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 COMMUNITY DEVELOPMENT  
 October 18, 2017

**DEPARTMENT OF  
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San Juan County  
 Department of Community Development  
 BY EMAIL

Subject: Comments on PSJ000-17-0003

Dear Ms. Shook,

Thank you for the opportunity to provide comments on the Mitigated Determination of Nonsignificance (MDNS) recently issued by your department to Orca Dreams, LLC for their project proposal to construct a private community dock and install a reverse osmosis desalination system near False Bay on San Juan Island.

The Washington Department of Natural Resources (DNR) stewards over 2.6 million acres of state-owned aquatic lands (SOAL) on behalf of the citizens of the state. In San Juan County, SOAL includes all the bedlands, and those tidelands which are not privately owned (approximately 30% of the tidelands in the county.) As currently proposed, portions of both the Orca Dreams, LLC dock and the desalination system would occupy bedlands; therefore, Orca Dreams, LLC would need to have a fully executed use authorization for the desalination system and, possibly, for the dock itself, from DNR before doing any work on SOAL.

DNR is prohibited from issuing a use authorization for any project that is not in accordance with all applicable federal, state, and local requirements. For this reason, any person or entity who wishes to obtain a use authorization from DNR to place new improvements on SOAL must show that they have received all necessary permits to build those improvements.

DNR staff have been aware of the proponent's interest in building a dock at this location for nearly two years. When compared with earlier design plans provided to DNR, the current design plans appear to have minimized some of the anticipated environmental impacts presented by earlier proposals. However, we find a number of the proponent's statements in the SEPA checklist problematic. Specifically:

1. On page 22, Section 5b, the proponent states that Pinto abalone habitat is in the project vicinity but there is no abalone present. While it may be true that no abalone was present at the time of the underwater survey, any survey represents only a snapshot in time, and

so it can not be assumed that abalone may never be present within the project area. Further, Pinto abalone is a priority species for DNR and other state agencies, so we must protect Pinto abalone habitat whether or not the species presently occupies that habitat. Given that the state has already spent many dollars and staff hours toward studying and restoring Pinto abalone, it is not in the state's interest to allow designated Pinto abalone habitat to be disturbed, which it would be if this project were to move forward.

2. On page 29, Section 12b, the proponent states that because most of the dock is over privately-owned tidelands, this reduces the impact to state-owned tidelands. DNR disagrees with this conclusion. The current dock design actually extends the structure further onto SOAL than the earlier design; so, by comparison, the current project actually has a larger footprint on SOAL than previously proposed. At present, there are no structures on SOAL at this location. If the dock is approved, the total area of overwater structures on SOAL would go from zero square feet to ~540 square feet of dock, plus additional area encumbered by the terminal anchor systems for the dock, and the navigational buoy marking the rock outcroppings.
3. On page 30, Section 14f, the proponent provides two estimates of the number of vessel trips that would occur per day/per season if the dock were to be constructed: One is what is termed a "worst-case scenario" and one is termed a "more likely" scenario. Under the "worst-case scenario" only two of the four boats expected to moor at the dock are likely to make a round trip per day, and it is estimated that all four boats would only be used 50% of the time that they were moored at the dock. DNR has multiple concerns with this.
  - a. Overwater structures impact the aquatic environment in multiple ways. The design of the dock itself has aspects that reduce if not minimize impacts on the aquatic environment; but allowing the dock to be constructed where no overwater structure currently exists means that impacts are not completely avoided: The only way to truly avoid impacts would be to not construct the dock.
  - b. Further, operations at the dock present additional impacts beyond those of the structure itself. In the act of departing and docking, vessel props can strike submerged aquatic vegetation and scour the benthos. Also, vessels are opaque, not transparent; so they cast permanent shadows in the water, which is detrimental to submerged aquatic vegetation, and also to migrating salmonids.
4. On page 10 of the "Detailed Project Data, Description and Regulatory Analysis" document (hereafter, Detailed Analysis), the proponent states "The dock will not create a barrier preventing migration of any of these species [Southern Resident killer whale, Chinook salmon and Bald eagle] because it will not be in deep enough water (~20 feet) to

impact migrating whales and the float won't ground creating a barrier to migrating salmon.... There will be no impact to the functions and values of migratory routes." DNR disagrees with this conclusion. As proposed, the float would be in water so shallow that it will require stoppers to prevent it from grounding. The installation of stoppers on the float will not prevent moored vessels from grounding during these periods, and will most likely increase the likelihood of vessels grounding out. Further, the shadows cast by vessels moored at the dock will occur in what is a nearshore area. Juvenile salmonids use nearshore areas heavily and are known to avoid dark (i.e., shadowed) locations, which they will avoid by swimming into deeper water, which makes them more exposed to more predators.

5. On page 14 of the Detailed Analysis, the proponent states "the removal of eight existing creosote piles will be an environmental improvement over existing conditions." None of the existing creosote piles are on SOAL; however, DNR fully supports removal of creosote piles from the aquatic environment whether they are located on SOAL or not. That said, the proponent suggests that they do not plan to remove the creosote piles regardless of whether their project is approved or not—rather, it seems to be a condition of receiving their permit to build the dock. As explained in item #2 above, given that there are currently no structures on SOAL, adding any overwater structure to SOAL—even those which are constructed with inert materials and are designed to minimize impacts to the environment—would *not* result in an environmental improvement over existing conditions on SOAL.
6. On page 17 of the Detailed Analysis, the proponent states "The piles supporting the float will include stops so it will never ground and obstruct existing water circulation patterns or the migration of Dungeness crab or juvenile salmon under said dock....the entire decking of the dock will be constructed with 69.9% light penetrating grating so there will be no significant shading impacts to seafloor below." The proponent makes similar assertions again on page 19. Again, DNR disagrees with this conclusion. As explained in items #3b and #4 above, preventing the float from grounding does not prevent moored vessels from grounding, and may actually increase that likelihood. Shading over the water will also occur, both from the dock itself (though minimized through the use of grated surfaces) and from the shadows cast by moored vessels.
7. On the Engineered drawing revised 5-17-17, in the "detail view" section, there is a note stating "(2) proposed float surge anchors (lines to be field located to avoid contact w/rocks on bottom)". The connecting line from the pile at the end of the dock to the southern anchor extends over halfway into the 25' foot buffer area that is depicted between the proposed dock and the nearby eelgrass bed. Further, the proponent did not provide any details about the type of anchor and tethering system to be used; nor were the

Erika Shook  
October 18, 2017  
Page 4 of 4

presence of the anchors acknowledged in the SEPA checklist or the Detailed Analysis. The anticipated impacts of these structures need to be described and considered as part of the cumulative impacts analysis for the project as a whole.

8. To ensure environmental protection, DNR typically authorizes docks at water depths of at least -7 feet MLLW (and more typically, with seven feet of water at extreme low tide) to prevent the grounding of vessels and improvements. The proponent has proposed to install stoppers to prevent the grounding of improvements at times of low water; however, this will not prevent moored vessels from grounding during these periods. Repeated grounding of vessels will crush the biota in the benthos.
9. In their application materials, the proponent did not address the presence of bull kelp within the project area. DNR seeks to protect bull kelp from impacts in the same way we seek to protect eelgrass. DNR staff conducted a site visit by vessel to the project location on October 9, 2017, and observed bull kelp on all sides of the rock outcroppings that are west of the proposed dock site, including east (shoreward) of the rocks. This is consistent with the kelp bed locations depicted for this area in the Washington Department of Ecology's Coastal Atlas.

In summary, DNR does not support the county's MDNS determination. Further, the dock does not meet the environmental protection outcomes that DNR typically requires for docks authorized by lease and so DNR would be unlikely to issue a lease for the dock as currently proposed.

If you have any questions, please contact DNR's Aquatic Land Manager for San Juan County, Gabe Harder, at 360-854-2858 or [gabriel.harder@dnr.wa.gov](mailto:gabriel.harder@dnr.wa.gov).

Sincerely,



Mary Huff  
District Manager, Orca-Straits District