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BEFORE THE HEARING EXAMINER
IN AND FOR SAN JUAN COUNTY

KIMBAL SUNDBERG and DEBRA CLAUSEN,
husband and wife; GRETCHEN ALLISON;
JAMES UHLIR and CAMILLE UHLIR,
husband and wife; MARTHA SCOTT;
CATHERINE DREW HARVELL and CHARLES
GREENE, husband and wife; MICHAEL
PRENTISS; and NANCY MORGAN and
CHRIS MORGAN, husband and wife,

Appellants,

vs.

SAN JUAN COUNTY, a political subdivision
and charter county of the State of
Washington,

Respondent.

NO.

NOTICE OF APPEAL
OF MITIGATED SEPA DETERMINATION
OF NON-SIGNIFICANCE

Permit No. PSJ000-17-0003

SAN JUAN COUNTY DEPARTMENT OF
COMMUNITY DEVELOPMENT
365 E SPRING ST., PO BOX 1568
FRIDAY H. WA 98720

The Appellants identified below appeal San Juan County's Mitigated Determination of Non-Significance ("MDNS") issued by San Juan County ("Respondent" or "the County") September 6, 2017 and re-issued on October 4, 2017 with respect to Permit No. PSJ000-17-0003, pursuant to the Washington State Environmental Policy Act, RCW Ch. 43.21C, WAC 197-11-680, and SJCC 18.80.140. That MDNS became final on October 18, 2017. Appellants ask the

ORIGINAL

1 Hearing Examiner to overturn Respondent's MDNS for the numerous reasons summarized
2 below because the Applicant, Orca Dreams, LLC, failed to provide Respondent with sufficient
3 information to determine that there would be no probable significant adverse environmental
4 impacts from the subject dock proposal, and because there likely will be significant adverse
5 environmental impacts, even with the mitigation required, that must be addressed.
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7

8 Pursuant to SJCC 18.80.140 D.5, Appellants provide the following information:
9

10 **A. Identification of Appellants.**
11

12 Appellants, each owners of properties in the vicinity of the Applicant's property provide
13 their below names, addresses, and telephone numbers, as required by SJCC 18.80.140.D.5.
14

15 However, each Appellant is represented by GODDU LANGLIE LORING SANDSTROM, PLLC and
16 asks to be contacted through counsel until further notice at:
17

18 Kathryn C. Loring
19 GODDU LANGLIE LORING SANDSTROM, PLLC
20 PO Box 668, Friday Harbor, WA 98250
21 360-378-2191
22 kloring@sjilaw.com
23

24 **1. Kimbal Sundberg and Debra Clausen, husband and wife.**

25 1853 False Bay Drive, Friday Harbor, WA 98250
26 360-378-9588

27 *Kimbal Sundberg submitted written comment on September 20, 2017 (and
28 attached thereto prior comment letters).

29 *Commented through counsel Kathryn C. Loring on September 20, 2017.
30

31 **2. Gretchen Allison**

32 588 Mountain Shadow Lane, Friday Harbor, WA 98250
360-378-5733

1 *Submitted written comment on September 17, 2017.

2 *Commented through counsel Kathryn C. Loring on September 20, 2017.

3
4 *Ms. Allison recreates in the False Bay area and near the Applicant's property,
5 including by kayak and will be directly impacted by both aesthetic impacts of the
6 proposed dock and the likely impacts on wildlife.

7
8 **3. James Uhlir and Camille Uhlir, husband and wife**

Mailing address: 913 Harvard Avenue E., Seattle, WA 98102

9 Property Address: 269& 300 Two Barn Farm Lane, Friday Harbor WA 98250
10 360-378-5689

11 *Submitted written comment on September 20, 2017 (dated September 18, 2017)

12
13 *Commented through counsel Kathryn C. Loring on September 20, 2017.

14
15 **4. Martha Scott**

Mailing address: PO Box 1474, Friday Harbor, WA 98250

16 Property address: 264 Mountain Shadow Lane, Friday Harbor, WA 98250
17 360-378-1303

18
19 *Submitted written comment September 20, 2017 (dated September 18, 2017)

20 *Commented through counsel Kathryn C. Loring on September 20, 2017.

21
22 *Property views the applicant's property and the potential dock across False Bay.

23
24 **5. Catherine Drew Harvell and Chuck Greene, husband and wife**

Mailing address: 620 University Rd., Friday Harbor, WA 98250

25 Property address: 42 Frog Song Trail, Friday Harbor, WA 98250
26 607-254-4274

27
28 *Drew Harvell submitted written comment on September 10, 2017 (with the False
29 Bay Sea Grass Eelgrass Report that she co-authored) and supplemental materials
30 including a transect map for their eelgrass survey on September 20, 2017.

31 *Chuck Greene submitted written comment on September 4, 2017 (dated August
32 30, 2017)

*Commented through counsel Kathryn C. Loring on September 20, 2017.

1 **6. Michael Prentiss.**

2 Mailing address: PO Box 7046, Dallas, TX 75209.
3 Property address: 1691 False Bay Dr., Friday Harbor, WA.

4
5 *Submitted written comment on September 18, 2017.

6 *Commented through counsel Kathryn C. Loring on September 20, 2017.

7
8 *Mr. Prentiss' property is directly adjacent to the Applicant's property and his
9 beach also is directly adjacent and will be directly affected.

10 **7. Chris Morgan and Nancy Morgan, husband and wife.**

11 Property Address: 287 Mountain Shadows Lane, Friday Harbor, WA 98250.

12 *Submitted written comments on September 5, 2017 (Nancy Morgan)

13 *Submitted written comments on September 6, 2017 (Chris Morgan)

14 *Commented through counsel Kathryn C. Loring on September 20, 2017.

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19 **B. Appellants' Standing to Appeal.**

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21 Pursuant to SJCC 18.80.140.C.3, each Appellant has standing to appeal the SEPA
22
23 determination to the Hearing Examiner because they each have submitted written comments
24 to the San Juan County Department of Community Development, including through counsel.

25 In addition, pursuant to SJCC 18.80.140.C.4, Appellants are each an "aggrieved person"
26
27 with standing to appeal the SEPA MDNS because each Appellant owns real property near the
28 property that is the subject of the pending dock application, has direct views from their
29 properties and/or adjacent public areas of the subject dock proposal, and recreates in the
30 nearby area. Each of these Appellants will be injured if the environmental impacts associated
31
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1 with the dock application are not fully analyzed and avoided or mitigated, and if the dock
2 application is approved, as each will have their views of the water and shoreline impacted by
3 the presence of the dock, will be impacted by any lighting at the dock, and will be directly
4 damaged by environmental impacts to False Bay water quality including oil pollution from
5 construction and operation of the dock.
6
7

8
9 In addition, each of the Appellants owns property in the vicinity of the Applicant's
10 property. Most of the Appellants have views of the Applicant's numerous built structures on
11 the property and/or the proposed dock. The Appellants further have views of the abundant
12 and diverse wildlife in and around False Bay. Most Appellants own shoreline property which
13 would be damaged by any oil spills, pollution, or debris released by accidents at the proposed
14 dock. The Appellants purchased their property with full knowledge that False Bay is a protected
15 marine area, and support the protection afforded this area by the University of Washington and
16 the Washington Department of Fish and Wildlife. The proposed dock will impact the Appellant's
17 enjoyment of their views of the shoreline as well as their use and enjoyment of the natural
18 setting and viewing of wildlife. Moreover, the proposed dock threatens the Appellant's sense
19 of special protection afforded to the marine environment of False Bay.
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27 **C. Identification of Decision that is the Subject of Appeal.**

28 Respondent's September 6, 2017 Mitigated Determination of Non-Significance with
29 respect to Permit No. PSJ000-17-0003 and the property at 57 Island Marble Ln., which was
30 revised on October 4, 2017 and became final on October 18, 2017, at which time the 21-day
31 appeal period began. A true and correct copy of that decision is attached hereto as Exhibit A.
32

1 **D. Summary of Facts.**

2 **1. History of the Subject Project.**

3
4 The Applicant's property has a complicated permit history, including prior boundary line
5
6 modifications, an application for a long plat that was previously withdrawn, an application for
7
8 a "joint use" dock that was previously withdrawn, and an application for "multi-family"
9
10 residential development (without subdividing the property) that was previously withdrawn.
11
12 The application that is the subject of this appeal is the application for a shoreline substantial
13
14 development permit for a four-slip dock and a desalination system, not associated with any plat
15
16 or subdivision. While many aspects of the proposed dock appear to have remained the same,
17
18 the length of the proposed dock has actually *increased* from the last proposal, and is now
19
20 proposed to be 260 feet long, rather than 240 feet long. May 2017 Project Description at 3.

21 **2. Prior SEPA Determination.**

22 On September 23, 2015, DCD issued a MDNS for the Applicants' prior application for a
23
24 dock, PSJ000-14-0008. However, DCD subsequently withdrew that MDNS on October 28, 2015,
25
26 "based on numerous public comments that raise issues of probable significant environmental
27
28 impacts." DCD's October 30, 2015 letter summarizing the basis for withdrawing its MDNS is
29
30 attached here as **Exhibit B**. Based on the comments received, including those specifically
31
32 mentioned, DCD specifically required the Applicant to undertake the following additional
analysis related to the proposed dock:

- Identify impacts to eelgrass and propose mitigation measures. (**Exhibit B** at 2, first paragraph).

- 1 • Analyze impacts to priority habitat for pinto abalone, and document that the project
2 will result in no net loss of ecological functions. (Exhibit B at 2, second paragraph).
- 3 • Obtain a survey showing the lateral boundaries of the second-class tidelands in order
4 to document that no portion of the proposed dock will be located on University of
5 Washington land. (Exhibit B at 2, third paragraph).
- 6 • Analyze the *long-term impacts* associated with increased boat traffic in this area
7 (including impacts to eelgrass, kelp and other large plants, to the pocket beach, and to
8 the marine reserve). (Exhibit B at 2, sixth paragraph).
- 9 • Conduct a study of dispersal patterns into False Bay should an accidental petroleum spill
10 occur. (Exhibit B at 2, sixth paragraph).
- 11 • Analyze how the dock and boats tied to it would be protected from storm events during
12 the months in which the dock is left in how the water. (Exhibit B at 2, seventh
13 paragraph).

14 3. Summary of New Application and May 2017 SEPA Checklist.

15 The subject application includes a 260-foot, four-slip dock, described as a "joint-use
16 community dock," despite the fact that it is intended to serve undivided properties in common
17 ownership (following withdrawal of the previous division proposals). No explanation is provided
18 as to why a 260-foot dock is needed, as opposed to the previously proposed 240-foot dock
19 (which was to provide six rather than four slips). The applicant increased the size of boats to be
20 moored from 30' to 35' long.
21
22

23 The SEPA Checklist states that the dock will be sited where remnants of an old Mar Vista
24 dock are located. 2017 SEPA Checklist at 3. While the materials state that the boundary lines
25 have been "updated," it is not clear that a new survey has been commissioned to confirm the
26 lateral boundaries of any second-class tidelands owned by the Applicant as required by DCD in
27 its October 30, 2015 letter. See Exhibit B at 2.
28
29

30 Further, the proposed dock location and/or orientation appears to have changed since
31 the last application, and possibly even during the application process. The application materials
32

1 do not clearly address the apparent change in orientation and/or location of the proposed dock.
2
3 Indeed, at page 8 of Appendix C to the 2017 Biological Assessment, there are two figures on the
4 same page that show the proposed dock in two different orientations. This is especially
5 important and potentially misleading, as the Applicant is relying on a preliminary eelgrass
6 survey from August 2014, at which time it appears that the proposed dock was to be in a
7 different location and potentially with a different orientation. A complete analysis requires
8 clarity on the location and orientation of the dock with respect to all data relied upon.
9
10

11 The SEPA Checklist states that float will be removed and stored at Snug Harbor Resort
12 from November through April. 2017 SEPA Checklist at 3-4. The checklist likewise states that the
13 seaward end of the dock ramp will be lifted out of the water and secured to two landward float
14 supports. *Id.* But no analysis is provided as to how the dock and boats tied thereto will be
15 protected from storms while the dock remains in the water, which was specifically required by
16 DCD in its October 30, 2015 letter. See Exhibit B at 2.
17
18

19 Much detail is provided in the SEPA Checklist and the Biological Assessment regarding
20 grading of various components of the dock; however, no mention is made of the opaque, foam-
21 filled float tubs, moored boats, and dock framing that have no light transmission.
22
23

24 The Applicants also seek to construct a reverse osmosis seawater desalination system
25 (RO) to “augment” drinking water for six single-family residences. 2017 SEPA Checklist at 9. The
26 proposed RO is intended to “augment” the water supply from an existing well, ID # BBM 060.
27 However, it is policy of the SJC DHCS to have plans for reverse osmosis seawater desalination
28 reviewed by the Washington State Department of Health. It is our understanding that the plans
29 have not yet been submitted to the Washington State Department of Health because they are
30 not sufficient for such review.
31
32

1 The SEPA Checklist states that 12,068 gallons of seawater will be drawn from Haro Strait
2 each day, and 9,072 gallons of "brine" will be discharged back into Haro Strait, via a pipeline
3 attached to the underside of the dock fixed pier (if the dock is permitted) or to a support piling,
4 and then taken under water and attached to the seafloor. 2017 SEPA Checklist at 9. No
5 information is provided as to how the locations/distances for the intake and discharge were
6 determined or whether anchoring to the seafloor and discharging brine at that depth and in the
7 chosen location will have any specific impacts.

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11 Much detail is provided in the SEPA Checklist and other materials regarding efforts to
12 address and minimize potential environmental impacts *during the construction phases* of the
13 dock and DO, including "proposed conservation measures for dock construction" and
14 "conservations measures". 2017 SEPA Checklist at 7-9, 13-14. The only specific reference to
15 conservation or environmental impact *after construction*, and therefore for the remainder of
16 the dock and DO's usable life, appears to be contained in the following conclusory statements
17 offered as "conservation measures" at pages 13-14 of the SEPA Checklist:

- 20 1. "A qualified diver will mark the margins of the eelgrass beds to ensure that the dock
21 is positioned with a minimum 25-foot buffer from the eelgrass beds."
22 ...
- 23 7. "Eelgrass and macroalgae will not be adversely impacted due to any project
24 activities"..."
25 ...
- 26 10. "Petroleum products will not be transferred on or near the joint-use dock..."
27 ...
- 28 12. "Boat operators will use the 'clear channel' along the southern approach to access
29 the proposed dock to prevent collision with submerged rocks and avoid impacts to the
30 False Bay Reserve."
31

32 2017 SEPA Checklist at 13-15.

1 Then, at page 21 of the 2017 SEPA Checklist, the Applicants offer specific conservation
2
3 measures as to eelgrass and macro algae, such as locating the dock and DO at least 25 feet from
4 marked eelgrass beds and not “directing” prop wash to existing eelgrass beds, and conclude
5 without analysis that “eelgrass ad macroalgae *will not be* adversely impacted due to any project
6 activities.” The February 24, 2017 Biological Assessment contains similar conclusions with very
7 little data, specifics, or analysis.
8

9 **E. Grounds for Appeal.**
10

11 The proposed location for the subject dock and desalination system is within an area of
12 ecological importance for numerous, independent reasons summarized below. SEPA requires
13 “local government agencies, including counties, to consider total environmental and ecological
14 factors to the fullest extent when taking ‘major actions significantly affecting the quality of the
15 environment.’” *Sisley v. San Juan County*, 89 Wn.2d 78, 82, 569 P.2d 712 (1977) (citing SEPA,
16 RCW 43.21C.030(2)(c)). The SEPA review must include the proposal’s direct, indirect and
17 cumulative impacts, as well as short and long-term impacts. WAC 197-11-060(4) (c), (d),(e). To
18 make a threshold determination that a proposal will not significantly affect the quality of the
19 environment, the County must consider all environmental factors even if it ultimately concludes
20 that the action does not require an EIS. *Sisley*, 89 Wn.2d at 83.
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27 The application materials and SEPA checklist provided here by the Applicants have not
28 provided reasonably sufficient information necessary to evaluate the environmental impact of
29 the proposed project to this ecologically rich area. Therefore, under SJCC 18.80.050.G.2.a and
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1 WAC 197-11-335, additional information is necessary and no threshold determination should
2 be made until such information is available.
3

4 Further, given the extensive site-specific and scientific information that was provided by
5 many individuals who commented on the proposed project and the MDNS, there is sufficient
6 information for Respondent to find a reasonable likelihood that the project will have a probable
7 significant adverse impact on an element of the environment, requiring a determination of
8 significance (“DS”) and the preparation of an Environmental Impact Statement (“EIS”) under
9 SJCC 18.80.050.G.3 and WAC 197-11-330(4).
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14 **1. Analysis of Desalination and Discharge of Saline Brine.**

15 The Applicant’s 2017 Biological Assessment addresses effects of the RO desalination
16 system’s operation starting at page 34. The Assessment states that small organisms and larval
17 stages of marine organisms will likely be impacted at the intake screen of the intake pump
18 pumping 12, 068 gallons per day, and the significance of that impacts is “not known.” 2017
19 Biological Assessment at 34. Nonetheless, in the same paragraph, the Assessment concludes
20 without further analysis that the “significance of this impact is likely to be insignificant and
21 undetectable.” *Id.*
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27 No analysis is provided as to the location of the discharge of the brine, nor of the impact
28 of attaching the discharge pipeline to the seafloor. Further, the Biological Assessment provides
29 no data as to the estimated mixing of the brine discharge, nor specific analysis of mixing and at
30 what distance the outflow will reach ambient salinity levels. See 2017 Biological Assessment at
31 35. No data is provided as to currents in the location of the dock and surrounding area.
32

1 Yet, the Assessment concludes that the subject DO desalination system “will be in an
2 area of higher velocity currents” than the only two studies of desalination and mixing
3 referenced. *Id.* Notably, the Applicant is thereby asserting that the current velocity in the pocket
4 bay and surrounding area is higher than the velocity of current at the Cattle Point location
5 referenced in the 2009 Strathmann study. While that seems impossible to believe, because the
6 Applicant has not provided the data, it is not possible to analyze. The Assessment simply
7 concludes that the “brine return water will likely be diluted to ambient salinity levels within 2
8 to 3 feet from the discharge pipe.” *Id.* Similarly, while temperature is referenced, and increased
9 temperature of brine is noted, no specific data and analysis is provided in order to analyze
10 potential impacts on the surrounding environment. *Id.*

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17 The discharge of saline brine has a real potential to impact nearby eelgrass and macro
18 algae, particularly given the enclosed nature of the pocket bay, and the already high level of
19 eelgrass disease noted in this area. (See the False Bay Seagrass Report from the Summer of
20 2016 authored by Olivia Graham, Morgan Eisenlord, and Drew Harvell, which already has been
21 submitted attached to comments by Drew Harvell), PhD and owner of neighboring property).

22 **2. Impacts to Eelgrass and Macro Algae.**

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27 The Applicant states in the 2017 Biological Assessment (page 11) that three “dive
28 surveys” have been conducted to document marine vegetation. However, the first such survey
29 was in March 2014, outside of the time period recommended by WDFW for conducting eelgrass
30 surveys, and at a time when the dock was proposed to be located in a different location and/or
31 a different orientation (though the materials provided are unclear). Still, the Applicant

1 acknowledges that said survey located marine algae Ulva, Laminaria, and Fucus within the
2 location under the proposed dock. Eelgrass was located "approximately" 25 feet to the south.
3

4 A Preliminary Eelgrass Survey was conducted in August 2014, at which time a "dense"
5 band of Laminaria and Ulva were observed "in the area of the proposed dock." In addition, the
6 August 2014 preliminary survey narrative noted "patches" of eelgrass (zostera marina) to "the
7 south," but the survey did not document the boundaries of that patch and the location of the
8 dock was not overlaid.
9
10

11 While a video survey was conducted in January 2016, that was outside of the months
12 recommended for eelgrass surveys by WDFW because it is outside the prime growing period.
13

14 SJCC 18.35.115(B) designates "kelp and eelgrass" as fish and wildlife habitat
15 conservation critical area in San Juan County. SJCC 18.20.110 defines "kelp" as all brown algae
16 of the order Laminariales, generally consisting of a holdfast, a stipe and a float.
17

18 Despite the acknowledged existence of these San Juan County designated critical areas
19 within and immediately adjacent to the proposed location of the dock and despite the Applicant
20 acknowledging via its Biological Assessment that dock shading can adversely impact juvenile
21 salmon that frequent the pocket beach, the application materials and SEPA Checklist do not
22 adequately evaluate the likely impacts of shading by the dock or impacts of boats coming to
23 and from the dock. Indeed, at page 32 of the 2017 Biological Assessment, it states simply that
24 "impacts due to shading from the dock will be minimal."
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1 The Applicant over-simplifies this issue by relying on the grating of the dock components
2 while ignoring the opaque float tubs, moored boats, and framing that have no light
3 transmission.
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5 In addition, the Applicant fails to adequately address the likely impacts of scouring
6 caused by boating activity, particularly given the very shallow waters in this area and the rocks
7 near the dock location. The dive surveys provided are inadequate in process/format, detail and
8 scope and did not provide sufficient information necessary to evaluate the true impacts of the
9 dock and related boating activity. Further, the assertion that boats will only travel in one
10 designated "clear" channel is unlikely and impossible to enforce.
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15 The mooring of boats up to 35' guarantees that eelgrass and macroalgae beds more
16 than 25 feet from the dock will be impacted by prop wash and maneuvering because boats must
17 turn 180 degrees or more in a shallow area to approach and leave the dock.
18
19

20 The False Bay Seagrass Report from the Summer of 2016 authored by Olivia Graham,
21 Morgan Eisenlord, and Drew Harvell submitted by Drew Harvell with her comment letter, as
22 well as her supplemental map and comment show that there is a very real possibility of impact
23 to the eelgrass meadow immediately adjacent to the proposed dock. Given the sheltered
24 embayment in which the proposed dock and DO are to be located, and the high levels of
25 seagrass disease found in this same pocket bay, there is a high probability of impact on the
26 nearby eelgrass meadow and kelp beds.
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31 DCD should require further analysis, including a complete dive survey conducted
32 pursuant to Washington Department of Fish and Wildlife guidelines, and broad enough in scope

1 to include the entire project and its impacts, including boat traffic, not just the footprint of the
2 dock itself. Further, given the probable significant impacts, an EIS should be required.
3

4 **3. Impacts on the Pocket Beach, Forage Fish, and Migrating Salmon.**

5 The application materials and SEPA Checklist also did not adequately analyze the likely
6 impact of the proposed dock and increased boat traffic to forage fish and migrating salmon.
7

8 Significant scientific information has been provided that the dock will likely impact the
9 nearshore feeding habitat and refuge for juvenile salmon, including threatened species Chinook
10 salmon, provided by the pocket beach. The project site has been identified in the Salmon
11 Recovery Strategy for San Juan Island County (WRIA2) as High Priority Fish Use Region with
12 Medium Probability for supporting juvenile Chinook salmon. Research in the San Juan Islands
13 (Beamer & Fresh 2012) has identified pocket beaches, including the project location, as among
14 the most important shoreline habitats for juvenile Chinook salmon.
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20 The shading caused by the dock will likely impact migrating salmon because of delays
21 or disorientation and increased predation. In addition, the proposed dock is likely to cause
22 “sediment pumping” due to its proposed location in shallow water, negatively impacting marine
23 life. Likewise, the prop wash from the projected boat transits will further erode bottom
24 sediments. The Biological Assessment provided by the Applicant acknowledges the potential
25 for these impacts and wholly fails to analyze them with specificity, instead focusing on
26 construction activities and then concluding without analysis that the project is not likely to have
27 these adverse impacts or that impacts will be minimal.
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1 **4. Impacts to Southern Resident Killer Whales.**

2 The proposed dock lies within the core summer feeding critical habitat designated for
3
4 the Southern Resident Killer Whale (SRKW), a listed species under the Endangered Species Act.
5
6 The SRKW are an iconic wildlife feature of San Juan Island and a frequent visitor to the vicinity
7
8 of the proposed dock location. Boat motors and other sources of underwater noise caused by
9
10 the proposed dock, including new boat transits in their critical habitat may have adverse
11
12 impacts on SRKW, including changes in swimming speed, call duration, unpredictable travel
13
14 paths, alteration of dive times, movement to open water, and unusual surface pattern
15
16 behaviors. Because these behaviors affect SPKW feeding, a significant issue affecting their
17
18 recovery, these are significant impacts to the endangered SRKW and have not been adequately
19
20 addressed or mitigated. Indeed, solely the construction phase of the project has been
21
22 considered rather than the continued use and operation of the dock with the associated
23
24 increased boating activity noted (including whale-watching activity).

25 **5. Visual and Aesthetic Impacts.**

26 The application materials and SEPA Checklist did not adequately analyze the likely visual
27
28 and aesthetic. The dock would extend now 260 feet from the shoreline. The 2017 SEPA
29
30 Checklist at page 28 asserts that there will be “no lighting fixtures.” This assertion seems very
31
32 unlikely given the size of this dock and should be critically analyzed. The 2017 SEPA checklist
33
34 asserts that the dock will not interfere with views from neighboring properties given the relative
35
36 distances, yet that ignores that the dock itself will extend 260 into the water and towards
37
38 nearby properties.

1 Finally, the proposed dock is especially significant because it will mar a significant
2 natural shoreline along the west coast of San Juan Island that is presently unbroken by the
3 presence of a dock.
4

5 **6. Impacts to Navigation and Recreation.**

6
7 The application materials and SEPA checklist fail to address the impact of the proposed
8 dock on navigation and recreation in the area, which is a very popular area for kayaking,
9 boating, and beach walking.
10

11 **7. Potential Alternatives.**

12
13 Finally, and perhaps most importantly, the application and 2017 SEPA checklist fail to
14 sufficiently address alternatives to the proposed dock and fail to demonstrate a need to moor
15 four or more boats in this location. The application materials assert without any specific
16 explanation that four boats are needed at all times and would need to all be moored at the
17 same facility. Further, the information provided shows that there are some slips available given
18 the sizes needed. For example, moorage for the Applicant's four boats would be readily
19 available by applying to the nearby the Port of Friday Harbor.
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25 **F. Relief Sought.**

26 Appellants respectfully request the following relief:

- 27 1. An order reversing and withdrawing the MDNS issued on September 6, 2017, and
28 revised and re-issued on October 4, 2017; and
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1 2. An order issuing a Determination of Significance that requires preparation of an
2
3 Environmental Impact Statement to address the probable significant adverse
4 impact of the proposed dock, including but not limited to:

- 5
6 i. Adverse impacts to critical areas of eelgrass and macro algae;
7
8 ii. Adverse impacts to forage fish and migrating salmon;
9
10 iii. Adverse impacts to listed endangered species Southern Resident Killer
11 Whales;
12
13 iv. Adverse impacts to water quality in False Bay and Haro Strait;
14
15 v. Potential for oil spills and capacity to clean-up:
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17 vi. Adverse view and aesthetic impacts to neighboring properties; and
18
19 vii. Adverse impacts on recreation and navigation;
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21 or, in the alternative, at the very least,

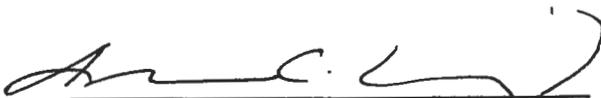
22 3. An order requiring additional information necessary to allow the Respondent to
23 fully analyze likely significant environmental impacts; and

24 4. An order requiring the reimbursement of Appellant's filing fee; and

25 5. Such other and further relief as the Hearing Examiner deems just and equitable.

26 Respectfully submitted this 8th day of November, 2017.

27
28
29 GODDU LANGLE LORING SANDSTROM PLLC

30
31 

32 KATHRYN C. LORING, WSBA #37662
Attorney for Appellants

G. Verification.

I am a named Appellant in the subject Notice of Appeal. I declare under penalty of perjury under the laws of the State of Washington that I have read the foregoing and believe the same to be true and correct to the best of my knowledge.

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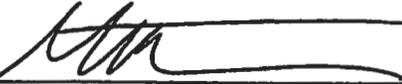
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Debra Clausen

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Gretchen Allison

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James Uhlir

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Camille Uhlir

 _____ Dated: Nov 6, 2017
Michael Prentiss

_____ Dated: _____
Martha Scott

_____ Dated: _____
Catherine Drew Harvell

_____ Dated: _____
Charles Greene

1 **G. Verification.**

2 I am a named Appellant in the subject Notice of Appeal. I declare under penalty of
3 perjury under the laws of the State of Washington that I have read the foregoing and believe
4 the same to be true and correct to the best of my knowledge.
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7 Kimbal Sundberg

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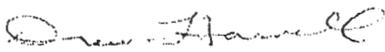
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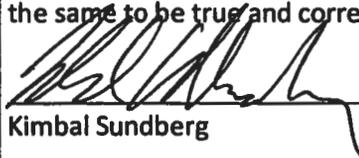
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Charles Greene

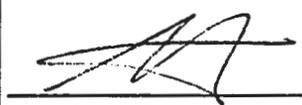
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G. Verification.

I am a named Appellant in the subject Notice of Appeal. I declare under penalty of perjury under the laws of the State of Washington that I have read the foregoing and believe the same to be true and correct to the best of my knowledge.


_____ Dated: 8 Nov 17
Kimbal Sundberg

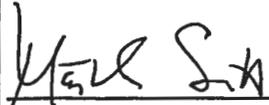

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Michael Prentiss


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Catherine Drew Harvell

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Charles Greene

1 **G. Verification.**

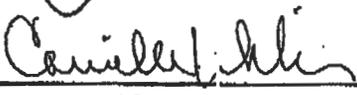
2 I am a named Appellant in the subject Notice of Appeal. I declare under penalty of
3 perjury under the laws of the State of Washington that I have read the foregoing and believe
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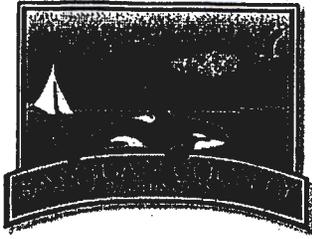
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Nancy Morgan Dated: 11/7/2017
Nancy Morgan

Chris Morgan Dated: NOV 7, 2017
Chris Morgan

EXHIBIT A



SAN JUAN COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT

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

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 bed 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.

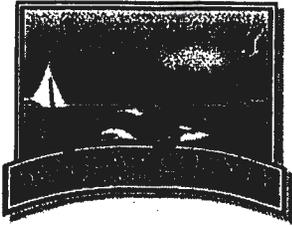
Responsible Official: Erika Shook, Director
Department of Community Development
(360) 378 2354

By Julie Thompson
Planner III

Date: October 4, 2017

Permit # PSJ000-17-0003

EXHIBIT B



SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

135 Rhone Street, PO Box 947, Friday Harbor, WA 98250

(360) 378-2354 | (360) 378-2116

dcd@sanjuanco.com | www.sanjuanco.com

Law Office of Stephanie Johnson O'Day
c/o Stephanie Johnson O'Day
Francine Shaw
PO Box 2112
Friday Harbor, WA 98250

October 30, 2015

Re: Orca Dreams Dock MDNS withdrawal

Stephanie and Francine,

On October 28, 2015, the Department of Community Development (DCD) withdrew the mitigated determination of nonsignificance we issued on September 23, 2015 for the Orca Dreams LLC dock proposal, PSJ000-14-0008. The withdrawal is based on numerous public comments that raise issues of probable significant environmental impacts. All the comment letters were forwarded to your office upon receipt in this office.

The Washington Department of Fish and Wildlife noted in a letter dated June 15, 2015, attached:

The site plan for this project shows eelgrass at the seaward extent of the proposed structure. The Washington Department of Fish and Wildlife (WDFW) considers eelgrass a priority habitat as it provides refuge and feeding opportunities for out-migrating juvenile salmon and other marine fish species. Thus, eelgrass is amongst the most critical habitat to preserve. The movement of up to six vessels into and out of this new moorage structure, while navigating around the rock outcroppings especially during low tide series will likely result in prop scour that will negatively impact the growth and long-term viability of this eelgrass bed. WDFW has a no-net-loss policy for eelgrass, and while eelgrass has been identified within the project area, there is no monitoring or mitigation plan submitted with the review documents.

The preliminary eelgrass/macro algae habitat survey prepared by Wells Construction dated August 24, 2014, shows a small patch of eelgrass approximately 220' offshore; luminaria and ulva from 60' to approximately 200'; and ulva beyond 200'. Unfortunately, the map of the dive survey did not superimpose the proposed dock location, so it is difficult to evaluate impacts to habitat.

Z:\Doc\Active\Sundberg, Kim - Orca Dreams\MDNS withdraw letter to Orca Dreams - additional info needed - Dock.docx

The proposed dock appears to be in fairly shallow water, so prop wash could have an impact on underlying vegetation. Those impacts need to be identified and mitigation measures proposed.

In the same letter WDFW also points out that in their Priority Habitat and Species data base, pinto abalone (*Haliotis kamtschatkana*) is listed as present within the project area and all along the southwestern shore of San Juan Island. According to WDFW, priority species require protective measures for their survival. They have identified construction of the pier, with the driving of piles and shoreline pier connection, as likely to cause an increase in siltation within the nearshore area that may impact abalone. The critical areas regulations in SJCC Chapter 18.35 require you to show the project will result in no net loss of ecological functions associated with critical saltwater habitat.

There is a question about whether any part of the proposed dock will be located on University of Washington land. A survey showing the lateral boundaries of the second class tidelands needs to be mapped to answer that question.

There is inadequate justification for three sets of beach access structures. There is virtually no information about the amount of vegetation removal that any of the beach access structures would require. If it turns out that vegetation will need to be removed to build the structures, that should be evaluated as part of the environmental review.

The long-term impact of the increased amount of boat traffic in this area should be evaluated. The potential for up to 736 trips in and out of the dock over a six month period every year at the mouth of False Bay, as opposed to the amount of traffic in the Strait of Juan de Fuca could have serious environmental impacts, but this issue has not been addressed. The letter from Dr. Megan Dethier, Associated Director for Academics and the Environment at the University of Washington Friday Harbor Labs, dated October 1, 2015, attached, lists five type of potentially negative impacts:

- a. Impacts to eelgrass.
- b. Impacts to kelp and other large plants.
- c. Impacts to the pocket beach.
- d. Impacts to the marine reserve.
- e. Future impacts from a need to protect or repair the infrastructure.

These long-term impacts need to be addressed.

While every effort will be made to prevent petroleum product spills if the dock gets built, there has been no study of dispersal patterns into False Bay should accidental spills occur. Petroleum products would be carried into False Bay on an incoming tide, but may not be completely removed on the outgoing tide. A study to understand that pattern should be undertaken.

The environmental checklist states that the ramp and float will be removed and stored on an upland site from October through May each year to prevent damage caused by extreme wind and wave action that this site experiences during the stormy season. However, as recently at August 2015, this site was exposed to an extreme storm. How would the dock and boats tied to it have been protected from sudden storms like that? Where in the upland do you plan to store the ramp and float? Will additional clearing and grading be required?

Upon submittal of a revised checklist and additional information, DCD will conduct additional SEPA review and issue another SEPA determination.

Due to the SEPA withdrawal, DCD has postponed the public hearing originally scheduled for November 19, 2015.

Please contact Julie Thompson if you have questions. She can be reached at Juliet@sanjuanco.com or 370 7588.

Sincerely,

Sam Gibboney, Director

DECLARATION OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on November 8, 2017, in the manner indicated below, I hand delivered the Notice of Appeal to the San Juan County Community Development Department.

Signed this 8 day of November, 2017 at Friday Harbor, Washington.


Donna Everitt

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