

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER  
FINDINGS, CONCLUSIONS AND DECISION**

**Applicant:** Community of Christ Campground  
c/o Glen Fishel, President  
12163 Bayhill Drive  
Burlington, WA 98233

**Agent:** John Ravnik  
Ravnik & Associates  
108 E. Gilkey  
Burlington, WA 98233

**File Nos:** PL05-0254 (shorelines)  
PL05-0253 (special use)

**Requests:** Shoreline Substantial Development/Variance  
Special Use Permit

**Location:** 11565, 11633, 1157 and 11795 Scott Road on Samish  
Island, within a portion of Secs 25 and 36, T36N, R2E,  
W.M.

**Land Use Designations:** Shoreline: Conservancy  
Comprehensive Plan: Rural Intermediate/Rural Resource

**Summary of Proposal:** To implement the revised the Master Plan of improvements  
for the Community of Christ Campground. Initial projects  
will occur in three phases the last commencing in the fall of  
2009. Subsequently, there are four listed future phases, all  
to begin by the fall of 2029. The initial projects include  
reconfiguration of existing RV stalls, building a new gravel  
driveway, construction of four new cabins, reconstruction  
of existing bathrooms, installing a sports court, building a  
new maintenance shed and miscellaneous surfacing and  
utility improvements. The future phases include a new  
chapel, three new cabins, a lodge, and expanding or  
replacing existing cabins.

**Public Hearing:** After reviewing the report of Planning and Development  
Services, the Hearing Examiner conducted a public hearing  
on December 21, 2005.

**Decision:** The application is approved, subject to conditions.

## **FINDINGS OF FACT**

1. The Community of Christ Campground Association (applicant) seeks approval of projects under a revised Master Plan for its campground on Samish Island.

2. The Community of Christ (previously known as the Reorganized Church of Jesus Christ of Latter Day Saints) owns a total of about 90 acres encompassing seven contiguous parcels.

3. The property is situated within a portion of Secs 25 and 36, T36N, R2E, W.M. It is bounded by Scott Road and residential development to the south, Blue Heron Road and Samish Bay to the north, Alice Bay to the east, and forested land to the west.

4. The proposed improvements will be within the approximate 16-acre area that is currently developed and used as a campground facility. This area is located along the north side of Scott Road, approximately 1300 feet northeast of the intersection of Scott Road and Samish Island Road. Freestad Lake, a man-made body of water, lies due north of the campground behind the beach berm of Samish Bay. It is connected to Samish Bay via an eight-inch culvert.

5. The most northwesterly parcel (47437) of the property is zoned Rural Resource. The southerly and easterly parcels are zoned Rural Intermediate. Most of the campground lies within the Rural Intermediate district. But some facilities both, existing and planned, are in the Rural Resource area.

6. The different zoning districts on the property are of interest because the allowed uses differ between them. Developed campgrounds are a permitted use within the Rural Intermediate zone, subject to a Hearing Examiner Special Use Permit. SCC 14.16.300(4)(e). However, in 1997 the Comprehensive Plan update included Parcel # 47437 in the Rural Resource zone. Developed campgrounds are not an allowed use in the Rural Resource zone. See SCC 14.16.430.

7. The applicant and the County staff both believe that the Rural Resource zoning on this particular property resulted from an inadvertent error. A Comprehensive Plan Amendment on this matter is reportedly in the works.

8. Existing development is grandfathered and so the Rural Resource zoning does not affect the continuance of any present facilities. But, what about proposed new camp facilities? Can they be approved in the Rural Resource area before a Comprehensive Plan change alters the zoning? This problem is solved by application of the vesting doctrine.

9. Certain developments to be located within what is now the Rural Resource zone were approved under an earlier Special Use Permit, issued in 1982 (SPU 82-012).

That permit allowed the expansion of the then existing campground and listed components in two phases. The Phase I items were to be completed by around 1990. But Phase II approved certain items to be built further in the future, subject to additional review. Included were a new chapel and more cabins.

10. The Phase II items were identified on the Master Plan diagram submitted as part of the applicaton for SPU 82-012. After considering this situation, the County Staff, with advice of counsel, determined that the eventual development of items listed as Phase II components in the 1982 Special Use Permit is vested to the code provisions in effect at the time the permit was issued – provisions under which campgrounds were permitted. This vesting applies notwithstanding that a use (i.e, new cabins) now to be built will not be in exactly the same location as initially approved.

11. The 1982 permit called for the Phase II developments to be resubmitted for approval by the County. The instant application does this seeking to consolidate all prior approvals with additional plans for development.

12. The shoreline designation for all of the shoreline areas in the campground is Conservancy.

13. The near-term planned improvements are proposed to be completed in three initial phases, with the last commencing in 2009. The application also includes four future phases. These would be developed in the 20 years following 2009, with all work to begin by the fall of 2029.

14. The proposed projects and estimated times of commencement are as follows:

Phase I-A

- Reconfigure existing area containing 36 RV stalls; reduce the number of stalls to 23; install a gravel foundation and crushed rock surfacing.
- Build four new cabins located north of the RV stall area within the western portion of campground.
- Extend utilities to the reconfigured RV stalls and new cabins. The new RV stalls, cabins and reconstructed west restroom will be served by the existing septic drainfield located to the south of the improvements. (begin: fall 2006)

Phase I-B

- Reconstruct the west restroom. (begin: fall: 2006)

Phase II-A

- Build a concrete sports court (approximately 80' x 80') north of the existing caretaker's east residence, within the eastern portion of the campground. The

court may be fenced. (begin: fall 2008)

#### Phase II-B

- Build a new maintenance/storage shed and associated driveway connecting to Scott Road, near the middle south edge of the campground. (begin: fall 2008)

#### Phase III

- Reconstruct and expand the east restroom, within the center north portion of the campground. (begin: 2009)

#### Future Phase I

- Construct large chapel west of existing dining hall, near the northwest corner of campground. (begin: by fall 2029)

#### Future Phase II

- Construct three additional cabins north of the cabins built in Phase I-A. (begin: by fall 2029)

#### Future Phase III

- Construct lodge facility and impervious parking area, in eastern-most portion of campground (begin: by fall 2029)

#### Future Phase IV

- Redevelop eastern-most cabins; expand the northern-most row of cabins farther to the north. (begin: by fall 2029).

15. The application was accompanied by what is described as a Phasing Plan. This shows the starting dates of the various phases. The applicant says that construction of camp improvements is difficult to schedule precisely because the time from March into November is given over to operating the camp leaving only a few months a year for construction work. Those are the months when weather conditions are unpredictable. The plan provides the year and time of year of project commencement but does not attempt to provide firm completion dates. Some of the projects may begin early. The contemplated ultimate completion date is late December 2032.

16. The Phasing Plan does not really provide a phased schedule for the commencement or completion of the "Future Phases," but merely provides that all four of these phases be begun by the fall of 2029. This, in effect, provides a 20 year period after

the last scheduled event in the initial phases before the camp must commence any further development.

17. The campground is an attractive grassy campus with significant areas of open space. A plan for “developed conditions” shows the general location of all proposed improvements. Dimensions are given elsewhere for the various structures to be built, but these are described as approximate. Final architectural plans have not been completed. There is ample space on the grounds for all of the improvements proposed without crowding.

18. The application identifies no new internal roadways. Two new driveways will be constructed: one to serve the reconfigured RV stalls on the west side, the other for the maintenance shed. The existing road, north from Scott Road to the dining hall, will be widened to improve emergency access.

19. Portions of the northern and eastern portions of the campground are within 200 feet of the Ordinary High Water Mark (OHWM) of Freestad Lake and of Samish Bay and therefore fall under the purview of the Shoreline Management Act. In the Staff’s view, two structures within these areas require a Shoreline Variance Permit – the sports court and the renovated east restroom.

20. The need for variances is predicated on the setback requirements in the SMP for “Recreation” development. The sports court is seen as an “auxiliary uses facility” subject to a 200 foot setback OHWM. The setback is regarded as an “essential structure” associated with a campsite, subject to a setback of 70 feet from the OHWM. See SMP 7.12(2)(C)(1) and Table R.

21. As proposed, the sports court is to be located within 152 feet of the OHWM of Samish Bay, and the renovated east restroom is to be built within 111 feet of the OHWM of Freestad Lake.

22. There is currently a row of mature poplars along the camp side of Scott Road. The applicant plans to remove these gradually and replace them with tree varieties that will provide better raptor habitat. Tree removal in the area around Freestad Lake will be outside the shoreline. However, to accommodate the proposed future chapel, as well as cabins, and RV parking south of the chapel, some conifers, and deciduous trees will be removed from the site.

23. A Fish and Wildlife Habitat Site Assessment prepared by Aqua-Terr Systems Inc., and dated March 22, 2005 was submitted by the applicant. Two features of the proposal will be located within a Habitat Conservation Area (HCA) – the east restroom facility and the sports court. Both of these will be located in open space and will not affect the fish and wildlife habitat. Nevertheless, the Assessment recommended a planting program to mitigate for the environmental effects of tree removal outside of the HCA.

The suggestion was the planting of trees around the perimeter of Freestad Lake (75) and along the road (30) to provide additional perch habitat for raptors and great blue herons.

24. The Assessment noted that a study was initiated in 2004 by the Center for the Study of Coastal Salish Environments to formulate shoreline improvement and salmon habitat restoration plans at the north end and in the northwesterly areas adjacent to Freestad Lake. The applicant, the County, and state and federal agencies are interested in cooperating on this project. The possibility is that some of the existing lake and adjacent property may be converted into a tidal estuary. There is concern that the tree planting plan might conflict with plans developed for the estuary project.

25. On September 6, 2005, the County issued a Mitigated Determination of Non-Significance (MDNS) for the proposal under the State Environmental Policy Act (SEPA). The MDNS was not appealed. The conditions of the MDNS are standard conditions for adherence to existing laws and regulations with one exception. That is a condition calling for compliance with the planting plan recommended by ATSI in the Fish and Wildlife Habitat Assessment. According to the Staff's recommended conditions the planting plan is intended to be modified by Finding No. 9 of the Staff Report.

26. Finding No. 9 sets forth a schedule for plantings around Freestad lake during three phases. The attempt is to insure that the replanting effort is coordinated with the estuary project so that no conflict occurs. The applicant has essentially agreed to this but has suggested some language changes to the condition on the subject.

27. Requests for agency review produced comments from the Public Works Department and the Health Department. Public Works noted the need to prepare a drainage report addressing impacts on both surface and ground water, providing for best management practices to prevent erosion and sedimentation, and calling for operation and maintenance of drainage facilities. They noted the need for compliance with County Fire Marshal standards and for a permit for access from the proposed maintenance building to the County Road.

28. Health noted that the March 11, 2005, septic report prepared by Mitchell Septic, Inc. and plans submitted by the applicant indicate there will be no increased use of the septic facilities. Based on this information, Health approved the project for sewage disposal.

29. There is no evidence that the improvements to the camp will substantially increase traffic to the site. The changes are not designed to increase housing or usage. They are just to make the overall facility better. Currently there are two families residing on the site, performing site management and dining hall supervision. Cooks and other camp staff are volunteers. This will not change. A small parking area will be provided at the east end of the campgrounds for use by occupants of the new East Lodge but this reflects an interest in convenience, not a projection that traffic will significantly increase.

Because of the extensive open space on site there is ample parking room for any parking overflow that might ever occur.

30. The only outside written comments on this proposal came from the Samish Indian Nation. They raised issues about the location of drainfields in relation to coliform levels in the bays, about possible changes in effluent flows, about the increased size of the east restroom and its proximity to the shore, and about possible interference with an Indian archaeological site.

31. The Mitchell Report and the applicant provided persuasive evidence to show that there will be no increased flow to the affected drainfields. As to Drainfield #2, the addition of seven new cabins will be offset by the reduction in RV stalls. As to Drainfield #3, although the east restroom building will be enlarged, effluent from it will not increase. Water conservation fixtures will be installed to reduce sewage flow. More important the flow of water from the east restroom is to the south away from the lake.

32. Every year the applicant provides County Health with an "Onsite Septic System Summary Report" which summarizes the results of inspection of the campground's three septic facilities. The County must approve the systems with a permit each year. There is no basis in the record for suggesting that the camp's systems are contributing to the elevation of coliform levels in Alice and Samish Bays.

33. The Tribe is especially worried about possible interference by the project's East Lodge (Future Phase III) with an archeological site know as 45SK205. The Tribe notes that the exact edges of the site are not known and say that any excavation in its vicinity should require additional archeological testing to avoid inadvertent disturbance to the site. They ask that the applicant bear the cost of additional archaeological evaluation.

34. The applicant does not believe that the proposed lodge locale impinges on the archaeological site, but is willing to allow personnel working for the Tribe to perform surficial and below-grade inspection of the lodge site area before any construction activities occur. However, they believe this work should be at the Tribe's expense. The applicant asks that any work done by the Tribe be completed prior to December 31, 2006.

35. The criteria for Special Use Permit approval are set forth at SCC 14.16.900(2)(b)(v), as follows:

- (a) The proposed use will be compatible with existing and planned land use and comply with the Comprehensive Plan.
- (b) The proposed use complies with the Skagit County Code.
- (c) The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing, or potential dwelling

units, based on the performance standards of SCC 14.16.840.

(d) The proposed use will not generate intrusions on privacy of surrounding uses.

(e) Potential effects regarding the general public health, safety, and general welfare.

(f) For special uses in ... Natural Resource Lands ..., the impacts on long-term natural resource management and production will be minimized.

(g) The proposed use is not in conflict with the health and safety of the community.

(h) The proposed use will be supported by adequate public facilities and services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.

36. The Staff Report analyses the application in light of these criteria and determines that, as conditioned, the proposal is consistent with them. The Hearing Examiner concurs with this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

37. The improvements to the camp will in no way interfere with its compatibility with nearby residential uses. The new structures will not substantially change the appearance of the already developed camp. The proposed buildings will be architecturally designed to correspond with and complement the existing buildings. The environmental effects will be minor or positive.

38. Variances from the Skagit County Shoreline Management Master Program for construction landward of the OHWM must meet the following criteria (SMP 10.03(1)):

a. The strict application of the bulk dimensional or performance standards set forth in this Master Program precludes or significantly interferes with with a reasonable use of the property not otherwise prohibited by this Master Program.

b. The hardship described above is specifically related to the property and is the result of unique conditions such are irregular lot shape, size or natural features and the application of this Master Program and, not, for for example, from deed restrictions or the applicant's own actions.



- c. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to the adjacent properties or the shoreline environment designation.
- d. The variance granted does not constitute a grant of special privilege not enjoyed by the other properties in the same area and will be the minimum necessary to afford relief.
- e. The public interest will suffer no substantial detrimental effect.

In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area.

39. The Staff Report analyzes the east restroom and sports court requests differently. Approval is recommended for the restroom variance, but denial is recommended for the sports court locale.

40. As to the restroom, the Hearing Examiner concurs with Staff. But he has determined that the sports court variance should also be allowed.

41. The restroom structure is being enlarged while the effluent level and the supporting infrastructure will stay the same. In order to use the existing system it makes sense to put the refitted restroom in roughly the same locale as the present facility.

42. The sports court is to be put in an open space area that is not currently allocated to another specific use. Unless surrounded by a high fence, it will be, in effect, a continuation of existing open space use. It will impose no adverse shoreline impacts. In the context of overall camp planning, the sport's court proposed site is a reasonable use of the property.

43. Although there is considerable open space on the site that might be used for the restroom or the sports court, much of that area is given over to existing play fields. To reconfigure these playfields would be a hardship.

44. The design of the restroom and sports courts is compatible with the campground's layout and has no impact on adjacent properties or the shoreline environment designation.

45. The subject campground is the only thing of its kind in the vicinity. To allow the requested encroachments on the setbacks in this open space setting where the existing environment is essentially lawn does not violate the principle against granting special favors. Other properties in the area do not present the same context. The proposed setbacks present no environmental problem and no problem of regulatory consistency. To place them elsewhere would displace existing uses. Under the circumstances, they can be considered to represent the minimum necessary.

46. No detrimental effect to the public interest of granting the requested variances has been identified. As a part of an overall rational plan for campground improvement, providing access for many people to the shoreline, the variances appear to serve the public interest.

47. 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 the subject matter of this proceeding.

2. The requirements of SEPA have been met.

3. The facts support a conclusion that the uses proposed are consistent with the criteria for Special Use Permit approval. SCC 14.16.900(2)(b)(v).

4. The facts support a conclusion that the east restroom and sports court meet the criteria for a Shoreline Substantial Development Permit. SMP 9.02(1).

5. The Examiner concurs with the Staff evaluation of the applicable setback requirements in this case and concludes that the Shoreline Variances applied for are needed.

6. The Examiner concludes that the setbacks sought for both the east restroom and the sports courts are consistent with the criteria for variances under the specific circumstances. SMP 10.03(1).

7. The applicant wishes to have the whole package – initial phases and future phases – approved so that the Camp will not have to come back in to seek County approval for any aspect of the plan until roughly 2032. This sort of thing is possible because of the Code provision that allows phasing of development over time. See SCC 14.16.900(2)(d). The intent is to allow the vesting of developments against any changes in regulations during a reasonable development period. Normally that would be five or six years after a project is commenced. The intent is not to freeze the law applicable to a particular use for extended periods of time.

8. In the Phasing Plan offered here there is a 20 year period between the commencement of the last item in Phase III and the first item in Future Phase I. While it is presumed that there will be some activity in the interim, the plan does no require any.

This is a very long time for development and a very long time to be allowed to use today's rules. Something more should be required to show ongoing progress during the 20 year period. The Examiner has therefore added a condition addressing progress reporting.

9. This approach is taken because this development presents an unusual circumstance. In the Examiner's view the chances are remote that the zoning and regulations will change between now and 2032 in a way that will make the camp improvements hereby approved unlawful . This is a long-term kind of use. The camp has already existed on site for nearly 45 years. It is a wonderful site for a camp. It is unlikely that future zoning will seek to eliminate this use. On the contrary, a favorable amendment to the Comprehensive Plan is anticipated.

10. Any finding herein which may be deemed a conclusion is hereby adopted as such.

### **CONDITIONS**

1. The project shall be carried out as described in the application materials, except as the same may be modified by these conditions.

2. If the applicant proposes any modifications, it shall apply for a new permit or permit revision from Planning and Development Services prior to the start of construction.

3. The Phasing Plan is approved, subject to the requirement that reasonable progress toward construction shall be made throughout the duration of the plan. All construction under the Plan shall be completed by December 20, 2032.

4. The Phasing Plan shall be adhered to. Whenever a project component covered by the Master Plan is commenced, the applicant shall notify Planning and Development Services. Building permits shall be sought early enough to allow for timely compliance with the start of construction dates.

5. During the period between 2009 and 2029, the applicant shall report to Planning and Development Services at least every three years on the progress of development of the Future Phases. If it appears that reasonable progress toward continued development is not being made, the Department shall schedule a hearing before the Examiner requiring the applicant to show cause why the Special Use Permit should not be terminated.

6. The applicant must obtain building permits as required for construction of project components. All other necessary approvals shall also be obtained.

7. The applicant shall comply with all applicable County codes and State statutes, including Chapter 14.32, Drainage. Roads within the development shall comply with County Fire Marshal standards. Access permit(s) for access to the County Road shall be obtained.

8. A drainage report and plan, prepared in accordance with the DOE Stormwater Management Manual, shall be prepared. The report shall address water quality and quantity for stormwater and groundwater treatment using best management practices, permanent and temporary erosion and sedimentation control, and plans for the operation and maintenance of drainage facilities.

9. The applicant shall submit annual "Onsite Septic System Summary Reports," and receive permit approval from the Health Department annually to operate the on-site systems.

10. The applicant shall carry out a tree-planting schedule in association with improvements being considered by the Center for Coastal Salish Environments (CCSE) around Freestad Lake, as follows:

a) Planting Phase 1 - Within five years of the date of issuance of the first grading/building permit issued to the Camp, one-third of the recommended quantity of trees proposed around Freestad Lake will be planted as discussed in the Aqua-Terr Systems, Inc.(ATSI) Assessment dated March 22, 2005. Prior to the planting activities, the Camp will contact the CCSE to determine the best location for these plantings so they are least likely to be impacted or removed by the program's potential improvements.

b) Planting Phase II – Within five years after the plantings in Planting Phase I, Camp the will again contact the CCSE to establish the location for the next one-third of trees proposed around Freestad Lake. When the locations are established the trees shall be planted.

c) Planting Phase III – Within five years after the plantings in Planting Phase II, the applicant shall again contact the CCSE to establish the location for the last one-third of trees proposed around Freestand Lake. When the locations are established the trees shall be planted.

d) If at any time during the planting plan hereunder, a habitat program and for the lake has been put into effect, the planting plan required by this permit shall yield to any conflicting provisions of the lake habitat program.

e) All future plantings hereunder around Freestad Lake are to be located on the immediate perimeter of the lake. If for any reason the CCSE ceases to exist or wishes not to participate, or if the proposed estuary project is not longer pursued, the Camp will procede with the above planting plan.

11. The poplar trees along the north side of Scott Road shall be removed with the next ten years. The Camp shall make plantings as recommended in the ATSI Assessment to replace poplar trees removed. An eradication program shall be instituted to eliminate the English Ivy on the site. The Ivy shall be replaced with suitable native ground cover.

12. The applicant shall provide the Samish Indian Nation an opportunity to perform surficial and below-grade investigations around the East Lodge site prior to December 31, 2006. The investigations shall take place in the area where the parking lot is proposed and where the lodge building envelope is located, as depicted on the drawing "Proposed Building Envelope for Lodge," dated 11/04/05. The parties shall share the costs of the investigation.


13. The applicant shall comply with all conditions stated in the MDNS issued September 6, 2005, except Condition 7. That condition has been superceded by Condition of Approval #10 above.

14. Any plans for fencing around the sports court shall be submitted to Planning and Development Services for review and approval.

15. Failure to comply with any permit condition may result in permit revocation.

### **DECISION**

The requested Special Use Permit (05-0253) and the requested Shoreline Substantial Development Permit and Variances (PL05-0254) are approved, subject to the conditions set forth above.

  
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Wick Dufford, Hearing Examiner

Date of Action: January 12, 2006

Date of Transmittal to Applicant: January 12, 2006

### **RECONSIDERATION/APPEAL – SPECIAL USE**

As provided in SCC 14.06.180, a request for reconsideration may be filed with Planning and Development Services within 10 days after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Planning and Development

Services within 14 days after the date of the decision, or decision on reconsideration, if applicable.

### **RECONSIDERATION/APPEAL - SHORELINES**

As provided in the Skagit County Shoreline Master Program, Section 13.01, a request for reconsideration may be filed with Planning and Development Services within five (5) days after the date of this decision. The decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Planning and Development Services within five (5) days after the date of decision or decision on reconsideration, if applicable.

### **DEPARTMENT OF ECOLOGY REVIEW**

If approval of a Shoreline Variance or Shoreline Conditional Use becomes final at the County level, the Department of Ecology must approve or disapprove it, pursuant to RCW 90.58.140.