

12 **SJCC 18.80.060(E)(11):** *If located within the jurisdiction of the County Shoreline*
13 *Master Program, the proposed temporary event or use meets all applicable shoreline*
14 *policies, regulations, and permit requirements;*

15 27. Consistency with all applicable shoreline policies, regulations, and permit
requirements was determined via application of the shoreline conditional use permit
criteria.

16 **SJCC 18.80.060(E)(12):** *The proposed temporary event or use complies with*
17 *outdoor festival regulations (Chapter 9.12 SJCC) and other federal, state, and local*
18 *rules, regulations, and ordinances; and*

19 28. As conditioned. SJCC 9.12.010 requires another permit for the festival and
appears to overlap many of the requirements imposed by the shoreline conditional use
permit and the Level III temporary permit criteria. SJCC 9.12.010 also appears to
require the Applicant to get a new permit every year. It is an unfortunate anomaly of
San Juan County regulations that so many permits governing the same activity are
required of the Applicant. The Hearing Examiner has no authority to waive any of
these duplicative requirements. However, in order to reduce the burden to the
Applicant, the conditions of approval will provide that any conflicting requirements
imposed by the SJCC 9.12.010 permit will supersede those of this decision without
any need for amendment or reapplication of the shoreline conditional use permit. This
condition will enable the County to change permit conditions to meet changing
circumstances without triggering a reapplication of the shoreline permit.

25 **SJCC 18.80.060(E)(13):** *The proposed temporary use (Level III) complies with the*
applicable permit criteria (i.e., conditional use permit).

1 29. As concluded in the preceding conclusions of law, the proposal complies with all
2 shoreline conditional use criteria.

3 **DECISION**

4 The application is consistent with all applicable policies and criteria and is approved
5 for a four day yearly music festival as described in the application (Ex. 3) and as
6 conditioned below:

- 7 1. At least 24 hours prior to commencement of the festival, the Applicant shall make
8 the premises available for inspection by Community Development and Planning
9 staff to determine compliance with these permit conditions.
- 10 2. Failure to comply with any terms or conditions of this permit may result in its
11 revocation.
- 12 3. The Applicant shall comply with all applicable provisions of Chapter 9.12 SJCC.
13 Any conditions imposed pursuant to Chapter 9.12 SJCC shall supersede any
14 conflicting conditions of this decision.
- 15 4. Community Development and Planning staff shall investigate whether the crowds
16 of the music festival may adversely affect shoreline environmental resources and
17 mitigate the proposal accordingly. Impacts to consider specifically include, but
18 are not necessarily limited to, determining whether solid waste generated by the
19 proposal may adversely affect water quality and also whether heavy usage of the
20 shoreline outside the "enclosed" festival area may harm shoreline habitat.
- 21 5. Community Development and Planning staff shall verify that sanitary waste
22 facilities are sufficient to accommodate demand created by the music festival and
23 that such facilities comply with County health regulations.
- 24 6. Community Development and Planning staff shall determine the amount of
25 parking required for the project as required by Table 6.4 of SJCC 18.60.120 and
ensure that the Applicant provides the requisite parking.
7. The Applicant shall coordinate public safety and traffic with the San Juan County
Sheriff's Office, Public Works and Fire Marshal. Issues that must be specifically
addressed and resolved prior to the commencement of the music festival include
parking along public roads, traffic control and festival security.
8. Festival activities that generate any appreciable noise audible beyond the property
boundaries of the project area may not be conducted outside the hours of 7:00 am
and 10:00 pm. Noise generated by the festival may not exceed the standards
imposed by Chapter 173-60 WAC. Should the County receive one or more
complaints regarding noise generated by the festival and Community
Development and Planning staff determine there's a reasonable likelihood that
noise levels exceed those set by Chapter 173-60 WAC, the Applicant shall be

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1 required at the next festival to monitor decibel levels with noise equipment and
2 demonstrate to the satisfaction of Community Development and Planning staff
3 that noise levels for the duration of the festival are within the levels required by
4 Chapter 173-60 WAC. Nothing within this condition shall be construed as
5 excusing compliance with any applicable County or state noise standards.

6 9. All festival activities shall be conducted behind applicable building setback lines
7 as required by SJCC 18.80.060(E)(4).

8 10. Any structures erected for the festival shall comply with applicable building and
9 fire codes as required by SJCC 18.80.060(E)(6).

10 11. The festival will not cause light or glare which will cause unreasonable adverse
11 impacts to surrounding land uses. No use shall be made of equipment or material
12 which produces unreasonable vibration, dust, smoke, odor, or electrical
13 interference to the detriment of adjoining property. The Applicant shall provide
14 County staff with a rudimentary lighting plan prior to commencement of the
15 festival that demonstrates that the Applicant has minimized light impacts to the
16 maximum extent practicable.

17 12. Any proposed use of public right-of-way shall be authorized by the County
18 engineer;

19 13. The festival property shall be returned to pre-event (2012) condition upon
20 conclusion of the festival except to the extent reasonably excused by Community
21 Development and Planning staff.

22 14. Community Development and Planning staff may require evidence of financial
23 responsibility in a form acceptable to staff to assure compliance with the
24 conditions of this permit approval.

25 15. For access necessary for emergency responses and for the safety of the public,
Point Lawrence Road shall not be blocked for any reason during the festival.
Parking will not be allowed along Lawrence Point Road.

16. There shall be no restriction of any kind for access to Doe Point road.

Dated this 27th day of June, 2012.



Phil Olbrechts
County of San Juan Hearing Examiner

Effective Date, Appeal Right, and Valuation Notices

1 Hearing examiner decisions become effective when mailed or such later date in
2 accordance with the laws and ordinance requirements governing the matter under
3 consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be
4 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.

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

7 Depending on the subject matter, this decision may be appealable to the San Juan
8 County Superior Court or to the Washington State Shorelines Hearings Board. State
9 law provides short deadlines and strict procedures for appeals, and failure to timely
10 comply with filing and service requirement may result in dismissal of the appeal. See
11 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.

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