

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS, AND DECISION

Applicant(s):	Cory Severson 227 18 th Street Huntington Beach, CA 92648	
Agent(s):	Jen-Jay Diving Inc. P.O. Box 278 Deer Harbor, WA 98243	S.J.C. DEPARTMENT OF MAY 23 2016 COMMUNITY DEVELOPMENT
File No.:	PSJ000-15-0001	
Request:	Shoreline Substantial Development Permit	
Parcel Nos:	262342006	
Location:	330 Elwha Rock Road, Orcas Island	
Summary of Proposal:	Application for a shoreline substantial development permit for authorization for redevelopment of an existing joint use dock.	
Land Use Designation:	Rural Farm Forest	
Public Hearing:	March 17, 2016	
Application Policies and Regulations:	SJCC18.35.130 SJCC18.50.190 SJCC18.50.200 SJCC18.80.020 SJCC18.80.030 SJCC18.80.050 SJCC18.80.110	Fish and wildlife habitat conservation areas Shoreline master program – boating facilities Shoreline master program – breakwaters, jetties and groins Application requirements Public notice of applications and comment SEPA implementation rules Shoreline permit and exemption procedures
Decision:	Approved subject to conditions	

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

In the Matter of the Application of)
)
Cory Severson) NO. PSJ000-15-0001
)
)
)
for approval of a shoreline substantial)
development permit for redevelopment of)
an existing joint use dock at 330 Elwha)
Rock Road, Orcas Island)

S.J.C. DEPARTMENT OF
MAY 23 2016
COMMUNITY DEVELOPMENT

SUMMARY OF DECISION

The request for shoreline substantial development permit to authorize redevelopment of an existing joint use dock serving three residentially zoned parcels and the break water protecting it is located at 330 Elwha Rock Road, Orcas Island is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request:

Cory Severson (Applicant) requested a shoreline substantial development permit (SSDP) to authorize redevelopment of an existing joint use dock serving three residentially zoned parcels and the break water protecting it located at 330 Elwha Rock Road, Orcas Island. The existing dock was approved by SSDP 90SJ024 (Lindholm) and revised in 90SJ024R for joint use by adjacent parcels, Christie (No. 262331001) and Armstrong (now Quinn, no. 262342008). The joint use agreement is recorded in Auditor File Number (AFN) 1999 1216008.

Hearing Date:

The San Juan County Hearing Examiner held an open record public hearing on the request on March 17, 2016. At the conclusion of the hearing, the record was held open to allow further argument from all parties as to what effect, if any, the lack of a signed joint use dock agreement between the Seversons and the Quinns has on the application's compliance with the requirements for SSDP approval. Post-hearing briefing/comments requested by the Examiner was scheduled to be fully submitted no later than April 29, 2016, resulting in a decision due date of May 13, 2016. Due to circumstances unrelated to the proceedings beyond the control of the undersigned, there was a delay in issuance.

Testimony:

At the open record public hearing, the following individuals presented testimony under oath:

Lee McEnery, San Juan County Department of Community Development
Cory Severson, Applicant
Jennie Rose, Jen-Jay Diving, Inc., Applicant Representative
Jeff Quinn, Joint Use Dock user

Kelly LaFave, Marine Structures Engineering, Inc., for Jeff Quinn
Chris Betcher, Jen-Jay Diving Inc., for the Applicant

Jeff and Mary Quinn were represented at hearing by Mimi Wagner and James Griffo of Wagner Law Offices.

Exhibits:

The following exhibits were admitted in the record:

1. Staff report, dated February 29, 2016
2. Application cover sheet
3. Project narrative, dated February 23, 2015, Jen-Jay Diving Inc.
4. Project plans, 6 pages: page 1 dated January 2015, pages 2-5 revised February 15, 2016, and photos at page 6
5. Preliminary eelgrass macro algae habitat survey, dated September 13, 2013 (2 pages plus photo page)
6. MDNS and SEPA checklist (14 pages)
7. Jen-Jay Diving Inc., letter regarding compliance with SJCC 18.35.130 (9 pages), April 2015
8. Biological Evaluation, dated January 2015, Jen-Jay Diving Inc. with attached JARPA
9. Legal advertising, 3 pages
10. Lindholm dock, staff reports, shoreline permits, SEPA appeal, 39 pages
11. University of Washington Friday Harbor Labs comment letter
12. Email correspondence regarding terms of joint use agreement, 28 pages
13. Severson photo of "Jenny B" at the dock
14. San Juan County Community Development and Planning document: Dock Permits – joint use
15. AFN 92182607 joint use agreement
16. Quinn photo packet, 8 pages
17. Pre-hearing brief of Jeff and Mary Quinn, dated March 21, 2016, with attachments:
 - A. Modification to Christie and Lindholm Joint Use Dock Agreement, AFN 1999 1216008
 - B. Report of Kelly David LaFave, P.E.
 - C. Letter to Michael Murray, March 4, 2016
 - D. Affidavit of Robert J. Wilson, PLS
18. Photo of original gangway plans, drawing by Mantle Industries for Carlson gangway

19. Depiction of 22-foot boat at dock, prepared by LaFave
20. 48-inch configuration plan, prepared by LaFave
21. Severson response to Post-Hearing Order, April 15, 2016
22. County response to Post-Hearing Order, April 18, 2016
23. Quinn Response to Post-Hearing Order, April 22, 2016
24. Severson Reply, April 29, 2016¹

Also included in the record is the March 18, 2016 Post-Hearing Order setting the submission schedule for post-hearing information.

Upon consideration of the testimony and exhibits submitted at the open record public hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. The Applicant requested a shoreline substantial development permit (SSDP) to authorize redevelopment of an existing joint use dock serving three residentially zoned parcels and the break water protecting it. The subject property, owned by Cory Severson (Applicant), is located at 330 Elwha Rock Road on the southwest side of Orcas Island near Harney Channel.² The existing pier extends over a gravel beach out from a medium bank solid rock bluff; the shoreline is vegetated with coniferous and deciduous trees and shrubs. The existing dock is the only moorage facility along the shoreline of the three lots. *Exhibits 1, 2, 4, and 8; See Aerial photo at Exhibit 4.*
2. The original shoreline permit application for the dock was submitted in 1990 by the Applicant's predecessor in interest, Cherie Lindholm, and approved as shoreline permit 90SJ024; it was later revised by approved shoreline permit 90SJ024R. The Lindholm proposal involved joint use by both adjacent parcels, Christie (parcel 262331001) and Armstrong (now Quinn, parcel 262342008), through two separate joint use agreements. One, recorded between Lindholm and Armstrong on October 1, 1992, granted to the Armstrongs the right to, at their option, moor one boat at one of the 30-foot floats for a monthly moorage fee payable in advance of the month of use at the going rate in local commercial marinas. No ownership rights or responsibilities were conferred to the Armstrongs, only the right to rent. The Lindholm/Armstrong joint use dock agreement has not been modified. The second agreement was between Lindholm and the neighbors to the other side, the Christies, which was later modified. Distinct from the Armstrong agreement, the joint use agreement between Lindholm and the Christies granted the Christies one-third ownership of the dock, including costs of construction and

¹ Exhibits of new evidence were attached to the Applicant's reply. New evidence was excluded by the post-hearing order unless specific steps for its introduction were followed. The Applicant did not follow these steps and the new evidence is excluded. It was neither reviewed nor relied upon.

² The property is known as Tax Parcel No. 262342006.

maintenance, in exchange for one-third of the useable space of the dock's surface. *Exhibits 1, 17, and 17.A.*

3. According to the San Juan County Shoreline Master Program (SMP) boating facilities regulations, joint use docks serving three or more single-family residences are restricted to a maximum length of 300 feet and a maximum area of 2,000 square feet. *San Juan County Code (SJCC) 18.50.190.G.3.* The existing joint use dock predates adoption of the current SMP standards for dock dimensions; it is legally nonconforming as to area. The instant proposal would increase the length of the dock slightly and reduce the area of the floats by about 657 square feet, but despite the reduction in area, the dock would remain over 2,000 square feet in area and still be legally nonconforming. The pier, which is not proposed to be altered, does not extend much further seaward than the extreme low tide contour of minus 4; the proposed new dock floats would end approximately 272 feet from the ordinary high water mark, which would continue to comply with the 300-foot maximum length for three user joint docks. San Juan County Department of Community Development Staff submitted that the proposed dock dimensions would be consistent with WAC 173-27-080(2), according to which a nonconforming use may be “enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses.” The dock proposal changes the configuration without enlarging the dock and does not extend into any areas where construction would not be allowed. *Exhibits 1, 2, 3, 4 and 8.*
4. The existing facility is comprised of a timber pier, aluminum ramp, and wood floats in a “T” configuration. The 10- by 165-foot pier has steel piles, wood decking, and aluminum railing in good condition. The existing ramp is four by 45 feet, fully grated aluminum. The pier and ramp are in good condition and would be retained. The existing dock and the breakwater protecting it have reached the end of their useful life and need to be replaced. The current proposal would remove the end “T” float and replace it with in-line floats 90 feet in length secured by pilings; the proposed floats are 10 by 40 feet and 10 by 50 feet. The existing eight- by 60-foot pier and four- by 40-foot ramp remain in good condition and would be retained. The overall length of the existing dock is 262 feet from the ordinary high water mark (OHWM). The proposed reconfiguration would extend further seaward to approximately 270 feet. All dolphins and pilings securing the existing floats would be removed and replaced with pilings attached to the proposed floats. Fair market value of the project is estimated to be \$180,000.00. *Exhibits 1, 2, 4, and 8.*
5. The existing log breakwater comprised of three 64-foot sections would be removed. A new breakwater consisting of three sections of 60-foot HDPE pipe secured by anchors would be placed in a broken angle on the south side to better protect the dock. The two east-most sections would be in the same location as the east end of the existing breakwater. The slight change in breakwater configuration would improve wave attenuation during summer boat traffic, while retaining protection during winter storms. *Exhibits 1, 2, 4, and 8.*

6. According to a survey performed by Applicant consultants, there is eelgrass under the west end of the existing breakwater, which is made of logs anchored with chains. The logs cause shading and the chains, which are not currently buoyed, drag and scour the bottom, damaging habitat. The logs are decomposing. The proposal to remove the “T” and straightening the floats would also move the breakwater further from eelgrass than the existing configuration, reducing shading. The west end of the breakwater would remain over eelgrass, as it is now. The proposed breakwater, consisting of a three-dimensional pipe triangle, would allow light passage and would be anchored with buoyed ropes unable to drag the bottom. The proposal overall would reduce impacts to eelgrass habitat under the breakwater. *Exhibits 1, 2, 4, and 8.*
7. Because the existing dock was built prior to the 1992 adoption of critical area regulations, it can be modified so long as the Applicant can demonstrate compliance with the SMP and can show that there would be “no net loss” of shoreline ecological function. *SJCC 18.35.025.A.* The Applicant submitted three consultant reports including a Biological Evaluation (January 2015), a report addressing the SMP requirements at *SJCC 18.35.130* (April 2015), and an eelgrass survey. Together, these documents support the Applicant’s assertion of no net loss to shoreline ecological function. The April 2015 report specifically addresses *SJCC 18.35.130.G.1* and 2, noting that the project design not only reduces surface area of the existing dock, but replaces the existing entirely solid surface with fully grated surface, and moves the facility away from its existing location in line with the edge of the eelgrass bed. Additionally, the solid wood breakwater, with anchor chains scarring the substrate and shading greater portions of eelgrass would be replaced with a different wave attenuator that would remove the anchor chain scarring, reduce eelgrass coverage, and allow more sunlight into the water column. Creosote piles would be replaced with steel piles. The consultant reports conclude that the proposal would result in “no net loss of ecological functions based on the project design and installation techniques,” specifically avoiding adverse impacts to Surf Smelt spawning beaches, forage fish, Eelgrass, Bull Kelp, Pandalid Shrimp, and Puget Sound Chinook Salmon, reduce impacts over the existing conditions to Groundfish, Pacific Salmon, and Coastal Pelagic Species Essential Fish Habitat. *Exhibits 1, 5, 7, and 8.*
8. There is no appreciable net drift at the proposed dock site and the project is not expected to impact littoral drift or water quality. The proposed dock is not expected to interfere with navigation because it does not extend into the navigation channel. Because the project would remodel an existing facility, no impacts to views of or from the shoreline are anticipated. *Exhibits 1 and 8.*
9. The proposal would be subject to review and approval of a hydraulic project approval (HPA) by the Washington Department of Fish and Wildlife, an aquatic use authorization by Washington Department of Natural Resources, and a Section 10 (work in navigable waters) permit from the US Army Corps of Engineers, among potential others. *Exhibit 8, JARPA.*

10. As explained in a November 10, 2015 letter from the Applicant, the proposal includes a “second modification” to the existing joint use agreement, which is not in the record. The changes have been agreed to by the Christies, but not by the Quinns. The reconfiguration would do away with the finger dock where the Quinns currently rent space. There is a difference of opinion between the Quinns and the Applicant regarding where the Quinns’ boat should be moored on the reconfigured dock. Moorage location is a required term of a joint use dock agreement, and terms of such agreements are required to be “reasonable”. Planning Staff asserted that the County code provides no regulatory basis for determining reasonableness of the terms of joint use dock agreements; Staff deferred to the Hearing Examiner for a decision as to whether the proposed second modification to the joint use dock agreement contains terms that are “reasonable.” However, Staff noted that the dimensions of the legally nonconforming dock require three joint users and that if three parties cannot agree on reasonable terms, the proposed dock would not meet the area and length standards for a two-user dock. Staff recommended that if the existing users cannot agree to terms, the application should be denied. In the alternative, Staff indicated that if Quinn withdraws from participation and another shoreline owner takes their place, further review may be necessary. Staff noted that any agreement would have to be recorded and run with the land. *Exhibits 1, 12, 14, 17, and 22; McEnery Testimony; Severson Testimony; Quinn Testimony.*

11. Pursuant to the State Environmental Policy Act (SEPA), San Juan County was designated lead agency for review of the proposal's probable, significant adverse environmental impacts. A mitigated determination of non-significance (MDNS) was issued on December 9, 2015. No comments were received. The following mitigation measures were imposed by the MDNS:
 1. The proposal shall maximize light penetration (thereby avoiding impacts caused by shading) with deck grating, float orientation and minimized size.
 2. BMPs shall prevent erosion and sediments from entering the marine waters.
 3. Equipment used for installation of the proposal shall be maintained to be leak-free while on the site.
 4. During dock construction, equipment engines shall not be idled unnecessarily.
 5. Dock components shall be built with materials suitable for kelp attachment and remain year-round to allow growth/attachment of kelp and filter-feeding organisms.
 6. Comply with all applicable state, federal and San Juan County codes.*Exhibits 1, and 6.*

12. The SSDP application and supporting information were submitted on February 27, 2015. *Exhibit 2.* Notice of the application was published on December 9, 2015. It was posted on-site, mailed to owners of property within 300 feet, and published. *Exhibits 1 and 9.*

13. The University of Washington Friday Harbor Labs submitted comment that the project was justified both in terms of need and because approval and construction would improve the marine environment. *Exhibit 11.*
14. The only other parties to comment on the proposal were Jeff and Mary Quinn, the third party to the existing joint use dock agreement. The Quinns made use of their rental rights under the existing joint use dock agreement since they purchased their property in 2004. They do not oppose the proposed renovations to the dock and breakwater, and they do not wish to give up their right to use the dock. However, the Quinns have not signed the amended joint use agreement put forward by the Applicant. At time of hearing, the Quinns continued to differ with the location proposed for their rental by the Applicant, as well as what they read to be new language restricting their use of the dock to a boat not longer than 30 feet. Specifically, the Quinns opposed being assigned to the area adjacent to the ramp proposed for their use by the Applicant, which they argued would be too narrow and would result in inadequate and unsafe access to their boat as a result of common wave and weather conditions requiring them to tie up with the bow facing offshore. They also took exception to the legal description of their property as included in the proposed new agreement by the Applicant. *Exhibits 12, 17, 19, 20, and 23; Quinn Testimony; LaFave Testimony.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for shoreline substantial development permit pursuant to Chapter 36.70.970 of the Revised Code of Washington and Chapters 2.22 and 18.80 of the San Juan County Code.

Criteria for Review

Pursuant to SJCC 18.80.110.H, a shoreline substantial development permit shall be granted only when the applicant meets the burden of proving that the proposal is:

1. Consistent with the policies of the Shoreline Management Act and its implementing regulations, Chapter 90.58 RCW and Chapter 173-27 WAC, as amended;
2. Consistent with the policies and regulations of the Shoreline Master Program in Chapter 18.50 SJCC;
3. Consistent with this chapter;
4. Consistent with the applicable sections of this code (e.g., Chapter 18.60 SJCC);
5. Consistent with the goals and policies of the Comprehensive Plan; and
6. All conditions specified by the hearing examiner to make the proposal consistent with the master program and to mitigate or avoid adverse impacts are attached to the permit.

Applicable Provisions of the San Juan County Code

SJCC 18.35.025 Critical Areas – Applicability

A. Applicability to Uses and Structures within the Shorelines of the State. Notwithstanding any provision in this code to the contrary, any use or structure legally located within shorelines of the state that was established or vested on or before the effective date of the County's development regulations to protect critical areas shall be regulated consistent with RCW 36.70A.480(3)(c). Such uses or structures may continue as a conforming use and may be redeveloped or modified if the redevelopment or modification is consistent with Chapter 18.50 SJCC and either: (1) the proposed redevelopment or modification will result in no net loss of shoreline ecological functions; or (2) the redevelopment or modification is consistent with SJCC 18.35.020 through 18.35.140. If the applicant chooses to pursue option (1), the application materials for required project or development permits must include information sufficient to demonstrate no net loss of shoreline ecological functions. For purposes of this subsection, an agricultural activity that does not expand the area being used for the agricultural activity is not a redevelopment or modification. For purposes of this subsection, "agricultural activity" has the same meaning as defined in RCW 90.58.065.

SJCC 18.50.190 Boating facilities (including docks, piers, and recreational floats).

Notwithstanding any other provision of this code, all docks, floats, piers or other moorage structures in village and hamlet activity centers, including any breakwater attendant to such moorage structures, except those regulated under subsection (G) of this section (residential docks) shall be prohibited. This provision shall not affect the ability of an applicant to obtain required approvals to repair, replace, enhance, modify, or enlarge any existing dock, float, pier or other moorage structure in a manner consistent with existing law.

A. Exemptions. Docks, as specified in SJCC 18.50.020(F), are exempt from the requirement for a shoreline substantial development permit pursuant to RCW 90.58.030(3)(e)(vii) and WAC 173-27-040(2)(h).

B. General Regulations.

1. Boating facilities shall be designed to minimize adverse impacts on marine life and the shore process corridor and its operating systems.
2. Boating facilities shall be designed to make use of the natural site configuration to the greatest possible degree.
3. All boating facilities shall comply with the design criteria established by the State Department of Fish and Wildlife relative to disruption of currents, restrictions of tidal prisms, flushing characteristics, and fish passage to the extent that those criteria are consistent with protection of the shore process corridor and its operating systems.
4. Areas with poor flushing action shall not be considered for overnight or long term moorage facilities.
5. In general, only one form of moorage or other structure for boat access to the water shall be allowed on a single parcel: a dock or a marine railway or a boat launch ramp may be permitted subject to the applicable provisions of this code. (A mooring buoy may be

allowed in conjunction with another form of moorage.) However, multiple forms of moorage or other structures for boat access to the water may be allowed on a single parcel if:

- a. Each form of boat access to water serves a public or commercial recreational use, provides public access, is a part of a marina facility, or serves an historic camp or historic resort; or
 - b. The location proposed for multiple boat access structures is common area owned by or dedicated by easement to the joint use of the owners of at least 10 waterfront parcels.
6. Structures on piers and docks shall be prohibited, except as provided for marinas in subsection (H) of this section.

C. General Regulations – Docks, Piers, and Recreational Floats.

1. Multiple use and expansion of existing facilities are preferred over construction of new docks and piers.
2. Mooring buoys shall be preferred over docks and piers on all marine shorelines except in the cases of port, commercial, or industrial development in the urban environment.
3. Moorage floats, unattached to a pier or floating dock, are preferred over docks and piers.
4. Every application for a substantial development permit for dock or pier construction shall be evaluated on the basis of multiple considerations, including but not necessarily limited to the potential impacts on littoral drift, sand movement, water circulation and quality, fish and wildlife, navigation, scenic views, and public access to the shoreline.
5. Docks or piers which can reasonably be expected to interfere with the normal erosion-accretion process associated with feeder bluffs shall not be permitted.
6. Abandoned or unsafe docks and piers shall be removed or repaired promptly by the owner. Where any such structure constitutes a hazard to the public, the County may, following notice to the owner, abate the structure if the owner fails to do so within a reasonable time and may impose a lien on the related shoreline property in an amount equal to the cost of the abatement.
7. Unless otherwise approved by shoreline conditional use permit, boats moored at residential docks shall not be used for commercial overnight accommodations.
8. Use of a dock for regular float plane access and moorage shall be allowed only by shoreline conditional use permit and shall be allowed only at commercial or public moorage facilities or at private community docks.

D. Regulations – General Design and Construction Standards.

1. Pilings must be structurally sound prior to placement in the water.
2. Chemically treated or coated piles, floats, or other structural members in direct contact with the water shall be as approved by the Environmental Protection Agency.

3. Pilings employed in piers or any other structure shall have a minimum vertical clearance of one foot above extreme high water.
4. All floats shall include stops which serve to keep the bottom off tidelands at low tide.
5. When plastics or other nonbiodegradable materials are used in float, pier, or dock construction, full containment features in the design of the structures shall be required.
6. Overhead wiring or plumbing is not permitted on piers or docks.
7. New boathouses or covered moorages are prohibited on floats, piers, and docks. Other structures on floats, piers, and docks shall be limited to three feet in height.
8. A pier shall not extend offshore farther than 50 feet beyond the extreme low tide contour.
9. Dock lighting shall be designed to shine downward, be of a low wattage, and shall not exceed a height of three feet above the dock surface.
10. All construction-related debris shall be disposed of properly and legally. Any debris that enters the water shall be removed promptly. Where feasible, floats shall be secured with anchored cables in place of pilings.
11. Materials used in dock construction shall be of a color and finish that will blend visually with the background.

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G. Regulations – Residential Docks.

1. New Shoreline Subdivisions. New subdivisions with shoreline frontage shall be required to provide community docks rather than individual, private docks, if any docks are proposed, as set forth in subsection (E) of this section.
2. Size and Dimensions of Docks, Piers, and Floats.
 - a. The maximum dimensions for a dock (including the pier, ramp, and float) associated with a single-family residence shall not exceed 700 total square feet in area. In addition, the length of the dock (including the pier, ramp, and float) may not extend more than 115 feet in length seaward of the ordinary high water mark. Docks exceeding these dimensions may only be authorized by variance.
 - b. The maximum dimensions for a joint-use dock (including the pier, ramp, and float) associated with two single-family residences shall not exceed 1,400 square feet in area. In addition, the length of the dock (including the pier, ramp, and float) may not extend more than 200 feet in length seaward of the ordinary high water mark. Docks exceeding these dimensions may only be authorized by variance.
 - c. The maximum dimensions for a joint-use community dock (including the pier, ramp, and float) associated with more than two single-family residences shall not exceed 2,000 square feet in total area. In addition, the length of the dock (including the pier, ramp, and float) may not extend more than 300 feet in length seaward of the ordinary high water mark. If a variance is granted to allow a dock exceeding these dimensions, its construction may only be authorized subject to the regulations for a marina.

- d. Maximum length and width of a ramp, pier or dock shall be the minimum necessary to accomplish moorage for the intended boating use.
3. Side Yard Setbacks. Docks shall be set back a minimum of 10 feet from side property lines. However, a joint use community dock may be located adjacent to or upon a side property line when mutually agreed to by contract or by covenant with the owners of the adjacent property. A copy of such covenant or contract must be recorded with the County auditor and filed with the approved permit to run with the title to both properties involved.
4. Development of a dock on a lot intended for single-family residential purposes shall require a shoreline substantial development permit or a statement of exemption issued by the County.
5. Applications for nonexempt docks and piers associated with single-family residences shall not be approved until:
 - a. It can be shown by the applicant that existing facilities are not adequate or feasible for use;
 - b. Alternative moorage is not adequate or feasible; and
 - c. The applicant shall have the burden of providing the information requested for in subsections (A) and (B) of this section, and shall provide this information in a manner prescribed by the administrator.

K. Regulations by Environment.

1. Urban. Marinas, marine railways, docks, and boat launches shall be permitted in the urban environment subject to the policies and regulations of this SMP.
2. Rural. Same as urban.
3. Rural Residential and Rural Farm-Forest. Boat launches, marine railways, and boathouses associated with them may be allowed as conditional uses only. Other boating facilities serving single-family residences, and community docks, shall be permitted in these environments subject to the policies and regulations of this SMP. Marinas shall not be permitted; however, the expansion or alteration of a marina legally established prior to the effective date of this code may be allowed subject to the policies and regulations of this SMP.
4. Conservancy. Boat launches, marine railways, and boathouses associated with them, may be allowed as conditional uses only. Other boating facilities serving single-family residences and community docks shall be permitted in these environments subject to the policies and regulations of this SMP. Marinas shall not be permitted.
5. Natural. Marinas, boat launches, docks, boathouses, and marine railways are prohibited in the natural environment.
6. Aquatic. Marina facilities, docks, and boat launches which are shoreline dependent shall be permitted in the aquatic environment subject to the policies and regulations of this SMP and to the regulations by environment applicable to the abutting shoreline area.

Where a proposed boating facility abuts more than one shoreline environment, the policies and regulations of the most restrictive abutting environment shall govern.

SJCC 18.50.200 Breakwaters, jetties, and groins.

A. Regulations.

1. Breakwaters shall conform to all design requirements established by the State Department of Fish and Wildlife and the U.S. Army Corps of Engineers.
2. Breakwaters shall be designed and constructed in a manner which will prevent detrimental impacts on the circulation of water, the movement of sand, and on aquatic life. The design shall also be such that impediments to navigation and to visual access from the shoreline shall be minimized.
3. Public breakwaters shall be designed to permit pedestrian use of their surfaces where safe and feasible.
4. Applications for breakwater permits shall include at least the following information:
 - a. The purpose of the breakwater;
 - b. Direction of net longshore drift, when appropriate;
 - c. Direction of prevailing winds and strongest tidal current;
 - d. Proposed construction materials; and
 - e. Proposed method of construction.

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B. Regulations by Environment.

1. Urban. Breakwaters, jetties, and groins shall be permitted in the urban environment subject to the policies and regulations of this SMP.
2. Rural. Same as urban.
3. Rural Residential and Rural Farm-Forest. Same as urban.
4. Conservancy. Floating breakwaters may be permitted in the conservancy environment if they can be made visually compatible with their surroundings. Rigid breakwaters shall be allowed only as a shoreline conditional use. Jetties and groins shall be prohibited.
5. Natural. Breakwaters, jetties, and groins are prohibited in the natural environment.
6. Aquatic. Breakwaters shall be permitted in the aquatic environment subject to the policies and regulations of this SMP and to the regulations by environment applicable to the abutting shoreline area. Where the proposed breakwater site abuts more than one shoreline environment, the policies and regulations of the most restrictive abutting environment shall govern.

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Conclusions Based on Findings

1. As conditioned, the proposed renovation of the existing joint use dock would be consistent with the Shoreline Management Act (SMA). The policy of the SMA, as set forth in RCW 90.58.020, is to “provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses.” 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.” *RCW 90.58.020*. Information from the Applicant's consultant shows that the project would reduce impacts to the marine environment over the existing conditions. Compliance with the conditions imposed herein, the mitigation measures imposed in the MDNS, and requirements imposed through other required state and/or federal permit processes would ensure that adverse effects to the waters of the state and to federally and locally protected species and habitats would be avoided. *Findings 1, 2, 3, 4, 5, 6, 7, and 9.*

2. As conditioned, the proposal satisfies applicable Shoreline Master Program criteria. The subject property and two adjacent parcels have only the one existing dock between them. Conditions would ensure that the remodeled facility continues to be used by three parties. The existing pier, which would not be modified, extends only a few feet beyond the extreme low tide contour. Pilings are necessary in this location to secure the floats, but anchor ropes would be used for the breakwater. Conditions would ensure that materials used are of a color and finish that blend with the background to the extent possible. The project would not increase the length of the overall facility beyond the 300-foot maximum allowed for three user joint docks. While the area of the legally nonconforming dock would continue to exceed the 2,000 square foot maximum, the project would reduce area by more than 650 square feet compared to the existing condition. Required permits issued by the State Department of Fish and Wildlife and the U.S. Army Corps of Engineers would ensure the redesigned breakwater conforms to all design requirements of those agencies, including those relating to navigation and to visual access from the shoreline. The remodeled breakwater would reduce impacts to the circulation of water, the movement of sand, and on aquatic life over the existing condition. *Findings 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, and 13.*

3. With regard to the dispute between the Applicant and the Quinns, the San Juan County Hearing Examiner lacks jurisdiction to decide reasonable terms of such private agreements.³ It is the Applicant's responsibility to obtain the agreement of joint users. The intent of the County's Shoreline Master Program that the facility be a joint use dock shared by multiple parties would be adequately protected by a condition of approval requiring the Applicant to submit one or more executed joint use agreements with the two adjacent waterfront parcel owners that run(s) with the land and are legally recorded prior to construction. Should the Applicant not be able to obtain the agreement of the Quinns

³ Hearing Examiners are creatures of the legislature without inherent or common-law powers and may exercise only those powers conferred either expressly or by necessary implication. *Chaussee v. Snohomish County Council*, 38 Wn. App. 630, 636 (1984).

and either move to go forward with only two parties or to add a different third party to the shared dock agreement, conditions would ensure that the matter would undergo further review by the Community Development Department prior to construction. *Findings 2, 10, and 14.*

4. Notice and other procedural requirements were performed consistent with SJCC 18.80. Compliance with 18.60 would be ensured through the County building permit and inspection processes. The proposal was reviewed for compliance with SEPA and an MDNS was issued. Compliance with adopted regulations shows compliance with applicable Comprehensive Plan goals and policies. *Findings 11 and 12.*

DECISION

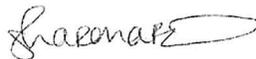
Based on the preceding findings and conclusions, the requested shoreline substantial development permit to authorize redevelopment of an existing joint use dock serving three residentially zoned parcels and the break water protecting it located at 330 Elwha Rock Road, Orcas Island is **APPROVED** subject to the following conditions applicable to the Applicants, agent(s), and successor(s) in interest:

1. This permit allows the reconfiguration of the dock and placement of the breakwater, as shown in the attached plans.
2. Prior to construction permit issuance, the Applicant shall submit to the Department of Community Development executed joint use agreements with the owners both adjacent parcels that run with the land and have been recorded with the County. Should this not be accomplished, review by the Department of any alternate proposal would be required, subject to all applicable notice and public processes.
3. The conditions of the MDNS shall be followed:
 - a) The proposal shall maximize light penetration with deck grating, float orientation and minimized size.
 - b) BMPs shall prevent erosion and sediments from entering the marine waters.
 - c) Equipment used for installation of the proposal shall be maintained to be leak-free while on the site.
 - d) During dock construction, equipment engines shall not be idled unnecessarily.
 - e) Dock components shall be built with materials suitable for kelp attachment and remain year-round to allow growth/attachment of kelp and filter-feeding organisms.
 - f) Comply with all applicable state, federal and San Juan County codes.
4. Boats moored at residential docks shall not be used for commercial overnight accommodations.
5. Use of the dock for regular float plane access and moorage shall not be allowed.
6. Pilings must be structurally sound prior to placement in the water.

7. Chemically treated piles, floats or other structural members in direct contact with the water shall comply with state and federal regulations.
8. Pilings employed in piers or any other structure shall have a minimum vertical clearance of one foot above extreme high water.
9. All floats shall include stops to keep the bottom off tidelands.
10. When plastics or other non-biodegradable materials are used in a float, pier or dock construction, full containment features are required.
11. Overhead wiring and plumbing are prohibited. Other structures on piers, ramps and floats shall be limited to three feet in height.
12. Dock lighting shall be designed to shine downward, be low wattage and shall not exceed a height of three feet above the dock surface.
13. Materials used in dock construction shall be of a color and finish that will blend visually with the background. If metal is used, it must be treated to comply with this requirement.
14. All debris entering the water or shoreline area shall be removed immediately and disposed of in a legal manner.
15. The float shall be secured with anchored cables rather than pilings unless the applicant can demonstrate that the use of anchored cables is not feasible and pilings must be used.
16. Development authorized by this permit shall commence within two years of the date of approval and shall be substantially complete within five years or the permit shall become null and void.
17. In addition to the above stated conditions, all applicable conditions from the previous shoreline permits 90SJ024 and 90SJ024R shall apply to this permit.
18. Immediately after construction is completed, the owner shall request that the Department of Community Development perform an inspection.
19. Failure to comply with any terms or conditions of this permit may result in its revocation.

Decided May 20, 2016.

By:



Sharon A. Rice
San Juan County 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 requirements 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.