

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS, AND DECISION**

Applicants:	William Hoglund on behalf of KPK Shangri-La Holdings LLC P.O. Box 1914 Wilson, WY 83014	
	Joan Haslett P.O. Box 67 Orcas, WA 98280	S.J.C. DEPARTMENT OF
Agent(s):	Jeff Otis 393 Bobbyann Road Eastsound, WA 98245	NOV 08 2017 COMMUNITY DEVELOPMENT
File No.:	PSJ000-17-0008	
Request:	Shoreline Substantial Development Permit	
Parcel Nos.:	261614002 (KPK) and 261614001 (Haslett)	
Location:	7236 Orcas Road, Orcas Island	
Summary of Proposal:	Proposed jointuse dock	
Land Use Designation:	Shoreline: Rural Farm Forest Upland: Ag Resource 10	
Public Hearing:	September 27, 2017	
Applicable Policies and Regulations:	SJCC18.35.110-140 Fish and wildlife habitat conservation areas SJCC18.50.190 Shoreline master program - boating facilities SJCC18.80.020 Application requirements SJCC18.80.030 Public notice of applications and comment SJCC18.80.050 SEPA implementation rules SJCC18.80.110 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 )  
 )  
**KPK Shangri-La Holdings LLC** )  
**and Joan and Wayne Haslett** )  
 )  
for approval of a shoreline substantial )  
development permit to construct a joint )  
use dock at 7236 Orcas Road, Orcas Island )

NO. PSJ000-17-0008

S.J.C. DEPARTMENT OF

NOV 08 2017

COMMUNITY DEVELOPMENT

**SUMMARY OF DECISION**

The request for a shoreline substantial development permit to construct a joint use dock serving two residential parcels located at 7236 and 7162 Orcas Road, Orcas Island is **APPROVED** subject to conditions.

**SUMMARY OF RECORD**

**Request:**

KPK Shangri-La Holdings LLC (also referred to as KPK) and Joan and Wayne Haslett (Applicants) requested a shoreline substantial development permit (SSDP) to authorize construction of a joint use dock serving two residential parcels at 7236 and 7162 Orcas Road, Orcas Island.

**Hearing Date:**

The San Juan County Hearing Examiner held an open record public hearing on the request on September 27, 2017. At the conclusion of the hearing, the Applicants agreed to extend the decision issuance date by five business days.

**Testimony:**

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

Lee McEnery, San Juan County Department of Community Development  
Jeff Otis, Applicant Representative  
William Hogle, KPK Shangri-La Holdings LLC, Applicant  
Wally Gudgeon, Applicant witness  
Kyle Loring, Friends of the San Juans

**Exhibits:**

The following exhibits were admitted in the record:

1. Department of Community Development Staff Report

2. Application cover sheet
3. Summary of Proposal (15 pages), dated June 12, 2017
4. Haslett letter
5. Comprehensive Plan map
6. Oblique aerial photo
7. Dock drawings (8 pages), dated February 23, 2017
8. SEPA Mitigated Determination of Non-Significance (MDNS), dated June 28, 2017
9. SEPA checklist (16 pages)
10. Eelgrass Macro Algae Habitat Survey (3 pages), dated September 29, 2016
11. Haslett/Hoglund joint use dock construction project Critical Areas Report and Marine Mammal Monitoring Plan (55 pages)
12. Draft Joint Use Agreement (9 pages)
13. Inquiries to neighbors with docks (3 pages)
14. Inquiries to marinas (6 pages)
15. Email clarifying inquiries to marinas, dated July 14, 2017
16. UW Friday Harbor Labs comment letter, dated July 7, 2017
17. Legal ad information (5 pages)
18. Comment letter from Friends of the San Juans, dated August 18, 2017
19. Planning Staff response to Friends of the San Juan comments, dated September 20, 2017
20. Applicant response to Friends of the San Juan comments, dated September 26, 2017
21. Photos (four) of the existing boat ramp and upland area, taken by Mr. Hoglund
22. Dive survey identifying locations of kelp (*Laminaria*) prepared by Jen-Jay Inc.

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. William Hoglund, on behalf of KPK Shangri-La Holdings LLC, and Joan and Wayne Haslett (Applicants) requested a shoreline substantial development permit (SSDP) to authorize construction of a joint use dock serving two contiguous residential shoreline parcels. The dock is proposed to be constructed on tax parcel number 261614002 located at 7236 Orcas Road (KPK), Orcas Island. The second parcel to share the joint use dock would be tax parcel number 261614001, addressed as 7162 Orcas Road (Haslett), Orcas Island. *Exhibits 1, 2, 3, 4, 5, and 6.*

2. The 28.3-acre subject KPK property and the adjacent parcel owned by Joan and Wayne Haslett lie on the eastern shoreline of West Sound. The upland areas of both parcels are zoned Ag Resource 10, which requires a minimum lot size of ten acres. Together, the two tax parcels total greater than 59 acres in area and have 1,533 lineal feet of shoreline, which is designated Rural Farm Forest by the San Juan County Shoreline Master Program. The parcels are each developed with single-family residences situated near the common property boundary. The shoreline along the KPK parcel contains an old, derelict concrete boat ramp and two mooring buoys, and the Haslett property has one existing buoy. *Exhibits 1, 3, 6, and 21; Jeff Otis Testimony.*
3. The shoreline along the project site consists of a gravel/cobble beach leading to solid rock at the water's edge. The bank varies from slightly sloping near the boat ramp to approximately six feet high along various portions of the two tax parcels' shorelines. *Exhibits 6 and 9.*
4. Surrounding parcels are predominantly closer to the 10 acre minimum lot size. Adjacent to the south of the KPK parcel there is a dock (Jannard dock), and adjacent to the north of the Haslett parcel is another (Exton dock). *Exhibits 5, 6, and 7.*
5. The San Juan County shoreline regulations establish maximum dimensions for joint use docks (including the pier, ramp, and float) serving two single-family residences as allowing up to 1,400 square feet in total area, and total length (including the pier, ramp, and float) of up to 200 feet seaward of the OHWM. *San Juan County Code (SJCC) 18.50.190.G.2.*
6. The Applicants propose to build a five- by 90-foot pier (450 square feet) with six 10-inch piles; a four-foot, nine-inch by 48-foot long ramp (228 square feet); and an eight- by 40-foot grated float (320 square feet) with two 10-inch guide piles and two anchors. Total overwater coverage would be 1,005.5 square feet (actually, 956 square feet less the ramp overlap area of 42 square feet), and the complete facility would extend approximately 170 feet from the OHWM. The pier would end at approximately the extreme low tide contour, or the -4 foot contour. Proposed materials include a combination of aluminum, steel, and wood; no chemically treated piles or other structural members would directly contact the water. All decking would be fully grated for increased light penetration. The float would be supported by 14 fully enclosed foam-filled float tubs, resulting in 61% open area (grated surface). Float stops are not proposed because three feet of water is expected to remain between the bottoms of the float tubs and the substrate at extreme low tide of -4 MLLW. The float is secured on the landward end with pilings and on the seaward end with anchors. The maximum height of the piles would be approximately 20 feet above MLLW. The base of the ramp would be located two feet above the extreme high tide (11 feet), and the pilings supporting the float would stand up approximately five feet above extreme high tide. No structures are proposed on the dock. *Exhibits 1, 2, 3, 7, 9, and 11.*

7. A small amount of upland shrubbery and grass may be removed for construction of the pier; no trees would be removed. The existing abandoned boat ramp on the KPK shoreline is proposed to be removed, which would be done by a land-based track hoe fitted with a jackhammer. Debris from this demolition would be loaded into a truck and hauled off-site for disposal at an approved facility. A small amount of appropriately sized (and sourced) gravel would be placed on the beach in the footprint of the removed boat ramp in order to restore the area to a more natural, pre-ramp construction condition. Two existing mooring buoys anchored by concrete blocks would also be removed from the KPK shoreline. A warning marker pole would be drilled into a large, shallow rock just south of the proposed dock. The existing mooring buoy along the Haslett shoreline would be retained. All construction would be completed in conformance with Army Corps of Engineers approved in-water work windows. No landscaping is proposed because vegetation removal is minimal at the head of the pier and the property is forested. *Exhibits 1, 2, 3, 7, 9, and 11.*
8. The proposal calls for a joint use dock that is sized and intended to be used by the residents in the two existing homes on the subject parcels. The application materials included a draft joint use dock agreement that would run with the land, provide for physical access to the dock from both lots, and preclude any other boating facility along the combined 1,533 feet of shoreline. However, noting that the zoning would allow subdivision of the two tax parcels into up to five lots, and that three additional residences could be developed on the two subject tax parcels, the Applicants propose to bind any such future created lots so that the entire 59 acres is served by the dock proposed in the instant application. The joint use dock agreement submitted addresses maintenance and operations. *Exhibits 3 and 12.*
9. Watercraft currently owned by the Applicants include: an 18-foot power boat, kept at the Haslett buoy during boating season and stored on a trailer at the Haslett parcel off-season, and a 33-foot power boat owned by the Hoglunds, currently moored in Seattle off-season. No floatplane use is proposed. *Exhibits 1, 3, and 20.*
10. The application narrative states that a 40-foot float is the minimum necessary to ensure moorage for the Applicants' two existing boats and guests, and that a 48-foot ramp is necessary to provide safe access to the float in low tides. *Exhibits 3 and 7.*
11. The Applicants indicated that the reason for the proposal is to safely be able to access and use their boats from their shoreline properties. The existing boat ramp cannot be expanded into a useable means of access by boat due to its condition. The existing mooring buoys, or a new mooring float, would not provide adequate boating access because of increased boat use at West Sound Marina and nearby private docks and anchorages resulting in wakes making access by dinghy dangerous and unfeasible for the last several years. Also, the rocky nature of the shoreline makes buoys inaccessible at low tides. *Exhibits 3, 4, and 20; William Hoglund Testimony.* The difficulty caused by increased boating traffic was corroborated by testimony from a long-time island resident and local realtor, who stated that West Sound used to be more of a sleepy village but is

no longer. The realtor personally has a dock and three mooring buoys, but about 10 years ago it became too dangerous to use the buoys due to the increased boat traffic. *Wally Gudgell Testimony.*

12. Given their current two boats and the potential for three additional lots in the event of future subdivision, the Applicants inquired of neighboring and nearby dock owners regarding the possibility of acquiring moorage for five boats on an existing dock in the area. The Applicants' agent inquired with the owners of the two adjacent docks (Exton and Jannard) and a third dock owned by Bob and Maria Nutt, whose dock is south of Jannard's, each of whom indicated they were not interested in participating with the Applicants in joint use of their existing docks. *Exhibits 1 and 13.*

13. The Applicants' agent also investigated the availability of commercial moorage. In a written communication to Brandt's Landing, Deer Harbor Marina, West Sound Marina, Cayou Quay Marina, Bayhead Marina, and Rosario Resort seeking moorage primarily during boating season for the Applicants' current 18-foot and 33-foot powerboats and also 20- to 35-foot power or sail boats associated with future potential lots. This request was sent together with requests for two other dock project applicants who were seeking moorage for three additional powerboats and one float plane. The marinas responded as follows:

- Brandt's Landing – completely full with 50 people on waitlist
- Deer Harbor Marina – full on year round moorage, though this changes from time to time
- West Sound Marina – can generally fit a small boat in the summer, but they need to get on the waitlist in early spring
- Cayou Quay – full this year, and there has been an upward trend towards being completely full during boating season during the last three years; boats do come and go, and a space opens occasionally; and generally there is not much availability at any marina on the island during the boating season for any variety of boat size
- Bayhead Marina – full
- Rosario – no year round moorage

The Applicant agent explained that he combined all three dock application project commercial moorage requests into a single communication to each marina because it's difficult to get marinas to respond, and in his opinion they were more likely to respond to a single request, and because the combined request more clearly communicates overall moorage demand. *Exhibits 3, 14, 15, and 20; Jeff Otis Testimony.*

14. The marine waters adjacent to the shorelines of all San Juan islands are regulated as fish and wildlife habitat conservation areas (FWHCA) through the County's critical areas

ordinance (CAO). *SJCC 18.35.110-.140*. The County database indicates that regulated habitat for Chinook salmon, Dungeness crab, and laminaria exist in the vicinity of the subject shoreline. *Exhibits 1 and 3*. The Applicants commissioned a professionally prepared eelgrass and macroalgae study, which was conducted on September 29, 2016 by a qualified diver. The diver reviewed the marine floor at 20-foot intervals along 150 feet of shoreline on the KPK parcel, near the existing trail from the Hasletts property, to approximately -30 MLLW. The survey found no eelgrass in the project area. Approximately two-thirds of the individual test sites contained no macroalgae, including the three test sites seaward of the ramp and pier, where the float is proposed. The majority of the test sites nearest to the shore showed marine vegetation dominated by fucus and ulva. At approximately 13 of the test sites, laminaria was observed in concentrations of five- to 60% of vegetation observed. The seaward end of the pier/landward end of the ramp would be located over laminaria. This placement would avoid two test sites with laminaria to the north and nine sites with laminaria to the south. The float would not be located over macroalgae or eelgrass. Shading and reduction of lighting to the substrate from the ramp and pier are expected to be minimal due to the proposed fully grated surfacing and the proposed elevation of the structure above the water. Light would be able to pass through the ramp and pier and under the structure throughout the course of the day. *Exhibits 9, 10, 11, and 22*.

15. The Applicants submitted an assessment of the regulated habitats, including FWHCAs, and protected species within 200 feet of the project site prepared by professional biologist Beth Tate of Jen-Jay, Inc. The submitted report assessed project impacts to Dungeness crab, Chinook salmon, Hood Canal Summer-run Chum salmon, Puget Sound Steelhead, Coastal-Puget Sound Bull trout, Georgia Basin Bocaccio Rockfish, Canary Rockfish, Yelloweye Rockfish, North American Green Sturgeon, Southern Resident Killer Whale, Humpback Whale, Gray Whale, Bald Eagle, Marbled Murrelet, Tufted Puffin, Common Loon, and Peregrine Falcon, all of which may be present within 200 feet of the project. The report also considered impacts to protected habitats including forage fish spawning and holding area, eelgrass and kelp bed habitat, shellfish areas, mudflats, intertidal areas with vascular plants, pocket beaches, and bluff-backed beaches including feeder bluffs. The habitat report noted the following measures would be implemented to avoid and minimize impacts on the aquatic environment during the construction and use of the dock:
  - Minimal vegetation removal;
  - Use of non-pollution generating construction materials;
  - Fully grated surfacing that would let 60% direct and ambient light to reach the water surface below the pier, ramp, and float;
  - Use of a vibratory hammer and cushion block to reduce underwater noise of piling installation;
  - Restricting pile driving to the period from two hours after sunrise to the two hours before sunset;

- Not allowing the construction barge to ground;
- Implementation of a spill protection plan during construction;
- Implementation of a marine mammal monitoring plan approved by the USACE during construction;
- Compliance with approved in-water work windows;
- Location of the float where it will not be over eelgrass or kelp; and
- Location of the float in waters deep enough (between -8 MLLW and -16 MLLW) to prevent effects of propeller scour during use of the facility.

The report concluded that, as proposed, impacts to protected species were either unlikely, or may occur, within 200 feet for the project, but that with the conservation measures there would be no net loss in shoreline ecological function for protected species. For protected habitats, through the combined effects of project location, design, and orientation together with the conservation measures and construction best management practices listed, the habitat assessment concluded that the project would result in no net loss of shoreline ecological function. In removing and repairing the shoreline in the location of the existing derelict boat ramp and two concrete block-anchored mooring buoys, the project may result in a net positive effect on shoreline ecological function. *Exhibits 11 and 22; Jeff Otis Testimony.*

16. Planning Staff accepted these consultant reports as adequately addressing the requirements for FWHCA assessment. Staff noted that in proposing a joint use dock that would effectively prevent two new individual docks along this shoreline, the project further minimizes impacts. Because no net loss of shoreline functions is expected, Staff noted that no compensation for impacts and no monitoring are required. *Exhibits 1, 10, and 11; Lee McEnery Testimony.*
17. The use of anchors at the seaward end of the float, and placement of the facility in an area with relatively low bank, would minimize the visual impacts to views of the shoreline from the water as well as views of the water from the upland. Also, the proposed construction in an area where docks already exist means the project would avoid construction in a pristine area. *Exhibit 3.*
18. According to the application narrative, in complying with SJCC 18.35.130.G.1.b and G.2.a regarding avoidance of impacts to the FWHCA through alternative alignments or locations, the Applicant considered the following factors in selecting the site for the proposed dock: presence and density of marine vegetation, water depth, bank height, habitat type and location, and the location of existing docks and waterfront development. During the macroalgae and eelgrass survey, no significant numbers of vertebrates or invertebrates were observed. No eelgrass was observed. The location of the proposed dock and the depth of the float were selected to minimize shading of the laminaria and the possibility of grounding by boats moored at the facility. The pier was placed in a

relatively flat area near the shared property line, in line with an existing trail from the Haslett parcel to the KPK parcel, in order to reduce the need for disturbance in the shoreline. *Exhibit 3; Jeff Otis Testimony.*

19. West Sound is the second largest embayment on Orcas island. The dock is proposed near the mouth of the bay where waters of West Sound mix with those of Harney Channel. The daily tidal exchange and wind effects result in tidal flushing. The report Current and Historical Geomorphic Mapping of San Juan County, prepared by Coastal Geological Services in 2010, does not indicate a drift cell, accretion zone, feeder bluff, or net shore drift in the project vicinity. Nothing in the record suggests impacts to littoral drift or water quality at the existing dock site. *Exhibits 1, 3, and 11.*
20. The facility is located on private property; approval would not impede and create public access to the shoreline. *Exhibits 1 and 3.*
21. Pursuant to the State Environmental Policy Act (SEPA), San Juan County assumed the role of lead agency for review of the proposal's probable, significant adverse environmental impacts. After review of the application materials, environmental checklist, and other materials on file with the County, the SEPA Responsible Official issued a mitigated determination of non-significance (MDNS) on June 28, 2017. No comments were received. The following mitigation measures were imposed by the MDNS:
  1. The proposal shall maximize light penetration 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. Comply with all recommendations in the Critical Area Assessment and Marine Mammal Monitoring Plan.
  6. Comply with all applicable state, federal and San Juan County codes.

*Exhibits 1 and 8.*
22. In addition to the conditions of the MDNS and the SSDP, if approved, the project would be required to obtain and abide by any conditions imposed by a Washington Department of Ecology Section 401 water quality certification, a Washington Department of Fish and Wildlife hydraulic project approval (HPA), a US Army Corps of Engineers Section 10 permit, and a Washington State Department of Natural Resources aquatic resource use authorization. *Exhibit 9.*

23. The SSDP application was submitted on June 14, 2017. *Exhibit 2*. Notice of the application was published on June 28, 2017. It was posted on-site, mailed to owners of property within 300 feet, and published. *Exhibits 1 and 17*.
24. The University of Washington Friday Harbor Labs submitted comments expressing a concern that the proposed dock is large and that the application materials lacked details as to the type of vessels to be docked. The Labs commented that marine habitats would be disturbed during construction, especially shading, but stated, "...it is the County's policy to allow such construction." They requested that the structure be scaled down in size or that the Applicants be required to justify its size. *Exhibit 16*.
25. Friends of the San Juans (Friends) submitted written comments and argument opposing approval during the public comment portion of the hearing. Friends argued that the application materials do not adequately demonstrate that the existing mooring buoys and boat ramp are inadequate, that nearby marinas and existing docks don't have capacity to provide moorage for the Applicants' existing boats, and that there are not less ecologically sensitive areas along the shoreline for construction of a dock. Friends challenged the nature of the inquiries sent to neighboring private dock owners and area marinas seeking capacity for moorage because the Applicants' agent included more boats than the Applicant's two existing boats. Friends contended that the dive survey did not review the entire shoreline in front of the subject parcels, and that there is thus no evidence that there is not a less sensitive placement possible. Friends also argued that any reliance by the County on Applicants' offering to bind potential future created lots to the instant dock agreement is speculative at best, and that there is no way to know whether the joint use dock agreement would effectively bind future created lots. Friends argued generally that the Shoreline Master Program disfavors docks and that the evidence offered by the Applicants failed to meet a more stringent application of the shoreline use policies. *Exhibit 18; Kyle Loring Testimony*.
26. In response to the UW Friday Harbor Labs comments, County Planning Staff responded that the proposed dock meets the size standard for a joint use dock for two parcels, that the Applicants' two boats would use the dock, and that the critical areas report concluded there would be no net loss of marine habitat. Planning Staff essentially declined to respond to Friends' comments, deferring to the hearing examiner, except that Staff testified that there are no adopted policies or regulations detailing the necessary requirements for inquiring after commercial moorage or shared moorage on existing private docks. The Planner assigned to the case found the materials submitted to prove alternate moorage was not available to be adequate to support a recommendation of approval. *Exhibits 1 and 19; Lee McEnery Testimony*.
27. The Applicants' agent responded to the Friends of the San Juans comments with respect to impact to the marine environment, reiterating that the manner in which the proposal was designed to avoid impacts to critical saltwater habitats through alternative alignments or locations, stated in Finding 17 above. The Applicants' response noted again that only a small portion of the ramp and pier would be located over kelp, as identified by the dive

survey, and that both ramp and pier would be fully grated to allow light penetration. The float would also be grated such that even considering (non-grated) float tubs, it would still provide 61% light penetration through its surface, and the float would be intentionally located over deeper water to avoid kelp. The Applicants asserted that the combination of light permeable grating and height of pier and ramp are expected to result in no net loss of kelp habitat function, according to the critical areas assessment, which was prepared by qualified professionals. Additionally, sedimentation that is anticipated to occur during construction is expected to be temporary, dissipating rapidly after construction. The longer term potential impact of petroleum products being introduced into the marine waters through boat use is also not expected to have impacts on marine habitat, because no fueling station is proposed, and any minor release due to spill or in bilge water is expected to be dispersed by the currents and tidal activity. Finally, the existing boat ramp is not a desirable feature in the shoreline and its repair and continued use would not be a better solution environmentally. *Exhibit 20; Jeff Otis Testimony; Wally Gudgeon Testimony.*

28. Responding to Friends' argument that the existing moorage facilities on-site have not been shown to be inadequate, the Applicants offered the following. The existing boat ramp is inarguably in disrepair due to being severely undermined. Its repair would require removal and construction of a new concrete ramp in the shoreline, which the Applicants contended would be a greater impact to shoreline ecological resources by retaining a hardened surface on a gravel shoreline that would act as a groin impacting flow of water and sediments. William Hoglund testified he has never used the ramp and that it is only accessible at the highest tides. If repair rendered it useable, it would only serve the KPK property; the Hasletts have no rights access to it. Should such use be negotiated, there is inadequate area upland of the ramp to store multiple boats. Because the project involves removal of the derelict ramp and restoration of the shoreline, together with the dock designed to avoid and minimize impacts to shoreline resources, the Applicants contended that the instant proposal is a more environmentally sound alternative. Regarding Friends' challenge to Applicants' inquiry regarding use of existing private docks, the Applicants reasserted that owners of the three nearest docks declined to provide moorage for the Applicants' properties' full potential boat ownership. The Applicants acknowledged that if the subject parcels do subdivide and future owners do desire moorage, they would either be required to apply for new mooring buoys – which does not trigger alternate moorage adequacy review – or apply to expand the size of the float – which would trigger alternate facilities review in the SSDP approval process. *Exhibit 20; William Hoglund Testimony; Jeff Otis Testimony.*
29. Regarding the choice to propose five vessels to the neighboring dock owners when inquiring if they were willing to enter into a joint use dock agreement with the Applicants, the agent submitted the following grounds. The shoreline master program, at SJCC 18.50.190.E.4, restricts new waterfront subdivisions to a community joint use moorage facility to serve all lots created; however, it is not the subdivision process that triggers review of the alternative moorage availability, but rather the dock permitting process. While there is no subdivision pending, the Applicants acknowledge that the

subject parcels could be subdivided to create three more lots and they are offering to restrict those three potential lots, which could be created to have waterfront areas, to the use of the proposed facility. The Applicants argued that such a situation is consistent with the Shoreline Hearings Board decision in the matter of *TG Dynamics vs. San Juan County*, SHB No. 08-030, at finding 5 and conclusion 3, which held that the “proposed joint use agreement, which will bind any future owners in perpetuity and prevent any individual docks within the plat, furthers the County’s goal of joint use and avoiding the porcupine effect in new waterfront subdivisions....” The Applicants noted that in that same case the Board recognized that “the dock may turn out to be illusory if [the applicant] fails to fully develop the subdivision or if other family members using the subdivision do not have the need for moorage.” *Exhibit 20*.

30. Regarding Friends’ challenge to the Applicants’ agent’s method of inquiring of the local marinas regarding commercial moorage, which combined the vessels from three applications into one communication (eight boats and a float plane), the agent again cited the *TG Dynamics* SHB decision, submitting that the “adequacy or feasibility of existing facilities and alternate moorage must be evaluated in the context of all the relevant considerations related to a particular proposal [including compliance with provisions that require evaluation of] potential impacts on littoral drift, sand movement, water circulation and quality, fish and wildlife, navigation, scenic views, and public access to the shoreline.” *Exhibit 20, citing conclusion 11 of TG Dynamics v. San Juan County, SHB-08-030*. The agent asserted that adequacy and feasibility of alternate moorage at marinas is determined based on demand and noted that greatest demand is during primary boating season. The agent argued that actual “demand” for the coming boating season logically includes all the vessels of the clients for whom he is currently seeking dock permits. Asking one at a time for each boat owner fails to capture the overall current demand. While several of the marinas indicated that a space may come open from time to time, the Applicants’ agent argued that the alternate moorage provision at SJCC 18.50.190.G.5 does not require an applicant to continuously check for any specified period of time with area marinas to see if a space is available, nor does it establish specific standards by which adequacy and feasibility of alternate moorage can be determined by an applicant or the County. The Applicants argue that the proposal’s result of constructing one dock on more than 1,500 feet of shoreline that could serve up to five lots, while removing the derelict boat ramp and restoring its footprint, and resulting in no net loss of shoreline ecological function, are relevant considerations that must be balanced with the alternate moorage requirement. *Exhibits 20 and 21; Jeff Otis 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 18.35.130 – Protection Standards for Aquatic Fish and Wildlife Habitat Conservation Areas (FWHCAs)**

G. Standards and Requirements for Shoreline Modifications. Shoreline modifications, including shoreline stabilization measures, are allowed within and over aquatic FWHCAs and their buffers subject to this section and Chapter 18.50 SJCC. These requirements remain in effect until they are replaced with an approved comprehensive update of the Shoreline Master Program. Unless specifically allowed by this section and Chapter 18.50 SJCC, construction of new shoreline modifications is prohibited.

1. General Standards.
  - a. Definitions. Definitions applicable to this subsection (G) are found in RCW 90.58.030 and WAC 173-26-020 and 173-27-030.
  - b. Mitigation Sequencing. Per WAC 173-26-201(2)(e), adverse impacts associated with new, expanded or replacement shoreline modifications must be mitigated consistent with the requirements of SJCC 18.35.020 through 18.35.050 and the following mitigation sequence:
    - i. Avoiding the impact altogether by not taking the action or part of the action.
    - ii. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts.
    - iii. Rectifying the impact by using appropriate technology or by repairing, rehabilitating or restoring the affected environment.

- iv. Reducing or eliminating the impact over time by preservation and maintenance operations.
  - v. Compensating for the impact by replacing, enhancing or providing substitute resources or environments.
  - vi. Monitoring the impact and compensation projects and taking appropriate corrective measures.
- c. In accordance with WAC 173-26-22(2)(c)(iii)(C), if inventories of critical salt water habitats have not been completed, overwater and nearshore developments in marine waters designated as FWHCAs may not be approved without an inventory of the site and adjacent shoreline parcels to assess the presence of these habitats and their functions. The methods and extent of the inventory shall be consistent with accepted research methodology, in consultation with Department of Ecology technical assistance materials.
- d. Public docks and docks serving five or more single-family residences, piers, bulkheads, bridges, fill, floats, jetties, utility crossings, lifts, stairs, ramps, and other human-made structures shall not intrude into or over critical salt water habitats unless all of the following conditions are satisfied:
- i. The public's need for such an action or structure is clearly demonstrated and the proposal is consistent with protection of the public trust as embodied in RCW 90.58.020. To show the project protects the public trust, the application shall include a narrative that:
    - (A) Demonstrates the proposal is consistent with the goals, policies and regulations of the County's SMP and is appropriate for the location;
    - (B) Itemizes the project's benefits for the public, such as providing physical or visual access to the shoreline; and
    - (C) Shows that the development will not have an adverse impact of the navigability of adjacent waters.
  - ii. Avoidance of impacts to critical salt water habitats by an alternative alignment or location is not feasible or would result in an unreasonable and disproportionate cost to accomplish the same general purpose;
  - iii. The project including any required mitigation, will result in no net loss of ecological functions associated with critical salt water habitat; and
  - iv. The project is consistent with the state's interest in resource protection and species recovery.
- e. When feasible, public access and ecological restoration shall be incorporated into publicly financed projects.

## 2. Additional Standards for Docks.

- a. Private, noncommercial docks and associated piers and floats for individual residential use, or for community use by the owners of no more than four adjacent or nearby residences, will be permitted over critical salt and fresh water habitats if the application complies with the applicable federal and state regulations and shows that:
  - i. Avoidance of impacts to critical salt and fresh water habitats by an alternative alignment or location is not feasible; and
  - ii. The project, including any required mitigation, will result in no net loss of ecological functions associated with critical salt water habitat.
- b. Application Requirements. In addition to applicable requirements of Chapter 18.50 SJCC, applications for approval of docks listed in this section shall include the following:
  - i. The applicable items listed in SJCC 18.80.020(C) (Project Permit Applications – Forms) along with photos of the site and a map showing the approximate location of critical areas and critical salt water habitats within 200 feet of the project area (existing maps may be used).
  - ii. The applicable items listed in SJCC 18.80.110 (shoreline permits).
  - iii. Any related project documents such as applications to other agencies or environmental documents prepared pursuant to the State Environmental Policy Act.
  - iv. A narrative explaining how the proposal meets the requirements of this subsection (G), SJCC 18.35.020 through 18.35.050 and Chapter 18.50 SJCC.
  - v. Best available science documents supporting the proposal.
  - vi. A copy of proposed stormwater and erosion control plans for the project as required by Chapter 18.60 SJCC.
  - vii. A report, appropriate for the scale and scope of the project, prepared by a qualified biological professional, identifying any aquatic FWHCAs located within 50 feet of the proposed project, evaluating conformance of the proposal with the requirements of this subsection (G), and describing any potential adverse impacts to the ecological function of aquatic FWHCAs that may result from the proposal.

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.

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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.

**Conclusions Based on Findings:**

1. As conditioned, the proposed joint-use dock serving two properties totaling 59 acres in area 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*. The record contains credible evidence that the proposal would result in no net loss of shoreline ecological function. While the habitat assessment was challenged generally by Friends of the San Juans, Friends did not offer site-specific study that contradicted the findings in the Applicants’ report. 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, 5, 6, 7, 8, 9, 11, 14, 15, 18, 19, 20, 21, and 22.*
2. As conditioned, the proposal satisfies applicable Shoreline Master Program criteria.
  - a. With regard to its proposed location in light of the boating facilities general regulations at SJCC 18.50190.B.1, the site selected minimizes overwater coverage of kelp to a small portion of the seaward end of the pier/ramp; both pier and ramp would have fully grated surfaces. The float, which would have the smallest amount of light-penetrating surface at 61%, would not be located over existing kelp and would be

placed far enough from the shore that at least four feet of water depth would remain at extreme low tide, which would help prevent shading effects under the float and avoid prop scour. In addition, the proposed pier location would be built near the shared property boundary between the two subject parcels in a relatively flat area with an existing trail, such that no upland disturbance in the shoreline area is necessary to provide access to the facility. Given the undisputed site-specific data in the eelgrass survey, the proposed placement of the dock appropriately minimizes impacts to laminaria. The undersigned is not persuaded that SJCC 18.50.190.B.1 requires study of the entire length of shoreline in order to show that impacts to marine life and shore processes are minimized. The evidence submitted effectively demonstrates compliance with SJCC 18.50.190.B.1 and B.2. West Sound generally and the proposed dock location specifically are not subject to poor flushing, but rather enjoy strong daily tidal flushing. Mooring buoys are allowed in conjunction with another form of moorage. The existing Haslett buoy would be retained. Aside from the one retained buoy, only one form of moorage is proposed – the joint use dock. *Findings 1, 2, 3, 6, 7, 8, 9, 11, 14, 15, 18, 19, 21, and 22.*

- b. Addressing the general SMP regulations for docks, piers, and floats: While expansion of existing facilities is preferred, the existing boat ramp on-site has far outlived its useful life and cannot be used without significant reconstruction. The neighboring dock owners declined to enter into a joint use agreement with the Applicants. The County's shoreline master program contains specific provisions allowing joint use docks to be owned and used by two residential parcels. *SJCC 18.50.190.g.2.b.* Use by the two Applicants would be multiple use. The record includes evidence that several property owners consider the current level of boating activity in West Sound and the resulting wakes to make the use of buoys and moorage floats unsafe. The undersigned is not persuaded that the Shoreline Management Act and the County's SMP restrict "all reasonable use of the shorelines of the state" to mooring buoys when these are considered unsafe by local boaters. In addition, the shoreline on-site is very rocky, making access by dinghy unfeasible. As noted above, West Sound is known to have good water circulation. The record contains a professionally prepared habitat assessment based on a site-specific dive survey and assessment, which concluded that as designed and located, with the proposed conservation measures implemented, and with the use of construction best management practices, the proposal would result in no net loss of shoreline ecological functions for sensitive species and critical habitats. Visual impacts are minimized in the proposal by the use of anchors on the seaward end of the float, by not placing structures on the pier, and by placing the facility in a relatively low bank area near other private docks. The subject shoreline is private; construction of the facility would not affect public access. The project is not proposed in a drift cell or accretion zone. The project would remove the derelict boat ramp and restore the shoreline. No commercial overnight accommodation or float plane moorage is proposed. *Findings 1, 2, 3, 6, 7, 8, 9, 11, 12, 13, 14, 15, 17, 18, 21, 24, 25, 26, 27, 28, 29, and 30.*

- c. Addressing design and construction standards: The facility would be made of aluminum, steel, and wood. No chemically treated structural members would be in direct contact with the water. Steel pilings would be structurally sound. Clearances above the water would be two feet at the base of the ramp above water level at extreme high tide. Pilings supporting the landward end of the float would be five feet higher than extreme high tide. The float is positioned such that no less than three feet of water would remain beneath it at extreme low tide (-4 MLLW). The float tubs would be fully enclosed. The pier would not extend beyond the extreme low tide contour. No wiring or plumbing or structures are proposed on the dock. Best management practices for clean up, spill control, temporary and permanent fuel storage areas, bilge, and ballast waters would be observed. The debris from removal of the existing ramp would be hauled off-site and disposed of at an upland facility, and the shoreline within the project's footprint would be restored with import of appropriately sized gravel. The float would be secured by both pilings and anchors. *Findings 1, 2, 5, 6, 7, 8, 9, 14, 17, and 18.*
- d. Addressing the regulations for residential docks for two users: At 1,005.5 feet in area and 170 feet in length, the proposed dock is well below the dimensions allowed for a two-property joint use dock (1,400 square feet in area, 200 feet long). In order to place the float in deeper water, a 48-foot ramp is necessary. The 40-foot float is the minimum needed to moor the existing two Applicants' boats and guests. The pier location is setback 60 feet south of the shared property boundary. Overland access would be provided by an existing path, minimizing upland disturbance. As noted above, three neighboring dock owners declined to enter into joint use agreements with the Applicants. The County SMP contains no standards that dictate the nature of the inquiry regarding existing private facility sharing. While the Applicants' inquiry included future potential boats, this is not expressly disallowed and is consistent with the Applicants' overall intention of permanently restricting the subject 59 acres to the use of the instant dock. Neither the County nor the Applicants can require owners of existing docks to make room for the Applicants' boats. While reasonable minds could disagree about the Applicants' method of inquiry, in the absence of more explicit regulatory standards and in light of the acceptance by Planning Staff, this question does not rise to a level that demonstrates lack of compliance with the intent of SJCC 18.50.190.G.5. With respect to commercial moorage, the Applicants' agent inquired about availability with six local marinas, none of which indicated space would be available in the coming boating season for both of the Applicants' existing boats. Again, this commercial moorage availability inquiry was bundled with the three speculative boats from potential future created lots on-site and with vessels from two other pending dock requests. Although the query was couched in terms of space for more than the Applicants' two existing boats, the information in the responses is sufficient to determine that there is not likely to be commercial moorage for both of the Applicants' existing boats in the coming boating season. The infeasibility of using the existing on-site moorage facilities was thoroughly addressed in a previous condition. The undersigned is persuaded that the Applicants' citation to the Shoreline Hearings Board decision in *TG Dynamics* identified the applicable standard: that the

adequacy or feasibility of existing facilities and alternate moorage are to be evaluated in the context of all relevant considerations of the instant proposal, which the record demonstrates: would result in a multiple use facility for between two and five parcels; would permanently restrict more than 1,500 lineal feet of shoreline to one dock; would not have impacts on littoral drift, navigation, scenic views, or public access to the shoreline; would not result in undue sand movement, or adversely impact water quality, and would cause no net loss of shoreline ecological function. The undersigned is not persuaded that the Shoreline Management Act and/or the County's applicable shoreline master program require applicants for joint use docks to repeatedly check with available marinas for commercial moorage openings for an indefinite period of time before being allowed to construct their own moorage facility that otherwise meets all requirements of the Code. *Findings 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, and 30.*

3. 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 1, 6, 22, 23, 24, 25, and 26.*

#### **DECISION**

Based on the preceding findings and conclusions, the requested shoreline substantial development permit to authorize construction of a joint use dock serving two residential parcels located at 7236 and 7162 Orcas 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 construction of a joint use dock serving tax parcels 261614002 (KPK) at 7236 Orcas Road, shared with 261614001 (Haslett, 7162 Orcas Road) as shown on the attached dock drawings (Exhibit 7).
2. Boats moored at residential docks shall not be used for commercial overnight accommodations.
3. The conditions of the MDNS, below, shall be adhered to:
  - 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. Comply with all recommendations in the Critical Area Assessment and Marine Mammal Monitoring Plan.

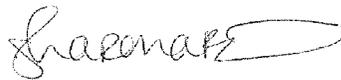
- f. Comply with all applicable state, federal and San Juan County codes.
4. Pilings must be structurally sound prior to placement in the water.
5. Chemically treated piles, floats, or other structural members in direct contact with the water shall comply with state and federal regulations.
6. Pilings 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. When plastics or other non-biodegradable materials are used in a float, pier, or dock construction, full containment features are required.
9. Overhead wiring and plumbing are prohibited. Other structures on piers, ramps and floats shall be limited to three feet in height.
10. Dock lighting shall be designed to shine downward, be low wattage and shall not exceed a height of three feet above the dock surface.
11. 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.
12. All debris entering the water or shoreline area shall be removed immediately and disposed of in a legal manner.
13. The float shall be secured with anchored cables rather than pilings unless the Applicants can demonstrate that the use of anchored cables is not feasible and pilings must be used.
14. 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.
15. The Applicants shall record a deed restriction that provides for access to and joint use of the dock by the current owner(s) and its successor(s) in interest of Tax Parcels 261614002 (Hoglund/KPK) and 261614001 (Haslett) which tax parcels adjoin the tax parcel to which the dock is appurtenant along the shoreline of West Sound, Orcas Island. The Applicants shall submit a copy of the recorded deed restriction to the Department of Community Development, which deed restriction shall be substantially in the form attached to this condition. The owner of the tax parcel on which the dock is located shall abide by the terms and conditions of the recorded deed restriction. Joint use and access to the dock shall be automatically conferred on the successor(s) in interest of Tax Parcels 261614002 (Hoglund/KPK) and 261614001 (Haslett). In the event agreement on reasonable terms and conditions for use cannot be reached or otherwise resolved, or in

the event the owner of Tax Parcel 261614002 (the Applicant) declares by action or deed that joint use is no longer available, this permit shall immediately be deemed rescinded after notice and an opportunity to cure is provided by the County, and the dock shall be removed from the shoreline.

16. Immediately after construction is completed, the Applicant shall request that the Department of Community Development perform an inspection for compliance.
17. Failure to comply with any terms or conditions of this permit may result in its revocation.

Decided November 7, 2017.

By:



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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.