

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS, AND DECISION

Applicant(s):	Laura and James Donald c/o Jen-Jay Inc. (Agent) PO Box 278 Deer Harbor, WA 98243	S.J.C. DEPARTMENT OF SEP 08 2017 COMMUNITY DEVELOPMENT
File No.:	PSJREV-15-0002 PSJVAR-17-0001	
Request:	Shoreline Substantial Development Permit and Shoreline Variance	
Parcel No:	272922992	
Location:	922 Lovers Cove Road, Orcas Island	
Summary of Proposal:	Application for revision to approved shoreline substantial development permit and shoreline variance to allow reconfiguration of an existing dock	
Shoreline Designation:	Conservancy	
Public Hearing:	August 23, 2017	
Applicable Policies and Regulations	WAC 173-27-100 SJCC 18.35.025 SJCC 18.50.190 SJCC 18.80.100	Revisions to Permits Critical Areas – Applicability Boating Facilities Shoreline permit and exemption procedures
Decision:	Approved subject to conditions	

4. 2016 aerial photo of the site
5. Photos of the existing dock, (five photos, three pages)
6. Variance Project Narrative, with dock drawings, 18 pages
7. Variance criteria narrative in an email from Beth Tate, Jen-Jay, Inc., dated April 18, 2017
8. Preliminary Eelgrass Macro Algae Habitat Survey, dated September 21, 2015
9. Amended Eelgrass Macro Algae Habitat Survey, dated October 28, 2015
10. Resolution 98-1996, approving the existing 1995 shoreline permit (95SJ033), for Terry
11. Joint Aquatic Resources Permit Application, dated September 18, 2015
12. Marine mammal monitoring plan, Jen-Jay, Inc., September 2015
13. Department of Natural Resources determination of no aquatic land lease required, dated October 5, 2015
14. US Army Corps of Engineers Letter of Permission, issued December 16, 2015
15. Notice of application and notice of hearing, with mailing list and photo of posted notice (11 pages)

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 Applicants requested revision of approved shoreline substantial development permit 95SJ033 and shoreline variance approval to authorize the reconfiguration of an existing dock at 922 Lovers Cove Road, Orcas Island. The upland portion of the subject property is developed with two residential dwellings, a detached garage, a pool, and accessory structures. *Exhibits A, 2, 6, 7, and 11.*
2. The existing dock was approved September 17, 1996 under permit 95SJ033. *Exhibit 10.* The 1996 approval authorized construction of a six- by 86-foot pier, a four- by 40-foot ramp, an eight- by 40-foot float, and eight- by eight-foot landing, for a total area of 1,060 feet. However, the dock was built with two small bumpouts on the seaward end of the pier, which resulted in its being 28 square feet larger than authorized by the permit (1,088 square feet). *Exhibits A and 6.* The Applicants purchased the property and the dock after its construction and have been part time residents there for 12 years. *Exhibits A and 11; Jim Donald Testimony.*
3. The upland portions of the subject property, which abuts President Channel, have a Comprehensive Plan Land Use Map designation of Forest Resource. Shorelands within 200 feet of the ordinary high water mark (OHWM) on-site are regulated pursuant to the Washington State Shoreline Management Act as implemented through the San Juan

County shoreline master program (SMP). The SMP designates the subject property's shorelands as Conservancy shoreline environment. *Exhibits A and 2.*

4. The existing dock was designed without consideration for the prevailing winds and currents (as detailed below), which can be extreme at the project location, and is in imminent need of repair. The Applicants desire to reconfigure the facility to be more suitable for its location. They submitted an application for exemption from shoreline permitting to re-configure the dock. Department of Community Development Staff determined that the proposed changes do not qualify for an shoreline exemption and instead are subject to the shoreline permit revision criteria established at San Juan County Code (SJCC) 18.80.110.M, which mirror the state shoreline regulations. The Applicants subsequently submitted the instant application (PSJREV-15-0002) to revise approved shoreline permit 95SJ033 on September 22, 2015. The revision application was determined to be complete on November 16, 2015 and was advertised for hearing. *Exhibits A and 11.*
5. However, Staff later realized that both the approved and the proposed dock area and length exceed the single-user dock dimensions allowed under the current shoreline regulations, which restrict single-user docks to a maximum of 700 square feet in area and 115 feet in length from the OHWM. *SJCC 18.50.190.G.2.* Adopted in 1998, these regulations rendered the existing dock legally non-conforming as to length and area. *Exhibit A; Lee McEnery Testimony.*
6. The proposed dock would extend 21 feet farther from the OHWM, increasing the nonconformity as to length inconsistent with the Shoreline Master Program. Staff informed the Applicants of several options on how to proceed: submit a variance request; delay the project to see how the future shoreline regulations address dock size; obtain a second user to increase the size allowed; revise the proposal not to increase the nonconformity; or withdraw the application. In March 2017, the Applicants elected to apply for a shoreline variance to allow the dock length to be extended. The permits were consolidated and set to be heard on June 15, 2017; however, the Applicants discovered a date conflict and the matter was re-advertised for August 23, 2017. *Exhibits A, 6, 7, and 15; Lee McEnery Testimony.*
7. In the existing condition, the float to which boats are moored is perpendicular to the shoreline in a "T" configuration. In this area, wind and wave action push towards the shore. In the past, there have been incidences of damage to boats from being pushed up onto and against the float. In order to minimize these incidences, the dock has been fitted with "stiff arms" to hold boats off the float. These structures occupy nearly the entire shoreward side of the float, restricting mooring to the seaward side. The stiff arm anchors are oil-filled galvanized pipes bolted to two- by four- by two-foot concrete blocks set into the intertidal zone. The galvanized pipes have been difficult to maintain and are rusting badly; parts must frequently be replaced. They are difficult to operate during seasonal removal and replacement of the float. When the float is out of the water for the season, the stiff arms and the associated steel cross cables rest on the substrate

beneath the dock, where they have significantly altered the habitat. The concrete blocks and the cross cables have collected significant aquatic vegetation, causing shading. The corrosion of the oil-filled pipes leads to the concern that they will rupture and contaminate the marine environment. *Exhibits 6 and 7; see specifically Exhibit 6, "Existing Elevation View" and Exhibit 5, Photos; Chris Betcher Testimony.*

8. The proposed revision would reorient the float at the end of the pier to be perpendicular to shore, allowing moored vessels to face into oncoming weather, a much safer position for vessels and for people during embarkation/disembarkation. The pier and ramp would remain unchanged, while the overall length of the dock from the shore would increase by 21 feet, to 136 feet in length. The revision would reduce the total surface area approved in 1995 from 1,060 square feet to 1,024 square feet (36 square feet), a reduction in actual area of 64 square feet (from the bumpouts). Proposed work includes: removal of the eight- by eight-foot ramp landing; reorienting the eight- by 40-foot float that is now perpendicular to the dock and replacing it with a grated float in line with the pier and ramp; removal of the standoff arms and their concrete footings; placing two piles at the ramp base; and stabilizing float with cables/embedded anchors. With the reoriented float, the overall dock length from the OHWM would be 136 feet. The single-use status of the dock would remain unchanged. *Exhibits A, 6, 7, and 11; see specifically Exhibit 6, "Proposed Plan" view.*
9. According to the assessment of the Applicants' consultant, who has maintained the existing dock for a period of approximately 20 years, the proposed revision would benefit both boating use of the structure and the nearshore marine environment. Reorientation would make both sides of the float accessible for moorage and would eliminate the current moorage abeam to prevailing weather, reducing hazards. Removal and safe upland disposal of the stiff arm structures would prevent the possibility of rupture and spillage into the Sound. Further, it would allow the restoration of the marine habitat beneath the dock. Extending the length of the facility 21 feet would allow boats to moor in deeper water, keeping prop wash away from shallower waters. Reducing the overwater coverage by 64 square feet and adding grated decking to the float would improve light penetration into the water column. In addition, removal of the corroding stiff arm structures and associated concrete blocks, which are visible at low tide, would improve the facility aesthetically and make it more consistent with existing docks in the vicinity. *Exhibits 6 and 7; Chris Betcher Testimony; Jim Donald Testimony.*
10. In attempting to comply with current standards, the Applicants considered both converting the facility to a joint use dock and reducing the length of the reoriented float such that the dock remains only 115 feet from the OHWM. Neighboring properties already have private docks. The existing pier rests on piles over very shallow rocks, and the ramp extends over additional rocks that are visible at low tide. Because of these rocks, it is not possible to shorten the pier or ramp to arrive at compliance with the 115-foot length standard. Reducing the length of the float to a 115-foot dock length would result in a 19-foot float too, which would be too short to moor the Applicants' current boat (36 feet). It is generally recommended that 40 feet of dock be provided for 36-foot

boats. Removing the existing dock and replacing it with a fully compliant structure in another location was determined to have greater environmental impacts than revising the existing structure. The "do nothing" option is not a viable long term solution both because it significantly reduces the usefulness of the facility and also increases the chances for rupture and oil spillage. In the assessment of the Applicants' consultant, the proposed revision is the simplest, most environmentally sensitive way to retain the use of the existing, permitted recreational dock. *Exhibits 6 and 7; Chris Betcher Testimony; Jim Donald Testimony.*

11. The Applicants submitted a habitat assessment and subsequent amendment addressing impacts of the proposed revised shoreline permit on the Conservancy shoreline environment. The habitat assessments indicate that there is Laminaria, a sea kelp, under the existing dock; no bull kelp was found in the vicinity. The habitat assessments concluded that the proposed revision would reduce shade effects to the Laminaria habitat as a result of the grated surface on the new float and the removal of artificial surfaces populated by aquatic vegetation. Noting that construction would be performed during appropriate work windows and that a marine mammal monitoring plan would be implemented, the assessments concluded that the proposed revision would reduce the impacts of the existing dock facility and would result in no net loss of shoreline ecological functions. *Exhibits 8, 9, and 12; Chris Betcher Testimony.*
12. Washington State Department of Natural Resources issued a letter indicating that the revised dock would not require an aquatic lands lease from the state agency. The permission contained restrictions and conditions as to the uses and nature of the revised dock. *Exhibit 13.* The US Army Corps of Engineers also issued a letter of permission subject to that agency's general conditions. *Exhibit 14.* The Applicant would be required to obtain and abide by conditions of a Hydraulic Project Approval from the Washington Department of Fish and Wildlife, which conditions include approved work windows for avoiding impacts to endangered species among other items. *Chris Betcher Testimony; Jennie Rose Testimony.*
13. Notice of application and of the public hearing date was published and mailed to surrounding property owners on May 3, 2017. On-site posting occurred on May 2, 2017. *Exhibits 1 and 15.*
14. There was no public comment on the application. *Exhibit A; Lee McEnergy Testimony.*
15. Upon review of the complete application and testimony at hearing, Staff determined that with the recommended conditions the proposal can comply with all applicable criteria in the Unified Development Code, the Comprehensive Plan, and the Shoreline Master Program. Staff recommended approval. *Lee McEnergy Testimony; Exhibit A.*

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CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for revisions to shoreline substantial development permits and applications for shoreline variances 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

Shoreline Permit Revision

Pursuant to SJCC 18.80.110.M, when an applicant seeks to revise a shoreline permit, an application in a form prescribed by the administrator together with detailed plans and text describing the proposed changes shall be filed with the administrator. Following receipt of this information, the administrator shall schedule a public hearing on the request.

1. The administrator shall ensure that notice of the hearing is published in a newspaper of general circulation within the County prior to the hearing. The administrator shall submit to the hearing examiner all of the written documents referred to above. At the beginning of the hearing, the recommendation of the administrator shall be read into the record.
2. If the hearing examiner determines that the proposed changes are within the scope and intent of the original permit, as defined by WAC 173-27-100(2), the revision shall be granted.
3. If the hearing examiner determines that the proposed changes are not within the scope and intent of the original permit, then the applicant must apply for a new shoreline permit.
4. Any permit revision approved by the hearing examiner shall become effective immediately. Within eight days of the hearing examiner's action, the approved revision shall be submitted to the Washington Department of Ecology. In addition, the administrator shall submit a copy of the examiner's decision to all parties of record to the original permit action.

Shoreline Variance

Pursuant to SJCC 18.80.110.I.3, variances from the provisions of the Shoreline Master Program may be granted when the applicant has proved that the following criteria have been met:

3. Criteria for Approval of Shoreline Variances. Variances from the provisions of the Shoreline Master Program may be granted when the applicant has proved that the following criteria have been met:
 - a. Variances for development that will be located landward of the ordinary high water mark (OHWM)...: ...
 - ii. That the hardship described in this section is specifically related to the property and is the result of unique conditions such as irregular lot shape, size, or natural features, and the application of the Shoreline Master Program, and not, for example, from deed restrictions or the applicant's own actions;

- iii. That the design of the project is compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment;
 - iv. That the requested variance does not constitute a grant of special privilege not enjoyed by the other properties in the area, and is the minimum necessary to afford relief; and
 - v. That the public interest will suffer no substantial detrimental effect.
- ...
- b. Variances for development that will be located either waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030(2)(b), or within wetlands as designated under Chapter 173-22 WAC, may be authorized provided the applicant can demonstrate all of the following:
 - i. Strict application of the bulk, dimensional, or performance standards set forth in the master program precludes a reasonable use of the property not otherwise prohibited by the master program;
 - ii. Proposal is consistent with the criteria established under subsection (I)(3)(a)(ii) through (v) of this section; and
 - iii. Public rights of navigation and use of the shorelines will not be adversely affected.
 - c. In the granting of shoreline variances, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

Applicable Provisions of the San Juan County Shoreline Master Program

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.

...

G. Regulations – Residential Docks.

1. New Shoreline Subdivisions. ... N/A
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.

Additional Applicable Regulations

WAC 173-27-100 Revisions to permits.

A permit revision is required whenever the applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the master program and/or the policies and provisions of chapter 90.58 RCW. Changes which are not substantive in effect do not require approval of a revision. When an applicant seeks to revise a permit, local government shall request from the applicant detailed plans and text describing the proposed changes.

1. If local government determines that the proposed changes are within the scope and intent of the original permit, and are consistent with the applicable master program and the act, local government may approve a revision.
2. “Within the scope and intent of the original permit” means all of the following:

- a. No additional over water construction is involved except that pier, dock, or float construction may be increased by five hundred square feet or ten percent from the provisions of the original permit, whichever is less;
 - b. Ground area coverage and height may be increased a maximum of ten percent from the provisions of the original permit;
 - c. The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under a variance granted as the original permit or a part thereof;
 - d. Additional or revised landscaping is consistent with any conditions attached to the original permit and with the applicable master program;
 - e. The use authorized pursuant to the original permit is not changed; and
 - f. No adverse environmental impact will be caused by the project revision.
3. Revisions to permits may be authorized after original permit authorization has expired under RCW 90.58.143. The purpose of such revisions shall be limited to authorization of changes which are consistent with this section and which would not require a permit for the development or change proposed under the terms of Chapter 90.58 RCW, this regulation and the local master program. If the proposed change constitutes substantial development then a new permit is required. Provided, this subsection shall not be used to extend the time requirements or to authorize substantial development beyond the time limits of the original permit.

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. ...

Conclusions Based on Findings

1. *Shoreline Substantial Development Permit Revision:* The proposed revision of the approved and built shoreline substantial development is within the scope and intent of the original permit as defined by WAC 173-27-100(2). The proposal decreases rather than increase the overwater area of the existing dock by 64 square feet. There would be no increase in ground area coverage or height. The requested increase in nonconformity as to dock length is addressed by the associated shoreline variance

permit, addressed below; approval of the revised shoreline substantial development permit shall be conditioned upon final approval of the shoreline variance. No landscaping is proposed or required. The approved use - a single-user recreational dock - is not altered. The record contains credible evidence that the proposal, as conditioned, would result in no net loss of shoreline ecological function; on the contrary, it would both provide improved conditions over those presently existing and prevent the potential contamination of marine waters by failure of the existing stiff arm structures. As proposed, the revision would be designed to make superior use of the natural site configuration of the existing facility and would be consistent with the general regulations in revising an existing facility, which is preferred over construction of new docks and piers. Conditions of approval would be sufficient to ensure compliance with applicable Shoreline Master Program general design and construction standards for boating facilities. *Findings 2, 3, 4, 6, 7, 8, and 11.*

2. *Shoreline Variance:* Strict application of the single-user dock length standards would preclude reasonable use of the existing permitted dock. The existing float is unsafe both for boating and for the marine environment. Unfortunately designed and built without consideration for prevailing winds and currents, it is hazardous and only marginally useable as is, and poses a contamination threat in the event of structural failure. Revision of the design is required to achieve the intent of the original permit. The "hardship" generating the need for variance includes several factors of the natural and built environments, all of which are outside of the Applicants' control. The Applicants bought the property with the dock in its current configuration/location and with the stiff arm structures in place. The weather and currents affecting the existing dock are a primary factor in the need for variance. Additionally, the dock was built over rocks that underlie both the existing pier and ramp (which are in good working order and would be retained as is). The rocks prevent shortening either pier or ramp to achieve compliance with the dock length standard. To shorten the float to comply with the dock length standard would be to render it useable only for very small watercraft. There are no provisions in the boating facilities section of the Shoreline Master Program that suggest any interest on the part of the County in limiting the size of recreational watercraft enjoyed by dock owners to only small craft. The revised dock length, while 21 feet longer than the standard, would render the facility more compatible with other permitted uses in the area aesthetically and environmentally, as well as in terms of safe use and function. Credible evidence supports the conclusion that the revised facility would result in no net loss of shoreline ecological function. On the contrary, habitat under the facility would be improved over the existing condition and the potential contamination resulting from failure of the existing stiff arm structures would be avoided. The record contains no evidence of detriment to adjacent property owners, who were notified of the proposal and declined the opportunity to comment. The single-user dock was legally permitted and enjoys legal nonconforming status as to area. Given the factors above, approval would not be special privilege. Approval of the proposed reconfigured dock is the minimum necessary to allow reasonable use of the approved facility. There is no evidence of detrimental effect to the public or to navigation, given the closeness to shore. Should

there ever be future similar requests, the cumulative impacts of decreasing dock area, improving habitat below existing docks, and increasing the safe function of docks would not be adverse. *Findings 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15.*

DECISION

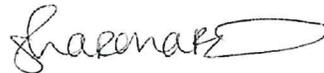
Based on the preceding findings and conclusions, the requested revision of approved shoreline substantial development permit 95SJ033 and shoreline variance approval to authorize the reconfiguration of an existing dock at 922 Lovers Cove Road, Orcas Island are **APPROVED** subject to the following conditions:

1. These permits allow the reconfiguration of a dock located on tax parcel 272922002 at 922 Lovers Cove Road, Orcas Island consistent with the attached approved site plans (Appendix 1, Plan View, page 10 of Exhibit 6). Approval of the requested shoreline substantial development permit revision is expressly conditioned upon final approval of the associated shoreline variance.
2. Boats moored at the dock shall not be used for commercial overnight accommodations.
3. Use of the dock for regular float plane access and moorage shall not be allowed.
4. Pilings must be structurally sound prior to placement in the water.
5. Chemically treated piles, floats, or other structural members in direct contact with the water shall comply with state and federal regulations.
6. Pilings employed in piers or any other structure shall have a minimum vertical clearance of one foot above extreme high water.
7. All floats shall include stops to keep the bottom off tidelands.
8. The proposal shall maximize light penetration with deck grating and float orientation.
9. Best management practices shall be implemented to prevent erosion and sediments from entering the marine waters.
10. Equipment used for installation of the proposal shall be maintained to be leak-free while on the site.
11. During dock construction, equipment engines shall not be idled unnecessarily.
12. 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.

13. Construction shall comply with the Marine Mammal Monitoring Plan, pages 4 and 5 of Exhibit 12.
14. Construction shall comply with all applicable state, federal, and San Juan County codes, including but not limited to SJCC 18.50.190.D, general design and construction standards for boating facilities.
15. When plastics or other non-biodegradable materials are used in a float, pier or dock construction, full containment features are required.
16. Overhead wiring and plumbing are prohibited. Other structures on piers, ramps and floats shall be limited to three feet in height.
17. Dock lighting, if any, shall be designed to shine downward, be low wattage, and shall not exceed a height of three feet above the dock surface.
18. 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.
19. All debris entering the water or shoreline area shall be removed immediately and disposed of in a legal manner.
20. The floats shall be secured with anchored cables.
21. 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.
22. Immediately after construction is completed, the owner shall request that Community Development perform an inspection. The request shall cite the permit number PSJREV 15-0002.
23. Failure to comply with any terms or conditions of this permit may result in its revocation.

Decided September 7, 2017.

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.