

EXHIBIT 2

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S.J.C. DEPARTMENT OF
MAR 30 2018
COMMUNITY DEVELOPMENT

BEFORE THE SAN JUAN COUNTY HEARING EXAMINER

THOMAS C. EVANS; BOX BAY SHELLFISH
FARM, LLC;

Appellants,

No. PPROVO-17-0065

v.

NOTICE OF APPEAL

DAN & CHERYL STABBERT; SAN JUAN
COUNTY PLANNING DEPARTMENT,
Respondents.

**PAPL00-18-0001
EVANS, THOMAS C.**

COMES NOW Thomas C Evans (Evans) and Box Bay Shellfish Farm (Box Bay) in the above entitled and foregoing matter and does hereby issue formal notice of appeal of the Findings of Fact, Conclusions of Law, and the Decision entered in the above matter on March 12, 2018, copy attached hereto, as follows:

(1) Identification of Appellants: Evans is the owner of the Westerly property described in the Joint Use Agreement attached, and resides immediately adjacent to the Stabbert Property. Box Bay is a non-profit Washington LLC which grows oysters for charitable purposes on the shoreline abutting the Stabbert/Evans properties, and in floating oyster grow cages which float in Box Bay are tied off to the Joint Use Dock and are within easy reach of any dock user. Contact information for Evans is as follows: Thomas C Evans Attorney At Law c/o Madison Park Law Offices 4020 East Madison Street, Suite 210, Seattle, Washington 98112. Tel: 206-527-8008 cell: 206-499-8000, E-mai

1 tom@maritimeinjury.com. For Box Bay: Thomas C. Evans, Manager, Box Bay Shellfish Farm LLC
2 P.O. Box 408 Olga, Washington 98112 Tel. 360-376-5987, E-mail tom@maritimeinjury.com.

3 (2) Statement Describing Standing To Appeal:

4 (a) Evans – would be directly and significantly adversely impacted by Stabbert Vacation Rental
5 by Owner (VRBO) in multiple ways, which are all set out in detail in the numerous objections
6 previously submitted to San Juan County (SJC) and are attached hereto. In summary, these impacts
7 include severe traffic conflicts by adding up to 18 renter occupants each likely making use of
8 Obstruction Pass Road on a regular basis where said road is privately maintained, can accommodate
9 only one vehicle in one direction at a time without side-line stand by; noise emanating up and out of the
10 Stabbert property from vacationers whose use of Stabbert property amounts to noise emanating from a
11 megaphone vortex given the configuration of Box Bay, encroachment on privately owned Evans
12 property including privately owned 300 square foot landing at the foot of the entrance to the privately
13 owned joint use dock; trespassers attempting to use the privately owned joint use dock and difficulties
14 in keeping trespassers off the dock. The dock is the centerpiece of the Stabbert VRBO property and
15 Evans will have to, without protective measures such as a locked gate and no trespass signs, constantly
16 restrain trespassers. Renters are also likely to be attracted to use the privately owned dock by
17 advertising depicting the property with the dock at the center. Unless large no. 18pt. type is included in
18 all advertisements stating the dock is not available for use, potential renters will naturally believe
19 Stabbert owns the joint use dock and it will be available for their use.

20 (b) Box Bay Shellfish Farm LLC is partially located in Box Bay, immediately in front of the
21 Stabbert property and has been a shellfish (oyster) farm since 2009. Its sole purpose is to serve the
community on a charitable purpose basis by giving away oysters free to charitable dinners and events.
It grows large non-commercial amounts of oysters in the areas indicated above and uses them for
charitable purposes only. This includes giving bulk supplies to local farm to table programs, allowing
students to come and see how a real oyster grow operation works, and allowing specific invitee
neighbors including Stabbert to come and take for free as many oysters as they want. Finally, the
oysters are sometimes used as a "sentinel" monitoring point for the SJC Health Department. During red
tide season samples of Box Bay oysters are given to the Health Department to test for red tide. Given

1 Box Bay's location – where several large flows of waters converge – it is an ideal location for testing.
2 VRBO residents are already invading the Box Bay growth area. A VRBO was recently granted to the
3 Bea property – just to the East of Evans property – and during the summer months VRBO renters are
4 frequently seen on the privately owned Evans tidelands where the oysters are stepped on in their grow
5 cages. In some cases outright theft of tideland based plastic grow cages has occurred. No trespassing
6 signs were placed at the entrance to Evans grow area tidelands but are regularly been ignored. A
7 potential problem with the future exists as to grow cages tied to the Evans side of the dock. VRBO
8 renters, who have no reason to care, can easily access these grow cages, untie them and set them free,
9 or take at will from storage bins on the Evans side of the dock. Adding 18 renters to this same area,
10 where problems are already being experience from just one VRBO (Bea) is guaranteed to negatively
11 impact Box Bay, indeed, it will put Box Bay's future grow viability in question.

12 (3) Identification of application under appeal, date of decision, and grounds for appeal:

13 Attached to this appeal is the complete record in this proceeding, including Evans/Box Bay's
14 objections to this permit. These documents, which are Bates Stamped for ease of access, identify
15 objections, issues and legal support. During the hearing on this matter the Bates pages will be
16 referenced along with the specific issue. In very summary non-total form these include:

17 (a) SJC did not include nearly enough private property warning signs or direction signs to make
18 sure VRBO's did not trespass especially on Box Bay grow areas.

19 (b) The joint use dock was clearly intended to benefit Stabbert/Evans only, and does not allow
20 or even suggest that renters paying money to Stabbert are allowed to use this dock at Evans/Box Bay
21 expense. This is completely self-serving and makes Evans have to pay expenses including significant
tax levy, repair cost, initial investment of \$90,000 all so Stabbert can profit at Evans' direct expense.
Evans pays significant real estate taxes attributed to the dock. Evans has to pay (and has paid) ½ of
repair costs due to storms.

(c) Allowing Stabbert's renters will push Evans/Box Bay off the dock – Evans/Box Bay is
guaranteed sole and exclusive use of the South ½ of the dock and float. If Stabbert is allowed to put
his renters on the dock his renters will undoubted take up and use Evans/Box Bay's skiff tie up area

1 and Evans will have no way of controlling without confronting the up to 18 renters who come
2 expecting to be able to use the dock.

3 (d) Stabbert's reasoning, incorporated by SJC into its decision making, for allowing so many
4 renters is flawed, and a direct violation of the Fourteenth Amendment requiring equal protection of the
5 law. Stabbert/SJC actually opine that the users of the Stabbert properties will only be "high end" (rich)
6 persons who can afford to pay for "high end" rentals. (For this, see p 9, top of page). To make matters
7 worse Stabbert also claims "highenders" don't "party" as much and are naturally quieter. The fact that
8 an applicant would urge a government agency to actually base a land use decision on a presumption
9 about the wealthy vs. other individuals is outrageous and would be a civil rights violation were SJC to
10 accept it. This sort of thinking has no place in government decision making yet that's exactly the way
11 the applicant sees it.

12 (e) These VRBO's are not categorically or otherwise exempt from obtaining a Shoreline
13 Management Permit (SMP). While SJC admits if someone presented at the permit counter with plans to
14 build a single family residence (SFR) and use it as a VRBO at the same time, this would require a SMP
15 permit, it denies that an SMP permit is necessary when the structure is turned into a completely
16 different use. *Use matters*, under the law, it's the land *use* that determines permitting and nowhere in
17 the Shoreline Management Act (SMA) is a VRBO a categorical exemption.

18 (f) Noise, glare from lights at night, and late night partying will all emanate directly up and into
19 Evans living area. Although the Evans living area appears to be non-existent as to the Stabbert property
20 it is hidden behind a slender row of trees and is in fact directly above the Stabbert property. The
21 Stabbert property is literally under the nose of the Evans property.

(g) The decision ignores that Evans owns outright and Box Bay uses for its private purposes the
300 sq. ft. platform at the entrance to the dock. This area was given to Evans by Jacobsen (previous
owner) as part of the agreement for a joint use dock. Having 18 renters puts Evans zodiac skiff
maintained on the property, its nets and other water related items at direct risk for damage, theft or
illegal use, and the SJC decision does nothing to prevent this.

(h) The staff report and decision treats Evans as if his dock interests are really public interests
and that Evans has an obligation to allow members of the public to use this joint use dock, even though
Evans paid in excess of \$90,000 for the construction, several thousand dollars for the occasional repairs

1 made necessary by wind damage, and the very significant amount of real estate tax attributable to the
2 dock (some estimate that a dock adds as much as \$500,000 of value to the assessors valuation).

3 (i) On page 10, last paragraph, SJC claims that "The Washington Supreme Court has ruled that
4 VRBO is not commercial" and therefore since the word "commercial" is used once in the joint use
5 agreement, along with multiple other words describing limitations, VRBO use is allowed because (so
6 goes the argument) if the word "commercial" is used then anything and everything that is non-
7 commercial including VRBO must be allowed. Very oddly, a "Washington State Supreme Court Case"
8 is then cited, *Wilkinson v. Chiwawa Communities Association*. Since this case is not properly cited a
9 little digging into the Washington Supreme Court Reports is necessary.

10 The correct cite is: *Wilkinson v Chiwawa Cmtys Ass'n*, 180 Wn.d 241 (2014). The issue in
11 *Wilkinson* are completely irrelevant to the case at hand. *Wilkinson* concerned whether a community
12 association (Chiwawa) could amend its plat declaratory covenants so as to exclude vacation rentals. No
13 Joint Use Agreement, no private rights documents were involved. Nothing in *Wilkinson* addressed or
14 even came close to addressing exclusive private rights in a Joint Use Agreement including a guarantee
15 between land owners of quiet use and enjoyment, a guarantee that the Southerly ½ of the dock was for
16 the *exclusive* use of Evans, that the landing 300' Square platform was for the exclusive use of Evans.

17 Wilkinson is also distinguishable in San Juan County, as SJC, in its Comp Plan *does* consider
18 vacation rentals to be a commercial in nature and specifically so states:

19 Comp. Plan. Section B, Element 2.2.A: "Vacation rentals...
20 of a principal, single family residential unit ...should be subject to
21 *standards similar to those for hospitality commercial establishments...*"

22 So it is not correct to say, in San Juan County, vacation rentals are not subject to and defined as a
23 Commercial use – they are and are legally required to follow the same standards as "hospitality
24 commercial establishments..."

25 (4) Relief sought, nature and extent:

26 1. Deny both applications without prejudice to re-application through the Shoreline
27 Management Conditional Use application process. Include in this decision a finding that nothing,
28 anywhere, even arguably suggests vacation rentals are categorically exempt from SMA permit

1 requirements and follow the guidelines of the SMA which disfavor categorical exemptions and doesn't
2 allow for any unless specifically listed as such. (There is no exemption anywhere in the SMA, State
3 Guidelines, or Master Program that lists vacation rental as categorically exempt).

4 2. Prohibit any renter use of the joint use dock, the privately owned platform, and the Evans
5 owned access trail. Find the conditions proposed by Evans – a locked coded entry gate to the dock, all
6 advertising clearly disclose the dock is not part of the rental and no trespassing signs are appropriate.
7 Require advertising of any sort disclose the dock, landing and private pathway as privately owned, to
8 use it is trespassing, and VRBO renters are to stay off.

9 3. Allow the posting of prominent no trespassing signs on the dock, platform and trail.

10 4. Require Stabbert at their expense to hire a well qualified outside contractor to install an all
11 weather saltwater proof gate at the entry to the dock that allows access only to persons properly on the
12 dock, with construction to be approved by Evans.

13 WITNESSES AND EXHIBITS

14 Exhibits consist of the SJC file and supplemented visuals to be presented by electronic video
15 equipment.

16 1. Thomas C Evans will testify under oath as per the above.

17 2. Box Bay will testify under oath by it's representative.

18 3. Edith Thomsen
19 2158 Obstruction Pass Road
20 Olga, WA 98279
21 (360)376-2446
rosecovers2@gmail.com

4. John F. and Paula Tiscornia
2253 Obstruction Pass Road
Olga, WA 98279
(360)376-6449
ptiscornia@aol.com

5. Roy and Susan Beaton
2159 Obstruction Pass Road
Olga, WA 98279
(360)376-6886
roybeaton@msn.com

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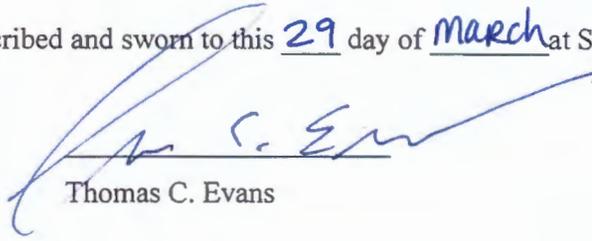
- 6. Kirk and Jill Callison
Obstruction Pass Road/Meany Way
Olga, WA 98279
jill@twist-design.com
- 7. Julie Thompson, SJC Planner
- 8. Any witness identified or called by Stabbert
- 9. Any witness identified or called by SJC
- 10. Dan and Cheryl Stabbert
- 11. Any person identified in the attached Exhibits

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Verification

Thomas C Evans, under penalty of perjury of the laws of the State of Washington, does swear and affirm the above and foregoing are true and correct for the uses and purposes therein described.

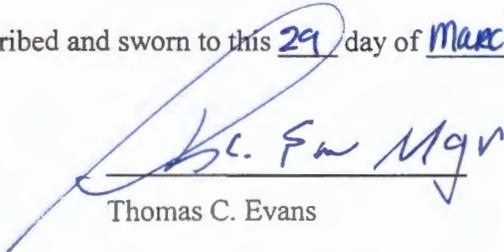
Subscribed and sworn to this 29 day of march at Seattle, Washington



Thomas C. Evans

Box Bay Shellfish Company LLC, by and through its Manger Thomas C. Evans does swear and affirm the above and foregoing statements regarding nature and use of Box Bay and impacts from VRBO occupancy true and correct to its best information and belief.

Subscribed and sworn to this 29 day of march at Seattle, Washington



Thomas C. Evans

**S.J.C. DEPARTMENT OF
MAR 30 2018
COMMUNITY DEVELOPMENT**



March 29, 2018

Via Fed-Ex

Department of Community Development
Attn: Hearing Examiner
135 Rhone Street
Friday Harbor, 98250

Re: Appeal re PPROVO-17-0065/PPROVO-17-0066

Dear Hearings Examiner:

Enclosed please find:

1. Appeal for PPROVO-17-0065 and (copy of) appeal fee of \$600;
2. Appeal for PPROVO-17-0066 and (copy of) appeal fee of \$600; and
3. One set of appellants exhibits with Bates stamp numbers. Both Appeals
Use the same set of Exhibits.

We are sending identical documents addressed to Ms. Julie Thompson, with the original appeal fee payment, and also simultaneously served electronic copies of the appeals and exhibits on Dan and Cheryl Stabbert.

Very Truly Yours,


Thomas C. Evans

S.J.C. DEPARTMENT OF
MAR 30 2018
COMMUNITY DEVELOPMENT

PAPL00-18-0001
EVANS, THOMAS C.

MADISON PARK LAW OFFICES
4020 E. Madison St., STE. 210
Seattle, WA 98112-3150

28498

DATE 3/29/18

19-7076/3250

PAY
TO THE
ORDER OF

SJC DCD

\$ 600 -

Six hundred and 00/100

DOLLARS  Security Features
Include in Box

CHASE 

JPMorgan Chase Bank, N.A.
www.Chase.com

FOR PPRVO-17-0065 APPEAL

[Signature]

MP

MADISON PARK LAW OFFICES
4020 E. Madison St., STE. 210
Seattle, WA 98112-3150

28499

DATE 3/29/18

19-7076/3250

PAY
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DOLLARS  Security Features
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JPMorgan Chase Bank, N.A.
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FOR PPRVO-17-0066 APPEAL

[Signature]

MP

S.J.C. DEPARTMENT OF
MAR 30 2018
COMMUNITY DEVELOPMENT

PAPL00-18-0001
EVANS, THOMAS C.



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 00015712

Account number: 008032

Date: 3/30/2018

Applicant: THOMAS C. EVANS
4020 EAST MADISON ST SUITE 210
MADISON PARK LAW OFFICES
SEATTLE, WA 98112

Type: check # 28498

<u>Permit Number</u>	<u>Fee Description</u>	<u>Amount</u>
PAPL00-18-0001	APPEAL FILING FEE	\$00.00
	Total:	\$600.00

Receipt Description:

Receipt Comments:
APPEAL OF STABBERT PROVISIONAL USE PERMIT PPROV0-17-0065



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

PROVISIONAL USE PERMIT

DATE: March 12, 2018
FILE: PPROVO-17-0066
TYPE: Request for vacation rental
APPLICANT: Dan and Cheryl Stabbert
AGENT: Karla Lopez
2629 NW 54th Street #201
Seattle, WA 98107
TAX PARCEL: 161650403
LOCATION: 2318 Obstruction Pass Road, Orcas Island
STAFF: Julie Thompson, Planner III
DECISION: Approved with conditions

FINDINGS OF FACT

1. The agent submitted a provisional use permit application and the required fees to DCD for a vacation rental on December 11, 2017.
2. The application was deemed complete on December 11, 2017.
3. There are no known permit or code enforcement actions on this parcel.
4. The proposal is to rent a four bedroom single-family home on a 1.32 acre shoreline parcel for periods less than thirty days. It is the only residence on the property. The applicants' have a second application in to rent the house on the neighboring property. Both houses share the driveway and have the same address.

Both houses were originally on the neighboring parcel, but a boundary line modification recorded in 2017 changed the boundary lines such that they are now on separate parcels.

The septic system serving both houses is permitted for six bedrooms. The adjacent house has three bedrooms, so this house should be restricted to the use of only three bedrooms due to the six bedroom septic system. There is no accessory dwelling unit on the property.

5. The property is located in the Rural Farm Forest shoreline and land use designation. The area is developed with residential uses. The driveway access is on a private road. See the site plan in Exhibit 4.
6. The site plan depicts at least 3 parking spaces.

7. The sewage design application on file #98-114-06 shown in Exhibit 7 was approved on January 20, 1998 for 6 bedrooms. Since the two adjacent properties appear to share the septic system, use of both houses should be for three bedrooms in each house.

8. The applicable Unified Development Code Sections are:

SJCC 18.30.040	Table 18.30.040 Allowable and Prohibited Uses in Rural, Resource, and Special Land Use Designations
SJCC 18.40.270	Vacation (short-term) rentals of residences or accessory dwelling units
SJCC 18.80.020	Project permit applications - Procedures
SJCC 18.80.030	Notice of project permit applications, public comment, and notice of hearing
SJCC 18.80.080	Permit procedures for provisional uses

9. SJCC Table 18.30.040 allows vacation rental by Provisional Use permit in the Rural Farm Forest land use designation. This house is in the Rural Farm Forest shoreline designation which, according to SJCC Table 18.50.600 requires a shoreline substantial development permit for development of a vacation rental, but not for the use as a vacation rental. According to the Shoreline Management Act, "development" is the construction or exterior alteration of structures, dredging, drilling, dumping, filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level (RCW 90.58.030(3)(a)). Since the proposal does not include new development, no such permits or approvals are required.

It was reviewed as a provisional use permit to check for compliance with the performance standards for vacation rental.

10. SJCC 18.80.030(A)(2)(a) requires publication of a notice of application.

Notice of application was published in the Island's Sounder and the Journal of the San Juan Islands on December 27, 2017 (Exhibit 9).

11. SJCC 18.80.030(A)(2)(b) & (c) require notification of the application to all property owners within 300 feet of the subject property and posting of the notice of application on the subject property.

The agent signed and submitted a form to DCD verifying that the site was posted and the property owners within 300 feet of the property were notified of the application. She also submitted a list of those individuals to whom the notice of application was mailed (Exhibit 9). Notice was mailed and the site was posted on December 27, 2017.

12. SJCC 18.40.270(A) states that no more than 3 guests per bedroom shall be allowed at any one time.

No more than 9 guests would be allowed in the home at any time, based on the proposed 3 bedroom limitation due to the septic permit.

13. SJCC 18.40.270(B) states that the use shall be operated in a way that will prevent unreasonable disturbances to area residents.

Noise and trespassing impacts could be as much as that associated with normal residential use of the site. Possible disturbances should be mitigated by conditions limiting the number of occupants to 9. The conditions should also require posting the rules of conduct specifically mentioning that trespassing is not allowed, property lines will be identified, and that the neighbors will be provided with a 24-hour local contact phone number. The contact is also required to keep a written log of complaints.

14. SJCC 18.40.270(C) states that at least one additional parking space shall be provided for the vacation rental use in addition to any other applicable parking requirements. The minimum parking required shall be one space per bedroom.

SJCC 18.60.120, Table 6.4, lists "Minimum Number of Required Parking Spaces for Different Land Uses". Minimum parking for residential use is only required in Activity Centers. This is not in an activity center. Based on SJCC 18.40.270(C), a total of 3 parking spaces are required and at least 3 spaces are shown on the application site plan, Exhibit 4, and explained in an email from the agent dated February 23, 2018, Exhibit 6. This meets the parking criteria.

15. SJCC 18.40.270(D) states that if food service is to be provided, the UDC requirements for a bed and breakfast residence shall be met.

No food service is proposed.

16. SJCC 18.40.270(E) states that no outdoor advertising signs are allowed.

No outdoor signs are proposed.

17. SJCC 18.40.270(F) states that the principal residence or accessory dwelling unit may be rented out on a short-term basis (vacation rental), but not both.

There is no accessory dwelling unit on this property.

18. SJCC 18.40.270(G) states that where there is both a principal residence and an accessory dwelling unit, the owner or a long-term lessee must reside on the premises, or one of the living units must remain un-rented.

There is no ADU on the property and this requirement is not applicable.

19. SJCC 18.40.270(H) states that in all activity center land use districts, rural residential, and conservancy land use districts, the vacation rental of a residence or accessory dwelling unit may be allowed by provisional ("Prov") permit only if the owner or lessee demonstrates that the residence or accessory dwelling unit in question was used for vacation rental on or before June 1, 1997. When internal land use district boundaries are adopted for an activity center, this provision will apply to VR and HR districts but not to the activity center in general.

The subject property is located in the Rural Farm Forest designation and this requirement is not applicable.

20. SJCC 18.40.270(I) states that vacation rental accommodations must meet all local and state regulations.

Sales tax: State law requires retail sales tax to be collected on a vacation rental.

Covenants: The County is not a party to private covenants. It is not able to enforce private covenants between property owners that may prohibit the use of a residence as a vacation rental. Issuance of a County land use permit for a vacation rental does not license the owner to violate private restrictions and covenants between property owners.

21. SJCC 18.40.270(J) states that owners of vacation rentals must file with the administrator a 24-hour contact phone number.

This requirement must be a condition of approval.

22. SJCC 18.40.270(K) states that the owner or lessee of the vacation rental shall provide notice to the tenants regarding rules of conduct and their responsibility not to trespass on private property or to create disturbances. If there is an easement that provides access to the shoreline, this shall be indicated on a map or the easement shall be marked; if there is no access, this shall be indicated together with a warning not to trespass.

Rules of conduct shall be submitted to the Department of Community Development after approval of the application and prior to rental of the house. This is a condition of approval.

23. SJCC 18.40.270(L) states that detached accessory dwelling units established under SJCC 18.40.240 cannot be separately leased or rented for less than 30 days.

This requirement is not applicable because there is no accessory dwelling unit.

24. We received comments from several neighbors on this application. These comments are for both applications. PPROVO-17-0066 is in the Rural Farm Forest land use and shoreline designation, so the shoreline comments only apply to that application.

- On January 7, 2018, John and Paula Tiscornia submitted a letter stating that they own seven lots that meet the applicant's property on three sides. (Exhibit 10) They have owned for about thirty years. They bought the property knowing it was not in a commercial zone, and would not have purchased it if it had been commercial.

They are not opposed to vacation rentals if they are in commercially zoned land. There are already numerous vacation rental properties in the vicinity. One at the end of the road advertises for twelve to fourteen people. That property is next to the property this application is for, which means if both properties were rented at the same time, there would be a resort without supervision.

They are concerned about traffic from guests and their friends, cleaning crews and garbage collection. Cars have parked on the side of the road making it difficult to drive by. What would happen if an emergency vehicle needed to get by. There have been several weddings and other large events with as many as fifty guests. Dogs run through their property after

deer and other wild life, unleashed. There seems to be no monitoring of behavior or number of guests. Vacation guests have trespassed onto their property—the yard, dock, and beach.

They object to the rental of the Stabbert's property.

- John Tiscornia submitted additional comments on January 16, 2018, Exhibit 11, stating that had actual and recent experience with short term vacation rentals at a nearby property. It has resulted in a significant increase in traffic including vacation renters, their guests, cleaning crews, and garbage collection on our one lane, deteriorating, and dead end road. He has also experienced people and unleashed dogs going through our property and on our beach without permission. It appears to him that no one seems to be monitoring the behavior of their guests.

The Stabberts' have two applications in; one is for a five bedroom house and the other is for a three bedroom house. That could add up to twenty-four people at one time. When adding to that the other vacation rental with the potential for fourteen people, you could have thirty-eight people at one time. He thinks the implications for increased fire danger, septic overuse, car traffic, disrespect of property, and potential violations of the Shorelines Act.

- On January 9, 2018, Julia Evans submitted comments noting that this use of their neighbors' properties will directly and adversely affect the enjoyment and safety of her and her home, Exhibit 12. She claims that their bedroom is directly visible from the joint use dock they share with the Stabberts', and states that the joint use agreement specifically restricts the dock's use to owners and their friends, and then only with the other owners permission. Additionally, access to the rental property is on a dirt road, partly shared only by her, and past the end of the county road.

She points out that this part of Obstruction Pass Road is not intended for the amount of traffic that several vacation rentals will bring. There has been a considerable increase in the number and speed of cars because of a different vacation rental. Also, the Stabberts' have added outdoor lighting which has had a negative impact on the enjoyment of their property. With vacation renters at the house, she suspects it will be on much more of the time.

- On January 16, 2018, Roy and Susan Beaton submitted comments, Exhibit 13. They are opposed to the use of this property as a vacation rental. Their end of Obstruction Pass Road is extremely narrow, and there are limited areas for cars to pass. Since there are no sidewalks in that area, the road is shared by vehicles, bicycles, and walkers (some with strollers and/or dogs).

In addition, short term renters have felt free to trespass along the water's edge on privately owned beaches. Each new rental increases the number of people they don't know on their beach. There is also the problem of beach fires in the evening, with some much larger than they think is allowed. They have even found some unattended fires late at night.

There doesn't seem to be any monitoring of these short term rentals. One time they found eight people staying in a one-bedroom rental designed for two people. Late night,

boisterous parties are also occurring, which is not conducive to the quiet enjoyment of their property.

- On January 17, 2018 we received comments from Kirk and Jill Callison, Exhibit 14. There is a vacation rental next door to them. They had no idea the impact from a vacation rental would cause until the neighbor started renting her house. It's a lot like having a family reunion next door every weekend. Because of the issues they and others in the area are already experiencing from vacation renters, they are quite distraught at the prospect of having another large home(s) being rented directly behind them.

Their objections are not meant to reflect any hard feelings toward their neighbors, rather to the negative impacts of having these large rentals in their neighborhood. When a large residence such as the Stabberts home becomes a vacation rental property it is transformed from a family home to an even venue much like a commercial hotel capable of accommodating large groups of non-resident visitors who, for the most part, do not care about anything other than coming for the vacation that they have paid dearly for and deserve. Renters have used their beach and dock, parked in their driveway, asked to use their phone, and had large unauthorized bonfires.

They feel that by issuing these vacation rental permit, the County is basically allowing the commercial/hospitality use of these homes in a single family residence zone. They don't think the County has the resources to monitor the use and activity of these rentals nor to enforce the rules. Their use and enjoyment of our single family residence is severely and negatively impacted by vacation rentals and they oppose the issuance of any further permits.

- Tom Evans submitted his first comments on January 9, 2018, Exhibit 15, and continued the conversation until February 4, 2018. He and his wife reside adjacent to the two proposed vacation rentals. He is opposed to the application. His concerns include noise, traffic, and light pollution. He also is opposed to allowing renters any use of the joint use dock he shares with the Stabberts'. He claims it is a violation of the Joint Use Agreement.

He indicates that Obstruction Pass Road is a one-lane road with very few pull outs on the roadway leading to the Stabbert properties. Renters will be confronted with a three way, largely unidentified triple-crossroads where Obstruction Pass Road, Point of View Lane, and the Stabbert driveway come together. There is no visual clue at this intersection as to what goes where.

The geographic location of these properties means that all light, glare and sound resonates and blasts out from the vortex into the wider open spaces of Box Bay, where there are a number of residences on the shore of the Bay. Sounds can be amplified by this such that it is not uncommon for normal conversation to be heard at a considerable distance out. Light and glare is also boosted out and at all the shoreline properties along the rock walls forming the bay.

There are very individual, unique, and special impacts the rentals would have on the Evans' specifically, which raises significant legal issues which follow.

The Stabbert-Evans properties are jointly bound by a shoreline substantial development permit issued in 2007, which incorporates into it the terms, limitations and conditions of a Joint Use Agreement. Both place strict limitations not only on the dock, access way, and land landing built as allowed by that permit, but also the strict, guaranteed quiet use and enjoyment provisions of the shoreline management act affecting upland use touching in whole or in part the 300 foot jurisdiction of the SMA. And it is quite clear from reading these two official documents that "vacation rental" is in direct violation of the limitations of the joint use agreement and the SMA.

Mr. Evans refers to several sections of the Joint Use Agreement that he says prohibit rental use of the property. He quotes a portion of Section 12:

"The owners of each parcel may allow their invitees to use the dock..."

This is followed by language referring to "invitees" as "guests" only, and even if a guest, they may only have access for seven days at the longest. That same section states the entire purpose of the Joint Use Agreement is to insure the "privacy and quiet enjoyment" of the owners. Section 18 denies any "commercial" use.

Perhaps his biggest argument is that vacation rentals are not exempt from the requirements of a shoreline substantial development permit. There are three sources for determining exemption, the Shoreline Management Act of 1971 at Chapter 90.58 RCW; Shoreline management permit and enforcement procedures in Chapter 173-27 WAC; and Chapter 18.50 SJCC. According to Mr. Evans, all of these legal sources lead to the conclusion that vacation rentals are not exempt from shoreline substantial development permit requirements.

He also argues that allowing the simultaneously rental of two side by side houses as vacation rentals is not allowed per SJCC 18.40.270(G):

"Where there are both a principal residence and an accessory dwelling unit, the owner or long-term lessee must reside on the premises, or one of the living units must remain unrented."

(The rest of Mr. Evans' comments are in the attached emails. They contain further discussion of why a shoreline substantial development permit should be required; why only one house should be allowed to get a vacation rental permit; numerous exhibits supporting his conclusion; photographs of the area; and applicable laws and regulations.)

- On January 22, 2018, the County received a response from Dan and Cheryl Stabbert, owners of the property subject to this application, Exhibit 16. They explain that the joint use agreement for the dock was developed for the ownership and use of the small dock on the SE corner of their property and to allow the Evans a pathway easement to a small parcel of land to store their marine gear including crab pots. Its primary focus is on the use, maintenance, and expense with a special focus on limiting noxious smells and unsightly storage. Also, the only prohibited use of the dock is commercial use which the Washington State Supreme Court has ruled does not apply to temporary rentals. "In Wilkinson v. Chiwawa Communities Association, the Washington Supreme Court held in 2014 that an

owner's receipt of money from a vacationing guest for the use of the owner's home does not change the use from residential to commercial."

They also state that the joint use agreement says that their property (referred to as Jacobsen in the joint use agreement) retains all rights of use and development. The agreement in no way gives the Evans' a say over how the Stabberts utilize their property in any way other than the joint use of the dock and its associated care.

The rules for vacation rentals in SJCC 18.40.270 clearly define the standards which they are prepared to enforce including local and nearby administration. The property, nearly nine miles from Eastsound, does not lend itself to a party crowd but to individuals who appreciate the isolation and beauty of this unique property.

Other objections that have been raised include:

- a. One-lane deteriorating road:
 - i. There are two separate entrances to this property with the Obstruction Pass entrance through an electronic gate and the second placed almost 700 feet away on the north end along the pond.
 - ii. There have been no complaints about Obstruction Pass Road being inadequate for its given use.
 - iii. This road has sufficient size for the large service trucks from both propane and waste services taking care of all of our homes along this road without ever a complaint.
 - iv. With both homes occupied the total occupancy is eight bedrooms with an average of two persons per room. Although it is implied that you can have three persons per room, these homes are not the quality to be occupied by three persons per room (unless one of them happens to be an infant). Their average guest complement has never been more than two cars as guests often bypass the ferry and come by the small water taxi. There is also a county dock a three to four minute walk away which is ideal for either the water taxi or a renter's personal boat. And the property dock and offshore buoys are adequate for small commuter boats up to 30 feet.
- b. Guests infringing on other property owners beach areas:
 - i. It is not only difficult but almost impossible to access other property's beach areas.
 - ii. The homes experiencing the trespass are on the east side of Obstruction Pass Road and they share a common beach. This property is uniquely isolated.
- c. Guest disrespecting people's property and a cultural change:
 - i. The referenced property, 33 Meany Way, is generally not occupied. Its entrance lies about 50 feet from the Stabbert Obstruction Pass Road entrance. They have never noticed a problem, but that house is located on a nearly continuous beach that runs east along Obstruction Pass connecting property to property.
 - ii. The Stabberts houses are designed to be lived in full time. If they choose to rent it out for short periods of time rather than use it themselves, the net increase is zero.

- iii. The high end rental agencies do background checks on the guests who may also have been rated by other venues that they have rented in the past.
 - d. Exterior lighting is bothersome:
 - i. There is a very low level and tasteful landscape lighting set on the west rock wall that includes three low wattage bulbs shining onto three large madronas on the hillside, spaced about 75 feet apart from one another. A fourth light of low wattage highlights a 17 foot hand-carved totem pole that looks over the bay. The lights automatically turn on at dusk and automatically turn off between eleven and twelve PM. No matter how many people stay at the house, the lights will never be any brighter or be on any longer.
 - e. Unattended beach fires:
 - i. Their property is not set up geographically to be conducive to that. They have a concrete fire pit in front of their house that is unobservable from the Obstruction Pass houses. There is even an outdoor fire pit on their patio. When the "no burn" rule is in effect, the fire pits are not used.
- Beginning on January 25, 2018, there was a series of emails between Tom Evans, the author of the above series of messages, and Chad Yunge, with the Department of Ecology's Shorelands Assessment and Management Program, Exhibit 17. The County was copied on most of the communications, but I believe we might not have received the email that started their string. However, it seems likely Mr. Evans was asking for Mr. Yunge's opinion on how the County was handling the vacation rental in the shoreline issue.

On January 30, 2018, Mr. Yunge responded to Mr. Evans that he had an opportunity that morning to review the San Juan County SMP related to the use of existing single-family residences as vacation rentals. He said that Ecology agrees with the County's determination that no shoreline substantial development permit is required. He concluded this based on the fact that no new development is being undertaken. The SMA defines "development" as a use consisting of the construction or exterior alteration of structures, dredging, drilling, dumping, filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level (RCW 90.58.030(3)(a)). While any use of the shoreline must be consistent with a local SMP, a permit or exemption is not required unless it involves development as defined above.

- On February 4, 2018, Mr. Evans send a request to the County to include two proposed conditions of approval to the Stabbert vacation rental permits, Exhibit 18. One of the conditions has to do with roadway access to the rentals (1) and the other has to do with preventing renters from accessing and using the privately owned dock, trail access to the Evans property, and that portion of the Evans owned platform and landing (2).

"1. Access to the Stabbert rentals from Obstruction Pass Road shall be limited to the Stabbert asphalt improved roadway running from the intersection of Obstruction Pass Road and Point of View Lane directly to the Stabbert properties and proposed vacation rentals. Stabbert shall take measures to insure renters looking to find the vacation rentals do not travel along Obstruction Pass Road beyond the intersection identified above. There shall be in a required

rental packet directions to the renters clearly showing that the roadway past the intersection is private property. Stabbert shall also post, on Stabbert Property abutting the intersection a large, 2.5 foot long 1 foot wide, weatherproof sign, professionally constructed, easy to read, from a vehicle and showing renters the proper access roadway into the rentals. Evans may post, on private roadway in which Evans has an ownership right, appropriate signs including 'Private Property No Trespassing'."

"2. Stabbert and/or Stabbert's agent shall expressly advise any potential and actual renter that these properties are private and to access them is trespassing. Any photo depicting the property or any writing of any sort whatsoever issued for purposes of obtaining renters shall contain a written disclosure in not less than 18 point type stating: "Dock, landing, and trail way are private property and renters may not use them. Using these properties is trespassing and may be prosecuted as such." This language shall be used anytime the rentals are represented as available, advertised, or listed including any and all internet postings, rental/real estate listing and photograph, listing through any VRBO agency, rental agency, real estate firm or other rental agency. It shall be Stabberts obligation to insure compliance with the conditions in this section. Any violation, intentional or otherwise, shall be considered a code and/or trespass violation with appropriate fines, law enforcement assistance and further protective measures, if necessary, as determined by any enforcement officer or other SJC agent or entity. Further, Stabbert shall, at his expense, install a professionally constructed and installed, weatherproof gated entry to the dock, which shall provide access only to Stabbert/Evans or their authorized invitees as identified in the joint use agreement. This gated entry shall be installed and approved by Evans before any rental is made. Entry shall be by shared key or coded lock. The gate, locking device, and installation shall be by third party professional, not be Stabbert personally or Stabbert employee or agent. The gated entry shall be locked anytime a renter is on the property and Stabbert shall be responsible for making sure the gate is locked when renters are anticipated or are on the property. Finally, Evans may install, professionally constructed and placed, 'PRIVATE PROPERTY—NO TRESPASSING' signs on the dock, platform, and trail, as reasonably necessary to insure compliance."

- On February 6, 2018, the Stabberts responded to Mr. Evans proposed conditions. They are opposed to posting any signs on their own property about use of their own road. They will in writing recommend that this road off Point of View Lane be the primary access road in any correspondence and instructions to potential users of the property. They are not willing to relinquish their right to use their own road and formal access, but agree that the Point of View Lane access is much more convenient and is the road of choice at almost all times other than formal events.

Regarding the dock, The Stabberts believe the joint use agreement clearly spell out what is and what is not prohibited. They believe the use by tenants, invitees, and others using the property are clearly allowed under the agreement. What is not allowed is commercial use, which is the argument Mr. Evans applies and which is wrong. The Washington Supreme Court ruled that vacation rental use is not commercial use. They think that Mr. Evans attempt to limit use of the dock is an attempt to dampen the demand for this property as it would not have quite the appeal otherwise.

The Stabberts would like to utilize the dispute provision for arbitration under the joint use agreement to clearly define both the Evans and Stabberts rights over the dock use, platform location, and any other items that might need some housekeeping between the parties. The Stabberts would abide by the outcome of the arbitration and if that prohibited the dock use in any way, they would abide by it.

The Stabberts propose the following language be added to the vacation rental permit approval:

- i. Stabbert shall abide by and communicate the rules outlined in the Joint Use Agreement as regards the use of the dock.
- ii. Stabbert shall place a sign at the foot of the Evans 4 foot easement path of "no trespassing" and shall clearly define this prohibition in any correspondence to property users.

The Stabberts feel their proposed additions to the permit offer the Evans and adjoining property owners adequate protection for the issues they have raised while protecting their property rights as owners.

25. SJCC 18.80.020 Project permit applications - Procedures.

- A. Nonbinding Preapplication Conferences. Preapplication conferences are optional, but strongly encouraged, and will be granted on a time-available basis by the director.
- B. Determination of Proper Type of Project Permit.
- C. Project Permit Application—Forms. Applications for project permits shall be submitted to the permit center on forms approved by the director. An application must (1) consist of all materials required by the applicable development regulations; (2) be accompanied by plans and appropriate narrative and descriptive information sufficiently detailed to define clearly the proposed project and demonstrate compliance with applicable provisions of this code; and, except for project permit applications for temporary uses, (3) shall include the following:
 1. A completed project permit application form;

A complete application was submitted to DCD on December 11, 2017.

2. If the applicant is not the owner of the subject property, a notarized statement by the owner(s) that (a) the application has been submitted with the consent of all owners of the subject property, and (b) identification of the owner's authorized agent or representative;

The owners of the property signed the application.

3. A legal description of the site and any other property description required by the applicable development regulations;

The legal description was included in the application in Exhibit 8.

4. The applicable fee;

The application fees were paid on December 11, 2017.

5. Evidence of available and adequate water supply as required by SJCC Title 8 and the Comprehensive Plan; see also SJCC 18.60.020;

Existing residences that were legally established are presumed by Health and Community Services to have an adequate water supply. This also applies to applications for vacation rentals in such residences.

6. Evidence of sewer availability or septic approval or suitability as required by SJCC Title 8;

The home is served by on-site sewage disposal system permit number 98-114-06. The approved capacity is for 6 bedrooms. The vacation rental permit is for a four bedroom house. The adjacent parcel has a three bedroom house which is also subject to a vacation rental permit, so this house should be limited to three bedrooms.

7. A plot plan to scale no smaller than one inch equals 40 feet for a plot larger than one acre, and no smaller than one inch equals 20 feet for a plot one acre or smaller;

The submitted site plan is adequate for the proposal because the development is existing.

8. Graphic depiction of the following:

- a. Compass direction and graphic scale; *Included*
- b. Corner grades and, if required by the director, existing contours of topography at five-foot contour intervals; *This was not shown and has been waived.*
- c. Proposed developments or use areas; *This was included on the site plan.*
- d. Existing structures and significant features on the subject property and on adjacent properties; *This was included on the site plan.*
- e. Property lines, adjoining streets, and immediately adjoining properties and their ownerships; *Property lines, adjoining street, and immediately adjoining properties are shown on the site plan.*
- f. Location and dimensions of existing and proposed improvements on public rights-of-way, such as roads, sidewalks, and curbs; *Few roads in this county are equipped with sidewalks or curbs and none are shown on the site plan.*
- g. Existing and proposed grades and volume and deposition of excavated material; *NA, because no earthwork is required.*
- h. Natural drainage direction and storm drainage facilities and improvements; *No new development is proposed so this information is not necessary.*
- i. Locations of all existing and proposed utility connections; *No new development is proposed so this information is not necessary.*
- j. Parking spaces and driveways; *These are depicted on the site plan.*
- k. Proposed landscaping; *Landscaping is not required for single family residential use.*
- l. Wetlands and other environmentally sensitive areas; and
There is no new development to trigger critical area review. Although the whole county is a critical aquifer recharge area, there are no performance standards for single family development.

m. All easements (recorded or unrecorded) must be shown. If recorded, the recording number must be shown. *Easements are not shown on the site plan as there is no new development proposed.*

9. The applicant shall provide a list showing the names and addresses of the owners of property within 300 feet of the boundaries of the property subject to the project permit application. For purposes of this chapter, the owners of property within 300 feet of the boundaries of the subject property are those whose names are shown on the tax assessment rolls on the date the project permit application is submitted to the permit center.

This list is provided in Exhibit 9.

10. Critical Areas (CAs). Because this is existing development, no critical area review is triggered. *The entire County is an aquifer recharge area but those regulations do not apply to residential uses.*

11. Frequently Flooded Areas. *No frequently flooded areas are located on this parcel.*

12. Additional Application Information for Divisions of Land and Boundary Line Modifications.

13. Additional Application Information for Binding Site Plans.

14. Additional Application Information for Planned Unit Development.

15. Additional Application Information for Rural Residential Cluster Development.

Items 12 through 15 do not apply to this proposal.

16. Additional Information. The director may require additional information necessary for review and evaluation for demonstration of project consistency with this code;

No additional information was requested.

17. Director's Waiver. The director may waive specific submittal requirements determined to be unnecessary for review of a project permit application required by this code;

No request was made for waiver of specific requirements; however site plan requirements were waived as noted above because there is no new development proposed.

18. Temporary Use Permit Applications. All project permit applications for a temporary use shall be submitted to the director in writing and contain sufficient information for the director to make a decision (see SJCC 18.80.060). The director shall determine what information is necessary for review of such applications.

This is not a temporary use permit application.

26. SJCC 18.80.020(c)(5)&(6) require evidence of adequate water and septic service for the proposed use.

The proposal is in an existing residence built in 1998. Water is from the Doe Bay community system. A certificate of water availability was obtained, 98-172-C. The on-site septic permit #98-114-06 is for a six-bedroom house.

27. SJCC 18.80.080(A). Purpose and Applicability. Provisional uses must comply with the development standards in Chapter 18.60 SJCC and the performance standards of Chapter 18.40 SJCC. Provisional uses must obtain a project permit.

This application conforms to the referenced standards.

28. SJCC 18.80.080(B). Notice. Notice for provisional uses must comply with the procedures set forth in SJCC 18.80.030(A). Public comment on the notice of application for a provisional use project permit must comply with SJCC 18.80.030(B).

The notification requirements were complied with as shown on the attached Instructions for Mailing the Legal Notice and Posting the Sign (Exhibit 9).

23. SJCC 18.80.080(C). Decision-making Authority. The administrator has authority to approve or deny provisional use permit applications according to the applicable provisions of this code. The administrator also has authority to impose conditions of approval on a provisional use permit.

29. SJCC 18.80.080(D). Criteria for Approval.

1. The provisional use permit application shall only be approved by the administrator if the use has been reviewed for consistency with the applicable sections of this code (e.g., Chapter 18.40 SJCC, Performance Standards, Chapter 18.50 SJCC, Shoreline Master Program, and Chapter 18.60 SJCC, Development Standards) and found to meet the requirements set forth by this code; and

The use has been shown above to be consistent with the performance standards for vacation rentals in SJCC 18.40.270.

2. Any provisional use application (not including short subdivisions) involving property located within the jurisdiction of the state Shoreline Management Act but not requiring a shoreline permit must conform to the policies in Element 3 of the Comprehensive Plan and the applicable regulations in Chapter 18.50 SJCC (the Shoreline Master Program).

The goal of the Rural Farm Forest shoreline designation is in the Comprehensive Plan at Section B Element 3.3.D:

"The goal of the Rural Farm-Forest Designation is to protect agricultural, mineral resource, as well as timber lands and to maintain and enhance the rural low density character of the County's shoreline while providing protection from expansion of mixed use and urban types of land uses. Open spaces and opportunities for recreational and other uses compatible with agricultural and forestry activities should be maintained. Development related to the commercial fishing industry and aquaculture would be allowed. Other forms of development which are not contrary to the purpose of the Rural Farm-Forest Designation would be permitted only under certain circumstances."

A vacation rental in this designation provides opportunities for recreational and other uses. This parcel is not currently used for agricultural or forestry uses, and likely has not been for a number of years.

The Comprehensive Plan discusses vacation rentals in the land use element at Section B Element 2.2.A:

12. Vacation rental (short-term, i.e., of less than thirty days) of a principal, single-family residential unit or an ADU should be subject to standards similar to those for hospitality commercial establishments but should be classified as a residential use for purposes of land use regulation.

There are no regulations in Chapter 18.50 SJCC pertaining to vacation rentals.

25. SJC 18.80.080(E). Term. Unless a shorter time period is specified in the provisional use permit conditions, development authorized through a provisional use permit shall be completed within five years from the date of provisional use permit approval or such permit shall become null and void.

This standard is not applicable because the property is already developed.

EXHIBITS

1. Application cover sheet
2. Application materials
3. Directions to the property
4. Site plan
5. Floor plan
6. Email explaining parking from agent dated February 23, 2018
7. Sewage design application
8. Legal description
9. Posting and notification verification, including legal ad
10. Comments from John and Paula Tiscornia dated January 7, 2018
11. Comments from John Tiscornia dated January 16, 2018
12. Comments from Julia Evans dated January 9, 2018
13. Comments from Roy and Susan Beaton dated January 16, 2018
14. Comments from Kirk and Jill Callison dated January 17, 2018
15. Comments from Tom Evans beginning January 9, 2018
16. Response from Dan and Cheryl Stabbert dated January 22, 2018
17. Email communication between Tom Evans and Chad Yunge beginning January 25, 2018
18. Proposed conditions of approval from Tom Evans dated February 4, 2018
19. Response from Dan and Cheryl Stabbert dated February 6, 2018
20. Permit receipt

CONCLUSIONS

This application meets SJCC 18.80.080(D), criteria for approval of a Provisional Use permit:

1. The provisional use permit application shall only be approved by the administrator if the use has been reviewed for consistency with the applicable sections of this code (e.g. Chapter 18.40 SJCC, Performance Standards, Chapter 18.50 SJCC, Shoreline Master Program, and Chapter 18.60 SJCC, Development Standards) and found to meet the requirements set forth by this code; and
2. Any provisional use application (not including short subdivisions) involving property located within the jurisdiction of the state Shoreline Management Act but not requiring a shoreline permit must conform to the policies in Element 3 of the Comprehensive Plan and the applicable regulations in Chapter 18.50 SJCC (the Shoreline Master Program).

DECISION AND PERMIT CONDITIONS

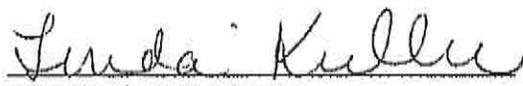
The application is approved subject to the following conditions:

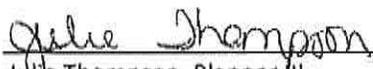
- 1) This permit allows a 3-bedroom vacation rental on TPN 161650403, 2318 Obstruction Pass Road, Orcas Island. The approval is for the site plan including 3 parking spaces as depicted on Exhibit 4, the attached approved site plan and as conditioned herein.
- 2) No more than 9 guests shall be accommodated at any one time when the home is rented.
- 3) Renters access to the property shall be via Point of View Lane.
- 4) There shall be no parking on adjacent roads.
- 5) Where there is both a principal residence and an accessory dwelling unit, the owner or a long-term lessee must reside on the premises, or one of the living units must remain un-rented.
- 6) Prior to operation, the applicant shall call the SJC Fire Marshall to have the driveway inspected for emergency vehicle access and shall submit evidence to the Department of Community Development that the driveway was approved by the Fire Marshall.
- 7) The vacation residence shall be operated in a way that will prevent unreasonable disturbances to area residents.
- 8) An up-to-date property management plan shall be kept on file with the administrator. The property management plan shall include the following:
 - a. Rules of conduct approved by the County;
 - b. State of Washington Unified Business Identifier number, and the names and addresses of the property owner and agents authorized to act on the property owner's behalf;
 - c. A designated property representative who lives on the island where the vacation rental is located who can respond to complaints and emergencies, along with a valid telephone number where the representative can be reached twenty-four (24) hours per day.
- 9) The rules of conduct and a map clearly depicting the property boundaries of the vacation rental shall be prominently displayed in the rental. The map shall indicate if there is an easement that provides

access to the shoreline. If so, the boundaries of the easement shall be clearly defined; if there is no access, this shall be indicated together with a warning not to trespass.

- 10) Adherence to all San Juan County and local fire and noise regulations shall be required.
- 11) All advertisements and marketing materials shall include the San Juan County permit number for the vacation rental. The rental shall not be advertised or marketed in conjunction with the vacation rental on the adjacent property.
- 12) No food service is to be provided.
- 13) No outdoor advertising signs are allowed.
- 14) Vacation accommodations must meet all local and state regulations, including those pertaining to business licenses and taxes.
- 15) No use shall be made of equipment or material that produces unreasonable vibration, noise, dust, smoke, odor, or electrical interference to the detriment of adjoining property.
- 16) Issuance of a permit for a vacation rental does not license the owner to violate private covenants and restrictions.
- 17) All correspondence related to this permit must reference the permit number, PPROVO-17-0065.
- 18) If the conditions of approval are not complied with, the resulting impacts may change a typical residential area to one with frequent incidents of trespass, noise, and traffic from strangers who have no investment in maintaining civil relations with neighbors. For this reason, it is emphasized that failure to comply with conditions of approval is grounds for revocation of this permit.

DATED this 12 day of March 2018.


Erika Shook, AICP, Director

Permit prepared by: 
Julie Thompson, Planner III

APPEALS

Any party of record to this decision may submit an appeal to the Department of Community Development located at 135 Rhone Street, Friday Harbor within twenty-one (21) days of the date of the decision. Appeals must be in writing, be accompanied by the appeal fee, and contain the following:

- The appellant's name, address, and phone number;
- ♦ The appellant's statement describing standing to appeal;

- Identification of the application which is the subject of the appeal, including date of the decision being appealed; appellant's statement of grounds for appeal and the facts upon which the appeal is based;
- The relief sought, including the specific nature and extent; and
- A statement that the appellant has read the appeal and believes the contents to be true, signed by the appellant.



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

Land Use Vacation Rental Permit Application

PROPERTY INFORMATION Land Use/Shoreline
Tax Parcel Number: 161650403000 Designation: 11 Water Body:
Island: Orcas Subdivision: N/A Lot Number: 3675
Property Size: 1.3178 Application Type: Vacation Rental
Existing and Proposed Use: 2318 Obstruction Pass Road 3 Bedroom Main Home (see attached)
Directions to Property: 4.3 Miles Moran State Park 4 S.J.C. DEPARTMENT OF

DEC 11 2017

OWNER AND AGENT INFORMATION:
Name of Owners: Dan & Cheryl Stabbert Name of Agent: Karla Lopez COMMUNITY DEVELOPMENT
Address: 13019 NE 61st Place Address: 2629 NW 54th ST # 201
City, State, Zip: Kirkland, WA 98107 City, State, Zip: Seattle, WA 98107
Phone Number: 206-383-1325 Phone Number: 206-383-1253
Email: dan@stabbertmaritime.com E-mail: karlal@Stabbertmaritime.com

NOTE: A timely appeal of Shoreline Exemptions will stay the effective date of the granting of the exemption until the appeal has been resolved at the County level. (SJCC 18.80.140A(7))

PERMIT CERTIFICATION (Must be signed by all property owners of record or a notarized agent signature provided.)
I have examined this application and attachments and know the same to be true and correct, and certify that this application is being made with the full knowledge and consent of all owners of the affected property. (Signed by property owner or agent. For agent signature, notarized authorization must be attached.)
Signatures and names of Dan Stabbert and Cheryl Stabbert with dates 12-7-17.
For DCD Use Only Complete Application: YES NO Date Received: 12/11/17 Receipt Number: 000015030

FOR STAFF USE ONLY
Date Received: Amount Paid: Receipt #:
SEPA Exempt Code Citation: Inspection Required: YES NO
Approved Denied By: Date:

NOTE: The Application Submittal Checklist for Land Use Review is a separate form that must be completed and attached to all applications. This checklist, along with other forms that might be needed, and current fees, may be found at: http://sanjuanco.com/permitcenter/applicationforms.aspx

019

December 6, 2017

San Juan County Department of Community Development
135 Rhone Street
PO Box 947
Friday Harbor 98250

To whom it may concern,

Attached please find two application for Vacation rentals for Dan & Cheryl Stabbert. The property - location is 2318 Obstruction Pass Road, Olga, WA 98203, one application is for the Main house parcel # 161650403000 Noted at Parcel C a 5 bedroom, 4 ½ bath home. Parcel # 16164300300 is for the guest house with the same address on a separate parcel #A 6.78 Acres, a 3 bedroom, 2 bath home.

I believe all the required documentation is attached. If there is anything missing please contact Mr. Dan Stabbert or me.

His email address is dan@stabbertmaritime.com or KarlaL@stabbertmaritime.com

Best Regards,



Karla Lopez

Assistant to Mr. Dan Stabbert

PPROV0-17-0066
STABBERT, DAN & CHERYL

020

PHOTOGRAPH ADDENDUM

Borrower or Owner DANIEL STABBERT
Property Address 2318 OBSTRUCTION PASS RD
City ORCAS ISLAND County SAN JUAN State WA Zip Code 98279
Client COBALT MORTGAGE INC



FRONT VIEW OF
SUBJECT PROPERTY



REAR VIEW OF
SUBJECT PROPERTY

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



STREET SCENE OF
SUBJECT PROPERTY

PPROV0-17-0066
STABBERT, DAN & CHERYL

Borrower: STABBERT, DANIEL	File No.: OBSTRUCTION2318
Property Address: 2318 OBSTRUCTION PASS ROAD	Case No.:
City: OLGA	State: WA
Lender: COBALT MORTGAGE	Zip: 98279



ANOTHER HOUSE VIEW



PORTION OF SITE AND VIEW



ANOTHER HOUSE VIEW

S.J.C. DEPARTMENT OF
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 COMMUNITY DEVELOPMENT

PPROV0-17-0066
 STABBERT, DAN & CHERYL
 022

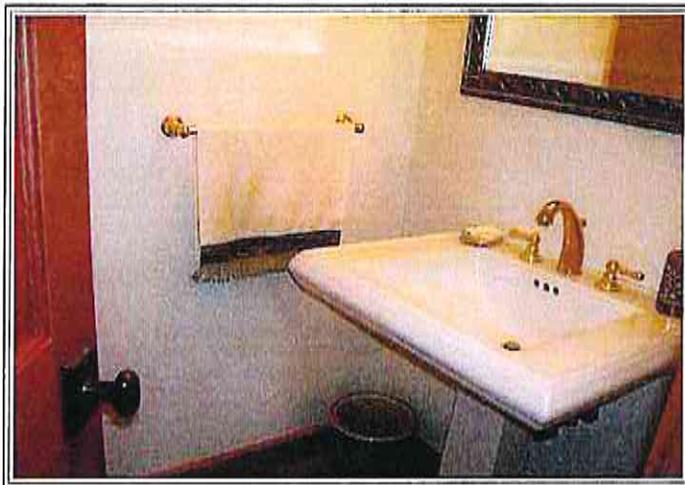
BATHROOM PHOTOS

Borrower: STABBERT, DANIEL	File No.: OBSTRUCTION2318	
Property Address: 2318 OBSTRUCTION PASS ROAD	Case No.:	
City: OLGA	State: WA	Zip: 98279
Lender: COBALT MORTGAGE		



UPPER BATH

Comment:



LOWER BATH

Comment:



LOWER BATH

Comment:

S.J.C. DEPARTMENT OF

DEC 11 2017

COMMUNITY DEVELOPMENT

Photo taken by GAFI on 12/11/17 at 10:00 AM

PPROV0-17-0066
STABBERT, DAN & CHERYL
023

INTERIOR PHOTOS

Borrower: STABBERT, DANIEL	File No.: OBSTRUCTION2318	
Property Address: 2318 OBSTRUCTION PASS ROAD	Case No.:	
City: OLGA	State: WA	Zip: 98270
Lender: COBALT MORTGAGE		



Kitchen

Comment:

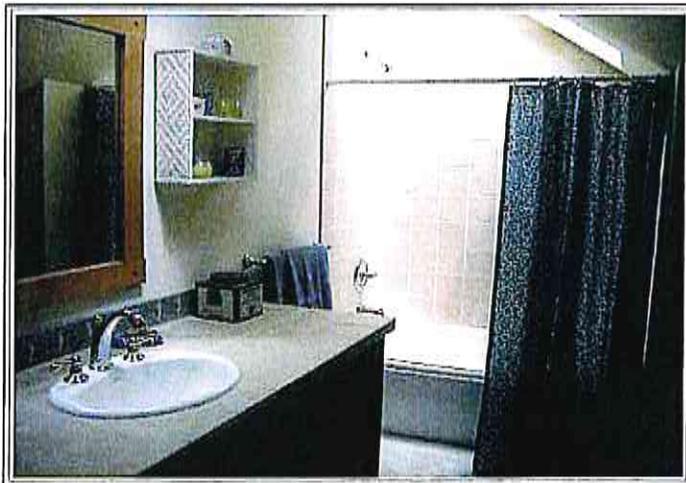


Living Area

Description:

Comment:

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



Bathroom

Description:
UPPER BATH

Comment:

Photo by Jerry AQ, Inc. 200 734 8177 www.jerryaq.com

PPROV0-17-0066
STABBERT, DANIEL & CHERYL

PHOTOGRAPH ADDENDUM

Borrower or Owner **DANIEL STABBERT**
Property Address **2318 OBSTRUCTION PASS RD**
City **ORCAS ISLAND** County **SAN JUAN** State **WA** Zip Code **98270**
Client **COBALT MORTGAGE INC.**



Master Bedroom



Master Bath



Master Bath



Sauna



Family Room



Guest Suite

S.J.C. DEPARTMENT OF

DEC 11 2017

COMMUI PPROV0-17-0066
STABBERT, DAN & CHERYL 025

Julie Thompson

From: Karla Lopez <KarlaL@stabbertmaritime.com>
Sent: Wednesday, February 21, 2018 8:54 AM
To: Julie Thompson
Subject: RE: Orcas

Hi,

It feels like I am always working. I had my two teen boys with me they love it there. Lost power all day Saturday so it was really nice to just hang out and play board games and talk there is no reception out there so we were really disconnected. I stayed in the main house this time, it is so beautiful out there.

One of the rooms on the main floor is not a bedroom I was wrong on the application Dan and Cheryl use it a playroom for the grandkids and its supposed to be an office. So the house has 4 bedrooms.

Parking is as follow; I will draw it out on the map I send this afternoon. Main house has 2 car garage 2 fit outside garage. There is area by the playground where 3-4 cars fits.

Guest house parking has 4 cars by the office/guest house and the large garage/barn can hold up to 6-8 cars.

Karla Lopez
Executive Assistant
Stabbert Maritime
p: 206.204.4132 m: 206.383.1253
a: 2629 NW 54th Street # 201, Seattle, WA 98107

STABBERT  MARITIME
w: StabbertMaritime.com e: KarlaL@StabbertMaritime.com

From: Julie Thompson [mailto:JulieT@sanjuanco.com]
Sent: Wednesday, February 21, 2018 8:28 AM
To: Karla Lopez
Subject: RE: Orcas

Thanks. Hope you had a good time and weren't working all weekend.

From: Karla Lopez [mailto:KarlaL@stabbertmaritime.com]
Sent: Wednesday, February 21, 2018 7:48 AM
To: Julie Thompson <JulieT@sanjuanco.com>
Subject: Orcas

I was at orcas all weekend. Sorry for the delay, will have the information requested today to you.

Google Maps

Moran State Park to 2318 Obstruction Pass Rd, Olga, WA 98279

Drive 4.3 miles, 9 min



Moran State Park

3572 Olga Rd, Olga, WA 98279

- ↑ 1. Head southeast on Olga Rd toward Kahboo Hill Rd
- ↶ 2. Turn left onto Point Lawrence Rd
- ↷ 3. Turn right onto Obstruction Pass Rd
- ↶ 4. Turn left to stay on Obstruction Pass Rd
- ↷ 5. Turn right to stay on Obstruction Pass Rd

i Destination will be on the right

1.5 mi
0.5 mi
0.9 mi
1.3 mi
102 ft

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

2318 Obstruction Pass Rd

Olga, WA 98279

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

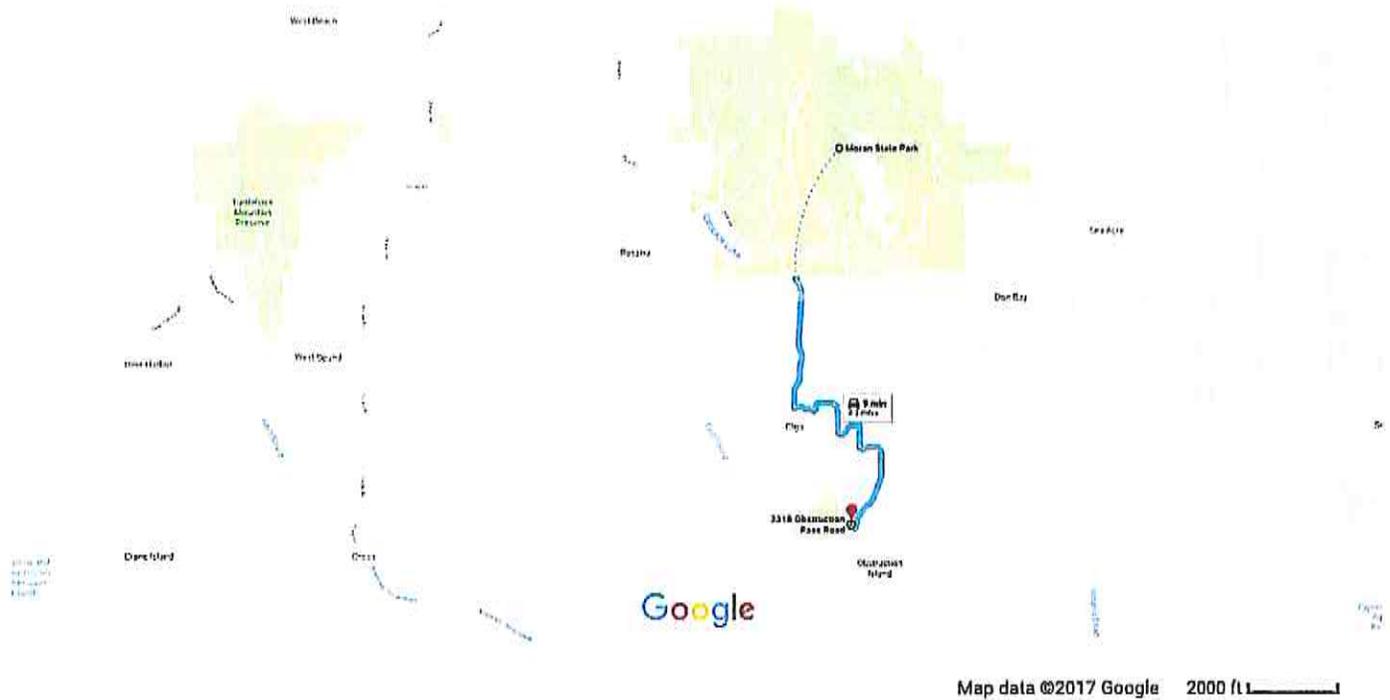
PPROV0-17-0065
STABBERT DAN & CHERYL

027

Google Maps

Moran State Park to 2318 Obstruction Pass Rd, Olga, WA 98279

Drive 4.3 miles, 9 min



Moran State Park

3572 Olga Rd, Olga, WA 98279

- ↑ 1. Head southeast on Olga Rd toward Kahboo Hill Rd
 - ↶ 2. Turn left onto Point Lawrence Rd
 - ↷ 3. Turn right onto Obstruction Pass Rd
 - ↶ 4. Turn left to stay on Obstruction Pass Rd
 - ↷ 5. Turn right to stay on Obstruction Pass Rd
- Destination will be on the right

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

1.5 mi
 0.5 mi
 0.9 mi
 1.3 mi
 102 ft

2318 Obstruction Pass Rd

Olga, WA 98279

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

PPROV0-17-0066
STABBERT, DAN & CHERYL

028

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FEB 23 2010
COMMUNITY DEVELOPMENT

PPROVO -17-0065

Read from PV Lane

Play Area

(6-8) Car Parking
Barn

(2) Car Parking "B"

SHOP

GARDEN

GREEN HOUSE

SHED

OFFICE HOUSE

GUEST HOUSE

← parking (4)
PLUS (2) garag.

PPROVO -17-0066

HOUSE

GARAGE

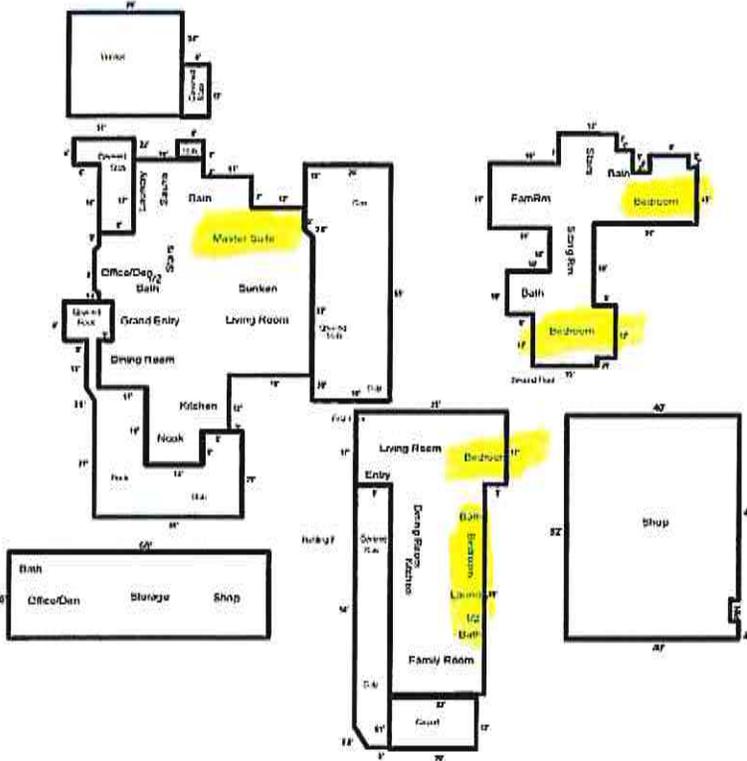
DRIVE FOR
SAN JUAN COUNTY 65

OBSTRUCTION PA68

SKETCH ADDENDUM

EXHIBIT 5

Barrower or Owner DANIEL STABBERT
 Property Address 2318 OBSTRUCTION PASS RD
 City ORCAS ISLAND County SAN JUAN State WA Zip Code 98279
 Client COBALT MORTGAGE INC



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

SUMMARY		SQ FT AREA	PERIMETER	AREA CALCULATION DETAILS			
Living Area				First Floor			
First Floor	2471	245		16.0 X 4.0 =	64.0	4.0 X 12.0 =	48.0
Second Floor	1337	242		27.0 X 7.0 =	189.0	1.0 X 2.0 =	2.0
Total	3808	488		39.0 X 5.0 =	195.0	Total	1337.0
39.5 X 1.0 =	39.5			40.5 X 1.0 =	40.5		
Other				40.0 X 2.0 =	80.0		
Shop	2070	188		49.5 X 1.0 =	49.5		
Accessory Buildings				50.0 X 9.0 =	450.0		
Building 2	1673	202		49.5 X 1.0 =	49.5		
Garage/Carport				49.0 X 2.0 =	98.0		
Carport	240	64		46.0 X 9.0 =	414.0		
Site Improvements				49.0 X 8.0 =	392.0		
Concrete	1022	149		30.0 X 3.0 =	90.0		
Concrete	831	203		18.0 X 10.0 =	180.0		
Concrete	212	72		13.0 X 8.0 =	104.0		
Concrete	72	36		Total	2471.0		
Concrete	24	20		Second Floor			
Concrete	481	136		13.0 X 21.0 =	273.0		
Subtotal	2642	615		4.0 X 17.0 =	68.0		
Garage/Carport				9.0 X 16.0 =	144.0		
Garage	624	100		16.0 X 15.0 =	240.0		
Accessory Buildings				2.0 X 13.0 =	26.0		
Office/Storage/Shop	1200	180		4.0 X 12.0 =	48.0		
				8.0 X 33.0 =	264.0		
				2.0 X 32.0 =	64.0		
				10.0 X 10.0 =	100.0		
				5.0 X 12.0 =	60.0		

SKETCH (1-10-2017)

PPROV0-17-0066
 STABBERT, DAN & CHERYL

030

Julie Thompson

From: Karla Lopez <KarlaL@stabbertmaritime.com>
Sent: Friday, February 23, 2018 12:03 PM
To: Julie Thompson
Subject: Parking @ Orcas
Attachments: DOC022318.pdf

Hi Julie,

Parking is as follows. The main house, has a 2 car garage, plus 4 cars fit in a paved area in front of garage.

The guest house has parking by the office, another garage and parking outside the garage.

The barn can really hold 10-12 cars but Dan said to safely move them around without moving cars in and out its 6-8.

LOL on a personal note his barn is bigger than my house.

It has been an insane week here. So happy its Friday. Have a great weekend.

LEGAL DESCRIPTION PARCEL C AFTER

THE FOLLOWING DESCRIBED PARCEL IS IN GOVERNMENT LOT 5 OF SECTION 16, AND GOVERNMENT LOT 1, SECTION 21, TOWNSHIP 38 NORTH, RANGE 1 WEST, W.M., SAN JUAN COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF BEGINNING OF PARCEL C, BEING THE SOUTHEAST CORNER OF LOT 3, BLOCK 4, WECOMA SHORE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, AT PAGE 50, IN THE OFFICE OF THE AUDITOR OF SAN JUAN COUNTY, WASHINGTON; THENCE NORTH 38°21'35" EAST, 135.47 FEET; THENCE SOUTH 81°27'06" WEST, 286.07 FEET; TO THE THE EAST LINE OF THE WEST 660 FEET OF SAID GOVERNMENT LOT 5, PER BOOK 16, PAGE 21 OF SURVEYS, RECORDS OF SAID COUNTY; THENCE ALONG SAID EAST LINE OF THE WEST 660 FEET OF GOVERNMENT LOT 5, SOUTH 01°22'09" WEST, 188.84 FEET, TO THE MEAN HIGH WATER LINE; THENCE SOUTH 86°25'32" EAST, 24.31 FEET; THENCE SOUTH 68°39'15" EAST, 55.48 FEET; THENCE SOUTH 49°41'24" EAST, 37.36 FEET; THENCE SOUTH 10°00'49" WEST 45.72 FEET; THENCE SOUTH 25°52'44" WEST, 24.28 FEET; THENCE SOUTH 24°52'34" EAST, 14.96 FEET; THENCE SOUTH 16°31'11" WEST, 47.76 FEET; THENCE SOUTH 09°56'27" EAST, 39.46 FEET, THENCE NORTH 24°03'03" EAST, LEAVING THE MEAN HIGH WATER LINE, A DISTANCE OF 178.06 FEET, TO THE SOUTH LINE OF SAID GOVERNMENT LOT 5; THENCE SOUTH 88°37'57" EAST, ALONG SAID GOVERNMENT LOT LINE SHARED BETWEEN GOVERNMENT LOT 1 & GOVERNMENT LOT 5, A DISTANCE OF 73.69 FEET; THENCE NORTH 09°10'22" WEST, 177.49 FEET, TO THE POINT OF BEGINNING OF PARCEL C.

TOGETHER WITH A PERPETUAL EASEMENT FOR A PRIVATE ROAD OVER AND ACROSS A PARCEL OF LAND 20 FEET IN WIDTH AS CONVEYED BY AND DESCRIBED IN QUIT CLAIM DEED, RECORDED SEPTEMBER 29, 1954 IN VOLUME 26 OF DEEDS, AT PAGE 25, UNDER AUDITOR'S FILE NO. 44688, RECORDS OF SAN JUAN COUNTY, WASHINGTON.

TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR JOINT USE OF INGRESS, EGRESS AND UTILITIES OVER THAT PORTION OF VACATED MEANY WAY AS CONVEYED AND DESCRIBED IN EASEMENT AGREEMENT, RECORDED SPETEMBER 16, 1975 IN VOLUME 13 OF OFFICIAL RECORDS, AT PAGE 228, UNDER AUDITOR'S FILE NO. 89717, RECORDS SAN JUAN COUNTY, WASHINGTON.

TOGETHER WITH THAT PORTION OF THE TIDELANDS OF SECOND CLASS SITUATE IN FRONT OF AND ADJACENT TO OR ABUTTING UPON AS CONVEYED BY THE STATE OF WASHINGTON BY DEED-SECOND CLASS TIDE LANDS, RECORDED JANUARY 30, 1950 IN VOLUME 29 OF DEEDS, AT PAGE 189, UNDER AUDITOR'S FILE NO. 48829, RECORDS OF SAN JUAN COUNTY, WASHINGTON.

SITUATE IN SAN JUAN COUNTY, WASHINGTON.

S.J.C. DEPARTMENT OF

PREPARED BY
STAR SURVEYING, INC.
July 31, 2017

AUG 01 2017

COMMUNITY DEVELOPMENT



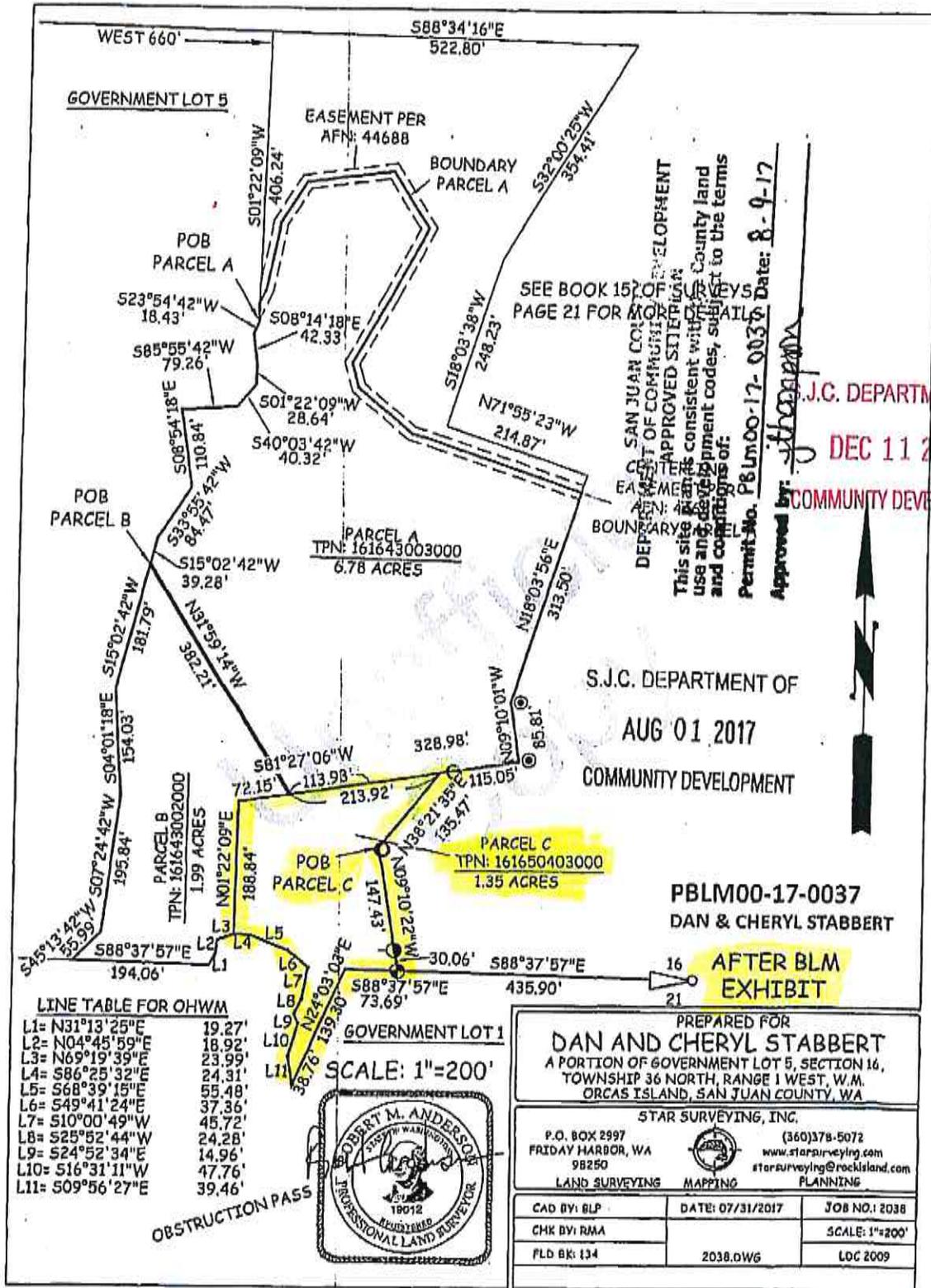
S.J.C. DEPARTMENT OF

DEC 11 2017

COMMUNITY DEVELOPMENT

PPROVO-17-0066
STABBERT, DAN & CHERYL

033



SEE BOOK 15 OF COUNTY RECORDS PAGE 21 FOR MORE INFORMATION

DEPARTMENT OF COMMUNITY DEVELOPMENT
 COUNTY ENGINEER
 APPROVED SITE PLAN

This site plan is consistent with the County land use and development codes, subject to the terms and conditions of:

Permit No. PBLM00-17-0037 Date: 8-9-17

Approved by: *[Signature]*

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

S.J.C. DEPARTMENT OF
 COMMUNITY DEVELOPMENT
 AUG 01 2017

PBLM00-17-0037
 DAN & CHERYL STABBERT

AFTER BLM
 EXHIBIT

PREPARED FOR
DAN AND CHERYL STABBERT
 A PORTION OF GOVERNMENT LOT 5, SECTION 16,
 TOWNSHIP 36 NORTH, RANGE 1 WEST, W.M.
 ORCAS ISLAND, SAN JUAN COUNTY, WA

PPROV0-17-0066
 STABBERT, DAN & CHERYL
 034



**SAN JUAN COUNTY
COMMUNITY DEVELOPMENT & PLANNING**

Location: 135 Rhone Street •
Mailing address: P.O. Box 947 • Friday Harbor, Washington 98250
360/378-2354 • 360/378-2116 • Fax 360/378-3922
permits@sanjuanco.com

Instructions for Mailing the Legal Notice and Posting the Sign

Mailing the Notice

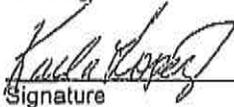
Enclosed is a copy of the legal notice for your project.

Highlight your application on the *Combined Notice of Application and Public Hearing* and mail the highlighted table to all owners of property located within 300 feet of the exterior boundaries of the property on which the proposed project will be located. Use the names and addresses shown on the tax assessment rolls on the date the project permit application was submitted. Please do the mailing within 5 days of the date you receive this notice.

Please sign and return this form to Community Development and Planning along with a list of those individuals to whom the "Combined Notice of Application & Public Hearing" was mailed. All notices which are returned to the applicant must be submitted to the administrator for inclusion in the file. Your permit may be delayed if notification is incomplete.

Permit number: PPROV0-17-0065 & PPROV0-17-0066 Applicant: Dan & Cheryl Stabbert Agent: N/A

I followed the mailing instructions of SJCC 18.80.030(A)(2)(b) for the "Combined Notice of Application and Public Hearing"


Signature

12/27/17
Date Mailed

S.J.C. DEPARTMENT OF
COMMUNITY DEVELOPMENT

Posting the Sign

In addition to mailing the Notice of Application and Hearing Table to neighboring property owners, a *signboard purchased from Community Development and Planning* must be filled out with the information contained in the notice and posted as follows.

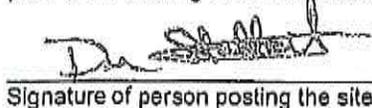
The signboard:

- shall be posted at the midpoint of the site road frontage, 5 feet inside the street property line, and between 5 and 8 feet above grade as measured from the top of the notice. If a private road serves the property, the notice shall also be located at the nearest intersection of the private road with a public road.
- must be completely visible to pedestrians and vehicles.
- must be filled out with waterproof ink.
- must be in place at least 30 days prior to the date of hearing, maintained in good condition during the notice period
- must be removed within 15 days after the end of the notice period.

Also submit a photograph showing the location(s) of the posting. Please do the posting within five days of the date you receive this notice. Sign and return this form. If you have questions, please contact Community Development and Planning.

P Permit number: PPROV0-17-0065 & PPROV0-17-0066 Applicant: Dan & Cheryl Stabbert Agent: N/A

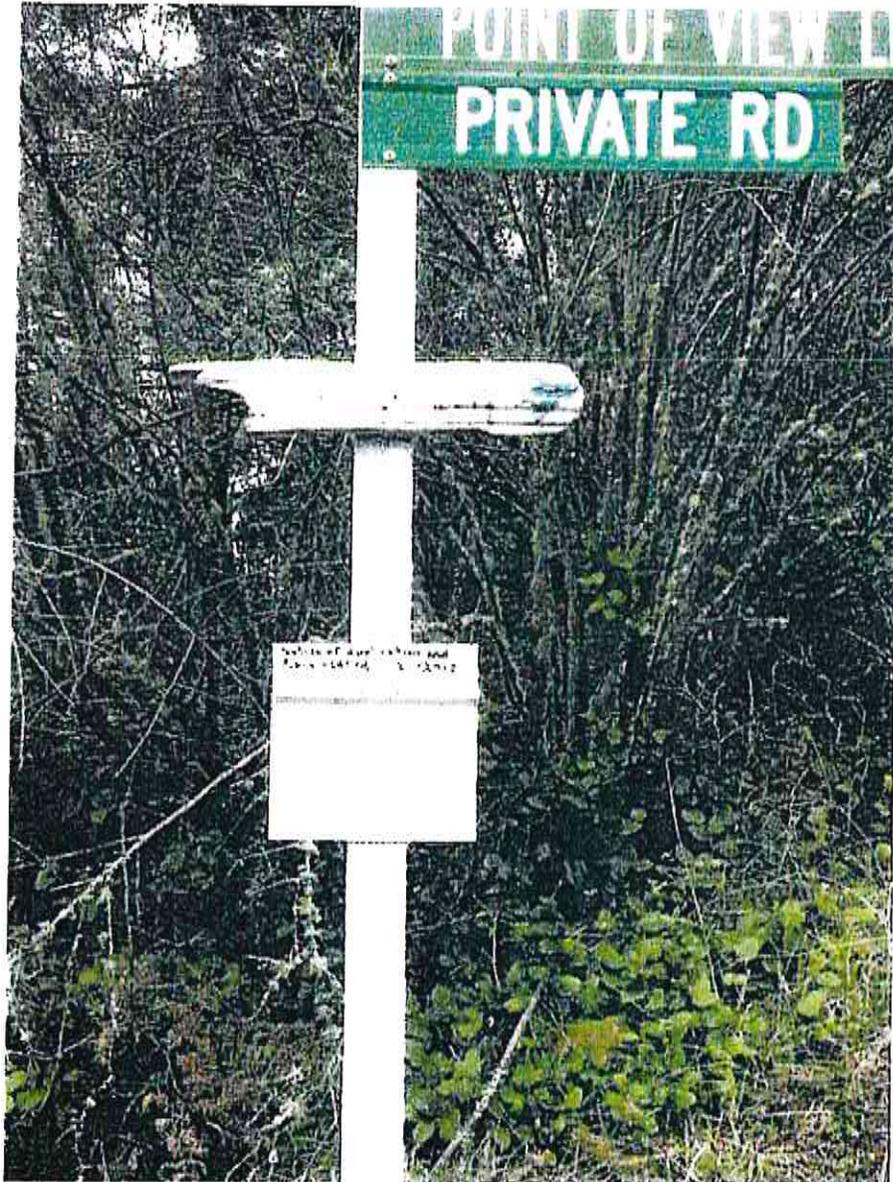
I followed the posting instructions of SJCC 18.80.030(A)(2)(c) and agree to maintain the posting for at least 30 days prior to the hearing date and remove it within 15 days after the end of the notice period.


Signature of person posting the site

12/27/17
Date Posted

Application & Hearing (2/3/4) N/Ads

<p>161650508000 Property ID: 3677 JOHN F & PAULA C TISCORNIA 5646 E MERCER WAY MERCER ISLAND, WA 98040-5123</p>	<p>161650511000 Property ID: 3665 GUY W & MARY E SHINN TTEES 101 N 48TH AVE #29 YAKIMA, WA 98908-3169</p>
<p>161650509000 Property ID: 3678 JOHN F & PAULA C TISCORNIA 5646 E MERCER WAY MERCER ISLAND, WA 98040-5123</p>	<p>161650213000 Property ID: 3666 ROY H & SUSAN R BEATON 2613 YANKEE CREEK ROAD EVERGREEN, CO 80439-4116</p>
<p>161650510000 Property ID: 3679 JOHN F & PAULA C TISCORNIA 5646 E MERCER WAY MERCER ISLAND, WA 98040-5123</p>	<p>161650215000 Property ID: 3667 ROBERT B & CHRISTINE H FOXE 17660 GREENACRES RD MOUNT VERNON, WA 98273-8846</p>
<p>161650511000 Property ID: 3680 JOHN F & PAULA C TISCORNIA 5646 E MERCER WAY MERCER ISLAND, WA 98040-5123</p>	<p>161650216000 Property ID: 3668 JACQUELINE M TURNER 2137 OBSTRUCTION PASS RD OLGA, WA 98279-9525</p>
<p>161650512000 Property ID: 3681 EDITH R THOMSEN PO BOX 401 EASTSOUND, WA 98245-0401</p>	<p>161650217000 Property ID: 3664 KEYBANK NATIONAL ASSOCIATION & MACK H HENRY TTEE ATTN TRUST REAL ESTATE OH-01-10-0930 100 PUBLIC SQUARE #600 CLEVELAND, OH 44113-2207</p>
<p>161650513000 Property ID: 3682 CAROL E STUBBS & ARLIS W STUBBS TTEES 2136 OBSTRUCTION PASS RD OLGA, WA 98279-9525</p>	<p>161650218000 Property ID: 3672 KEYBANK NATIONAL ASSOCIATION & MACK H HENRY TTEE ATTN TRUST REAL ESTATE OH-01-10-0930 100 PUBLIC SQUARE #600 CLEVELAND, OH 44113-2207</p>
<p>161650514000 Property ID: 3683 DONALD & JEAN WILSON TTEES c/o DONALD G WILSON SR 8501 ELLSWORTH LN SANTEE, CA 92071-4002</p>	<p>161650219000 Property ID: 3671 KEYBANK NATIONAL ASSOCIATION & MACK H HENRY TTEE ATTN TRUST REAL ESTATE OH-01-10-0930 100 PUBLIC SQUARE #600 CLEVELAND, OH 44113-2207</p>
<p>161650515000 Property ID: 3684 JOHN D MASON & ELIZABETH GAINES 13 LAKESIDE DRIVE GREENBELT, MD 20770-1973</p>	<p>161650516000 Property ID: 3661 JOHN F TISCORNIA 5646 EAST MERCER WAY MERCER ISLAND, WA 98040-5123</p>



TEXT OF
1. 12. 2015
COMMUNITY DEVELOPMENT

SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT
 135 Rhone Street, P. O. Box 947, Friday Harbor, WA 98250
 (360) 378-2354 (360) 378-2116 Fax (360) 378-3922
 dcd@sanjuanco.com www.sanjuanco.com/bcdp

To: The Journal & Sounder

Please publish once on **12/27/2017** and bill Community Development & Planning

NOTICE OF APPLICATIONS AND PUBLIC HEARINGS (County Council = CC; Planning Commission = PC; Hearing Examiner = HEX; County Council Meeting Room = CCHR)													
Permit Number	Description	Tax Parcel Number, Project Location, and Island	Applicant/Agent Name and Address	Date of Application	Date Complete	Other Req Permits, If known	Existing Environmental Documents	SEPA Threshold DET	SEPA Comments End Date	Project Comments End Date	Hearing Body	Hearing Place	Hearing Date
PPROV0-17-0051	Vacation Rental	350511003, 180 Moon Ridge Rd, San Juan	Ken & Lynn Weatherill, PO Box 3487, Friday Harbor, WA 98250	10/5/17	10/24/17	None	NA	Exempt	-	11/7/18	-	-	-
PPROV0-17-0065	Vacation Rental	161643003, 2318 Obstruction Pass Rd, Orcas	Dan & Cheryl Stabbert, c/o Karla Lopez, 2629 NW 54 th St #201, Seattle, WA 98107	12/11/17	12/11/17	None	NA	Exempt	-	1/17/18	-	-	-
PPROV0-17-0066	Vacation Rental	161650403, 2318 Obstruction Pass Rd, Orcas	Dan & Cheryl Stabbert, c/o Karla Lopez, 2629 NW 54 th St #201, Seattle, WA 98107	12/11/17	12/11/17	None	NA	Exempt	-	1/17/18	-	-	-

LAND USE DECISIONS: Hearing Examiner Decisions: <http://www.sanjuanco.com/development/decisions.aspx>; Planning Commission Decisions: <http://www.sanjuanco.com/planning/commission/decisions.aspx>

BUILDING PERMITS ISSUED: Permits issued by the Department of Community Development are searchable at <https://services.sanjuanco.com/Default.asp> and <http://www.sanjuanco.com/councilings/outlets.aspx>. To search a date range, use two periods between the date entries, i.e., after "Issue Date," enter "11/7/2014 - 11/21/2014" and after "Permit Status," select "Issued." This will return a table of permits issued for the date range in question. There is no need to enter a permit type, unless you want to narrow your search. There are also links available on our website. (San Juan County is providing this information as a public service. In recognition that there will be occasional down times due to system updates.)

APPLICANT COMMENTS: You may be invited by appointment during regular business hours at the Community Development, located at 135 Rhone Street, Friday Harbor. Comment on notices of Application can be submitted in writing to Community Development at P. O. Box 947, Friday Harbor, WA 98250, no later than the end date for project comments specified above. Requests for copies of project decisions or staff reports or requests to provide testimony in a public hearing for a project, may be made by contacting Community Development at (360) 378-2354 or (360) 378-2116. Fax (360) 378-3922. dcd@sanjuanco.com

NOTICE OF PUBLIC HEARINGS: Hearing Examiner meetings on San Juan Island start at 10:00 a.m., in the County Council Hearing Room, 55 Second Street, Friday Harbor. Any person desiring to comment prior to the hearing should submit a written statement to Community Development, PO Box 947, Friday Harbor, WA 98250. Written comments may also be submitted at the hearing. A copy of the staff report for a hearing may be obtained from Community Development seven days prior to the hearing.

NOTICE OF PERMITS: Information regarding all land use and building permits is available on the County's website. A link is available on the Community Development homepage at: sanjuanco.com/ldd

LEGAL NO. S20171737

John and Paula Tiscornia
5646 East Mercer Way
Mercer Island, Washington 98040

January 7, 2018

San Juan County Department of Community
Development
PO Box 947
Friday Harbor, Washington 98250

S.J.C. DEPARTMENT OF

JAN 18 2018

COMMUNITY DEVELOPMENT

Dear Sir:

We received a letter of notification regarding the Stabbert property, located on Orcas Island. We own seven lots that meet Stabbert's property on three Sides. We have owned our property for about thirty years. This neighborhood is not zoned Commercial. We would not have purchased our property if it was in a commercial zone.

Vacation rentals are fine with us if they are zoned on commercial land but not in single family lots. We have about six or seven vacation rentals on our single lane road at Obstruction Pass. We live on a private, single lane dead end road which is in poor repair. Our address is 2253 Obstruction Pass Road. There is a large vacation

rental at the end of our road that advertises to hold twelve to fourteen guests

at this time. The Stabbert property is very large and would be right next to the Janice Bea's large property. Put the two properties together and we have a resort without supervision.

The real estate people love these large properties for weddings, large parties and family reunions. They rent well and there is a big demand. These are party houses.

Here is what we have experienced the last few years with the vacation rentals in our neighborhood.

Lots and lots of traffic from guests and their friends, cleaning crews and garbage collection. Cars parked on the side of the road making it difficult to drive by. What happens if there is a need for a fire truck or aid car?

We have seen several weddings and a large oyster eating party with about fifty guests in the smaller vacation rentals. The renters seem to invite lots of guests to enjoy the vacation rental with them.

Many dogs running thru our property off leash after the deer and wild life.

No one seems to monitor behavior, or number of guests after their check is cashed.

Vacation guests coming onto our property— —yard, dock and beach without permission.

We object to this plan of Stabbert's to rent out their large property as a vacation rental.

Yours truly:

Paula E. Tiscornia

John and Paula Tiscornia

ptiscornia@hew.com

Julie Thompson

From: John Tiscornia <jtiscornia@huronconsultinggroup.com>
Sent: Tuesday, January 16, 2018 2:53 PM
To: Julie Thompson
Cc: dan@stabbertmaritime.com; juliaevans@mac.com; Jill Callison; roybeaton@msn.com; Susan; Paula Tiscornia
Subject: Application for Vacation Rental at 2318 Obstruction Pass Rd.

Dear Community Development and Planning:

In early January we received notice from Dan and Cheryl Stabbert, who are wonderful neighbors, of their application to have a permit for short term vacation rental of their properties at 2318 Obstruction Pass Rd. (Tax parcels 161643003 and 161650403). We own properties that are adjacent on three sides to the Stabbert's properties (2253, 2241, and 2198 Obstruction Pass Rd). We oppose this application for the following reasons.

We have had actual and recent experiences with short term vacation rentals with the property at 33 Meany Way owned by Janice Bea. We have experienced significant increase in car traffic (vacation renters, their guests, cleaning crews, and garbage collection) on our one lane, deteriorating, dead end road. We have also experienced people and unleashed dogs going through our property and on our beach without our permission. This is a residential area and not zoned for commercial activities. We are extremely concerned that the county is allowing this change of culture in our neighborhood and impact on our properties. It would appear that no one seems to be monitoring the behavior of their guests.

It is our understanding that the Stabbert application is for two houses. One has 5 bedrooms and the other has 3 bedrooms. The current rule allows 3 people per bedroom. This means 15 people in one house and 9 in the second house. Adding in the vacation rental property at 33 Meany Way which allows a maximum of 14 people, our dead end neighborhood has the potential for 38 guests all at the same time. This has huge implications for increased fire danger (guests usually have beach fires which are not always put out), septic overuse, car traffic, disrespect of property, and potential violations the Shorelines Act.

We have been property owners at Obstruction Pass for 30 years and respect the rights of other property owners to use their property as long as such use does not infringe upon the rights of others. This application infringes upon the Obstruction Pass neighborhood and therefore we oppose it.

Respectively submitted,

John Tiscornia

John Tiscornia
 Managing Director
 550 W. Van Buren Street
 Chicago, Illinois 60607
 Office 312-880-3522 | Mobile 206-310-6500
 www.huronconsultinggroup.com
 info@huronconsultinggroup.com

HURON

Julie Thompson

From: Julia Evans <juliaevans@mac.com>
Sent: Tuesday, January 9, 2018 4:17 PM
To: Julie Thompson
Subject: Stabbert Vacation Rental Applications PPROVO-17-0065 and PPROVO-17-0066

Please be advised that this use of our neighbor's properties will directly and adversely affect the enjoyment and safety of us and our home. Our bedroom is directly visible from our joint use dock, and our agreement specifically restricts the dock's use to owners and their friends, and then only with the other owner's permission. In addition, access to their property is on a dirt road, partly shared only by us, and past the end of the county road.

No part of Obstruction Pass Road past the County Dock at LieberHaven is intended for or built to withstand that amount of traffic. It is, in fact, virtually a one lane road on which residents enjoy strolling and their children playing. Our neighborhood has already suffered from the vacation renters at the Bea property, with a considerable increase in the number and speed of cars. Further, the Stabberts installed a considerable amount of outdoor lighting which negatively impacts all our enjoyment of our properties, and I can only expect it will be on much more of the time if the property is occupied by vacation renters. The owners are infrequently in residence to insure that rules are followed, and there is currently inadequate policing of the terms of vacation rental properties, with large home(s) easy to abuse with many more occupants than are allowed.

Thank you for your consideration.

Sent from my iPad

Julie Thompson

From: Roy Beaton <roybeaton@msn.com>
Sent: Tuesday, January 16, 2018 10:57 AM
To: Julie Thompson
Cc: Dan Stabbert; Julia & Tom Evans; Kirk and Jill Callison; Stew Beaton; John and Paula Tiscornia
Subject: File Nos. PPROVO-17-0065 and 0066, both 2318 Obstruction Pass Road, Olga, WA

Dear San Juan County Government:

My wife and I have a home at 2159 Obstruction Pass Road. We have recently become aware that yet another application for two short term rental permits has been filed per the property above referenced. This email is being offered in opposition to that application.

The applicants, Dan and Cheryl Stabbert, are extremely nice people, and we consider them to be good neighbors. Nevertheless, we are opposed to the creation of any more short term rentals in our area. Our end of Obstruction Pass Road is extremely narrow, and there are limited areas for cars to pass one another. In addition, there are no sidewalks or other off road areas for pedestrians to use, so cars, bikers, and walkers (some with strollers and/or dogs) all have to share the roadway.

In addition, while the residents with beach front property own their respective stretches of the beach, short term renters have felt free to trespass along the water's edge. Ordinarily, we don't mind allowing others to cross our property, but with the addition of each new short term rental permit, the number of people we don't know who appear on our beach seems to increase.

Also, there's the problem of multiple beach fires during the summer, with some much larger than what we believe are allowed by the fire department. At times, I have even discovered unattended fires late at night.

Over time, it would appear that there seems to be little or no regulation or monitoring of these short term rentals. For instance, in one case we became aware of a nearby, one room short term rental (designed to handle a maximum of two occupants) that was housing eight people. In that case, the septic system began to fail, allowing black water to bubble up onto the surface.

There are times when late night parties involving a number of boisterous people can be heard up and down the beach. That type of activity is not conducive to the quiet enjoyment of our property, or that of our non-rental neighbors.

We're not sure of the total number of short term rentals in our immediate area, but we believe the number may already exceed ten. This figure may include rentals that have not been issued permits. Regardless, we believe there are already too many such rentals in our area, and allowing even more of them runs the risk of creating a nuisance for the neighborhood, and ultimately may affect property values.

When we bought our property and built our home approximately ten years ago, I don't believe there were any legally permitted short term rentals in our area. With the addition of each new rental permit, the character of our neighborhood diminishes a little more.

For all of the foregoing reasons, we ask that the County not issue any more short term vacation rental permits on our end of Obstruction Pass Road.

Thank you for your consideration.

Roy and Susan Beaton

Sent from my iPad

January 17, 2018

Dear Julie,

Thank you for sending the two vacation rental permits applied for by our neighbors, the Stabbert family. For whatever reason, we received no separate notice from the County and/or the Stabberts directly.

My husband, Kirk Callison, and I own a waterfront home on Obstruction Pass at 29 Meany Way with a private dock. The home right next door to us at 33 Meany Way is also a 4 bedroom vacation rental. We had no idea how much having a rental property next door would impact us until the owners starting renting their home 2 years ago. I think it is fair to say that the owners themselves had no idea how the renters would impact all of us and their home when they first started this venture either. They are our friends and have tried to lessen the impact, but it is virtually impossible to co-exist. It is like having a different family reunion next door to us every weekend. Because of the issues we and our other neighbors are already experiencing with vacation property renters, we are quite distraught at the prospect of having another large home(s) being rented directly behind us. There are also quite a few smaller properties that are rentals father down the beach from us towards the Obstruction Pass County dock creating a situation where we have at least a half dozen homes being rented out during the popular summer months. It is not clear if these are permitted rentals or not.

While we do not know Cheryl and Dan Stabbert well, we have had the pleasure of meeting them on several occasions in the neighborhood and Kirk and Dan have shared the friendly fishing and boating stories common between island neighbors. We are sad to learn they now want to rent out their home. Our objections shared here to vacation rentals are in no way meant to reflect any hard feelings towards any of our neighbors personally, but rather a sharing of the negative impact these large rentals have on our neighborhood and the basis for our request that the county reconsider its permitting criteria and take a hard look at the personal impact they have on residents who are not renting out their homes.

When a large family residence such as the Stabberts' home becomes a vacation rental property it is transformed from a family home to an event VENUE much like a commercial hotel capable of accommodating large groups of non-resident visitors who, for the most part, do not care about anything other than coming for the vacation that they feel they have paid dearly for and deserve. We have had issues with renters using our beach, our dock, parking in our driveway, needing to use our phone (there is limited to no cell service in Obstruction Pass), having large un-authorized bonfires etc.

Kirk and I would like the County to realize that by issuing these vacation rental permits it is, in our opinion and from our experience having one next door, basically allowing the commercial/hospitality use of these homes in a single family residential zone. This is not acceptable. The County further does not have the resources to monitor the use and activity of these rentals nor to enforce the rules. Further, our single family residential zoned neighborhood does not have the infrastructure to handle the

large volume of people coming to these vacation rentals (i.e. fire, police, life/safety, water/sewer, etc.). Lastly and adding to the issues specific to our end of Obstruction Pass is that we are on a one-lane, dead-end, one-way-in-one-way out, private road – see pictures attached.

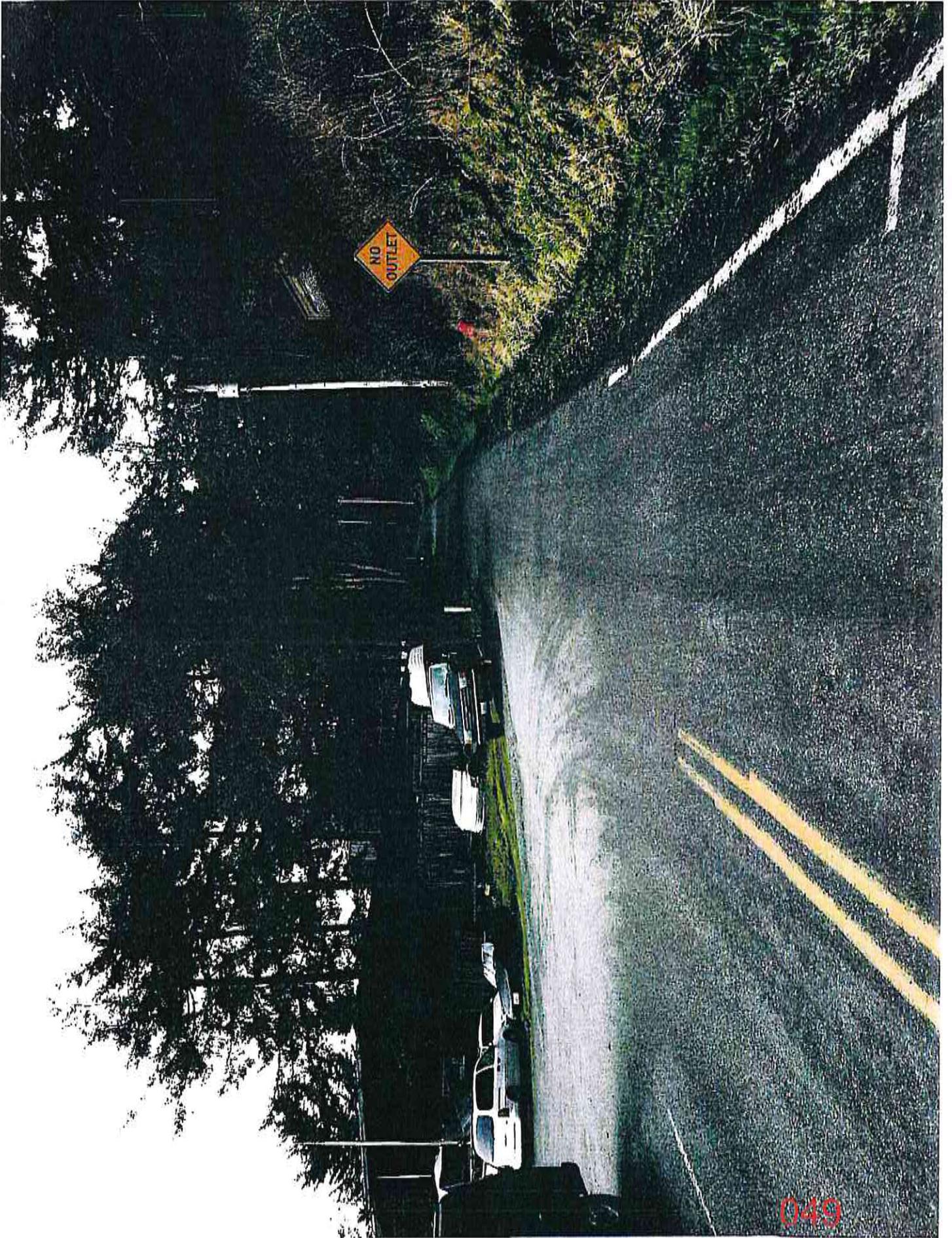
The Stabberts have applied for two permits (2 tax parcels) that share the same single property address. My question, if they have two parcels under one address (as their permit letter suggests) is this one property or two properties? I would argue that one address means one property such that under San Juan County Code 18.40.270 (F) they can rent either their main residence or the guest house, but not both. This determination is significant inasmuch as it means the property will be rented to a maximum of 15 people if we are only talking about the 5 bedroom main house or as many as 24 people if the County intends to treat the two parcels with one address as two properties such that both the main house (15 people) and 3 bedroom guest house (9 people) can be rented together.

The impact of an additional 15 to 24 people coming to and from the Stabbert property located directly behind our home in addition to the 10 -12 vacation renters traveling to and from the Bea property right next door to our home is significant and quite simply unimaginable to us. Not to mention the "service vehicles" necessary to clean, remove garbage, and service these renters. Again, we are a small single family residential community, not a commercial zoned resort community.

Our use and enjoyment of our single family Obstruction Pass home and property is severely and negatively impacted by vacation rentals and we respectfully oppose the issuance of any further permits.

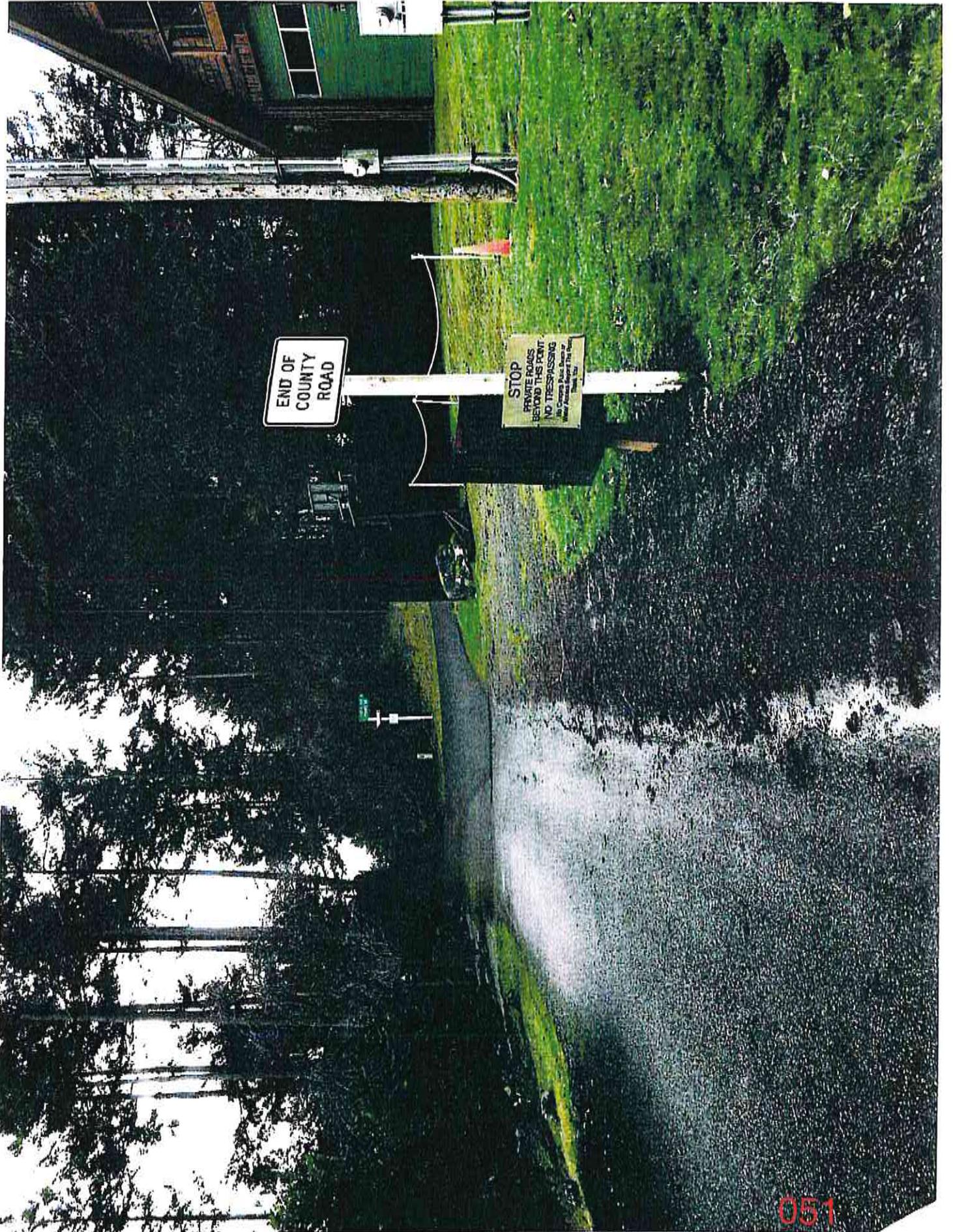
Respectfully submitted,

Kirk & Jill Callison



049





051

Julie Thompson

From: Tom Evans <tom@maritimeinjury.com>
Sent: Tuesday, January 9, 2018 2:46 PM
To: Julie Thompson
Cc: Julia Evans
Subject: Fwd: Stabbert - vacation rentals no. PPROVO 17-0051; and PPROVO 17-0066

d any files transmitted with it are confidential attorney-client communication or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.

Begin forwarded message:

From: Tom Evans <tom@maritimeinjury.com>
Subject: Re: Stabbert - vacation rentals no. PPROVO 17-0051; and PPROVO 17-0066
Date: January 9, 2018 at 2:27:37 PM PST
To: juliet@sanjuanco.com
Cc: Julia Evans <juliaevans@mac.com>

Thank you for taking time to talk with me regarding the above applications for 2 vacation rentals on the same property owned by Dan and Cheryl Stabert. I have your phone number as 360 378 2116 and the address for purposes of commenting as: San Juan County of Community Development P O Box 947 Friday Harbor, Washington 98250, email is juliet@sanjuanco.com

There are a number of residents along Obstruction Pass Rd. who have significant concerns, especial about noise, traffic, and light pollution. The subject property sits at the vortex of a small bay and light and noise pollution travels South, affecting a number of residents on each side of Box Bay.

I will provide you with a copy of the Shoreline substantial development permit which incorporates by direct reference the joint use agreement which prohibits any commercial/low scale residential use into the surrounding community. It is quite clear that the properties are limited to the quiet use and enjoyment of the surrounding properties. A full hearing was held approximately 10 years ago and these conditions were made a condition of the permit. The covenant is recorded. As I said I will send you further commentary and copies of the documents referenced above shortly. Thank you for your courtesy and cooperation. Tom Evans (all contact info below: best cell 206 499 8000 best email tom@maritimeinjury.com)

INJURY AT SEA
MARITIME INQUIRY AND RESOLUTION



Thomas C. Evans • Injury at Sea
4020 East Madison Street, Suite 210, Seattle,
WA 98112
Tel: 206.527.8008, Ext. 2 • Toll Free: 1.800.
SEA. SALT
Cell: 206.499.8000 Fax: 206.527.0725
E-mail: tom@maritimeinjury.com
www.injuryatsea.com

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San Juan
County
Date: January 14, 2018
Dept. of Community Development
P.O. Box 947
Friday Harbor, Washington 98250
Attention: Julie

Da

Dear Department and Julie: **IMMEDIATE**
ATTENTION REQUESTED: (1) OPEN RECORD PREDECISION
HEARING REQUESTED PER SJC 18.80.040

(2) REQUEST FOR EXTENSION OF TIME FOR
COMMENTS, FROM 1/17/18 TO

1/31/18 OR THEREAFTER

Thank you for taking time last week to discuss the above applications for two (2) simultaneous, adjacent vacation rental permit requests, identified above. I am writing and appearing in this land use proceeding for the legal and personal reasons identified below.

By way of introduction, and notice of appearance, my wife, Julia, and I reside adjacent to the Stabbert properties and our respective properties abut each other, ours being the Easterly property. I am sending along in much greater detail by way of exhibits both legal/pictorial views of the properties involved so that it should be easier for your office to get a birds-eye view of what we are discussing/presenting regarding these two applications. For purposes of my "appearing" in these proceedings please add my wife and I as a party to these proceedings of record. For legal purposes, please consider this an "appearance" by attorney. I am a Washington lawyer, wsba 5122. While I admit the focus of my practice was not land use, for several years I represented the State of Washington AG - Department of Ecology - working on Shoreline Management Act hearings and SEPA issues for the DOE. For contact purposes please send all official notices to my law office in Seattle, address of: Thomas C Evans, Madison Park Law Offices, 4020 East Madison Seattle, Washington 98112. Fax: 206 527 0725. email always works best for me and I pretty much monitor it 24/7 tom@maritimeinjury.com telephone, my personal cell is best: 206 499 8000.

First, from a personal standpoint, we all are a neighborhood loosely defined as the non-obstructionists of obstruction pass road. We are collection of, maybe 15 waterfront homes, sited waterside of a one-way largely self-maintained, sometimes drivable, sometimes passable, neighborly road a/k/a Obstruction Pass Road. When I say "We" I am in no way intending to state that I, personally, represent the interests of my neighbors, or that they agree or disagree with me. We loosely count 6 non-obstructionists as opposed to these applications, others who are non committal but aware of what is proposed here. And this, in part, informs the reason for my first request - an extension of the comment date from

from January 17 to January 31. We need this in order to allow enough time for neighbors to comment and become better informed as to what impact these applications may have on us. Just guessing, I would say that fully 65% of us are not in residence full time, and many are out of State residents. So, we lack sufficient time for preparation/digestion/gossip/and explanation. I know that this additional 14 days would be very much appreciated.

We are determined, first, to try to convince Dan and Cheryl to withdraw the applications, and, second, failing that, all hell may break loose and everybody may start lawyering up. We thoroughly respect Dan and Cheryl's absolute right to file for vacation rental uses. And we respect and welcome them to our homes and community without regard to their doing what they have a perfect right to do. Dan and Cheryl have been very forthcoming about these applications, and reliable and trustworthy. Had it not been for Dan's personally typed note that vacation rentals were being proposed, I would not even as of now know this was happening.

So, now down to the basics and the collective aesthetic, environmental, quiet use and enjoyment of our respective properties, as well as the legal reasons why we oppose 2 x vacation rental land use in the heart of our community.

To orient you to the delicate balance of our neighborhood, I will be sending you a set of exhibits as identified below. Unfortunately, due to severe flu-like illness I was knocked off schedule. Otherwise I would have had exhibits ready. I expect they will be in your hands via pdf no later than tomorrow, Tuesday, or Wednesday.

The first set of exhibits we are preparing will give you a perfect birds-eye view of the setting in which these vacation rentals would be placed. Obstruction pass road is one-lane only, definitely not two car passable with very few pull outs, on the roadway leading to the Stabbert properties. Renters will be confronted with a three way, largely unidentified triple-crossroads where obstruction pass, point of view lane, and the stabbert driveway come together. There is absolutely no visual clue at this three way intersection as to what goes where. As the owners of the property at the very very end of obstruction pass road we are already frequently confronted with lost tourists, who have a difficult time turing around, and an even more difficult time getting re-oriented after turning around.

As you will see from the aerial visuals I am sending you, these two rentals would be at the end of and exact center of an incredibly beautiful Bay, Box Bay, with the overall land-use geometry being very much like a cone, rentals at the absolute end vortex. This means that all light, glare, sound, resonates and blasts out from the vortex into the wider open spaces of the Bay, where a number of us live of the shores of the bay. Sounds can be and are amplified by this such that its not uncommon for normal conversation to heard at a considerable distance out. Light and glare, likewise is boosted out and at all of the shoreline properties along the rock walls forming the bay. But there are very individual, unique, and special impacts the rentals would have on us - the Evans - specifically, and this also raises very significant legal issues discussed below.

(A) SPECIFIC PERMITTING CONFLICTS AND VISUAL/QUIET USE AND ENJOYMENT CONFLICTS WITH EVANS PROPERTY.

The Stabbert - Evans Properties are jointly bound by a shoreline substantial development permit issued in 2007, which incorporates into it the terms limitations and conditions of a Joint Use Agreement. Both the substantial development permit and the Joint Use Agreement place strict limitations not only on the dock, access way, and land landing built as allowed by that permit, but also the strict, guaranteed quiet use and enjoyment provisions of the shoreline management act affecting upland use touching in whole or in part the 300 foot jurisdiction of the SMA. And it is quite clear from reading these two official documents that "vacation rental" is in direct violation of the limitations of the joint use agreement and the SMA. Again, I apologize for not having these documents to you already, but they will be included in the exhibit package. The joint use agreement was Recorded on November 5, 2007, auditors receiving no. 2007 1105018. The shoreline substantial development permit is SJC file No. 05SJ018, and includes findings of fact, conclusions of law, by then hearing examiner Wick Dufford which clearly preclude any rental type use, either of the pier or of the jurisdictional area included with the 300 foot SMA and "integrated" project extension of the SMA.

Rental use of the properties is clearly prohibited. *Only the owners and their specific invitees are allowed access to or use of the relatively large front portion of the Stabbert property. Section 12, page 5 states:* "The owners of each parcel may allow their invitees to use the dock...." This is followed by language referring to "invitees" as "guests" only, and even if a guest, they may only have access for seven days at the longest. That same section states that the entire purpose of the Joint Use Agreement is to insure the "...privacy and quiet enjoyment" of the owners. Section 18 denies any "commercial" use.

Even if you were to limit the legal restrictions above to the pier, landing area, and platform (which is exclusively owned by Evans) it would mean a barrage of renters would constantly be attempting to access and use the dock and private platform area. These areas would have to be locked off and private property signs placed everywhere. If the property is shown with the dock/shoreline area, it is only natural renters will want to try to use and access it.

B. SPECIFIC LEGAL CONFLICTS AND STATUTORY /ADMINISTRATIVE/SMA/SJC CODE CONFLICTS

—
Due to time limitations I am unfortunately unable to provide copies of cited authority, below, or submit a complete response as of time. However, I would like to point out the following legal issues presented by these applications:

(1) *Vacation Rentals are not exempt from requirements of a shoreline substantial development permit.*

It is obvious from a review of these files, and similar vacation rental proceedings I have reviewed, SJC considers "vacation rental" as a categorically exempt land use from the SMA. This is a clear error of law, and SJC needs to address this issue immediately, not just for purposes of these permit requests but for purposes of all past and future permits.

The issue of categorical exemption is relatively simple under the SMA and indeed, SJC. There are three sources for determining exemption, the SMA - Chapter 90.58 RCW, WAC 173-27, the DOE Regs and interpretations; SJC 18.50.040. All three of these legal sources clearly lead to the same conclusion - use of a single family residence as a vacation rental is a use not exempt from permitting. The fact that the structure (single family residence or appearance) was already in existence does not change the fact that, when the use of the structure is changed (owner/occupied to vacation rental) no permit required because there is no new instruction. Its the *use* that matters. And a change in use is not categorically exempt simply because the structure is not changed.

RCW 90.58.356(e)vi exempts single family residences only to the extent they are "owner occupied." WAC 173-27-040- the DOE interpretation of the SMA, and identifying uses exempt from substantial development permits, specifically states exemptions are to be narrowly construed and only those uses which meet the precise definition of a *listed defined exemption* are exempt. *Finally, even the County's own code* makes it clear vacation rental is not an exempt use. See: SJC 18.50.040 (A) and (B).

(2) Allowing two immediately adjacent vacation rentals defeats the purpose of SJC governing rentals - SJC 18.40.270

Its important to remember this is an application for two, side by side, vacation rentals. While it may be true there are to separate lots, this does not make any difference in terms of impacts. Quite obviously the purposes of SJC 18.40.270 (G), preventing simultaneous dual rental of vacation rental - main residence and appurtenance - was to proven the impacts that come from jamming vacation rentals together.

This ends comments submitted as of January 15, 2018. There simply has not been enough time to finish the legal and layout review of this proposal, which is not fault attributable to the applicants or other persons. A copy of this email is being sent simultaneously to Dan and Cheryl Stabbert and SJC.

Thankyou for your courtesy and co-operation. Tom Evans

Thomas C. Evans • Injury at Sea
4020 East Madison Street, Suite 210, Seattle, WA 98112
Tel: 206.527.8008, Ext. 2 • Toll Free: 1.800. SEA. SALT
Cell: 206.499.8000 Fax: 206.527.0725
E-mail: tom@maritimeinjury.com www.injuryatsea.com

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Julie Thompson

From: Tom Evans <tom@maritimeinjury.com>
Sent: Tuesday, January 16, 2018 12:54 PM
To: Julie Thompson
Cc: Julia Evans
Subject: Re: Applications of Dan & Cheryl Stabbert - Vacation Rentals - File nos: (1) PPROVO-17-0065 (2) PPROVO-17-0066 - Both 2318 Obstruction Pass Rd. Olga Wash.

Thank you Julie. We should get the exhibits to you mentioned in my email later today or tomorrow. Obviously the most pressing question for us is if we can get the comment time extended, as we requested, from January 17 to January 31. We are in touch with a number of neighborhood residents who wish to send in a comment but may not have enough time given that tomorrow, January 17 is the current cut off time for comments. Thank you for your courtesy and co-operation. Tom

INJURY AT SEA
MARITIME INJURY ATTORNEYS



Thomas C. Evans • Injury at Sea
4020 East Madison Street, Suite 210, Seattle,
WA 98112
Tel: 206.527.8008, Ext. 2 • **Toll Free:** 1.800.
SEA. SALT
Cell: 206.499.8000 **Fax:** 206.527.0725
E-mail: tom@maritimeinjury.com
www.injuryatsea.com

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On Jan 16, 2018, at 12:23 PM, Julie Thompson <JulieT@sanjuanco.com> wrote:

Thanks Tom. I'm looking into some of your issues and won't do anything with the application until I get back to you.
Julie

From: Tom Evans [<mailto:tom@maritimeinjury.com>]
Sent: Monday, January 15, 2018 5:41 PM
To: Julie Thompson <JulieT@sanjuanco.com>; juliet@sanjuancounty.com
Subject: Applications of Dan & Cheryl Stabbert - Vacation Rentals - File nos: (1) PPROVO-17-0065 (2) PPROVO-17-0066 - Both 2318 Obstruction Pass Rd. Olga Wash.

Julie Thompson

From: Tom Evans <tom@maritimeinjury.com>
Sent: Wednesday, January 17, 2018 4:36 PM
To: Julie Thompson; juliet@sanjuancounty.com
Cc: Julia Evans; Dan Stabbert
Subject: Stabbert Vacation Rental Applications
Attachments: Stabbert Opposition Exhibits.pdf

Hi Julie - here are a few of the Exhibits I was talking about. Unfortunately other work has kept me from making a complete list or finishing identifying our legal authority. This does include a copy of the Joint Use agreement which is incorporated into the substantial development permit. Since it is a part of the substantial development permit, this, then is not simply a matter of private party issues, between us and the Stabberts. It is also a matter of SJC permitting authority and potential violation of the terms, conditions, and limitations of a SJC issued permit. Earlier I gave you a reference to file number of the SJC substantial development permit and I am continuing to look for my copy, but I would imagine you have it readily available.

I have also included what I refer to as the "headwaters" of substantial development permit exemptions. No County or City may exceed the authority of Chapter 90.58 RCW, the SMA, or the WAC provisions adopted by the Department of Ecology both of which include specific reference to exemptions, an *no where is there any exemption* from permit requirements except for *owner occupied single family residences*. I also included a copy of SJC's own Management Act reference to categorically exempt uses and it, too, does not (indeed, can not) include an exemption beyond that allowed by State Law. All exemption law very clearly states exemptions are only allowed if that very specific land use is identified and all legal issues connected to exemption issues require strict construction of the exemption language. Again, no where is the State, Department and SJC law is there anything that even arguably suggests vacation rentals are categorically exempt. The SJC may wish to consider the risk here in that should it be established, as I think it will, vacation rentals are not categorically exempt that will mean every vacation rental permit previously issued or presently contemplated within the shoreline jurisdiction will be found invalid. I don't want to litigate this issue in Superior Court but I will if pressed.

Since the comment period expires today, I am hoping that we will receive notice of comment period extension to January 31 as requested. A number of residents have now sent in opposition letters. I am not aware of whether Dan and Cheryl have seen any of these and had an opportunity to respond. Please notify me of an extension and also please respond to my request for an open record proceeding in advance of Department decision making on whether to issue the requested two vacation rentals. Please note a copy of this email is being sent to Dan and Cheryl and my contact information remains the same. emails always works best tom@maritimeinjury.com but I am also available by phone anytime to discuss this 206 499 8000. Regards. Tom Evans

INJURY AT SEA
MARITIME INJURY ASSISTANCE



Thomas C. Evans ♦ **Injury at Sea**
4020 East Madison Street, Suite 210, Seattle,
WA 98112
Tel: 206.527.8008, Ext. 2 ♦ **Toll Free:** 1.800.
SEA. SALT
Cell: 206.499.8000 **Fax:** 206.527.0725
E-mail: tom@maritimeinjury.com
www.injuryatsea.com

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Julie Thompson

From: Tom Evans <tom@maritimeinjury.com>
Sent: Monday, January 22, 2018 3:24 PM
To: Julie Thompson
Cc: Julia Evans; Jill Callison; John Tiscornia; Paula Tiscornia; Roy Beaton; Dan Stabbert
Subject: Re: Dan Stabbert Application
Attachments: Stabbert Comments to Rental Application.pdf

Hi Julie, thank you for forwarding a copy of Dan and Cheryl's response. I would like the opportunity to submit a Reply and I suspect some of the neighbors would too. I am hoping you can give us until close of business Friday January 26 to do so. Thank you for your courtesy and cooperation. Tom Evans
tom@maritimeinjury.com



Thomas C. Evans ? Injury at Sea
4020 East Madison Street, Suite 210, Seattle,
WA 98112
Tel: 206.527.8008, Ext. 2 ? Toll Free: 1.800.
SEA. SALT
Cell: 206.499.8000 Fax: 206.527.0725
E-mail: tom@maritimeinjury.com
www.injuryatsea.com

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On Jan 22, 2018, at 10:15 AM, Julie Thompson <JulieT@sanjuanco.com> wrote:

The Stabbert's responses, for your information.

Julie Thompson

From: Tom Evans <tom@maritimeinjury.com>
Sent: Tuesday, January 23, 2018 10:42 AM
To: Julie Thompson
Subject: Re: Stabbert Application

Julie - thank you very much for your follow through on this. But there still are unresolved questions that remain unanswered as to why a substantial development is not being required. These unresolved conflicts under the SJC interpretation are: 1. "Conditional Use Permit" does not exempt an application from substantial development permit requirements - the fact that certain "terms - uses - conditions" (definition of CUP) are required does nothing to exempt the application from a substantial development permit. No where in the SMA, Chapter 90.58 RCW, or the SJC's own Master Program are uses exempt from obtaining a substantial development permit simply because they are a conditional use; 2. In the matrix SJC requires a substantial development permit if the proposed use is in Rural Farm Forest Zone, a Rural Residential Zone, an Urban Zone, a Port Zone and an Aquatic Zone. To follow the logic of SJC, what's the difference between converting a single family residence along a shoreline in an Rural Residential Zone, an Urban Zone, and a Rural Farm Zone, a Port zone, and an aquatic zone where SJC requires a substantial development permit for vacation rental, but not so in a Rural Zone? If SJC is claiming that the Stabbert proposal is categorically exempt because it costs less than the exemption cost threshold (a position we disagree with as the house costs can not be ignored) why wouldn't the same not be true for the five zones identified above? Once again, allowing something as a *conditional use* doesn't mean a shoreline management substantial development permit isn't required. These two requirements - CUP and Shoreline Substantial Development Permit - are not inconsistent requirements. SJC sets the terms and conditions for the use, but those terms and conditions still have to pass muster with the SMA, which is achieved by requiring a shoreline substantial development permit.

We are not saying the Stabberts can not, as a matter of law, have a vacation rental. We are saying they must go through the application process for a shoreline substantial development permit - just like you require in the three zones identified above. It also makes sense to require this, as the application then have a far more thorough review, the community is better notified and involved, and there is an appeal process directly to the shoreline management hearings board.

Simply put, we are asking: 1. obtaining a shoreline substantial development permit be made a condition of any vacation rental initial permit; 2. including the terms and conditions of the joint use agreement by incorporation into permit requirements (which are part of the substantial development permit issued by SJC to us and Stabbert , as a successor in interest).

Please explain for me: what is the basis for shoreline substantial development permit exemption, given the above? Again, thank you for your time and I look forward to your response. Tom Evans

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Thomas C. Evans • Injury at Sea
4020 East Madison Street, Suite 210, Seattle,
WA 98112
Tel: 206.527.8008, Ext. 2 • **Toll Free:** 1.800.
SEA. SALT
Cell: 206.499.8000 **Fax:** 206.527.0725
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On Jan 23, 2018, at 9:12 AM, Julie Thompson <JulieT@sanjuanco.com> wrote:

Tom,

In the matrix in SJCC 18.50.600, whenever CUP is used, it is intended to mean a shoreline conditional use permit, not an upland conditional use permit. I'm not sure why it is a conditional use in Rural because conditional use permits have more criteria to be met, but that's what it says.

Julie

From: Tom Evans [<mailto:tom@maritimeinjury.com>]
Sent: Thursday, January 18, 2018 2:54 PM
To: Julie Thompson <JulieT@sanjuanco.com>; juliet@sanjuancounty.com
Cc: Julia Evans <juliaevans@mac.com>
Subject: Stabbert Application

Hi Julie - thank you for taking time today to inform me of the status of the Stabbert Application. It was also helpful hearing from you how SJC came up with the position that Rural Zone vacation rentals do not need substantial development permits because the cost involved, according to your office, does not exceed the threshold minimum expense for categorical exemption. You also did clearly state that if someone was applying for a single family residence and vacation rental at the same time, this could not be exempt because the cost (of building a house) does exceed the expense threshold for exemption. As you know we believe that one of the SJC mistakes is to overlook the importance of "use." Its the *use* that counts, and ignoring that a house is obviously necessary and obviously does not meet the expense threshold means we very much disagree with the SJC analysis here. If one were to follow this logic you could virtually have a use for just about anything and it would be categorically exempt from obtaining a substantial development permit, so long as the cost of creating the use inside the house does not exceed roughly 6k in expenses. Clearly this was not intended when Chapter 90.58, the Shoreline Management Act was passed, and it very clearly limits exemptions for single family residence to one, and only one, owner-occupied single family residence.

It seems we all agree that vacation rentals are not categorically exempt by name - that is, no where in the list of exemptions are single family residences used as vacation rentals identified as exempt or even possibly exempt. Virtually every impact prohibited in or along a shoreline of state wide significance is violated by vacation rental.

I do appreciate vacation rentals are mentioned once, and only once, in the SMA master program in the matrix of SJC 18.50.600. This section clearly states that a shoreline vacation rental is only allowed in a Rural Zone by CUP - conditional use permit. Oddly, SJC 18.50.040(C) which identifies SJC interpretation of categorically exempt development and uses from substantial development permit requirements states as follows: " A use classified as a conditional use ...is allowed subject to a conditional use permit and is ineligible for a shoreline substantial

development permit exemption." I wonder if you can explain for me how it is vacation rentals in a Rural Zone along a Shoreline of State-wide significance are allowed by conditional use only (CU) and this doesn't require a substantial development permit, where SJC's own Master Program clearly states that it does.

I look forward to your response and thank you for your courtesy and cooperation. Tom Evans

Thomas C. Evans • Injury at Sea
4020 East Madison Street, Suite 210, Seattle, WA 98112
Tel: 206.527.8008, Ext. 2 • **Toll Free:** 1.800. SEA. SALT
Cell: 206.499.8000 **Fax:** 206.527.0725
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Julie Thompson

From: Tom Evans <tom@maritimeinjury.com>
Sent: Wednesday, January 24, 2018 2:07 PM
To: Julie Thompson
Subject: Fwd: Designation of Properties: 1. Zoned Rural Farm Forest 2. Shoreline Designation: Rural Fram Forest

Julie - I just now noticed that the zoning and shoreline designation for the Stabbert property and proposal proposal is RFF - Rural Farm Forest, no RR Rural Residential. Under the RFF zoning and Shoreline management an "SD" or substantial development permit is listed as required. Its not listed as CU. This would seem to indicate, as a matter of law, given both the Zoning Designation and the Shoreline Designation, a Substantial Development Permit is required outright for vacation rental. See: Page 84 of 87, Shoreline Master Program, matrix for vacation rentals. That being the case, aside from any cu issues, cu does not apply but a shoreline substantial development clearly is. Can you explain why the SMA substantial development permit was not required outright at the beginning?

I will be responding to the Stabbert submittal but will likely have to do so in piecemeal fashion. I am on-islan at present and don't have the benefit of my law office staff. Thank you for your courtesy and co-operation. Tom

Thomas C. Evans • Injury at Sea
4020 East Madison Street, Suite 210, Seattle, WA 98112
Tel: 206.527.8008, Ext. 2 • **Toll Free:** 1.800. SEA. SALT
Cell: 206.499.8000 **Fax:** 206.527.0725
E-mail: tom@maritimeinjury.com www.injuryatsea.com

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Julie Thompson

From: Tom Evans <tom@maritimeinjury.com>
Sent: Wednesday, January 24, 2018 2:51 PM
To: Julie Thompson
Subject: Shoreline Hearings Board Decision Finding Vacation Rentals Require A Shoreline Permit
Attachments: PCHBSHB Decision Search.pdf

Julie - here is a Shorelines Hearings Board decision clearly stating vacation rental require a shoreline permit. In the case below, the property owner had been using trailers in a trailer park for occupation and homes for individual owners. He then decided to convert these RV s to vacation rentals. Note that this is relatively recent decision, and it was initiated when the Department ofEcology fined the applicant, Darin Barry \$12,000 for chaing the use of an RV from owner/occupied use to vacation rental. Note that the SHB indicated regardless of whether light construction was required, the simple change in use - to vacation rental - required a shoreline permit and because the owner did not first obtain a shoreline permit he was fined \$12,000. This causes me to wonder, would the DOE, upon finding out SJC has been allowing vacation rentals without shoreline permits, both SJC and the vacation rental owners are at risk for similar fines and penalties for the same reason. I understand there are in fact a number of local vacation rentals along the shoreline that do not have shoreline permits. This, to me, has created a significant liability on both SJC s part and the many home owners who are risk for enforcement action.

I would appreciate your most immediate response to the above. This is not just a Stabbert issue but SJC wide potential liability. Thank you once again for your courtesy and cooperation. Tom Evans



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4020 East Madison Street, Suite 210, Seattle,
WA 98112
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Julie Thompson

From: Tom Evans <tom@maritimeinjury.com>
Sent: Wednesday, January 24, 2018 7:45 PM
To: Julie Thompson
Subject: ShorelineConditional Use Application Process
Attachments: WebPage.pdf

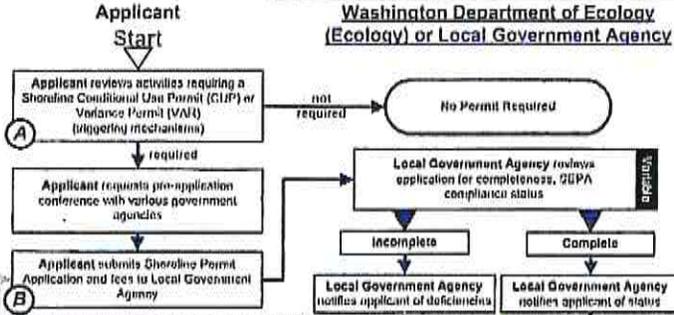
Julie - I thought this might be helpful for you. Its the DOE outline of Shoreline Permitting Process including CU and SDP. Note that a number of items are missing when you bypass Shoreline Permitting, not the least of which, when there is a request for a public hearing a public hearing must be granted. Further, a lot of basic materials ar required included much more comprehensive standards and basic application documents. Tom

<https://fortress.wa.gov/ecy/publications/parts/1706029part13.pdf>

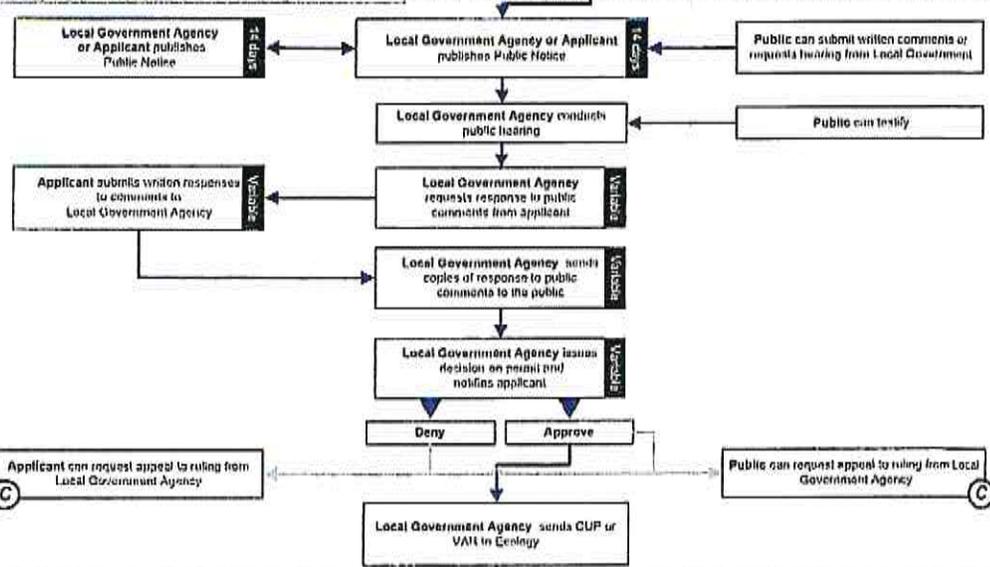
Shoreline Conditional Use Permit and Variance Permit

Public or Other Interested Party

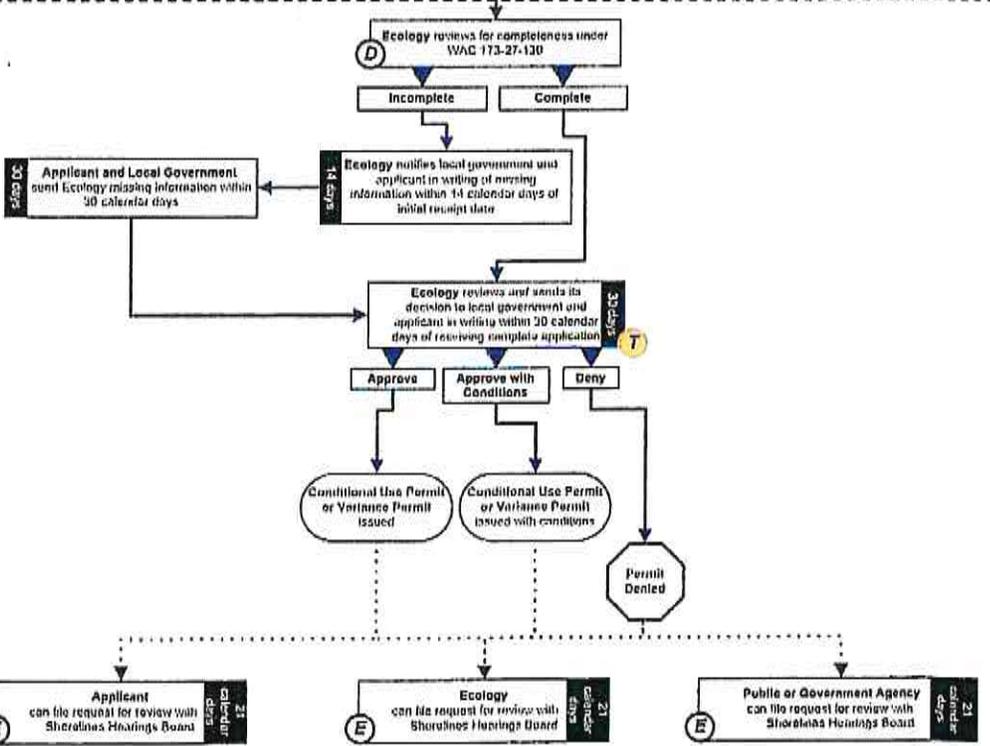
Application Phase



Local Government Review Phase



Ecology Review and Appeal Phase



Legend: (A) =Hyperlink (T) =Timeliness Target → =Progression ⇄ =Revision ... =Optional
 For more information on this or any permitting process visit <http://www.ecy.wa.gov> or call the Washington State Office of Regulatory Assistance at (800) 517-0043.
 All timeliness targets are in calendar days.

Julie Thompson

From: Tom Evans <tom@maritimeinjury.com>
Sent: Wednesday, January 24, 2018 7:53 PM
To: Julie Thompson
Subject: WAC 173-27-180: Application requirements for substantial development, conditional use, or variance permit.

Julie, sorry to keep bothering you, but here is what State law and the DOE require, at a minimum, for application for a shoreline permit including cu. Little of what has been required qualifies in any way as a Shoreline Permit application. The appellation does not really even come close to what is required. Regards.
Tom



Thomas C. Evans • Injury at Sea
4020 East Madison Street, Suite 210, Seattle,
WA 98112
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<http://apps.lcg.wa.gov/WAC/default.aspx?cite=173-27-180>

Application requirements for substantial development, conditional use, or variance permit.

A complete application for a substantial development, conditional use, or variance permit shall contain, as a minimum, the following information:

- (1) The name, address and phone number of the applicant. The applicant should be the owner of the property or the primary proponent of the project and not the representative of the owner or primary proponent.
- (2) The name, address and phone number of the applicant's representative if other than the applicant.
- (3) The name, address and phone number of the property owner, if other than the applicant.

(4) Location of the property. This shall, at a minimum, include the property address and identification of the section, township and range to the nearest quarter, quarter section or latitude and longitude to the nearest minute. All applications for projects located in open water areas away from land shall provide a longitude and latitude location.

(5) Identification of the name of the shoreline (water body) that the site of the proposal is associated with. This should be the water body from which jurisdiction of the act over the project is derived.

(6) A general description of the proposed project that includes the proposed use or uses and the activities necessary to accomplish the project.

(7) A general description of the property as it now exists including its physical characteristics and improvements and structures.

(8) A general description of the vicinity of the proposed project including identification of the adjacent uses, structures and improvements, intensity of development and physical characteristics.

(9) A site development plan consisting of maps and elevation drawings, drawn to an appropriate scale to depict clearly all required information, photographs and text which shall include:

(a) The boundary of the parcel(s) of land upon which the development is proposed.

(b) The ordinary high water mark of all water bodies located adjacent to or within the boundary of the project. This may be an approximate location provided, that for any development where a determination of consistency with the applicable regulations requires a precise location of the ordinary high water mark the mark shall be located precisely and the biological and hydrological basis for the location as indicated on the plans shall be included in the development plan. Where the ordinary high water mark is neither adjacent to or within the boundary of the project, the plan shall indicate the distance and direction to the nearest ordinary high water mark of a shoreline.

(c) Existing and proposed land contours. The contours shall be at intervals sufficient to accurately determine the existing character of the property and the extent of proposed change to the land that is necessary for the development. Areas within the boundary that will not be altered by the development may be indicated as such and contours approximated for that area.

(d) A delineation of all wetland areas that will be altered or used as a part of the development.

(e) A general indication of the character of vegetation found on the site.

(f) The dimensions and locations of all existing and proposed structures and improvements including but not limited to; buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities.

(g) Where applicable, a landscaping plan for the project.

(h) Where applicable, plans for development of areas on or off the site as mitigation for impacts associated with the proposed project shall be included and contain information consistent with the requirements of this section.

(i) Quantity, source and composition of any fill material that is placed on the site whether temporary or permanent.

(j) Quantity, composition and destination of any excavated or dredged material.

(k) A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties.

(l) Where applicable, a depiction of the impacts to views from existing residential uses and public areas.

(m) On all variance applications the plans shall clearly indicate where development could occur without approval of a variance, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses.

[Statutory Authority: RCW ~~90.58.140~~(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-180, filed 9/30/96, effective 10/31/96.]

Julie Thompson

From: Tom Evans <tom@maritimeinjury.com>
Sent: Thursday, January 25, 2018 3:35 PM
To: Julie Thompson
Cc: Erika@sanjuanco.com
Subject: "residential" use
Attachments: PCHBSHB Decision Search.pdf

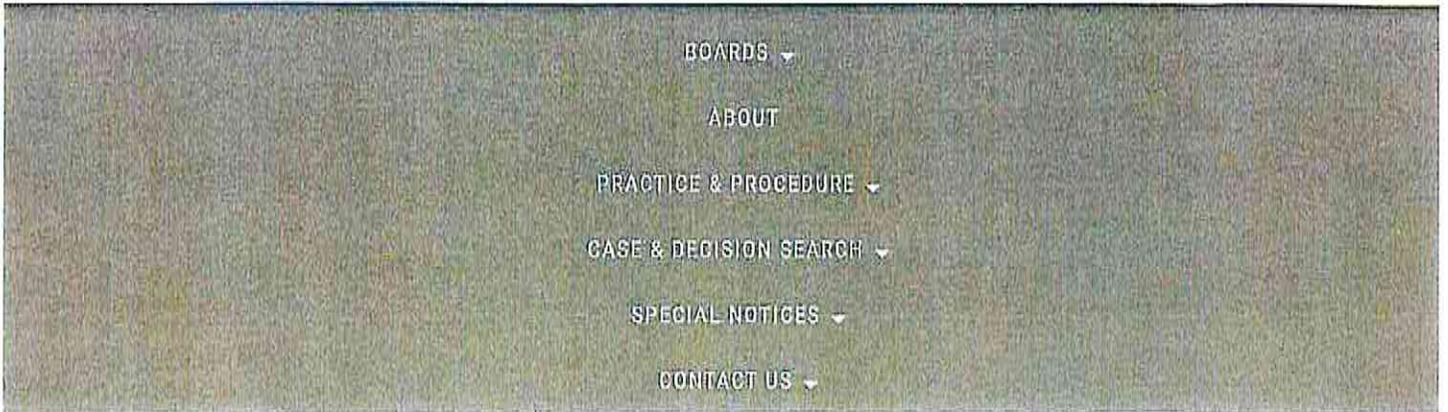
Julie, only one owner-occupied or leased use of a single family residence is exempt from the SMA.
See: RCW90.58.030(e)(vi) A vacation rental is not the same use as residential. Please read if you have not already the case I sent you, another copy sent to you herein. Note that Darin Robin/Robin Hood Village was fined \$15,000, upheld on appeal, for claiming, after living in an RV, he could convert the RV to vacation rental. My patience is beginning to run thin. I have sent you all of the materials necessary to make clear vacation rental is in no way the same thing as residential use, is not categorically exempt, is not exempt under claim it costs less than the roughly 6k exemption threshold and the change in use does matter. There are severe fines for violating the SMA as SJC is now doing. Due notice has been given, and the State will soon become involved. Please contact, in Olympia, DOE Senior Shorelines Planner Betty Rankor 360 407 7469 . you can contact the NW rep, Chad Young whom you said you knew 360 255 4403. I think as you are aware the Office of the Attorney General has an independent right to be involved and appeal all shoreline matters, as an agency separate from the DOE. They, too should soon become involved, and they, too, have the power of civil sanction. I can not urge you strongly enough to get an opinion on this outside of your own planning Dept. At the very least, call the State Shorelines Sr. Personnel listed above. Thank you for your courtesy and cooperation.
Tom Evans

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Thomas C. Evans ♦ **Injury at Sea**
4020 East Madison Street, Suite 210, Seattle,
WA 98112
Tel: 206.527.8008, Ext. 2 ♦ **Toll Free: 1.800.**
SEA. SALT
Cell: 206.499.8000 Fax: 206.527.0725
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PCHB/SHB Decision :

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Case Number	Board
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Darin Barry/Robin Hood Village Resort v. Department of Ecology

Case Number: S12-008	Date Filed: 7/11/2012
Appeal Type: PENALTY	Closed: 3/14/2013

Reason:
Appeal of \$12,000 Penalty for failure to comply with shoreline permitting requirements

Permits / Penalties / Orders

Type: Penalty	Number: 9251
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Closing Comments:

Darin Barry, owner of Robin Hood Resort on Hood Canal, received a penalty from Ecology for placement of four recreational park trailers (RPTs) intended for short term vacation rentals on a waterfront lot on Hood Canal. The lot has historically been used for recreational vehicle parking and tent camping since before the date of the Shoreline Management Act (SMA). Barry did not contest the amount of the penalty. The only issue identified by the parties was whether the placement of the RPTs required shoreline permits under the SMA and local shoreline master plan (SMP). Following an evidentiary hearing and a site visit, the Board concluded that the placement of the RPTs was development under the SMA. Based on the fair market value of the RPTs the Board went on to conclude that the development met the definition of substantial. The Board also concluded that even if the placement of the RPTs was not a substantial development, a shoreline conditional use permit (CUP) was still required for use of the RPTs as short-term vacation rentals. The Board rejected Barry's contention that the use was grandfathered. While recreational vehicle parking is a grandfathered use, the Board concluded that the permanent placement of the RPTs on the lot for vacation rentals constitutes a change in use and therefore requires a SCUP. Because shoreline permits were required, the Board affirmed Ecology's penalty.

Closing Comments:

Darin Barry, owner of Robin Hood Resort on Hood Canal, received a penalty from Ecology for placement of four recreational park trailers (RPTs) intended for short term vacation rentals on a waterfront lot on Hood Canal. The lot has historically been used for recreational vehicle parking and tent camping since before the date of the Shoreline Management Act (SMA). Barry did not contest the amount of the penalty. The only issue identified by the parties was whether the placement of the RPTs required shoreline permits under the SMA and local shoreline master plan (SMP). Following an evidentiary hearing and a site visit, the Board concluded that the placement of the RPTs was development under the SMA. Based on the fair market value of the RPTs the Board went on to conclude that the development met the definition of substantial. The Board also concluded that even if the placement of the RPTs was not a substantial development, a shoreline conditional use permit (CUP) was still required for use of the RPTs as short-term vacation rentals. The Board rejected Barry's contention that the use was grandfathered. While recreational vehicle parking is a grandfathered use, the Board concluded that the permanent placement of the RPTs on the lot for vacation rentals constitutes a change in use and therefore requires a SCUP. Because shoreline permits were required, the Board affirmed Ecology's penalty.

Julie Thompson

From: Tom Evans <tom@maritimeinjury.com>
Sent: Friday, January 26, 2018 1:12 PM
To: Julie Thompson
Cc: Erika Shook
Subject: Stabbert Application
Attachments: PCHBSHB Decision Search.pdf

Julie - thank you for taking time over those past few week to review the multiple legal, statutory, and case law citations holding that conversion to a residence within shoreline jurisdiction to a vacation rental use does require a shoreline conditional use. Now that the State of Washington DOE is aware and becoming involved maybe someone more convincing than me can make the point. One of the DOE Shoeline planners I talked to was directly involved in Barry case above. Their position, as well as mine, a change in use from residential to vacation rental requires a shoreline permit. Recall in *Barry* Mr. Barry was using an RV to live in (as residential housing) but then started advertising the RV as a vacation rental. The result was a \$15,000 fine imposed by DOE and upheld by the SHB.

We believe SJC is making a serious error in not requiring a Shoreline application from Stabberts. In summary, you at one time claimed that since the \$6,000 costs are above what the conversion may cost, the application is exempt since the cost of making the change in use was below the exemption threshold.. This assumes use has nothing to do with permitting - use has everything to do permitting. Next, you claimed SJC considers residential use as including vacation rental. Good luck with that one. I don't think many planers, hearing examiners, or Judges are going to be convinced using a house to live in as owner/occupied is the same thing as if you rent that same house as a vacation rental. Your own SJC code makes clear vacation rental is a different use than simple residential use. SJC requires vacation rental obtain a cu permit, and be treated as a conditional use. Also, there is the SMA Chapter 90.58, definition section, which clearly states the only exempt shoreline residential use is an owner-occupied single family residence.

SJC is also ignoring its own Master program. Please refer to page 84 of 87 of the Program, the matrix page. There, your plan lists CU (conditional use) as being required in a shoreline Rural Forest Zone - the only zone that has CU for vacation rentals. You do not have the zoning correct for the site of the application. The zoning is Rural Farm Forest, not RF. Please refer to and look at your own Master Program Zone Designation Map. For a Rural Farm Forest zone a SD is required. SD means, as your Plan clearly states, Shoreline Development and a Shoreline Development Permit is required. I think its going to be a little odd if SJC Planning ends up defending a position that is clearly in error under its own Master Program.

If a permit is ever actually entered we will immediately appeal to the Hearing Examiner. We will also see if the DOE and AG will join the hearing as interested parties, or, whether they will be able to take enforcement action to get compliance before then. Since there will be a full hearing before a hearing examiner we will save our substantive evidence until then. For example, we do not believe Stabberts have, in any way, shown just exactly how narrow the one lane road is. The pictures shown to you are a few select photos of portions of the road that have recently been improved and none of the narrow road our community currently enjoys for walking doges etc has been show.

Procedurally, as you probably know, if Stabbert does not apply for the shoreline permit, and that requirement is not included in the final decision of the hearing examiner, we will be forced to file a Superior Court LUPA suit along with a Declaratory action. Since the State also has an interest in this, the DOE/AG may or may not join. Following Superior Court trial the matter is subject to review as a matter of right by the Court of Appeals, and after that, the Washington Supreme Court. The issue of vacation rental and shoreline permitting is one of State wide interest and a State-wide defining opinion would be important from a legal stand point. We are absolutely committed to carry this issue as far as necessary if these applications continue to be pressed.

One other point re process. As is obvious, and as is admitted in the Stabbert application, the Joint Use Agreement is part of the SMA Dock permit. Renters can not use the dock nor can they use the landing area which we own. But to insure these are protected please be sure to include the following conditions: 1. Stabbert must not advertise or show the dock in any picture without that picture clearing stating the dock is not part of the rental and may not be used; 2. to insure the dock is not used contrary to our dock permit Stabbert be required to install a gated entry with either a lock or a key code for access to the dock; 3. the rental agent and Stabbert in the packet they give to renters clearly state the dock area is off limits. Most unfortunately, for our part, we are going to be required to create and attach a minim two large signs **KEEP OFF** on our privately owned landing and easement up to our property. We have a perfect right to do this. Contrary to the Stabbert allegation they have a right to force us to move the landing yet again, the law is quite clear. Once two land owners agree to on-land ownership locations, and a land owner (us) relies to their detriment that the other land owner is being honest when they say they want something moved for the convenience of their family (wheel chair/limited mobility) that agreement is binding. We were not required to move the platform as Stabbert took this property as a bonafide purchase with actual notice of boundaries and ownership of property development.

Please do keep us advised of your schedule. I think it would be unwise to progress unless and until you have been cleared by Betty Rankor, Sr. Shorelines DOE Planner and Chad Young, regional representative of the DOE. Additionally, as you may know, the State Attorney General was given independent standing to enforce the Shoreline Management Act and has its own independent enforcement authority. They are next on my list. I have not yet had time to contact the AG tasked with Shoreline Enforcement.

Thank you for your courtesy and cooperation. Tom Evans



Thomas C. Evans ♦ Injury at Sea
4020 East Madison Street, Suite 210, Seattle,
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PCHB/SHB Decision

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Case Detail

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Darin Barry/Robin Hood Village Resort v. Department of Ecology

Case Number: **S12-008** Date Filed: **7/11/2012**
 Appeal Type: **PENALTY** Closed: **3/14/2013**

Reason:
Appeal of \$12,000 Penalty for failure to comply with shoreline permitting requirements

Permits / Penalties / Orders

Type: **Penalty** Number: **9251**

Closing Comments:

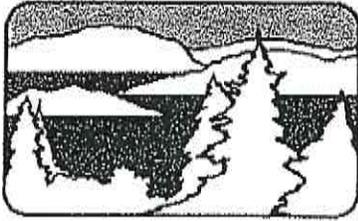
Darin Barry, owner of Robin Hood Resort on Hood Canal, received a penalty from Ecology for placement of four recreational park trailers (RPTs) intended for short term vacation rentals on a waterfront lot on Hood Canal. The lot has historically been used for recreational vehicle parking and tent camping since before the date of the Shoreline Management Act (SMA). Barry did not contest the amount of the penalty. The only issue identified by the parties was whether the placement of the RPTs required shoreline permits under the SMA and local shoreline master plan (SMP). Following an evidentiary hearing and a site visit, the Board concluded that the placement of the RPTs was development under the SMA. Based on the fair market value of the RPTs the Board went on to conclude that the development met the definition of substantial. The Board also concluded that even if the placement of the RPTs was not a substantial development, a shoreline conditional use permit (CUP) was still required for use of the RPTs as short-term vacation rentals. The Board rejected Barry's contention that the use was grandfathered. While recreational vehicle parking is a grandfathered use, the Board concluded that the permanent placement of the RPTs on the lot for vacation rentals constitutes a change in use and therefore requires a SCUP. Because shoreline permits were required, the Board affirmed Ecology's penalty.

Closing Comments:

Darin Barry, owner of Robin Hood Resort on Hood Canal, received a penalty from Ecology for placement of four recreational park trailers (RPTs) intended for short term vacation rentals on a waterfront lot on Hood Canal. The lot has historically been used for recreational vehicle parking and tent camping since before the date of the Shoreline Management Act (SMA). Barry did not contest the amount of the penalty. The only issue identified by the parties was whether the placement of the RPTs required shoreline permits under the SMA and local shoreline master plan (SMP). Following an evidentiary hearing and a site visit, the Board concluded that the placement of the RPTs was development under the SMA. Based on the fair market value of the RPTs the Board went on to conclude that the development met the definition of substantial. The Board also concluded that even if the placement of the RPTs was not a substantial development, a shoreline conditional use permit (CUP) was still required for use of the RPTs as short-term vacation rentals. The Board rejected Barry's contention that the use was grandfathered. While recreational vehicle parking is a grandfathered use, the Board concluded that the permanent placement of the RPTs on the lot for vacation rentals constitutes a change in use and therefore requires a SCUP. Because shoreline permits were required, the Board affirmed Ecology's penalty.

STABBERT OPOSITION EXHIBITS

1.
DECLARATION OF EASEMENTS AND
COVENANTS FOR ACCESS TO AND JOINT USE
OF DOCK



**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicants: Steve and Joann Jacobson
2318 Obstruction Pass Road
Olga, WA 98279

Agent: Jeff Otis
Otis Land Use Consulting
393 Bobbyann Drive
Eastsound, WA 98245

File Nos: HE 06-06 (05SJ018)

Request: Shoreline Substantial Development Permit

Location: 2318 Obstruction Pass Road, in a cove off of
Obstruction Pass, on Orcas Island.

Summary of Proposal: To build and maintain a joint use dock serving five
parcels. The dock would extend 182 feet from the
Ordinary High Water Mark (OHWM), with a total area
of 916 square feet.

Shoreline Designation: Rural Farm Forest

Public Hearing: After reviewing the report of Community Development
and Planning, the Hearing Examiner conducted a
public hearing on February 9, 2006

Applicable Law: RCW 90.58.020 – Shoreline Act policies
SJCC 18.50.190 – Boating Facilities
SJCC 18.80.110(H) – Substantial Development criteria

Decision: The application is approved, subject to conditions.

S.J.C. COMMUNITY

MAR 27 2006

DEVELOPMENT & PLANNING

FINDINGS OF FACT

1. Steve and Joann Jacobson (applicants) seek to build a joint-use dock in a cove off of Obstruction Pass on Orcas Island.
2. The dock site is Tax Parcel 161643003 located at 2318 Obstruction Pass Road. The shoreline designation is Rural Farm Forest. The neighborhood consists of developed and undeveloped residential parcels. Obstruction Pass State Park lies to the north and west.
3. The small cove involved (Box Bay) has steep rocky sides with a beach at the inner end. Within the small cove there are no other docks. The nearest dock is some distance around the point to the east. It is already a joint-use dock
4. The proposed dock will serve five parcels totaling 15.61 acres. Two of the parcels are adjacent on the shore. Together they include over 1000 lineal feet of waterfront. One of the parcels is partly within shoreline jurisdiction but does not contain measurable shoreline frontage. Two of the parcels to be served are upland parcels.
5. At present the five parcels are in two ownerships. Steve and Joann Jacobson own tax parcels 161643002, 161643003 and 161643004. Thomas and Linda Evans own tax parcels 161650402 and 162112001. The Jacobsons have a single family residence and guesthouse on one lot and a cabin on another. The Evans property has a residence and a guesthouse.
6. The Evans have proposed terms and conditions for a joint use agreement. The other near neighbors (King and Brumfield) were offered joint-use but declined.
7. The dock will consist of a fixed pier that is 4'8" wide and 97' long, a ramp that is 3'10" wide and 60' long, and a float that is 8' wide and 30' long. The total square footage is 916. Because the ramp and float overlap, the total dock area is 898 square feet.
8. The proposal is to secure the float with steel pilings. This is to avoid having to place anchors in the eelgrass with cables scouring of the substrate. Moreover, anchors would cause navigation hazards at the lowest tides.
9. The pier will be in a north-south orientation. The ramp and float will run northeast to southwest. The seaward extension of the float will terminate at approximately the -5 foot tidal elevation. The float will not ground.
10. A diving survey disclosed the presence of eelgrass in the cove, but the proposed dock is located and oriented so that it lies in a clear area between two

eelgrass beds and is at least 20 feet away from any eelgrass. Nonetheless, the float is designed with grating that creates 60% open space. The ramp and pier will be fully grated.

11. There is an abandoned marine railway approximately 20 feet west of the top of the proposed pier location. The applicants will remove this structure.

12. It is believed that there was once a dock in the cove. There are pilings in the water in front of the proposed location of the new dock. Currently, there are two buoys located further out. Jacobson now uses a 26-foot boat daily for commuting. He ties it to one of the pilings and takes a dinghy to the beach. He hopes to continue to use the 26-footer and to bring two larger boats into the cove.

13. The Jacobsons' buoy is a long way from the beach. It is not feasible to use it on stormy days. The cove is open to a long fetch and Jacobson has at times had difficulties during rough weather, even when using the piling for his boat. The dinghy can't be pulled over the beach logs on windy days when waves are breaking on the shore. There have been times when the dinghy has swamped. He thinks that reliance on the buoy for daily access is unsafe. The Evans property has a steep and rocky shoreline and there is no good place to land or store a dinghy. They say that it is too hard even to land a kayak on their shoreline. This difficulty has prevented them from ever using their buoy.

14. The proposed dock is to be used year-around. There are no private docks in the near vicinity at which joint-use by these applicants is available. Rosario is the nearest commercial marina, but it does not offer long-term moorage. The closest marina offering long-term moorage is in Eastsound at Brandt's landing. The harbor master there reports that Brandt's is essentially always full. The only other marinas on the island that potentially have space available are Deer Harbor Marina, Caouy Quay and Westsound Marina. These are on the west side of the island 45 to 60 minutes away by car and a substantial distance by boat.

15. Jacobsen testified that he and his wife will use the dock as their main access to the house, including bringing in groceries and supplies. He has no intention of ever keeping any commercial boat at the proposed dock.

16. Under the local Shoreline Master Program, multiple use and expansion of existing facilities are preferred over the construction of new docks. In addition, mooring buoys or mooring floats are preferred over docks. See SJCC 18.50.190(C)(1-3). For docks associated with single-family residences it must be shown that "existing facilities are not adequate or feasible for use" and that "alternative mooring is not adequate or feasible." SJCC 18.50.190(G)(5)(a-b).

17. Here existing facilities are either unavailable or too far away to be considered a reasonable, particularly for daily access use. The alternative of

mooring buoys or floats is not adequate because of the difficulties presented by physical conditions.

18. The depth at the float should be sufficient to prevent prop wash from damaging the eelgrass except perhaps at the very lowest tides. At such tides, the larger boats will not be brought into the dock.

19. The site has no appreciable net shore drift that might be affected by the dock. Water circulation and quality are excellent in the cove and should not be significantly altered by use of the dock.

20. The dock will be tucked into the cove, well out of the main navigation channel. It will be visible from the water only from directly in front of the cove. Even then it will present a low profile.

21. A Hydraulic Project Approval for the dock was issued by the Department of Fish and Wildlife on January 18, 2006. This permit is designed to address and minimize impacts to marine plant and animal life.

22. A Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) was issued by the County on December 7, 2005. No comments were received concerning the DNS. The DNS was not appealed.

23. Notice of the application was given as required by law. There were no written public comments. There was no public testimony at the hearing.

24. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the persons and the subject matter of this proceeding. SJCC 18.80.100(E).

2. The requirements of SEPA have been met.

3. SJCC 18.50.190(K)(3) allows boating facilities in the Rural Farm Forest environment, subject to the policies and regulations of the Shoreline Master Program (SMP). A Substantial Development Permit is required to the construction of a substantial dock, such as the one at issue.

4. The criteria for granting a Shoreline Substantial Development Permit are contained in SJCC 18.80.110(H). The applicant has the burden to prove that the proposal is:

1. Consistent with the policies of the Shoreline Management Act and its implementing regulations, Chapter 90.58, RCW and Chapter 173-27 WAC, as amended;
2. Consistent with the policies and regulations of the Shoreline Master Program in Chapter 18.50 SJCC;
3. Consistent with this chapter [permits];
4. Consistent with the application sections of the code (e.g., Chapter 18.60 SJCC);
5. Consistent with the goals and policies of the Comprehensive Plan; and
6. All conditions specified by the hearing examiner to make the proposal consistent with the master program and to mitigate or avoid adverse impacts are attached to the permit.

5. In this case, the policies and regulations of the Shoreline Management Act are adequately carried out by the provision of the local Shoreline Master Program (SMP).

6. The shoreline portion of the Comprehensive Plan contains a policy favoring the construction of joint-use docks in preference to numerous individual structures. Comp Plan Sec. 3.5(11). This proposal is consistent with the joint-use preference.

7. Under the SMP docks must be designed to minimize impacts on marine life and the shore process corridor. In connection with all applications potential impacts on littoral drift, sand movement, water circulation and quality, fish and wildlife scenic views, and public access to the shoreline are to be considered. See SJCC 18.50.190(B)(1) and (C)(4). The subject project will cause no significant adverse effects in any of these areas.

8. A fundamental policy of the Shoreline Act is that natural conditions of the shoreline are to be altered only in limited instances. RCW 90.58.020. The use of a joint-use facility reduces to a degree the shoreline area that might be affected by docks. Limiting the number of docks preserves natural shoreline conditions, thereby functioning to an extent in the same way as do the preferences for existing facilities and mooring buoys. In circumstances like the present where existing facilities and mooring buoys are not reasonable alternatives, the proposal of a joint use dock best serves the policies of the SMP.

9. Similarly, under the circumstances, the containment of the float with pilings is the best choice in terms of environmental protection, despite the preference for the use of anchor cables. SJCC 18.50.190(D)(10).

10. In sum, the proposal, as conditioned, will be consistent with Comprehensive Plan policies and with the SMP policies and regulations for boating facilities.

11. Further, the correct permit has been sought and there is no indication that any performance or development standards of the Unified Development Code will be violated.

12. Accordingly, the Examiner holds that the criteria for a Shoreline Substantial Development Permit will be met by the permit, as conditioned below.

13. Any finding which may be deemed conclusion is hereby adopted as such.

CONDITIONS

The following conditions shall be attached to the permit:

1. The dock shall be constructed as proposed in the application materials, except as the same may be altered by these conditions.

2. Prior to construction, the applicants shall enter into a joint-use agreement that provides reasonably for construction, maintenance, expenses, insurance, and use of the dock. The agreement shall be submitted to Community Development and Planning for approval.

3. The use of the dock shall be used as described at the hearing. The terms and conditions of the joint-use agreement shall be followed.

4. Prior to construction, the marine railway shall be removed.

5. The general design and construction standards of SJCC 18.50.190(D) shall be complied with.

6. The applicant shall obtain all other required permits or approvals and shall abide by the conditions of same.

7. Construction shall not be begun until all relevant appeal periods have run.

8. Development under this permit shall commence within two years of the date the approval becomes final and shall be completed within five years thereof or the permit shall become void.

9. Failure to comply with any condition may result in permit revocation.

DECISION

The requested Shoreline Substantial Development Permit is approved, subject to the conditions set forth above.

Done this 21st day of March 2006.

Wick Dufford
Wick Dufford, Hearing Examiner

APPEAL

Appeal of this decision is to the Washington State Shorelines Hearings Board pursuant to RCW 90.58.180, and the rules adopted by said hearings board.

AFTER RECORDING MAIL TO:
Law Office of Mann & Blaine
P.O. Box 399
Eastsound, WA 98245

Auditor File #: 2007 1105018

JUD

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SAN JUAN COUNTY, WASHINGTON

F. MILENE HENLEY, AUDITOR

CINDYM

**DECLARATION OF EASEMENTS AND COVENANTS FOR
ACCESS TO AND JOINT USE OF DOCK**

WHEREAS, STEVEN K. JACOBSON and JO ANN JACOBSON, husband and wife ("Grantors" / "Jacobson") are the legal owners in fee simple of the parcels of record on Orcas Island, San Juan County, Washington, described in Exhibit A, attached hereto at pages 11 and 12, being portions of Government Lot 1, Section 21, and Government Lot 5, Section 16, all in Township 36 North, Range 1 West of W.M. ("Jacobson Parcels 1, 2 and 3"); Tax Parcel Nos. 161643004, 161650403 and 161643003;

WHEREAS, THOMAS C. EVANS and JULIA S. EVANS, husband and wife ("Grantees" / "Evans") are the legal owners in fee simple of the parcels of record on Orcas Island, San Juan County, Washington, described in Exhibit B, attached hereto at pages 12 and 13, being portions of Government Lot 1, Section 21, and Government Lot 5, Section 16, all in Township 36 North, Range 1 West of W.M. ("Evans Parcels A and B"); Tax Parcel Nos. 162112001 and 161650402;

WHEREAS, Evans Parcels A and B are adjacent to Jacobson Parcels 1, 2 and 3;

WHEREAS, for no monetary consideration, and in consideration of the parties' joint contribution to the construction, use and maintenance of a Dock on the tidelands adjacent to Jacobson Parcel 2, and in consideration of the mutual covenants granted herein and of the mutual benefits derived therefrom, Jacobson hereby grants to Evans Parcels A and B rights of joint use and ownership as to the Dock, along with a right of access to the Dock, and the parties hereby subject their respective Parcels to these rights and obligations of joint use and maintenance of the Dock;

DECLARATION OF EASEMENTS AND COVENANTS FOR
ACCESS TO AND JOINT USE OF DOCK

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SAN JUAN COUNTY, WASHINGTON

088

WHEREAS, the parties make their Parcels, and shall convey the same, subject to the easements, covenants and charges hereafter set forth which shall run with the real property and shall be binding on all parties having or acquiring any right, title, or interest such Parcels, or any part thereof, and shall inure to the benefit of each owner of the other Parcels, and such owner's heirs successors and assigns;

**DECLARATION OF EASEMENTS
FOR ACCESS TO DOCK AND FOR STORAGE**

As owner of Jacobson Parcels 1, 2 and 3, and portions of the tidelands adjacent thereto, Jacobson hereby grants to Evans Parcels A and B:

(1) a non-exclusive perpetual easement, four (4) feet in width, for non-motorized access to the Dock, from the edge of the existing access easement to the Evans Parcels A and B, to the top of the dock's pier, centered upon the center of the existing path, approximately as depicted on the survey map attached hereto as Exhibit C and incorporated herein by this reference; and

(2) an exclusive perpetual easement for the storage of personal property associated with reasonable use of the Dock, including kayaks, crab nets, and boating supplies, within an area 10.0' wide by 30.0' long, located approximately as depicted as "10.0' x 30.0' Storage Area" on the Map attached as Exhibit C. This area shall be adjacent to the Southeast side of the pier, and its long side shall commence at the point where the pier's southeast side intersects with the top of the bank above the level of high high-tide, and run 30.0' landward, parallel with the pier. The personal property stored within this area shall not interfere with the marine view from Jacobson Parcel 1.

A. By these easements, the owners of Evans Parcels A and B and their invitees may access the Dock and may convey and wheel their personal property to the Dock, but no motorized conveyance shall be allowed. Parking on the motorized access easement adjacent to the beginning of this access easement shall be permitted for day to day use and such transfers of people and personal property, with no vehicle to be parked for more than 18 hours, at any one time. The owners of Evans Parcels A and B may not erect any structures within the "10.0' x 30.0' Storage Area," and shall keep the area neat and free of debris.

B. Jacobson has performed some of the work in clearing and excavating steps for the accessway. Evans shall construct the remainder of the accessway, using natural materials and no pavement or concrete. Solar-powered low-watt lighting directed at the ground and other reasonably safety features shall be allowed. Evans shall be solely responsible for the maintenance of the accessway.

C. Jacobson Parcels 1, 2 and 3 retain all other rights of use and development within these easement areas. Evans Parcels A and B retain all rights of use and development with Evans Parcels A and B. Future development by the owners of Jacobson Parcels 1, 2 and 3 shall not interfere with the use and enjoyment of these easement areas by Evans Parcels A and B.

DECLARATION OF COVENANTS
AS TO JOINT OWNERSHIP AND USE OF DOCK

As to the joint ownership and use of the Dock, and for the perpetual mutual benefit of the Evans Parcels A and B and the Jacobson Parcels 1, 2 and 3, the parties covenant and declare as follows:

1. The Dock consists of a pier, ramp and float, which are located over a portion of Jacobson Parcel 2 and over a portion of its adjacent tidelands, approximately as depicted on the Map attached as Exhibit D.
2. The pier, float and ramp shall be owned in common in the following ratio: $\frac{1}{4}$, total, to Jacobson Parcels 1, 2 and 3, and $\frac{1}{4}$, total to Evans Parcels A and B. Neither party's use shall ever interfere with the right of use of the other. There is no "fractional" ownership or use other than as stated herein.
3. The costs to insure, maintain, repair and replace the pier, ramp and float shall be shared in the following ratio: $\frac{1}{2}$ to be borne by the owners of Jacobson Parcels 1, 2 and 3, and $\frac{1}{2}$ to be borne by the owners of Evans Parcels A and B.
4. To Evans Parcels A and B is allotted the exclusive use of the southerly 30' linear feet of the float and the topside adjacent thereto, along with non-exclusive perpetual access via the pier, ramp and float.
5. To Evans Parcels A and B is allotted the exclusive use of the area designed "10.0' x 30.0' Storage Area" on the Map attached as Exhibit D, which area lies adjacent to the southeast side of the pier's landward end.
6. To Jacobson Parcels 1, 2 and 3 is allotted the exclusive use of the northerly 30' linear feet of the float and the topside adjacent thereto, along with non-exclusive perpetual access via the pier and ramp.
7. Joint users shall keep the Dock, ramp and facilities in very good order and repair, as well as clean, safe and sightly. Any damage occasioned by any user's acts or omissions shall be repaired at the sole expense of the user causing the damage, to the extent that said repair is not subject to reimbursement by insurance. All other necessary repairs and maintenance shall be shared equally.

8. Decisions as to the work to be done, who shall do the work, the choice of insurer, and how often assessments are to be made shall be decided by mutual agreement of the participating Parcels. Provided, that if the Dock shall be damaged by any casualty so as to render it unsafe or otherwise unfit for use, any owner may incur reasonable costs in causing such damaged portion to be repaired or removed, and such costs shall be deemed agreed costs. All such work shall be conducted efficiently and with minimal impact on all parcels. No party may unilaterally modify, paint, or otherwise decorate or alter in any manner any portion of the pier, ramp or float. Disagreements as to assessments and/or details of maintenance shall be submitted to arbitration pursuant to the Dispute Resolution provisions below.

9. Any assessment 30 days overdue shall be delinquent, and subject to collection, and shall bear interest at 1.0% per month. The assessment, plus interest and the costs of collection, including reasonable attorney's fees, shall be a charge on the land and shall constitute a continuing lien on the Parcels so assessed, as well as a personal obligation of the Parcels' owner at the time of the assessment, but no lien may be recorded except in accordance with the dispute resolution procedures below. Such lien shall be enforceable in the manner of mechanics' and materialmen's liens, and shall be subordinate only to the lien of any first or second mortgage given to secure the purchase and/or development of the participating Parcels, further provided, no lien shall ever be recorded or filed without the party seeking to file or record a lien having completed the dispute resolution procedures below.

10. There shall at all times be maintained as a common expense a policy of insurance providing for the repair and replacement of the Dock if in the event it is damaged or destroyed. The owners of the benefited Parcels shall each maintain an individual liability insurance policy with a limit of not less than \$1,000,000.00 naming each property and its owners as insureds, insuring against any liability to the public or to the common owners and their invitees, licensees, or others incident to the ownership and use of the Dock, or by mutual agreement they may maintain such a policy as a common expense. This limit shall be reviewed and adjusted as prudent over time. Each owner shall be solely responsible for such owner's vessels and guests' vessels, including all risks thereto from damage, destruction, or other loss including theft.

11. The privacy and quiet enjoyment of the parties' shall be respected at all times, and to that end no noxious or offensive activity shall be carried out on the Dock or on or about the Storage Area, and thereon the common owners and their caretakers, guests and invitees shall refrain from emitting unnecessary noise and light, or otherwise unreasonably interfering with the quiet use and enjoyment of each owner's property.

12. The owners of each Parcel may allow their invitees to use the Dock, but such use shall be subject to all applicable provisions of this agreement, including the boundaries of all easement areas. Each party shall be personally responsible for making sure any caretaker, guest or invitee is personally aware of the terms and conditions of use, including the foregoing provision regarding privacy and quiet enjoyment. All guests and invitees shall be permitted only temporary use, not exceeding 7 days without the permission of the other owner. For the purposes of this section, an owner's tenants and caretakers are not considered invitees.

13. Each joint user shall indemnify and hold all other users harmless from any loss, damage or injury resulting from any and all acts and omissions of such user and his or her invitees, agents or licensees associated with the use of the Dock and easement areas set forth herein.

14. Taxes attributable to the Dock shall be shared borne by the participating Parcels in the ratio set forth above. In the event the taxing authorities fail to reflect such ratio in its assessments, the parties agree to compensate each other to the extent necessary to accomplish the purpose of this section.

15. No storage of personal property shall be allowed on the pier, ramp or float with the exception of mooring lines.

16. No significant repair, refinishing or painting of any watercraft shall be allowed.

17. No houseboats or other boats being used as a residence for more than 7 days shall be permitted to be moored at the Dock.

18. The Dock shall be for residential use incidental to the upland Parcels only. No commercial use shall be permitted.

19. This agreement adopts by reference the government permits and approvals granted for the purpose of allowing the construction of the Dock, including but not limited to: San Juan County File No. 05SJ018 and the Findings, Conclusions and Decision of the Hearings Examiner, HE 06-06, and the Permit Reference No. 200501235 granted by the U.S. Army Corps of Engineers.

20. Jacobson may install low scale utilities as part of dock construction, including low level lighting directed downward, water, power, and the parties shall share equally in these costs as well.

21. Jacobson Parcels 1, 2 and 3 retain all other rights of use and development within the beach and tidelands located thereon, and Evans Parcels A and B retain all other rights of use and development within the beach and tidelands located thereon.

DECLARATION OF COVENANTS
AS TO PAYMENT OF COSTS OF DOCK'S DEVELOPMENT

As for payment by the participating Parcels for the right of joint ownership and use of the Dock, and for the exclusive perpetual benefit of such Parcels, the owners of Jacobson Parcels 1, 2 and 3 and the owners of Evans Parcels A and B and agree, covenant and declare as follows:

I. Jacobson has finished advance construction of the pier, ramp and float, which are awaiting installation, and performed partial construction of the Evans' accessway to the Dock by clearing and installing steps. Jacobson shall be responsible for all installation and final construction of the pier, ramp and float and shall do so in a neat and workman like manner so that the improvements as installed are fit for the purpose intended. Evans agrees, as outlined below, to pay their fair 50% share of the cost of all of the improvements and installation expense, with credit for any payments to date and the payment identified in this Agreement. Evans shall be responsible for all remaining work to improve the Evans' accessway. Evans agrees, as outlined below, to reimburse Jacobson for 100% of Jacobson's reasonable and necessary expenses for work on the accessway actually performed to date by Jacobson, an amount the parties agree does not exceed \$1,500.00.

II. The Dock's development costs are deemed to be: (a) all costs to permit, design, construct and install the pier, float and ramp; and (b) the cost of the survey that is Exhibit C hereto. Such costs shall exclude Jacobson's costs related to the revision of the application to the Army Corps of Engineers and the parties' respective legal fees.

III. To partially compensate Jacobson for his undisputed expenses to date, within five (5) days following signing and filing with the San Juan County Auditor of this Declaration, Evans shall pay to Jacobson, the sum of \$20,000, further provided said payment shall not be due prior to December 5, 2007. The parties agree that this document may be recorded prior to all final governmental approvals for the dock.

IV. Upon completion of installation of the pier, ramp and float, such that all of the improvements are available for use and enjoyment, Jacobson shall send to Evans in writing an itemized request for 50% payment for all balances owed, showing credit for all amounts Jacobson believes were paid or not paid previously by Evans and total construction costs. Evans shall, within 14 days of receipt of such itemized request for payment respond in writing as to what portion Evans agrees or disagrees with. To the

extent Evans agrees with specific cost items on the billing, and is able to pay, that amount shall be paid to Jacobson or their successor at the end of the 14 day period. Jacobson is aware that Evans' business cash flow is presently negative, but expected to improve in 2008. To the extent Evans is unable to then pay any additional amounts due, said balances shall bear 8% simple interest per annum from the date of submission by Jacobson and be paid in full within 12 months. Any additional disputed amounts shall likewise bear such interest, but final payment and the final amount due shall be resolved by the Dispute Resolution Process below, provided that as to such disputes, each party agrees to bear such party's own attorney's fees and costs and one half of the arbitrator's fee.

GENERAL PROVISIONS

Covenants Running with the Land: The terms and conditions herein shall be covenants running with the land, and shall burden and benefit Grantors, Grantees and their respective successor and assigns in interest of the servient estates and benefited parcels, respectively.

Failure to Comply. The terms and conditions of joint use and access as set forth herein are expressly conditioned upon compliance with all requirements set forth herein. Failure to abide by the terms and conditions may result in loss of privilege.

Non-Waiver: The failure of any party to insist upon strict performance of any of the terms, covenants, or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder at law or in equity and shall not be deemed a waiver of any subsequent breach or default in any such terms, covenants or conditions.

Assignment - Sublease Prohibited. The rights and obligations herein may not be assigned or sublet by the Owners to any other users or to any other real property, but are to be enjoyed by the residents of the participating Parcels, and may be allocated within each participating Parcel in the event of future subdivision or boundary modification.

Liability: Neither Owners make any express warranties regarding the condition of their respective Parcels and/or these easement areas, and such owners, and their agents and invitees, elect to enter the same for the purposes set forth herein at their sole risk.

Dispute Resolution / Attorney's Fees. Neither party may bring a claim against the other without first having invited the other to a face-to-face meeting, the exclusive topic of which shall be the peaceful, inexpensive and cooperative resolution of the dispute at issue. No lien may ever be filed against an owner's property without this dispute resolution process first being employed and an arbitrator's decision entered. Failing resolution at such a meeting, all disputes arising under this document shall be submitted to binding arbitration before a qualified impartial arbitrator mutually agreeable to the parties. If within seven days the parties are unable to agree on an arbitrator, each party

shall appoint its first choice for arbitrator to act on its behalf in the selection of an arbitrator by mutual agreement. If no agreement can be reached within seven days, a party may commence an action for the limited purpose of obtaining appointment of an arbitrator by the presiding Judge of San Juan County Superior Court. The arbitration shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association, or its successor. The arbitrator shall determine and award to the substantially prevailing party its costs, reasonable attorney's fees, and arbitrator's fees. The arbitrator's final decision may be filed and enforced by judgment entered in San Juan County Superior Court. If, in order to obtain relief, a party is required to file the arbitrator's decision in the Superior Court, the party so-required shall recover their reasonable costs and reasonable attorney fees for any such proceeding. If Jacobson substantially prevails in any arbitrated dispute over the balances due from Evans for dock construction and installation as outlined above, Jacobson may, in such circumstance, file a lien against the Evans properties for the amount remaining upon issuance of the arbitrator's decision, and such lien may be foreclosed in the same manner as materialman's liens under Washington law.

Severability: Invalidation of any of this document's provisions, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions herein, or the application thereof to any other person, and the same shall remain in full force and effect.

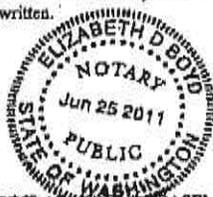
Counterparts: This document may be executed in counterparts, all of which shall be construed to constitute one and the same document.

[Signature]
STEVEN K. JACOBSON date Oct 30, 07

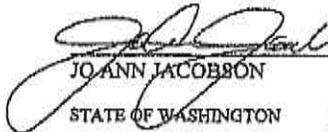
STATE OF WASHINGTON)
County of San Juan) ss.

On this 30 day of Oct, A.D. 2007, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared to me Steven K. Jacobson, known to be the individual described in and who executed the foregoing instrument, and acknowledged to me that he signed and sealed the said instrument as his free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal hereto affixed the day and year in this certificate above written.



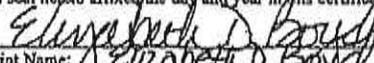
[Signature]
Print Name: ELIZABETH D BOYD
NOTARY PUBLIC in and for the State of Washington
Residing at 2125 20th
My commission expires: 6/25/11

 10/30/07
JO ANN JACOBSON date
STATE OF WASHINGTON)
County of San Juag) ss.

On this 30 day of Oct, A.D. 2007, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared to me Jo Ann Jacobson, known to be the individual described in and who executed the foregoing instrument, and acknowledged to me that she signed and sealed the said instrument as her free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal hereto affixed the day and year in this certificate above written.




Print Name: Elizabeth D. Boyd
NOTARY PUBLIC in and for the State of Washington
Residing at East Sound
My commission expires: 6/25/11

[Signature]
THOMAS C. EVANS date 10/24/07

STATE OF WASHINGTON)
County of King) ss.

On this 24th day of October, A.D. 2007, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared to me Thomas C. Evans, known to be the individual described in and who executed the foregoing instrument, and acknowledged to me that he signed and sealed the said instrument as his free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal hereto affixed the day and year in this certificate above written.



[Signature]
Print Name: SUSAN L. BEICHELLEY
NOTARY PUBLIC in and for the State of Washington
Residing at Auburn
My commission expires: 01-10-11

[Signature]
JULIA S. EVANS date 10/24/07

STATE OF WASHINGTON)
County of King) ss.

On this 24th day of October, A.D. 2007, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared to me Julia S. Evans, known to be the individual described in and who executed the foregoing instrument, and acknowledged to me that she signed and sealed the said instrument as her free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal hereto affixed the day and year in this certificate above written.

[Signature]

2007 1105018 PAGE 11 OF 17
SAN JUAN COUNTY, WASHINGTON

Print Name: Susan L Beichley
NOTARY PUBLIC in and for the State of Washington
Residing at Oakburn
My commission expires: 01-10-11



EXHIBIT "A"

PROPERTY DESCRIPTION

PARCEL 1: (161643004000 and 161650403000)

The Westerly one-half of Lots 2 and 3, Block 4 WECOMA SHORE, according to the Plat thereof, recorded in Volume 1 of Plats, at page 50 in the office of the Auditor of San Juan County, Washington.

EXCEPTING THEREFROM that portion lying East of the existing road as conveyed to Joe W. Morrison and Esther F. Morrison, his wife by Statutory Warranty Deed, recorded September 24, 1956 in Volume 27 of Deeds, at page 556, under Auditor's File No. 47084, records of San Juan County, Washington.

Vacated Lot 1, Block 4 and Vacated Lots 1, 2, 3, 4, 5, 6 and 7, Block 5, WECOMA SHORE, according to the Plat thereof, recorded in Volume 1 of Plats, at page 50, in the office of the Auditor of San Juan County, Washington and as vacated on July 8, 1971 by San Juan County Commissioners Resolution No. 101-1971

TOGETHER WITH 'Lane' adjoining, which upon vacation on February 1, 1971 by San Juan County Commissioners Resolution No. 22-1971 attached to said premises by operation of law.

TOGETHER WITH that portion of Vacated 'Meany Way' adjoining, which upon vacation on September 15, 1973 by San Juan County Commissioners Resolution No. 161-1975 attached to said premises by operation of law.

TOGETHER WITH a non-exclusive easement for joint use of Ingress, egress and utilities over that portion of Vacated Meany Way as conveyed and described in Easement Agreement, recorded September 16, 1975 in Volume 13 of Official Records, at page 228, under Auditor's File No. 88717, records of San Juan County, Washington.

Situate in San Juan County, Washington.

PARCEL 2: (161643003000)

That portion of Government Lot 5, Section 16, Township 36 North, Range 1 West of W.M., which lies West of the West line of Wecoma Shore Plat, according to the Plat thereof, recorded in Volume 1 of Plats, at page 50, in the office of the auditor of San Juan County, Washington and East of the East line of the West 660 feet of said Government Lot 5.

TOGETHER WITH that portion of Government Lot 1, Section 21, Township 36 North, Range 1 West of W.M., described as follows: Commencing at a point on the North line of said Government Lot 1, which point is 435.9 feet West of the East meander corner common to Sections 21 and 16, said Township and Range, and also being the Northwest corner of that certain tract of land conveyed to Joe W. Morrison and Esther F. Morrison by Deed recorded September 24, 1956 in Volume 27 of Deeds, at page 556, under Auditor's File No. 47084, records of San Juan County, Washington; thence South 22°41' West along the West line thereof, a distance of 139.3 feet; thence South 23°10' West along the West line of said Morrison tract, a distance of 108.2 feet to the meander line; thence Northerly along the meander line to the North line of said Government Lot 1; thence East along said North line of Government Lot 1 a distance of 117 feet more or less to the point of beginning.

Exhibit A, page 1

EXHIBIT "A"

(Continued)

(Legal Description Continued)

TOGETHER WITH That portion of the Tidelands of the Second Class situate in front of, adjacent to or abutting upon, as conveyed by the State of Washington by Deed-Second Class Tide Lands, recorded January 30, 1958 in Volume 29 of Deeds, at page 189, under Auditor's File No. 48829, records of San Juan County, Washington.

TOGETHER WITH AND SUBJECT TO a perpetual easement for a private road over and across a parcel of land 20 feet in width as conveyed by and described in Quit Claim Deed, recorded September 29, 1954 in Volume 26 of Deeds, at page 25, under Auditor's File No. 44686, records of San Juan County, Washington.

TOGETHER WITH a non-exclusive easement for joint use of Ingress, egress and utilities over that portion of Vacated Meany Way as conveyed and described in Easement Agreement, recorded September 18, 1975 in Volume 13 of Official Records, at page 228, under Auditor's File No. 89717, records of San Juan County, Washington.

Situate in San Juan County, Washington.

PARCEL 3: (181843002000)

All that portion of the West 680 feet of Government Lot 5, Section 16, Township 36 North, Range 1 West of W.M. lying east of a 20 foot road as described as follows:

Beginning at a point on the east line of the West 680 feet of said Government Lot 5; 936 feet North of the southeast corner thereof; thence southerly with the centerline of road, South 22° 23' West, 45.4 feet; thence South 9° 36' East, 64.7 feet; thence South 38° 42' West, 38 feet; thence South 64° 34' West, 85.9 feet; South 10° 16' East, 117.8 feet; South 32° 34' West, 82.2 feet; thence South 13° 41' West, 224.4 feet; thence South 5° 23' East, 154.7 feet; thence South 6° 03' West, 191.4 feet; thence South 43° 52' West, 62.2 feet to the South line of said Government Lot 5; thence East with the same 240.87 feet to the East line of the West 680 feet; thence North with the same 936 feet to the point of beginning.

TOGETHER WITH a perpetual easement for a private road over and across a parcel of land 20 feet in width as conveyed by and described in Quit Claim Deed, recorded September 29, 1954 in Volume 26 of Deeds, at page 25, under Auditor's File No. 44686, records of San Juan County, Washington.

TOGETHER WITH a non-exclusive easement for joint use of Ingress, egress and utilities over that portion of Vacated Meany Way as conveyed and described in Easement Agreement, recorded September 18, 1975 in Volume 13 of Official Records, at page 228, under Auditor's File No. 89717, records of San Juan County, Washington.

Situate in San Juan County, Washington.

Exhibit A, page 2

EXHIBIT "A"

PARCEL A:

All that portion of Government Lot 1, Section 21, Township 36 North, Range 1 West, W.M., in San Juan County, Washington, lying East of a line whose point of beginning is 435.9 feet West of the East meander corner between Sections 16 and 21; said Township and Range; THENCE South 22°41' West, 139.3 feet; THENCE South 23°10' West, 108.2 feet to the line of ordinary high tide; THENCE southerly along the line of ordinary high tide to the most southerly point upon the peninsula of land being described;

AND ALSO all that portion of the property described under Auditor's File No. 109342, records of San Juan County, Washington, lying South of the following described line:

Beginning at a point on the West boundary of said property marked by a 5/8-inch diameter rebar with cap labeled "KSM, LS 29535"; THENCE North 89°08'51" East, 48.91 feet to a 5/8-inch diameter rebar with cap labeled "KSM, LS 29535"; THENCE South 53°42'21" East 48.57 feet to a 5/8-inch diameter rebar with cap labeled "KSM, LS 29535"; THENCE South 53°42'21" East, 3.12 feet to a point on the South boundary of said property and the terminus of said line;

EXCEPTING THEREFROM all that portion of Government Lot 1, Section 21, Township 36 North, Range 1 West, W.M., lying South of the following described line:

Commencing at the Northwest corner of said property described under Auditor's File No. 115562, records of said county, from which a 5/8-inch rebar with cap marked "K&S, LS 29535" bears South 89°42'41" East, 6.62 feet; THENCE South 89°42'41" East, 411.58 feet, more or less, to the line of ordinary high tide and the TRUE POINT OF BEGINNING; THENCE South 89°42'41" East, 24.32 feet, more or less, to a 16-inch square concrete monument marking the perpetuation of the East meander corner of said Section 21; THENCE South 89°42'41" East, 16.69 feet, more or less, to the line of ordinary high tide and the terminus of said described line;

TOGETHER WITH those portions of tidelands of the second class situated in front thereof and lying within the following description:

Continued

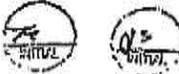


Exhibit B page 1

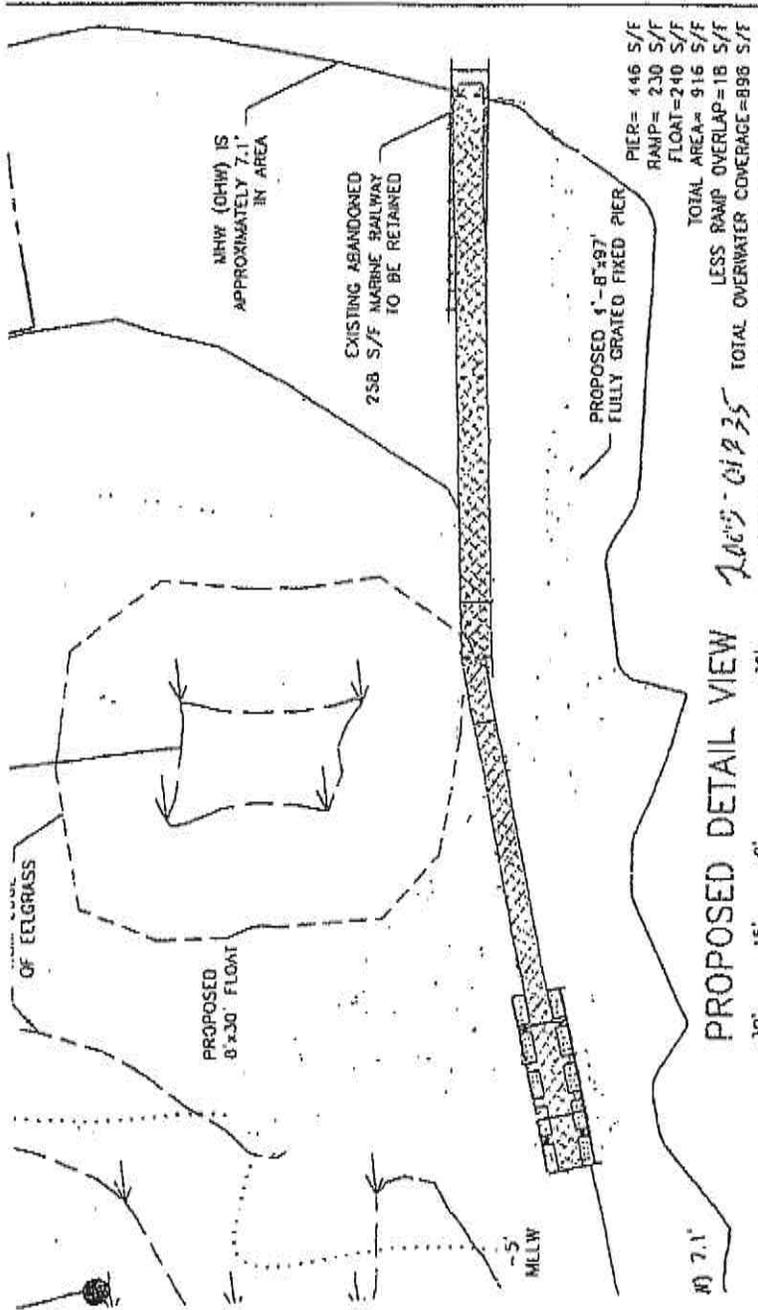
EXHIBIT "A" (Continued)

Beginning at a point on the North line of said Section 21, 180 feet, more or less, west from the East meander corner on said North line, said point being the intersection of said North line with the line of ordinary high tide; THENCE Southwesterly along said line of ordinary high tide 300 feet, more or less, to the point of intersection with a line which is 275 feet South of and parallel to the North line of said Section 21; THENCE North to said North line; THENCE East to the POINT OF BEGINNING.

PARCEL B:

That portion of the West half of Lots 2 and 3, Block 4, WECOMA SHORE, according to plat recorded in Volume 1 of Plats, page 50, records of San Juan County, Washington, lying East of the existing road, as declared and granted in Declaration and Grant of Easement, recorded March 6, 1974, under Auditor's File No. 84180, records of San Juan County, Washington.

Exhibit B, page 2



PROPOSED DETAIL VIEW



SCALE: 1"=30'

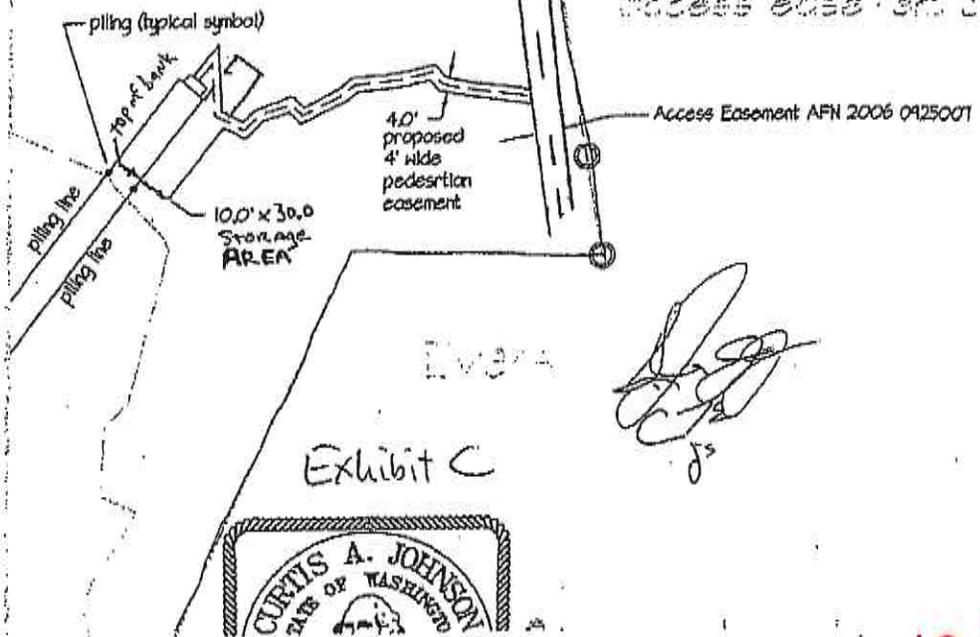
PIER, 3'-10" x 60' RAMP AND 8' x 30' RAMP LAUNCH RAILWAY

Exhibit D

REFERENCE #:	
APPLICANT: STEVEN JACOBSON & THOMAS EVANS	
PROPOSED: JOINT USE PIER FOR STEVE JACOBSON AND THOMAS EVANS	
NEAR/AT: ORCAS ISLAND	
SHEET #:	OF: 7
DATE: 10-12-05	DWG#: 05-1016-A.C.C.

See Record of Survey
in Book 15 at page 21
of 25 maps
Records San Juan County

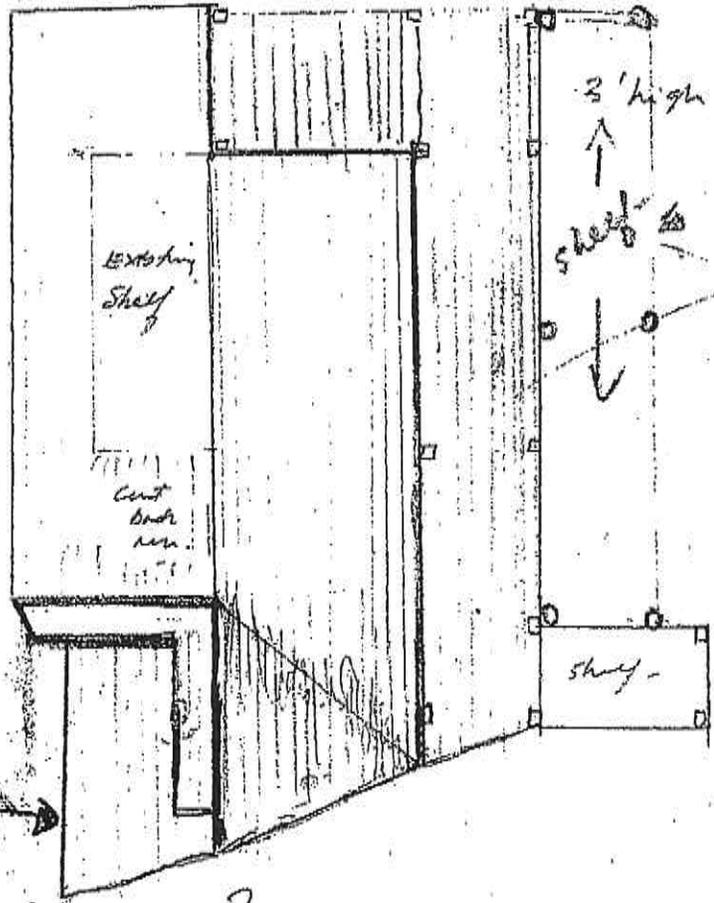
Illustrative
of a proposed easement
access easement



2. VISUALS

6/11/15

Board
#12



3' high
↑
shelf
↓
extra shelf?

higher for hooks?

5-10' 4x4
4-7' 4x4

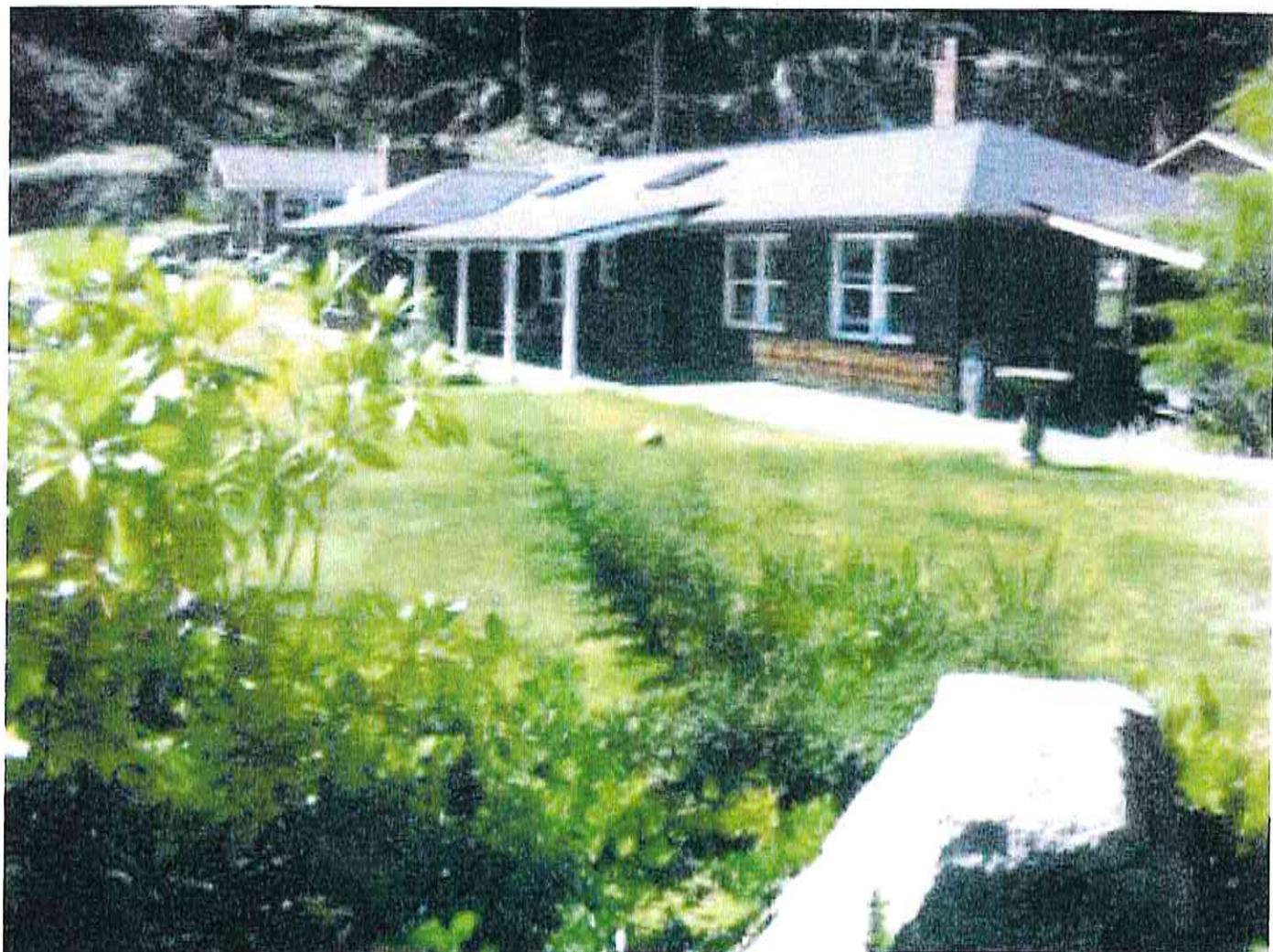
back to main wall board

Flora
4/30/15

for ground
DJ
4/20/15







3. LEGAL CODES/ RCW'S

**WAC 173-27-040****Developments exempt from substantial development permit requirement.****(1) Application and interpretation of exemptions.**

(a) Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the substantial development permit process.

(b) An exemption from the substantial development permit process is not an exemption from compliance with the act or the local master program, nor from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and provisions of the applicable master program and the Shoreline Management Act. A development or use that is listed as a conditional use pursuant to the local master program or is an unlisted use, must obtain a conditional use permit even though the development or use does not require a substantial development permit. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of the master program, such development or use can only be authorized by approval of a variance.

(c) The burden of proof that a development or use is exempt from the permit process is on the applicant.

(d) If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire proposed development project.

(e) Local government may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the act and the local master program.

(2) The following developments shall not require substantial development permits:

(a) Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand dollars, if such development does not materially interfere with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and Statistics, United States Department of Labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the *Washington State Register* at least one month before the new dollar threshold is to take effect. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030 (2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;

(b) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size,

shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;

(c) Construction of the normal protective bulkhead common to single-family residences. A "normal protective" bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the department of fish and wildlife;

(d) Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to chapter 90.58 RCW, these regulations, or the local master program, obtained. All emergency construction shall be consistent with the policies of chapter 90.58 RCW and the local master program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency;

(e) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels: Provided, That a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(f) Construction or modification of navigational aids such as channel markers and anchor buoys;

(g) Construction on shorelands by an owner, lessee or contract purchaser of a single-family

residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to chapter 90.58 RCW. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. On a statewide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Local circumstances may dictate additional interpretations of normal appurtenances which shall be set forth and regulated within the applicable master program. Construction authorized under this exemption shall be located landward of the ordinary high water mark;

(h) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exception applies if either:

(i) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or

(ii) In fresh waters the fair market value of the dock does not exceed:

(A) Twenty thousand dollars for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced, and are located in a county, city, or town that has updated its master program consistent with the master program guidelines in chapter 173-26 WAC as adopted in 2003; or

(B) Ten thousand dollars for all other docks constructed in fresh waters.

However, if subsequent construction occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified in either (h)(ii)(A) or (B) of this subsection, the subsequent construction shall be considered a substantial development for the purpose of this chapter.

For purposes of this section salt water shall include the tidally influenced marine and estuarine water areas of the state including the Pacific Ocean, Strait of Juan de Fuca, Strait of Georgia and Puget Sound and all bays and inlets associated with any of the above;

(i) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater from the irrigation of lands;

(j) The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

(k) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system;

(l) Any project with a certification from the governor pursuant to chapter 80.50 RCW;

(m) Site exploration and investigation activities that are prerequisite to preparation of an

application for development authorization under this chapter, if:

- (i) The activity does not interfere with the normal public use of the surface waters;
- (ii) The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;
- (iii) The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

(iv) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and

(v) The activity is not subject to the permit requirements of RCW 90.58.550;

(n) The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department of ecology jointly with other state agencies under chapter 43.21C RCW;

(o) Watershed restoration projects as defined herein. Local government shall review the projects for consistency with the shoreline master program in an expeditious manner and shall issue its decision along with any conditions within forty-five days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in this section.

(i) "Watershed restoration project" means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:

(A) A project that involves less than ten miles of streamreach, in which less than twenty-five cubic yards of sand, gravel, or soil is removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;

(B) A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

(C) A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the state, provided that any structure, other than a bridge or culvert or instream habitat enhancement structure associated with the project, is less than two hundred square feet in floor area and is located above the ordinary high water mark of the stream.

(ii) "Watershed restoration plan" means a plan, developed or sponsored by the department of fish and wildlife, the department of ecology, the department of natural resources, the department of transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county, or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed for which agency and public review has been conducted pursuant to chapter 43.21C RCW, the State Environmental Policy Act;

(p) A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the following apply:

- (i) The project has been approved in writing by the department of fish and wildlife;
- (ii) The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 77.55 RCW; and
- (iii) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are determined to be consistent with local shoreline master programs, as follows:

(A) In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the criteria under (p)(iii)(A)(I) and (II) of this subsection:

(I) A fish habitat enhancement project must be a project to accomplish one or more of the following tasks:

- Elimination of human-made fish passage barriers, including culvert repair and replacement;
- Restoration of an eroded or unstable streambank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or
- Placement of woody debris or other instream structures that benefit naturally reproducing fish stocks.

The department of fish and wildlife shall develop size or scale threshold tests to determine if projects accomplishing any of these tasks should be evaluated under the process created in this section or under other project review and approval processes. A project proposal shall not be reviewed under the process created in this section if the department determines that the scale of the project raises concerns regarding public health and safety; and

(II) A fish habitat enhancement project must be approved in one of the following ways:

- By the department of fish and wildlife pursuant to chapter 77.95 or 77.100 RCW;
- By the sponsor of a watershed restoration plan as provided in chapter 89.08 RCW;
- By the department as a department of fish and wildlife-sponsored fish habitat enhancement or restoration project;
 - Through the review and approval process for the jobs for the environment program;
 - Through the review and approval process for conservation district-sponsored projects, where the project complies with design standards established by the conservation commission through interagency agreement with the United States Fish and Wildlife Service and the natural resource conservation service;
 - Through a formal grant program established by the legislature or the department of fish and wildlife for fish habitat enhancement or restoration; and
 - Through other formal review and approval processes established by the legislature.

(B) Fish habitat enhancement projects meeting the criteria of (p)(iii)(A) of this subsection are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of (p)(iii)(A) of this subsection and being reviewed and approved according to the provisions of this section are not subject to the requirements of RCW 43.21C.030 (2)(c).

(C)(I) A hydraulic project approval permit is required for projects that meet the criteria of (p)(iii)(A) of this subsection and are being reviewed and approved under this section. An applicant shall

use a joint aquatic resource permit application form developed by the office of regulatory assistance to apply for approval under this chapter. On the same day, the applicant shall provide copies of the completed application form to the department of fish and wildlife and to each appropriate local government. Local governments shall accept the application as notice of the proposed project. The department of fish and wildlife shall provide a fifteen-day comment period during which it will receive comments regarding environmental impacts. Within forty-five days, the department shall either issue a permit, with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project. The department shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by the conditioning of a permit. If the department determines that the review and approval process created by this section is not appropriate for the proposed project, the department shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes.

(II) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may formally appeal the decision to the hydraulic appeals board pursuant to the provisions of this chapter.

(D) No local government may require permits or charge fees for fish habitat enhancement projects that meet the criteria of (p)(iii)(A) of this subsection and that are reviewed and approved according to the provisions of this section.

(q) The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) or to otherwise provide physical access to the structure by individuals with disabilities.

[Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-27-040, filed 8/7/17, effective 9/7/17. Statutory Authority: RCW 90.58.030 (3)(e), 90.58.045, 90.58.065, 90.58.140(9), 90.58.143, 90.58.147, 90.58.200, 90.58.355, 90.58.390, 90.58.515, 43.21K.080, 71.09.250, 71.09.342, 77.55.181, 89.08.460, chapters 70.105D, 80.50 RCW. WSR 07-02-086 (Order 05-12), § 173-27-040, filed 1/2/07, effective 2/2/07. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-040, filed 9/30/96, effective 10/31/96.]



RCW 90.58.030

Definitions and concepts.

As used in this chapter, unless the context otherwise requires, the following definitions and concepts apply:

(1) Administration:

- (a) "Department" means the department of ecology;
- (b) "Director" means the director of the department of ecology;
- (c) "Hearings board" means the shorelines hearings board established by this chapter;
- (d) "Local government" means any county, incorporated city, or town which contains within its boundaries any lands or waters subject to this chapter;
- (e) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated.

(2) Geographical:

- (a) "Extreme low tide" means the lowest line on the land reached by a receding tide;
- (b) "Floodway" means the area, as identified in a master program, that either: (i) Has been established in federal emergency management agency flood insurance rate maps or floodway maps; or (ii) consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state;
- (c) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water;
- (d) "Shorelands" or "shoreland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology.

(i) Any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom.

(ii) Any city or county may also include in its master program land necessary for buffers for critical areas, as defined in chapter 36.70A RCW, that occur within shorelines of the state, provided that forest practices regulated under chapter 76.09 RCW, except conversions to nonforestland use, on lands subject to the provisions of this subsection (2)(d)(ii) are not subject to additional regulations under this chapter;

(e) "Shorelines" means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes;

(f) "Shorelines of statewide significance" means the following shorelines of the state:

(i) The area between the ordinary high water mark and the western boundary of the state from Cape Disappointment on the south to Cape Flattery on the north, including harbors, bays, estuaries, and inlets;

(ii) Those areas of Puget Sound and adjacent salt waters and the Strait of Juan de Fuca between the ordinary high water mark and the line of extreme low tide as follows:

(A) Nisqually Delta—from DeWolf Bight to Tatsolo Point,

(B) Birch Bay—from Point Whitehorn to Birch Point,

(C) Hood Canal—from Tala Point to Foulweather Bluff,

(D) Skagit Bay and adjacent area—from Brown Point to Yokeko Point, and

(E) Padilla Bay—from March Point to William Point;

(iii) Those areas of Puget Sound and the Strait of Juan de Fuca and adjacent salt waters north to the Canadian line and lying seaward from the line of extreme low tide;

(iv) Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high water mark;

(v) Those natural rivers or segments thereof as follows:

(A) Any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more,

(B) Any east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer;

(vi) Those shorelands associated with (f)(i), (ii), (iv), and (v) of this subsection (2);

(g) "Shorelines of the state" are the total of all "shorelines" and "shorelines of statewide significance" within the state;

(h) "Wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and

drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

(3) Procedural terms:

(a) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level;

(b) "Guidelines" means those standards adopted to implement the policy of this chapter for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards shall also provide criteria to local governments and the department in developing master programs;

(c) "Master program" means the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020. "Comprehensive master program update" means a master program that fully achieves the procedural and substantive requirements of the department guidelines effective January 17, 2004, as now or hereafter amended;

(d) "State master program" is the cumulative total of all master programs approved or adopted by the department of ecology;

(e) "Substantial development" means any development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection (3)(e) must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. The following shall not be considered substantial developments for the purpose of this chapter:

(i) Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;

(ii) Construction of the normal protective bulkhead common to single-family residences;

(iii) Emergency construction necessary to protect property from damage by the elements;

(iv) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels. A feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities.

A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(v) Construction or modification of navigational aids such as channel markers and anchor buoys;

(vi) Construction on shorelands by an owner, lessee, or contract purchaser of a single-family residence for his own use or for the use of his or her family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter;

(vii) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single and multiple family residences. This exception applies if either: (A) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or (B) in fresh waters, the fair market value of the dock does not exceed: (I) Twenty thousand dollars for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced, and are located in a county, city, or town that has updated its master program consistent with the master program guidelines in chapter 173-26 WAC as adopted in 2003; or (II) ten thousand dollars for all other docks constructed in fresh waters. However, if subsequent construction occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified in either (e)(vii)(A) or (B) of this subsection (3), the subsequent construction shall be considered a substantial development for the purpose of this chapter. All dollar thresholds under (e)(vii)(B) of this subsection (3) must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2018, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. The office of financial management must calculate the new dollar thresholds, rounded to the nearest hundred dollar, and transmit them to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar thresholds are to take effect;

(viii) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater for the irrigation of lands;

(ix) The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

(x) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system;

(xi) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

(A) The activity does not interfere with the normal public use of the surface waters;

(B) The activity will have no significant adverse impact on the environment including, but not limited to, fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

(C) The activity does not involve the installation of a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

(D) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and

(E) The activity is not subject to the permit requirements of RCW 90.58.550;

(xii) The process of removing or controlling an aquatic noxious weed, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department jointly with other state agencies under chapter 43.21C RCW;

(xiii) The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with disabilities act of 1990 (42 U.S.C. Sec. 12101 et seq.) or to otherwise provide physical access to the structure by individuals with disabilities.

[2016 c 193 § 1; 2014 c 23 § 1. Prior: 2010 c 107 § 3; 2007 c 328 § 1; 2003 c 321 § 2; 2002 c 230 § 2; 1996 c 265 § 1; prior: 1995 c 382 § 10; 1995 c 255 § 5; 1995 c 237 § 1; 1987 c 474 § 1; 1986 c 292 § 1; 1982 1st ex.s. c 13 § 2; 1980 c 2 § 3; 1979 ex.s. c 84 § 3; 1975 1st ex.s. c 182 § 1; 1973 1st ex.s. c 203 § 1; 1971 ex.s. c 286 § 3.]

NOTES:

Intent—Retroactive application—Effective date—2010 c 107: See notes following RCW 36.70A.480.

Finding—Intent—2003 c 321: "(1) The legislature finds that the final decision and order in *Everett Shorelines Coalition v. City of Everett and Washington State Department of Ecology*, Case No. 02-3-0009c, issued on January 9, 2003, by the central Puget Sound growth management hearings board was a case of first impression interpreting the addition of the shoreline management act into the growth management act, and that the board considered the appeal and issued its final order and decision without the benefit of shorelines guidelines to provide guidance on the implementation of the shoreline management act and the adoption of shoreline master programs.

(2) This act is intended to affirm the legislature's intent that:

(a) The shoreline management act be read, interpreted, applied, and implemented as a whole consistent with decisions of the shoreline[s] hearings board and Washington courts prior to the decision of the central Puget Sound growth management hearings board in *Everett Shorelines Coalition v. City of Everett and Washington State Department of Ecology*;

(b) The goals of the growth management act, including the goals and policies of the shoreline management act, set forth in RCW 36.70A.020 and included in RCW 36.70A.020 by RCW 36.70A.480, continue to be listed without an order of priority; and

(c) Shorelines of statewide significance may include critical areas as defined by RCW 36.70A.030(5), but that shorelines of statewide significance are not critical areas simply because they are shorelines of statewide significance.

(3) The legislature intends that critical areas within the jurisdiction of the shoreline

management act shall be governed by the shoreline management act and that critical areas outside the jurisdiction of the shoreline management act shall be governed by the growth management act. The legislature further intends that the quality of information currently required by the shoreline management act to be applied to the protection of critical areas within shorelines of the state shall not be limited or changed by the provisions of the growth management act." [2003 c 321 § 1.]

Finding—Intent—2002 c 230: "The legislature finds that the dollar threshold for what constitutes substantial development under the shoreline management act has not been changed since 1986. The legislature recognizes that the effects of inflation have brought in many activities under the jurisdiction of chapter 90.58 RCW that would have been exempted under its original provisions. It is the intent of the legislature to modify the current dollar threshold for what constitutes substantial development under the shoreline management act, and to have this threshold readjusted on a five-year basis." [2002 c 230 § 1.]

Effective date—1995 c 255: See RCW 17.26.901.

Severability—1986 c 292: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 292 § 5.]

Intent—1980 c 2; 1979 ex.s. c 84: "The legislature finds that high tides and hurricane force winds on February 13, 1979, caused conditions resulting in the catastrophic destruction of the Hood Canal bridge on state route 104, a state highway on the federal-aid system; and, as a consequence, the state of Washington has sustained a sudden and complete failure of a major segment of highway system with a disastrous impact on transportation services between the counties of Washington's Olympic peninsula and the remainder of the state. The governor has by proclamation found that these conditions constitute an emergency. To minimize the economic loss and hardship to residents of the Puget Sound and Olympic peninsula regions, it is the intent of 1979 ex.s. c 84 to authorize the department of transportation to undertake immediately all necessary actions to restore interim transportation services across Hood Canal and Puget Sound and upon the Kitsap and Olympic peninsulas and to design and reconstruct a permanent bridge at the site of the original Hood Canal bridge. The department of transportation is directed to proceed with such actions in an environmentally responsible manner that would meet the substantive objectives of the state environmental policy act and the shorelines management act, and shall consult with the department of ecology in the planning process. The exemptions from the state environmental policy act and the shorelines management act contained in RCW 43.21C.032 and 90.58.030 are intended to approve and ratify the timely actions of the department of transportation taken and to be taken to restore interim transportation services and to reconstruct a permanent Hood Canal bridge without procedural delays." [1980 c 2 § 1; 1979 ex.s. c 84 § 1.]

18.40.270 Vacation (short-term) rentals of residences or accessory dwelling units (ADUs).

The following standards apply to all vacation (short-term; less than 30 days) rentals of single-family residential units and accessory dwelling units or portions thereof:

- A. No more than three guests per bedroom shall be accommodated at any one time.
- B. The vacation rental of a principal residence or accessory dwelling unit shall be operated in a way that will prevent unreasonable disturbances to area residents.
- C. At least one additional off-street parking space shall be provided for the vacation rental use in addition to the parking required for the residence or accessory dwelling unit.
- D. If any food service is to be provided the requirements for a bed and breakfast residence must be met.
- E. No outdoor advertising signs are allowed.
- F. The owner or a long-term lessee may rent either the principal residence or the accessory dwelling unit on a short-term basis (vacation rental), but not both.
- G. Where there are both a principal residence and an accessory dwelling unit, the owner or long-term lessee must reside on the premises, or one of the living units must remain unrented.
- H. In all activity center land use districts, rural residential, and conservancy land use districts, the vacation rental of a residence or accessory dwelling unit may be allowed by provisional ("Prov") permit only if the owner or lessee demonstrates that the residence or accessory dwelling unit in question was used for vacation rental on or before June 1, 1997. When internal land use district boundaries are adopted for an activity center, this provision will apply to VR and HR districts but not to the activity center in general.
- I. Vacation rental accommodations must meet all local and state regulations, including those pertaining to business licenses and taxes.
- J. Owners of vacation rentals must file with the administrator a 24-hour contact phone number.
- K. The owner or lessee of the vacation rental shall provide notice to the tenants regarding rules of conduct and their responsibility not to trespass on private property or to create disturbances. If there is an easement that provides access to the shoreline, this shall be indicated on a map or the easement shall be marked; if there is no

access, this shall be indicated together with a warning not to trespass.

L. Detached accessory dwelling units established under SJCC 18.40.240 cannot be separately leased or rented for less than 30 days. (Ord. 7-2006 § 8; Ord. 21-2002 § 5; Res. 145-1998; Ord. 2-1998 Exh. B § 4.19.3)

18.40.280 Industrial uses – Standards for site development.

A. All Industrial Uses. The following standards apply to all industrial uses as listed in Tables 18.30.030 and 18.30.040 and to those other uses determined by the administrator to be industrial uses.

1. The use of chemicals, industrial solvents, or other noxious or hazardous substances shall comply with all federal, state, and County safety, fire, structural, storage, and disposal standards.

2. Water supplies, wastewater, and sewage disposal facilities adequate to serve the proposed use shall be provided.

3. Retail sales and services incidental to a principally permitted use are allowable, provided:

a. The operations are contained within the main structure which houses the primary use;

b. Retail sales occupy no more than 15 percent of the total building square footage;

c. No retail sales or display of merchandise occurs outside the structure; and

d. All products offered for retail sales on the site are manufactured, warehoused, or assembled on the premises.

4. No use shall be made of equipment or material which produces unreasonable vibration, noise, dust, smoke, odor, electrical interference to the detriment of adjoining property.

5. Use of a County access road or private road for access to new industrial development shall be permitted only if the applicant demonstrates that public health, safety and welfare will be protected, and if traffic and maintenance impacts to the private road are minimized by conditions on the permit.

B. Industrial Uses in Rural Designations. For all allowable and conditionally permitted industrial uses located in rural land use districts, as listed in Table 18.30.040, if estimated traffic volume generated would exceed the volume that would be generated by rural residential use of the site (five trips per day per unit of maximum

density), any easements or road improvements required by the County engineer to accommodate the increase must be provided prior to occupancy.

C. Concrete Batch Plants – Additional Standards. All receiving, mixing, and preparation activities shall occur in an enclosed space that includes an air filtration exhaust system.

D. Light Industrial Uses – Additional Standards.

1. All operations other than loading and unloading shall be conducted within a fully enclosed building.

2. Production of noise at the property lines of the premises shall not exceed normal ambient noise levels in the vicinity, as discernible without instruments.

3. No emissions of dust, dirt, odors, smoke, toxic gases or fumes will occur. (Ord. 2-1998 Exh. B § 4.20)

18.50.040 Exemptions from shoreline substantial development permit requirements – General requirements.

A. Exemption from the shoreline substantial development permit requirements under this section does not constitute an exemption from the policies of the SMA, the regulations of this SMP, or other applicable County, state, or federal permit requirements.

B. Exemption procedures are provided in SJCC 18.80.110(F). Exemptions are construed narrowly in accordance with WAC 173-27-040(1)(a). If any part of a project is not eligible for an exemption, a shoreline substantial development permit is required for the entire project.

C. Certificates of exemption are required for certain developments under SJCC 18.50.050(B). A use classified as a conditional use, or a use not named or contemplated in this chapter, is allowed subject to a conditional use permit and is ineligible for a shoreline substantial development permit exemption.

D. The following developments, as defined in WAC 173-27-040, are not shoreline substantial developments and require a certificate of exemption when not considered as part of a larger project or development permit:

1. With the exception of docks, any development, use, structure or activity whose total cost or fair market value, whichever is higher, does not exceed the maximum exempt amount allowed by state law (\$6,416 as of October 2012) in accordance with WAC 173-27-040(2)(a), if such development does not materially interfere with the normal public use of the water or shorelines of the state. The total cost or fair market value of the development includes the fair market value of any donated, contributed or found labor, equipment, or materials.
2. Normal maintenance or repair of existing structures or developments including those damaged by fire, accident, or the elements in accordance with WAC 173-27-040(2)(b).
3. Construction of a protective structural shoreline stabilization measure associated with existing single-family residences in accordance with WAC 173-27-040(2)(c).
4. Emergency construction necessary to protect property from damage by the elements, in accordance with WAC 173-27-040(2)(d). Flooding or other seasonal events that can be anticipated and may occur but are not immediately imminent are not an emergency.
5. Construction and practices necessary for farming, irrigation, and

ranching activities, including agricultural service roads and utilities on shorelands, construction and maintenance of a barn or similar agricultural structure and the construction and maintenance of irrigation structures such as head gates, pumping facilities, and irrigation channels in accordance with WAC 173-27-040(2)(e); provided, that a feedlot of any size, all processing plants, other activities of a commercial nature, and alteration of the contour of the shorelands by leveling or filling (other than that which results from normal cultivation) are not considered normal or necessary farming or ranching activities.

6. Construction or modification of navigational aids such as channel markers and anchor buoys in accordance with WAC 173-27-040(2)(f).

7. Construction of a single-family residence, including normal residential appurtenances, for the use of the beneficial owner and their family is exempt from shoreline substantial development permit requirements. For the purposes of this SMP, the beneficial owner is an individual who may be a land owner, lessee, contract purchaser, or a member of a family corporation, trust, or partnership, and who is related by blood, adoption, marriage or domestic partnership to all other members of the corporation, trust or partnership. For the construction of more than one single-family residence, a shoreline substantial development permit is required in accordance with WAC 173-27-040(2)(g). Exempt normal residential appurtenances are defined in SJCC 18.20.140 and regulated by SJCC 18.50.050.

8. Construction of a dock, including a community dock, designed for pleasure craft only, for the private, noncommercial use of the owner, lessee, or contract purchaser of single- and multiple-family residences in accordance with WAC 173-27-040(2)(h). This exception applies if either:

a. In salt waters, the fair market value of the dock does not exceed \$2,500; or

b. In fresh waters, the fair market value of the dock does not exceed \$10,000, but if subsequent construction having a fair market value exceeding \$2,500 occurs within five years of completion of the prior construction, the subsequent construction is considered a substantial development.

9. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as part of an irrigation system for the primary purpose of making use of the system waters, including return flow

and artificially stored groundwater from the irrigation of lands in accordance with WAC 173-27-040(2)(i).

10. The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water in accordance with WAC 173-27-040(2)(j).

11. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, that were created, developed, or utilized primarily as part of an agricultural drainage or diking system in accordance with WAC 173-27-040(2)(k).

12. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this SMP in accordance with WAC 173-27-040(2)(m) if:

- a. The activity does not interfere with the normal public use of the surface waters;
- b. The activity will have no significant adverse impact on the environment such as fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;
- c. The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;
- d. A private entity seeking development authorization under this section first posts a financial guarantee or provides other evidence of financial responsibility to the County to ensure that the site is restored to preexisting condition; and
- e. The activity is not subject to the permit requirements of RCW 90.58.550.

13. The process of removing or controlling an aquatic noxious weed, as defined in state law, through the use of herbicides or other treatment methods that are recommended in a final environmental impact statement published by the U.S. Department of Agriculture or the WDOE jointly with other state agencies under Chapter 43.21C RCW in accordance with WAC 173-27-040(2)(n). In order to qualify as exempt, noxious weed control must meet the following County requirements:

- a. Aquatic weed control must only occur when native plant communities and associated habitats are threatened or where a water-dependent use is restricted by the presence of weeds. Aquatic weed control must occur in compliance with all other applicable laws and standards.

b. Aquatic weeds will be controlled by hand pulling or mechanical harvesting that does not disturb the sea bed, or entail placement of aqua-screens. If the action is being proposed for the retention of existing water depth for navigation, it is considered normal maintenance and repair.

c. The control of aquatic weeds by derooting, rotovating, or other methods that disturb the sea bed or benthos in order to maintain the pre-existing water depth for navigation in an area covered by a previous permit is considered normal maintenance and repair. The control of aquatic weeds by similar methods in any other circumstance requires a shoreline substantial development permit.

d. Use of herbicides to control aquatic weeds is prohibited except where no feasible alternative exists and weed control complies with all state rules and regulations.

14. Watershed restoration projects in accordance with WAC 173-27-040(2)(o).

15. A public or private project that is designed to improve fish or wildlife habitat or fish passage in accordance with WAC 173-27-040(2)(p), when all of the following apply:

a. The project has been approved by the Washington Department of Fish and Wildlife (WDFW);

b. The project has received hydraulic project approval by the WDFW pursuant to Chapter 77.55 RCW; and

c. The County has determined that the project is substantially consistent with this SMP. (Ord. 11-2017 § 5; Ord. 1-2016 § 10)

18.80.040 Open-record predecision hearings.

A. Responsibility of Administrator for Hearings. The administrator shall:

1. Where applicable, schedule open-record predecision hearings on project permit applications;
2. Prepare the staff report on the project permit application, which shall be a single report stating intermediate steps taken in processing the project permit application as of the date of the report, and recommendations, if any. The staff report shall state any mitigation required or proposed under the development regulations or under the County's SEPA authority. If a threshold determination other than a determination of significance has not been issued previously by the County, the report shall include or append this determination; and
3. Prepare the notice of decision, if required, and mail a copy of the notice of decision to those required by this code (SJCC 18.80.130) to receive such decision.

B. Burden and Nature of Proof. The burden of proof is on the project permit applicant. The project permit application must be supported by evidence that it is consistent with the applicable state law, County development regulations, the Comprehensive Plan, and the applicant meets his burden of proving that any significant adverse environmental impacts have been adequately analyzed and addressed. (Ord. 15-2002 § 4; Ord. 2-1998 Exh. B § 8.4)

Dan & Cheryl Stabbert
13019 NE 61st Place
Kirkland, WA 98033
206-383-1325

January 22, 2018 (Updated)

San Juan County Development Department
Attention Julie Thompson
135 Rhode Street
Friday Harbor, WA 98250

Re: 2318 Obstruction Pass Road, Olga
Permit # PPROVO-17-0065 and PPROVO-17-0066

Via: Email JulieT@sanjuanco.com

Dear San Juan County Department of Community Development:

My wife Cheryl and I own two homes on Orcas Island, and they are situated on ten wonderful acres that we call Totem Cove. Over the past four-plus years we have hosted some family events at Totem Cove including two large family reunions. The unique isolation of this property combined with the natural beauty that only the San Juan Islands can offer blended with those reunions to create memories for a lifetime. It led us to request permission from your agency to be allowed to offer this same wonderful experience to other families on a limited basis. (Note: Your time is valuable so we have included a brief pictorial review with descriptions in the event there is not sufficient time to review our written response)

In response to Tom Evans objections we would like to offer the following:

1. The joint use agreement (JUA) was developed for the ownership and use of the small dock on the SE corner of this property and to allow the Evans a pathway easement to a small parcel of land to store their marine gear including crab pots. Its primary focus is on the use, maintenance, and expense with a special focus on limiting noxious smells, unsightly storage, etc. as the Evans primary use has been for oyster development with up to 24,000 seedlings at a given time. Basically protecting our (Jacobsen's) property from misuse of the storage and dock area given that it is directly in front of our master bedroom and is not even visible from the majority of the Evans property including their home. (see Exhibit 1 Aerial Photo). Also the only prohibited use of the dock is commercial use which the Washington State Supreme Court has clearly ruled does not apply to temporary rentals.

"In *Wilkinson v. Chiwawa Communities Association*, the Washington Supreme Court held in 2014 that an owner's receipt of money from a vacationing guest for the use of the owner's home does not change the use from residential to commercial".

2. The joint use agreement repeatedly re-states in paragraph 2C. and then again in paragraph 21 that our property (Jacobsen) parcels retain all rights of use and development. (Exhibit 2 Joint Use

Agreement). In no way was this agreement designed to give the Evans a say over how we utilized our property in any way other than the joint use of the dock and its associated care. To claim that the joint use agreement gives the Evans access to authority over our uplands and its use is far-reaching. And to claim that the limited use of our 10-acre parcel of property somehow will affect their enjoyment and safety is misleading.

3. The property is unique in the fact that it has natural boundaries to the south(Salish Sea and rock walls) , to the west (50-70' rock walls) to the north (wetland/pond division) and to the east (rock and elevated tree lined boundary that follows Obstruction Pass Road. (Exhibit 3)

4. The rules for vacation rental residences 18.40.270 clearly defines the standards which we are prepared to enforce including our arrangement for local and nearby administration. The property itself, nearly 9 miles from Eastsound does not lend itself to the "party " crowd but rather to a unique blend of individual who appreciates the isolation and beauty of this unique property.

5. The objections that have been raised reflect the sum of all fears rather than reality.

a. One lane deteriorating road:

i. We have two separate entrances to this property with the Obstruction Pass entrance through an electronic gate and the second-placed almost 700 feet away on the north end along the pond.

ii. There have been no complaints about Obstruction Pass Road being inadequate for its given use.

iii. This road has sufficient size for the large service trucks from both propane and waste services taking care of all of our homes along this road without ever a complaint.

iv. With both homes occupied the total occupancy is 8 bedrooms with an average of 2 persons per room. 3 persons per room has been implied but as you can see from the photos (attachment 4 interior photos) these homes are not the quality of living to be occupied by 3 person per room unless of course there is an infant at one time or the other in a bassinet. Our average guest complement has never been more than two cars as guests often by-pass the ferry and come by the small water taxi (Island Express). One of the great features of Obstruction Pass is that you can bypass the ferry lines, reservations, and delays. In the four and half years we have owned this property we have come by ferry no more than three or four times. The county dock which is only a 3 -4 minute walk from our property is ideal for either water taxi or your own personal boat. And the property dock and offshore buoys are adequate for small commuter boats up to 30 feet.

b. Guests infringing on other property owners beach areas

i. As you can see from our aerial photo (Exhibit 1) that is not only difficult but almost impossible to occur here. We have had one instance where a young person climbed out on the rock along our SW corner and infringed on our neighbors privacy and we posted a sign to preclude this. It was a daring act due to the rugged terrain and not one likely to be repeated.

ii. The homes that are experiencing this are on the east side of Obstruction Pass Road and they all share a common beach with one another. (Please see attachment of additional photos) That is not the case with our property, and as you can see from the photos, we are uniquely isolated- a quality that makes our property somewhat unique.

c. Guests disrespecting people's property and a cultural change:

i. The home that is being referenced 33 Meany Way and it is a very nice property. It is generally empty and its entrance lies about 50' from our Obstruction Pass Road

entrance. We have never noticed a problem. But again, that home is located on a nearly continuous beach that runs east along Obstruction Pass connecting property to property (Additional photos).

ii. These homes are designed to be lived in full time. If we choose to allow another family, to live in our home for a short period rather than be use the home ourselves the net increase is zero. The attitudes of those who come to Orcas Island tend to be unique respectful and appreciative of nature. When you consider the remote nature of this property, its isolation, and you blend that with the sub set for Orcas, you have a very special group. One that I am always surprised by and appreciative of and would find it very unusual to be anything other than respectful.

iii. The nature of rentals with the high end agencies do not only undergo background checks but the guests generally have been rated by other venues that they have rented in the past. This rating system helps ensure the quality of both the guest and the home owner, and to ensure that problems do not occur. There is no guarantee of course but the likelihood once again of getting a bad apple is rare and becoming even more so as more historic data is collected. It is something we are thinking through ourselves as we consider lending our beautiful home to another family and an issues we will always treat with respect.

d. Exterior Lighting is bothersome

i. We appreciate Julia Evans and her heart for Orcas and this area. We installed a very low level and tasteful landscape lighting set on our west rock wall that includes three low wattage bulbs shining onto three large madronas on our hillside, spaced about 75' apart from one another. A fourth light of low wattage highlights a 17' hand-carved totem pole that looks over the bay and which was carved for our family 30 years ago. The lights turn on at dusk and off between 11PM and 12PM each evening through automatic switching. There is no chance that they will stay on longer nor later as their timing is fixed. So no matter whether we have 4 people there or 6 people staying the night the lights will not become any brighter nor stay on any longer nor look any less beautiful. (Exhibit 5 night photo of hillside)

e. Unattended Beach Fires

i. Our property is such that we have never had a fire on the beach. It is not set up geographically conducive for that. Unlike the homes fronting Obstruction Pass and where the other authors reside where the beach flows directly out in front of their homes and families roam up and down sharing stories etc. Our property has a concrete fire pit in front of our home and completely hidden, protected, and totally unobservable from the Obstruction Pass homes. We even have an outdoor fireplace on our patio. I mistakenly had a fire in the fireplace one season and was reminded by our neighbor who is a volunteer fireman that the "no burn" rule applied to fireplaces as well. So we haven't made that mistake again, and we reinforce it with all of our guests.

Well, that is it for our responses to our neighbors, whom we do care for and respect. But also, we would appreciate it if we were granted our request for the two permits as we feel it is within our rights as property owners to utilize our property as we see fit and within the structure and guidelines that have been set by the County and which we feel we more than adequately meet.

Regards,

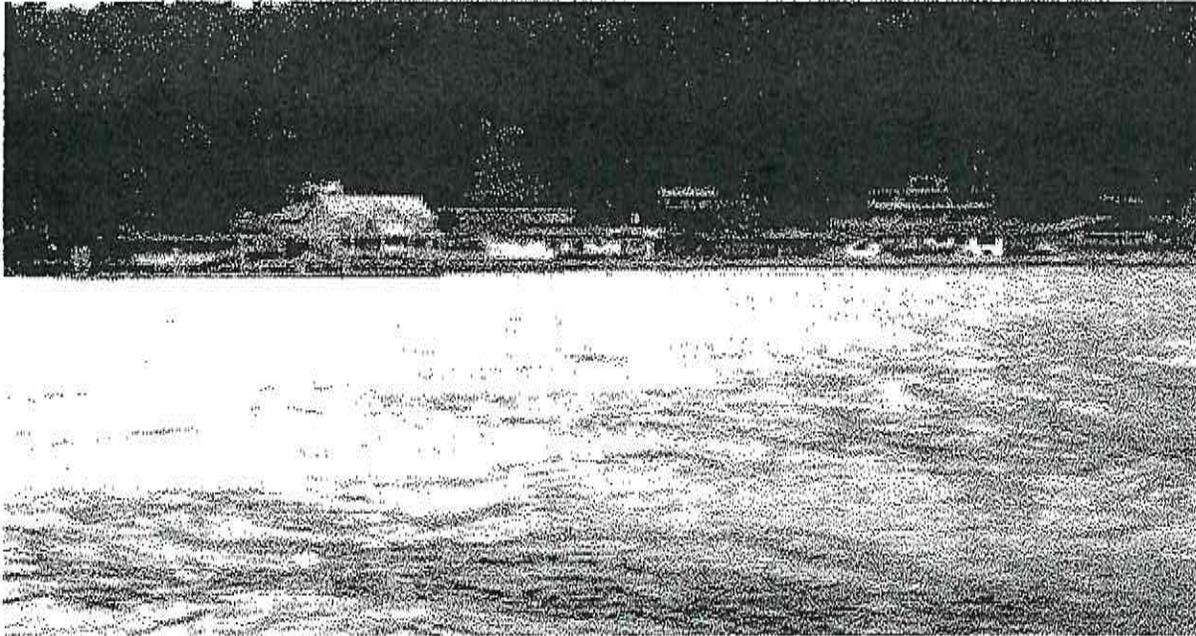


Dan & Cheryl Stabbert

Aerial Photo of Stabbert and Evans Homes showing the distance, adequate separation, and privacy between the residences.-This photo shows the distance that Evans home is from Stabbert as well as orientation of Evans home towards the view along obstruction pass nearly a 200 degree view AWAY from Stabbert property.



Photo showing the proximity of the homes the permit opponents are referencing with their concerns and the difference in density compared to the Stabbert property.



Photos of Stabbert property boundaries once again showing the misleading statements of trespass, beach fires, and disrespect of boundary lines are unfounded. Photos include

- a. Photo of south Salish Sea and adjacent rock outcroppings
- b. Photo of west rock wall with elevations to 60' along the entire west property line.
- c. Photo of east rock wall, steel entry gates, and tree lined fence that follow the entire length of the property along Obstruction Pass Road.
- d. Photo of north boundary made up of large wetland and pond area that runs along main access blacktop road off of Point of View lane.
- e. Boundaries are such that Obstruction Pass have a difficult even looking into the 10 acre Stabbert property let alone accessing it physically.



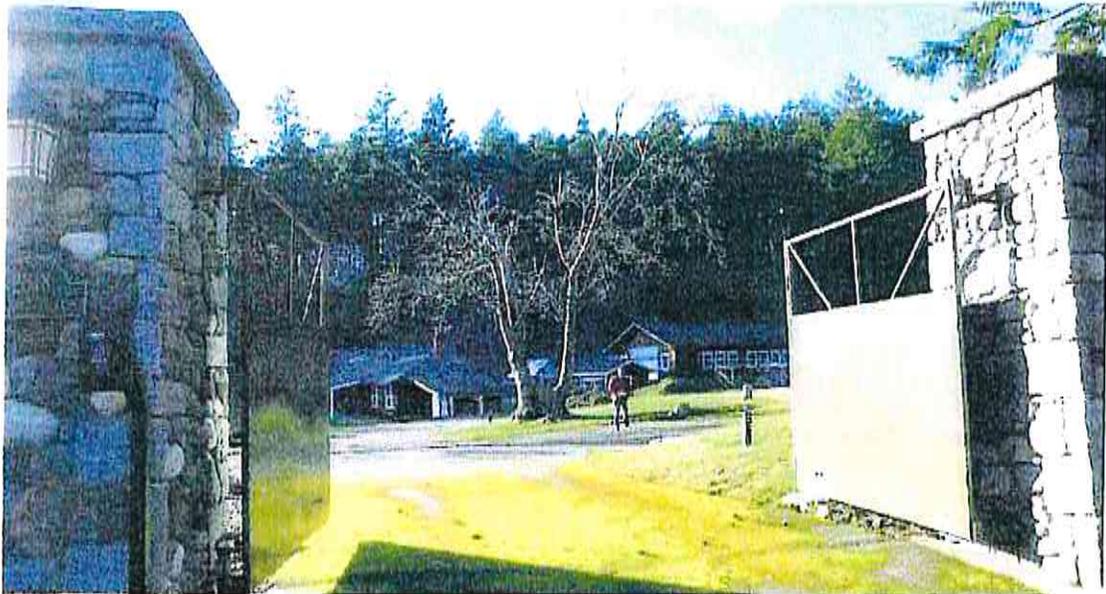
East Wall Boundary



East Wall Boundary



West Wall Boundary



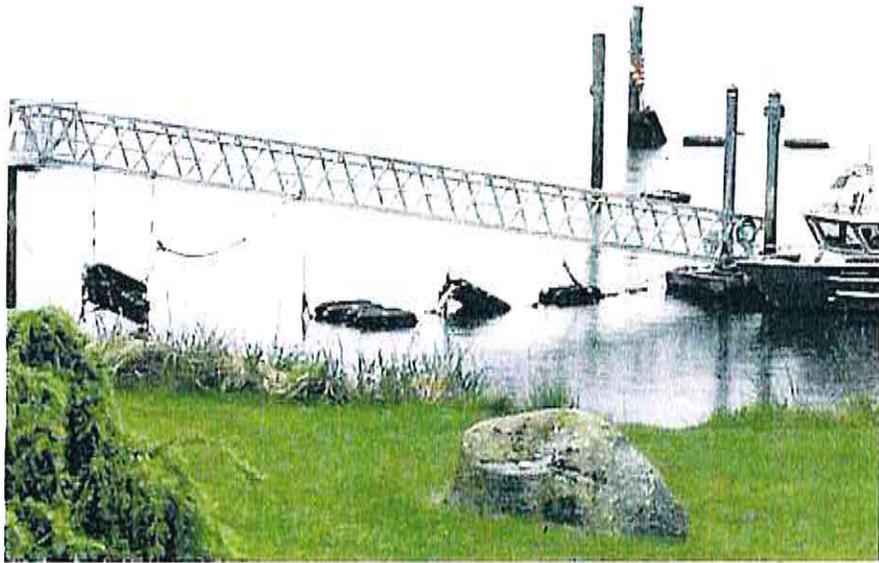


Property North Boundary Pond along Point of view Entrance Road

Photos showing one of the primary purposes of the Joint Use Agreement (JUA) was to protect the Stabbert home and NOT to deliver authority over the Stabbert property to the Evans. Copy of JUA highlighted to key clauses. Photos of Evans oyster cages hanging haphazardly from the dock and its access. Photos of debris laden cages (algae, muscle encrusted, noxious smelling when out of the water) Photo of the direct line of sight of from the Stabbert master bedroom/main house living area to the Evans platform. One of the JUA primary purposes is to protect the Stabberts property from misuse of the storage and dock area given that the Evans storage area lie directly in front of our master bedroom and primary living areas. Conversely, this same storage is not remotely visible from nor do noxious smells affect the Evans home or living environment. . (see Exhibit 1 Aria) Photo showing and exhibit 2 of Evans oyster cages).



View from Stabbert Property



C. Jacobson Parcels 1, 2 and 3 retain all other rights of use and development within these easement areas. Evans Parcels A and B retain all rights of use and development with Evans Parcels A and B. Future development by the owners of Jacobson Parcels 1, 2 and 3 shall not interfere with the use and enjoyment of these easement areas by Evans Parcels A and B.

**DECLARATION OF COVENANTS
AS TO JOINT OWNERSHIP AND USE OF DOCK**

As in the joint ownership and use of the Dock, and for the perpetual mutual benefit of the Evans Parcels A and B and the Jacobson Parcels 1, 2 and 3, the parties covenant and declare as follows:

1. The Dock consists of a pier, ramp and float, which are located over a portion of Jacobson Parcel 2 and over a portion of its adjacent tidelands, approximately as depicted on the Map attached as Exhibit D.
2. The pier, float and ramp shall be owned in common in the following ratio: 33% total, to Jacobson Parcels 1, 2 and 3, and 66% total to Evans Parcels A and B. Neither party's use shall ever interfere with the right of use of the other. There is no "fractional" ownership or use other than as stated herein.
3. The costs to insure, maintain, repair and replace the pier, ramp and float shall be shared in the following ratio: 1/2 to be borne by the owners of Jacobson Parcels 1, 2 and 3, and 1/2 to be borne by the owners of Evans Parcels A and B.
4. To Evans Parcels A and B is allotted the exclusive use of the easterly 30' linear feet of the float and the topside adjacent thereto, along with non-exclusive perpetual access via the pier, ramp and float.
5. To Evans Parcels A and B is allotted the exclusive use of the area designated "10.0' x 30.0' Storage Area" on the Map attached as Exhibit D, which area lies adjacent to the southeast side of the pier's landward end.
6. To Jacobson Parcels 1, 2 and 3 is allotted the exclusive use of the westerly 30' linear feet of the float and the topside adjacent thereto, along with non-exclusive perpetual access via the pier and ramp.
7. Joint users shall keep the Dock, ramp and facilities in very good order and repair, as well as clean, safe and sightly. Any damage occasioned by any user's use or omissions shall be repaired at the sole expense of the user causing the damage, to the extent that said repair is not subject to reimbursement by insurance. All other necessary repairs and maintenance shall be shared equally.

21. Jacobson Parcels 1, 2 and 3 retain all other rights of use and development within the beach and tidelands located thereon, and Evans Parcels A and B retain all other rights of use and development within the beach and tidelands located thereon.

**DECLARATION OF COVENANTS
AS TO PAYMENT OF COSTS OF DOCK'S DEVELOPMENT**

As for payment by the participating Parcels for the right of joint ownership and use of the Dock, and for the exclusive perpetual benefit of such Parcels, the owners of Jacobson Parcels 1, 2 and 3 and the owners of Evans Parcels A and B and agree, covenant and declare as follows:

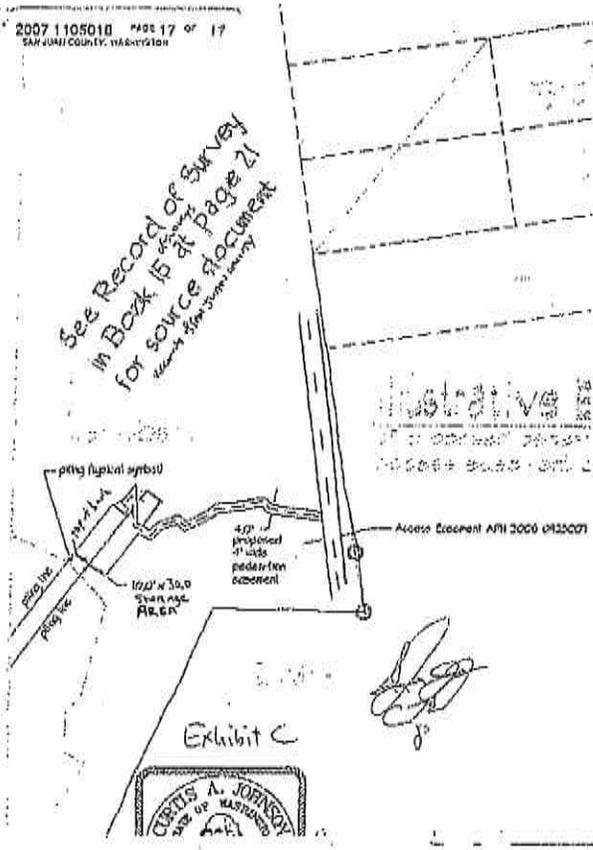
I. Jacobson has halted advance construction of the pier, ramp and float, which are awaiting installation, and performed partial construction of the Evans' accessway to the Dock by clearing and installing steps. Jacobson shall be responsible for all installation and final construction of the pier, ramp and float and shall do so in a neat and workman like manner so that the improvements as installed are fit for the purpose intended. Evans agrees, as outlined below, to pay their fair 50% share of the cost of all of the improvements and installation expense, with credit for any payments to date and the payment identified in this Agreement. Evans shall be responsible for all remaining work to improve the Evans' accessway. Evans agrees, as outlined below, to reimburse Jacobson for 100% of Jacobson's reasonable and necessary expenses for work on the accessway actually performed to date by Jacobson, an amount the parties agree does not exceed \$1,500.00.

II. The Dock's development costs are deemed to be: (a) all costs to permit, design, construct and install the pier, float and ramp; and (b) the cost of the survey that is Exhibit C hereto. Such costs shall exclude Jacobson's costs related to the revision of the application to the Army Corps of Engineers and the parties' respective legal fees.

III. To partially compensate Jacobson for his undepicted expenses to date, within five (5) days following signing and filing with the San Juan County Auditor of this Declaration, Evans shall pay to Jacobson, the sum of \$10,000, further provided said payment shall not be due prior to December 5, 2007. The parties agree that this document may be recorded prior to all final governmental approvals for the dock.

IV. Upon completion of installation of the pier, ramp and float, such that all of the improvements are available for use and enjoyment, Jacobson shall send to Evans in writing an itemized request for 50% payment for all balances owed, showing credit for all amounts Jacobson believes were paid or not paid previously by Evans and total construction costs. Evans shall, within 14 days of receipt of such itemized request for payment respond in writing as to what portion Evans agrees or disagrees with. To the

See Record of Survey
in Book 15 at Page 21
for source document
March 24th 1854

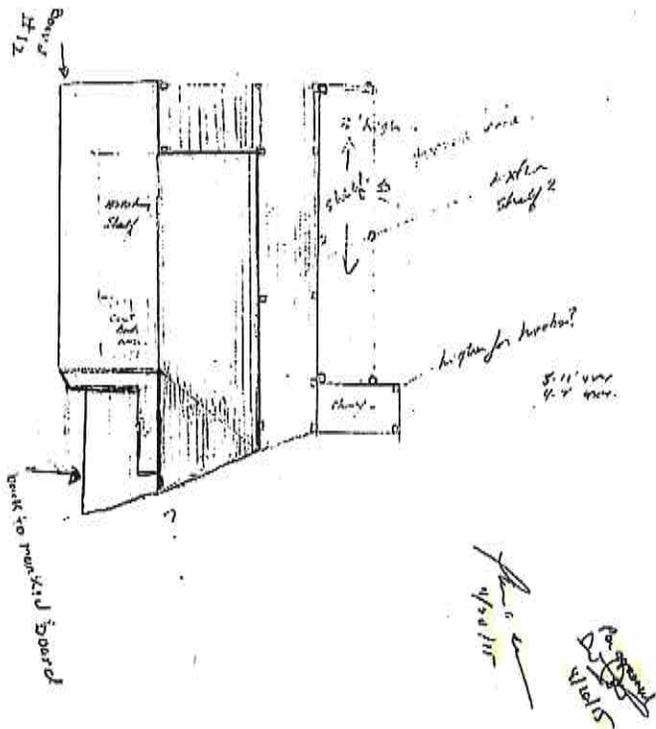


[Handwritten signature]

Exhibit C

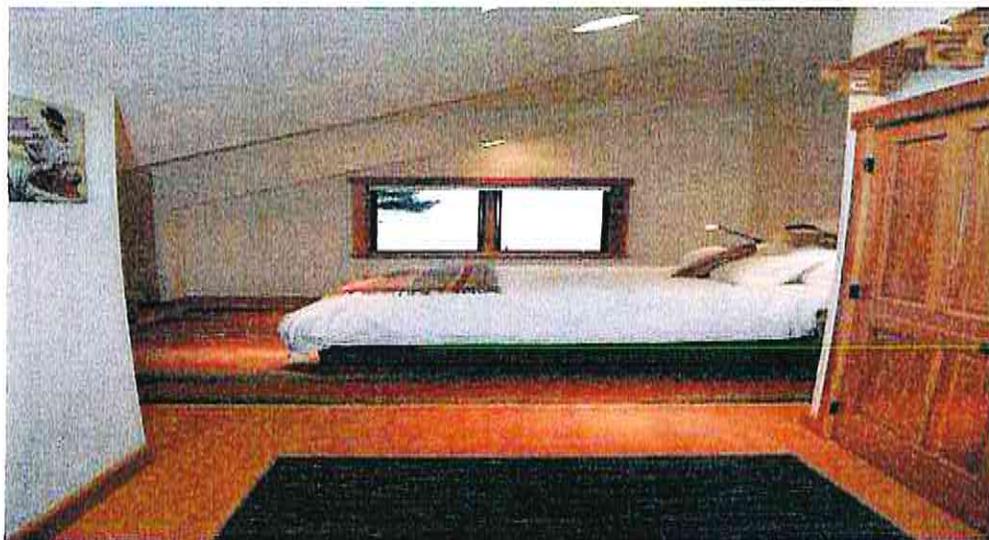


Explanation of and purpose for drawing of Evans structure with Stabbert signature. Dwg of Evans Platform with Dan Stabbert Signature was due to the fact that Evans, prior to Stabbert purchase of the property, had constructed a substantial structure on Stabbert property considerably outside of approved easement and Stabbert wanted this structure moved upon their ownership of the property-This platform while moved, remains located outside of the Evans allowed easement and it is built as a structure even though PROHIBITED in the Joint Use Agreement (JUA). Stabberts have allowed the structure and its location on a temporary and voluntary basis but have not waived their rights in the JUA. Basically employing a good neighbor policy but with a stick.



Photos showing the quality of the Stabbert homes showing the accusations of large groups in single rooms is not only miss leading but illogical

Sample photos of interior of Stabbert Homes including imported carpets from around the world, hand crafted furnishings, and rock/stone architecture. These are not party houses where three sleep to a room.



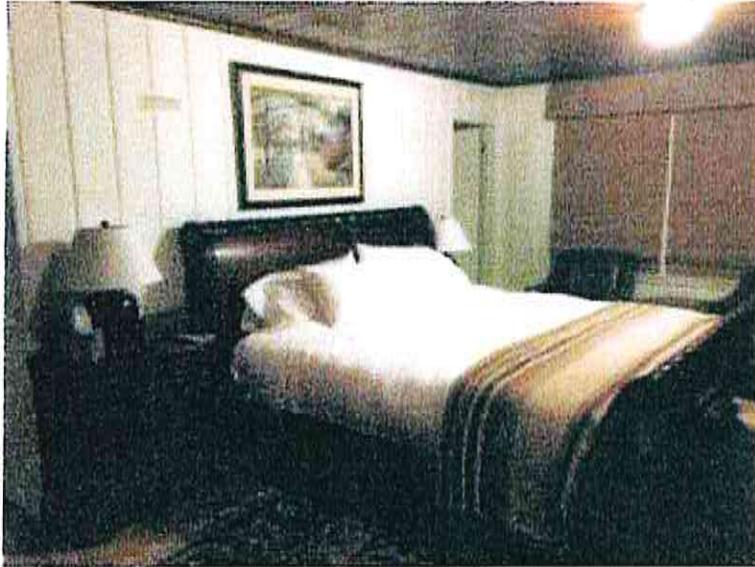




Guest House Living Room



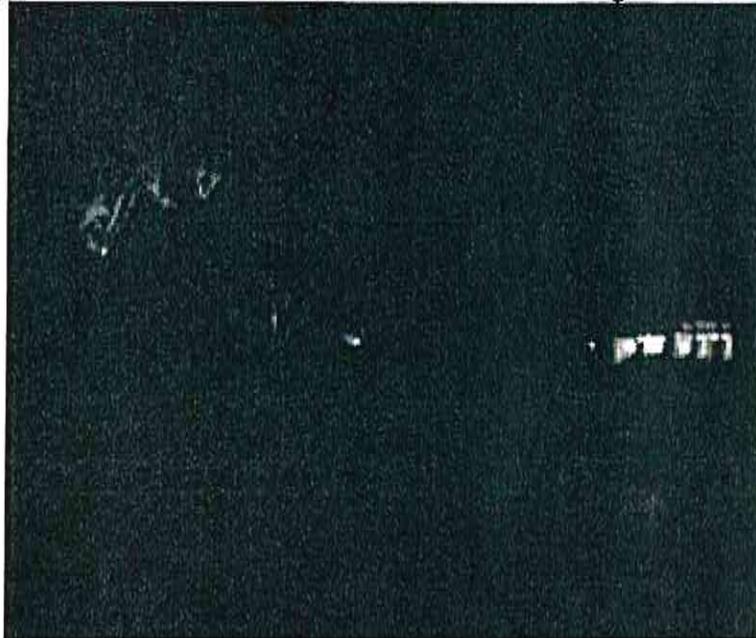
Guest House Dining Room



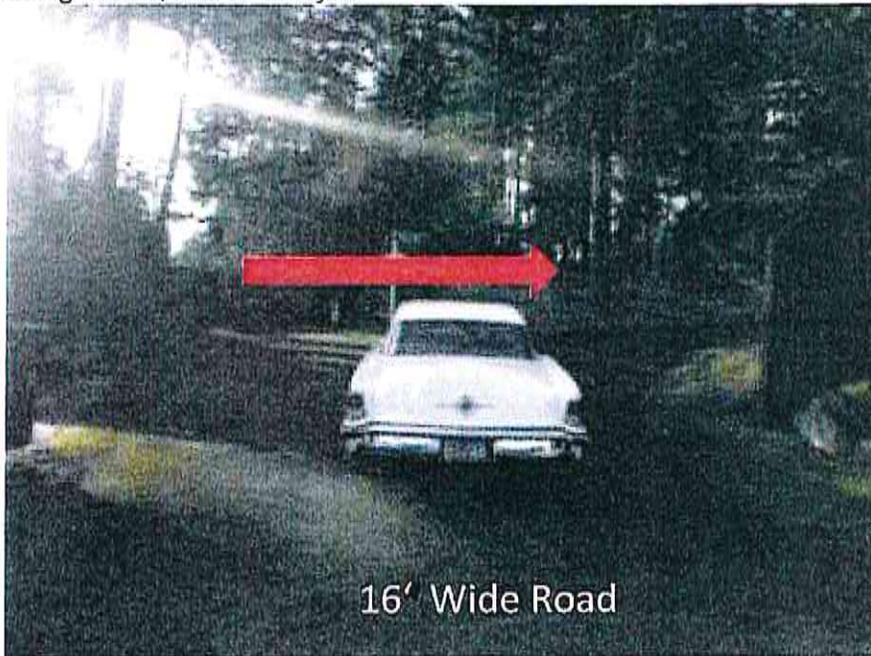
Guest House Master Bedroom

Picture of night lights on hill to refute the claim that use of our home will cause damage and loss of enjoyment to the Evans and that with increased utilization will come increased lighting-These three madrone lights and small uplights on Totem Pole photo are taken from the dock looking back on the hillside. The Evans Home, while facing away from these lights, is another 200-300 southeast of the dock location and 400-500 feet from the hillside light sources. These lights are on a timer year round whether the property is being used or not. They are LED, very low power consumption and energy efficient line voltage.

Stabbert night lights on Totem Pole and Hill with House Interior Lights on for comparison.



- These photos and documents show the capable capacity of the road serving the Stabbert property and disprove the unfounded and never before made claims of an unsafe, too small, and incapable road serving the residences off of Obstruction Pass. They also show the normal mode of transportation and access to the Stabbert property by water and NOT by car or other mode of transportation. Photo and Copy of Obstruction Pass Road and Point of View Lane Connection, Photo of water taxi with Obstruction Pass and Orcas guests coming into county dock. These photos and documents show the roads leading in and out of the Stabbert property. The roads are sufficiently wide to support a number of properties beyond the intersection of Point of View Lane and Obstruction Pass Road. The Stabbert property can be accessed safely by either road. There have been no known accidents, reported injuries, or other miss-happenings that we are aware of ever on these roads. The community has not called for repair, replacement, or increase in size. Just as importantly, is the fact that the vast majority of guests and residents to Obstruction Pass and specifically our property come by boat and not by car. Often bringing their bicycles, hiking shoes, and or a kayak.





Stabbert property arriving by boat which is the normal form of transportation for this property not by car or ferry.



The fire area photo is provided to disprove allegations that unattended beach fires and safety violations will occur if the Stabbert property is allowed to be utilized by others than the Stabbert family. Photos show approved concrete and stone fire area built into property and not on the beach. Beach fires are common for the homes along Obstruction Pass itself but just the opposite for the Stabbert property. This photo shows our built in exterior fire place as well as our concrete poured fire area located in an open zone.



Short aerial view of the property and situated structure shows our veracity and disproves the unfounded claims made by the opponents -This short video shows the property and how the structures are situated on its ten acres including access roads, boundaries, and isolation.



Julie Thompson

From: Tom Evans <tom@maritimeinjury.com>
Sent: Tuesday, January 30, 2018 10:41 AM
To: Yunge, Chad (ECY)
Cc: Julie Thompson; Renkor, Betty (ECY)
Subject: Re: Stabbert Vacation Rentals
Attachments: PCHBSHB Decision Search.pdf

Hi Chad, and thank you for getting back to me so quickly. Instead of outlining an argument, I thought I would ask you to answer the fairly simple question raised by the matrix as to whether a shoreline permit is required:

1. Arent vacation rentals only found on p84 of 87, their column up?
2. Doesn't the block for permit required for Rural Farm Forest (four blocks to the right) say "SD,"?
3. Doesn't the definition of SD, found on P 81 of 87, state that SD means "Subject To Shoreline Substantial Development Permit?"

How do you explain that?

You also make the statement below vacation rentals are only required for "Rural environment designation." There is no "Rural environment designation." The matrix/mapping doesn't show anything designated "Rural Environment Designation." There is a column for "Rural" but my neighbor's property is not designated Rural.

How can you have a land use zoning map that so clearly designates a "SD" is required, but then say an SD isn't required? Please explain.

As for no permit being required because no construction involved, I think DOE is failing to distinguish between change in use and construction. The logic of this argument leads to, if you have a structure you can change it to any use otherwise allowed because no construction was required. This misses the point of the Barry case below, copy below for your convenience. Please read the last sentence of paragraph two again where "...the Board concludes...a change in use" does trigger the requirement for a permit. The trailer was already there, all Barry did was change to use to vacation rental.

I am sorry, but I just can't find the logic in your response above. Last night I went over this in depth with Friends of San Juans planners. As you know they know the Master Program inside and out.

I would very much appreciate your responding to the above. Thankyou for your courtesy and cooperation. Tom Evans

On Jan 30, 2018, at 10:01 AM, Yunge, Chad (ECY) <CYUN461@ECY.WA.GOV> wrote:

Hi Tom,

I had an opportunity this morning to read through the San Juan County Shoreline Master Program (SMP) related to use of existing single-family residences as vacation rentals. I also spoke with Julie Thompson at the San Juan County Department of Community Development (DCD). In short, Ecology agrees with DCD's determination that no shoreline substantial development permit and/or shoreline conditional use permit is required for the use of your neighbor's residences as vacation rentals.

You had mentioned that the matrix located in Table 18.50.600 indicates that a Shoreline Conditional Use Permit (CUP) is required for vacation rentals. It looks like that only applies to the Rural environment designation. Your neighbor's properties appear to be located in the Rural Farm Forest designation which does not require a CUP:

Residential Development²			RURAL					
Single-family	No*	SD	SD	SD	SD	SD	SD	No*
Multifamily	No	SD	SD	SD	SD	SD	SD	No
Over-water	No	No	No	No	No	No	No	No
Live aboard vessels	No	No	No	No	No	No	SD	No
Vacation rentals ²	No*	No	CUP*	SD	SD	SD	SD	No
Private Pedestrian								

Regarding a substantial development permit or an exemption from one, since the proposal does not include new development, no such permits/approvals are required. The Shoreline Management Act (SMA) defines "development" as a use consisting of the construction or exterior alteration of structures, dredging, drilling, dumping, filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level (RCW 90.58.030(3)(a)). While any use of the shoreline must be consistent with a local SMP, a permit or exemption is not required unless it involves development as defined above.

I can certainly understand your concerns regarding use of the neighboring homes as vacation rentals. This issue is certainly coming up in other jurisdictions in Washington State as well as nationwide. It sounds like San Juan County does have performance standards that must be met in association with this use (SJCC 18.40.270 – Vacation (short-term) rentals of residences or accessory dwelling units). Hopefully these standards will alleviate some or all of your concerns regarding use of neighboring properties.

King regards,
Chad

Chad Yunge | Regional Shoreline Planner | [Department of Ecology](#) | 360-255-4374 | chad.yunge@ecy.wa.gov

This communication is a public record and may be subject to disclosure as per the Washington State Public Records Act (RCW 42.56)

From: Tom Evans [<mailto:tom@maritimeinjury.com>]
Sent: Thursday, January 25, 2018 5:04 PM
To: Yunge, Chad (ECY) <CYUN461@ECY.WA.GOV>
Cc: Renkor, Betty (ECY) <EREN461@ECY.WA.GOV>
Subject: Re: Contact Info.

Thank you Chad. In the interim I will send you copies of what I have and what the response from the County has been, which is, categorical exemption, no application required> Have a great weekend and thanks again!

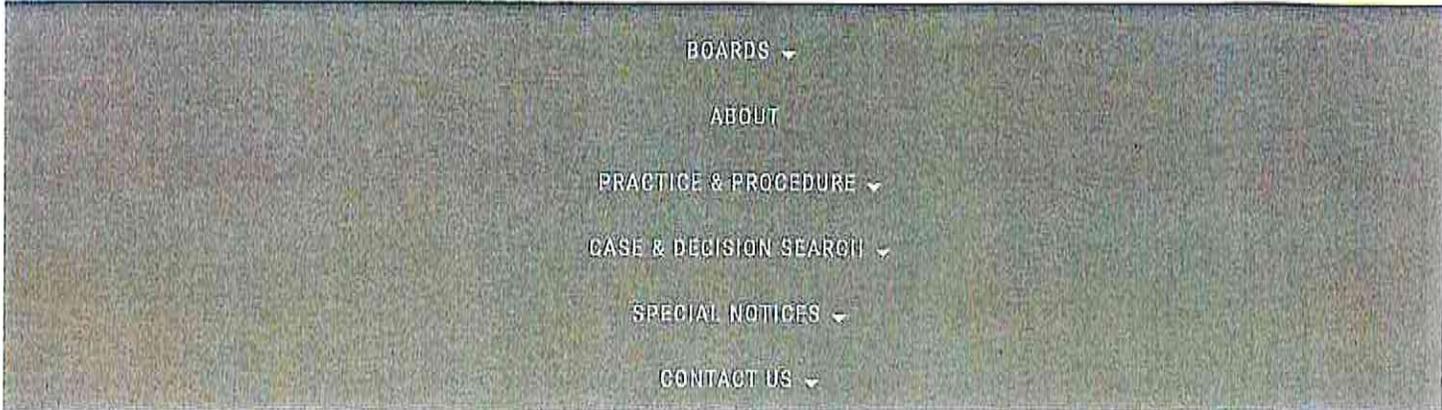
Thomas C. Evans • Injury at Sea
4020 East Madison Street, Suite 210, Seattle, WA 98112
Tel: 206.527.8008, Ext. 2 • **Toll Free:** 1.800. SEA. SALT
Cell: 206.499.8000 **Fax:** 206.527.0725
E-mail: tom@maritimeinjury.com www.injuryatsea.com

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On Jan 25, 2018, at 5:02 PM, Yunge, Chad (ECY) <CYUN461@ECY.WA.GOV> wrote:

Hi Tom. I will be out of the office until Monday and will look into this at that time.

Thanks,
Chad



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[PRACTICE & PROCEDURE](#) ▾

[CASE & DECISION SEARCH](#) ▾

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PCHB/SHB Decision

The Environmental Hearings Office (EHO) dating back to 1970 on this website, courtesy. The EHO cannot guarantee

Use this search tool to find decisions click 'Search'; no criteria is necessary, please click [here](#).

Click on a case number or case name

Word/Phrase Search:

Decision Type:
-- All Types --

Match Whole Phrase/Number

Case Number	Board
Case Number	Board

Case Detail

[Print](#)

Darin Barry/Robin Hood Village Resort v. Department of Ecology

Case Number: **S12-008** Date Filed: **7/11/2012**
 Appeal Type: **PENALTY** Closed: **3/14/2013**

Reason:
Appeal of \$12,000 Penalty for failure to comply with shoreline permitting requirements

Permits / Penalties / Orders

Type: **Penalty** Number: **9251**

Closing Comments:

Darin Barry, owner of Robin Hood Resort on Hood Canal, received a penalty from Ecology for placement of four recreational park trailers (RPTs) intended for short term vacation rentals on a waterfront lot on Hood Canal. The lot has historically been used for recreational vehicle parking and tent camping since before the date of the Shoreline Management Act (SMA). Barry did not contest the amount of the penalty. The only issue identified by the parties was whether the placement of the RPTs required shoreline permits under the SMA and local shoreline master plan (SMP). Following an evidentiary hearing and a site visit, the Board concluded that the placement of the RPTs was development under the SMA. Based on the fair market value of the RPTs the Board went on to conclude that the development met the definition of substantial. The Board also concluded that even if the placement of the RPTs was not a substantial development, a shoreline conditional use permit (CUP) was still required for use of the RPTs as short-term vacation rentals. The Board rejected Barry's contention that the use was grandfathered. While recreational vehicle parking is a grandfathered use, the Board concluded that the permanent placement of the RPTs on the lot for vacation rentals constitutes a change in use and therefore requires a SCUP. Because shoreline permits were required, the Board affirmed Ecology's penalty.

Closing Comments:

Darin Barry, owner of Robin Hood Resort on Hood Canal, received a penalty from Ecology for placement of four recreational park trailers (RPTs) intended for short term vacation rentals on a waterfront lot on Hood Canal. The lot has historically been used for recreational vehicle parking and tent camping since before the date of the Shoreline Management Act (SMA). Barry did not contest the amount of the penalty. The only issue identified by the parties was whether the placement of the RPTs required shoreline permits under the SMA and local shoreline master plan (SMP). Following an evidentiary hearing and a site visit, the Board concluded that the placement of the RPTs was development under the SMA. Based on the fair market value of the RPTs the Board went on to conclude that the development met the definition of substantial. The Board also concluded that even if the placement of the RPTs was not a substantial development, a shoreline conditional use permit (CUP) was still required for use of the RPTs as short-term vacation rentals. The Board rejected Barry's contention that the use was grandfathered. While recreational vehicle parking is a grandfathered use, the Board concluded that the permanent placement of the RPTs on the lot for vacation rentals constitutes a change in use and therefore requires a SCUP. Because shoreline permits were required, the Board affirmed Ecology's penalty.



CC

Julie Thompson

From: Tom Evans <tom@maritimeinjury.com>
Sent: Thursday, February 1, 2018 2:26 PM
To: Yunge, Chad (ECY)
Cc: Renkor, Betty (ECY); Julie Thompson
Subject: Re: Stabbert Vacation Rentals- One Single Simple Question

Again, thank you very much. I am satisfied we have reached the point where we have respectfully and honorably identified the point that gives rise to our honest difference of opinion. Best to all who contributed to this conversation. Tom Evans



Thomas C. Evans • Injury at Sea
4020 East Madison Street, Suite 210, Seattle,
WA 98112
Tel: 206.527.8008, Ext. 2 • Toll Free: 1.800.
SEA. SALT
Cell: 206.499.8000 Fax: 206.527.0725
E-mail: tom@maritimeinjury.com
www.injuryatsea.com

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On Feb 1, 2018, at 2:19 PM, Yunge, Chad (ECY) <CYUN461@ECY.WA.GOV> wrote:

Correct.

From: Tom Evans [<mailto:tom@maritimeinjury.com>]
Sent: Thursday, February 1, 2018 2:16 PM
To: Yunge, Chad (ECY) <CYUN461@ECY.WA.GOV>
Cc: Renkor, Betty (ECY) <EREN461@ECY.WA.GOV>; Julie Thompson <JulieT@sanjuanco.com>
Subject: Re: Stabbert Vacation Rentals- One Single Simple Question

Thank you Chad. I think you answered my question and to make sure I am correct about what you are saying, you are stating: unless there is actual new development involved, i.e. new construction associated with the permit application, which exceeds the categorically exempt cost amount, a shoreline permit is not required. Please correct me if I have that wrong and thank you once again for your courtesies and cooperation. Tom Evans

Julie Thompson

From: Yunge, Chad (ECY) <CYUN461@ECY.WA.GOV>
Sent: Thursday, February 1, 2018 2:19 PM
To: Tom Evans
Cc: Renkor, Betty (ECY); Julie Thompson
Subject: RE: Stabbert Vacation Rentals- One Single Simple Question

Correct.

From: Tom Evans [mailto:tom@maritimeinjury.com]
Sent: Thursday, February 1, 2018 2:16 PM
To: Yunge, Chad (ECY) <CYUN461@ECY.WA.GOV>
Cc: Renkor, Betty (ECY) <EREN461@ECY.WA.GOV>; Julie Thompson <JulieT@sanjuanco.com>
Subject: Re: Stabbert Vacation Rentals- One Single Simple Question

Thank you Chad. I think you answered my question and to make sure I am correct about what you are saying, you are stating: unless there is actual new development involved, i.e. new construction associated with the permit application, which exceeds the categorically exempt cost amount, a shoreline permit is not required. Please correct me if I have that wrong and thank you once again for your courtesies and cooperation. Tom Evans

On Feb 1, 2018, at 1:52 PM, Yunge, Chad (ECY) <CYUN461@ECY.WA.GOV> wrote:

Hi Tom,

I get no pleasure from being correct in this conversation we are having. You raise some good questions and I have tried to answer them as clearly as I can.

Regarding your question below, while Table 18.50.600 shows that a substantial development permit (SD) is required, it is making an assumption that there is development involved with the proposed use. The table itself cannot redefine when a substantial development is required under the SMA. A lot of local governments include a similar matrix in their SMPs as a quick reference guide to what uses/developments are allowed and where. The reader can't stop there however, the text of the applicable sections of the SMP and/or SMA prevail. Perhaps a better term to have used would have been "permitted subject to policies and regulations" rather than use "SD" in the table.

Looks like you have a terrific spot there on Orcas. I do hope we meet someday Tom.

Kind regards,
Chad

From: Tom Evans [mailto:tom@maritimeinjury.com]
Sent: Thursday, February 1, 2018 12:33 PM

To: Yunge, Chad (ECY) <CYUN461@ECY.WA.GOV>
Cc: Renkor, Betty (ECY) <EREN461@ECY.WA.GOV>; Julie Thompson <JulieT@sanjuanco.com>
Subject: Stabbert Vacation Rentals- One Single Simple Question

Thank you again Chad. As before, your arguments are well thought out and well presented, even if I do disagree.

This time, I am going to boil it down to one single simple question. If I agree with your answer I will self-declare you the victor:

The Master Program Matrix clearly states a vacation rental in a Rural Farm Forest Zone is subject to SD, with SD defined as: "Subject to shoreline substantial development permit unless exempt per subsection (B) of this section." (B not applicable, requires an asterix)

Given the above, please state every reason why a shoreline permit is not being required for the Stabbert applications?

Thanks again for sharing your knowledge and experience with me. If you are on Island (Orcas) in the near future I would like to meet you.
Regards, Tom Evans

On Feb 1, 2018, at 8:47 AM, Yunge, Chad (ECY) <CYUN461@ECY.WA.GOV> wrote:

Good morning, Tom.

A shoreline conditional use permit (CUP) is only required when a Shoreline Master Program (SMP) establishes the specific requirement for one. With exception of the Rural designation, the San Juan County SMP does not require a CUP for vacation rentals per Table 18.50.600. If the Stabbert property was located in a Rural designation, I would interpret that a CUP is required, even if absent of any development. The Stabbert property is located in a Rural Farm Forest designation and no conditional use permit is required for vacation rentals within that designation per Table 18.50.600.

Local governments have discretion to create a CUP requirement within their SMP for certain types of uses based on their type, location, etc. San Juan County has chosen to do this only in the Rural designation in regards to vacation rentals. In Mason County, the SMP in effect at the time of the Barry case, required a conditional use permit for new non-water dependent commercial uses on their shorelines. The Shorelines Hearings Board (SHB), which relies heavily on specific language within individual SMPs, correctly determined that the unauthorized developments placed on the Robinhood Village site represented a new commercial use and required a CUP per the Mason County SMP in that case.

Hope this helps,
Chad

From: Tom Evans [<mailto:tom@maritimeinjury.com>]
Sent: Wednesday, January 31, 2018 2:07 PM
To: Yunge, Chad (ECY) <CYUN461@ECY.WA.GOV>
Cc: Renkor, Betty (ECY) <EREN461@ECY.WA.GOV>; Julie Thompson <JulieT@saniuanco.com>
Subject: Re: Stabbert Vacation Rentals

Gentlepersons: I have obtained a copy of the actual Findings of Fact and Conclusions of Law in the *Barry* case, attached above. Please note the highlighted sections which clearly state: (1) the fact that something may have been previously constructed - in this case, an RV constructed off site - makes no difference in cost exemption. See: definition of value/cost for shoreline purposes in *Barry* above.. The SHB will undoubtedly find that the fact the Stabbert houses were previously constructed is irrelevant - its not when it was constructed, its what it cost to build and value as of the time its turned into SMA type use - and a house costs much more than a 6k exemption. Further, responding to Chad's comment below that substantial development only applies to actual development, as explained yesterday, that is technically true but it is erroneous to say development has to be some sort of new construction before a SCU permit is required. Once you start using the structure for a shoreline purpose (vacation rental) its the cost of the structure (house) that counts, not when it was built.

You will also see below that the Hearings Board clearly distinguishes between shoreline substantial development permit and shoreline conditional use permit. The Board clearly states that these are separate land use issues, and as shown in green below, use matters, all by itself.

I thoroughly believe its only a matter of time before firm precedent will be established that vacation rentals require a shoreline SCU permit. You might want to think about the consequences of that in terms of the hundreds of permits that have been issued illegally. And, for SJC s sake,its my opinion that there is no use allowed during the period someone applies for an "after the fact" permit. SJC seems to be of the opinion that a person who applies for an after the fact opinion gets to continue the illegal use while they get an after the fact permit. Wont happen here. Not what the law allows.

I am also obtaining a copy of the AGs brief in *Barry* which makes strong arguments on behalf of the AG as to all of the above. Thank you one again for your courtesy and cooperation. Tom Evans

On Jan 30, 2018, at 4:40 PM, Yunge, Chad (ECY)
<CYUN461@ECY.WA.GOV> wrote:

Hi Tom,

I agree with you that the SMA regulates both use and development, but maintain that the substantial development permit process only applies to development under the SMA.

The AG issued a legal opinion in 2007 (AGO 2007 No. 1) dealing with the question of whether or not certain types of aquaculture required a substantial development permit. The opinion makes the same general argument:

RCW 90.58.140(1) provides that development on the shorelines shall not be undertaken unless consistent with the SMA, with SMA guidelines, and with local government master programs. Subsection (2) prohibits substantial development on the shorelines without first obtaining a permit from the government entity having administrative jurisdiction under this chapter.

RCW 90.58.030(3)(d) defines development to mean:

a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level[.]

RCW 90.58.030(3)(e) defines substantial development as any development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state.

Under the [SMA] no substantial development exists if there is no development within the meaning of RCW 90.58.030(3)(d), because

for there to be a *substantial development*, there must first be a *development*. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 812, 828 P.2d 549 (1992).

From: Tom [mailto:tom@maritimeinjury.com]
Sent: Tuesday, January 30, 2018 1:28 PM
To: Yunge, Chad (ECY) <CYUN461@ECY.WA.GOV>
Cc: Julie Thompson <JulieT@sanjuanco.com>; Renkor, Betty (ECY) <EREN461@ECY.WA.GOV>
Subject: Re: Stabbert Vacation Rentals

Chad, thank you once again for being so thoughtful as to respond to me so promptly. I apologize but I will be in trial once I get back to Seattle but do not expect this to take much time.

Just very briefly I think we can now see the worm in the apple. It all has to do with that word use. And here is what tells me that. You say if a new house is being constructed for vacation rental a shoreline permit would be required. However you also say if that same house was already constructed and then an application was made for vacation rental it would be exempt. This proposition states a change in use doesn't trigger shoreline permit requirements only new construction does. And I am saying the SMA covers use AND construction. I suggest you ask your AG for a legal opinion as to what USE means under land use law in general and the shoreline management act in particular. Thanks so much again. Take care. Tom

Sent from my iPhone

On Jan 30, 2018, at 11:15 AM, Yunge, Chad (ECY) <CYUN461@ECY.WA.GOV> wrote:

From: Tom Evans [mailto:tom@maritimeinjury.com]
Sent: Tuesday, January 30, 2018 10:41 AM
To: Yunge, Chad (ECY) <CYUN461@ECY.WA.GOV>
Cc: Julie Thompson <JulieT@sanjuanco.com>; Renkor, Betty (ECY) <EREN461@ECY.WA.GOV>
Subject: Re: Stabbert Vacation Rentals

Hi Tom. My responses are below in Italics. I am looking at an online version of the San Juan County Shoreline

Master Program which does not have page numbers but I think I get all of your questions below:

Hi Chad, and thank you for getting back to me so quickly. Instead of outlining an argument, I thought I would ask you to answer the fairly simple question raised by the matrix as to whether a shoreline permit is required:

1. Are vacation rentals only found on p84 of 87, their column up?

2. Doesn't the block for permit required for Rural Farm Forest (four blocks to the right) say SD?

3. Doesn't the definition of SD, found on P 81 of 87, state that SD means Subject To Shoreline Substantial Development Permit?

How do you explain that?

The matrix assumes these are new developments in terms of the requirement for an SD. I would interpret this as the construction of a new residence for use as a vacation rental or exterior modification of an existing residence for use as a vacation rental as needing a substantial development permit or an exemption from one as applicable.

You also make the statement below vacation rentals are only required for Rural environment designation. There is no "Rural environment designation. The matrix/mapping doesn't show anything designated Rural Environment Designation. There is a column for Rural but my neighbor's property is not designated Rural.

Table 18.50.600 is titled Shoreline development, uses, structures and activities by designation. Designation here means shoreline environment designation as required by WAC 173-26-211.

How can you have a land use zoning map that so clearly designates a SD is required, but then say an SD isn't required? Please explain.

The maps do not indicate permit types. The matrix in Table 18.50.600 does but cannot be interpreted to override what the term substantial development (SD)

means. Substantial development permits are only triggered when a proposal includes development as defined by the Shoreline Management Act.

As for no permit being required because no construction involved, I think DOE is failing to distinguish between change in use and construction. The logic of this argument leads to, if you have a structure you can change it to any use otherwise allowed because no construction was required. This misses the point of the Barry case below, copy below for your convenience. Please read the last sentence of paragraph two again where the Board concludes a change in use does trigger the requirement for a permit. The trailer was already there, all Barry did was change to use to vacation rental.

Barry brought in park model cabins to an area of the shoreline historically used as a campsite for recreational vehicles/tent camping. The board concluded that this was development and required shoreline permits. The Stabbert proposal involves no development.

I am sorry, but I just can't find the logic in your response above. Last night I went over this in depth with Friends of San Juans planners. As you know they know the Master Program inside and out.

I would very much appreciate your responding to the above. Thankyou for your courtesy and cooperation. Tom Evans

On Jan 30, 2018, at 10:01 AM, Yunge, Chad (ECY) <CYUN461@ECY.WA.GOV> wrote:

Hi Tom,

I had an opportunity this morning to read through the San Juan County Shoreline Master Program (SMP) related to use of existing single-family residences as vacation rentals. I also

spoke with Julie Thompson at the San Juan County Department of Community Development (DCD). In short, Ecology agrees with DCD's determination that no shoreline substantial development permit and/or shoreline conditional use permit is required for the use of your neighbor's residences as vacation rentals.

You had mentioned that the matrix located in Table 18.50.600 indicates that a Shoreline Conditional Use Permit (CUP) is required for vacation rentals. It looks like that only applies to the Rural environment designation. Your neighbor's properties appear to be located in the Rural Farm Forest designation which does not require a CUP:

<image001.png> image on next page

Regarding a substantial development permit or an exemption from one, since the proposal does not include new development, no such permits/approvals are required. The Shoreline Management Act (SMA) defines development as a use consisting of the construction or exterior alteration of structures, dredging, drilling, dumping, filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level (RCW 90.58.030(3)(a)). While any use of the shoreline must be consistent with a local SMP, a permit or exemption is not required unless it involves development as defined above.

I can certainly understand your concerns regarding use of the neighboring homes as vacation rentals. This issue is certainly coming up in

Table 18.50.600

Residential Development ²									
Single-family	No*	SD		RURAL	SD	SD	SD	SD	No*
Multifamily	No	SD			SD	SD	SD	SD	No
Over-water	No	No			No	No	No	No	No
Live aboard vessels	No	No			No	No	No	SD	No
Vacation rentals ²	No*	No			CUP*	SD	SD	SD	No
Private Pedestrian									

other jurisdictions in Washington State as well as nationwide. It sounds like San Juan County does have performance standards that must be met in association with this use (SJCC 18.40.270 ♦ Vacation (short-term rentals of residences or accessory dwelling units). Hopefully these standards will alleviate some or all of your concerns regarding use of neighboring properties.

King regards,
Chad

Chad Yunge | Regional Shoreline Planner |
Department of Ecology | 360-255-4374 |
chad.yunge@ecy.wa.gov 

This communication is a public record and may be subject to disclosure as per the Washington State Public Records Act (RCW 42.56)

From: Tom Evans
[\[mailto:tom@maritimeinjury.com\]](mailto:tom@maritimeinjury.com)
Sent: Thursday, January 25, 2018 5:04 PM
To: Yunge, Chad (ECY)
<CYUN461@ECY.WA.GOV>
Cc: Renkor, Betty (ECY)
<EREN461@ECY.WA.GOV>
Subject: Re: Contact Info.

Thank you Chad. In the interim I will send you copies of what I have and what the response from the County has been, which is, categorical exemption, no application required> Have a great weekend and thanks again!

<image002.jpg>

Thomas C. Evans ♦ Injury at Sea
4020 East Madison Street, Suite 210, Seattle, WA 98112
Tel: 206.527.8008, Ext. 2 ♦ **Toll Free:** 1.800. SEA. SALT
Cell: 206.499.8000 **Fax:** 206.527.0725
E-mail: tom@maritimeinjury.com www.injuryatsea.com

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destroy it immediately. Any unauthorized dissemination, distribution or copying of this communic
prohibited.

On Jan 25, 2018, at 5:02 PM, Yunge,
Chad (ECY) <CYUN461@ECY.WA.GOV>
wrote:

Hi Tom. I will be out of
the office until Monday
and will look into this at
that time.

Thanks,
Chad

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**SHORELINES HEARINGS BOARD
STATE OF WASHINGTON**

DARIN BARRY and ROBIN HOOD
VILLAGE RESORT,

Appellant,

v.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY,

Respondents.

SHB No. 12-008

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER

S.J.C. DEPARTMENT OF
FEB 01 2018
COMMUNITY DEVELOPMENT

The Shorelines Hearings Board held a hearing in this matter on February 5, 2013, at the Board's office in Tumwater, Washington. The day before the hearing the Board met the parties on site and conducted a site visit. The Board did not take testimony on this day.

The Board was comprised of Board Members Kathleen D. Mix, Chair, Jon R. Wagner, and Dave Somers.¹ Administrative Appeals Judge Kay M. Brown presided for the Board. Attorney Jack W. Hanemann represented the Petitioner Darin Barry/Robin Hood Village Resort (Barry). Assistant Attorney General Sonia A. Wolfman represented the Respondent Washington State Department of Ecology (Ecology).

In addition to the site visit, the Board received sworn testimony of witnesses, exhibits, and arguments on behalf of the parties. Having fully considered this record, the Board enters the following:

¹ This case is being heard by a three member panel pursuant to RCW 90.58.185.

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER
SHB No. 12-008

1 FINDINGS OF FACT

2 1.

3 Robin Hood Village is a long-established resort facility on Hood Canal near Union,
4 Washington. Don Beckman, the set designer for the original Robin Hood movie filmed in 1934,
5 built some of its historic cottages, hence the name. The resort includes the forest side, which is
6 on the landward side of East State Route 106, and "The Green", which is on the waterward side
7 of the same highway. The Green is a relatively flat pie shaped area bordered by a curve in the
8 highway to the west, Hood Canal to the east, and a fish bearing stream called Big Bend Creek on
9 the south. *Barry Testimony, Mraz Testimony, Exs. P-2, E-14, E-15.*

10 2.

11 The Green has been used for recreational vehicle (RV) parking and tent camping since
12 before the date of the Shoreline Management Act (SMA) and the Mason County Shoreline
13 Master Program (SMP). Barry and the previous four owners have rented RV parking sites for as
14 many as seven RV's at a time. Some of the larger RVs could house six to nine people and have
15 washers and dryers. The campers would pull their RV's onto the Green, park, "hookup" to
16 electrical and water provided by the resort, and enjoy the beach and waterfront view. *Oblizalo*
17 *Testimony, Barry Testimony, Exs. E-15, P-1, P-2, P-7.*

18 3.

19 Barry purchased the resort in 2004. At that time, the Green included a gazebo the resort
20 used as an espresso stand, a fire pit, a low wall along the waterfront, and an old paddle wheel
21 boat. The RV's that were brought onto the site by their owners had self-contained holding tanks.

1 The RV owners were allowed to empty those tanks in the septic system on the forest side of the
2 resort. *Barry Testimony, Exs. E-15C.*

3 4.

4 Barry made some changes to the Green in the period from 2004 to 2011. He
5 discontinued the use of the gazebo as an espresso stand. He added a 3,000 gallon holding tank
6 and acceptance lines to each RV space. The holding tank was installed pursuant to a permit from
7 Mason County. He landscaped the fire pit area and added cement blocks to create a second
8 terrace further landward from the waterfront retaining wall. Each year he added two to three
9 truck-loads of gravel to The Green to fill in rutting caused by the heavy RV's driving on and off
10 of the site. *Barry Testimony, Exs. E-15, P-4, P-12.*

11 5.

12 On May 1, 2011, Barry placed four recreation park trailers (RPT) on the Green. Barry
13 purchased the RPTs from a manufacturing facility in Woodburn, Oregon. The RPTs came from
14 the manufacturer with porches. Each RPT cost \$20,000, which included delivery to the site.
15 Barry paid an additional \$1,000 for each RPT to be professionally anchored and installed, and to
16 obtain an installation certificate. The RPTs are still on their wheels. They do not include self-
17 contained holding tanks. Placement of the units on the site included plumbing work to attach the
18 RPTs to the previously existing connections for the on-site holding tank, construction of a lattice
19 skirt and two-by-four frame for the skirt, an upgrade of some of the existing electrical
20 connections from 30 amps to 50 amps, and construction of steps to the porch of the RPT. Barry
21 also added four planter boxes with approximately 12 trees in each box for privacy screening

1 between the RPTs. The upgrade in the electrical connections and the addition of the planter
2 boxes were useful improvements even if Barry continues the prior practice of renting RV spaces.
3 While Barry consulted with the Department of Labor and Industries (L&I) and his attorney,
4 Barry did not consult with the County prior to placing the RPTs on site. *Barry Testimony, Exs.*
5 *P-5, P-8, P-16.*

6 6.

7 RPTs are a specific category of trailer-type designed to provide temporary
8 accommodation for recreation, camping or seasonal use. Manufacturers build RPTs on a single
9 chassis and mount them on wheels. Their gross trailer area cannot exceed 400 square feet in the
10 set-up mode. Manufacturers certify them as compliant with the American National Standards
11 Institute (ANSI) A119.5 Recreational Park Trailer Standard, not the Department of Housing and
12 Urban Development (HUD) standards for permanent residences. Washington State has adopted
13 the ANSI A119.5 standard for all RPTs that are to be sold in Washington. For purposes of L&I
14 certification, L&I categorizes RPTs as recreational vehicles. *Harvey Testimony, Barry*
15 *Testimony, Ex. P-5.*

16 7.

17 Within days of Barry's placement of the RPTs on the Green, the County received a
18 citizen complaint. The County visited the site on May 5, 2011, and confirmed the placement of
19 the RPTs on the Green without County approvals. The County posted a Correction Notice on the
20 site on May 10, 2011, prohibiting occupation of the site. There was then a series of letters, e-
21 mails, and on-site meetings. The attorney for Barry and the County attorney provided conflicting

1 legal opinions on whether the placement of the RPTs required shoreline permits. The meetings
2 included Rick Mraz from Ecology, who provided Ecology's opinion that shoreline permits were
3 required for placement of the RPTs on the waterfront. On June 24, 2011, the County sent Barry
4 a letter informing him of its conclusion that the four RV hookups on the Green had been
5 historically used for RV's and were therefore grandfathered for that use. However, the County
6 also concluded that the planned use of the RPTs did not fit the County's requirements for RV site
7 use and therefore was not a continuation of the grandfathered use. This letter also informed
8 Barry of the need to obtain appropriate shoreline permits. The County required Barry to obtain
9 all necessary permits or remove the RPTs. *Mraz Testimony, Barry Testimony, Exs. E-6 through*
10 *E-11, P-16.*

11 8.

12 While Barry made some attempt to begin the County permitting process, including
13 paying a permitting fee, he did not complete the process. Nor did he remove the RPTs. In
14 March of 2012, the County began investigations of parcels adjacent to Big Bend Creek due to
15 elevated fecal coliform levels in the creek. In the course of the investigation, the County
16 communicated internally and with Ecology. On April 5, 2012, Ecology issued a notice of
17 correction (NOC) to Barry for failure to comply with the SMA and SMP. The NOC required
18 Barry to cease advertising and renting the RPTs until he obtained necessary shoreline permits
19 and to apply for shoreline permits. If Barry did not obtain the necessary shoreline permits,
20 Ecology required Barry to remove the RPTs by June 5, 2012. The NOC indicated that Ecology

21
FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER
SHB No. 12-008

1 could impose monetary penalties for failure to comply. *Mraz Testimony, Barry Testimony, Exs.*
2 *P-3, P-11, E-1, E-4, E-5.*

3 9.

4 In response to the NOC, Barry contacted the County and stopped advertising the RPTs as
5 available for rental. He did not, however, contact Ecology and he did not apply for shoreline
6 permits. On May 16, 2012, Ecology sent a follow up letter to Barry requesting a response and
7 warning of penalties. On June 11, 2012, Ecology issued an Order and Notice of Penalty
8 requiring Barry to apply for shoreline permits and assessing a penalty of \$12,000. *Mraz*
9 *Testimony, Barry Testimony, Ex. E-2, E-3.*

10 10.

11 Barry has, and intends to continue to use, the RPTs as short-term vacation units. He
12 advertises them as waterfront cottages and charges a nightly rental fee. Barry does not intend to
13 move the RPTs in and out of the Green. Nor does he intend to allow them to become permanent
14 residences. He intends to use them as permanent short-term vacation rental cottages, and indeed,
15 the units appear as small cottages with waterfront views. *Barry Testimony, Ex. E-14.*

16 11.

17 Hood Canal is a shoreline of statewide significance under the SMA. RCW 90:58.030(2)
18 (f)(ii)(C). The Green is in an area designated under the Mason County Shoreline Master
19 Program (SMP) as an urban environment. Hood Canal is a distressed waterbody due to
20 increased loading of nitrogen, resulting in a decrease in dissolved oxygen and negative impacts
21 on fish. Failing septic systems are one source of nitrogen in Hood Canal. *Mraz Testimony.*

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12.

Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1.

The Board has jurisdiction over this matter pursuant to RCW 90.58.210. Ecology has the burden of proof. WAC 461-08-500(1). The scope and standard of review for this matter is *de novo*. WAC 461-08-500(3).

2.

The pre-hearing order entered in this case identified just one issue: Whether the permanent placement of four "park model" rental units in the Mason County Shoreline requires shoreline permits under the SMA and the SMP?²

A. Shoreline substantial development permit

3.

The SMA requires any person who undertakes a substantial development on the shorelines of the state to first obtain a shoreline substantial development (SSDP) permit. RCW 90.58.140(2). RCW 90.58.030(3)(a) defines "Development" as:

[A] use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level.

² If the Board determines shoreline permits are required, Barry does not contest the amount of the penalty issued by Ecology.

1 The same definition is contained in the SMP. See Mason County Code (MCC) 17.50.040.

2 4.

3 RCW 90.58.030(3)(e) defines "Substantial development" as:

4 [A]ny development of which the total cost or fair market value exceeds five
5 thousand dollars, or any development which materially interferes with the normal
6 public use of the water or shorelines of the state."

6 *See also* MCC 17.50.040.

7 RCW 90.58.030(3)(e) goes on to direct that the cost figure for substantial development
8 must be adjusted for inflation every five years based on changes in the consumer price index.

9 RCW 90.58.030(3)(e). On September 15, 2012, Washington State increased the threshold to
10 \$6,416.00. WSR 12-16-035.

11 5.

12 Here, all parties agree that the RPTs placed on the Green are within 200 feet of Hood
13 Canal and therefore within shoreline jurisdiction. RCW 90.58.030(2)(d) and (e); RCW
14 90.58.040. To determine whether an SSDP is required, the first question is whether the
15 placement of RPTs on the shoreline is development. The Board concludes that it is.

16 6.

17 Placing the RPTs on the Green constitutes "placing of obstructions" in the shoreline. The
18 steps Barry constructed for access to the RPTs, and the skirting and two-by-four framework he
19 constructed around the bottom of the RPTs, constitute "construction or alteration of structures."

20 While the RPTs can be moved with some effort and expense, this is not Barry's intent. He
21 intends to leave the RPTs in place on the shoreline and rent them out for short-term vacation

1 rental cottages. The RPTs are now obstructions in the shoreline, and therefore within the
2 definition of development.³ This conclusion is consistent with a prior Washington Court case
3 that concluded that the placement of a mobile home, the addition of a septic tank and drain field,
4 and the construction of a deck within shoreline jurisdiction constitutes development. *Hunt v.*
5 *Anderson*, 30 Wn. App. 437, 439, 635 P.2d 156 (1981).

6 7.

7 The next question is whether the development meets the definition of "substantial
8 development" by exceeding the threshold value of \$6,416. Barry contends that because the
9 manufacturer constructed the RPTs off site and Barry brought them onto the site, their purchase
10 price cannot be considered in analyzing whether this development is substantial. This argument
11 ignores the definition of substantial development contained in the SMA and the Ecology rules.
12 The definition of substantial development includes "any development of which the total cost or
13 fair market value" exceeds the threshold amount, currently \$6,416. RCW 90.58.030(3)(e)
14 (emphasis added).

15 8.

16 "Fair market value" of a development for shoreline purposes is defined in Ecology's rules
17 as:

18 [T]he open market bid price for conducting the work, using the equipment and
19 facilities, and purchase of the goods, services and materials necessary to
20 accomplish the development. This would normally equate to the cost of hiring a
contractor to undertake the development from start to finish, including the cost of

21 ³ Barry argues that the placement of RPTs is not a development because RPTs are not "structures". The Board does not reach this argument because it concludes that the RPTs are within the definition of shoreline development because they are obstructions in the shoreline.

1 labor, materials, equipment and facility usage, transportation and contractor
2 overhead and profit. The fair market value of the development shall include the
3 fair market value of any donated, contributed or found labor, equipment or
4 materials;

5 WAC 173-27-030(8).

6 9.

7 Here, the purchase price of each RPT was \$20,000. Their purchase constitutes the
8 purchase of "goods . . . necessary to accomplish the development." The charge to install the
9 RPTs was \$1,000 for each unit. Additional costs included the plumbing connection, the
10 electrical upgrade, purchase of the material for the skirting and steps, and the value of Mr.
11 Barry's labor. All of these costs are costs for labor and materials necessary to accomplish the
12 development of the Green with short-term vacation rental cottages, and therefore are part of the
13 development's fair market value. The Board concludes that Barry's development is substantial
14 and requires an SSDP.

15 10.

16 B. Conditional use permit (CUP)

17 To carry out its responsibilities under the SMA, Mason County has promulgated
18 shoreline master program use regulations. MCC 17.50.020. MCC 17.50.050 provides that to
19 conduct a commercial non-water dependent use with waterfront requires a shoreline conditional
20 use permit (SCUP). The requirement to obtain a SCUP is separate from the requirement to
21 obtain an SSDP. A use may require a SCUP even if it does not require an SSDP. *Clam Shacks
of America v. Skagit Cnty.*, 109 Wn.2d 91, 97-98, 743 P.2d 265 (1987). Therefore, even if the

1 placement of RPTs does not constitute a substantial development as the Board has concluded, the
2 use of the RPTs as short-term vacation rental cottages would still require a SCUP.⁴ Barry
3 responds that a SCUP is not required because use of the Green for recreational vehicle parking
4 predates the SMA, and therefore is a grandfathered use.

5 11.

6 C. Grandfathered use.

7 Mason County Code 15.09.055(b) addresses nonconforming uses under the SMP. It
8 states:

9 Applicability to Nonconforming Development. "Nonconforming development"
10 means a shoreline use or structure which was lawfully constructed or established
11 prior to the effective date of the act or the master program, or amendments
12 thereto, but which does not conform to present regulations or standards of the
13 program or policies of the act. Nonconforming developments may continue to be
14 utilized for the same purpose established on the date of the statute. If a change in
15 use is proposed for such development, any new use must obtain a permit by
16 applicable regulations; provided, that a proposed new use for such development
17 that does not conform to master program policies may be considered as a
18 conditional use.

19 Expansion of a nonconforming development is prohibited.

20 Nonconforming development may be continued provided that it is not enlarged,
21 intensified or increased or altered in any way which increases its nonconformity;
provided significant environmental damage does not result. Expansion of a
development which is nonconforming by reason of substandard lot dimensions,
setback requirements or lot area, but which is not a nonconforming use may be
allowed as a variance

⁴ It is also possible that the placement of the RPT closest to Big Bend Creek requires a variance, because the RPT may be within the 50 foot shoreline setback for non-water dependent uses in the Urban Environment. MCC 17.50.060.

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12.

The core of Barry's argument is that he does not need to obtain either an SSDP or SCUP because his use of the Green for RV rental parking existed before the date of the SMA and SMP. Ecology does not dispute that the Green has been used for RV rental space parking prior to the date of the SMA and SMP, and therefore this use, and the development existing for this use, is a grandfathered non-conforming development and use. The dispute, however, is whether Barry's use of RPTs placed permanently on the Green, which he intends to use as vacation rentals, is a continuation of the existing RV space rental use, or a change in use. Further, the parties dispute whether the placement of the RPTs is an expansion of the existing non-conforming development for the RV parking.

13.

Barry argues that because RPTs are licensed by L&I as RVs, are built on a single chassis, and remain on wheels, that his placement of them on the Green for vacation rental cottages is not a change in use from renting RV parking spaces. The Board disagrees. The past use of the Green involved RVs pulling into the site, hooking up to utilities, and paying for their temporary use of the site for a number of nights. At times there would be several RVs on the site. At other times, there would be none. In contrast, the proposed use involves the permanent year-round placement of the RPTs on the Green for use as vacation rentals. Barry owns the RPTs, not their occupants. While they may remain unoccupied at times, they are still permanent visual objects in the shoreline. Because they are licensed as RVs does not change the reality that they are being used as permanent short-term vacation rental cottages.

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14.

In a prior decision, the Board has considered a change from a temporarily authorized structure to a permanent structure to be an inappropriate expansion of a non-conforming use. *Ecology v. Lewis County and Cowlitz Timber Trails Association*, SHB No. 00-027 (2001) (CL VII)(holding that the addition of decks, covers, and gazebos to an existing RV camping club added a high degree of permanency and intensity of use inconsistent with the conservancy designation in which they were located). Similarly here, the permanent placement of RPTs for short-term vacation rental cottages on the Green is an expansion of the prior unpermitted but grandfathered use for the temporary parking of RVs. While the RPTs may not be occupied for any more extensive periods of time than the RVs, when the occupants of the RVs leave, they take the RVs with them. In contrast, when the vacationers leave the RPTs, the RPTs remain behind as permanent objects in the shoreline. Barry's permanent placement of the RPTs requires an SSDP. Further, while Barry's use of the RPTs as vacation rentals may not be inconsistent with the urban shoreline environment, this use is a change from the prior RV parking rental, and therefore requires a SCUP.

15.

Barry argues that having short-term vacation rental cottages that are not driven in and out of the Green, do not have to be connected and disconnected to utility hook-ups, and produce only the sewage generated while the occupants are on the site, have less environmental impact on the shoreline than the prior RV rental parking use. Barry also emphasizes that he and prior owners have used the Green for up to seven RV parking sites, but that he has now placed only four RPTs

1 on the site. Further, he rents the RPTs for two people only, which is a fewer number of people
2 than could arrive in a large RV. While Barry may be right that in some ways the four short-term
3 vacation rental cottages could have fewer environmental impacts than the prior RV parking
4 rental, this misses the point. The use of the Green for RV parking is occurring without the
5 benefit of shoreline permits because it is a grandfathered use. Change and/or expansion of this
6 grandfathered use and development requires appropriate shoreline permitting. The public policy
7 of this state, as well as the spirit of zoning measures, is to restrict rather than increase
8 nonconforming uses in the shoreline area so that they may ultimately be phased out. *Jefferson*
9 *County v. Seattle Yacht Club*, 73 Wn. App 576, 591, 870 P.2d 987(1994), citing *Keller v.*
10 *Bellingham*, 20 Wn. App. 1, 9, 578 P.2d 881 (1978), *aff'd*, 92 Wn.2d 726, 600 P.2d 1276 (1979).
11 Instead of allowing changes in use and expansion of development, which would support the
12 increase in non-conformity, the SMA requires Barry to restrict the non-conforming use and
13 obtain appropriate shoreline permits. The shoreline permitting process allows the County and
14 Ecology the opportunity to assess environmental impacts, condition the permits to avoid such
15 impacts, and control future uses. The permitting process also allows the public an opportunity to
16 become involved. For these reasons, Barry's unpermitted use and development of the shoreline
17 cannot be allowed to change or expand, thus encouraging its continuation without the benefit of
18 shoreline permits.

19 16.

20 Barry cites to a 1979 Washington Supreme Court case, to support his argument that
21 expansion of a facility is not necessarily an enlargement of a non-conforming use, but can be an

1 intensification of a use, which in that case the Court determined was permissible. *Keller v.*
2 *Bellingham*, 92 Wn.2d 726, 600 P.2d 1276 (1979). The *Keller* court, however, specifically based
3 its ruling on the language of the Bellingham zoning code at issue, which expressly prohibited
4 enlargement of a nonconforming use, but was silent as to intensification. This, coupled with the
5 City's interpretation of its own code, which was that it allowed for intensification of a
6 nonconforming use, persuaded the court that the modernization of a nonconforming chlorine
7 plant was permissible. *Keller*, at 732. Here, however, Mason County's code on nonconforming
8 uses expressly prohibits both intensification and expansion. MCC 15.09.055(b)
9 ("Nonconforming development may be continued provided that it is not enlarged, intensified or
10 increased or altered in any way which increases its nonconformity"). Further, Mason County has
11 concluded that a change from RV parking to RPTs used for short-term vacation rental cottages
12 constitutes a change in use requiring shoreline permits. *Ex. E-6*. Therefore the basis upon which
13 the *Keller* court made its decision is not present here.⁵

14 17.

15 The Legislature has mandated that the SMA mandate be "liberally construed to give full
16 effect to the objectives and purposes for which it was enacted." RCW 90.58.900. The overriding
17 purpose for which the SMA was enacted was to preserve the natural resources of the state and to
18 regulate construction upon the shorelines in accordance with the public interest. *Hama Hama*

19
20 ⁵ The other case cited by Barry is even less relevant to Barry's situation because it involves the doctrine of
21 diminishing assets applied to businesses such as surface mines, which have assets that are exhausted over time. *City of Univ. Place v. McGuire*, 144 Wn.2d 640, 649, 30 P.3d 453 (Wash. 2001). Here, we are not dealing with a situation involving a diminishing asset, nor is the problem that the unpermitted use has been moved from one area of Barry's parcel to another. Therefore, this case adds nothing to the analysis.

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER
SHB No. 12-008

1 *Co. v. Shorelines Hearings Bd.*, 85 Wn.2d 441, 446-447 (1975)(citing RCW 90.58.010-.020).
2 Ecology and Mason County's conclusion that the placement of RPTs for use as short-term
3 vacation rental cottages along Hood Canal shoreline is a substantial development requiring an
4 SSDP and a SCUP, and that it is not a grandfathered use, is consistent with the SMA and the
5 SMP.

6 18.

7 Any finding of fact deemed to be a conclusion of law is hereby adopted as such.

8 Based upon the foregoing Findings of Fact and Conclusions of Law, the Board enters the
9 following:

10 ORDER

11 The Board AFFIRMS Ecology's Order and Notice of Penalty.

12 SO ORDERED this 14TH day of March, 2013.

13 **SHORELINES HEARINGS BOARD**

14 KATHLEEN D. MIX, Chair

15
16 JON R. WAGNER, Member

17
18 DAVE SOMERS, Member

19 KAY M. BROWN, Presiding
20 Administrative Appeals Judge

21
FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER
SHB No. 12-008

Julie Thompson

From: Tom Evans <tom@maritimeinjury.com>
Sent: Sunday, February 4, 2018 6:40 PM
To: Julie Thompson
Subject: Fwd: Stabbert Applications - Vacation Rentals - File Nos. PPROVO-17-0065 and 0066 - Request for permit conditions re: 1. Road Access 2. Private Property Protection

Hi Julie - the purpose of this email is to request staff recommend two conditions to mitigate impacts as outlined below. These recommendations are made with the hypothetical understanding that staff will recommend approval with conditions. No legal or other arguments are made. The first recommendation concerns roadway access from Obstruction Pass Road onto the Stabbert property.

I am not sure Stabbert intended to suggest use of a private driveway across our property for access in stead of their improved roadway that runs directly to his property, but its unclear from his paperwork. Frankly, I think they may even agree with me as to which roadway will be used. The second recommendation concerns protecting private property from renter access. I have emailed and discussed these issues with Stabbert over these past few weeks, but for the last 10 days he has not returned any email except one to say he is traveling for the next 30 days and is not available.

(1) PROPOSED CONDITION FOR ROADWAY ACCESS TO RENTALS.

Stabbert's have a first class asphalt road way leading to both of the two lots proposed for the proposed rentals. At the point where Point of View Lane intersects with Obstruction Pass Road there is a improved roadway running directly to Stabbert's, providing easy access and parking area for both rentals. I am not certain why some of the photos submitted suggest access across our (Evans) property but Exhibit 3 pictures a large metal gate and roadway leading to Stabbert's property. To access Stabbert property on the roadway in the photograph cars would have to travel over a joint use easement which limits use of this roadway to one (1) single family residence. On 9/25/2006, a joint easement access was recorded, under auditors receiving number 20060925007, states p2, paragraph 3 "This easement shall be for of providing access for a driveway to no more than one (1) single family residence... (on Evans property). At the same time the Joint use Agreement was negotiated Jacobsen (then owner of Stabbert property) also resolved a long standing dispute over the small roadway access to Evans property. The parties agreed that Evans would pay Jacobsen the full cost of paving the roadway and in return a joint easement would be legally available to Evans. Stabbert and Jacobsen never or very rarely access their property by going through the metal gate. Given their paved roadway is in much better condition, makes for a shorter access, and would keep renters from having to travel to the very end of Obstruction Pass Road (thus not passing by six properties on Obstruction Pass Road) it makes the best sense to have renters exit Obstruction Pass Road where it intersects Point of View Lane. Stabbert Exhibit 3 also contains photos that show the improved road I am talking about and how easily it provides access to Stabbert properties. In the photo identified as "rock wall" at the very top right of the photo an asp haled roadway can be seen entering the Stabbert property.

Ex 3, photo of Y shaped intersecting asphalt roadways shows a longer part of the Stabbert improved roadway which runs directly to Obstruction Pass Road. The "bottom" of the Y shape is this roadway. It makes no sense for Stabbert's to access their property, or for renters drive into our property on an easement that limits access to just us and Stabbert.

Given the above, I suggest include the following condition:

(1) Access to the Stabbert rentals form Obstruction Pass Road shall be limited to the Stabbert asphalt improved roadway running from the intersection of Obstruction Pass Road

and Point of View Lane directly to the Stabbert properties and proposed vacation rentals. Stabbert shall take measures to insure renters looking to find the vacation rentals do not travel along Obstruction Pass Road beyond the intersection identified above. There shall be in a required rental packet directions to the renters clearly showing that the roadway past the intersection is private property. Stabbert shall also post, on Stabbert Property abutting the intersection a large, 2.5 foot long 1 foot wide, weatherproof sign, professionally constructed, easy to read, from a vehicle and showing renters the proper access roadway into the rentals.

Evans may post, on private roadway in which Evans has an ownership right, appropriate signs including "Private Property No Trespassing."

(2) PROPOSED CONDITION PREVENTING RENTERS FROM ACCESSING AND USING THE PRIVATELY OWNED DOCK, TRAIL ACCESS TO EVANS PROPERTY, AND 300'

EVANS OWNED PLATFORM/LANDING.

Exhibit 1 submitted by Stabbert clearly shows how *anyone anywhere* on the Stabbert property would naturally assume the dock, platform, and trail must be improvements they are entitled to use. Further, it will be very hard to keep renters off these privately owned properties. Evans *should not* be required to bear the burden of keeping renters off this private property. Renter access to any of these properties puts Evans at a liability risk. Further, Evans could also end up being contractually obligated to pay for any repair for damages done by renters. Effective measures are required to keep renters off this private property, measures that will not require Evans to have to always monitor for compliance, or take the risk of keeping trespassers off. In order accomplish this, Stabbert should be required, and Stabberts rental agent where appropriate below, to do the following:

The dock, platform, and trail-way access to the Evans property are all private property with respect to renters. There is a substantial risk of trespass without appropriate conditions. It is only natural that any renter on the Stabbert properties would assume access to the dock, landing, and trail way are part of their rental. There is a substantial risk that renters will access the dock etc. regardless of knowing these properties are private. Therefore, the following measures are appropriate: (1) Stabbert and/or Stabbert's agent shall expressly advise any potential and actual renter that these properties are private and to access them is trespassing. Any photo depicting the property or any writing of any sort whatsoever issued for purposes of obtaining renters shall contain a written disclosure in not less than 18 point type stating: "Dock, landing, and trail way are private property and renters may not use them. Using these

properties is trespassing and may be prosecuted as such.” This language shall be used anytime the rentals are represented as available, advertised, or listed including any and all internet postings, rental/real estate listing and photograph, listing through any VRBO agency, rental agency, real estate firm or other rental agency. It shall be Stabberts obligation to insure compliance with the conditions in this section. Any violation, intentional or otherwise, shall be considered a code and/or trespass violation with appropriate fines, law enforcement assistance and further protective measures, if necessary, as determined by any enforcement officer or other SJC agent or entity. Further, Stabbert shall, at his expense, install a professionally constructed and installed, weatherproof gated entry to the dock, which shall provide access only to Stabbert/Evans or their authorized invitees as identified in the joint use agreement. This gated entry shall be installed and approved by Evans before any rental is made. Entry shall be by shared key or coded lock. The gate, locking device, and installation shall be by third party professional, not by Stabbert personally or Stabbert employee or agent. The gated entry shall be locked anytime a renter is on the property and Stabbert shall be responsible for making sure the gate is locked when renters are anticipated or are on the property. Finally, Evans may install, professionally constructed and placed, ‘PRIVATE PROPERTY - NO TRESPASSING’ signs on the dock, platform, and trail, as reasonably necessary to insure compliance.

Thank you Julie and please let me know if you have any questions. Tom Evans

Thomas C. Evans • Injury at Sea
4020 East Madison Street, Suite 210, Seattle, WA 98112
Tel: 206.527.8008, Ext. 2 • Toll Free: 1.800. SEA. SALT
Cell: 206.499.8000 Fax: 206.527.0725
E-mail: tom@maritimeinjury.com www.injuryatsea.com

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Dan & Cheryl Stabbert
13019 NE 61st Place
Kirkland, WA 98033
206-383-1325

February 6, 2018

San Juan County Development Department
Attention Julie Thompson
135 Rhode Street
Friday Harbor, WA 98250

Re: 2318 Obstruction Pass Road, Olga
Permit # PPROVO-17-0065 and PPROVO-17-0066
Response to Tom Evens email Sunday February 4th 2018

Via: Email JulieT@sanjuanco.com

Dear Julie,

Thank you for forwarding Tom Evan's email. In response to his Proposed Conditions (1) and (2)

(1) Road Use

a. The Obstruction Pass formal entry with the stone pillars and steel automatic entry gates are our formal access to our property over a road that is also owned by Stabbert but which Evans has an easement for accessing their property. Evans admits that the Stabbert' rarely use this access; in fact, I do not think we have used it more than a dozen times in four years. Evans request that we post signs on our own property saying that use of our own road, on our own property, through our formal access is far-reaching and not acceptable to Stabbert. The fact remains that the back asphalt road that comes off of Point of View lane is the easiest and most expeditious remains and it will continue to be the most heavily used.

b. Stabbert as a good neighbor will in writing recommend that this road be the primary road in any correspondence and instructions to potential users of the Stabbert property. Stabbert will not relinquish our right to use our own road and formal access but once again the Point of View access road is much more convenient and it, as Evans points out, is the road of choice at almost all times other than formal events.

(2) Dock Use

a. We believe the Joint Use Agreement (JUA) clearly spells out what is and what is not prohibited. We believe the use of tenants, invitees, and others using the property are clearly allowed under this agreement. What is not allowed is commercial use, and that is the argument which Tom Evans applies and which is wrong. The Washington Supreme Court ruled that

vacation rental use is not commercial use. Evans attempt to limit the dock is an attempt to dampen the demand for this property as it would not have quite the appeal otherwise.

b. Tom Evans has implored us to not proceed with this application but rather come in under the radar by renting on a case by case basis where we request the Evans approval, which the Evans would not unreasonably withhold. We have rejected that approach and have chosen to go through the formal process to ensure we are not cutting any corners. I have told Tom Evans we would like to do the same with the JUA and utilize the dispute provision for arbitration under the JUA to clearly define both the Evans and Stabberts rights over the dock use, platform location, and any other items that might need some housekeeping between the parties. I also told the Evans that we would abide by the outcome of the arbitration and if that prohibited the dock used in any way, and then we would abide by it.

c. Based upon this and once again as a good neighbor policy, I propose the following language be added to the permit approval:

i. Stabbert shall abide by and communicate the rules outlined in the Joint Use Agreement as regards the use of the dock.

ii. Stabbert shall place a sign at the foot of the Evans 4' easement path of "no trespassing" and shall clearly define this prohibition in any correspondence to property users.

Evans continued attempts to prohibit our use of our property is moving from reasonable to punitive. Large signs, legal penalties, prohibitions on who can and cannot install locked and coded gates, (as Evans knows Stabbert has employee within their shipyard who build steel gates, install electrical appliances, and who do woodwork), prosecution language in 18 point font on any advertising, and much more are an attempt to make the Stabberts sorry for making their request and to create eye sore and other psychological barriers to Stabberts use and enjoyment of their property even when not being used by others.

We protest the Evans position and attempts at intimidation of legal costs, Supreme Court hearings, and other punitive actions as noted above.

We feel our proposed additions to the permit offer the Evans and adjoining property owners adequate protection for the issues they have raised while protecting our property rights as owner's. We request that the permit be issued with our comments /additions as proposed herein.

Regards,



Dan Stabbert



San Juan County Building Permit, Planning & Land Use

135 Rhone Street P.O. Box 947 Friday Harbor, WA 98250 EXHIBIT 20
(360) 378-2354 (360) 378-2116 Fax (360) 378-3922
www.sanjuanco.com

Permit Receipt

RECEIPT NUMBER 00015030

Account number: 007721

Date: 12/12/2017

Applicant: DAN & CHERYL STABBERT
13019 NE 61ST PL
KIRKLAND, WA 98033

Type: check # 1187

Permit Number	Fee Description	Amount
PPROV0-17-0066	PLNG PROVISIONAL USE	1,000.00
	Total:	\$1,000.00

Receipt Description:

Receipt Comments:
VACATION RENTAL