

## NOTICE AND STATEMENT OF APPEAL

APPELLANT INFORMATION

1. Name of Appellant: University of Washington
2. Name and Contact Information of Appellant's Authorized Representative:

Ray Liaw  
Van Ness Feldman LLP  
719 Second Avenue, Suite 1150  
Seattle, WA 98104  
Phone: 206-623-9372  
Email: hrl@vnf.com

S.J.C. DEPARTMENT OF  
OCT 11 2017  
COMMUNITY DEVELOPMENT

DECISION BEING APPEALED

1. Decision: SEPA Threshold Determination: Revised Mitigated Determination of Nonsignificance ("MDNS") for the four-slip dock, navigational buoy, and reverse osmosis desalination system ("Project") proposed by Orca Dreams LLC ("Applicant"), Permit # PSJ000-17-003. A copy of that decision is attached hereto as Attachment A.
2. Date of Issuance: October 4, 2017
3. Address of Subject Property: 57 Island Marble Lane, San Juan Island. Tax parcels numbers (TPN): 353344008, 34041103, and 340411005.

## APPEAL INFORMATION

1. Standing - Appellant's Interest in the Appeal.

The University of Washington (UW) owns the nearby property known as False Bay (TPN 353312001000), which is part of the state designated San Juan Islands Marine Preserve Area. WAC 220-302-100(1). False Bay serves as an important biological preserve and has been the site of extensive, nationally recognized studies conducted by UW Friday Harbor Labs' professors, as well as UW graduate and undergraduate students dating back to 1904. Additionally, False Bay hosts researchers from other colleges and universities from across the country, as indicated in the many comment letters submitted in response to the MDNS that is the subject of this appeal.

The proposed dock would be located on the northwest tip of the Applicant's property, oriented east-west and constructed immediately south of the entry to the tidal lands in False Bay. Given the importance of these tidal lands, the UW is extremely concerned with the probable significant adverse environmental impacts to False Bay resulting from the Applicant's proposed addition of a large dock to accommodate four pleasure boats

and a desalination system discharging into marine waters. The length of the dock, number of boats, and toxins released from the dock and boat traffic will be swept into the shallow waters of False Bay and harm the invertebrate, fish eggs, and embryos in False Bay, critical to the health of the marine environment and the UW's research. Furthermore, the UW has significant concerns regarding probable adverse impacts the Project will cause to the broader marine environment, including impacts to threatened and endangered species known to be on or within the vicinity of the Project.

Studies and research that take place in False Bay are a value to the entire state, region and beyond. Impacts will occur not only from the dock and desalination system construction, but also from annual removal and reinstallation of the dock and the operations of water craft and the desalination system. The impacts to False Bay will be significant and will not only impact the immediate area but the critical research that has occurred over the last 100 years.

The UW submitted multiple comment letters to the San Juan County's Department of Community Development detailing those concerns and opposing the MDNS for the Project, which is the subject of this appeal.

## 2. Grounds for Appeal and Facts Supporting the Appeal.

The University of Washington's appeals the adequacy of the analysis underlying the MDNS issued for the Project and the conclusion that the Project will not have a probable significant adverse impact on the environment. Facts supporting this appeal are set forth in the comment letters previously submitted to San Juan County by UW representatives members, including Professor Billie J. Swalla (Director of UW Friday Harbor Laboratories), Julie Blakeslee (Environmental and Land Use Compliance Officer for the UW Capital Planning and Development Office), and Craig Staude (Resident Scientist at UW Friday Harbor Laboratories). Those letters are attached to this Notice and Statement of Appeal as **Attachments B, C, and D**. The UW reserves the right to rely on facts set forth in comment letters submitted by other researchers, nearby residents, and concerned parties in response to the MDNS for the Project.

The UW challenges the procedural adequacy of the County's SEPA review for the Applicant's proposal. These grounds include, but are not limited to, the following:

- Improper geographic scope of potential adverse impacts:
  - Scope of analysis too narrow, improperly limited to the Applicant's property.
  - Applicant fails to identify the surveyed location of the Project proximate to the UW False Bay tidelands.
- Insufficient characterization about site conditions in immediate vicinity of Project
  - Inadequate dive survey data to identify presence of eelgrass and kelp near the Project. Timing of surveys outside prime growing season inconsistent with WDFW recommendations.
  - Inadequate description of discharge location for desalination equipment and range of tidal depth in proposed location.
- Insufficient disclosure of operational impacts resulting from the proposal:
  - SEPA checklist limited to temporary construction impacts.

- Insufficient analysis of environmental impacts resulting from temporary and long-term impacts within highly sensitive shoreline environment, including but not limited to:
  - Impacts of desalination equipment on eelgrass, kelp beds, microalgae, forage fish, and migrating salmon.
  - Impacts of shading from dock, opaque float tubs, and solid moored boats on eelgrass, kelp beds, microalgae, forage fish, and migrating salmon.
  - Impacts from operation of water craft and dock maintenance on eelgrass, kelp beds, microalgae, forage fish, and migrating salmon.
  - Impacts to False Bay resulting from changes in currents, wave energy, sediment supply, and pollutants toxins from the dock and boat traffic.
  - Impacts to priority habitat for pinto abalone.
  - Impacts on Southern Resident Killer Whales (“SRKW”) and other direct, indirect, and cumulative impacts associated with increased boats traffic.
  - Impacts to visual and aesthetics resulting from dock and four boats extending 260 feet.
- Insufficient analysis of need for the proposed dock or reasonable alternatives to the proposed dock.
- Insufficient analysis of cumulative impacts resulting from approval of first dock to be developed along west San Juan Island between Cape San Juan to Mitchell Bay.
- Insufficient analysis of how Project achieves no net loss to critical habitat and aquatic species in the immediate vicinity of the Project and surrounding areas, including False Bay.

Based on these deficiencies, the MDNS is not warranted. *See* WAC 197-11-100; 197-11-330; 197-11-335.

Additionally, based on the information disclosed by the Applicant, the Project will result in significant adverse environmental impacts. The UW comment letters in Attachments B-D identify many of these impacts, including, but not limited to, the following:

- **Disturbance of False Bay Marine Reserve and Ongoing Research:** The disturbance on False Bay created by increased boat traffic will significantly adversely impact the marine reserve, affecting ongoing experiments, teaching and research. Additionally, introduction of gas and oil from operation and maintenance of four pleasure craft into this immediate environment will kill embryos and larvae, which are abundant in the spring and summer months in False Bay.
- **Displacement of Public Property:** The cove and pocket beach where the dock is to be located will extend out state-owned tidelands and waters, at the very end of a bay that has been studied and preserved for over 40 years.
- **Loss of Eelgrass and Algae:** The dock and boats will displace sea grass habitat used by fish, birds, and invertebrates and increase disturbance at the mouth of False Bay. The BA notes large amounts of kelp under the dock footprint. Recent sea grass surveys done by UW and other researchers show eelgrass at the mouth of False Bay, which at times extends into the pocket bay where the Project will be located. The

accuracy of the Applicant's eelgrass surveys are highly suspect, given the time of year when these were completed. Regardless, the grated docks in combination with the solid boats and opaque floats not allow light transmission and will not eliminate impacts to eelgrass and vegetation below and adjacent to the dock. Boat wakes, gas or oil in water, increased turbidity, and prop wash will damage adjacent eelgrass. To the extent that the 25-foot buffer condition is intended to avoid harm to eelgrass resulting from boat maneuvers, there is no plan for monitoring the effectiveness of this proposed mitigation measure.

- **Impact on Pocket Beach:** Research has shown that pocket beaches are the most critical habitat to preserve for juvenile chinook salmon and other fishes, including herring and rockfish. This large dock will adversely affect the ability of fish to use the pocket beach for food foraging, and the gas and oil from boat traffic will kill their eggs and embryos, preventing new generations of fish. Many aspects of the Project are likely to alter the character of the pocket beach and thus reduce or eliminate its use by salmon and forage fish; these include changing wave action and currents, increasing or decreasing sediment supply from the uplands, adding pollution or debris from boats.
- **Impact on Marine Birds:** The cove is a refuge for marine birds, including harlequin, goldeneye, bufflehead, merganser, black turnstone, black oystercatcher, grebe, loon, and cormorant. Boat traffic will disrupt this critical refuge for marine birds with noise and disturbance of birds landed to eat and rest.
- **Negative Impact on Impact on Threatened and Endangered species, including SRKW and juvenile chinook:** The west side of San Juan Island is a critical feeding ground for the three resident SRKW pods. The increased boat traffic and degraded environment is likely to negatively affect the SRKW and their salmon food source. Noise has been shown to adversely affect SRKW and they currently have four baby whales, which are more sensitive to sound than the adults.
- **Displacement of Existing Recreational Use:** A large dock with boat traffic would adversely impact the quiet and natural beauty of False Bay and negatively affect the aesthetics. False Bay is a favorite kayaking spot for many San Juan Island residents and visitors to the area. It is one of the few undeveloped shorelines on San Juan Island that is accessible to the public.
- **Impact of desalination system on biological resources and water quality:** Effluent from the desalination facility will be concentrated and at a higher temperature than ambient seawater at the site. The proposed location for the discharge of brine does not address shallow water conditions occurring at low tides, which are insufficient to dilute the brine and avoid impacts to critical habitat and forage fish.
- **Impact of damaged docks, boats and floats:** Extreme wind and wave events in the Strait of Juan de Fuca occur in the summer, when afternoon westerly winds commonly reach gale force. The Project is exposed to these south-westerly winds. There is a high likelihood that debris, gas, and oil from vessels damaged during high

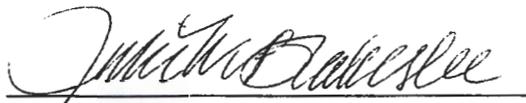
wind and wave events will spill into eelgrass beds, on the pocket beach, and into the False Bay Marine Reserve.

Based on these probable significant adverse impacts, a Determination of Significance is warranted and an environmental impact statement ("EIS") should be conducted for the Project. See WAC 197-11-360.

3. Relief requested.

Due to the probable significant adverse impacts resulting from the proposed action, the UW requests that San Juan County withdraw the MDNS that is the subject of this appeal, issue a Determination of Significance, and conduct an EIS of the Project.

Authorized Representative, on behalf of the Appellant, has read the content of this Notice and Statement of Appeal and believes the contents to be true.



Julie Blakeslee  
Environmental and Land Use Planner  
University of Washington Capital Planning & Development

10.10.17  
Date



Ray Liaw, WSBA #40725  
Van Ness Feldman LLP  
Attorneys for University of Washington

10/10/2017  
Date

# ATTACHMENT A



# San Juan County Community Development & Planning

135 Rhone Street, P.O. Box 947, Friday Harbor, WA 98250 | cdp@sanjuanco.com  
 (360) 378-2354 | (360) 378-2116 | Fax (360) 378-3922 | www.sanjuanco.com

## REQUEST FOR REVIEW

Applicant Name and File #: Orca Dreams LLC PSJ000-17-0003 DATE: 10-4-17

Reissued MDNS to correct dates  
 Please review the application materials and return written comments to Julie by 10-31-17.

If you request additional information or materials from the applicant, please notify SJC Community Development & Planning in writing.

State Agencies	
<input type="checkbox"/>	Dept. of Archaeology
<input type="checkbox"/>	Dept. of Agriculture – Kelly McLain
<input type="checkbox"/>	Dept. of Commerce
<input checked="" type="checkbox"/>	Dept. of Ecology/SEPA
<input checked="" type="checkbox"/>	Dept. of Ecology/Shoreline – Chad Yunge
<input type="checkbox"/>	Dept. of Ecology/Shoreline – Doug Gresham
<input type="checkbox"/>	Dept. of Fish and Wildlife – Doug Thompson
<input type="checkbox"/>	Dept. of Fish and Wildlife - SEPA
<input type="checkbox"/>	Dept. of Health – Kelly Cooper
<input type="checkbox"/>	Dept. of Health - Shellfish
<input type="checkbox"/>	Dept. of Natural Resources – SEPA
<input checked="" type="checkbox"/>	Dept. of Natural Resources – NW Region
<input type="checkbox"/>	Dept. of Social & Health Services –Terri Sinclair-Olson
<input type="checkbox"/>	Dept. of Transportation Env Svcs – Roland Storme
<input type="checkbox"/>	Dept. of Transportation – Ferries – Robert Price
<input type="checkbox"/>	Energy Facility Site Evaluation Council–Stephen Posner
<input type="checkbox"/>	Interagency Committee on Outdoor Recreation
<input type="checkbox"/>	Parks and Recreation Commission
<input type="checkbox"/>	Puget Sound Partnership
<input checked="" type="checkbox"/>	UW-Friday Harbor Labs, Director
<input type="checkbox"/>	UW-Real Estate Office, Property Rights Manager
<input type="checkbox"/>	Washington State Parks NW Region
Tribal Agencies	
<input type="checkbox"/>	Lummi Historic Preservation Office
<input type="checkbox"/>	Lummi Natural Resources – Alan Chapman (Shoreline)
<input type="checkbox"/>	Samish Indian Nation – Jackie Ferry
<input type="checkbox"/>	Swinomish Tribal Commission – Tim Hyatt
<input type="checkbox"/>	Tulalip, Natural Resources
County Agencies	
<input type="checkbox"/>	San Juan County Council
<input type="checkbox"/>	San Juan County Planning Commission
<input type="checkbox"/>	San Juan County Prosecutor – Amy Vira
<input type="checkbox"/>	San Juan County Assessor
<input type="checkbox"/>	San Juan County Community Development & Planning
<input type="checkbox"/>	Chief Building Official – Fred Schaller

County Agencies (Cont.)	
<input type="checkbox"/>	San Juan County Engineer
<input checked="" type="checkbox"/>	San Juan County Health Dept – Kyle Dodd
<input type="checkbox"/>	San Juan County Parks Dept – Dona Wuthnow
<input type="checkbox"/>	San Juan County Dept of Emergency Management
<input type="checkbox"/>	San Juan County Fire Marshal – Richard Meyers
<input type="checkbox"/>	Fire Districts (Indicate: #2, #3, #4, or all)
Town, Utilities, & Utility Districts	
<input type="checkbox"/>	Town of Friday Harbor – Mike Bertrand
<input type="checkbox"/>	Eastsound Sewer District
<input type="checkbox"/>	Eastsound Water Users
<input type="checkbox"/>	Fisherman Bay Sewer District
<input type="checkbox"/>	Fisherman Bay Water Association
<input type="checkbox"/>	Washington Water Service Company
<input type="checkbox"/>	OPALCO
<input type="checkbox"/>	CenturyLink
Schools and Libraries	
School District:	Lopez Orcas San Juan Shaw
Libraries:	Lopez Orcas San Juan Shaw
Other	
<input type="checkbox"/>	San Juan Conservation District
<input type="checkbox"/>	SJC Noxious Weed Control Board
<input type="checkbox"/>	San Juan County Parks Board – Dona Wuthnow
<input type="checkbox"/>	Eastsound Planning Review Committee
<input type="checkbox"/>	Deer Harbor Plan Review Committee
<input type="checkbox"/>	Lopez Village Plan Committee

Distribution completed by: Linda Heinsey

Date: 10/4/17



**SAN JUAN COUNTY**  
**DEPARTMENT OF COMMUNITY DEVELOPMENT**

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**REVISED MITIGATED DETERMINATION OF NONSIGNIFICANCE**

**To correct comment and appeal dates**  
**Shoreline Permit Application for Orca Dreams LLC**  
**Four-slip dock and RO Desalination System**  
**San Juan Island**

**Project Description:** Orca Dreams LLC is proposing construction of a four-slip dock and associated navigational buoy to serve their three waterfront parcels (TPNs 353344008, 340411003, and 340411005) and five existing single family residences. They are also proposing to install a reverse osmosis desalination system to provide potable water to six single-family residences.

**Proponent:** Orca Dreams LLC, David Honeywell, Managing Member, PO Box 928, Friday Harbor, WA 98250

**Agent:** Francine Shaw, Land Use Planner, Law Office of Stephanie Johnson O'Day, PO Box 2112, Friday Harbor, WA 98250.

**Project Location:** San Juan Island, 57 Island Marble Lane

**Lead Agency:** San Juan County Department of Community Development

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(C). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request. This determination is subject to the mitigating measures as identified below. If this application is approved, these measures shall be deemed conditions of approval of the land use and/or permit pursuant to San Juan County Code 18.80.050. Such conditions are considered binding and may not be altered by subsequent decisions unless a threshold determination is re-issued.

**Proposed Conservation Measures for Dock and RO Desalination System Construction:**

1. **Timing limitations:** In-water work shall only be allowed from September 1 through March 1 for the protection of salmon and bull trout.
  - a. Work below the ordinary high water line shall not occur from March 2 through August 31 of any year for the protection of migrating juvenile salmonids.
2. A qualified diver will mark the margins of the eelgrass beds to ensure that the dock is positioned with a minimum 25-foot buffer from the eelgrass beds.
3. Pile removal will follow the EPA Best Management Practices for Pile Removal & Disposal (EPA 2007).
4. A rubber cushion will be placed between the vibratory pile driver and the pile to reduce the generation of both airborne and underwater noise.
5. A collar will be placed around existing creosote-treated piles prior to removal to capture sediment and minimize any increase of turbidity associated with pile removal.

6. Observers qualified in identification of marine mammals and seabirds will be on-site during pile driving operations to watch for presence or absence of killer whale, and other marine mammals and marbled murrelet within the 1.34-mile action area. Observers will check for presence of marine mammals within the action area 30 minutes prior to and during operations and advise operators of presence of marine mammals. Presence/absence of marine mammals will be recorded and reported.
  - a. One observer will be stationed at the top of the bluff at the promontory just south of the project site (Figure 7). Two additional observers will be stationed in a boat and will be cruising in Haro Strait along the boundary of the zone of influence (ZOI).
  - b. Observers will communicate with the contractor with both cellular telephones and VHF radios. Communication checks will occur daily.
  - c. Pile driving or removal will not occur if killer whales or humpback whales are within the 1.34-mile ZOI.
  - d. Pile driving will not occur when other marine mammals are within 200 feet of the Project site, or when marbled murrelet are within 160 feet of the project.
  - e. Pile driving/removal operations will occur between 2 hours after sunrise and 2 hours before sunset from September 1 through September 15 to protect marbled murrelet during nesting season of April 1 through September 15.
7. The contractor will have a prepared Spill Control and Countermeasure Plan (SCC Plan) that addresses specific actions to prevent petroleum products from being discharged into surface waters. The contractor will also have oil-absorbent materials on site to be used in the event of a petroleum product spill and measures to avoid petroleum products or other deleterious materials from entering surface waters will be taken. This plan can be found in the Biological Assessment at Appendix F.
8. Eelgrass and macroalgae will not be adversely impacted due to any project activities:
  - a. The construction barge will not be allowed to ground in the Project area.
  - b. Prop wash will not be directed toward eelgrass beds that are mapped near the Project area.
  - c. Barge anchors and cables will not be placed in the eelgrass bed that is mapped to the south of the dock alignment.
9. The following BMPs described in the Stormwater Management Manual for Western Washington Volume II; Construction Stormwater Pollution Prevention (Ecology 2014) shall be followed to minimize the amount of fine sediment from entering marine water due to disturbance of soil as part of improvements to the access trail:
  - a. BMP C101: Preserve Natural Vegetation
  - b. BMP C153: Material Delivery
  - c. BMP C230: Straw Bale Barrier
  - d. BMP C233: Silt Fence
  - e. BMP C235: Straw Wattles
10. All construction materials shall be removed from the work site and natural material will be returned to their original position at the end of construction.
11. Petroleum products will not be transferred on or near the joint-use dock. Fuel and lubricating oil will be purchased and transferred at licensed fuel stations.
12. A private navigation buoy will be installed to mark the location of rocks that are seaward of the proposed float.
13. Boat operators will use the clear channel along the southern approach to the proposed dock to prevent collision with submerged rocks and avoid impacts to the False Bay Preserve.
14. The float and ramp will be removed from the site on or near November 1 and reinstalled on or near May 1.
15. The BMPs in the Orca Dreams Spill Containment, Prevention and Control Plan (Appendix D of the BA) will be strictly followed.
16. The project shall comply with all applicable provisions of the Unified Development Code, Title 18 San Juan County Code.

This determination is issued pursuant to WAC 197-11-350. San Juan County will not act on this proposal for 14 days from the date of publication. Comments must be submitted in writing to the Department of Community Development no later than October 18, 2017. Appeals must be submitted in writing to the Department of Community Development no later than November 8, 2017.

**Responsible Official:** Erika Shook, Director  
Department of Community Development  
(360) 378 2354



By Julie Thompson  
Planner III

**Date:** October 4, 2017

**Permit #**

PSJ000-17-0003

# ATTACHMENT B



# FRIDAY HARBOR LABS

UNIVERSITY of WASHINGTON

College of the Environment

**Professor Billie J. Swalla**  
Director of FHL

Wednesday, September 20, 2017

S.J.C. DEPARTMENT OF

SEP 20 2017

COMMUNITY DEVELOPMENT

Attn: Julie Thompson  
San Juan County Community Development and Planning  
Friday Harbor, WA 98250

Re: Orca Dreams Dock and Desalinization System Permit# PSJ000-17-0005

Dear Julie,

We are writing concerning the requested permit by Orca Dreams LLC for construction of a large, four slip community dock and a reverse osmosis desalinization system to provide potable water for six single-family residences.

As you are aware, the University of Washington owns the nearby property known as False Bay (TPN 353312001000), and maintains it as a marine reserve for studies of sedimentation, marine invertebrates, fish and other scientific disciplines. False Bay has been the site of UW Friday Harbor Laboratories (FHL) Faculty, undergraduate and graduate student studies since the inception of FHL - from the 1904 Station Diary, the students visited "Kanaka Bay" - "MUD - Acres of it!" - which was present day False Bay.

FHL studies leading to PhDs in False Bay date back at least to Mario Pamatmat (PhD UW 1966) and continue with current studies being conducted by faculty, undergraduate students and graduate students. We have all of these studies documented in our library and with student papers and are very concerned that the marine reserve will be compromised by boat traffic, which brings oil and gas, noise, and increased human impacts to any area. We do understand the desire to have a boat in the San Juan Islands, but there are at least two marinas that have slips available within 15 minutes of the Orca Dreams LLC.

The proposed dock, which would be on the northwest tip of Orca Dreams LLC's property, would be just south of the entry to the tidal lands in False Bay, located in an East-West fashion, which is known to disturb juvenile Chinook salmon, the preferred prey of the Salish Sea resident Orca Pod. False Bay serves as an important biological preserve, and is used for a variety of research projects in connection with the University's Friday Harbor Labs. Given the importance of these tidal lands, the University is extremely concerned with the potential adverse environmental impacts resulting from the addition of a large dock and desalinization plant.

Marine reserves contribute to the health of the marine environment because they provide a place for marine animals to feed, live and, most importantly, lay eggs for the next generation. Any toxins released from the dock and boat traffic will surely be swept into the shallow waters of False Bay. To suggest that these toxins would not harm the invertebrate and fish eggs and embryos in False Bay is simply not true.

An Environmental Impact Statement (EIS) is required to analyze the following potential adverse environmental impacts of a dock and also a desalinization plant, which is sure to add super saline water to this pristine environment:

- **Displacement of Public Property:** The cove and pocket beach where the dock is to be located will extend out state-owned tidelands and waters, at the very end of a bay that has been studied and preserved for over 40 years.
- **Displacement of Sea Grass Habitat:** The dock, boats, and people will displace sea grass habitat used by fish, birds, and invertebrates and increase disturbance at the mouth of False Bay.
- **Displacement of Existing Recreational Use:** False Bay is a favorite kayaking spot for many San Juan Island residents. It is one of the few undeveloped shorelines on San Juan Island that is accessible to the public. A large dock with boat traffic would mar the quiet and natural beauty of False Bay and negatively affect the aesthetics.
- **Disturbance of Ongoing Research:** University of Washington has multiple scientists who are conducting research in False Bay and use the bay as a valuable field site for Friday Harbor Laboratories marine courses and field trips. The disturbance created by increased boat traffic will mar the False Bay marine reserve, affecting ongoing experiments. Gas and oil are killers of embryos and larvae, which are abundant in the spring and summer months in False Bay.
- **Negative Impact on Resident Orcas:** The West Side of San Juan Island is a critical feeding ground for the three resident Orca pods. The increased boat traffic and degraded environment is likely to negatively affect the Orcas and their salmon food source. Orcas have been shown to be negatively effected by noise, and baby whales are more sensitive to sound than the adults.
- **Impact on Pocket Beach:** Research has shown that pocket beaches are the most critical habitat to preserve for juvenile chinook salmon and other fishes, including herring and rockfish. This large dock will negatively affect the ability of fish to use the pocket beach for food foraging, and the gas and oil from boat traffic will kill their eggs and embryos, preventing new generations of fish.
- **Impact on Marine Birds:** The cove is a refuge for marine birds, including harlequin, goldeneye, bufflehead, merganser, black turnstone, black

oystercatcher, grebe, loon, and cormorant. Boat traffic will disrupt this critical refuge for marine birds with noise and disturbance of birds landed to eat and rest.

- Sea Grass and Algae will be negatively impacted: Recent sea grass surveys done by FHL researchers and others later in the season has shown eelgrass at the mouth of False Bay, which at times extends into the pocket bay. This is critical for stabilization of the sand in False Bay.

In addition, Friday Harbor Labs has the following concern about the project:

- This dock will be the only one on the West Side of San Juan Island: There are currently no docks from Cape San Juan to Mitchell Bay, making the west side a refuge for whales, fish, birds, shellfish, crabs and invertebrates who make their home near and in False Bay.
- This dock is unlikely to last in this Location: The dock will be exposed to the high winds and high waves from the Strait of Juan de Fuca and Haro Strait and is likely to be eventually destroyed by winter storms. This would lead to oil spills and debris damage in False Bay, from the boats, the dock and the floats.
- The Port of Friday Harbor Marina and Jensen's Marina are close: The owners justify the dock by stating that there are no slips at the Port of Friday Harbor. However, the Port has openings every winter. The San Juan Island marinas are a much safer and sheltered way to care for boats, reducing the damage that they may cause in high storms.

We sincerely hope that you reconsider the issuance of this permit. Many of the FHL scientists have written their own letters, magnifying their concerns where they have scientific expertise. In addition to the potential adverse environmental impacts there are a multitude of other reasons to deny this application or significantly mitigate the environmental impacts associated with the project as noted in our letter. My contact information is below; please do not hesitate to contact me if you would like to discuss any of our comments.

Sincerely,



Billie J. Swalla  
Director, Friday Harbor Laboratories  
Professor of Biology  
University of Washington  
Phone: 206-616-0764  
Email: [bjswalla@uw.edu](mailto:bjswalla@uw.edu)

**Cc: Associate Dean Stephanie Harrington, UW College of the Environment  
Megan Dethier, FHL Associate Director for Academics and the Environment,  
FHL  
Jeanette Henderson, Executive Director, UW Real Estate  
Julie Blakeslee, Environmental and Land Use Planner, UW Real Estate**

# ATTACHMENT C



**UNIVERSITY of WASHINGTON**  
CAPITAL PLANNING & DEVELOPMENT

September 19, 2017

Julie Thompson  
San Juan County Community Development and Planning  
PO Box 947  
Friday Harbor, WA 98250

S.J.C. DEPARTMENT OF  
SEP 20 2017  
COMMUNITY DEVELOPMENT

cc: Erika Shook, Director

Re: Orca Dreams 4-Slip Dock, Navigational Buoy and Desalination System #PSJ000-17-0003

Dear Julie,

This letter is to urge San Juan County to issue a Determination of Significance and require the preparation of an Environmental Impact Statement (EIS) for the proposed actions related to Orca Dream LLC's proposed dock, navigational buoy, desalination system and related construction and operations at False Bay (Proposal). The University of Washington believes that the Proposal is likely to have a probable significant adverse environmental impact, even with mitigation measures, and an EIS is required.

False Bay has been owned by the University for many years and has been the site of research conducted since at least 1904. False Bay is a state designated Marine Preserve, part of the San Juan Island Marine Preserve Area set forth in Washington Administrative Code 220-16-440.

False Bay is part of the University's system of biological preserves, which includes Friday Harbor Laboratories and Argyle Lagoon on San Juan Island, and Cedar Rock and Ellis Preserves which are terrestrial properties with waterfront on Shaw Island. The research and graduate, undergraduate, K-12 and community education that takes place at Friday Harbor Laboratories is nationally recognized and is a significant economic force in the San Juan Islands. False Bay is an integral part of the resource base for this research and teaching, and has on-going scientific experiments as described in Dr. Swalla's September 19, 2017 letter to San Juan County. Dr. Swalla points to the potential adverse environmental impacts that should be analyzed in an EIS, in summary here:

- displacement of sea grass habitat
- disturbance of ongoing research
- negative impact on resident Orcas
- impact on Pocket Beach
- impact on marine birds
- impact on sea grass and algae
  
- impact on Pinto abalone

Box 352205 University Facilities Building Seattle, WA 98195-2205  
206.543.5200 fax 206.543.1277 <http://pm.uw.edu/cpd/>

P001869-092517-000315

- impact of desalination system on biological resources and water quality

The University is very concerned with the issuance of a Mitigated Determination of Non-Significance. An EIS is required whenever there is the potential for an adverse environmental impact. The letter from the University's Friday Harbor Laboratories and those letters submitted by others clearly demonstrate that additional analysis is required for the application. The SEPA Guidelines state (WAC 197-11-400) that the primary purpose of an EIS is to ensure that SEPA's policies are an integral part of the actions of state and local government. An EIS provides an impartial discussion of significant environmental impacts and informs decision makers and the public of reasonable alternatives, including mitigation measures that would avoid or minimize adverse environmental impacts or enhance environmental quality (and determine if the Proposal and proposed mitigation would result in an environmental impact). The process enables government agencies and interested citizens to review and comment on proposed projects. The SEPA Guidelines further state that the EIS is more than a disclosure document; it should be used by agency officials in conjunction with other relevant materials and considerations to make decisions.

There are additional potential impacts that I would add to the list that should be analyzed in an EIS. The SEPA Checklist acknowledges that both threatened and endangered species are known to be on or within the vicinity of the project and the marine water fronting the project is a migratory route for Southern Resident killer whale and salmon. The impacts to these threatened and endangered species triggers the need for an EIS. There is little analysis of the impact of the continued existence and use of the facility and no analysis of the proposed desalination system (operations) in this highly sensitive location.

Ecology's direction to local jurisdictions, in light of the citizen referendum creating the Shoreline Management Act, was to provide protections for shoreline natural resources including the land, vegetation and wildlife, and the water of the state and their aquatic life and to ensure no net loss of ecological function. The SEPA Checklist does not adequately assess this loss.

Studies and research that have taken place in False Bay has been of value to the entire state, region and beyond. Impacts will occur from not only dock and desalination system installation, but also from annual removal and reinstallation of the dock and the operations of water craft and the desalination system. The impacts to False Bay will be significant and that will not only impact the immediate area but the critical research that has occurred over the last 100 years. It is also important to note that biological preserves like False Bay are extremely rare and difficult to establish. A primary benefit of False Bay research is that it has occurred over along period of time and has not been subject to spills or other impacts.

Your original MDNS, dated 9/6/17, gave a comment due date of 10/7/17. Yesterday on 9/18/17 you sent a Corrected MDNS that is still dated 9/6/17 but changed the comment due date to 9/20/17. We believe this does not give adequate notice.

Thank you for consideration of our comments on the SEPA determination.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Blakeslee", with a long horizontal flourish extending to the right.

**Julie Blakeslee**  
Environmental and Land use Compliance Officer  
Capital Planning & Development  
University of Washington  
Phone: 206-543-2425  
Email: [jblakesl@uw.edu](mailto:jblakesl@uw.edu)

**Cc: Regulatory Branch, US Army Corps of Engineers  
Federal Permit Coordinator, Washington Department of Ecology  
Doug Thompson, Washington State Department of Fish and Wildlife  
Gabriel Harder, Aquatic Lands Manager, Washington State Department of Natural Resources  
Dr. Billie Swalla, UW Friday Harbor Laboratories  
Jeanette Henderson, UW Real Estate**

**ATTACHMENT D**

## Julie Thompson

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**From:** staude@u.washington.edu  
**Sent:** Tuesday, September 19, 2017 9:16 PM  
**To:** Julie Thompson  
**Subject:** Comment on Orca Dreams dock and desal application - Craig Staude

Hello Julie,

I came by the Planning Office to deliver my comment letter today at about quarter of 5 and discovered it closed at 3:30. I'm catching an early ferry tomorrow morning so I hope you can accept this digital form of my comments (copied below) on the Orca Dreams dock and desal applications.

Thanks,  
Craig Staude

\*\*\*

19 September 2017

To: Julie Thompson, San Juan County Planning Department  
Re: Orca Dreams Dock and Desalination Applications

S.J.C. DEPARTMENT OF  
SEP 20 2017  
COMMUNITY DEVELOPMENT

I wish to restate my concern about a proposed dock at Orca Dreams due to its proximity to the University of Washington False Bay Marine Research Preserve on San Juan Island. My previous letter regarding the original dock proposal should be on file from June 2015.

The value of False Bay and its headlands for marine research has been recognized for more than 50 years. In the mid 1960s professors encouraged the UW Administration to purchase the False Bay tidelands to protect it against development, and in 1974 the University obtained ownership. Through the intervening years, this site has been a major study area for classes and independent investigators from the UW Friday Harbor Laboratories. This work has added significantly to our understanding of the biology, ecology, and physiology of marine organisms (e.g., mollusks, crustaceans, polychaetes, seagrass, and microorganisms). I personally have served as a Teaching Assistant for field trips to this rich habitat. In the 1970's and 80's we routinely received permission to park and walk down to the University tidelands through this property, which was then called "Mar Vista Resort" and owned by Mrs. Lee Bave.

The dock that was previously proposed in 2015 was sited immediately adjacent to tidelands owned by the University of Washington. It is not clear to me whether the present proposal has relocated the dock farther east of those UW-owned tidelands. In any case, this project remains very close to those tidelands. I feel strongly that the boundary of the adjacent UW-owned tidelands should be clearly mentioned in the text of the application and be noted on the accompanying charts and drawings. [I can only find the briefest mention in SEPA Checklist 3.a.1 that the project is "outside the False Bay Biological Preserve, and there seems to be no mention of the close proximity of University-owned tidelands.]

I understand that the size of the dock & float is somewhat smaller than the originally proposed (2015) dock, and includes the plan to remove the float and associated boats from November to May to protect the waters of Snug Harbor. This addresses some of my previous concerns, but it does not dismiss them altogether. There will still be the occasional mishap, as occurs around boats, where fuel, paint or solvents will be spilled, bilges will be pumped, and flotsam will be generated. It is also very likely that a boat maneuvering onto the dock will misjudge the turn and drift or be blown on to the shore, possibly over the tideland owned by the University.

I find it hard to believe the statement (SEPA checklist Conservation Measure 10) that "petroleum products will not be transferred on or near the joint use dock." Considering the distance to the nearest fuel dock, there will most certainly be violations to this rule. When boaters misjudge their reserve of fuel they will be forced to replenish their fuel from the dock. SEPA Checklist 3.a.6 acknowledges this "potential for accidental fuel leaks." It further assures that "heads will be pumped... at approved pumpout facilities" but in reality it's a long way to the nearest pumping station.

Regarding the additional application for a desalination plant:

Checklist 3.a.6 states that 9,072 gallons per day of brine will be discharged through a diffuser mounted above the bottom about 56-ft seaward at the -5 tidal elevation. If not properly diluted, this brine can be toxic to marine organisms. Because of its greater density, poorly-mixed brine can pool over depressions and penetrate the sediment, killing sensitive benthic animals.

Permit Drawing Page 6 does not give much information regarding the exact position and mixing pattern of the diffuser. If the scale of the drawing is reliable, it appears that on a -3 ft tide the diffuser may be exposed, and brine would be discharged into extremely shallow water. This would seem insufficient to dilute the brine under low slack conditions. While the Biological Assessment (BA) on page 35 gives assurance that the brine will be thoroughly mixed within 2 to 3 feet of the diffuser, it does not address the condition of very low tides. I would like to see evidence that the brine will be properly dispersed during those periods of low tide. The BA further states that the "sea floor is consistently slopes away from the shoreline" but the aerial photo (Figure 2, page 7) indicates a rocky rise beyond the dock.

The Biological Assessment on page 35 specifies that no chemicals other than brine will be used to clean the desalination system. I question whether this will be adequate to prevent the growth of fouling organisms in the supply/discharge pipes, intake screen, and diffuser. How will fouling organisms be removed should they develop in the system?

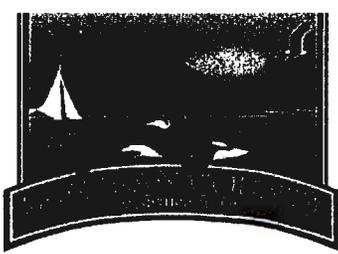
I hope these various points will be considered by the reviewers and evaluated for possible significance before the Orca Dreams dock and desalination applications can be approved.

Craig P. Staude, Ph.D.  
1273 Three Meadows Lane  
Friday Harbor, WA 98250

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On Fri, 8 Sep 2017, Julie Thompson wrote:

>  
> All,  
>  
> Below are links to the recently submitted Orca Dreams dock and desal  
> applications. You are welcome to come look at the file whenever you  
> would like, but almost everything is in these two links. The SEPA  
> comment period ends Sept. 20; the SEPA appeal period ends October 11. The hearing is scheduled December  
> 27. Project comments are accepted up to the hearing itself, but I would appreciate them earlier so they can be included  
> with the staff report to the hearing examiner.  
>  
> Please feel free to contact me if you have further questions. These  
> links are on the Community Development webpage under "Current Planning Projects".  
>  
> Julie



San Juan County

# Building Permit, Planning & Land Use

135 Rhone Street P.O. Box 947 Friday Harbor, WA 98250  
(360) 378-2354 (360) 378-2116 Fax (360) 378-3922  
www.sanjuanco.com

## Permit Receipt RECEIPT NUMBER 00014511

Account number: 000459

Date: 10/11/2017

**Applicant:**

620 UNIVERSITY RD  
FRIDAY HARBOR LABS  
FRIDAY HARBOR, WA 98250

Type: check # A617068

<u>Permit Number</u>	<u>Fee Description</u>	<u>Amount</u>
PAPL00-17-0010	APPEAL FILING FEE	600.00
	Total:	\$600.00

**Receipt Description:**

**Receipt Comments:**

APPEAL OF THE SEPA THRESHOLD DETERMINATION:REVISED MDNS FOR psj000-17-0003

