

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicants: John Bogaert
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File No: HE08-09 (08SJ005)

Request: Shoreline Substantial Development Permit (SSDP)

Location: 4313 Roche Harbor Road
San Juan Island

Parcel Nos: 363211001, 363322002, 363323003, 363322006

Summary of Proposal: A request for a SSDP involving significant revisions to the existing lakeshore resort located in the central northern part of San Juan Island

Shoreline Designation: Rural Farm Forest

Public Hearing: After reviewing the report of the Community Development and Planning Department a public hearing was held on February 18, 2009 and a re-opened hearing was held May 6, 2009.

Applicable Policies and Regulations: RCW 90.58 Shoreline Management Act (SMA)
SJCC 18.50 Shoreline Master Program (SMP)
SJCC 13.08 Firecode
SJCC 18.80.110(H) SSDP Criteria
SJCC 18.80.110(G)(7) and (8) SSDP Timeframes

Decision: Approval with conditions.

Findings of Fact

1. This is a request for a SSDP for revision of the existing Lakedale Resort. The resort is located in the north central part of San Juan Island on Roche Harbor Road.
2. The area and resort involves three lakes; Dream Lake and Neva Lake, which are both shorelines, and Fishhook Lake which is a category III wetland. The site is forested with grassy areas and includes an existing dock.
3. Prior to a 1995 permit there were approximately 125 tent and RV sites, a showerhouse, and a small store offering groceries, fishing gear, packaged food and espresso. Permit No. 95SJ027 authorized a lodge with eight guest rooms, a second shower house, 11 new cabins, a spa, a bunkhouse, a new store and picnic shelters.
4. The resort currently consists of a 10-bedroom lodge, seven cabins, five group campsites, 75 individual camp sites 13 tent platforms (tent cabins) and 15 RV sites. There is a shop, store, office, spa and showers.
5. The proposal for revision involves two phases. Phase one proposes to add eight rooms to the lodge, three cabins, seven RV sites, and 12 yurts. Phase two proposes an additional eight rooms to the lodge.
6. An activities center is also proposed as part of the expansion. The new proposal also requests adding three new docks for swimming, rowboats and canoes.
7. Other recreational activities include boating, fishing, horseshoes, volleyball, Frisbee golf, pingpong and chess. The proposed facilities for these increased recreational activities include a general store, picnic and barbeque facilities and a spa. A number of charity and community events are also proposed.
8. In each of the two phases individual campsites and group campsites will be eliminated.
9. In January 2009 the County Department of Health and Community Services verified septic system adequacy.
10. The County Department of Health and Community Services has given preliminary approval to the water system design. However, before any building permits can issue the proposed water system improvements, which include a water storage tank, must be installed and approved by the State Department of Health and by the County.
11. The County Public Works Department approved the stormwater site plan.

12. Once the new accommodations have been added and some old ones eliminated the same number of individual and group accommodations that existed in 2005 will be present. Therefore there is no concurrency analysis issue.
13. A new fire hydrant, fire lane and space for emergency vehicles will be installed as part of this project.
14. Drainage and surface runoff from the recreational areas will be controlled so that pollutants are not carried into water bodies. The activities and structures that are proposed do not necessitate the use of large quantities of chemical fertilizers.
15. Various areas will be landscaped with native plants for purpose of screening, directing circulation and enhancing existing vegetation. Wildlife habitats will be preserved and increased.
16. It is necessary for the proposed design to be modified to eliminate any RV parking within the 50-foot wetland buffer. Vehicles are limited to roads and parking spaces. Boats will be launched from designated boat launch areas.
17. The applicants have agreed that the RV's shall not be occupied for more than 180 days per year.
18. The resort is located on a peninsula surrounded by the three lakes. All three lakes are manmade. Two of the lakes are shorelines under the SMA. There is no marine life at the site because these are manmade freshwater lakes. There no other commercial or industrial enterprises on the peninsula.
19. Each of the three proposed docks is in a cove so they do not project into the individual lakes. No structures are proposed on the docks. There are no live-aboard proposals. There will be no overnight accommodation. No float plane use is allowed. No wiring or plumbing is proposed. Anchor cables will be used for the docks.
20. The types of boats to be used are rowboats and canoes. The purpose of the docks is to make it safer for boaters to access boats and swimmers to enter the water.
21. The proposal serves a commercial recreational use thus allowing multiple forms of moorage. Because of the commercial resort usage, mooring buoys are not preferred. Under these facts, several small docks are preferred over one larger one. Use of small docks insure that boating and swimming activities are not concentrated in one area where there are three lakes available to be used by the patrons of the resort. The dock usage will be very low impact. The proposed docks will provide better access to the water for resort patrons. The resort is self-contained and is not dependent upon public facilities.

22. The proposal provides for one accessible parking space for each employee, one parking stall for each lodge room, cabin and yurt, one parking space for each campsite (except for the bicycle only campsites), one parking space for every 200 square feet of recreational activity area in the activities facility and one parking space for every 300 square feet of retail space in the activities facilities. Overflow parking is to be designated near the activities facilities and main swimming areas.
23. The applicant has requested additional time for commencement of work and for completion of the project. The request is based on the extensive nature of the proposed revisions including installation of the water system prior to issuance of any building permit. The request is also premised upon an acknowledgment of the unstable economic conditions now and for the immediate future. These economic conditions include an unprecedented instability of commercial loan activity necessary to finance this project.
24. A Determination of Non-Significance was issued June 29, 2008. No comments were received.
25. The initial notice of hearing was published June 25, 2008. The original August 20, 2008 hearing was continued to November 5, 2008 and later continued to February 18, 2009. The supplemental publication was placed on February 4, 2009. Mailing occurred June 25, 2008 and the site was posted June 26, 2008.
26. The staff report of February 11, 2009, supplemental staff report of May 5, 2009 and staff report addendum of May 6, 2009 are incorporated herein by reference as though fully set forth. The analysis and factual statements contained in the staff report are adopted as a finding herein.
27. Any conclusion herein which may be deemed a finding is hereby adopted as such.

Conclusions of Law

1. The Hearing Examiner has jurisdiction over the persons and subject matter of this proceeding.
2. Proper notice was given in compliance with local and state requirements.
3. The proposal has complied with the requirements of the State Environmental Policy Act.
4. Properly conditioned the proposal meets the criteria of SJCC 18.80.110(H), the SMP and the SMA.
5. The normal standards for commencement and completion of an approved SSDP is found in the SMA within RCW 90.58.143. Under .143(2) commencement must

generally take place within two years of permit approval. Under .143(3) completion must generally occur within a five year timeframe of permit approval. Generally those requirements are followed within county code provisions SJCC 18.80.110(G)(7)(8).

6. There is a provision found in the SMA under RCW 90.58.143(1) that provides as follows:

...Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of the master program and this chapter, local governments may adopt different time limits from those set forth subsections (2) and (3) of this section as part of action on a substantial development permit.

The initial decision as to whether this section applies to the applicant's request for extensions relates to whether the hearing examiner is considered "local government" for purposes of adopting different time limits "as part of action on a substantial development permit." Under current county code provisions the hearing examiner is the only part of local government (San Juan County) that takes final action on approval or disapproval of a SSDP. There is no appeal process to any other branch of local government but only to the Shorelines Hearings Board. Thus, the hearing examiner, as the county agency taking action on the SSDP, must be the local government for purposes of RCW 90.58.143(1).

7. The next legal issue to be determined is the application of SJCC 18.80.110(G)(7). That provision reads as follows:

Construction or substantial progress toward construction of a project for which a shoreline permit is granted must be undertaken within two years after the permit approval. Substantial progress toward construction shall include the letting of contracts, purchase of materials involved, utility installation and site preparation, but shall not include use or development inconsistent with the master program or the terms of permit approval. However the two-year period shall not include time during which development could not proceed due to reasonable related administrative appeals or litigation, nor include time necessary to obtain other required permits for the project from state and federal agencies. The hearing examiner may, with discretion, extend the two-year time period for a reasonable time.

This county code provision allows a hearing examiner to extend the two year period "for a reasonable time" as long as the same is done "with discretion". The code does not specify when the hearing examiner decision about extending the two year period must occur.

8. With regard to completion of a SSDP project, SJCC 18.80.110(G)(8) provides as follows:

Unless specified otherwise in permit conditions, all development authorized by a shoreline permit shall be completed within five years of the date of permit approval or the permit shall become null and void. A permittee may request a time extension before the permit expires by making the written request to the administrator, stating the reasons. The hearing examiner will review the permit, and upon a finding of good cause:

- a. Extend the permit for one year; or
- b. Terminate the permit.

However, nothing in this section shall preclude the hearing examiner from issuing shoreline permits with a fixed termination date of less than five years.

This county code provision requires project completion within five years with an allowance for a one-year extension, "unless specified otherwise in permit conditions." Under the language of subsection G8 an apparent unlimited completion extension may be issued, without any legislative criteria, if the extension is granted as part of the permit conditions.

9. A reasonable reading of G7 and G8, in conjunction with the SMA and the SMP, imposes a reasonable time requirement (specified in G7) in addition to a specific finding of good cause (as indicated in G8 for the one-year extension request). Additionally, because the SMA is always the umbrella for any shoreline decision, the further requirements found in RCW 90.58.143(1) that good cause must be based upon the requirements and circumstances of the proposed project and consistent with the SMA and SMP, also becomes a requirement for any decision regarding an extension of the commencement or completion date beyond the standard allowances.
10. The remaining issue is when the decision about unusual extension time frames can or must be made. Under the language of G8, as part of permit conditions imposed prior to approval, the completion date may be extended beyond the normal five year period.
11. Less clear is when a time extension under G7 is either allowed or required. The county through a very well presented memo from deputy prosecuting attorney Jonathan Cain argues that the difference in the language between G7 and G8 allows the extension of the commencement period to occur only after the permit is issued. The well-prepared memo of Mr. Donald Eaton on behalf of the applicant argues to the contrary.

12. Mr. Cain's argument would be persuasive but for the provisions of the SMA found in .143(1) which allows deviation from both the standard commencement and completion time frames as "part of action on a substantial development permit."
13. Under the facts as shown earlier and properly conditioned to fulfill the policies and requirements of the SMA, the SMP and applicable provisions of the San Juan County Comprehensive Plan as well as development code, because of the requirements and circumstances of this particular project specifically in light of the breadth of the project, the requirement of installation of the entire water system and the unprecedented instability of the financial market throughout the country, particularly the banking industry as relates to the ability of the applicant to secure financing, a commencement period of three years and six months from the date of approval of this SSDP is appropriate. The time exclusions provided for in SJCC 18.80.110(G)(7) are applicable for purposes of determining the date of approval.
14. Under the same criteria a completion date of eight years from the date of approval is appropriate. That completion date, however, does not exclude any time periods for administrative appeals or permitting from state or federal agencies under SJCC 18.80.110(G)(8).
15. Any finding herein which may be deemed a conclusion is hereby adopted as such.

Conditions

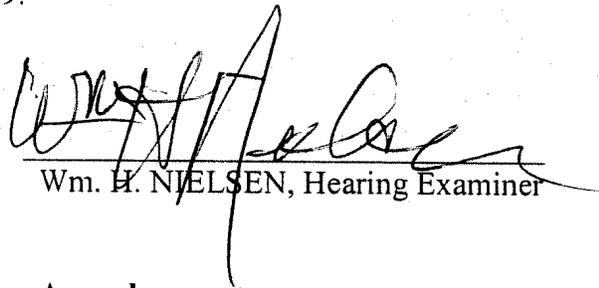
1. This application is approved as submitted in the papers including the drawings received April 9, 2008 as subsequently modified and as may be modified by these conditions.
2. This permit shall cover and include 16 new lodge rooms, three new cabins, seven new RV sites, 12 new yurts, a new activity center, three new docks, necessary roads and parking, picnic and barbeque facilities for vacationers, sports activities for vacationers and events for vacationers as allowable by county code and these conditions.
3. Prior to final inspections approval or issuance of any certificates of occupancy, the water system improvements must be installed and approved by the State Department of Health and by the county.
4. No RV may be occupied for more than 180 days per year.
5. Drainage and surface runoff from recreational areas and parking shall be controlled so that pollutants will not be carried into water bodies.

6. When plastics or other non-biodegradable materials are used in dock construction, full containment features in the design and construction of the structures are required.
7. Compliance with SJCC fire codes is required. All state and federal permit approval shall be obtained prior to issuing any building permits. All required building permits shall be obtained.
8. Construction or substantial progress toward construction of this project must undertaken within three (3) years six (6) months after approval. All development authorized by this SSDP shall be completed within eight (8) years of the date of permit approval.
9. Failure to comply with any condition of this permit may result in its revocation.

Decision

The shoreline substantial development application is approved subject to the conditions set forth above.

DONE this 20th day of MAY, 2009.


Wm. H. NIELSEN, Hearing Examiner

Shoreline Appeal

Any appeal of the shoreline substantial development permit shall be made to the Washington State Shoreline Hearings Board pursuant to RCW 90.58.180 and the rules adopted by said hearings board.