

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

In the Matter of Shoreline Substantial)
Development and Permit Application filed)
by)

File No. PSJ000-17-004

WELLSPRING ENTERPRISES LLC,)
Applicant,)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION APPROVING SHORELINE
SUBSTANTIAL DEVELOPMENT
PERMIT**

PROJECT: *Repair and maintenance of the
Captain's Landing Marina on Shaw Island,
including installation of a new pumpout facility,
located north of the Shaw General Store and east
of the Shaw Island ferry landing.*)
_____)

I. SUMMARY OF DECISION.

The Shoreline Substantial Development Permit for the Captain's Landing Marina repair and maintenance project, including installation of a new pumpout facility, is approved, subject to Conditions of Approval that are based upon evidence in the Record and the unchallenged MDNS issued for the project.

II. EXISTING CONDITIONS and PROJECT DESCRIPTION.

The existing Captain's Landing Marina facility is located on Shaw Island, located north of the Shaw General Store and east of the Shaw Island ferry landing. The pending application would authorize full replacement of virtually all of the existing Captain's Landing Marina facilities, including the pier, ramp, floats, and piles – provided all of these items will be replaced and located in the same configuration as the existing facilities. *(Exhibit 4, Application, Summary of Proposal on page 1 of letter submitted by Jeff Otis,*

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
DECISION – APPROVING SHORELINE
SUBSTANTIAL DEVELOPMENT PERMIT TO
REPAIR AND MAINTAIN CAPTAIN'S LANDING
MARINA ON SHAW ISLAND –
FILE NO. PSJ000-17-004**

**GARY N. MCLEAN
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FOR SAN JUAN COUNTY**

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1 with *Otis Land Use Consulting*). It also includes installation of a new pumpout facility with
2 an above-ground septic tank to serve marina customers. The applicant received a grant to
3 help fund the proposed pumpout facility from the Washington State Parks and Recreation
4 Commission.

5 During the public hearing, applicant representatives indicated that they have been in
6 communication with Army Corps and state Fisheries staff who expressed their support for
7 replacing much of the current “solid” decking and ramp elements with “grated” surfaces as
8 described in the application materials.

9 There is no dispute that the existing Captain’s Landing Marina is a legal use, and
10 that the marina provides moorage and marina services to local residents and visitors,
11 reducing demand for individual, private docks in the area. The application materials (*Ex. 4*)
12 and the Staff Report credibly explain how the pending marina repair/replacement project,
13 including the new pumpout facility, is consistent with and promotes goals and policies
14 found in the County’s Comprehensive Plan, particularly those found in Element 3, Section
15 5C, regarding Boating Facilities.

16 Credible and un rebutted evidence established that the current marina facility is in a
17 well-worn, weathered, condition, and that the proposed project will bring it compliance
18 with current environmental, building, design, and other standards or practices commonly
19 used by comparable but newer facilities in San Juan County and the State of Washington.

20 Given the project’s location within the County’s regulated shoreline area, and its
21 estimated value, there is no dispute that a Shoreline Substantial Development Permit is
22 required.

23 III. RELEVANT CODE PROVISIONS.

24 The San Juan County Code includes a specific, unambiguous, and clearly-captioned
25 code section addressing “Shoreline Permit and Exemption Procedures,” found at SJCC
26 18.80.110. Relevant portions read as follows:

18.80.110 Shoreline permit and exemption procedures.

A. Purpose and Applicability.

1. This section includes the procedures necessary to ensure that the provisions of the
Shoreline Master Program (Element 3 of the Comprehensive Plan and Chapter 18.50
SJCC) are implemented and enforced, and to ensure that all persons affected by the
master program are treated in a fair and equitable manner.

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2. This section applies to all lands and waters within the jurisdiction of the master program and to all persons and agencies as described in Chapter 18.50 SJCC.

3. The following are referred to as “shoreline permits” and are subject to this review process:

a. Shoreline substantial development permits.

[...]

E. Decisionmaking Authority. The hearing examiner has authority to take the following actions:

1. Based upon the criteria in subsection (H) of this section, hear and issue or deny shoreline permits following receipt of the recommendations of the administrator, and to impose conditions of approval on such permits[.]

[...]

H. Criteria for Approval of Substantial Development Permits. A shoreline substantial development permit shall be granted by the County only when the applicant meets his 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.

[...]

N. Rescission of Shoreline Permits. Any shoreline permit may be rescinded by the hearing examiner pursuant to RCW 90.58.140(8) upon the finding that the permittee has failed to comply with the terms and conditions thereof. In the event that the permittee is denied a required sewage disposal, building, or other permit necessary for the project in question, the shoreline permit may be rescinded by the hearing examiner. In the event a shoreline permit is rescinded by the hearing examiner, the permittee shall be notified by certified mail. Copies of the examiner’s final action shall be filed with the Washington Department of Ecology.

Drawn from the previously provided portions of the San Juan County Shoreline

1 Master Program code provisions, and other applicable provisions of the County’s Unified
2 Development Code found in Title 18 SJCC, of which the SMP is a portion, the following
3 topics are worth highlighting in this Decision.

3 **Jurisdiction:** As shown above, under SJCC 18.80.110(E), the Hearing Examiner is
4 given the authority to hold public hearings and issue or deny shoreline permits, based upon
5 the criteria in SJCC 18.80.110(H).

5 **Burden of Proof:** Under SJCC 18.80.010(A), “Shoreline Permits” are specifically
6 listed as “Project Permits” covered by the provisions of SJCC Chapter 18.80 re: application,
7 notice, review and appeal requirements for the County’s Unified Development Code, which
8 is found in Title 18 of the SJCC and includes Chapter 18.50, the County’s Shoreline Master
9 Program. SJCC 18.80.040(B) reads as follows:

9 *“[t]he burden of proof is on the project permit applicant. The project permit
10 application must be supported by evidence that it is consistent with the
11 applicable state law, County development regulations, the Comprehensive
12 Plan, and the applicant meets his burden of proving that any significant
13 adverse environmental impacts have been adequately analyzed and
14 addressed.”*

13 **Standard of Review:** SJCC 2.22.210(H) explains that “for an application to be
14 approved, a preponderance of the evidence presented at the hearing must support the
15 conclusion that the application meets the legal decision criteria that apply.”

15 **Shoreline Regulations:** The County’s Shoreline Master Plan/Program (SMP) and
16 its code provisions effectuating the SMP were recently amended, following review and
17 approval by the San Juan County Council. Review and approval by the Department of
18 Ecology, as required by applicable state law, is not yet complete. For purposes of permit
19 processing, this project vested and was reviewed under the County’s “old”, yet-to-be-
20 updated shoreline regulations.

19 SJCC 18.50.010(A), now reads as follows:

20 *“This chapter [18.50] of the Unified Development Code, together with
21 Element 3 of the Comprehensive Plan and SJCC 18.80.110(I)(3),
22 18.80.110(J)(4) and 18.80.120(D), is the Shoreline Master Program for San
23 Juan County, Washington.”*

23 So, until approved by the Department of Ecology, the County’s SMP provisions are

1 codified in SJCC Chapter 18.50, together with Element 3 of the Comprehensive Plan
2 collectively known as the “SJC Shoreline Master Program” or “SMP.”¹

3 **Review Criteria for a Shoreline Substantial Development Permit:** “Substantial
4 Development” is defined in RCW 90.58.030(3)(e) and SJCC 18.20.190, and means any
5 development of which the total cost or fair market value exceeds \$6,416² or any
6 development which materially interferes with the normal public use of the water or
7 shorelines of the state. Substantial developments proposed in shoreline areas of San Juan
8 County require a Substantial Development Permit. SJCC 18.80.110(H). The approval
9 criteria for a Shoreline Substantial Development Permit application is set forth in SJCC
10 18.80.110(H), which reads as follows:

11 **18.80.110(H). Criteria for Approval of Substantial Development Permits.** A shoreline
12 substantial development permit shall be granted by the County only when the applicant
13 meets his burden of proving that the proposal is:

- 14 1. Consistent with the policies of the Shoreline Management Act and its implementing
15 regulations, Chapter 90.58 RCW and Chapter 173-27 WAC, as amended;
- 16 2. Consistent with the policies and regulations of the Shoreline Master Program in Chapter
17 18.50 SJCC;
- 18 3. Consistent with this chapter;
- 19 4. Consistent with the applicable sections of this code (e.g., Chapter 18.60 SJCC);
- 20 5. Consistent with the goals and policies of the Comprehensive Plan; and
- 21 6. All conditions specified by the hearing examiner to make the proposal consistent with
22 the master program and to mitigate or avoid adverse impacts are attached to the permit.

23 **Review Criteria for the Department of Ecology:** Finally, if the Examiner approves
24 or denies the Shoreline Permit, such decision must be forwarded to the Department of
25 Ecology and the Attorney General, for state review and any appeals of the Shoreline Permit,
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¹ See SJCC 18.50.010(B), which reads: “The short title of this chapter (18.50) and Element 3 of the
Comprehensive Plan is the “SJC Shoreline Master Program” or “SMP.”

² This figure is the current figure posted on the Department of Ecology’s Shoreline Program website, which is
based upon the initial statutory \$5,000.00 threshold, adjusted for inflation by the state Office of Financial
Management on a 5-year cycle, most recently adjusted in 2012.

1 in accord with Washington Shoreline Management regulations found in WAC 173-27-130.
2 This Decision is subject to review and approval, approval with conditions, or denial by the
3 Washington Department of Ecology within thirty days of submittal by the County. WAC
4 173-27-130, and -200. Ecology's review criteria for Shoreline Substantial Development
5 Permits is found at WAC 173-27-150³. The San Juan County review criteria for the
6 requested shoreline permit is consistent with and substantially similar to those that will be
7 used by the Department of Ecology.

6 **IV. RECORD AND EXHIBITS; SUMMARY OF PUBLIC HEARING**

7 Exhibits entered into evidence as part of the record, and an audio recording of the
8 public hearing, are maintained by the San Juan County Department of Community
9 Development, in accord with applicable law.

9 **Hearing Testimony:** The following individuals presented testimony under oath at
10 the duly noticed open record public hearing held on June 15, 2017:

- 11 1. Julie Thompson, Project Planner for San Juan County, who prepared the Staff
12 Report for the pending application.
- 13 2. Jeff Otis, with Otis Land Use Consulting, appeared as the applicant's Agent.
14 Mr. Otis authored the 18-page project summary letter that is included in the
15 Record as part of Exhibit 4;
- 16 3. Steve and Terri Mason, the Project Applicants and owners of Captain's Landing
17 on Shaw Island, appeared at the hearing.

17 No one appeared at the public hearing to oppose or question the application or
18 submitted any written comments into the Record indicating their opposition to the pending
19 application. No one appealed the MDNS issued for the project.

20 ³ WAC 173-27-150

Review criteria for substantial development permits.

(1) A substantial development permit shall be granted only when the development proposed is consistent with:

- 21 (a) The policies and procedures of the act;
 - 22 (b) The provisions of this regulation; and
 - 23 (c) The applicable master program adopted or approved for the area. Provided, that where no master program has been approved for an
24 area, the development shall be reviewed for consistency with the provisions of chapter [173-26](#) WAC, and to the extent feasible, any draft
25 or approved master program which can be reasonably ascertained as representing the policy of the local government.
- (2) Local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and
26 the local master program.

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Exhibits: The following Exhibits are included as part of the Record for this matter:

Staff Report, prepared by Ms. Thompson, dated May 26, 2017, for the pending application (17 pages);

1. Request for Review of the Wellspring Enterprises LLC (Captain’s Landing Marina) repair and maintenance proposal, including installation of a pumpout facility, distributed by L. Guernsey for the San Juan County Community Development & Planning Department on April 19, 2017, requesting review and written comments by May 17, 2017 from the Washington Department of Ecology (2 individual recipients), the Dept. of Natural Resources NW Region, the Parks and Recreation Commission, and from the San Juan County Fire Marshal;

2. SEPA Mitigated Determination of Nonsignificance (MDNS) issued for the project on April 19, 2017, which details 17 specific, binding, mitigation measures or conditions of approval for the proposal.

*(NOTE: The Staff Report and Ms. Thompson confirmed that no written comments addressing, or appeals of, the MDNS were received by the County. By operation of WAC 197-11-545 (re: Effect of no comment), if a consulted agency does not respond with written comments within the time periods for commenting on environmental documents, the lead agency may assume that the consulted agency has no information relating to the potential impact of the proposal as it relates to the consulted agency's jurisdiction or special expertise; further, lack of comment by other agencies or members of the public on environmental documents within the applicable time period shall be construed as lack of objection to the county’s environmental analysis. Again, the record establishes that the MDNS was not appealed – SJCC 18.80.140(A) provides that a SEPA threshold determination like the MDNS issued for this project may be appealed within 21 days of issuance).

3. Environmental Checklist, signed and submitted by the applicant’s Agent, Mr. Otis, on February 27, 2017;

4. Application materials, including the following items:

- a. Land Use Project Permit Application, cover sheet, for Shoreline Permit, signed by Applicant’s Agent, Mr. Otis, on 2/27/2017, but marked Received by the County on March 2, 2017;
- b. Project Summary letter from Mr. Otis (18 pages);
- c. Environmental checklist;
- d. Project Drawings, prepared by Waterfront Construction Inc., dated 12/6/16, (sheets 1 – 10), and Septic Tank Drawings, prepared by Astech Professionals Inc., dated 13 Oct. 2016;

- e. Eelgrass/Macroalgae Habitat Survey;
- f. Forage Fish Spawning map;
- g. Project Description & Construction Sequence (“PDCS”);
- h. Marine Mammal Monitoring Plan;
- i. BMPs for pollution control;
- j. Light availability test report;
- k. Pumpout Grant Approval, letter dated September 14, 2015, from the Washington State Parks’ Clean Vessel Program Manager, awarding a \$161,404.00 grant to Steve and Terri Mason (owners of Captain’s Landing and the Shaw Island General Store) for the construction of a boat sewage pumpout facility at Captain’s Landing on Shaw Island;
- l. Agent Authorization;
- m. Property Owner list; and
- n. Legal Description.

5. Eelgrass/Macroalgae Habitat Survey, prepared by Marine Surveys & Assessments, dated July 15, 2015;

6. Marine Mammal Monitoring Plan, prepared by Jen-Jay, Inc., 2017 (no date given);

7. Best Management Practices, prepared by Waterfront Construction, Inc.;

8. Light Availability Test, prepared by Reliable Analysis Inc., dated September 3, 2008;

9. Comment letter, and applicant’s response;

10. Septic permit;

11. Legal advertising;

12. Posting and verification of notification, required by relevant codes.

The Examiner has had a full and fair opportunity to consider all evidence and testimony submitted as part of the record, has reviewed and researched relevant codes and caselaw, and is fully advised. Accordingly, this Decision is now in order.

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V. FINDINGS OF FACT.

Based on the Record, the Examiner issues the following findings of fact:

1. All statements of fact, assessments of credibility, or determinations on the weight of evidence as described in any other section of this Decision, are hereby incorporated by reference and adopted as Findings of Fact supporting this Decision and the attached Conditions of Approval.

2. In March of this year, Wellspring Enterprises, LLC, submitted an application to repair and replace virtually all of the existing elements of the Captain’s Landing Marina facility on Shaw Island, incorporating more environmentally-friendly components, like replacing solid, light-blocking surfaces with grated decking over the water; replacing creosote piles with steel piles; and replacing uncontained Styrofoam floats with sealed, high-density foam-filled pontoons.

3. As noted on page 2 of Mr. Otis’ Project Summary Letter, included in the Record as part of Exhibit 4, and repeated on pages 1 and 2 of the Staff Report, the Proposal covered by this application includes the following activities:

- Replacing the existing 6’ x 31’9” solid decked pier and six 12” creosote treated piles with a 5’ x 8’ fully grated pier supported by two 8” steel piles.
- Replacing the existing 3’4” x 35’ solid decked ramp with a 4’9” x 44’ fully grated ramp.
- Replacing the existing 9’ x 87’6” solid decked main float and eight 12” creosote treated piles with a fully grated 8’ x 87’6” float and eight steel 10” piles.
- Replacing the existing 6’ x 100’ solid decked float and three creosote treated 12” piles with a fully grated 6’ x 100’ float and three 10” steel piles.
- Replacing the existing 6’ x 88’ solid decked float and three creosote treated 12” piles with a fully grated 6’ x 88’ float and three 10” steel piles.
- Replacing the existing uncontained Styrofoam floatation located on all floats with sealed, high-density foam-filled pontoons.
- Installing a 2’ x 3’ pump-out facility at the seaward end of the main float.
- Installing an above ground, fenced, 6’W x 7’6”H x 10’L septic tank near the entrance to the marina between the Shaw store and warehouse.
- All replacement facilities such as the pier, ramp, floats, and piles will be located in the same configuration as the existing facilities.

4. The project site, known as “Captain’s Landing” or the “Captain’s Landing Marina”,

1 is located on Shaw Island, east of the Shaw Island ferry landing, with the Shaw General
2 Store and warehouse located to the south. Residential uses are located to the south,
3 southeast, and southwest of the Captain's Landing Marina. (*Staff Report; Site Plan,*
4 *included as part of Ex. 4).*

5 5. The application materials included a number of thorough environmental reports
6 analyzing potential impacts, and suggesting mitigation measures to include as part of the
7 project, including without limitation: an Eelgrass/Macroalgae Habitat Survey; a Forage
8 Fish Spawning map; a Project Description & Construction Sequence ("PDCS"); a Marine
9 Mammal Monitoring Plan; recommended BMPs for pollution control; and a "Light
10 Availability" test report. (*See Exhibits 4, 5, 6, 7, and 8).*

11 6. County staff received the application materials and determined that they were
12 complete on or about March 2, 2017. (*Staff Report, page 2).*

13 7. Staff issued public notices regarding the pending application on April 19, 2017,
14 formally requesting review and written comments from four (4) agencies by May 17, 2017,
15 including the Washington Department of Ecology (2 individual recipients), the Dept. of
16 Natural Resources NW Region, the Parks and Recreation Commission, and the San Juan
17 County Fire Marshal. (*Ex. 1*). The public Notice of Application for the pending application
18 was published on the same date, April 19, 2017. (*Ex. 11*).

19 8. The only government agency to comment on the application was the San Juan Fire
20 Marshal, who inquired about the fire suppression plan for the site. His brief request, and
21 the applicant's satisfactory response, are included as part of the Record. (*See Ex. 9, which*
22 *includes Applicant's Agent's response that reads in relevant part: "...we will soon have a*
23 *new wild land fire truck. Because keeping our ferry landing safe is a priority, we have*
24 *drills here at the landing and we have 6 fire extinguishers here. We are covered!"*).

25 9. The Staff Report confirms that applicable notice, mailing and publication
26 requirements were satisfied. (*Staff Report, page 2; Exhibits 11 and 12*).

Following review and consideration of all environmental documentation submitted
as part of the application, including a SEPA Checklist (*Ex. 3*) completed by Applicant's
agent, County officials issued a SEPA Mitigated Determination of Non-Significance
(MDNS) for the proposal on April 19, 2017. (*Exhibit 2*). The Department of Ecology
issued Material Identification #201701975.

11. The MDNS includes 17 specific mitigation measures that are intended to avoid or
minimize potential adverse impacts on the environment, particularly aquatic aspects of the

1 environment. (See Ex. 2, MDNS).

2 12. The face of the MDNS notification issued by the County specified that the deadline
3 for comments regarding the MDNS was May 3, 2017, and the deadline for any appeals of
4 the MDNS expired on May 24, 2017. (See Ex. 2, MDNS).

5 13. The County received no comments regarding the MDNS. (Staff Report, page 2).

6 14. Because no agency or person submitted comments regarding the MDNS, no party
7 had standing to appeal the determination. In any event, no one submitted an appeal of the
8 MDNS issued for the Captain's Landing project.

9 15. By operation of WAC 197-11-545 (re: Effect of no comment), if a consulted
10 agency does not respond with written comments within the time periods for commenting on
11 environmental documents, the lead agency may assume that the consulted agency has no
12 information relating to the potential impact of the proposal as it relates to the consulted
13 agency's jurisdiction or special expertise; further, lack of comment by other agencies or
14 members of the public on environmental documents within the applicable time period shall
15 be construed as lack of objection to the county's environmental analysis. Again, the record
16 establishes that the MDNS was not appealed – SJCC 18.80.140(A) provides that a SEPA
17 threshold determination like the MDNS issued for this project may be appealed within 21
18 days of issuance.

19 16. All 17 of the unchallenged mitigation measures included in the MDNS are
20 supported by evidence in the Record, reasonable, and capable of being accomplished.
21 Accordingly, as recommended by Staff and fully supported by Applicant witnesses who
22 testified at the public hearing, they are all included as Conditions of Approval for the
23 pending Shoreline Permit.

24 17. As noted above, the pending application includes installation of a new boat sewage
25 pumpout facility at the marina, which has already received substantial support from the
26 Washington State Parks and Recreation Commission's Clean Vessel Program division, in
the form of a grant for \$161,404.00 to Steve and Terri Mason, owners of Captain's Landing
and the Shaw Island General Store. (See Ex. 4(k)).

18 18. At the hearing, Applicant witnesses explained that they received an extension from
19 the Washington State Parks and Recreation Commission to obtain necessary permits before
20 collecting Parks' grant funds they were awarded to construct the boat sewage pumpout
21 facility at Captain's Landing.

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25 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND**
26 **DECISION – APPROVING SHORELINE**
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MARINA ON SHAW ISLAND –
FILE NO. PSJ000-17-004

1 19. The Examiner takes official notice of another Shoreline Permit decision that was
2 issued last Summer for redevelopment of another private marina in San Juan County, in
3 which the Examiner did not have authority or evidence sufficient to mandate installation of
4 a new boat sewage pumpout facility as part of such project. Subsequently, the Department
5 of Ecology approved the Shoreline Permit, but exercised its authority to expressly include a
6 new pumpout facility. While not binding on the pending application's review by the
7 Department of Ecology, it would be highly unusual to see the Department later oppose or
8 disapprove a new pumpout facility at Captain's Landing, especially here, where another
9 state agency has awarded substantial funds to accomplish the project. Moreover, the
10 thorough and credible environmental documentation that is included in this Record fully
11 justifies installation of the pumpout facility as conditioned herein.

12 20. No individual or government agency invited to comment on the project application
13 offered any evidence or information that would rebut or materially challenge the findings
14 and analysis provided in applicant's environmental analysis and project construction
15 recommendations that are included as part of the Record.

16 **21. Merits of the project.**

17 21A. *Comprehensive Plan.* The Staff Report and the application materials included as
18 part of the Record, including without limitation *Exhibits 4, 5, 6, 7, and 8*, include facts and
19 analysis that comprise far more than a preponderance of evidence to establish that the
20 pending Shoreline application satisfies, and in many respects, promotes or implements,
21 applicable provisions of the County's Comprehensive Plan.

22 21B. Except as modified in this Decision, the Examiner hereby adopts by reference all
23 statements of fact included in the Staff Report, and the applicant's Project Summary letter
24 (*Ex. 4*) which address the project's consistency with applicable County Comprehensive
25 Plan provisions. The statements of fact adopted herein shall be deemed Findings of Fact
26 supporting this Decision and Conditions of Approval.

27 21C. Substantial evidence in the record, including without limitation the application
28 materials, environmental reports, and testimony by Applicant representatives, fully support
29 Staff's conclusions in the Staff Report, explaining that the proposed project satisfactorily
30 complies with applicable county code provisions, and/or can be mitigated through
31 conditions set forth in the MDNS issued for this project, to minimize, reduce, or prevent
32 any probable, significant, adverse, environmental impacts associated with the project.

33 21D. For instance, there is substantial, credible, and un rebutted information in the
34 application materials to demonstrate that no net loss of shoreline ecological functions will

1 *occur.* These materials include, without limitation, the Eelgrass/Macroalgae Habitat
2 Survey, *Ex. 5*; the Marina Mammal Monitoring Plan, *Ex. 6*; and the Light Availability Test,
3 *Ex. 8*.

4 21E. The application materials also include “Best Management Practices” that will be
5 observed throughout the construction process. (*See Ex. 7*). The MDNS mitigation
6 measures and conditions of approval mandate compliance with these standards.

7 21F. Adding light-penetrating grating, replacing un-encapsulated Styrofoam floats with
8 sealed floats, and replacing creosote pilings with steel pilings will all reduce potential
9 adverse impacts to marine life that currently exist by removing the potential for added
10 toxics and allowing more light to support sea life.

11 21G. The marina already exists. So, keeping the marina as a viable, appropriately
12 constructed, and environmentally-sensitive provider of moorage space for area residents
13 and visitors – especially with a new boat sewage pumpout facility at Captain’s Landing – is
14 reasonable and fully consistent with Comprehensive Plan Policy 3.5.C., including without
15 limitation subsections 3.5.C.1, 3, 4, 5, 11, 13, 14, 15, 16, 19(a), 20, and 21 (“*Installation
16 and maintenance of accessible boat sewage disposal (pump out) facilities are required in
17 all marinas and should be available in convenient locations to all boaters*”).

18 21H. The replacement aspects of the project will actually *reduce* potential environmental
19 impacts, with the following beneficial changes: flotation materials will be enclosed; the
20 existing pier width will be reduced one foot from six to five feet, and will be reduced in
21 length; the number of piles will be substantially reduced; creosote piles will be replaced
22 with steel piles; the westerly-most float will be reduced in width from nine to eight feet; and
23 a boat sewage pumpout facility will be located on the site where there is none today,
24 thereby eliminating the potential for illicit discharge of sewage from boats using the
25 existing marina. (*Staff Report; Ex. 4, Project Summary Letter at page 6 of 18, description
26 of ‘Proposed Conditions’ and ‘Mitigation of Potential Impacts’*).

27 21I. The probable, significant, adverse environmental impacts of the proposal are
28 virtually all related to the removal and construction process, which can be minimized and
29 fully addressed through implementation of the mitigation measures identified in the
30 County’s unchallenged MDNS issued for the proposal. The MDNS is fully supported by
31 unrebuted, credible, environmental studies and documentation, including without
32 limitation the environmental checklist and supporting environmental reports provided for
33 the project.

1 22. The findings, recommendations and conclusions provided in the environmental
2 documentation submitted on behalf of the applicant, are credible and well-reasoned
3 summaries of complicated regulations, conditions, possible impacts and appropriate
4 mitigation measures associated with the proposed project. Applicant's proposal has been
5 designed, planned, and/or conditioned based on input from experts in various fields.

6 23. No one presented any testimony or evidence that would justify denial of the pending
7 shoreline application.

8 24. The project promotes and is consistent with the state shoreline policies set forth in
9 the Shoreline Management Act at RCW 90.50.020(1-6). For example, the project provides
10 a common area for boat moorage at a marina, which can be used by inland residents and
11 others who would not otherwise have access to the shoreline; the redevelopment project
12 will replace the existing facility with an environmentally-sensitive facility that will greatly
13 improve existing conditions and serve to preserve and protect the natural character,
14 resources, and ecology of the shoreline; it will provide a demonstrated, long-term benefit,
15 and hopefully reduce the obvious pressures for more single-use boat docks in and around
16 Shaw Island, which are disfavored in the County's SMP.

17 *The Record includes substantial evidence that the application meets requirements to*
18 *approve the Substantial Development Permit.*

19 25. Substantial and credible evidence in the record, including without limitation
20 un rebutted findings and analysis provided in the Staff Report, and Applicant's Project
21 Summary Letter, included in the Record as part of Exhibit 4, establishes that the applicant
22 has met its burden to prove that the pending application satisfies all criteria for approval of
23 a Substantial Development Permit, found at SJCC 18.80.110(H). Specifically, the applicant
24 has met its burden to establish that: 1. The proposal is consistent with the policies of the
25 Shoreline Management Act and its implementing regulations, Chapter 90.58 RCW and
26 Chapter 173-27 WAC, as amended; 2. The proposal is Consistent with the policies and
regulations of the Shoreline Master Program in Chapter 18.50 SJCC; 3. The proposal is
consistent with applicable provisions of SJCC chapter 18.80; 4. The proposal is consistent
with the applicable sections of the SJCC code; 5. The proposal is consistent with the goals
and policies of the Comprehensive Plan; and 6. The Examiner has conditioned approval of
the project to make the proposal consistent with the shoreline master program and to
mitigate or avoid adverse impacts.

1 26. Any finding or other statement of fact contained in another section of this Decision
2 that is deemed to be a finding of fact is hereby adopted as such and incorporated by
3 reference.

4 VI. CONCLUSIONS OF LAW.

5 1. The Record, including without limitation the County's Staff Report and Ex. 4,
6 Applicant's detailed Project Summary letter with its supporting environmental and
7 regulatory analysis reports, includes substantial, credible and convincing proof that the
8 Shoreline application satisfies the County's approval criteria.

9 2. The principal purpose of SEPA is to provide decisionmakers and the public with
10 information about potential adverse impacts of a proposed action. *Save our Environment v.*
11 *Snohomish County*, 99 Wash.2d 363, 373 (1983). "SEPA is primarily a procedural statute
12 that requires the disclosure of environmental information. SEPA does not demand a
13 particular substantive result in government decision making; rather it ensures that
14 environmental values are given appropriate consideration." *Glasser v. City of Seattle*, 139
15 Wn. App. 728, 742 (2007). In this matter, the Record includes substantial, credible, and
16 un rebutted evidence to support issuance of the MDNS, and the marina repair and
17 maintenance proposal is fully justified under SEPA as an appropriate measure that will
18 materially reduce and minimize the existing potential for negative environmental impacts
19 that is presented by the marina in its current condition, especially considering installation of
20 the new boat sewage pumpout facility.

21 4. The state's Shoreline Management Act ("SMA") and the regulatory policies
22 established thereunder, including those adopted by San Juan County and approved by the
23 Department of Ecology, does/do not prohibit all development in the shoreline. Rather, its
24 purpose is to allow careful development of shorelines by balancing public access,
25 preservation of shoreline habitat and private property rights through coordinated planning.
26 *Overlake Fund v. Shoreline Hearings Bd. (State Report Title: Overlake Fund v. Shorelines
Hearings Bd.)*, 90 Wash. App. 746, 761, 954 P.2d 304, 312 (1998).

5. When it approved the San Juan County Shoreline Master Program, the Department
of Ecology approved the County's decision to permit recreation uses, like the marina, in its
waters and along some shoreline areas. It included approval of provisions that allow for
maintenance and upgrades to existing shoreline uses, like the marina, through issuance of a
shoreline permit. In so doing, both the County and DOE recognized that the area in which
this proposal is located is an already-developed area within the county, which is suitable for
recreation development. In an ideal world, we might well choose to preserve all shorelines

1 in a natural, undisturbed state. But the Shoreline Management Act, DOE and the County
2 understand that, in a practical world, development pressures exist and permitting a range of
3 uses is necessary to accommodate those pressures. On the sliding scale of values
4 contemplated by the Act and regulations, the natural condition of the shoreline portion of
the marina simply does not justify effectively denying a shoreline permit for the Captain's
Landing project, a pre-existing, legal marina use, a long-existing recreational use that is
located along a shoreline area with significant demand for the services it provides.

5 6. The SMA clearly contemplates a balancing approach. “[C]oordinated planning is
6 necessary in order to protect the public interest associated with the shorelines of the state
7 while, at the same time, recognizing and protecting private property rights consistent with
8 the public interest.” RCW 90.58.020. The SMA also recognizes that alterations in the
9 natural condition of the shoreline will occur with priority to be given for shoreline
10 recreational uses like marinas. Id. The SMA does not prohibit development but attempts to
ensure that development will occur in such a way to protect the public against “adverse
effects to the public health, the land and its vegetation and wildlife, and the waters of the
state and their aquatic life.” Id. Lastly, the SMA fosters “all reasonable and appropriate
uses” of the shorelines of the state. Id.

11 7. As shown above, the Record establishes that the proposed repair and maintenance
12 project will result in a more environmentally-friendly marina, on the same site, and using
13 the same configuration.

14 8. The marina repair and maintenance proposal furthers many of the goals of the SMA
and the San Juan County SMP.

15 9. Any finding or other statement contained in a previous section of this Decision that
16 is deemed to be a Conclusion of Law is hereby adopted as such and incorporated by
17 reference.

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VII. DECISION, CONDITIONS OF APPROVAL.

Based on the record, and for the reasons set forth above, the Shoreline Substantial Development Permit for the Captain’s Landing Marina Project is approved, subject to the following Conditions of Approval, which are attached hereto, and incorporated herein by reference.

ISSUED this 27th Day of July, 2017



Gary N. McLean
Hearing Examiner

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
DECISION – APPROVING SHORELINE
SUBSTANTIAL DEVELOPMENT PERMIT TO
REPAIR AND MAINTAIN CAPTAIN’S LANDING
MARINA ON SHAW ISLAND –
FILE NO. PSJ000-17-004**

GARY N. MCLEAN
AS HEARING EXAMINER PRO TEM
FOR SAN JUAN COUNTY
McLeanLaw@me.com

1 **CONDITIONS OF APPROVAL**

2 **Captain's Landing Marina Project**
3 *Shoreline Substantial Development Permit*
4 *File No. PSJ000-17-004*

5 Based on the Record, and under authority of applicable county code provisions, the
6 Examiner imposes the following Conditions of Approval on the above-referenced permit.

7 A. The Project shall be developed in a manner and design substantially in the form as the
8 Captain's Landing Marina replacement and maintenance project Drawings, prepared by Waterfront
9 Construction Inc., dated 12/6/16, (sheets 1 – 10), and the Septic Tank Drawings, prepared by Astech
10 Professionals Inc., dated 13 Oct. 2016 and included in the record as part of *Exhibit No. 4*.

11 B. The applicant shall obtain any associated permit, license, or approval required by any state,
12 federal, or other regulatory body with jurisdiction over aspects of the project; any conditions of
13 regulatory agency permits, licenses, approvals or leases (including but not limited to any Aquatics
14 Land Lease with DNR) shall be considered conditions of approval for this project.

15 C. The applicant shall comply with all professional report conclusions and recommendations
16 submitted in connection with this Shoreline Permit and associated approvals issued by the San Juan
17 County for this project, as approved, referenced, relied-upon, and/or modified by the County.

18 D. The applicant shall implement and comply with all of the mitigation measures listed in the
19 MDNS issued for the project, which are restated below and incorporated herein as Conditions of
20 Approval for this Shoreline Permit:

- 21 1. The project shall reduce overwater coverage on a level generally reflected in the Project
22 Drawings, included as part of Ex. 4, by approximately 165 sq.ft., which can be achieved
23 through reductions in total size of the existing pier, westerly float, or other overwater
24 facilities, all subject to final review and approval by County building officials;
- 25 2. Twenty creosote treated piles shall be removed and replaced with sixteen steel piles;
- 26 3. The proposed pier, ramp, and floats shall be fully grated and designed to allow 60% direct
and ambient light to reach the substrate;
4. The existing unsealed Styrofoam Floatation shall be replaced with sealed tub floatation;
5. The existing facilities shall be replaced in their existing configuration;
6. Non-pollution generating construction materials shall be used;

25 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND
26 DECISION – APPROVING SHORELINE
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FOR SAN JUAN COUNTY

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- 1 7. A vibratory hammer and cushion block shall be used to reduce underwater noise during pile
2 driving;
- 3 8. Pile driving shall only occur between two hours after sunrise and two hours before sunset;
- 4 9. The construction barge shall not be allowed to ground;
- 5 10. The contractor shall implement and comply with the Best Management Practices identified
6 in Exhibit 7;
- 7 11. The Marine Mammal Monitoring Plan in Exhibit 6 shall be implemented and strictly
8 observed, particularly during the marine-construction process;
- 9 12. All floats shall include stops to keep the bottom off the tidelands at low tide;
- 10 13. Dock lighting shall meet the requirements of SJCC 18.60.170;
- 11 14. All construction materials shall be removed from the work site and natural material shall be
12 returned to their original position at the end of construction;
- 13 15. Common saltwater technical provisions (WAC 220-110-270) shall be strictly adhered to;
- 14 16. The project shall comply with all applicable provisions of the Unified Development Code,
15 Title 18 San Juan County Code; and
- 16 17. The project shall obtain all other required state and federal permits and shall comply with
17 those permits.

18 E. Failure to Comply with These Conditions of Approval Shall Be Grounds for Rescission of
19 the Shoreline Permit. As provided in SJCC 18.80.110(N), captioned “Rescission of Shoreline
20 Permits,” any shoreline permit may be rescinded by the hearing examiner pursuant to RCW
21 90.58.140(8), upon the finding that the permittee has failed to comply with the terms and conditions
22 thereof. In addition, if the permittee is denied any other permit or authorization required by a state
23 or federal agency with jurisdiction over aspects of the Project, the underlying shoreline permit may
24 be rescinded.

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Effective Date, Appeals, 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/or SJCC 18.80.110.

Decisions of the Hearing Examiner are final and not subject to administrative appeal to the San Juan County Council, unless the County council has adopted, by ordinance, written procedures for the discretionary review of such decisions. See Section 4.50 of the San Juan County Home Rule Charter and 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 any 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 confer with advisors of their choosing, possibly including a private attorney.

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

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