

EXHIBIT 3

Lynda Guernsey

From: Tom Evans <tom@maritimeinjury.com>
Sent: Wednesday, May 23, 2018 1:46 PM
Jeremy Eckert
Cc: Erika Shook; Chris Osborn; Lynda Guernsey; Julie Thompson
Subject: Re: Pre-hearing conference for PAPL0018-0001 & 0002 - Stabbert

Jeremy, thank you for this information. This email did not show up in my in box. I am new to Skype but will try to get this working. Thanks again. 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

Please be advised that this e-mail and 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.

On May 23, 2018, at 1:07 PM, Jeremy Eckert <jeremy.eckert@foster.com> wrote:

Mr. Evans –

I believe that today's pre-hearing conference is at 3pm. The Hearing Examiner's Office sent the following message to everyone (please note the highlighted call in information below and the conference ID number)

Requested actions per pre-hearing conference request by Foster Pepper LLC:

1. Hearing Examiner direct the appellant to prepare a more definitive statement of issues on appeal and connect each issue to the applicable provisional use permit approval criteria.
2. Pursuant to SJCC 2.22.200.D.8 Hearing Examiner to prepare a schedule that includes dispositive motion briefing.

All parties have been provided copies of the documents. Please let me know if you need anything. This will be by phone.

→ [Join Skype Meeting](#)

Trouble Joining? [Try Skype Web App](#)

Join by phone

[1 \(360\) 370-0599](tel:13603700599) (San Juan County)

English (United States)

[Find a local number](#)

Conference ID: 505705

[Forgot your dial-in PIN?](#) | [Help](#)

From: Tom Evans [mailto:tom@maritimeinjury.com]
Sent: Wednesday, May 23, 2018 12:21 PM
To: Erika Shook
Cc: Chris Osborn; Jeremy Eckert; Lynda Guernsey; Julie Thompson
Subject: Re: Pre-hearing conference for PAPL0018-0001 & 0002 - Stabbert

I am standing by my cell phone 206 499 8000 for a conference call from 2:30 pm on, or am available anytime for e-mail update. Thank you 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

Please be advised that this e-mail and 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.

On May 16, 2018, at 1:15 PM, Erika Shook <erikas@sanjuanco.com> wrote:

Hello,
The San Juan County Hearing Examiner, Gary McLean, is available for a pre-hearing conference by phone next Wednesday May 23, 2018 at either 2:30 or 3 pm. Will either of these times work for the parties?

Erika Shook, Director - Direct Line (360) 370-7571
SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT
360-378-2354 | 135 Rhone Street | PO Box 947 | Friday Harbor, WA 98250

Confidentiality Notice: This e-mail message, including any attachments, may be subject to the Washington State Public Records Act, RCW Chapter 42.56 et al. This e-mail and attachments are for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any review, use, disclosure, or distribution by unintended recipients is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

Lynda Guernsey

From: Jeremy Eckert <jeremy.eckert@foster.com>
Sent: Wednesday, May 23, 2018 1:08 PM
Cc: 'Tom Evans'; Erika Shook
Subject: Chris Osborn; Lynda Guernsey; Julie Thompson
RE: Pre-hearing conference for PAPL0018-0001 & 0002 - Stabbert

Mr. Evans –

I believe that today's pre-hearing conference is at 3pm. The Hearing Examiner's Office sent the following message to everyone (please note the highlighted call in information below and the conference ID number)

Requested actions per pre-hearing conference request by Foster Pepper LLC:

1. Hearing Examiner direct the appellant to prepare a more definitive statement of issues on appeal and connect each issue to the applicable provisional use permit approval criteria.
 2. Pursuant to SJCC 2.22.200.D.8 Hearing Examiner to prepare a schedule that includes dispositive motion briefing.
- All parties have been provided copies of the documents. Please let me know if you need anything. This will be by phone.

→ [Join Skype Meeting](#)

[Trouble Joining? Try Skype Web App](#)

Join by phone

[1 \(360\) 370-0599 \(San Juan County\)](#)

[English \(United States\)](#)

[Find a local number](#)

Conference ID: 505705

[Forgot your dial-in PIN?](#) | [Help](#)

From: Tom Evans [mailto:tom@maritimeinjury.com]
Sent: Wednesday, May 23, 2018 12:21 PM
To: Erika Shook
Cc: Chris Osborn; Jeremy Eckert; Lynda Guernsey; Julie Thompson
Subject: Re: Pre-hearing conference for PAPL0018-0001 & 0002 - Stabbert

I am standing by my cell phone 206 499 8000 for a conference call from 2:30 pm on, or am available anytime for e-mail update. Thank you 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

You are advised that this e-mail and 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.

On May 16, 2018, at 1:15 PM, Erika Shook <erikas@sanjuanco.com> wrote:

Hi,

The San Juan County Hearing Examiner, Gary McLean, is available for a pre-hearing conference by phone next Wednesday May 23, 2018 at either 2:30 or 3 pm. Will either of these times work for the parties?

Erika Shook, Director - Direct Line (360) 370-7571
SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT
360-378-2354 | 135 Rhone Street | PO Box 947 | Friday Harbor, WA 98250

Confidentiality Notice: This e-mail message, including any attachments, may be subject to the Washington State Public Records Act, RCW Chapter 42.56 et al. This e-mail and attachments are for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any review, use, disclosure, or distribution by unintended recipients is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

Lynda Guernsey

From: Tom Evans <tom@maritimeinjury.com>
Sent: Wednesday, May 23, 2018 12:21 PM
Erika Shook
Cc: chris.osborn@foster.com; jeremy.eckert@foster.com; Lynda Guernsey; Julie Thompson
Subject: Re: Pre-hearing conference for PAPL0018-0001 & 0002 - Stabbert

I am standing by my cell phone 206 499 8000 for a conference call from 2:30 pm on, or am available anytime for e-mail update. Thank you 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

Please be advised that this e-mail and 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.

On May 16, 2018, at 1:15 PM, Erika Shook <erikas@sanjuanco.com> wrote:

Hello,

The San Juan County Hearing Examiner, Gary McLean, is available for a pre-hearing conference by phone next Wednesday May 23, 2018 at either 2:30 or 3 pm. Will either of these times work for the parties?

Erika Shook, Director - Direct Line (360) 370-7571
SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT
360-378-2354 | 135 Rhone Street | PO Box 947 | Friday Harbor, WA 98250

Confidentiality Notice: This e-mail message, including any attachments, may be subject to the Washington State Public Records Act, RCW Chapter 42.56 et al. This e-mail and attachments are for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any review, use, disclosure, or distribution by unintended recipients is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

Lynda Guernsey

From: Tom Evans <tom@maritimeinjury.com>
Sent: Friday, May 18, 2018 4:41 PM
To: Erika Shook
Cc. Kelsey Demeter; Lynda Guernsey; jeremy.eckert@foster.com; chris.osborn@foster.com; Julie Thompson
Subject: Re: Pre-hearing conference for PAPL0018-0001 & 0002 - BoxBayShellFishCo/Evans adv. Stabbert

Thank you for your assistance in this matter. Regards. 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

Please be advised that this e-mail and 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.

On May 18, 2018, at 4:34 PM, Erika Shook <erikas@sanjuanco.com> wrote:

San Juan County DCD has received these documents and forwarded them the Hearing Examiner.

Erika Shook, Director - Direct Line (360) 370-7571
SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT
360-378-2354 | 135 Rhone Street | PO Box 947 | Friday Harbor, WA 98250

Confidentiality Notice: This e-mail message, including any attachments, may be subject to the Washington State Public Records Act, RCW Chapter 42.56 et al. This e-mail and attachments are for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any review, use, disclosure, or distribution by unintended recipients is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

From: Kelsey Demeter <kelsey@maritimeinjury.com>
Sent: Friday, May 18, 2018 4:00 PM
To: Erika Shook <erikas@sanjuanco.com>
Cc: Kelsey Demeter <kelsey@maritimeinjury.com>; Lynda Guernsey <LyndaG@sanjuanco.com>; jeremy.eckert@foster.com; chris.osborn@foster.com; Julie Thompson <JulieT@sanjuanco.com>; Tom Evans <tom@maritimeinjury.com>
Subject: Pre-hearing conference for PAPL0018-0001 & 0002 - BoxBayShellFishCo/Evans adv. Stabbert

Good Afternoon,

Please find correspondence on the above matter.

Best,
Kelsey



Kelsey Demeter • Paralegal • Injury at Sea

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

Tel: 206.527.8008 • **Toll Free:** 1.800. SEA. SALT

Fax: 206.527.0725

E-

mail: kelsey@maritimeinjury.com www.injuryatsea.com

Please be advised that this e-mail and 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.

Lynda Guernsey

From: Erika Shook
Sent: Friday, May 18, 2018 4:34 PM
To: 'Kelsey Demeter'
Cc: Lynda Guernsey; jeremy.eckert@foster.com; chris.osborn@foster.com; Julie Thompson; Tom Evans
Subject: RE: Pre-hearing conference for PAPL0018-0001 & 0002 - BoxBayShellFishCo/Evans adv. Stabbert

San Juan County DCD has received these documents and forwarded them the Hearing Examiner.

Erika Shook, Director - Direct Line (360) 370-7571
SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT
360-378-2354 | 135 Rhone Street | PO Box 947 | Friday Harbor, WA 98250

Confidentiality Notice: This e-mail message, including any attachments, may be subject to the Washington State Public Records Act, RCW Chapter 42.56 et al. This e-mail and attachments are for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any review, use, disclosure, or distribution by unintended recipients is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

From: Kelsey Demeter <kelsey@maritimeinjury.com>
Sent: Friday, May 18, 2018 4:00 PM
To: Erika Shook <erikas@sanjuanco.com>
Cc: Kelsey Demeter <kelsey@maritimeinjury.com>; Lynda Guernsey <LyndaG@sanjuanco.com>; jeremy.eckert@foster.com; chris.osborn@foster.com; Julie Thompson <JulieT@sanjuanco.com>; Tom Evans <tom@maritimeinjury.com>
Subject: Pre-hearing conference for PAPL0018-0001 & 0002 - BoxBayShellFishCo/Evans adv. Stabbert

Good Afternoon,

Please find correspondence on the above matter.

Best,
Kelsey



Kelsey Demeter • Paralegal • Injury at Sea
4020 East Madison Street, Suite 210, Seattle, WA
98112
Tel: 206.527.8008 • **Toll Free:** 1.800. SEA. SALT
Fax: 206.527.0725
E-
mail: kelsey@maritimeinjury.com www.injuryatsea.com

Please be advised that this e-mail and 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.

Lynda Guernsey

From: Erika Shook
Sent: Friday, May 18, 2018 4:33 PM
To: 'Gary McLean'
Cc: Lynda Guernsey
Subject: FW: Pre-hearing conference for PAPL0018-0001 & 0002 - BoxBayShellFishCo/Evans adv. Stabbert
Attachments: May 18 Ltr re PreHearing Conf.pdf; Ex 1 -PreHearingConfLtr.pdf; Ex 2-PreHearingConfLtr.pdf; Ex 3-PreHearingConfLtr.pdf

Hi Gary,
We received the following materials for the pre-hearing conference scheduled for next Wednesday. I am forwarding as Lynda Guernsey is out of the office right now.

Erika Shook, Director - Direct Line (360) 370-7571
SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT
360-378-2354 | 135 Rhone Street | PO Box 947 | Friday Harbor, WA 98250

Confidentiality Notice: This e-mail message, including any attachments, may be subject to the Washington State Public Records Act, RCW Chapter 42.56 et al. This e-mail and attachments are for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any review, use, disclosure, or distribution by unintended recipients is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

From: Kelsey Demeter <kelsey@maritimeinjury.com>
Sent: Friday, May 18, 2018 4:00 PM
To: Erika Shook <erikas@sanjuanco.com>
Cc: Kelsey Demeter <kelsey@maritimeinjury.com>; Lynda Guernsey <LyndaG@sanjuanco.com>; jeremy.eckert@foster.com; chris.osborn@foster.com; Julie Thompson <JulieT@sanjuanco.com>; Tom Evans <tom@maritimeinjury.com>
Subject: Pre-hearing conference for PAPL0018-0001 & 0002 - BoxBayShellFishCo/Evans adv. Stabbert

Good Afternoon,

Please find correspondence on the above matter.

Best,
Kelsey



Kelsey Demeter • Paralegal • Injury at Sea
4020 East Madison Street, Suite 210, Seattle, WA
98112
Tel: 206.527.8008 • **Toll Free:** 1.800. SEA. SALT
Fax: 206.527.0725
E-mail: kelsey@maritimeinjury.com www.injuryatsea.com

Be advised that this e-mail and 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.

Lynda Guernsey

From: Kelsey Demeter <kelsey@maritimeinjury.com>
Sent: Friday, May 18, 2018 4:00 PM
Cc: Erika Shook
Kelsey Demeter; Lynda Guernsey; jeremy.eckert@foster.com; chris.osborn@foster.com; Julie Thompson; Tom Evans
Subject: Pre-hearing conference for PAPL0018-0001 & 0002 - BoxBayShellFishCo/Evans adv. Stabbert
Attachments: May 18 Ltr re PreHearing Conf.pdf; Ex 1 -PreHearingConfLtr.pdf; Ex 2-PreHearingConfLtr.pdf; Ex 3-PreHearingConfLtr.pdf

Good Afternoon,

Please find correspondence on the above matter.

Best,
Kelsey



Kelsey Demeter • Paralegal • Injury at Sea

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

Tel: 206.527.8008 • **Toll Free:** 1.800. SEA. SALT

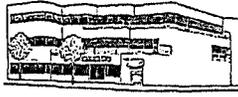
Fax: 206.527.0725

E-

mail: kelsey@maritimeinjury.com www.injuryatsea.com

○ e be advised that this e-mail and 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.





May 18, 2018

Via US Mail and E-mail

Department of Community Development
Attn: Hearings Examiner
135 Rhone Street
Friday Harbor, 98250
dcd@sanjuanico.com
LyndaG@sanjuanico.com

*Re: PPROVO-17-0065/PPROVO-17-0066 / PAPL0018-0001 & 0002
Pre-Hearing Conference – Wednesday May 23, 2018: Box Bay Shellfish Farm LLC and Thomas C. Evans adv. Stabbert*

Dear Hearings Examiner:

I write regarding the forthcoming pre-hearing conference scheduled in the above matters and with respect to a suggestion that this first conference focus on a briefing/resolution schedule addressing the jurisdictional issues in these appeals. There are three jurisdictional matters that need to be addressed prior to commencement of this hearing:¹

- 1. There Is No Staff Record Or Recommendation Dealing With The DNR's determination that VRBO use of a joint use private residential dock is considered a commercial use by DNR and is prohibited.**

The Community Development ("CD") decision is dated March 12, 2018. (Ex.1). Unfortunately CD failed to contact or consider the jurisdiction of the DNR over joint residential use docks (and buoys). The DNR, upon learning of this project, wrote the Stabbert's on May 7, 2018, informing them that VRBO use *is* considered commercial and is not permitted (Ex. 2).

CD in its "Decision and Permit Conditions" Ex.1, p16-17, CD lists 18 conditions but fails to mention anything about VRBO use of the dock as being illegal. CD was proceeding under an error of law. It lacked the written input from the DNR that VRBO rental use is clearly a

¹ Please Note – Appellants organized and Bates Stamped every page of SJC – CD Records, in a 3-ring-binder referred to as Appellants Exhibits and each had a red Bates Stamped page number – a set of these prepared exhibits were sent to the Examiner at the time Appellants appeals were submitted. Ex 1 are pages 1-17 of those exhibits.

commercial and prohibited use. VRBO renters must be kept off the dock and from using the buoys. Further, the CD did not make any record or recommendations on how this should be handled, if indeed the VRBOs go forward. The applicant – Stabbert, fully intends to use the dock and buoys as advertising points, listing his VRBOs as "dock and buoy ready".

Since there is no CD decision, or record, on this matter, an appeal cannot proceed – not at least on this issue. The role of the hearing examiner is to conduct *appeals* on a record made by an agency – SJC – CD. Before this appeal can proceed both applications should be remanded to SJC-CD to establish what limitations on use will be required (No trespassing signs? Locked gate?) How can an appellant appeal from a record that doesn't even exist? The Hearing Examiner steps out of his/her role if he/she starts making substantive design decisions. Also, due process is lost – the public hearing intends full and fair public participation – but how can that happen without a remand when an error of law is made and an entire area of design/development significance is simply ignored?

2. The VRBO's Require A Shoreline Substantial Development Conditional Use

SJC – CD also did not consider, for permitting purposes that a VRBO *is* a commercial use and is in no way categorically exempt from the Shoreline Management Act. SJC-CD completely ignores the fact that only categorically exempt projects are exempt from obtaining an SMA permit. See: Ex. 1 p.9 wherein CD concludes unless a project involves dredging – drilling – filling etc., no permit is required. It also throws out SMA permitting requirements by, once again, finding as a matter of law, VRBO's are not "commercial" and are exempt on those grounds. Finally, SJC-CD treats the entire VRBO as a piecemeal process – one owner occupied single-family residence that is already built, lets you move on, piece-meal – to a commercial use as a VRBO. So, the CD reasoning goes, since a VRBO doesn't involve any movement of dirt etc. VRBO must be exempt because the SFR being used as a VRBO is no different than a SFR all by itself.

If these permits are not remanded for a SMA conditional use, it will only be a matter of time, likely short, before an appellate court compels SMA permits. The CD relies on a non-lawyer, planner in a local DOE office - Mr. Chad Yunge – for its legal position. Yet, the Attorney General, not yet having issued a formal opinion, is prosecuting persons who convert SFR-mobile housing RV s into VRBO's. Substantial fines and penalties have been upheld by the Shoreline Hearing's Board. See: *Darin Barry/Robin Hood Village v. Department of Ecology* S12-008 (Ex. 3) where the Attorney General issued a fine of \$12,000 to Barry for using a recreational RV as a VRBO along Hood Canal without a SMA permit. Barry appealed, and the Shoreline Hearings Board upheld the entire \$12,000 fine finding that a SFR converted to a VRBO ***is not exempt*** from getting a shoreline management condition use permit.

3. Chapter 2.22.210 "Hearing Examiner" Is Unconstitutionally Vague

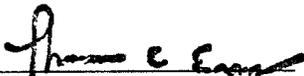
SJC 2.22.210 "Features Common To All Hearings" states as follows:

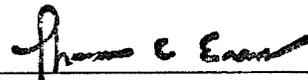
For an administrative decision to be reversed or modified
the appellant has the burden by a preponderance of the evidence
to show that the legal decision criteria are erroneously applied
by the decision maker....

This is an unconstitutionally vague standard. Probably one of the best examples of the invalidity of these rules is this case – here, the decision maker didn't erroneously apply the criteria – the decision maker didn't even know of the rules in question. (DNR requirements). Where and what is the fact burden for proof stated? Must an appellant show unsupported findings of fact? Is the appeal only about what a specific person did, or didn't do? What does passing Judgment on what a single person did or didn't do, have to do with the multitude of facts in a case?

In conclusion, it is respectfully requested that the Hearing Examiner address the serious jurisdictional issues before anything else. Further briefing should be ordered.

Respectfully Submitted,


Thomas C. Evans
pro se


Box Bay Shellfish Farm LLC
By its Manager, Thomas C. Evans

Cc: Julie Thompson
Chris Osborn
Jeremy Eckert
Erica Shook

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

CERTIFICATE OF SERVICE

I certify on this date that I served the above document on the following individuals in the manner identified.

San Juan Hearing Examiner
Department of Community Development [X] Via Email
135 Rhone Street [X] Via US Mail, postage prepaid
P.O. Box 947
Friday Harbor, WA 98250
dcd@sanjuanco.com
LyndaG@sanjuanco.com
EricaS@sanjuanco.com
JulieT@sanjuanco.com

Christopher R. Osborn, WSBA #13608
Jeremy M. Eckert, WSBA #42596
chris.osbom@foster.com [X] Via Email
jeremy.eckert@foster.com [X] Via US Mail, postage prepaid
Foster Pepper PLLC
1111 Third Ave., Suite 3000
Seattle, WA 98101
P: 206-447-4400
F: 206-447-9700
Attorney for Respondents Dan and Cheryl Stabbert

Dated this 18th day of May, 2018

s/ Kelsey Demeter
Kelsey Demeter, Paralegal

EXHIBIT 1

Approval



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 SIC 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, PPROVD-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.

EXHIBIT 2

DNR Letter
May 7, 2018



HILARY S. FRANZ
COMMISSIONER OF PUBLIC LANDS

May 7, 2018

DEPARTMENT OF
NATURAL RESOURCES

NORTHWEST REGION
919 N TOWNSHIP STREET
SEDRO-WOOLLEY, WA 98284-9384

360-856-3500
FAX 360-856-2150
TR5 711
NORTHWEST.REGION@DNR.WA.GOV
WWW.DNR.WA.GOV

Dan and Cheryl Stabbert
13019 NE 61st Place
Kirkland, WA 98107

Subject: Vacation Rental and Use of State-Owned Aquatic Lands -- Private Recreational
Dock/Mooring Buoys, Obstruction Pass, Orcas Island

Dear Mr. and Mrs. Stabbert:

I am writing to you regarding the dock and mooring buoys located in Obstruction Pass, Orcas Island that are associated with your upland property, San Juan County tax parcel 161650403000 with an address of 2318 Obstruction Pass Rd. A portion of the dock and the mooring buoys are located on state-owned aquatic land (SOAL) managed by Washington Department of Natural Resources (DNR). Typically, projects taking place on or over SOAL require an authorization from DNR, however, Chapter 79.105.430 of the Revised Code of Washington (RCW) provides permission under certain circumstances for private recreational docks and private recreational mooring buoys to be installed and maintained without charge. Chapter 332-30-144 of the Washington Administrative Code (WAC) specifies what does and does not qualify for a private recreational dock.

It is my understanding that you recently received a Land Use Vacation Rental Permit for the above-mentioned property from San Juan County Department of Community Development. The purpose of this letter is to notify you that in order to use and maintain your dock without charge, the dock must be used exclusively for private recreational purposes and cannot be used commercially. WAC 332-30-144(2)(c) states the following:

A "private recreational purpose" being a nonincome-producing, leisure-time, and discretionary use by the abutting residential owner(s).

Allowing use of the dock through a short-term rental agreement disqualifies them from the private recreation dock exemption. If you intend to allow renters of your vacation property to use the dock, you would need to apply for an authorization from DNR, which would be in the form

Mr. and Mrs. Stabbert
May 7, 2018
Page 2 of 2

of a lease. I encourage you to learn more about the process for leasing SOAL by reading this fact sheet on our website:

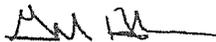
https://www.dnr.wa.gov/publications/aqr_fs_leasing_guide_0816.pdf?2182kh2

Please note that for joint-use docks, all owners of the dock must apply for the authorization from DNR. If you would like to proceed with the application process or just have questions, I would be happy to assist you.

Please note that recreational mooring buoys must be registered with DNR even if they qualify under RCW 79.105.430. Please fill out the mooring buoy application at www.dnr.wa.gov to register your buoy(s) if you have not already done so.

If you have any questions about this letter, please contact me by phone at 360-854-2858 or by email at gabriel.harder@dnr.wa.gov.

Sincerely,



Gabe Harder, Land Manager
Aquatic Resources Division, Orca-Straits District
919 N. Township St.
Sedro-Woolley, WA 98284

Enclosures: RCW 79.105.430
WAC 332-30-144
DNR-Mooring Buoy Brochure

c: Karla Lopez, Agent (by email)
Tom Evans, Joint owner (by email)

RCW 79.105.430**Private recreational docks—Mooring buoys.**

(1) The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain without charge a dock on the areas if used exclusively for private recreational purposes and the area is not subject to prior rights, including any rights of upland, tideland, or shoreland owners as provided in RCW 79.125.400, 79.125.460, 79.125.410, and 79.130.010. The dock cannot be sold or leased separately from the upland residence. The dock cannot be used to moor boats for commercial or residential use. This permission is subject to applicable local, state, and federal rules and regulations governing location, design, construction, size, and length of the dock. Nothing in this subsection (1) prevents the abutting owner from obtaining a lease if otherwise provided by law.

(2) The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain a mooring buoy without charge if the boat that is moored to the buoy is used for private recreational purposes, the area is not subject to prior rights, including any rights of upland, tideland, or shoreland owners as provided in RCW 79.125.400, 79.125.460, 79.125.410, and 79.130.010, and the buoy will not obstruct the use of mooring buoys previously authorized by the department.

(a) The buoy must be located as near to the upland residence as practical, consistent with applicable rules and regulations and the provisions of this section. The buoy must be located, or relocated if necessary, to accommodate the use of lawfully installed and maintained buoys.

(b) If two or more residential owners, who otherwise qualify for free use under the provisions of this section, are in dispute over assertion of rights to install and maintain a mooring buoy in the same location, they may seek formal settlement through adjudication in superior court for the county in which the buoy site is located. In the adjudication, preference must be given to the residential owner that first installed and continually maintained and used a buoy on that site, if it meets all applicable rules, regulations, and provisions of this section, and then to the owner of the residential property nearest the site. Nothing in this section requires the department to mediate or otherwise resolve disputes between residential owners over the use of the same site for a mooring buoy.

(c) The buoy cannot be sold or leased separately from the abutting residential property. The buoy cannot be used to moor boats for commercial or residential use, nor to moor boats over sixty feet in length.

(d) If the department determines that it is necessary for secure moorage, the abutting residential owner may install and maintain a second mooring buoy, under the same provisions as the first, the use of which is limited to a second mooring line to the boat moored at the first buoy.

(e) The permission granted in this subsection (2) is subject to applicable local, state, and federal rules and regulations governing location, design, installation, maintenance, and operation of the mooring buoy, anchoring system, and moored boat. Nothing in this subsection (2) prevents a boat owner from obtaining a lease if otherwise provided by law. This subsection (2) also applies to areas that have been designated by the commissioner or the fish and wildlife commission as aquatic reserves.

(3) This permission to install and maintain a recreational dock or mooring buoy may be revoked by the department, or the department may direct the owner of a recreational dock or mooring buoy to relocate their dock or buoy, if the department makes a finding of public necessity to protect waterward access, ingress rights of other landowners, public health or

safety, or public resources. Circumstances prompting a finding of public necessity may include, but are not limited to, the dock, buoy, anchoring system, or boat posing a hazard or obstruction to navigation or fishing, contributing to degradation of aquatic habitat, or contributing to decertification of shellfish beds otherwise suitable for commercial or recreational harvest. The revocation may be appealed as provided for under RCW 79.105.160.

(4) Nothing in this section authorizes a boat owner to abandon a vessel at a recreational dock, mooring buoy, or elsewhere.

[2005 c 155 § 106; 2002 c 304 § 1; 2001 c 277 § 1; 1989 c 175 § 170; 1983 2nd ex.s. c 2 § 2. Formerly RCW 79.90.105.]

NOTES:

Effective date—1989 c 175: See note following RCW 34.05.010.

WAC 332-30-144**Private recreational docks.**

(1) **Applicability.** This section implements the permission created by RCW 79.105.430, Private recreational docks, which allows abutting residential owners, under certain circumstances, to install private recreational docks without charge. The limitations set forth in this section apply only to use of state-owned aquatic lands for private recreational docks under RCW 79.105.430. No restriction or regulation of other types of uses on aquatic lands is provided. This section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(2) **Eligibility.** The permission shall apply only to the following:

(a) An "abutting residential owner," being the owner of record of property physically bordering on public aquatic land and either used for single family housing or for a multifamily residence not exceeding four units per lot.

(b) A "dock," being a securely anchored or fixed, open walkway structure visible to boaters and kept in good repair extending from the upland property, primarily used as an aid to boating by the abutting residential owner(s), and accommodating moorage by not more than four pleasure boats typical to the body of water on which the dock is located. Two or more abutting residential owners may install and maintain a single joint-use dock provided it meets all other design requirements of this section; is the only dock used by those owners; and that the dock fronts one of the owners' property.

(c) A "private recreational purpose," being a nonincome-producing, leisure-time, and discretionary use by the abutting residential owner(s).

(d) State-owned aquatic lands outside harbor areas designated by the harbor line commission.

(3) **Uses not qualifying.** Examples of situations not qualifying for the permission include:

(a) Yacht and boat club facilities;

(b) Floating houses, as defined in WAC 332-30-106(23), and vessels used as a residence (as defined in WAC 332-30-106(62));

(c) Resorts;

(d) Multifamily dwellings, including condominium ownerships, with more than four units;

(e) Uses other than docks such as launches and railways not part of the dock, bulkheads, landfills, dredging, breakwaters, mooring buoys, swim floats, and swimming areas.

(4) **Limitations.**

(a) The permission does not apply to areas where the state has issued a reversionary use deed such as for shellfish culture, hunting and fishing, or park purposes; published an allocation of a special use and the dock is inconsistent with the allocation; or granted an authorization for use such as a lease, easement, or material purchase.

(b) Each dock owner using the permission is responsible for determining the availability of the public aquatic lands. Records of the department are open for public review. The department will research the availability of the public aquatic lands upon written request. A fee sufficient to cover costs shall be charged for this research.

(c) The permission is limited to docks that conform to adopted shoreline master programs and other local ordinances.

(d) The permission is not a grant of exclusive use of public aquatic lands to the dock owner. It does not prohibit public use of any aquatic lands around or under the dock. Owners of docks located on state-owned tidelands or shorelands must provide a safe, convenient, and clearly available means of pedestrian access over, around, or under the dock at all tide levels.

However, dock owners are not required to allow public use of their docks or access across private lands to state-owned aquatic lands.

(e) The permission is not transferable or assignable to anyone other than a subsequent owner of the abutting upland property and is continuously dependent on the nature of ownership and use of the properties involved.

(f) Vessels used as a residence and floating houses are not permitted to be moored at a private recreational dock, except when such moorage is necessary because of an emergency that immediately threatens human life or property, for the duration of the emergency only.

(5) **Revocation.** The permission may be revoked or canceled if:

(a) The dock or abutting residential owner has not met the criteria listed in subsection (2) or (4) of this section; or

(b) The dock significantly interferes with navigation or with navigational access to and from other upland properties. This degree of interference shall be determined from the character of the shoreline and waterbody, the character of other in-water development in the vicinity, and the degree of navigational use by the public and adjacent property owners;

(c) The dock interferes with preferred water-dependent uses established by law; or

(d) The dock is a public health or safety hazard.

(6) **Appeal of revocation.** Upon receiving written notice of revocation or cancellation, the abutting residential owner shall have thirty days from the date of notice to file for an administrative hearing under the contested case proceedings of chapter 34.05 RCW. If the action to revoke the permission is upheld, the owner shall correct the cited conditions and shall be liable to the state for any compensation due to the state from the use of the aquatic lands from the date of notice until permission requirements are met or until such permission is no longer needed. If the abutting residential owner disclaims ownership of the dock, the department may take actions to have it removed.

(7) **Current leases.** Current lessees of docks meeting the criteria in this section will be notified of their option to cancel the lease. They will be provided a reasonable time to respond. Lack of response will result in cancellation of the lease by the department.

(8) **Property rights.** No property rights in, or boundaries of, public aquatic lands are established by this section.

(9) **Lines of navigability.** The department will not initiate establishment of lines of navigability on any shorelands unless requested to do so by the shoreland owners or their representatives.

(10) Nothing in this section is intended to address statutes relating to sales of second class shorelands.

[Statutory Authority: RCW 79.105.360. WSR 06-06-005 (Order 724), § 332-30-144, filed 2/16/06, effective 3/19/06. Statutory Authority: RCW 79.90.455, 79.90.460. WSR 02-21-076 (Order 710), § 332-30-144, filed 10/17/02, effective 11/17/02. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. WSR 85-22-066 (Resolution No. 500), § 332-30-144, filed 11/5/85.]

Aquatic Resources District Offices

DNR manages the 2.6 million acres of State Aquatic Lands statewide—lands under the marine and fresh waters, and beaches. These mostly-submerged lands offer aquatic habitat, navigation, commerce, and public use and access. DNR's aquatic districts provide on-the-ground management.

Orea Strait District Aquatic Resources
919 N. Towship St.
Sedro Woolley, WA 98284
(360) 856-3500
Fax: (360) 856-2150



Shoreline District Aquatic Resources
950 Farman Ave.
Bainbridge, WA 98022
(360) 825-1631
Fax: (360) 825-1672

Rivers District Aquatic Resources
601 Bond Rd.
P.O. Box 2809
Castle Rock, WA 98011
(360) 577-2025
Fax: (360) 274-4196

Mooring buoy information and application are online at www.dnr.wa.gov

Type "mooring buoy" in the upper right search tool.

Need Help With Your Permits?

For assistance preparing permits, contact the **Office of Regulatory Assistance**.

They provide statewide environmental permit information, at

(360) 407-7037 or

1-800-917-0043



WASHINGTON STATE DEPARTMENT OF **Natural Resources**



UPDATED 10/14



Shoreline Residents May Moor a Boat on State Aquatic Lands

Laws Change for Recreational Mooring Buoys

The 2001 and 2002 Legislatures passed laws about recreational mooring buoys. Individuals who own residential property abutting state-owned aquatic lands may install a mooring buoy on those public lands for recreational purposes without charge.

The law prohibits commercial and transient uses, and living on boats moored to recreational buoys on state lands. It limits boats to sixty feet or less in length, and allows for a second buoy to help secure moorage to the first buoy.

It directs disputes over the assertion of rights to superior court, and it defines the circumstances around which Washington's Department of Natural Resources (DNR) may require a buoy to be relocated or removed:

- ▶ To protect access of other landowners;
- ▶ If it poses a hazard to or obstructs navigation or fishing;
- ▶ If it contributes to degradation of aquatic habitat;
- ▶ If it contributes to decertification of shellfish beds.

Qualifying for Free Use of State Lands for Your New Mooring Buoy

Residential owners of "uplands" next to state aquatic lands might qualify for free use of the state lands to install a recreational buoy.

A mooring buoy qualifies for free use if the conditions meet all of these criteria:

- ▶ The applicant owns residential property next to state-owned shorelands, tidelands, or related beds of navigable waters (other than harbor areas);
- ▶ The moored boat is used for private recreational purposes;
- ▶ The moored boat is not more than sixty (60) feet in length;
- ▶ The area being used for the buoy is not subject to prior rights;
- ▶ The mooring buoy will not obstruct use of previously authorized mooring buoys.

The mooring buoy is located on state aquatic lands, but as near to the shore of residence as practical; and

All applicable local, state, and federal rules and regulations have been met.

If your buoy meets these criteria, fill out the mooring buoy/boatlift application at www.dnr.wa.gov. Mail it to DNR's Aquatic District Office in your area, listed here.

Boatlifts on state aquatic lands require the same application. Boatlifts have a yearly fee.

APRIL PHOTO: STEPHEN PUGH

Recreational Mooring Buoys For Residential Owners Next to State-Owned Aquatic Lands

WASHINGTON STATE DEPARTMENT OF **Natural Resources**



WASHINGTON STATE DEPARTMENT OF **Natural Resources**

USE REQUIREMENTS

Although residential landowners whose property abuts state aquatic lands may use a recreational mooring buoy for free, they are still responsible for meeting requirements for the installation of the buoy, including:

- ▶ **State Registration with DNR**
Complete an application.
- ▶ **City Restrictions**
If you live within city limits, allowable uses vary. Contact your city's planning office for requirements.

Contact the following agencies to determine if a permit or authorization is required:

- ▶ **WA Department of Fish and Wildlife**
Hydraulic Project Approval
(360) 902-2534
- ▶ **WA Department of Ecology**
(360) 407-6400
- ▶ **U.S. Army Corps of Engineers (Permit)**
Requirements differ by county, addressed through your local county planning office.
- ▶ **Shoreline Master Program (Permit or Exemption)**
Requirements differ by county, addressed through your local county planning office.

PLEASE NOTE

Private recreational mooring buoys are not authorized for residential (living on the boat) or commercial purposes.

Buoy-moored boat must not be more than 60 feet in length.

FOR RESIDENTIAL PROPERTY OWNERS

How to Moor Your Boat On State-Owned Aquatic Lands

CHOOSE A MOORING SYSTEM DESIGN

Some mooring system designs have the potential to damage underwater lands and marine vegetation around the buoy. DNR's Land Managers can help you select a system that best suits your area. State Department of Fish and Wildlife has found two designs to be less destructive to ecosystems, fish and wildlife:

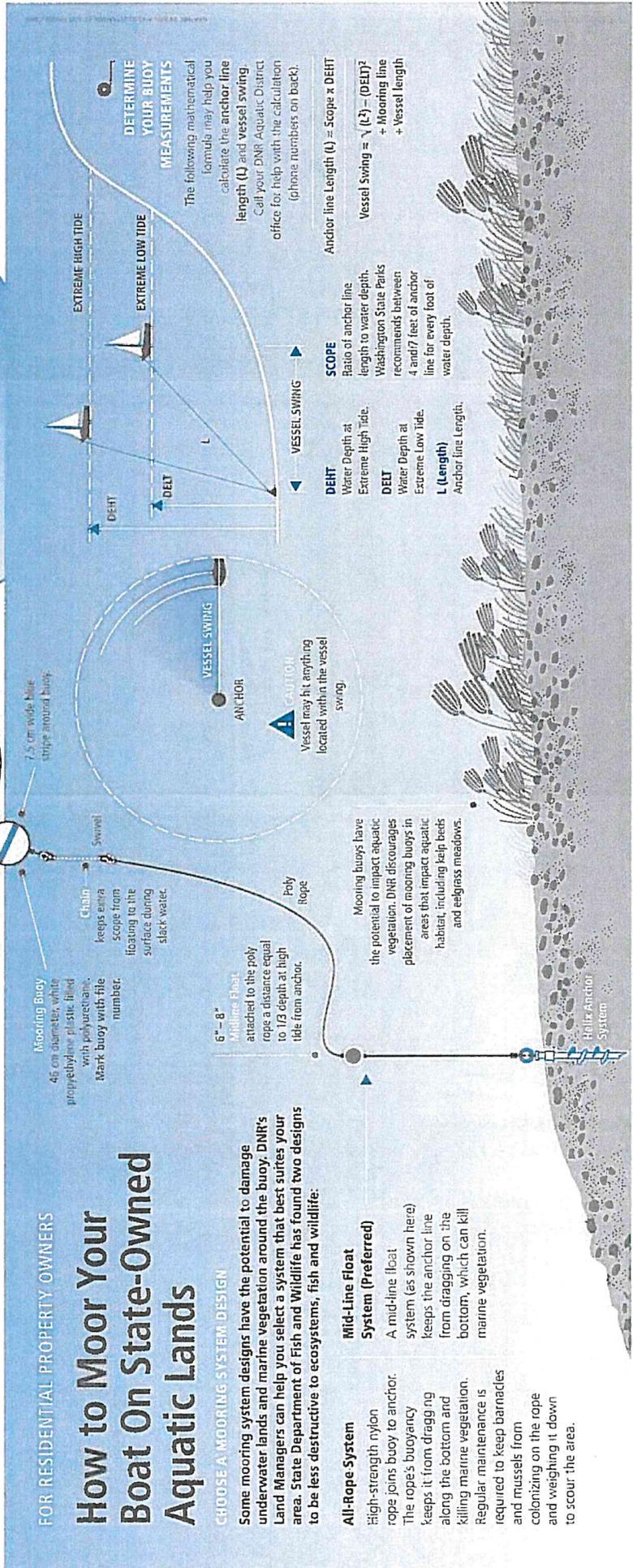
All-Rope System

High-strength nylon rope joins buoy to anchor. The rope's buoyancy keeps it from dragging along the bottom and killing marine vegetation. Regular maintenance is required to keep barnacles and mussels from colonizing on the rope and weighing it down and scour the area.

Mid-Line Float System (Preferred)

A mid-line float system (as shown here) keeps the anchor line from dragging on the bottom, which can kill marine vegetation.

Regular maintenance is required to keep barnacles and mussels from colonizing on the rope and weighing it down and scour the area.



DETERMINE YOUR BUOY MEASUREMENTS

The following mathematical formula may help you calculate the anchor line length (L) and vessel swing. Call your DNR Aquatic District office to help with the calculation (phone numbers on back).

$$\text{Anchor line Length (L)} = \text{SCOPE} \times \text{DEFT} + \text{VESSEL SWING}$$

$$\text{VESSEL SWING} = \sqrt{(L^2) - (\text{DEFT})^2}$$

SCOPE
Ratio of anchor line length to water depth. Washington State Parks recommends between 4 and 7 feet of anchor line for every foot of water depth.

DEFT
Water Depth at Extreme High Tide.

DEFT
Water Depth at Extreme Low Tide.

L (Length)
Anchor line Length.

VESSEL SWING
Ratio of anchor line length to water depth. Washington State Parks recommends between 4 and 7 feet of anchor line for every foot of water depth.

CAUTION
Vessel may hit anything located within the vessel swing.

Mooring buoys have the potential to impact aquatic vegetation. DNR discourages placement of mooring buoys in areas that impact aquatic habitat, including help beds and eelgrass meadows.

Mooring buoys have the potential to impact aquatic vegetation. DNR discourages placement of mooring buoys in areas that impact aquatic habitat, including help beds and eelgrass meadows.

Mooring buoys have the potential to impact aquatic vegetation. DNR discourages placement of mooring buoys in areas that impact aquatic habitat, including help beds and eelgrass meadows.

EXHIBIT 3

Robin Hood

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

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.*

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 . . .

20 Expansion of a nonconforming development is prohibited.

21 Nonconforming development may be continued provided that it is not enlarged,
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.

12.

1
2 The core of Barry's argument is that he does not need to obtain either an SSDP or SCUP
3 because his use of the Green for RV rental parking existed before the date of the SMA and SMP.
4 Ecology does not dispute that the Green has been used for RV rental space parking prior to the
5 date of the SMA and SMP, and therefore this use, and the development existing for this use, is a
6 grandfathered non-conforming development and use. The dispute, however, is whether Barry's
7 use of RPTs placed permanently on the Green, which he intends to use as vacation rentals, is a
8 continuation of the existing RV space rental use, or a change in use. Further, the parties dispute
9 whether the placement of the RPTs is an expansion of the existing non-conforming development
10 for the RV parking.

13.

11
12 Barry argues that because RPTs are licensed by L&I as RVs, are built on a single chassis,
13 and remain on wheels, that his placement of them on the Green for vacation rental cottages is not
14 a change in use from renting RV parking spaces. The Board disagrees. The past use of the
15 Green involved RVs pulling into the site, hooking up to utilities, and paying for their temporary
16 use of the site for a number of nights. At times there would be several RVs on the site. At other
17 times, there would be none. In contrast, the proposed use involves the permanent year-round
18 placement of the RPTs on the Green for use as vacation rentals. Barry owns the RPTs, not their
19 occupants. While they may remain unoccupied at times, they are still permanent visual objects
20 in the shoreline. Because they are licensed as RVs does not change the reality that they are being
21 used as permanent short-term vacation rental cottages.

14.

1
2 In a prior decision, the Board has considered a change from a temporarily authorized
3 structure to a permanent structure to be an inappropriate expansion of a non-conforming use.
4 *Ecology v. Lewis County and Cowlitz Timber Trails Association*, SHB No. 00-027 (2001) (CL
5 VII)(holding that the addition of decks, covers, and gazebos to an existing RV camping club
6 added a high degree of permanency and intensity of use inconsistent with the conservancy
7 designation in which they were located). Similarly here, the permanent placement of RPTs for
8 short-term vacation rental cottages on the Green is an expansion of the prior unpermitted but
9 grandfathered use for the temporary parking of RVs. While the RPTs may not be occupied for
10 any more extensive periods of time than the RVs, when the occupants of the RVs leave, they
11 take the RVs with them. In contrast, when the vacationers leave the RPTs, the RPTs remain
12 behind as permanent objects in the shoreline. Barry's permanent placement of the RPTs requires
13 an SSDP. Further, while Barry's use of the RPTs as vacation rentals may not be inconsistent
14 with the urban shoreline environment, this use is a change from the prior RV parking rental, and
15 therefore requires a SCUP.

15.

16
17 Barry argues that having short-term vacation rental cottages that are not driven in and out
18 of the Green, do not have to be connected and disconnected to utility hook-ups, and produce only
19 the sewage generated while the occupants are on the site, have less environmental impact on the
20 shoreline than the prior RV rental parking use. Barry also emphasizes that he and prior owners
21 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.

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

Lynda Guernsey

Subject: Pre-hearing conference for PAPL0018-0001 & 0002 - Stabbert
Location: Skype Meeting
Start: Wed 5/23/2018 3:00 PM
End: Wed 5/23/2018 4:00 PM
Recurrence: (none)
Meeting Status: Accepted
Organizer: Erika Shook
Required Attendees: Jeremy Eckert; Chris Osborn; 'tom@maritimeinjury.com'; Julie Thompson
Optional Attendees: Lynda Guernsey

Requested actions per pre-hearing conference request by Foster Pepper LLC:

1. Hearing Examiner direct the appellant to prepare a more definitive statement of issues on appeal and connect each issue to the applicable provisional use permit approval criteria.
2. Pursuant to SJCC 2.22.200.D.8 Hearing Examiner to prepare a schedule that includes dispositive motion briefing.

All parties have been provided copies of the documents. Please let me know if you need anything. This will be by phone.

→ [Join Skype Meeting](#)

Trouble Joining? [Try Skype Web App](#)

Join by phone

1 (360) 370-0599 (San Juan County)

English (United States)

[Find a local number](#)

Conference ID: 505705

[Forgot your dial-in PIN?](#) | [Help](#)

From: Erika Shook [<mailto:erikas@sanjuanco.com>]
Sent: Wednesday, May 16, 2018 1:16 PM
To: Chris Osborn; Jeremy Eckert; 'tom@maritimeinjury.com'
Cc: Lynda Guernsey; Julie Thompson
Subject: Pre-hearing conference for PAPL0018-0001 & 0002 - Stabbert

Hello,

The San Juan County Hearing Examiner, Gary McLean, is available for a pre-hearing conference by phone next Wednesday May 23, 2018 at either 2:30 or 3 pm. Will either of these times work for the parties?

Erika Shook, Director - Direct Line (360) 370-7571
SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT
360-378-2354 | 135 Rhone Street | PO Box 947 | Friday Harbor, WA 98250

Confidentiality Notice: This e-mail message, including any attachments, may be subject to the Washington State Public Records Act, RCW Chapter 42.56 et al. This e-mail and attachments are for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any review, use, disclosure, or distribution by unintended recipients is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

Lynda Guernsey

From: Tom Evans <tom@maritimeinjury.com>
Sent: Wednesday, May 16, 2018 2:24 PM
To: Erika Shook
chris.osborn@foster.com; jeremy.eckert@foster.com; Lynda Guernsey; Julie Thompson; Kelsey Demeter
Subject: Re: Pre-hearing conference for PAPL0018-0001 & 0002 - Stabbert

I am available either of those times. Contact information is as per below, however, best contact telephone number for direct contact is personal cell 206 499 8000, or I can call in to any number. I also suggest the parties send, in advance of this conference, a short list of issues proposed to be addressed. Tom Evans/pro se and on behalf of Box Bay Shellfish Farm LLC as its Manager.

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

Please be advised that this e-mail and 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 delete it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.

On May 16, 2018, at 1:15 PM, Erika Shook <erikas@sanjuanco.com> wrote:

Hello,

The San Juan County Hearing Examiner, Gary McLean, is available for a pre-hearing conference by phone next Wednesday May 23, 2018 at either 2:30 or 3 pm. Will either of these times work for the parties?

Erika Shook, Director - Direct Line (360) 370-7571
SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT
360-378-2354 | 135 Rhone Street | PO Box 947 | Friday Harbor, WA 98250

Confidentiality Notice: This e-mail message, including any attachments, may be subject to the Washington State Public Records Act, RCW Chapter 42.56 et al. This e-mail and attachments are for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any review, use, disclosure, or distribution by unintended recipients is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

Lynda Guernsey

From: Jeremy Eckert <jeremy.eckert@foster.com>
Sent: Wednesday, May 16, 2018 1:21 PM
To: Erika Shook; Chris Osborn; 'tom@maritimeinjury.com'
Cc: Lynda Guernsey; Julie Thompson
Subject: RE: Pre-hearing conference for PAPL0018-0001 & 0002 - Stabbert

Thank you for the email. We can make either time work.

Jeremy Eckert
ATTORNEY
Foster Pepper PLLC
Tel: 206.447.6284
jeremy.eckert@foster.com

From: Erika Shook [mailto:erikas@sanjuanco.com]
Sent: Wednesday, May 16, 2018 1:16 PM
To: Chris Osborn; Jeremy Eckert; 'tom@maritimeinjury.com'
Cc: Lynda Guernsey; Julie Thompson
Subject: Pre-hearing conference for PAPL0018-0001 & 0002 - Stabbert

Hello,
The San Juan County Hearing Examiner, Gary McLean, is available for a pre-hearing conference by phone next Wednesday May 23, 2018 at either 2:30 or 3 pm. Will either of these times work for the parties?

Erika Shook, Director - Direct Line (360) 370-7571
SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT
360-378-2354 | 135 Rhone Street | PO Box 947 | Friday Harbor, WA 98250

Confidentiality Notice: This e-mail message, including any attachments, may be subject to the Washington State Public Records Act, RCW Chapter 42.56 et al. This e-mail and attachments are for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any review, use, disclosure, or distribution by unintended recipients is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

Lynda Guernsey

From: Erika Shook
Sent: Wednesday, May 16, 2018 1:16 PM
To: 'chris.osborn@foster.com'; 'jeremy.eckert@foster.com'; 'tom@maritimeinjury.com'
Subject: Lynda Guernsey; Julie Thompson
Pre-hearing conference for PAPL0018-0001 & 0002 - Stabbert

Hello,

The San Juan County Hearing Examiner, Gary McLean, is available for a pre-hearing conference by phone next Wednesday May 23, 2018 at either 2:30 or 3 pm. Will either of these times work for the parties?

Erika Shook, Director - Direct Line (360) 370-7571
SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT
360-378-2354 | 135 Rhone Street | PO Box 947 | Friday Harbor, WA 98250

Confidentiality Notice: This e-mail message, including any attachments, may be subject to the Washington State Public Records Act, RCW Chapter 42.56 et al. This e-mail and attachments are for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any review, use, disclosure, or distribution by unintended recipients is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

Lynda Guernsey

From: Lynda Guernsey
Sent: Monday, May 14, 2018 3:47 PM
Subject: Gary N. McLean
FW: Supplemental Evans Appeal Info PAPL00-18-0001 and 0002 re PPROVO-17-0065/PPROVO-17-0066
Attachments: Ltr to Hearing Examiner re Supplemental Appeal.pdf; Supplemental Appeal PPROVO 17-0065 Box Bay.pdf; Supplemental Appeal PPROVO 17-0066 Box Bay.pdf; Supplemental Appeal PPROVO 17-0065 TCE.pdf; Supplemental Appeal PPROVO 17-0066 TCE.pdf

Hi Gary,

Please see the email below and attachments regarding the Evans appeals PAPI00-18-0001 and 0002 of the Stabberts Provisional use permits.

Regards,
Lynda

Lynda Guernsey, Administrative Specialist II – Direct Line (360) 370-7579
SAN JUAN COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT
(360) 378-2354 | 135 Rhone Street | PO Box 947 | Friday Harbor, WA 98250

From: Kelsey Demeter <kelsey@maritimeinjury.com>
Sent: Friday, May 11, 2018 4:59 PM
To: Community Development <cdp@sanjuanco.com>; Lynda Guernsey <LyndaG@sanjuanco.com>
Cc: Kelsey Demeter <kelsey@maritimeinjury.com>; Tom Evans <tom@maritimeinjury.com>; chris.osborn@foster.com; jeremy.eckert@foster.com; chris <chris@soellinglaw.com>; Julie Thompson <JulieT@sanjuanco.com>
Subject: Supplemental Appeal re PPROVO-17-0065/PPROVO-17-0066

Good Evening,

Please find Supplemental Appeal documents regarding the above matter on behalf of Thomas C. Evans, *pro se* and Box Bay Shellfish Farm LLC.

Best,
Kelsey Demeter
Paralegal



Kelsey Demeter • Paralegal • Injury at Sea
4020 East Madison Street, Suite 210, Seattle, WA
98112
Tel: 206.527.8008 • Toll Free: 1.800. SEA. SALT
Fax: 206.527.0725
E-
mail: kelsey@maritimeinjury.com www.injuryatsea.com

Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communication or 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.

Lynda Guernsey

From: Kelsey Demeter <kelsey@maritimeinjury.com>
Sent: Friday, May 11, 2018 4:59 PM
To: Community Development; Lynda Guernsey
Cc: Kelsey Demeter; Tom Evans; chris.osborn@foster.com; jeremy.eckert@foster.com; chris; Julie Thompson
Subject: Supplemental Appeal re PPROVO-17-0065/PPROVO-17-0066
Attachments: Ltr to Hearing Examiner re Supplemental Appeal.pdf; Supplemental Appeal PPROVO 17-0065 Box Bay.pdf; Supplemental Appeal PPROVO 17-0066 Box Bay.pdf; Supplemental Appeal PPROVO 17-0065 TCE.pdf; Supplemental Appeal PPROVO 17-0066 TCE.pdf

Good Evening,

Please find Supplemental Appeal documents regarding the above matter on behalf of Thomas C. Evans, *pro se* and Box Bay Shellfish Farm LLC.

Best,
Kelsey Demeter
Paralegal



Kelsey Demeter • Paralegal • Injury at Sea
4020 East Madison Street, Suite 210, Seattle,
WA 98112
Tel: 206.527.8008 • **Toll Free:** 1.800. SEA.
SALT
Fax: 206.527.0725
E-mail: kelsey@maritimeinjury.com
www.injuryatsea.com

Please be advised that this e-mail and 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.



May 11, 2018

S.J.C. DEPARTMENT OF

MAY 11 2018

COMMUNITY DEVELOPMENT

Via US Mail and E-mail

Department of Community Development
Attn: Hearings Examiner
135 Rhone Street
Friday Harbor, 98250
dcd@sanjuanco.com
LyndaG@sanjuanco.com

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

Dear Hearings Examiner:

Enclosed please find:

1. Supplemental Appeal for PPROVO-17-0065 on behalf of Thomas C. Evans;
2. Supplemental Appeal for PPROVO-17-0065 on behalf of Box Bay Shellfish Farm LLC;
3. Supplemental Appeal for PPROVO-17-0066 on behalf of Thomas C. Evans; and
4. Supplemental Appeal for PPROVO-17-0066 on behalf of Box Bay Shellfish Farm LLC

Following the SJC recommended decision in the above matters it was discovered SJC never checked with or copied the Washington State DNR about these proposals. As the attached documentation clearly discloses, private recreational docks and buoys are within the DNR jurisdiction and both are situated on State land. State law and WAC provisions strictly prohibit any revenue generating connection or purpose to residential docks and buoys. The attached DNR letter to Dan and Cheryl Stabbert informs them that the State specifically defines VRBO use *as a commercial use* and is not permitted on a residential dock or buoy. The Joint Use agreement between the parties makes no difference whatsoever. A copy of the DNR letter issued to Stabbert is attached to the supplement appeals above.

Very Truly Yours,


Thomas C. Evans
pro se


Box Bay Shellfish Farm LLC
By its Manager, Thomas C. Evans

Cc: Chris Osborn
Jeremy Eckert
Chris Soelling
Julie Thompson

MADISON PARK LAW OFFICES
4020 EAST MADISON STREET, SUITE 210,
SEATTLE, WASHINGTON 98112
TELEPHONE (206) 527-8008 • FAX (206) 527-0725

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

S.J.C. DEPARTMENT OF
MAY 11 2018
COMMUNITY DEVELOPMENT

BEFORE THE SAN JUAN COUNTY HEARING EXAMINER

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

Appellants,

v.

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

No. PPROVO-17-0065

**SUPPLEMENT TO
NOTICE OF APPEAL AND
ASSIGNMENT OF ERROR
(BOX BAY)**

COMES NOW Box Bay Shellfish Farm LLC (Box Bay) in the above entitled and foregoing matter and submits this supplement and assignment of error to appellants appeal filed on March 29, 2018.

On May 7, 2018, the Department of Natural Resources informed the parties that the use of a private dock in conjunction with a VRBO rental is, by law, considered a *commercial* use of a private rental joint use dock and buoys and is illegal under WAC 332-30-144(2)(c).

The implications of both the dock and buoys being on public lands, administered by the State Department of Natural Resources (DNR) makes any income generating use of the dock or buoys illegal. DNR has both statutory and administrative authority of improvements placed on public lands, which are defined as property beyond the mean high tide level. **Ex. 1** is a copy of the various

1 jurisdictional authorities dependent on tide level. Both the dock and buoys are well beyond this marker
2 and are all well within State owned lands.

3 The DNR, and the State, have both statutory authority (RCW 79.105.430 Private Recreational
4 Docks – Mooring buoys)(Ex. 2) and administrative authority (WAC 332-30-144)(Ex. 3) over private
5 recreational docks, specifically. These restrictions were completely overlooked by the SJC planning
6 department which never bothered to solicit input from DNR

7 The intent of the DNR regulation of joint use dock and private buoys was to make it easy for
8 private, abutting private property owners to build a dock and place a buoy without having to first get a
9 DNR lease for public lands. Using these improvements to make money is totally contrary to intent and
10 purpose of this grant.

11 WAC 332-30-144 (2)(c) defines "private recreational use" as follows:

12 (c) A "private recreational purpose" being *a non-income*
13 *producing*, leisure-time, and discretionary use by the
14 abutting residential owner(s).

15 WAC 332-30-144(5) provides for revocation of this permission for uses not permitted by WAC 332-
16 30-144(2)(c).

17 VRBO's are specifically defined as a commercial use in the SJC Comp. plan and are subject to
18 the terms, conditions, and limitations of a commercial use property:

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.*

Further, the DNR per the attached letter (Ex.4), *clearly* considers rental VRBO use as a
commercial use.

The result of the above is that the VRBO decisions in the two Stabbert VRBO permits are
based on complete error of law and misuse of fact. The SJC Planning Department looked at the Joint
Use Agreement between Stabbert/Evans as merely a private covenant which Stabbert/Evans would
have to rely on an arbitrator for resolution of disputes -such as Stabbert's proposed VRBO renters use
of the jointly owned dock and individually owned buoys. This was a mistake. State law, in and of itself
makes Stabbert's proposed VRBO renters use illegal and this is something SJC should have taken into

1 consideration and imposed strict restrictions on. Appellants Evans/Box Bay have sought SJC Planning
2 Department control of the prohibited use, which potentially would involve as many as 18 renters per
3 day on the dock or using the buoys. SJCC 18.40.270(i) requires strict compliance with all other
4 applicable State and local regulations. Clearly, the decision of the SJC Planning Departments decision
5 runs afoul of state law.

6 The Hearing Examiner is respectfully requested to find SJC and its VRBO recommendations as
7 clearly erroneous and in violation of State law. Very strict limitations should be placed on Stabbert
8 which will guarantee Evans/Box Bay will not be stuck having to be their own enforcement officers.
9 The dock entry should be locked, labeled as private use only – no trespassing - and any and all
10 advertising shall clearly disclose renters may not use the dock and buoys.

11
12 Respectfully submitted this 11th day of May

13 /s/ Thomas C. Evans

14 THOMAS C. EVANS, Manager Box Bay
15 4020 East Madison Street, Suite 210
16 Seattle, WA 98112
17 Tel: 206-527-5555
18 Fax: 206-527-0725
19 E-mail: tom@maritimeinjury.com
20
21

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

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 11th day of May at Orcas Island, Washington

s/ Thomas C. Evans
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 11th day of May at Orcas Island, Washington

s/ Thomas C. Evans
Thomas C. Evans

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

CERTIFICATE OF SERVICE

I certify on this date that I served the above document on the following individuals in the manner identified.

San Juan Hearing Examiner
Department of Community Development 135
Rhone Street
P.O. Box 947
Friday Harbor, WA 98250
dcd@sanjuanco.com
LyndaG@sanjuanco.com

[X] Via Email
[X] Via US Mail

Christopher R. Osborn, WSBA #13608
Jeremy M. Eckert, WSBA #42596
chris.osbom@foster.com
jeremy.eckert@foster.com
Foster Pepper PLLC
1111 Third Ave., Suite 3000
Seattle, WA 98101
P: 206-447-4400
F: 206-447-9700
Attorney for Respondents Dan and Cheryl Stabbert

[X] Via Email
[X] Via US Mail

Christopher J. Soelling PLLC
chris@soellinglaw.com
1001 4th Ave #4400
Seattle, WA 98154
206-389-1570

[X] Via Email
[X] Via US Mail

Dated this 11th day of May, 2018

s/ Kelsey Demeter
Kelsey Demeter, Paralegal

EXHIBIT 1

AQUATIC LAND
BOUNDARIES IN
WASHINGTON STATE

AQUATIC LAND BOUNDARIES IN WASHINGTON STATE

by Steven Ivey, PLS

for Land Surveyors Association of WA

January – March 2012

Steve Ivey is currently employed as an Aquatic Land Surveyor for the Washington Department of Natural Resources as the Department's aquatic land ownership specialist for 11 years. He provides support to the Department in resolving aquatic land ownership disputes, performs navigability assessments for rivers and lakes, and the preparation of supplemental maps for harbor areas in Washington. He has more than 30 years of experience in the land surveying profession with many years employed in the private sector at various locations in Wyoming, Montana, and Washington. He has an Associate Degree in Civil Engineering - Surveying and Construction Option from Southern Polytechnic State University in Marietta, GA. He has been a licensed surveyor since 1989; he is licensed in three states, and is a Certified Federal Surveyor (CFed).

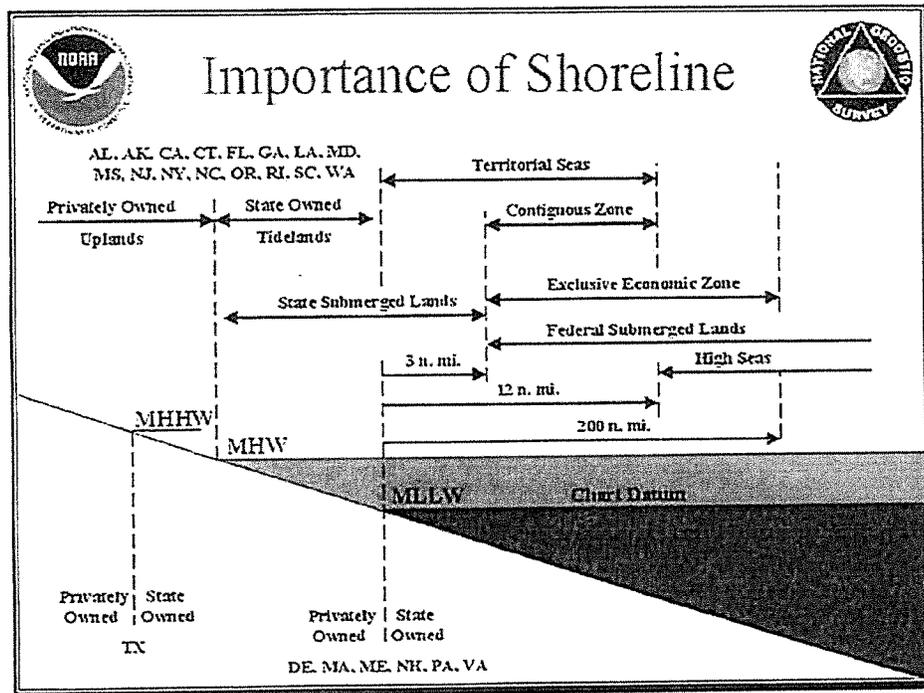


Figure: Shoreline boundaries for various states. Courtesy of NOAA, Department of Commerce

EXHIBIT 2

RCW 79.105.430

Private Recreational Docks –
Mooring buoys

RCW 79.105.430**Private recreational docks—Mooring buoys.**

(1) The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain without charge a dock on the areas if used exclusively for private recreational purposes and the area is not subject to prior rights, including any rights of upland, tideland, or shoreland owners as provided in RCW 79.125.400, 79.125.460, 79.125.410, and 79.130.010. The dock cannot be sold or leased separately from the upland residence. The dock cannot be used to moor boats for commercial or residential use. This permission is subject to applicable local, state, and federal rules and regulations governing location, design, construction, size, and length of the dock. Nothing in this subsection (1) prevents the abutting owner from obtaining a lease if otherwise provided by law.

(2) The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain a mooring buoy without charge if the boat that is moored to the buoy is used for private recreational purposes, the area is not subject to prior rights, including any rights of upland, tideland, or shoreland owners as provided in RCW 79.125.400, 79.125.460, 79.125.410, and 79.130.010, and the buoy will not obstruct the use of mooring buoys previously authorized by the department.

(a) The buoy must be located as near to the upland residence as practical, consistent with applicable rules and regulations and the provisions of this section. The buoy must be located, or relocated if necessary, to accommodate the use of lawfully installed and maintained buoys.

(b) If two or more residential owners, who otherwise qualify for free use under the provisions of this section, are in dispute over assertion of rights to install and maintain a mooring buoy in the same location, they may seek formal settlement through adjudication in superior court for the county in which the buoy site is located. In the adjudication, preference must be given to the residential owner that first installed and continually maintained and used a buoy on that site, if it meets all applicable rules, regulations, and provisions of this section, and then to the owner of the residential property nearest the site. Nothing in this section requires the department to mediate or otherwise resolve disputes between residential owners over the use of the same site for a mooring buoy.

(c) The buoy cannot be sold or leased separately from the abutting residential property. The buoy cannot be used to moor boats for commercial or residential use, nor to moor boats over sixty feet in length.

(d) If the department determines that it is necessary for secure moorage, the abutting residential owner may install and maintain a second mooring buoy, under the same provisions as the first, the use of which is limited to a second mooring line to the boat moored at the first buoy.

(e) The permission granted in this subsection (2) is subject to applicable local, state, and federal rules and regulations governing location, design, installation, maintenance, and operation of the mooring buoy, anchoring system, and moored boat. Nothing in this subsection (2) prevents a boat owner from obtaining a lease if otherwise provided by law. This subsection (2) also applies to areas that have been designated by the commissioner or the fish and wildlife commission as aquatic reserves.

(3) This permission to install and maintain a recreational dock or mooring buoy may be revoked by the department, or the department may direct the owner of a recreational dock or mooring buoy to relocate their dock or buoy, if the department makes a finding of public necessity to protect waterward access, ingress rights of other landowners, public health or

safety, or public resources. Circumstances prompting a finding of public necessity may include, but are not limited to, the dock, buoy, anchoring system, or boat posing a hazard or obstruction to navigation or fishing, contributing to degradation of aquatic habitat, or contributing to decertification of shellfish beds otherwise suitable for commercial or recreational harvest. The revocation may be appealed as provided for under RCW 79.105.160.

(4) Nothing in this section authorizes a boat owner to abandon a vessel at a recreational dock, mooring buoy, or elsewhere.

[2005 c 155 § 106; 2002 c 304 § 1; 2001 c 277 § 1; 1989 c 175 § 170; 1983 2nd ex.s. c 2 § 2. Formerly RCW 79.90.105.]

NOTES:

Effective date—1989 c 175: See note following RCW 34.05.010.

EXHIBIT 3

WAC 332-30-144

WAC 332-30-144**Private recreational docks.**

(1) **Applicability.** This section implements the permission created by RCW 79.105.430, Private recreational docks, which allows abutting residential owners, under certain circumstances, to install private recreational docks without charge. The limitations set forth in this section apply only to use of state-owned aquatic lands for private recreational docks under RCW 79.105.430. No restriction or regulation of other types of uses on aquatic lands is provided. This section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(2) **Eligibility.** The permission shall apply only to the following:

(a) An "abutting residential owner," being the owner of record of property physically bordering on public aquatic land and either used for single family housing or for a multifamily residence not exceeding four units per lot.

(b) A "dock," being a securely anchored or fixed, open walkway structure visible to boaters and kept in good repair extending from the upland property, primarily used as an aid to boating by the abutting residential owner(s), and accommodating moorage by not more than four pleasure boats typical to the body of water on which the dock is located. Two or more abutting residential owners may install and maintain a single joint-use dock provided it meets all other design requirements of this section; is the only dock used by those owners; and that the dock fronts one of the owners' property.

(c) A "private recreational purpose," being a nonincome-producing, leisure-time, and discretionary use by the abutting residential owner(s).

(d) State-owned aquatic lands outside harbor areas designated by the harbor line commission.

(3) **Uses not qualifying.** Examples of situations not qualifying for the permission include:

(a) Yacht and boat club facilities;

(b) Floating houses, as defined in WAC 332-30-106(23), and vessels used as a residence (as defined in WAC 332-30-106(62));

(c) Resorts;

(d) Multifamily dwellings, including condominium ownerships, with more than four units;

(e) Uses other than docks such as launches and railways not part of the dock, bulkheads, landfills, dredging, breakwaters, mooring buoys, swim floats, and swimming areas.

(4) **Limitations.**

(a) The permission does not apply to areas where the state has issued a reversionary use deed such as for shellfish culture, hunting and fishing, or park purposes; published an allocation of a special use and the dock is inconsistent with the allocation; or granted an authorization for use such as a lease, easement, or material purchase.

(b) Each dock owner using the permission is responsible for determining the availability of the public aquatic lands. Records of the department are open for public review. The department will research the availability of the public aquatic lands upon written request. A fee sufficient to cover costs shall be charged for this research.

(c) The permission is limited to docks that conform to adopted shoreline master programs and other local ordinances.

(d) The permission is not a grant of exclusive use of public aquatic lands to the dock owner. It does not prohibit public use of any aquatic lands around or under the dock. Owners of docks located on state-owned tidelands or shorelands must provide a safe, convenient, and clearly available means of pedestrian access over, around, or under the dock at all tide levels.

However, dock owners are not required to allow public use of their docks or access across private lands to state-owned aquatic lands.

(e) The permission is not transferable or assignable to anyone other than a subsequent owner of the abutting upland property and is continuously dependent on the nature of ownership and use of the properties involved.

(f) Vessels used as a residence and floating houses are not permitted to be moored at a private recreational dock, except when such moorage is necessary because of an emergency that immediately threatens human life or property, for the duration of the emergency only.

(5) **Revocation.** The permission may be revoked or canceled if:

(a) The dock or abutting residential owner has not met the criteria listed in subsection (2) or (4) of this section; or

(b) The dock significantly interferes with navigation or with navigational access to and from other upland properties. This degree of interference shall be determined from the character of the shoreline and waterbody, the character of other in-water development in the vicinity, and the degree of navigational use by the public and adjacent property owners;

(c) The dock interferes with preferred water-dependent uses established by law; or

(d) The dock is a public health or safety hazard.

(6) **Appeal of revocation.** Upon receiving written notice of revocation or cancellation, the abutting residential owner shall have thirty days from the date of notice to file for an administrative hearing under the contested case proceedings of chapter 34.05 RCW. If the action to revoke the permission is upheld, the owner shall correct the cited conditions and shall be liable to the state for any compensation due to the state from the use of the aquatic lands from the date of notice until permission requirements are met or until such permission is no longer needed. If the abutting residential owner disclaims ownership of the dock, the department may take actions to have it removed.

(7) **Current leases.** Current lessees of docks meeting the criteria in this section will be notified of their option to cancel the lease. They will be provided a reasonable time to respond. Lack of response will result in cancellation of the lease by the department.

(8) **Property rights.** No property rights in, or boundaries of, public aquatic lands are established by this section.

(9) **Lines of navigability.** The department will not initiate establishment of lines of navigability on any shorelands unless requested to do so by the shoreland owners or their representatives.

(10) Nothing in this section is intended to address statutes relating to sales of second class shorelands.

[Statutory Authority: RCW 79.105.360. WSR 06-06-005 (Order 724), § 332-30-144, filed 2/16/06, effective 3/19/06. Statutory Authority: RCW 79.90.455, 79.90.460. WSR 02-21-076 (Order 710), § 332-30-144, filed 10/17/02, effective 11/17/02. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. WSR 85-22-066 (Resolution No. 500), § 332-30-144, filed 11/5/85.]

EXHIBIT 4

Department of Natural Resources
letter dated May 7, 2018



HILARY S. FRANZ
COMMISSIONER OF PUBLIC LANDS

May 7, 2018

**DEPARTMENT OF
NATURAL RESOURCES**

NORTHWEST REGION
919 N TOWNSHIP STREET
SEDRO-WOOLLEY, WA 98284-9384

360-856-3500
FAX 360-856-2150
TR5 711
NORTHWEST REGION@DNR.WA.GOV
WWW.DNR.WA.GOV

Dan and Cheryl Stabbert
13019 NE 61st Place
Kirkland, WA 98107

**Subject: Vacation Rental and Use of State-Owned Aquatic Lands -- Private Recreational
Dock/Mooring Buoys, Obstruction Pass, Orcas Island**

Dear Mr. and Mrs. Stabbert:

I am writing to you regarding the dock and mooring buoys located in Obstruction Pass, Orcas Island that are associated with your upland property, San Juan County tax parcel 161650403000 with an address of 2318 Obstruction Pass Rd. A portion of the dock and the mooring buoys are located on state-owned aquatic land (SOAL) managed by Washington Department of Natural Resources (DNR). Typically, projects taking place on or over SOAL require an authorization from DNR, however, Chapter 79.105.430 of the Revised Code of Washington (RCW) provides permission under certain circumstances for private recreational docks and private recreational mooring buoys to be installed and maintained without charge. Chapter 332-30-144 of the Washington Administrative Code (WAC) specifies what does and does not qualify for a private recreational dock.

It is my understanding that you recently received a Land Use Vacation Rental Permit for the above-mentioned property from San Juan County Department of Community Development. The purpose of this letter is to notify you that in order to use and maintain your dock without charge, the dock must be used exclusively for private recreational purposes and cannot be used commercially. WAC 332-30-144(2)(c) states the following:

A "private recreational purpose" being a nonincome-producing, leisure-time, and discretionary use by the abutting residential owner(s).

Allowing use of the dock through a short-term rental agreement disqualifies them from the private recreation dock exemption. If you intend to allow renters of your vacation property to use the dock, you would need to apply for an authorization from DNR, which would be in the form

Mr. and Mrs. Stabbert
May 7, 2018
Page 2 of 2

of a lease. I encourage you to learn more about the process for leasing SOAL by reading this fact sheet on our website:

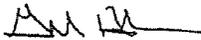
https://www.dnr.wa.gov/publications/aqr_fs_leasing_guide_0816.pdf?2182kh2

Please note that for joint-use docks, all owners of the dock must apply for the authorization from DNR. If you would like to proceed with the application process or just have questions, I would be happy to assist you.

Please note that recreational mooring buoys must be registered with DNR even if they qualify under RCW 79.105.430. Please fill out the mooring buoy application at www.dnr.wa.gov to register your buoy(s) if you have not already done so.

If you have any questions about this letter, please contact me by phone at 360-854-2858 or by email at gabriel.harder@dnr.wa.gov.

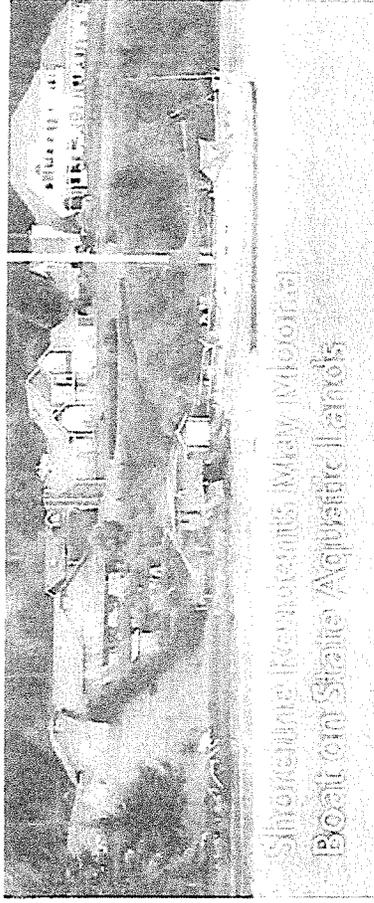
Sincerely,



Gabe Harder, Land Manager
Aquatic Resources Division, Orca-Straits District
919 N. Township St.
Sedro-Woolley, WA 98284

Enclosures: RCW 79.105.430
WAC 332-30-144
DNR-Mooring Buoy Brochure

c: Karla Lopez, Agent (by email)
Tom Evans, Joint owner (by email)



Qualifying for Free Use of State Lands for Your New Mooring Buoy

Individual owners of "uplands" next to state aquatic lands might qualify for free use of the state lands to install a recreational buoy.

A mooring buoy qualifies for free use if the conditions meet all of these criteria:

- ▶ The applicant owns residential property next to state-owned shorelands, tidelands, or related beds of navigable waters (other than harbor areas).
- ▶ The moored boat is used for private recreational purposes.
- ▶ The moored boat is not more than 50' (60' feet in length).
- ▶ The area being used for the buoy is not subject to prior rights.
- ▶ The mooring buoy will not obstruct use of previously authorized mooring buoys.

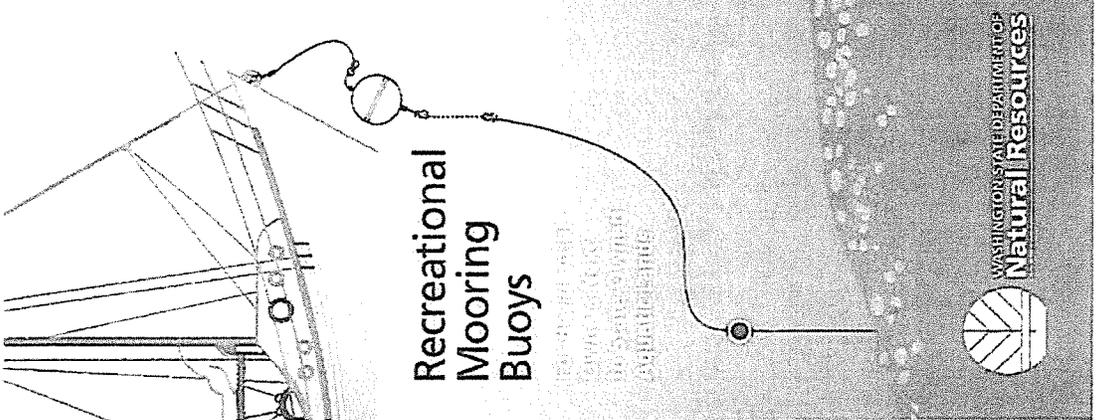
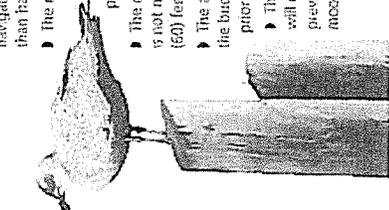
If your buoy meets these criteria, fill out the mooring buoy/boatlift application at www.dnr.wa.gov. Mail it to DNR's Aquatic District Office in your area, listed here:

- ▶ If rights disputes over the assertion of rights to superior court, and it defines the circumstances around which Washington's Department of Natural Resources (DNR) may require a buoy to be relocated or removed:
- ▶ To protect access of other landowners;
- ▶ If it poses a hazard to or obstructs navigation or fishing;
- ▶ If it contributes to degradation of aquatic habitat;
- ▶ If it contributes to decalcification of shellfish beds.

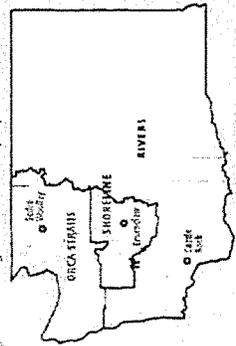
Laws Change for Recreational Mooring Buoys

The 2001 and 2002 Legislatures passed laws about recreational mooring buoys. Individuals who own residential property abutting state-owned aquatic lands may install a mooring buoy on those public lands for recreational purposes without charge.

The law prohibits commercial and transient uses, and living on boats moored to recreational buoys on state lands. It limits boats to six feet or less in length, and allows for a second buoy to help secure moorage to the first buoy.



DNR manages the 2.6 million acres of State Aquatic Lands statewide—lands under the marine and fish waters and beaches. These mostly submerged lands offer a variety of recreational, commercial, and public uses and benefits. DNR's aquatic districts provide on-the-ground management for your habitat.



919 N. Township St.
Sedro Woolley, WA 98284
(360) 856-3500
Fax (360) 856-3159

601 Road Rd.
P.O. Box 350
Castle Rock, WA 98611
(360) 877-0225
Fax (360) 274-4196

Mooring buoy information and application are online at www.dnr.wa.gov

Type mooring buoy in the upper right search box.

For assistance preparing permits, contact the Office of Regulatory Assistance. They provide statewide environmental permit information at (360) 407-7037 or 1-800-977-6043



WASHINGTON STATE DEPARTMENT OF Natural Resources

USE REQUIREMENTS

Although residential landowners whose property abuts state aquatic lands may use a recreational mooring buoy for free, they are still responsible for meeting requirements for the installation of the buoy, including:

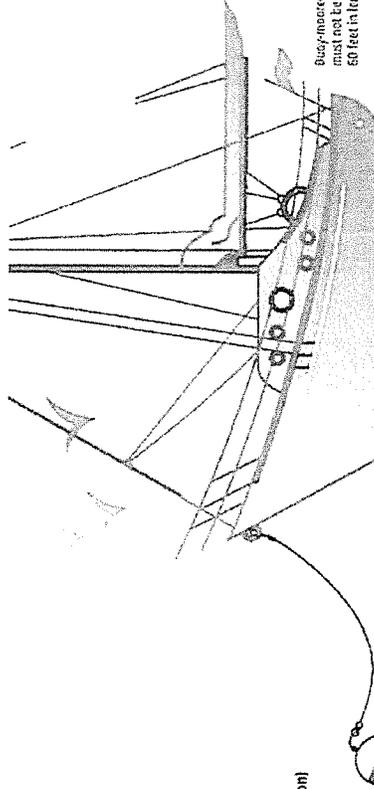
- ▶ **State Registration with DNR**
Complete an application.
- ▶ **City Restrictions**
If you live within city limits, allowable uses vary. Contact your city's planning office for requirements.

Contact the following agencies to determine if a permit or authorization is required:

- ▶ **WA Department of Fish and Wildlife Hydraulic Project Approval**
(360) 902-2534
- ▶ **WA Department of Ecology**
(360) 407-6400
- ▶ **U.S. Army Corps of Engineers (Permit)**
(206) 764-3495
- ▶ **Shoreline Master Program (Permit or Exemption)**
Requirements differ by County, addressed through your local county planning office.

PLEASE NOTE
Private recreational mooring buoys are not authorized for residential (living on the boat) or commercial purposes.

Booy-moored boat must not be more than 60 feet in length.



FOR RESIDENTIAL PROPERTY OWNERS

How to Moor Your Boat On State-Owned Aquatic Lands

Some mooring system designs have the potential to damage underwater lands and marine vegetation around the buoy. DNR's Land Managers can help you select a system that best suits your area. State Department of Fish and Wildlife has found two designs to be less destructive to ecosystems, fish and wildlife:

All-Rope System

High-strength nylon rope joins buoy to anchor. The rope's buoyancy keeps it from dragging along the bottom and killing marine vegetation. Regular maintenance is required to keep barnacles and mussels from colonizing on the rope and weighing it down to scour the area.

Mid-Line Float System (Preferred)

A mid-line float system (as shown here) keeps the anchor line from dragging on the bottom, which can kill marine vegetation.

Mooring buoy
As an alternative to a hydraulic project approval, mark buoy with the number.

Keep ends of mooring buoy floating to the surface during slack water.

6" - 8" rope attached to the poly rope a distance equal to 1/3 depth at high tide from anchor.

Anchor
Vessel may be length of mooring buoy located within the vessel swing.

Mooring buoys have the potential to impact aquatic vegetation. DNR discourages placement of mooring buoys in areas that impact aquatic habitat, including riparian beds and eelgrass meadows.

The following mathematics formulas may help you calculate the anchor line length (L) and vessel swing (S) for your boat. Aquatic District office can help with the calculations (please numbers on buoy).

$$\text{Anchor line Length (L)} = \text{Scope} \times \text{DERT}$$

$$\text{Vessel Swing} = \sqrt{(L^2) - (\text{DERT})^2} + \text{Mooring line} + \text{Vessel length}$$

SCOPE
Ratio of anchor line length to water depth. Washington State Parks recommends between 4 and 7 feet of anchor line for every foot of water depth.

DERT
Water Depth at Extreme High Tide

DELT
Water Depth at Extreme Low Tide

L (Length)
Anchor line length.

VESEL SWING



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

S.J.C. DEPARTMENT OF
MAY 11 2018
COMMUNITY DEVELOPMENT

BEFORE THE SAN JUAN COUNTY HEARING EXAMINER

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

Appellants,

No. PPROVO-17-0066

v.

**SUPPLEMENT TO
NOTICE OF APPEAL AND
ASSIGNMENT OF ERROR
(BOX BAY)**

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

COMES NOW Box Bay Shellfish Farm LLC (Box Bay) in the above entitled and foregoing matter and submits this supplement and assignment of error to appellants appeal filed on March 29, 2018.

On May 7, 2018, the Department of Natural Resources informed the parties that the use of a private dock in conjunction with a VRBO rental is, by law, considered a *commercial* use of a private rental joint use dock and buoys and is illegal under WAC 332-30-144(2)(c).

The implications of both the dock and buoys being on public lands, administered by the State Department of Natural Resources (DNR) makes any income generating use of the dock or buoys illegal. DNR has both statutory and administrative authority of improvements placed on public lands, which are defined as property beyond the mean high tide level. **Ex. 1** is a copy of the various

1 jurisdictional authorities dependent on tide level. Both the dock and buoys are well beyond this marker
2 and are all well within State owned lands.

3 The DNR, and the State, have both statutory authority (RCW 79.105.430 Private Recreational
4 Docks – Mooring buoys)(Ex. 2) and administrative authority (WAC 332-30-144)(Ex. 3) over private
5 recreational docks, specifically. These restrictions were completely overlooked by the SJC planning
6 department which never bothered to solicit input from DNR

7 The intent of the DNR regulation of joint use dock and private buoys was to make it easy for
8 private, abutting private property owners to build a dock and place a buoy without having to first get a
9 DNR lease for public lands. Using these improvements to make money is totally contrary to intent and
10 purpose of this grant.

11 WAC 332-30-144 (2)(c) defines "private recreational use" as follows:

12 (c) A "private recreational purpose" being *a non-income*
13 *producing, leisure-time, and discretionary use by the*
14 *abutting residential owner(s).*

15 WAC 332-30-144(5) provides for revocation of this permission for uses not permitted by WAC 332-
16 30-144(2)(c).

17 VRBO's are specifically defined as a commercial use in the SJC Comp. plan and are subject to
18 the terms, conditions, and limitations of a commercial use property:

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.***

Further, the DNR per the attached letter (Ex.4), *clearly* considers rental VRBO use as a
commercial use.

The result of the above is that the VRBO decisions in the two Stabbert VRBO permits are
based on complete error of law and misuse of fact. The SJC Planning Department looked at the Joint
Use Agreement between Stabbert/Evans as merely a private covenant which Stabbert/Evans would
have to rely on an arbitrator for resolution of disputes -such as Stabbert's proposed VRBO renters use
of the jointly owned dock and individually owned buoys. This was a mistake. State law, in and of itself
makes Stabbert's proposed VRBO renters use illegal and this is something SJC should have taken into

1 consideration and imposed strict restrictions on. Appellants Evans/Box Bay have sought SJC Planning
2 Department control of the prohibited use, which potentially would involve as many as 18 renters per
3 day on the dock or using the buoys. SJCC 18.40.270(i) requires strict compliance with all other
4 applicable State and local regulations. Clearly, the decision of the SJC Planning Departments decision
5 runs afoul of state law.

6 The Hearing Examiner is respectfully requested to find SJC and its VRBO recommendations as
7 clearly erroneous and in violation of State law. Very strict limitations should be placed on Stabbert
8 which will guarantee Evans/Box Bay will not be stuck having to be their own enforcement officers.
9 The dock entry should be locked, labeled as private use only – no trespassing - and any and all
10 advertising shall clearly disclose renters may not use the dock and buoys.

11
12
13
14
15
16
17
18
19
20
21
Respectfully submitted this 11th day of May

/s/ Thomas C. Evans
THOMAS C. EVANS, Manager Box Bay
4020 East Madison Street, Suite 210
Seattle, WA 98112
Tel: 206-527-5555
Fax: 206-527-0725
E-mail: tom@maritimeinjury.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

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 11th day of May at Orcas Island, Washington

s/ Thomas C. Evans
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 11th day of May at Orcas Island, Washington

s/ Thomas C. Evans
Thomas C. Evans

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

CERTIFICATE OF SERVICE

I certify on this date that I served the above document on the following individuals in the manner identified.

San Juan Hearing Examiner
Department of Community Development 135 [X] Via Email
Rhone Street [X] Via US Mail
P.O. Box 947
Friday Harbor, WA 98250
dcd@sanjuanco.com
LyndaG@sanjuanco.com

Christopher R. Osborn, WSBA #13608
Jeremy M. Eckert, WSBA #42596 [X] Via Email
chris.osbom@foster.com [X] Via US Mail
jeremy.eckert@foster.com
Foster Pepper PLLC
1111 Third Ave., Suite 3000
Seattle, WA 98101
P: 206-447-4400
F: 206-447-9700
Attorney for Respondents Dan and Cheryl Stabbert

Christopher J. Soelling PLLC [X] Via Email
chris@soellinglaw.com [X] Via US Mail
1001 4th Ave #4400
Seattle, WA 98154
206-389-1570

Dated this 11th day of May, 2018

s/ Kelsey Demeter
Kelsey Demeter, Paralegal

EXHIBIT 1

**AQUATIC LAND
BOUNDARIES IN
WASHINGTON STATE**

AQUATIC LAND BOUNDARIES IN WASHINGTON STATE

by Steven Ivey, PLS

for Land Surveyors Association of WA

January – March 2012

Steve Ivey is currently employed as an Aquatic Land Surveyor for the Washington Department of Natural Resources as the Department's aquatic land ownership specialist for 11 years. He provides support to the Department in resolving aquatic land ownership disputes, performs navigability assessments for rivers and lakes, and the preparation of supplemental maps for harbor areas in Washington. He has more than 30 years of experience in the land surveying profession with many years employed in the private sector at various locations in Wyoming, Montana, and Washington. He has an Associate Degree in Civil Engineering - Surveying and Construction Option from Southern Polytechnic State University in Marietta, GA. He has been a licensed surveyor since 1989; he is licensed in three states, and is a Certified Federal Surveyor (CFed).

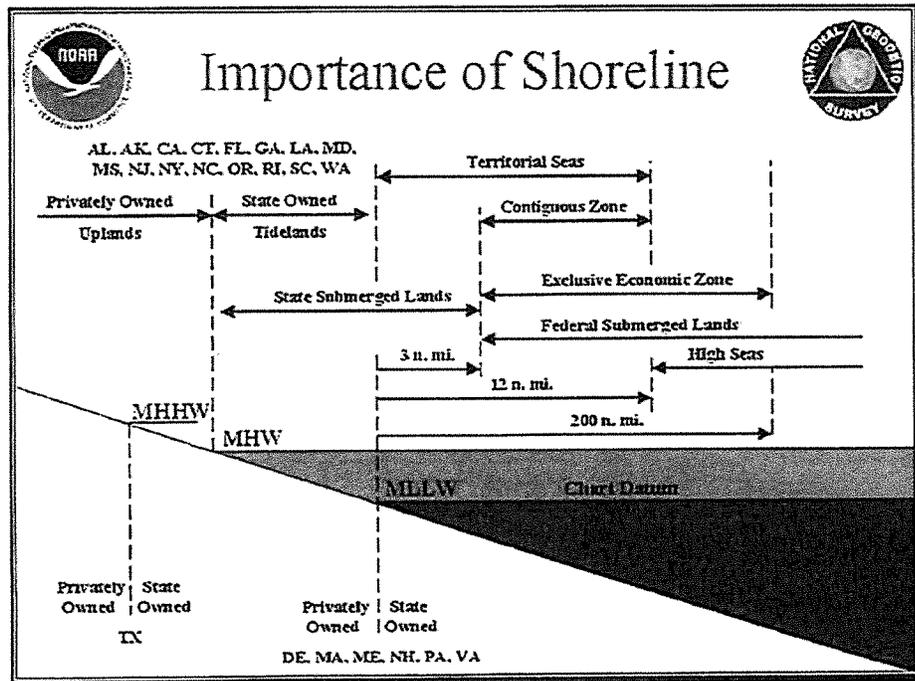


Figure: Shoreline boundaries for various states. Courtesy of NOAA, Department of Commerce

EXHIBIT 2

RCW 79.105.430

Private Recreational Docks –
Mooring buoys

RCW 79.105.430**Private recreational docks—Mooring buoys.**

(1) The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain without charge a dock on the areas if used exclusively for private recreational purposes and the area is not subject to prior rights, including any rights of upland, tideland, or shoreland owners as provided in RCW 79.125.400, 79.125.460, 79.125.410, and 79.130.010. The dock cannot be sold or leased separately from the upland residence. The dock cannot be used to moor boats for commercial or residential use. This permission is subject to applicable local, state, and federal rules and regulations governing location, design, construction, size, and length of the dock. Nothing in this subsection (1) prevents the abutting owner from obtaining a lease if otherwise provided by law.

(2) The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain a mooring buoy without charge if the boat that is moored to the buoy is used for private recreational purposes, the area is not subject to prior rights, including any rights of upland, tideland, or shoreland owners as provided in RCW 79.125.400, 79.125.460, 79.125.410, and 79.130.010, and the buoy will not obstruct the use of mooring buoys previously authorized by the department.

(a) The buoy must be located as near to the upland residence as practical, consistent with applicable rules and regulations and the provisions of this section. The buoy must be located, or relocated if necessary, to accommodate the use of lawfully installed and maintained buoys.

(b) If two or more residential owners, who otherwise qualify for free use under the provisions of this section, are in dispute over assertion of rights to install and maintain a mooring buoy in the same location, they may seek formal settlement through adjudication in superior court for the county in which the buoy site is located. In the adjudication, preference must be given to the residential owner that first installed and continually maintained and used a buoy on that site, if it meets all applicable rules, regulations, and provisions of this section, and then to the owner of the residential property nearest the site. Nothing in this section requires the department to mediate or otherwise resolve disputes between residential owners over the use of the same site for a mooring buoy.

(c) The buoy cannot be sold or leased separately from the abutting residential property. The buoy cannot be used to moor boats for commercial or residential use, nor to moor boats over sixty feet in length.

(d) If the department determines that it is necessary for secure moorage, the abutting residential owner may install and maintain a second mooring buoy, under the same provisions as the first, the use of which is limited to a second mooring line to the boat moored at the first buoy.

(e) The permission granted in this subsection (2) is subject to applicable local, state, and federal rules and regulations governing location, design, installation, maintenance, and operation of the mooring buoy, anchoring system, and moored boat. Nothing in this subsection (2) prevents a boat owner from obtaining a lease if otherwise provided by law. This subsection (2) also applies to areas that have been designated by the commissioner or the fish and wildlife commission as aquatic reserves.

(3) This permission to install and maintain a recreational dock or mooring buoy may be revoked by the department, or the department may direct the owner of a recreational dock or mooring buoy to relocate their dock or buoy, if the department makes a finding of public necessity to protect waterward access, ingress rights of other landowners, public health or

safety, or public resources. Circumstances prompting a finding of public necessity may include, but are not limited to, the dock, buoy, anchoring system, or boat posing a hazard or obstruction to navigation or fishing, contributing to degradation of aquatic habitat, or contributing to decertification of shellfish beds otherwise suitable for commercial or recreational harvest. The revocation may be appealed as provided for under RCW 79.105.160.

(4) Nothing in this section authorizes a boat owner to abandon a vessel at a recreational dock, mooring buoy, or elsewhere.

[2005 c 155 § 106; 2002 c 304 § 1; 2001 c 277 § 1; 1989 c 175 § 170; 1983 2nd ex.s. c 2 § 2. Formerly RCW 79.90.105.]

NOTES:

Effective date—1989 c 175: See note following RCW 34.05.010.

EXHIBIT 3

WAC 332-30-144

WAC 332-30-144**Private recreational docks.**

(1) **Applicability.** This section implements the permission created by RCW 79.105.430, Private recreational docks, which allows abutting residential owners, under certain circumstances, to install private recreational docks without charge. The limitations set forth in this section apply only to use of state-owned aquatic lands for private recreational docks under RCW 79.105.430. No restriction or regulation of other types of uses on aquatic lands is provided. This section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(2) **Eligibility.** The permission shall apply only to the following:

(a) An "abutting residential owner," being the owner of record of property physically bordering on public aquatic land and either used for single family housing or for a multifamily residence not exceeding four units per lot.

(b) A "dock," being a securely anchored or fixed, open walkway structure visible to boaters and kept in good repair extending from the upland property, primarily used as an aid to boating by the abutting residential owner(s), and accommodating moorage by not more than four pleasure boats typical to the body of water on which the dock is located. Two or more abutting residential owners may install and maintain a single joint-use dock provided it meets all other design requirements of this section; is the only dock used by those owners; and that the dock fronts one of the owners' property.

(c) A "private recreational purpose," being a nonincome-producing, leisure-time, and discretionary use by the abutting residential owner(s).

(d) State-owned aquatic lands outside harbor areas designated by the harbor line commission.

(3) **Uses not qualifying.** Examples of situations not qualifying for the permission include:

(a) Yacht and boat club facilities;

(b) Floating houses, as defined in WAC 332-30-106(23), and vessels used as a residence (as defined in WAC 332-30-106(62));

(c) Resorts;

(d) Multifamily dwellings, including condominium ownerships, with more than four units;

(e) Uses other than docks such as launches and railways not part of the dock, bulkheads, landfills, dredging, breakwaters, mooring buoys, swim floats, and swimming areas.

(4) **Limitations.**

(a) The permission does not apply to areas where the state has issued a reversionary use deed such as for shellfish culture, hunting and fishing, or park purposes; published an allocation of a special use and the dock is inconsistent with the allocation; or granted an authorization for use such as a lease, easement, or material purchase.

(b) Each dock owner using the permission is responsible for determining the availability of the public aquatic lands. Records of the department are open for public review. The department will research the availability of the public aquatic lands upon written request. A fee sufficient to cover costs shall be charged for this research.

(c) The permission is limited to docks that conform to adopted shoreline master programs and other local ordinances.

(d) The permission is not a grant of exclusive use of public aquatic lands to the dock owner. It does not prohibit public use of any aquatic lands around or under the dock. Owners of docks located on state-owned tidelands or shorelands must provide a safe, convenient, and clearly available means of pedestrian access over, around, or under the dock at all tide levels.

However, dock owners are not required to allow public use of their docks or access across private lands to state-owned aquatic lands.

(e) The permission is not transferable or assignable to anyone other than a subsequent owner of the abutting upland property and is continuously dependent on the nature of ownership and use of the properties involved.

(f) Vessels used as a residence and floating houses are not permitted to be moored at a private recreational dock, except when such moorage is necessary because of an emergency that immediately threatens human life or property, for the duration of the emergency only.

(5) **Revocation.** The permission may be revoked or canceled if:

(a) The dock or abutting residential owner has not met the criteria listed in subsection (2) or (4) of this section; or

(b) The dock significantly interferes with navigation or with navigational access to and from other upland properties. This degree of interference shall be determined from the character of the shoreline and waterbody, the character of other in-water development in the vicinity, and the degree of navigational use by the public and adjacent property owners;

(c) The dock interferes with preferred water-dependent uses established by law; or

(d) The dock is a public health or safety hazard.

(6) **Appeal of revocation.** Upon receiving written notice of revocation or cancellation, the abutting residential owner shall have thirty days from the date of notice to file for an administrative hearing under the contested case proceedings of chapter 34.05 RCW. If the action to revoke the permission is upheld, the owner shall correct the cited conditions and shall be liable to the state for any compensation due to the state from the use of the aquatic lands from the date of notice until permission requirements are met or until such permission is no longer needed. If the abutting residential owner disclaims ownership of the dock, the department may take actions to have it removed.

(7) **Current leases.** Current lessees of docks meeting the criteria in this section will be notified of their option to cancel the lease. They will be provided a reasonable time to respond. Lack of response will result in cancellation of the lease by the department.

(8) **Property rights.** No property rights in, or boundaries of, public aquatic lands are established by this section.

(9) **Lines of navigability.** The department will not initiate establishment of lines of navigability on any shorelands unless requested to do so by the shoreland owners or their representatives.

(10) Nothing in this section is intended to address statutes relating to sales of second class shorelands.

[Statutory Authority: RCW 79.105.360. WSR 06-06-005 (Order 724), § 332-30-144, filed 2/16/06, effective 3/19/06. Statutory Authority: RCW 79.90.455, 79.90.460. WSR 02-21-076 (Order 710), § 332-30-144, filed 10/17/02, effective 11/17/02. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. WSR 85-22-066 (Resolution No. 500), § 332-30-144, filed 11/5/85.]

EXHIBIT 4

Department of Natural Resources
letter dated May 7, 2018



HILARY S. FRANZ
COMMISSIONER OF PUBLIC LANDS

May 7, 2018

**DEPARTMENT OF
NATURAL RESOURCES**

NORTHWEST REGION
919 N TOWNSHIP STREET
SEDRO-WOOLLEY, WA 98284-9384

360-856-3500
FAX 360-856-2150
TRS 711
NORTHWEST.REGION@DNR.WA.GOV
WWW.DNR.WA.GOV

Dan and Cheryl Stabbert
13019 NE 61st Place
Kirkland, WA 98107

**Subject: Vacation Rental and Use of State-Owned Aquatic Lands -- Private Recreational
Dock/Mooring Buoys, Obstruction Pass, Orcas Island**

Dear Mr. and Mrs. Stabbert:

I am writing to you regarding the dock and mooring buoys located in Obstruction Pass, Orcas Island that are associated with your upland property, San Juan County tax parcel 161650403000 with an address of 2318 Obstruction Pass Rd. A portion of the dock and the mooring buoys are located on state-owned aquatic land (SOAL) managed by Washington Department of Natural Resources (DNR). Typically, projects taking place on or over SOAL require an authorization from DNR, however, Chapter 79.105.430 of the Revised Code of Washington (RCW) provides permission under certain circumstances for private recreational docks and private recreational mooring buoys to be installed and maintained without charge. Chapter 332-30-144 of the Washington Administrative Code (WAC) specifies what does and does not qualify for a private recreational dock.

It is my understanding that you recently received a Land Use Vacation Rental Permit for the above-mentioned property from San Juan County Department of Community Development. The purpose of this letter is to notify you that in order to use and maintain your dock without charge, the dock must be used exclusively for private recreational purposes and cannot be used commercially. WAC 332-30-144(2)(c) states the following:

A "private recreational purpose" being a nonincome-producing, leisure-time, and discretionary use by the abutting residential owner(s).

Allowing use of the dock through a short-term rental agreement disqualifies them from the private recreation dock exemption. If you intend to allow renters of your vacation property to use the dock, you would need to apply for an authorization from DNR, which would be in the form

Mr. and Mrs. Stabbert
May 7, 2018
Page 2 of 2

of a lease. I encourage you to learn more about the process for leasing SOAL by reading this fact sheet on our website:

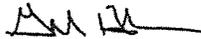
https://www.dnr.wa.gov/publications/aqr_fs_leasing_guide_0816.pdf?2182kh2

Please note that for joint-use docks, all owners of the dock must apply for the authorization from DNR. If you would like to proceed with the application process or just have questions, I would happy to assist you.

Please note that recreational mooring buoys must be registered with DNR even if they qualify under RCW 79.105.430. Please fill out the mooring buoy application at www.dnr.wa.gov to register your buoy(s) if you have not already done so.

If you have any questions about this letter, please contact me by phone at 360-854-2858 or by email at gabriel.harder@dnr.wa.gov.

Sincerely,



Gabe Harder, Land Manager
Aquatic Resources Division, Orca-Straits District
919 N. Township St.
Sedro-Woolley, WA 98284

Enclosures: RCW 79.105.430
WAC 332-30-144
DNR-Mooring Buoy Brochure

c: Karla Lopez, Agent (by email)
Tom Evans, Joint owner (by email)



DNR 443-0011 02/04/2014

Qualifying for Free Use of State Lands for Your New Mooring Buoy

Residential owners of "uplands" next to state aquatic lands might qualify for free use of the state lands to install a recreational buoy.

A mooring buoy qualifies for free use if the conditions meet all of these criteria:

- ▶ The applicant owns residential property next to state-owned shorelands, tidelands, or related beds of navigable waters (other than harbor areas).
- ▶ The moored boat is used for private recreational purposes.
- ▶ The moored boat is not more than sixty (60) feet in length.
- ▶ The area being used for the buoy is not subject to prior rights.
- ▶ The mooring buoy will not obstruct use of previously authorized mooring buoys.
- ▶ The mooring buoy is located on state aquatic lands, but as near to the shore of residence as practical; and
- ▶ All applicable local, state, and federal rules and regulations have been met.

If your buoy meets these criteria, fill out the mooring buoy/boatlift application at www.dnr.wa.gov. Mail it to DNR's Aquatic District Office in your area, listed here.

Boatlifts on state aquatic lands require the same application. Boatlifts have a yearly fee.

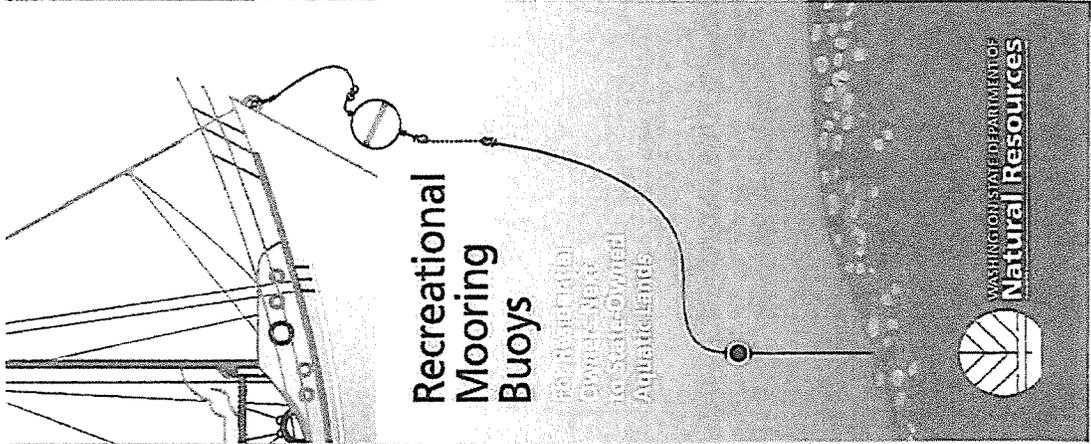
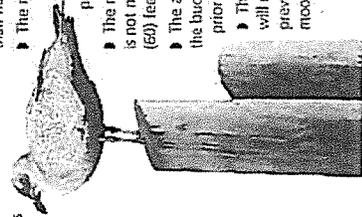
Laws Change for Recreational Mooring Buoys

The 2001 and 2002 legislatures passed laws about recreational mooring buoys. Individuals who own residential property abutting state-owned aquatic lands may install a mooring buoy on those public lands for recreational purposes without charge.

The law prohibits commercial and transient uses, and living on boats moored to recreational buoys on state lands. It limits boats to sixty feet or less in length, and allows for a second buoy to help secure moorage to the first buoy.

It'd rights disputes over the assertion of rights to superior court, and it defines the circumstances around which Washington's Department of Natural Resources (DNR) may require a buoy to be relocated or removed:

- ▶ To protect access of other landowners.
- ▶ If it poses a hazard to or obstructs navigation or fishing.
- ▶ If it contributes to degradation of aquatic habitat.
- ▶ If it contributes to declassification of shellfish beds.



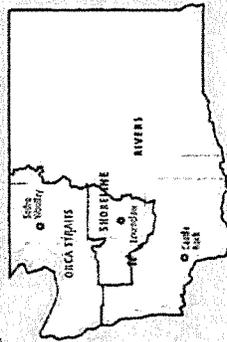
Recreational Mooring Buoys

FOR RESIDENTIAL OWNERS NEAR TO STATE-OWNED AQUATIC LANDS



Aquatic Resources District Offices

DNR manages the 2.6 million acres of State Aquatic Lands statewide—lands under the marine and fresh waters, and beaches. These mostly submerged lands offer aquatic habitat, navigation, commerce, and public use and access. DNR's aquatic districts provide on-the-ground management.



GRAYS HARBOR DISTRICT
601 Bond Rd.
P.O. Box 230
Coke Creek, WA 98611
(360) 377-2025
Fax: (360) 274-4196

SHORELINE DISTRICT
950 Lamm Ave.
Bremerton, WA 98312
(360) 835-1611
Fax: (360) 835-1672

Mooring buoy information and application are online at www.dnr.wa.gov

Type "mooring buoy" in the upper right search tool.

For assistance preparing permits, contact the **Office of Regulatory Assistance**. They provide statewide environmental permit information, at **(360) 407-7037** or **1-800-917-0043**



WASHINGTON STATE DEPARTMENT OF **Natural Resources**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

S.J.C. DEPARTMENT OF
MAY 11 2018
COMMUNITY DEVELOPMENT

BEFORE THE SAN JUAN COUNTY HEARING EXAMINER

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

Appellants,

v.

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

No. PPROVO-17-0065

**SUPPLEMENT TO
NOTICE OF APPEAL AND
ASSIGNMENT OF ERROR
(THOMAS C. EVANS)**

COMES NOW Thomas C. Evans (Evans) as attorney appearing pro-se in the above entitled and foregoing matter and submits this supplement and assignment of error to appellants appeal filed on March 29, 2018.

On May 7, 2018, the Department of Natural Resources informed the parties that the use of a private dock in conjunction with a VRBO rental is, by law, considered a *commercial* use of a private rental joint use dock and buoys and is illegal under WAC 332-30-144(2)(c).

The implications of both the dock and buoys being on public lands, administered by the State Department of Natural Resources (DNR) makes any income generating use of this including, specifically VRBO use, against the law. DNR has both statutory authority and administrative authority of anything placed on public lands, which are defined as property beyond the mean high tide level. **Ex.**

1 It is a copy of the various jurisdictional authorities dependent on tide level. Both the dock and buoys
2 are well beyond this marker and are all well within State owned lands.

3 The DNR, and the State, have both statutory authority (RCW 79.105.430 Private Recreational
4 Docks – Mooring buoys)(Ex. 2) and administrative authority (WAC 332-30-144)(Ex. 3) over private
5 recreational docks, specifically. These restrictions were completely overlooked by the SJC planning
6 Department which never bothered to solicit input from DNR

7 The intent of the DNR regulation of joint use dock and private buoys was to make it easy for
8 private, abutting private property owners to build a dock and place a buoy without having to first get a
9 DNR lease for public lands. Using these improvements to make money is totally contrary to intent and
10 purpose of this grant.

11 WAC 332-30-144 (2)(c) defines "private recreational use" as follows:

12 (c) A "private recreational purpose" being *a non-income*
13 *producing*, leisure-time, and discretionary use by the
14 abutting residential owner(s).

15 WAC 332-30-144(5) provides for revocation of this permission for uses not permitted by WAC 332-
16 30-144(2)(c).

17 VRBO's are specifically defined as a commercial use in the SJC Comp. plan and are subject to
18 the terms, conditions, and limitations of a commercial use property:

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.*

Further, the DNR per the attached letter (Ex.4), *clearly* considers rental VRBO use as a
commercial use.

The result of the above is that the VRBO decisions in the two Stabbert VRBO permits are
based on complete error of law and error of fact. The SJC Planning Department looked at the Joint Use
Agreement between Stabbert/Evans as merely a private covenant which Stabbert/Evans would have to
rely on an arbitrator for resolution of disputes -such as Stabbert's proposed VRBO renters use of the
jointly owned dock and individually owned buoys. This was a mistake. State law, in and of itself makes
Stabbert's proposed VRBO renters use illegal and this is something SJC should have taken into

1 consideration and imposed strict restrictions on. Appellants Evans/Box Bay have sought SJC Planning
2 Department control of the prohibited use, which potentially would involve as many as 18 renters per
3 day on the dock or using the buoys. SJCC 18.40.270(i) requires strict compliance with all other
4 applicable State and local regulations. Clearly, the decision of the SJC Planning Departments decision
5 runs afoul of state law.

6 The Hearing Examiner is respectfully requested to find SJC and its VRBO recommendations as
7 clearly erroneous and in violation of State law. Very strict limitations should be placed on Stabbert
8 which will guarantee Evans/Box Bay will not be stuck having to be their own enforcement officers.
9 The dock entry should be locked, labeled as private use only and any and all advertising shall clearly
10 disclose the dock and buoys may not be used. Evans/Box Bay should be allowed to post appropriate no
11 trespassing signs.

12 Respectfully submitted this 11th day of May

13 /s/ Thomas C. Evans, pro se
14 THOMAS C. EVANS WSBA #5122
15 4020 East Madison Street, Suite 210
16 Seattle, WA 98112
17 Tel: 206-527-5555
18 Fax: 206-527-0725
19 E-mail: tom@maritimeinjury.com
20
21

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

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 11th day of May at Orcas Island, Washington

s/ Thomas C. Evans
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 11th day of May at Orcas Island, Washington

s/ Thomas C. Evans
Thomas C. Evans

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

CERTIFICATE OF SERVICE

I certify on this date that I served the above document on the following individuals in the manner identified.

San Juan Hearing Examiner
Department of Community Development 135 [X] Via Email
Rhone Street [X] Via US Mail
P.O. Box 947
Friday Harbor, WA 98250
dcd@sanjuanco.com
LyndaG@sanjuanco.com

Christopher R. Osborn, WSBA #13608
Jeremy M. Eckert, WSBA #42596 [X] Via Email
chris.osbom@foster.com [X] Via US Mail
jeremy.eckert@foster.com
Foster Pepper PLLC
1111 Third Ave., Suite 3000
Seattle, WA 98101
P: 206-447-4400
F: 206-447-9700
Attorney for Respondents Dan and Cheryl Stabbert

Christopher J. Soelling PLLC [X] Via Email
chris@soellinglaw.com [X] Via US Mail
1001 4th Ave #4400
Seattle, WA 98154
206-389-1570

Dated this 11th day of May, 2018

s/ Kelsey Demeter
Kelsey Demeter, Paralegal

EXHIBIT 1

**AQUATIC LAND
BOUNDARIES IN
WASHINGTON STATE**

AQUATIC LAND BOUNDARIES IN WASHINGTON STATE

by Steven Ivey, PLS

for Land Surveyors Association of WA

January – March 2012

Steve Ivey is currently employed as an Aquatic Land Surveyor for the Washington Department of Natural Resources as the Department's aquatic land ownership specialist for 11 years. He provides support to the Department in resolving aquatic land ownership disputes, performs navigability assessments for rivers and lakes, and the preparation of supplemental maps for harbor areas in Washington. He has more than 30 years of experience in the land surveying profession with many years employed in the private sector at various locations in Wyoming, Montana, and Washington. He has an Associate Degree in Civil Engineering - Surveying and Construction Option from Southern Polytechnic State University in Marietta, GA. He has been a licensed surveyor since 1989; he is licensed in three states, and is a Certified Federal Surveyor (CFed).

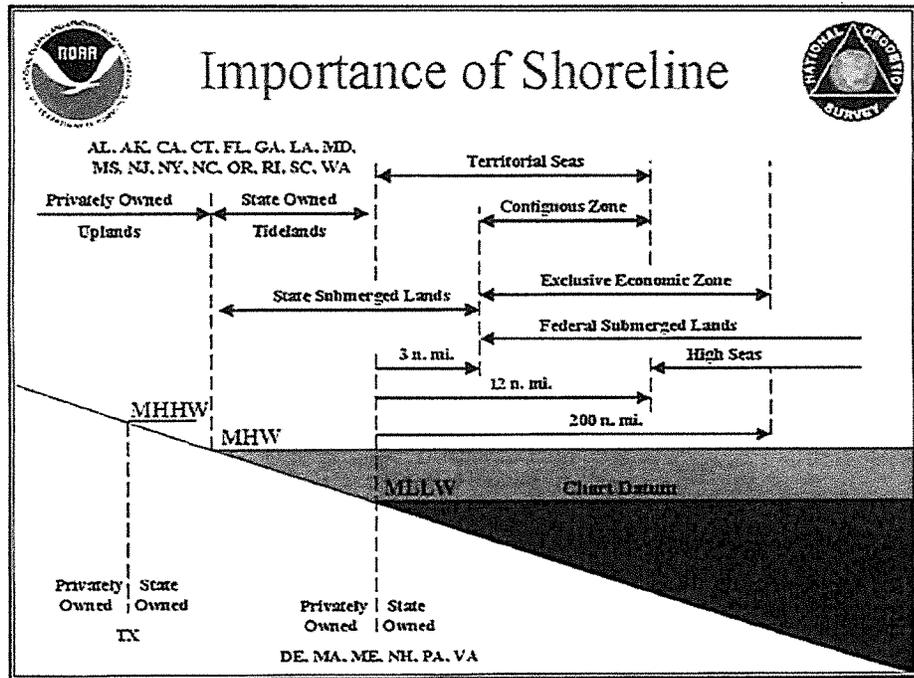


Figure: Shoreline boundaries for various states. Courtesy of NOAA, Department of Commerce

EXHIBIT 2

RCW 79.105.430

Private Recreational Docks –
Mooring buoys

RCW 79.105.430**Private recreational docks—Mooring buoys.**

(1) The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain without charge a dock on the areas if used exclusively for private recreational purposes and the area is not subject to prior rights, including any rights of upland, tideland, or shoreland owners as provided in RCW 79.125.400, 79.125.460, 79.125.410, and 79.130.010. The dock cannot be sold or leased separately from the upland residence. The dock cannot be used to moor boats for commercial or residential use. This permission is subject to applicable local, state, and federal rules and regulations governing location, design, construction, size, and length of the dock. Nothing in this subsection (1) prevents the abutting owner from obtaining a lease if otherwise provided by law.

(2) The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain a mooring buoy without charge if the boat that is moored to the buoy is used for private recreational purposes, the area is not subject to prior rights, including any rights of upland, tideland, or shoreland owners as provided in RCW 79.125.400, 79.125.460, 79.125.410, and 79.130.010, and the buoy will not obstruct the use of mooring buoys previously authorized by the department.

(a) The buoy must be located as near to the upland residence as practical, consistent with applicable rules and regulations and the provisions of this section. The buoy must be located, or relocated if necessary, to accommodate the use of lawfully installed and maintained buoys.

(b) If two or more residential owners, who otherwise qualify for free use under the provisions of this section, are in dispute over assertion of rights to install and maintain a mooring buoy in the same location, they may seek formal settlement through adjudication in superior court for the county in which the buoy site is located. In the adjudication, preference must be given to the residential owner that first installed and continually maintained and used a buoy on that site, if it meets all applicable rules, regulations, and provisions of this section, and then to the owner of the residential property nearest the site. Nothing in this section requires the department to mediate or otherwise resolve disputes between residential owners over the use of the same site for a mooring buoy.

(c) The buoy cannot be sold or leased separately from the abutting residential property. The buoy cannot be used to moor boats for commercial or residential use, nor to moor boats over sixty feet in length.

(d) If the department determines that it is necessary for secure moorage, the abutting residential owner may install and maintain a second mooring buoy, under the same provisions as the first, the use of which is limited to a second mooring line to the boat moored at the first buoy.

(e) The permission granted in this subsection (2) is subject to applicable local, state, and federal rules and regulations governing location, design, installation, maintenance, and operation of the mooring buoy, anchoring system, and moored boat. Nothing in this subsection (2) prevents a boat owner from obtaining a lease if otherwise provided by law. This subsection (2) also applies to areas that have been designated by the commissioner or the fish and wildlife commission as aquatic reserves.

(3) This permission to install and maintain a recreational dock or mooring buoy may be revoked by the department, or the department may direct the owner of a recreational dock or mooring buoy to relocate their dock or buoy, if the department makes a finding of public necessity to protect waterward access, ingress rights of other landowners, public health or

safety, or public resources. Circumstances prompting a finding of public necessity may include, but are not limited to, the dock, buoy, anchoring system, or boat posing a hazard or obstruction to navigation or fishing, contributing to degradation of aquatic habitat, or contributing to decertification of shellfish beds otherwise suitable for commercial or recreational harvest. The revocation may be appealed as provided for under RCW 79.105.160.

(4) Nothing in this section authorizes a boat owner to abandon a vessel at a recreational dock, mooring buoy, or elsewhere.

[2005 c 155 § 106; 2002 c 304 § 1; 2001 c 277 § 1; 1989 c 175 § 170; 1983 2nd ex.s. c 2 § 2. Formerly RCW 79.90.105.]

NOTES:

Effective date—1989 c 175: See note following RCW 34.05.010.

EXHIBIT 3

WAC 332-30-144

WAC 332-30-144**Private recreational docks.**

(1) **Applicability.** This section implements the permission created by RCW 79.105.430, Private recreational docks, which allows abutting residential owners, under certain circumstances, to install private recreational docks without charge. The limitations set forth in this section apply only to use of state-owned aquatic lands for private recreational docks under RCW 79.105.430. No restriction or regulation of other types of uses on aquatic lands is provided. This section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(2) **Eligibility.** The permission shall apply only to the following:

(a) An "abutting residential owner," being the owner of record of property physically bordering on public aquatic land and either used for single family housing or for a multifamily residence not exceeding four units per lot.

(b) A "dock," being a securely anchored or fixed, open walkway structure visible to boaters and kept in good repair extending from the upland property, primarily used as an aid to boating by the abutting residential owner(s), and accommodating moorage by not more than four pleasure boats typical to the body of water on which the dock is located. Two or more abutting residential owners may install and maintain a single joint-use dock provided it meets all other design requirements of this section; is the only dock used by those owners; and that the dock fronts one of the owners' property.

(c) A "private recreational purpose," being a nonincome-producing, leisure-time, and discretionary use by the abutting residential owner(s).

(d) State-owned aquatic lands outside harbor areas designated by the harbor line commission.

(3) **Uses not qualifying.** Examples of situations not qualifying for the permission include:

(a) Yacht and boat club facilities;

(b) Floating houses, as defined in WAC 332-30-106(23), and vessels used as a residence (as defined in WAC 332-30-106(62));

(c) Resorts;

(d) Multifamily dwellings, including condominium ownerships, with more than four units;

(e) Uses other than docks such as launches and railways not part of the dock, bulkheads, landfills, dredging, breakwaters, mooring buoys, swim floats, and swimming areas.

(4) **Limitations.**

(a) The permission does not apply to areas where the state has issued a reversionary use deed such as for shellfish culture, hunting and fishing, or park purposes; published an allocation of a special use and the dock is inconsistent with the allocation; or granted an authorization for use such as a lease, easement, or material purchase.

(b) Each dock owner using the permission is responsible for determining the availability of the public aquatic lands. Records of the department are open for public review. The department will research the availability of the public aquatic lands upon written request. A fee sufficient to cover costs shall be charged for this research.

(c) The permission is limited to docks that conform to adopted shoreline master programs and other local ordinances.

(d) The permission is not a grant of exclusive use of public aquatic lands to the dock owner. It does not prohibit public use of any aquatic lands around or under the dock. Owners of docks located on state-owned tidelands or shorelands must provide a safe, convenient, and clearly available means of pedestrian access over, around, or under the dock at all tide levels.

However, dock owners are not required to allow public use of their docks or access across private lands to state-owned aquatic lands.

(e) The permission is not transferable or assignable to anyone other than a subsequent owner of the abutting upland property and is continuously dependent on the nature of ownership and use of the properties involved.

(f) Vessels used as a residence and floating houses are not permitted to be moored at a private recreational dock, except when such moorage is necessary because of an emergency that immediately threatens human life or property, for the duration of the emergency only.

(5) **Revocation.** The permission may be revoked or canceled if:

(a) The dock or abutting residential owner has not met the criteria listed in subsection (2) or (4) of this section; or

(b) The dock significantly interferes with navigation or with navigational access to and from other upland properties. This degree of interference shall be determined from the character of the shoreline and waterbody, the character of other in-water development in the vicinity, and the degree of navigational use by the public and adjacent property owners;

(c) The dock interferes with preferred water-dependent uses established by law; or

(d) The dock is a public health or safety hazard.

(6) **Appeal of revocation.** Upon receiving written notice of revocation or cancellation, the abutting residential owner shall have thirty days from the date of notice to file for an administrative hearing under the contested case proceedings of chapter 34.05 RCW. If the action to revoke the permission is upheld, the owner shall correct the cited conditions and shall be liable to the state for any compensation due to the state from the use of the aquatic lands from the date of notice until permission requirements are met or until such permission is no longer needed. If the abutting residential owner disclaims ownership of the dock, the department may take actions to have it removed.

(7) **Current leases.** Current lessees of docks meeting the criteria in this section will be notified of their option to cancel the lease. They will be provided a reasonable time to respond. Lack of response will result in cancellation of the lease by the department.

(8) **Property rights.** No property rights in, or boundaries of, public aquatic lands are established by this section.

(9) **Lines of navigability.** The department will not initiate establishment of lines of navigability on any shorelands unless requested to do so by the shoreland owners or their representatives.

(10) Nothing in this section is intended to address statutes relating to sales of second class shorelands.

[Statutory Authority: RCW 79.105.360. WSR 06-06-005 (Order 724), § 332-30-144, filed 2/16/06, effective 3/19/06. Statutory Authority: RCW 79.90.455, 79.90.460. WSR 02-21-076 (Order 710), § 332-30-144, filed 10/17/02, effective 11/17/02. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. WSR 85-22-066 (Resolution No. 500), § 332-30-144, filed 11/5/85.]

EXHIBIT 4

Department of Natural Resources
letter dated May 7, 2018



HILARY S. FRANZ
COMMISSIONER OF PUBLIC LANDS

May 7, 2018

**DEPARTMENT OF
NATURAL RESOURCES**

NORTHWEST REGION
919 N TOWNSHIP STREET
SEDRO-WOOLLEY, WA 98284-9384

360-856-3500
FAX 360-856-2150
TRS 711
NORTHWEST.REGION@DNR.WA.GOV
WWW.DNR.WA.GOV

Dan and Cheryl Stabbert
13019 NE 61st Place
Kirkland, WA 98107

**Subject: Vacation Rental and Use of State-Owned Aquatic Lands -- Private Recreational
Dock/Mooring Buoys, Obstruction Pass, Orcas Island**

Dear Mr. and Mrs. Stabbert:

I am writing to you regarding the dock and mooring buoys located in Obstruction Pass, Orcas Island that are associated with your upland property, San Juan County tax parcel 161650403000 with an address of 2318 Obstruction Pass Rd. A portion of the dock and the mooring buoys are located on state-owned aquatic land (SOAL) managed by Washington Department of Natural Resources (DNR). Typically, projects taking place on or over SOAL require an authorization from DNR, however, Chapter 79.105.430 of the Revised Code of Washington (RCW) provides permission under certain circumstances for private recreational docks and private recreational mooring buoys to be installed and maintained without charge. Chapter 332-30-144 of the Washington Administrative Code (WAC) specifies what does and does not qualify for a private recreational dock.

It is my understanding that you recently received a Land Use Vacation Rental Permit for the above-mentioned property from San Juan County Department of Community Development. The purpose of this letter is to notify you that in order to use and maintain your dock without charge, the dock must be used exclusively for private recreational purposes and cannot be used commercially. WAC 332-30-144(2)(c) states the following:

A "private recreational purpose" being a nonincome-producing, leisure-time, and discretionary use by the abutting residential owner(s).

Allowing use of the dock through a short-term rental agreement disqualifies them from the private recreation dock exemption. If you intend to allow renters of your vacation property to use the dock, you would need to apply for an authorization from DNR, which would be in the form

Mr. and Mrs. Stabbert
May 7, 2018
Page 2 of 2

of a lease. I encourage you to learn more about the process for leasing SOAL by reading this fact sheet on our website:

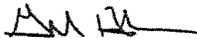
https://www.dnr.wa.gov/publications/aqr_fs_leasing_guide_0816.pdf?2182kh2

Please note that for joint-use docks, all owners of the dock must apply for the authorization from DNR. If you would like to proceed with the application process or just have questions, I would happy to assist you.

Please note that recreational mooring buoys must be registered with DNR even if they qualify under RCW 79.105.430. Please fill out the mooring buoy application at www.dnr.wa.gov to register your buoy(s) if you have not already done so.

If you have any questions about this letter, please contact me by phone at 360-854-2858 or by email at gabriel.harder@dnr.wa.gov.

Sincerely,



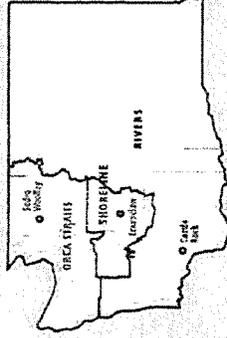
Gabe Harder, Land Manager
Aquatic Resources Division, Orca-Straits District
919 N. Township St.
Sedro-Woolley, WA 98284

Enclosures: RCW 79.105.430
WAC 332-30-144
DNR-Mooring Buoy Brochure

c: Karla Lopez, Agent (by email)
Tom Evans, Joint owner (by email)

Aquatic Resources District Offices

DNR manages the 2.6 million acres of State Aquatic Lands statewide—lands under the marine and fresh waters and beaches. These mostly submerged lands offer aquatic habitat, navigation, commerce, and public use and access. DNR's aquatic districts provide on-the-ground management.



Puget Sound
950 Laramie Ave.
Bremerton, WA 98322
(360) 835-1831
Fax: (360) 835-1872

Shoreline
601 Beach Rd.
P.O. Box 230
Castle Rock, WA 98011
(360) 577-2025
Fax: (360) 774-4196

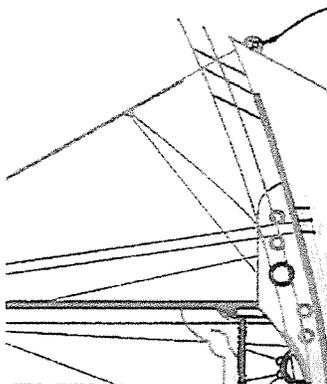
Mooring buoy information and application are online at www.dnr.wa.gov

For assistance preparing permits, contact the **Office of Regulatory Assistance**. They provide statewide environmental permit information, at **(360) 407-7037** or **1-800-971-0043**



WASHINGTON STATE DEPARTMENT OF **Natural Resources**

UPDATED 10/14



Recreational Mooring Buoys

FOR BOAT OWNERS
SWINGING
ON STATE-OWNED
AQUATIC LANDS



WASHINGTON STATE DEPARTMENT OF **Natural Resources**



Shoreline Residents May Moor a Boat on State Aquatic Lands

Laws Change for Recreational Mooring Buoys

The 2001 and 2002 Legislatures passed laws about recreational mooring buoys. Individuals who own residential property abutting state-owned aquatic lands may install a mooring buoy on those public lands for recreational purposes without charge.

The law prohibits commercial and transient uses, and limits on boats moored to recreational buoys on state lands. It limits boats to sixty feet or less in length, and allows for a second buoy to help secure moorage to the first buoy.

It directs disputes over the assertion of rights to superior court, and it defines the circumstances around which Washington's Department of Natural Resources (DNR) may require a buoy to be relocated or removed:

- ▶ To protect access of other landowners.
- ▶ If it poses a hazard to or obstructs navigation or fishing;
- ▶ If it contributes to degradation of aquatic habitat;
- ▶ If it contributes to deterioration of shellfish beds.

Qualifying for Free Use of State Lands for Your New Mooring Buoy

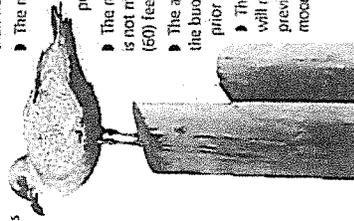
Residential owners of "uplands" next to state aquatic lands might qualify for free use of the state lands to install a recreational buoy.

A mooring buoy qualifies for free use if the conditions meet all of these criteria:

- ▶ The applicant owns residential property next to state-owned shorelands, tidelands, or related beds of navigable waters (other than harbor areas);
- ▶ The moored boat is used for private recreational purposes;
- ▶ The moored boat is not more than sixty (60) feet in length;
- ▶ The area being used for the buoy is not subject to prior rights;
- ▶ The mooring buoy will not obstruct use of previously authorized mooring buoys;
- ▶ The mooring buoy is located on state aquatic lands, but as near to the shore of residence as practical; and
- ▶ All applicable local, state, and federal rules and regulations have been met.

If your buoy meets these criteria, fill out the mooring buoy/boatlift application at www.dnr.wa.gov. Mail it to DNR's Aquatic District Office in your area, listed here.

Boatlifts on state aquatic lands require the same application. Boatlifts have a yearly fee.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

S.J.C. DEPARTMENT OF
MAY 11 2018
COMMUNITY DEVELOPMENT

BEFORE THE SAN JUAN COUNTY HEARING EXAMINER

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

Appellants,

No. PPROVO-17-0066

v.

**SUPPLEMENT TO
NOTICE OF APPEAL AND
ASSIGNMENT OF ERROR
(THOMAS C. EVANS)**

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

COMES NOW Thomas C. Evans (Evans) as attorney appearing pro-se in the above entitled and foregoing matter and submits this supplement and assignment of error to appellants appeal filed on March 29, 2018.

On May 7, 2018, the Department of Natural Resources informed the parties that the use of a private dock in conjunction with a VRBO rental is, by law, considered a *commercial* use of a private rental joint use dock and buoys and is illegal under WAC 332-30-144(2)(c).

The implications of both the dock and buoys being on public lands, administered by the State Department of Natural Resources (DNR) makes any income generating use of this including, specifically VRBO use, against the law. DNR has both statutory authority and administrative authority of anything placed on public lands, which are defined as property beyond the mean high tide level. **Ex.**

1 is a copy of the various jurisdictional authorities dependent on tide level. Both the dock and buoys
2 are well beyond this marker and are all well within State owned lands.

3 The DNR, and the State, have both statutory authority (RCW 79.105.430 Private Recreational
4 Docks – Mooring buoys)(Ex. 2) and administrative authority (WAC 332-30-144)(Ex. 3) over private
5 recreational docks, specifically. These restrictions were completely overlooked by the SJC planning
6 Department which never bothered to solicit input from DNR

7 The intent of the DNR regulation of joint use dock and private buoys was to make it easy for
8 private, abutting private property owners to build a dock and place a buoy without having to first get a
9 DNR lease for public lands. Using these improvements to make money is totally contrary to intent and
10 purpose of this grant.

11 WAC 332-30-144 (2)(c) defines "private recreational use" as follows:

12 (c) A "private recreational purpose" being *a non-income*
13 *producing, leisure-time, and discretionary use by the*
14 *abutting residential owner(s).*

15 WAC 332-30-144(5) provides for revocation of this permission for uses not permitted by WAC 332-
16 30-144(2)(c).

17 VRBO's are specifically defined as a commercial use in the SJC Comp. plan and are subject to
18 the terms, conditions, and limitations of a commercial use property:

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.*

Further, the DNR per the attached letter (Ex.4), *clearly* considers rental VRBO use as a
commercial use.

The result of the above is that the VRBO decisions in the two Stabbert VRBO permits are
based on complete error of law and error of fact. The SJC Planning Department looked at the Joint Use
Agreement between Stabbert/Evans as merely a private covenant which Stabbert/Evans would have to
rely on an arbitrator for resolution of disputes -such as Stabbert's proposed VRBO renters use of the
jointly owned dock and individually owned buoys. This was a mistake. State law, in and of itself makes
Stabbert's proposed VRBO renters use illegal and this is something SJC should have taken into

1 consideration and imposed strict restrictions on. Appellants Evans/Box Bay have sought SJC Planning
2 Department control of the prohibited use, which potentially would involve as many as 18 renters per
3 day on the dock or using the buoys. SJCC 18.40.270(i) requires strict compliance with all other
4 applicable State and local regulations. Clearly, the decision of the SJC Planning Departments decision
5 runs afoul of state law.

6 The Hearing Examiner is respectfully requested to find SJC and its VRBO recommendations as
7 clearly erroneous and in violation of State law. Very strict limitations should be placed on Stabbert
8 which will guarantee Evans/Box Bay will not be stuck having to be their own enforcement officers.
9 The dock entry should be locked, labeled as private use only and any and all advertising shall clearly
10 disclose the dock and buoys may not be used. Evans/Box Bay should be allowed to post appropriate no
11 trespassing signs.

12 Respectfully submitted this 11th day of May

13 /s/ Thomas C. Evans, pro se
14 THOMAS C. EVANS WSBA #5122
15 4020 East Madison Street, Suite 210
16 Seattle, WA 98112
17 Tel: 206-527-5555
18 Fax: 206-527-0725
19 E-mail: tom@maritimeinjury.com
20
21

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

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 11th day of May at Orcas Island, Washington

s/ Thomas C. Evans
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 11th day of May at Orcas Island, Washington

s/ Thomas C. Evans
Thomas C. Evans

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

CERTIFICATE OF SERVICE

I certify on this date that I served the above document on the following individuals in the manner identified.

San Juan Hearing Examiner
Department of Community Development 135
Rhone Street
P.O. Box 947
Friday Harbor, WA 98250
dcd@sanjuanco.com
LyndaG@sanjuanco.com

Via Email
 Via US Mail

Christopher R. Osborn, WSBA #13608
Jeremy M. Eckert, WSBA #42596
chris.osbom@foster.com
jeremy.eckert@foster.com
Foster Pepper PLLC
1111 Third Ave., Suite 3000
Seattle, WA 98101
P: 206-447-4400
F: 206-447-9700
Attorney for Respondents Dan and Cheryl Stabbert

Via Email
 Via US Mail

Christopher J. Soelling PLLC
chris@soellinglaw.com
1001 4th Ave #4400
Seattle, WA 98154
206-389-1570

Via Email
 Via US Mail

Dated this 11th day of May, 2018

s/ Kelsey Demeter
Kelsey Demeter, Paralegal

EXHIBIT 1

AQUATIC LAND
BOUNDARIES IN
WASHINGTON STATE

AQUATIC LAND BOUNDARIES IN WASHINGTON STATE

by Steven Ivey, PLS

for Land Surveyors Association of WA

January – March 2012

Steve Ivey is currently employed as an Aquatic Land Surveyor for the Washington Department of Natural Resources as the Department's aquatic land ownership specialist for 11 years. He provides support to the Department in resolving aquatic land ownership disputes, performs navigability assessments for rivers and lakes, and the preparation of supplemental maps for harbor areas in Washington. He has more than 30 years of experience in the land surveying profession with many years employed in the private sector at various locations in Wyoming, Montana, and Washington. He has an Associate Degree in Civil Engineering - Surveying and Construction Option from Southern Polytechnic State University in Marietta, GA. He has been a licensed surveyor since 1989; he is licensed in three states, and is a Certified Federal Surveyor (CFed).

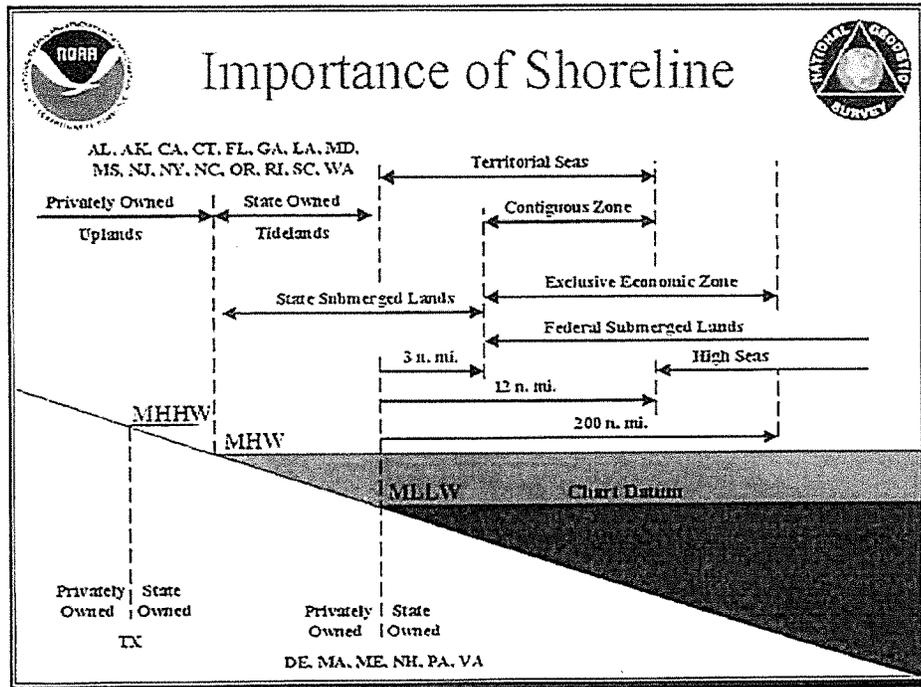


Figure: Shoreline boundaries for various states. Courtesy of NOAA, Department of Commerce

EXHIBIT 2

RCW 79.105.430

Private Recreational Docks –
Mooring buoys

RCW 79.105.430**Private recreational docks—Mooring buoys.**

(1) The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain without charge a dock on the areas if used exclusively for private recreational purposes and the area is not subject to prior rights, including any rights of upland, tideland, or shoreland owners as provided in RCW 79.125.400, 79.125.460, 79.125.410, and 79.130.010. The dock cannot be sold or leased separately from the upland residence. The dock cannot be used to moor boats for commercial or residential use. This permission is subject to applicable local, state, and federal rules and regulations governing location, design, construction, size, and length of the dock. Nothing in this subsection (1) prevents the abutting owner from obtaining a lease if otherwise provided by law.

(2) The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain a mooring buoy without charge if the boat that is moored to the buoy is used for private recreational purposes, the area is not subject to prior rights, including any rights of upland, tideland, or shoreland owners as provided in RCW 79.125.400, 79.125.460, 79.125.410, and 79.130.010, and the buoy will not obstruct the use of mooring buoys previously authorized by the department.

(a) The buoy must be located as near to the upland residence as practical, consistent with applicable rules and regulations and the provisions of this section. The buoy must be located, or relocated if necessary, to accommodate the use of lawfully installed and maintained buoys.

(b) If two or more residential owners, who otherwise qualify for free use under the provisions of this section, are in dispute over assertion of rights to install and maintain a mooring buoy in the same location, they may seek formal settlement through adjudication in superior court for the county in which the buoy site is located. In the adjudication, preference must be given to the residential owner that first installed and continually maintained and used a buoy on that site, if it meets all applicable rules, regulations, and provisions of this section, and then to the owner of the residential property nearest the site. Nothing in this section requires the department to mediate or otherwise resolve disputes between residential owners over the use of the same site for a mooring buoy.

(c) The buoy cannot be sold or leased separately from the abutting residential property. The buoy cannot be used to moor boats for commercial or residential use, nor to moor boats over sixty feet in length.

(d) If the department determines that it is necessary for secure moorage, the abutting residential owner may install and maintain a second mooring buoy, under the same provisions as the first, the use of which is limited to a second mooring line to the boat moored at the first buoy.

(e) The permission granted in this subsection (2) is subject to applicable local, state, and federal rules and regulations governing location, design, installation, maintenance, and operation of the mooring buoy, anchoring system, and moored boat. Nothing in this subsection (2) prevents a boat owner from obtaining a lease if otherwise provided by law. This subsection (2) also applies to areas that have been designated by the commissioner or the fish and wildlife commission as aquatic reserves.

(3) This permission to install and maintain a recreational dock or mooring buoy may be revoked by the department, or the department may direct the owner of a recreational dock or mooring buoy to relocate their dock or buoy, if the department makes a finding of public necessity to protect waterward access, ingress rights of other landowners, public health or

safety, or public resources. Circumstances prompting a finding of public necessity may include, but are not limited to, the dock, buoy, anchoring system, or boat posing a hazard or obstruction to navigation or fishing, contributing to degradation of aquatic habitat, or contributing to decertification of shellfish beds otherwise suitable for commercial or recreational harvest. The revocation may be appealed as provided for under RCW 79.105.160.

(4) Nothing in this section authorizes a boat owner to abandon a vessel at a recreational dock, mooring buoy, or elsewhere.

[2005 c 155 § 106; 2002 c 304 § 1; 2001 c 277 § 1; 1989 c 175 § 170; 1983 2nd ex.s. c 2 § 2. Formerly RCW 79.90.105.]

NOTES:

Effective date—1989 c 175: See note following RCW 34.05.010.

EXHIBIT 3

WAC 332-30-144

WAC 332-30-144**Private recreational docks.**

(1) **Applicability.** This section implements the permission created by RCW 79.105.430, Private recreational docks, which allows abutting residential owners, under certain circumstances, to install private recreational docks without charge. The limitations set forth in this section apply only to use of state-owned aquatic lands for private recreational docks under RCW 79.105.430. No restriction or regulation of other types of uses on aquatic lands is provided. This section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(2) **Eligibility.** The permission shall apply only to the following:

(a) An "abutting residential owner," being the owner of record of property physically bordering on public aquatic land and either used for single family housing or for a multifamily residence not exceeding four units per lot.

(b) A "dock," being a securely anchored or fixed, open walkway structure visible to boaters and kept in good repair extending from the upland property, primarily used as an aid to boating by the abutting residential owner(s), and accommodating moorage by not more than four pleasure boats typical to the body of water on which the dock is located. Two or more abutting residential owners may install and maintain a single joint-use dock provided it meets all other design requirements of this section; is the only dock used by those owners; and that the dock fronts one of the owners' property.

(c) A "private recreational purpose," being a nonincome-producing, leisure-time, and discretionary use by the abutting residential owner(s).

(d) State-owned aquatic lands outside harbor areas designated by the harbor line commission.

(3) **Uses not qualifying.** Examples of situations not qualifying for the permission include:

(a) Yacht and boat club facilities;

(b) Floating houses, as defined in WAC 332-30-106(23), and vessels used as a residence (as defined in WAC 332-30-106(62));

(c) Resorts;

(d) Multifamily dwellings, including condominium ownerships, with more than four units;

(e) Uses other than docks such as launches and railways not part of the dock, bulkheads, landfills, dredging, breakwaters, mooring buoys, swim floats, and swimming areas.

(4) **Limitations.**

(a) The permission does not apply to areas where the state has issued a reversionary use deed such as for shellfish culture, hunting and fishing, or park purposes; published an allocation of a special use and the dock is inconsistent with the allocation; or granted an authorization for use such as a lease, easement, or material purchase.

(b) Each dock owner using the permission is responsible for determining the availability of the public aquatic lands. Records of the department are open for public review. The department will research the availability of the public aquatic lands upon written request. A fee sufficient to cover costs shall be charged for this research.

(c) The permission is limited to docks that conform to adopted shoreline master programs and other local ordinances.

(d) The permission is not a grant of exclusive use of public aquatic lands to the dock owner. It does not prohibit public use of any aquatic lands around or under the dock. Owners of docks located on state-owned tidelands or shorelands must provide a safe, convenient, and clearly available means of pedestrian access over, around, or under the dock at all tide levels.

However, dock owners are not required to allow public use of their docks or access across private lands to state-owned aquatic lands.

(e) The permission is not transferable or assignable to anyone other than a subsequent owner of the abutting upland property and is continuously dependent on the nature of ownership and use of the properties involved.

(f) Vessels used as a residence and floating houses are not permitted to be moored at a private recreational dock, except when such moorage is necessary because of an emergency that immediately threatens human life or property, for the duration of the emergency only.

(5) **Revocation.** The permission may be revoked or canceled if:

(a) The dock or abutting residential owner has not met the criteria listed in subsection (2) or (4) of this section; or

(b) The dock significantly interferes with navigation or with navigational access to and from other upland properties. This degree of interference shall be determined from the character of the shoreline and waterbody, the character of other in-water development in the vicinity, and the degree of navigational use by the public and adjacent property owners;

(c) The dock interferes with preferred water-dependent uses established by law; or

(d) The dock is a public health or safety hazard.

(6) **Appeal of revocation.** Upon receiving written notice of revocation or cancellation, the abutting residential owner shall have thirty days from the date of notice to file for an administrative hearing under the contested case proceedings of chapter 34.05 RCW. If the action to revoke the permission is upheld, the owner shall correct the cited conditions and shall be liable to the state for any compensation due to the state from the use of the aquatic lands from the date of notice until permission requirements are met or until such permission is no longer needed. If the abutting residential owner disclaims ownership of the dock, the department may take actions to have it removed.

(7) **Current leases.** Current lessees of docks meeting the criteria in this section will be notified of their option to cancel the lease. They will be provided a reasonable time to respond. Lack of response will result in cancellation of the lease by the department.

(8) **Property rights.** No property rights in, or boundaries of, public aquatic lands are established by this section.

(9) **Lines of navigability.** The department will not initiate establishment of lines of navigability on any shorelands unless requested to do so by the shoreland owners or their representatives.

(10) Nothing in this section is intended to address statutes relating to sales of second class shorelands.

[Statutory Authority: RCW 79.105.360. WSR 06-06-005 (Order 724), § 332-30-144, filed 2/16/06, effective 3/19/06. Statutory Authority: RCW 79.90.455, 79.90.460. WSR 02-21-076 (Order 710), § 332-30-144, filed 10/17/02, effective 11/17/02. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. WSR 85-22-066 (Resolution No. 500), § 332-30-144, filed 11/5/85.]

EXHIBIT 4

Department of Natural Resources
letter dated May 7, 2018



HILARY S. FRANZ
COMMISSIONER OF PUBLIC LANDS

May 7, 2018

DEPARTMENT OF
NATURAL RESOURCES

NORTHWEST REGION
919 N TOWNSHIP STREET
SEDRO-WOOLLEY, WA 98284-9384

360-856-3500
FAX 360-856-2150
TRS 711
NORTHWEST.REGION@DNR.WA.GOV
WWW.DNR.WA.GOV

Dan and Cheryl Stabbert
13019 NE 61st Place
Kirkland, WA 98107

Subject: Vacation Rental and Use of State-Owned Aquatic Lands -- Private Recreational
Dock/Mooring Buoys, Obstruction Pass, Orcas Island

Dear Mr. and Mrs. Stabbert:

I am writing to you regarding the dock and mooring buoys located in Obstruction Pass, Orcas Island that are associated with your upland property, San Juan County tax parcel 161650403000 with an address of 2318 Obstruction Pass Rd. A portion of the dock and the mooring buoys are located on state-owned aquatic land (SOAL) managed by Washington Department of Natural Resources (DNR). Typically, projects taking place on or over SOAL require an authorization from DNR, however, Chapter 79.105.430 of the Revised Code of Washington (RCW) provides permission under certain circumstances for private recreational docks and private recreational mooring buoys to be installed and maintained without charge. Chapter 332-30-144 of the Washington Administrative Code (WAC) specifies what does and does not qualify for a private recreational dock.

It is my understanding that you recently received a Land Use Vacation Rental Permit for the above-mentioned property from San Juan County Department of Community Development. The purpose of this letter is to notify you that in order to use and maintain your dock without charge, the dock must be used exclusively for private recreational purposes and cannot be used commercially. WAC 332-30-144(2)(c) states the following:

A "private recreational purpose" being a nonincome-producing, leisure-time, and discretionary use by the abutting residential owner(s).

Allowing use of the dock through a short-term rental agreement disqualifies them from the private recreation dock exemption. If you intend to allow renters of your vacation property to use the dock, you would need to apply for an authorization from DNR, which would be in the form

Mr. and Mrs. Stabbert
May 7, 2018
Page 2 of 2

of a lease. I encourage you to learn more about the process for leasing SOAL by reading this fact sheet on our website:

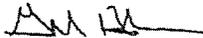
[https://www.dnr.wa.gov/publications/aqr fs leasing_guide_0816.pdf?2182kh2](https://www.dnr.wa.gov/publications/aqr_fs_leasing_guide_0816.pdf?2182kh2)

Please note that for joint-use docks, all owners of the dock must apply for the authorization from DNR. If you would like to proceed with the application process or just have questions, I would be happy to assist you.

Please note that recreational mooring buoys must be registered with DNR even if they qualify under RCW 79.105.430. Please fill out the mooring buoy application at www.dnr.wa.gov to register your buoy(s) if you have not already done so.

If you have any questions about this letter, please contact me by phone at 360-854-2858 or by email at gabriel.harder@dnr.wa.gov.

Sincerely,



Gabe Harder, Land Manager
Aquatic Resources Division, Orca-Straits District
919 N. Township St.
Sedro-Woolley, WA 98284

Enclosures: RCW 79.105.430
WAC 332-30-144
DNR-Mooring Buoy Brochure

c: Karla Lopez, Agent (by email)
Tom Evans, Joint owner (by email)

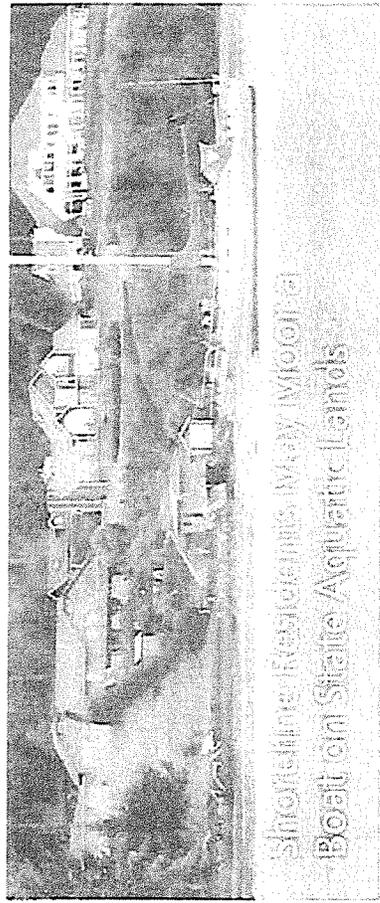


PHOTO COURTESY OF DNR

Qualifying for Free Use of State Lands for Your New Mooring Buoy

Residential owners of "uplands" next to state aquatic lands might qualify for free use of the state lands to install a recreational buoy.

A mooring buoy qualifies for free use if the conditions meet all of these criteria:

- ▶ The applicant owns residential property next to state-owned shorelands, tidelands, or related beds of navigable waters (other than harbor areas);
- ▶ The moored boat is used for private recreational purposes;
- ▶ The moored boat is not more than 500 (500) feet in length;
- ▶ The area being used for the buoy is not subject to prior rights;
- ▶ The mooring buoy will not obstruct use of previously authorized mooring buoys;
- ▶ All applicable local, state, and federal rules and regulations have been met

If your buoy meets these criteria, fill out the mooring buoy/boatlift application at www.dnr.wa.gov. Mail it to DNR's Aquatic District Office in your area, listed here.

Boatlifts on state aquatic lands require the same application. Boatlifts have a yearly fee.

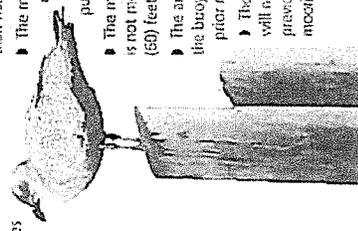
Laws Change for Recreational Mooring Buoys

In the 2001 and 2002 legislatures passed laws about recreational mooring buoys. Individuals who own residential property abutting state-owned aquatic lands may install a mooring buoy on those public lands for recreational purposes without charge.

The law prohibits commercial and transient uses, and living on boats moored to recreational buoys on state lands. It limits boats to 500 feet or less in length, and allows for a second buoy to help secure moorage to the first buoy.

It affects disputes over the assertion of rights to superior courts, and it defines the circumstances around which Washington's Department of Natural Resources (DNR) may require a buoy to be relocated or removed:

- ▶ To protect access of other landowners;
- ▶ if it poses a hazard to or obstructs navigation or fishing;
- ▶ if it contributes to degradation of aquatic habitat;
- ▶ if it contributes to decalcification of shellfish beds.



Recreational Mooring Buoys

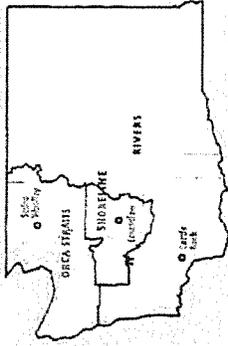
www.dnr.wa.gov
www.dnr.wa.gov
www.dnr.wa.gov

WASHINGTON STATE DEPARTMENT OF
Natural Resources

Aquatic Resources

DNR manages the 2.6 million acres of State Aquatic Lands statewide—beds under the marine and fresh water, and beaches. These mostly submerged lands offer aquatic habitat, navigation, commerce, and public use and access. DNR's aquatic districts provide on-the-ground management.

919 N. Townsend St.
 Salem, WA 98324
 (360) 856-3500
 Fax (360) 856-2159



580 Tatum Ave.
 Bellingham, WA 98222
 (360) 835-1631
 Fax (360) 835-1672

601 Bond Rd.
 P.O. Box 290
 Castle Rock, WA 98011
 (360) 577-9925
 Fax (360) 274-4186

Mooring buoy information and application are online at www.dnr.wa.gov

For assistance preparing permits, contact the **Office of Regulatory Assistance**. They provide statewide environmental permit information, at **(360) 407-7037** or **1-800-917-0043**



WASHINGTON STATE DEPARTMENT OF
Natural Resources

© 2008 DNR

Lynda Guernsey

From: Lynda Guernsey
Sent: Monday, May 14, 2018 3:40 PM
Gary N. McLean
Subject: FW: Letter Re PPROVO-17-0065/PPROVO-17-0066 Re Evans Appeal of Stabberts Prov Use Permits
Attachments: 5-11-18 Letter to San Juan.pdf

Hi Gary,

Please see the email below and attachment regarding the Evans appeals PAPL00-18-0001 and 0002 of the Stabberts provisional use permits.

Regards,
Lynda

Lynda Guernsey, Administrative Specialist II – Direct Line (360) 370-7579
SAN JUAN COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT
(360) 378-2354 | 135 Rhone Street | PO Box 947 | Friday Harbor, WA 98250

From: Kelsey Demeter <kelsey@maritimeinjury.com>
Sent: Friday, May 11, 2018 1:35 PM
To: Julie Thompson <JulieT@sanjuanco.com>
CC: Kelsey Demeter <kelsey@maritimeinjury.com>; Community Development <cdp@sanjuanco.com>; Lynda Guernsey <lynda.guernsey@sanjuanco.com>; chris.osborn@foster.com; jeremy.eckert@foster.com; Tom Evans <tom@maritimeinjury.com>
Subject: PPROVO-17-0065/PPROVO-17-0066

Good Afternoon Julie,

Please find correspondence from Mr. Evans on the above referenced matter. As the certificate of service attached states, this email is also being served simultaneously on the attorneys for the Stabbert's as well as the Hearing Examiner's office. A hard copy has been placed in the mail to all parties.

Best regards,
Kelsey



Kelsey Demeter • Paralegal • Injury at Sea
4020 East Madison Street, Suite 210, Seattle, WA
98112
Tel: 206.527.8008 • **Toll Free:** 1.800. SEA. SALT
Fax: 206.527.0725
E-
mail: kelsey@maritimeinjury.com www.injuryatsea.com

Please be advised that this e-mail and 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 notify it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.

Lynda Guernsey

From: Kelsey Demeter <kelsey@maritimeinjury.com>
Sent: Friday, May 11, 2018 1:35 PM
Julie Thompson
Kelsey Demeter; Community Development; Lynda Guernsey; chris.osborn@foster.com;
jeremy.eckert@foster.com; Tom Evans
Subject: PPROVO-17-0065/PPROVO-17-0066
Attachments: 5-11-18 Letter to San Juan.pdf

Good Afternoon Julie,

Please find correspondence from Mr. Evans on the above referenced matter. As the certificate of service attached states, this email is also being served simultaneously on the attorneys for the Stabbert's as well as the Hearing Examiner's office. A hard copy has been placed in the mail to all parties.

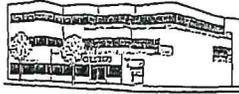
Best regards,
Kelsey



Kelsey Demeter • Paralegal • Injury at Sea
4020 East Madison Street, Suite 210, Seattle, WA
98112
Tel: 206.527.8008 • **Toll Free:** 1.800. SEA. SALT
Fax: 206.527.0725
E-
mail: kelsey@maritimeinjury.com www.injuryatsea.com

Please be advised that this e-mail and 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.

MADISON
PARK LAW
OFFICES



Thomas C. Evans

May 11, 2018

Via US Mail and E-mail

JulieT@sanjuanco.com

Department of Community Development

Attn: Julie Thompson

135 Rhone Street

Friday Harbor, 98250

Re: *Appeal re PPROVO-17-0065/PPROVO-17-0066*
Box Bay Shellfish Farm LLC / Thomas C. Evans

S.J.C. DEPARTMENT OF

MAY 11 2018

COMMUNITY DEVELOPMENT

Dear Julie:

I write to request that San Juan County *reopen* the record in the above matters (PPROVO-17-0065 and PPROVO-17-0066) and correct a clear error of law that was made when issuing these VRBO permits.

The planning department completely neglected to consult with other departments who have jurisdictional authority over the project. In this case, no contact was made with the Department of Natural Resources nor was any consideration given to their authority over properties which they have jurisdictional control over – the dock and the buoys – which are located on state-owned aquatic lands. This has led to very apparent errors of law in the March 12, 2018 recommendations made. It also makes clear SJC is sadly mistaken when it tries to treat a VRBO as "non-commercial" and not in need of a shoreline substantial development permit.

The DNR has now been consulted and rendered its opinion which includes an outline of its jurisdiction in the attached May 7, 2018 letter to the Stabbert's (Ex. 1). The Department of Natural Resources made it clear that use of a private dock for *commercial* (revenue generating from VRBOs) purposes is illegal under WAC 332-30-144(2)(c) and that a vacation rental constitutes commercial use.

When San Juan County issued two VRBO permits to Dan Stabbert it clearly failed (despite my numerous protestations in the form of letters and emails) to appreciate the fact that the shoreline of San Juan County is highly protected in an effort to prohibit activities which would contribute to its deterioration. Commercial use on state-owned aquatic lands, such as the Stabbert VRBOs, falls into this protected territory.

4020 EAST MADISON STREET
SUITE 210
SEATTLE, WA 98112
(206) 527-8008
FAX (206) 527-0725
TOLL FREE 1-800-SEA-SALT
www.injuryatsea.com

tom@maritimeinjury.com

The DNR, and the State, have both statutory authority (RCW 79.105.430 Private Recreational Docks – Mooring buoys)(Ex. 2) and administrative authority (WAC 332-30-144)(Ex. 3) over private recreational docks, specifically. These restrictions were overlooked and both of these VRBO permits and findings contain serious, improper legal and fact error. A private recreation dock and mooring buoy used for any revenue purpose is considered a commercial use by DNR and would be outside the exceptions of RCW 79.105.430 and WAC 332-30-144. Understand this has nothing to do with the Joint Use Agreement. It has everything to do with SJC Planning rushing to a conclusion while ignoring State law.

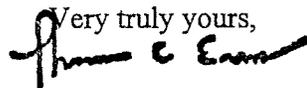
WAC 332-30-144 (2)(c) defines "private recreational use" as follows:

(c) A "private recreational purpose" *being a non-income producing, leisure-time, and discretionary use by the abutting residential owner(s).*

WAC 332-30-144(5) provides for revocation of this permission for uses not permitted by WAC 332-30-144(2)(c).

SJC planning now has a legal obligation to re-open the record for the limited purpose of correcting its very obvious errors. By law, and without regard to any JUA, the Stabbert's would be breaking the law to allow renters to use the dock and buoys. This is a commercial use, and SJC's position that VRBOs are not considered commercial, is going to become more and more ridiculous as time goes on. SJC collects money from tax on VRBOs. Other State agencies including DNR clearly define them as a commercial use. The SMA has no categorical exemption for something that is so obviously a commercial use.

We request a new, limited, reconsideration directed at keeping VRBO renters off the dock and buoys. At a minimum this should require a locked gate, posted notice, advertising that makes it clear these VRBO's do not include the buoys and dock which are privately owned. SJC 18.40.270(i) requires that any VRBO *shall* meet the requirements of all State and Local requirements. The Director has the authority to re-open the record for purposes of correcting obvious legal error. Please do that now.

Very truly yours,


Thomas C. Evans &
Box Bay Shellfish Farm LLC, Manager

Cc: See Certificate of Service attached

CERTIFICATE OF SERVICE

I certify on this date that I served the above document on the following individuals in the manner identified as well as the to the addressee.

San Juan Hearing Examiner
Department of Community Development 135
Rhone Street
P.O. Box 947
Friday Harbor, WA 98250
dcd@sanjuanco.com
LyndaG@sanjuanco.com

Via Email
 Via US Mail

Christopher R. Osborn, WSBA #13608
Jeremy M. Eckert, WSBA #42596
chris.osbom@foster.com
jeremy.eckert@foster.com
Foster Pepper PLLC
1111 Third Ave., Suite 3000
Seattle, WA 98101
P: 206-447-4400
F: 206-447-9700
Attorney for Respondents Dan and Cheryl Stabbert

Via Email
 Via US Mail

Dated this 11th day of May, 2018

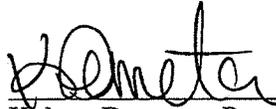

Kelsey Demeter, Paralegal

EXHIBIT 1

Department of Natural Resources
letter dated May 7, 2018



HILARY S. FRANZ
COMMISSIONER OF PUBLIC LANDS

May 7, 2018

**DEPARTMENT OF
NATURAL RESOURCES**

NORTHWEST REGION
919 N TOWNSHIP STREET
SEDRO-WOLLEY, WA 98284-9384

360-856-3500
FAX 360-856-2150
TRS 711
NORTHWEST.REGION@DNR.WA.GOV
WWW.DNR.WA.GOV

Dan and Cheryl Stabbert
13019 NE 61st Place
Kirkland, WA 98107

**Subject: Vacation Rental and Use of State-Owned Aquatic Lands -- Private Recreational
Dock/Mooring Buoys, Obstruction Pass, Orcas Island**

Dear Mr. and Mrs. Stabbert:

I am writing to you regarding the dock and mooring buoys located in Obstruction Pass, Orcas Island that are associated with your upland property, San Juan County tax parcel 161650403000 with an address of 2318 Obstruction Pass Rd. A portion of the dock and the mooring buoys are located on state-owned aquatic land (SOAL) managed by Washington Department of Natural Resources (DNR). Typically, projects taking place on or over SOAL require an authorization from DNR, however, Chapter 79.105.430 of the Revised Code of Washington (RCW) provides permission under certain circumstances for private recreational docks and private recreational mooring buoys to be installed and maintained without charge. Chapter 332-30-144 of the Washington Administrative Code (WAC) specifies what does and does not qualify for a private recreational dock.

It is my understanding that you recently received a Land Use Vacation Rental Permit for the above-mentioned property from San Juan County Department of Community Development. The purpose of this letter is to notify you that in order to use and maintain your dock without charge, the dock must be used exclusively for private recreational purposes and cannot be used commercially. WAC 332-30-144(2)(c) states the following:

A "private recreational purpose" being a nonincome-producing, leisure-time, and discretionary use by the abutting residential owner(s).

Allowing use of the dock through a short-term rental agreement disqualifies them from the private recreation dock exemption. If you intend to allow renters of your vacation property to use the dock, you would need to apply for an authorization from DNR, which would be in the form

Mr. and Mrs. Stabbert
May 7, 2018
Page 2 of 2

of a lease. I encourage you to learn more about the process for leasing SOAL by reading this fact sheet on our website:

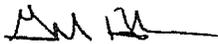
https://www.dnr.wa.gov/publications/aqr_fs_leasing_guide_0816.pdf?2182kh2

Please note that for joint-use docks, all owners of the dock must apply for the authorization from DNR. If you would like to proceed with the application process or just have questions, I would happy to assist you.

Please note that recreational mooring buoys must be registered with DNR even if they qualify under RCW 79.105.430. Please fill out the mooring buoy application at www.dnr.wa.gov to register your buoy(s) if you have not already done so.

If you have any questions about this letter, please contact me by phone at 360-854-2858 or by email at gabriel.harder@dnr.wa.gov.

Sincerely,



Gabe Harder, Land Manager
Aquatic Resources Division, Orca-Straits District
919 N. Township St.
Sedro-Woolley, WA 98284

Enclosures: RCW 79.105.430
WAC 332-30-144
DNR-Mooring Buoy Brochure

c: Karla Lopez, Agent (by email)
Tom Evans, Joint owner (by email)

USE REQUIREMENTS

Although residential landowners whose property abuts state aquatic lands may use a recreational mooring buoy for free, they are still responsible for meeting requirements for the installation of the buoy, including:

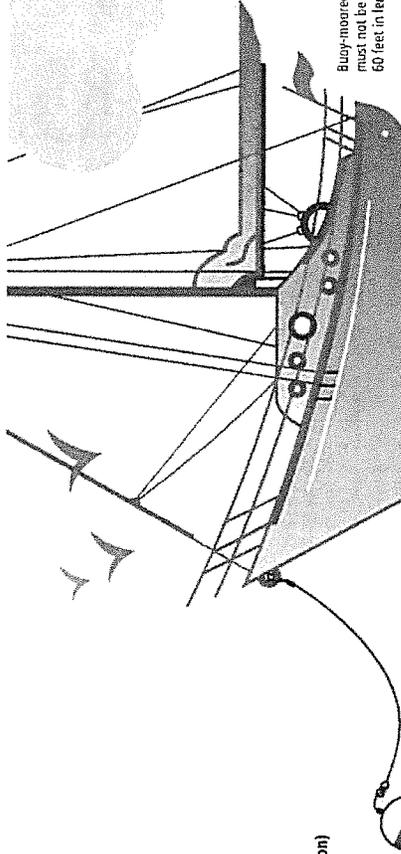
- ▶ **State Registration with DNR**
Complete an application.
- ▶ **City Restrictions**
If you live within city limits, allowable uses vary. Contact your city's planning office for requirements.

Contact the following agencies to determine if a permit or authorization is required:

- ▶ **WA Department of Fish and Wildlife Hydraulic Project Approval**
(360) 902-2534
- ▶ **WA Department of Ecology**
(360) 407-6400
- ▶ **U.S. Army Corps of Engineers (Permit)**
(206) 764-3495
- ▶ **Shoreline Master Program (Permit or Exemption)**
Requirements differ by county, addressed through your local county planning office.

PLEASE NOTE
Private recreational mooring buoys are not authorized for residential (living on the boat) or commercial purposes.

Buoy-moored boat must not be more than 60 feet in length.



FOR RESIDENTIAL PROPERTY OWNERS

How to Moor Your Boat On State-Owned Aquatic Lands

CHOOSE A MOORING SYSTEM DESIGN

Some mooring system designs have the potential to damage underwater lands and marine vegetation around the buoy. DNR's Land Managers can help you select a system that best sures your area. State Department of Fish and Wildlife has found two designs to be less destructive to ecosystems, fish and wildlife.

- ▶ **All-Rope System**
High-strength nylon rope joins buoy to anchor. The rope's buoyancy keeps it from dragging along the bottom and killing marine vegetation. Regular maintenance is required to keep barnacles and mussels from colonizing on the rope and weighing it down to scour the area.
- ▶ **Mid-Line Float System (Preferred)**
A mid-line float system (as shown here) keeps the anchor line from dragging on the bottom, which can kill marine vegetation.

Mooring Buoy
46 cm diameter, white, polyethylene, plastic float. Mark buoy with file number.

Chain
Keeps extra slack from floating in the harbor along slack water.

6" - 8" Midline float
attached to the poly rope a distance equal to 1/3 depth at high tide from anchor.

Poly rope

Anchor
Vessel may hit anything located within the vessel swing.

Vessel Swing

DENT
Water Depth at Extreme High Tide

DELT
Water Depth at Extreme Low Tide

L (Length)
Anchor line Length.

SCOPE
Ratio of anchor line length to water depth. Washington State Parks recommends between 4 and 7 feet of anchor line for every foot of water depth.

Anchor line Length (L) = Scope x DENT
Vessel Swing = $\sqrt{(L^2) - (DENT)^2}$ + Mooring line + Vessel length

Determine Your Buoy Measurements
The following mathematical formula may help you calculate the anchor line length (L) and vessel swing. Call your DNR Aquatic District office for help with the calculation (phone numbers on back).

Mooring buoys have the potential to impact aquatic vegetation. DNR discourages placement of mooring buoys in areas that impact aquatic habitat, including kelp beds and seagrass meadows.

High-Friction System

Anchor Line Length

Ratio of anchor line length to water depth. Washington State Parks recommends between 4 and 7 feet of anchor line for every foot of water depth.

Water Depth at Extreme High Tide

Water Depth at Extreme Low Tide

Anchor line Length

Anchor line Length (L) = Scope x DENT

Vessel Swing = $\sqrt{(L^2) - (DENT)^2}$ + Mooring line + Vessel length

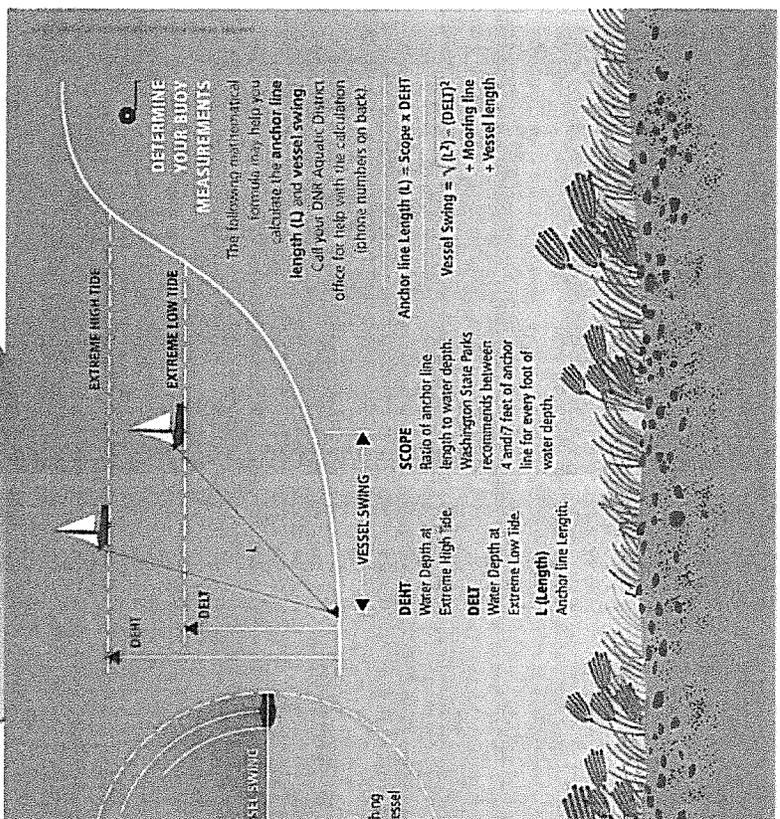


EXHIBIT 2

RCW 79.105.430

Private Recreational Docks –
Mooring buoys

RCW 79.105.430**Private recreational docks—Mooring buoys.**

(1) The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain without charge a dock on the areas if used exclusively for private recreational purposes and the area is not subject to prior rights, including any rights of upland, tideland, or shoreland owners as provided in RCW 79.125.400, 79.125.460, 79.125.410, and 79.130.010. The dock cannot be sold or leased separately from the upland residence. The dock cannot be used to moor boats for commercial or residential use. This permission is subject to applicable local, state, and federal rules and regulations governing location, design, construction, size, and length of the dock. Nothing in this subsection (1) prevents the abutting owner from obtaining a lease if otherwise provided by law.

(2) The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain a mooring buoy without charge if the boat that is moored to the buoy is used for private recreational purposes, the area is not subject to prior rights, including any rights of upland, tideland, or shoreland owners as provided in RCW 79.125.400, 79.125.460, 79.125.410, and 79.130.010, and the buoy will not obstruct the use of mooring buoys previously authorized by the department.

(a) The buoy must be located as near to the upland residence as practical, consistent with applicable rules and regulations and the provisions of this section. The buoy must be located, or relocated if necessary, to accommodate the use of lawfully installed and maintained buoys.

(b) If two or more residential owners, who otherwise qualify for free use under the provisions of this section, are in dispute over assertion of rights to install and maintain a mooring buoy in the same location, they may seek formal settlement through adjudication in superior court for the county in which the buoy site is located. In the adjudication, preference must be given to the residential owner that first installed and continually maintained and used a buoy on that site, if it meets all applicable rules, regulations, and provisions of this section, and then to the owner of the residential property nearest the site. Nothing in this section requires the department to mediate or otherwise resolve disputes between residential owners over the use of the same site for a mooring buoy.

(c) The buoy cannot be sold or leased separately from the abutting residential property. The buoy cannot be used to moor boats for commercial or residential use, nor to moor boats over sixty feet in length.

(d) If the department determines that it is necessary for secure moorage, the abutting residential owner may install and maintain a second mooring buoy, under the same provisions as the first, the use of which is limited to a second mooring line to the boat moored at the first buoy.

(e) The permission granted in this subsection (2) is subject to applicable local, state, and federal rules and regulations governing location, design, installation, maintenance, and operation of the mooring buoy, anchoring system, and moored boat. Nothing in this subsection (2) prevents a boat owner from obtaining a lease if otherwise provided by law. This subsection (2) also applies to areas that have been designated by the commissioner or the fish and wildlife commission as aquatic reserves.

(3) This permission to install and maintain a recreational dock or mooring buoy may be revoked by the department, or the department may direct the owner of a recreational dock or mooring buoy to relocate their dock or buoy, if the department makes a finding of public necessity to protect waterward access, ingress rights of other landowners, public health or

safety, or public resources. Circumstances prompting a finding of public necessity may include, but are not limited to, the dock, buoy, anchoring system, or boat posing a hazard or obstruction to navigation or fishing, contributing to degradation of aquatic habitat, or contributing to decertification of shellfish beds otherwise suitable for commercial or recreational harvest. The revocation may be appealed as provided for under RCW 79.105.160.

(4) Nothing in this section authorizes a boat owner to abandon a vessel at a recreational dock, mooring buoy, or elsewhere.

[2005 c 155 § 106; 2002 c 304 § 1; 2001 c 277 § 1; 1989 c 175 § 170; 1983 2nd ex.s. c 2 § 2. Formerly RCW 79.90.105.]

NOTES:

Effective date—1989 c 175: See note following RCW 34.05.010.

EXHIBIT 3

WAC 332-30-144

WAC 332-30-144**Private recreational docks.**

(1) **Applicability.** This section implements the permission created by RCW 79.105.430, Private recreational docks, which allows abutting residential owners, under certain circumstances, to install private recreational docks without charge. The limitations set forth in this section apply only to use of state-owned aquatic lands for private recreational docks under RCW 79.105.430. No restriction or regulation of other types of uses on aquatic lands is provided. This section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(2) **Eligibility.** The permission shall apply only to the following:

(a) An "abutting residential owner," being the owner of record of property physically bordering on public aquatic land and either used for single family housing or for a multifamily residence not exceeding four units per lot.

(b) A "dock," being a securely anchored or fixed, open walkway structure visible to boaters and kept in good repair extending from the upland property, primarily used as an aid to boating by the abutting residential owner(s), and accommodating moorage by not more than four pleasure boats typical to the body of water on which the dock is located. Two or more abutting residential owners may install and maintain a single joint-use dock provided it meets all other design requirements of this section; is the only dock used by those owners; and that the dock fronts one of the owners' property.

(c) A "private recreational purpose," being a nonincome-producing, leisure-time, and discretionary use by the abutting residential owner(s).

(d) State-owned aquatic lands outside harbor areas designated by the harbor line commission.

(3) **Uses not qualifying.** Examples of situations not qualifying for the permission include:

(a) Yacht and boat club facilities;

(b) Floating houses, as defined in WAC 332-30-106(23), and vessels used as a residence (as defined in WAC 332-30-106(62));

(c) Resorts;

(d) Multifamily dwellings, including condominium ownerships, with more than four units;

(e) Uses other than docks such as launches and railways not part of the dock, bulkheads, landfills, dredging, breakwaters, mooring buoys, swim floats, and swimming areas.

(4) **Limitations.**

(a) The permission does not apply to areas where the state has issued a reversionary use deed such as for shellfish culture, hunting and fishing, or park purposes; published an allocation of a special use and the dock is inconsistent with the allocation; or granted an authorization for use such as a lease, easement, or material purchase.

(b) Each dock owner using the permission is responsible for determining the availability of the public aquatic lands. Records of the department are open for public review. The department will research the availability of the public aquatic lands upon written request. A fee sufficient to cover costs shall be charged for this research.

(c) The permission is limited to docks that conform to adopted shoreline master programs and other local ordinances.

(d) The permission is not a grant of exclusive use of public aquatic lands to the dock owner. It does not prohibit public use of any aquatic lands around or under the dock. Owners of docks located on state-owned tidelands or shorelands must provide a safe, convenient, and clearly available means of pedestrian access over, around, or under the dock at all tide levels.

However, dock owners are not required to allow public use of their docks or access across private lands to state-owned aquatic lands.

(e) The permission is not transferable or assignable to anyone other than a subsequent owner of the abutting upland property and is continuously dependent on the nature of ownership and use of the properties involved.

(f) Vessels used as a residence and floating houses are not permitted to be moored at a private recreational dock, except when such moorage is necessary because of an emergency that immediately threatens human life or property, for the duration of the emergency only.

(5) **Revocation.** The permission may be revoked or canceled if:

(a) The dock or abutting residential owner has not met the criteria listed in subsection (2) or (4) of this section; or

(b) The dock significantly interferes with navigation or with navigational access to and from other upland properties. This degree of interference shall be determined from the character of the shoreline and waterbody, the character of other in-water development in the vicinity, and the degree of navigational use by the public and adjacent property owners;

(c) The dock interferes with preferred water-dependent uses established by law; or

(d) The dock is a public health or safety hazard.

(6) **Appeal of revocation.** Upon receiving written notice of revocation or cancellation, the abutting residential owner shall have thirty days from the date of notice to file for an administrative hearing under the contested case proceedings of chapter 34.05 RCW. If the action to revoke the permission is upheld, the owner shall correct the cited conditions and shall be liable to the state for any compensation due to the state from the use of the aquatic lands from the date of notice until permission requirements are met or until such permission is no longer needed. If the abutting residential owner disclaims ownership of the dock, the department may take actions to have it removed.

(7) **Current leases.** Current lessees of docks meeting the criteria in this section will be notified of their option to cancel the lease. They will be provided a reasonable time to respond. Lack of response will result in cancellation of the lease by the department.

(8) **Property rights.** No property rights in, or boundaries of, public aquatic lands are established by this section.

(9) **Lines of navigability.** The department will not initiate establishment of lines of navigability on any shorelands unless requested to do so by the shoreland owners or their representatives.

(10) Nothing in this section is intended to address statutes relating to sales of second class shorelands.

[Statutory Authority: RCW 79.105.360. WSR 06-06-005 (Order 724), § 332-30-144, filed 2/16/06, effective 3/19/06. Statutory Authority: RCW 79.90.455, 79.90.460. WSR 02-21-076 (Order 710), § 332-30-144, filed 10/17/02, effective 11/17/02. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. WSR 85-22-066 (Resolution No. 500), § 332-30-144, filed 11/5/85.]

Lynda Guernsey

From: Lynda Guernsey
Sent: Monday, May 7, 2018 9:04 AM
Gary N. McLean
Subject: FW: Notice of Appearance - San Juan Co. PPROVO 17-0065, 17-0066
Attachments: NOA Julie Thompson.pdf; Box Bay 17-0066.pdf; Box Bay 17-0065.pdf; TCE 17-0066.pdf; TCE 17-0065.pdf

Hi Gary,

I couldn't remember this morning whether I had forwarded this to you or not so if you didn't get it here it is and if you did please disregard! This is in regards to PAPL00-18-0001 and 0002 appeals of the Stabberts provisional use permits.

Regards,
Lynda

Lynda Guernsey, Administrative Specialist II – Direct Line (360) 370-7579
SAN JUAN COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT
(360) 378-2354 | 135 Rhone Street | PO Box 947 | Friday Harbor, WA 98250

From: Julie Thompson
Sent: Wednesday, May 2, 2018 1:47 PM
Lynda Guernsey <LyndaG@sanjuanco.com>
Subject: FW: Notice of Appearance - San Juan Co. PPROVO 17-0065, 17-0066

PAPL00-18-0001 and 0002.

From: Kelsey Demeter <kelsey@maritimeinjury.com>
Sent: Wednesday, May 2, 2018 1:35 PM
To: Julie Thompson <JulieT@sanjuanco.com>
Cc: Kelsey Demeter <kelsey@maritimeinjury.com>; Tom Evans <tom@maritimeinjury.com>
Subject: Notice of Appearance - San Juan Co. PPROVO 17-0065, 17-0066

Good Afternoon,

Please find a copy of the Notice of Appearance in the above referenced matter for Box Bay Shellfish Farm LLC and Thomas C. Evans.

Best,
Kelsey

Kelsey Demeter • Paralegal • Injury at Sea
4020 East Madison Street, Suite 210, Seattle, WA 98112
Tel: 206.527.8008 • **Toll Free:** 1.800. SEA. SALT
Fax: 206.527.0725
E-mail: kelsey@maritimeinjury.com www.injuryatsea.com

Please be advised that this e-mail and 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

MADISON
PARK LAW
OFFICES



May 2, 2018

JulieT@sanjuanco.com
Department of Community Development
Attn: Julie Thompson
135 Rhone Street
Friday Harbor, 98250

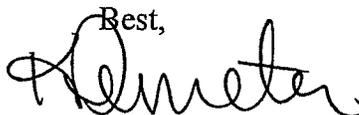
Re: Appeal of PPROVO-17-0065/PPROVO-17-0066– Notice of Appearance

Dear Julie:

Please find a copy of the Notices of Appearance by Box Bay Shellfish Farm LLC and Thomas C. Evans in the matters of PPROVO 17-0065 and PPROVO 17-0066.

A hard copy has been sent via USPS.

Best,



Kelsey Demeter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

BEFORE THE SAN JUAN COUNTY HEARING EXAMINER

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

Appellants,

v.

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

No. PPROVO-17-0066

**NOTICE OF APPEARANCE
(BOX BAY SHELLFISH FARM LLC)**

- TO: San Juan County, Department of Community Development; and Hearing Examiner; and
- TO: San Juan County, Office of the Hearing Examiner; and
- TO: Christopher R. Osborn and Jeremy M. Eckert, attorneys for Respondents Dan and Cheryl Stabbert

PLEASE TAKE NOTICE THAT: Thomas C. Evans does hereby appear as counsel for Box Bay Shellfish Farm LLC and request that all pleadings and all papers be served at 4020 E. Madison St., Suite 210, Seattle, WA 98112. Further, service by email, except by original process, is acceptable for all parties who likewise accept such service, so long as a copy of all papers so-served is retained

1 in the file, and simultaneously with service on Thomas C. Evans, tom@maritimeinjury.com and
2 Kelsey Demeter, kelsey@maritimeinjury.com.

3 Dated this 2nd day of May, 2018.
4

5 /s/ Thomas C. Evans
6 THOMAS C. EVANS WSBA #5122
7 4020 East Madison Street, Suite 210
8 Seattle, WA 98112
9 Tel: 206-527-5555
10 Fax: 206-527-0725
11 E-mail: tom@maritimeinjury.com
12
13
14
15
16
17
18
19
20
21

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

CERTIFICATE OF SERVICE

I certify on this date that I served the above document on the following individuals in the manner identified.

San Juan Hearing Examiner
Department of Community Development 135 [X] Via Email
Rhone Street [X] Via US Mail, postage prepaid
P.O. Box 947
Friday Harbor, WA 98250
dcd@sanjuanco.com

Christopher R. Osborn, WSBA #13608
Jeremy M. Eckert, WSBA #42596 [X] Via Email
chris.osbom@foster.com [X] Via US Mail, postage prepaid
jeremy.eckert@foster.com
Foster Pepper PLLC
1111 Third Ave., Suite 3000
Seattle, WA 98101
P: 206-447-4400
F: 206-447-9700
Attorney for Respondents Dan and Cheryl Stabbert

Dated this 2nd day of May, 2018

s/ Kelsey Demeter
Kelsey Demeter, Paralegal

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

BEFORE THE SAN JUAN COUNTY HEARING EXAMINER

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

Appellants,

No. PPROVO-17-0065

v.

**NOTICE OF APPEARANCE
(BOX BAY SHELLFISH FARM)**

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

- TO: San Juan County, Department of Community Development; and
- TO: San Juan County, Office of the Hearing Examiner; and
- TO: Christopher R. Osborn and Jeremy M. Eckert, attorneys for Respondents Dan and Cheryl Stabbert

PLEASE TAKE NOTICE THAT: Thomas C. Evans does hereby appear for Box Bay Shellfish Farm LLC and requests that all pleadings and all papers be served at 4020 E. Madison St., Suite 210, Seattle, WA 98112. Further, service by email, except by original process, is acceptable for all parties who likewise accept such service, so long as a copy of all papers so-served is retained in

1 the file, and simultaneously with service on Thomas C. Evans, tom@maritimeinjury.com and Kelsey
2 Demeter, kelsey@maritimeinjury.com.

3
4 Dated this 2nd day of May, 2018.

5 /s/ Thomas C. Evans

6 THOMAS C. EVANS WSBA #5122
7 4020 East Madison Street, Suite 210
8 Seattle, WA 98112
9 Tel: 206-527-5555
10 Fax: 206-527-0725
11 E-mail: tom@maritimeinjury.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

CERTIFICATE OF SERVICE

I certify on this date that I served the above document on the following individuals in the manner identified.

San Juan Hearing Examiner
Department of Community Development 135 [X] Via Email
Rhone Street [X] Via US Mail, postage prepaid
P.O. Box 947
Friday Harbor, WA 98250
dcd@sanjuanco.com

Christopher R. Osborn, WSBA #13608
Jeremy M. Eckert, WSBA #42596 [X] Via Email
chris.osbom@foster.com [X] Via US Mail, postage prepaid
jeremy.eckert@foster.com
Foster Pepper PLLC
1111 Third Ave., Suite 3000
Seattle, WA 98101
P: 206-447-4400
F: 206-447-9700
Attorney for Respondents Dan and Cheryl Stabbert

Dated this 2nd day of May, 2018

s/ Kelsey Demeter
Kelsey Demeter, Paralegal

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

BEFORE THE SAN JUAN COUNTY HEARING EXAMINER

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

Appellants,

v.

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

No. PPROVO-17-0066

**NOTICE OF APPEARANCE
(THOMAS C. EVANS)**

TO: San Juan County, Department of Community Development; and

TO: San Juan County, Office of the Hearing Examiner; and

TO: Christopher R. Osborn and Jeremy M. Eckert, attorneys for Respondents Dan and Cheryl Stabbert

PLEASE TAKE NOTICE THAT: Thomas C. Evans does hereby appear *pro se* and requests that all pleadings and all papers be served at 4020 E. Madison St., Suite 210, Seattle, WA 98112. Further, service by email, except by original process, is acceptable for all parties who likewise accept such service, so long as a copy of all papers so-served is retained in the file, and simultaneously with

1 service on Thomas C. Evans, tom@maritimeinjury.com service is also made on Kelsey Demeter,
2 kelsey@maritimeinjury.com.

3
4 Dated this 2nd day of May, 2018.

5 /s/ Thomas C. Evans

6 THOMAS C. EVANS WSBA #5122

7 4020 East Madison Street, Suite 210

8 Seattle, WA 98112

9 Tel: 206-527-5555

10 Fax: 206-527-0725

11 E-mail: tom@maritimeinjury.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

CERTIFICATE OF SERVICE

I certify on this date that I served the above document on the following individuals in the manner identified.

San Juan Hearing Examiner
Department of Community Development 135 [X] Via Email
Rhone Street [X] Via US Mail, postage prepaid
P.O. Box 947
Friday Harbor, WA 98250
dcd@sanjuanco.com

Christopher R. Osborn, WSBA #13608
Jeremy M. Eckert, WSBA #42596 [X] Via Email
chris.osbom@foster.com [X] Via US Mail, postage prepaid
jeremy.eckert@foster.com
Foster Pepper PLLC
1111 Third Ave., Suite 3000
Seattle, WA 98101
P: 206-447-4400
F: 206-447-9700
Attorney for Respondents Dan and Cheryl Stabbert

Dated this 2nd day of May, 2018

s/ Kelsey Demeter
Kelsey Demeter, Paralegal

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

BEFORE THE SAN JUAN COUNTY HEARING EXAMINER

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

Appellants,

v.

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

No. PPROVO-17-0065

**NOTICE OF APPEARANCE
(THOMAS C. EVANS)**

TO: San Juan County, Department of Community Development; and

TO: San Juan County, Office of the Hearing Examiner; and

TO: Christopher R. Osborn and Jeremy M. Eckert, attorneys for Respondents Dan and Cheryl Stabbert

PLEASE TAKE NOTICE THAT: Thomas C. Evans does hereby appear *pro se* and requests that all pleadings and all papers be served at 4020 E. Madison St., Suite 210, Seattle, WA 98112. Further, service by email, except original process, is acceptable for all parties who likewise accept such service, so long as a copy of all papers so-served is retained in the file, and simultaneously with

1 service on Thomas C. Evans, tom@maritimeinjury.com and Kelsey Demeter,
2 kelsey@maritimeinjury.com.

3 Dated this 2nd day of May, 2018.

4 /s/ Thomas C. Evans

5 THOMAS C. EVANS WSBA #5122

6 4020 East Madison Street, Suite 210

7 Seattle, WA 98112

8 Tel: 206-527-5555

9 Fax: 206-527-0725

10 E-mail: tom@maritimeinjury.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

CERTIFICATE OF SERVICE

I certify on this date that I served the above document on the following individuals in the manner identified.

San Juan Hearing Examiner
Department of Community Development 135
Rhone Street
P.O. Box 947
Friday Harbor, WA 98250
dcd@sanjuanco.com

Via Email
 Via US Mail, postage prepaid

Christopher R. Osborn, WSBA #13608
Jeremy M. Eckert, WSBA #42596
chris.osbom@foster.com
jeremy.eckert@foster.com
Foster Pepper PLLC
1111 Third Ave., Suite 3000
Seattle, WA 98101
P: 206-447-4400
F: 206-447-9700
Attorney for Respondents Dan and Cheryl Stabbert

Via Email
 Via US Mail, postage prepaid

Dated this 2nd day of May, 2018

s/ Kelsey Demeter
Kelsey Demeter, Paralegal

Lynda Guernsey

From: Julie Thompson
Sent: Wednesday, May 2, 2018 1:47 PM
To: Lynda Guernsey
Subject: FW: Notice of Appearance - San Juan Co. PPROVO 17-0065, 17-0066
Attachments: NOA Julie Thompson.pdf; Box Bay 17-0066.pdf; Box Bay 17-0065.pdf; TCE 17-0066.pdf; TCE 17-0065.pdf

PAPLOO-18-0001 and 0002.

From: Kelsey Demeter <kelsey@maritimeinjury.com>
Sent: Wednesday, May 2, 2018 1:35 PM
To: Julie Thompson <JulieT@sanjuanco.com>
Cc: Kelsey Demeter <kelsey@maritimeinjury.com>; Tom Evans <tom@maritimeinjury.com>
Subject: Notice of Appearance - San Juan Co. PPROVO 17-0065, 17-0066

Good Afternoon,

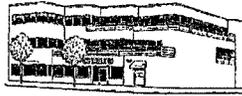
Please find a copy of the Notice of Appearance in the above referenced matter for Box Bay Shellfish Farm LLC and Thomas C. Evans.

Best,
Kelsey

Kelsey Demeter • Paralegal • Injury at Sea
4020 East Madison Street, Suite 210, Seattle, WA 98112
Tel: 206.527.8008 • **Toll Free:** 1.800. SEA. SALT
Fax: 206.527.0725
E-mail: kelsey@maritimeinjury.com www.injuryatsea.com

Please be advised that this e-mail and 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.

MADISON
PARK LAW
OFFICES



May 2, 2018

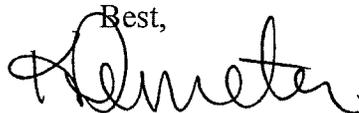
JulieT@sanjuanco.com
Department of Community Development
Attn: Julie Thompson
135 Rhone Street
Friday Harbor, 98250

Re: Appeal of PPROVO-17-0065/PPROVO-17-0066– Notice of Appearance

Dear Julie:

Please find a copy of the Notices of Appearance by Box Bay Shellfish Farm LLC and Thomas C. Evans in the matters of PPROVO 17-0065 and PPROVO 17-0066.

A hard copy has been sent via USPS.

Best,

Kelsey Demeter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

BEFORE THE SAN JUAN COUNTY HEARING EXAMINER

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

Appellants,

No. PPROVO-17-0066

v.

**NOTICE OF APPEARANCE
(BOX BAY SHELLFISH FARM LLC)**

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

- TO: San Juan County, Department of Community Development; and Hearing Examiner; and
- TO: San Juan County, Office of the Hearing Examiner; and
- TO: Christopher R. Osborn and Jeremy M. Eckert, attorneys for Respondents Dan and Cheryl Stabbert

PLEASE TAKE NOTICE THAT: Thomas C. Evans does hereby appear as counsel for Box Bay Shellfish Farm LLC and request that all pleadings and all papers be served at 4020 E. Madison St., Suite 210, Seattle, WA 98112. Further, service by email, except by original process, is acceptable for all parties who likewise accept such service, so long as a copy of all papers so-served is retained

1 in the file, and simultaneously with service on Thomas C. Evans, tom@maritimeinjury.com and
2 Kelsey Demeter, kelsey@maritimeinjury.com.

3 Dated this 2nd day of May, 2018.

4
5 /s/ Thomas C. Evans
6 THOMAS C. EVANS WSBA #5122
7 4020 East Madison Street, Suite 210
8 Seattle, WA 98112
9 Tel: 206-527-5555
10 Fax: 206-527-0725
11 E-mail: tom@maritimeinjury.com
12
13
14
15
16
17
18
19
20
21

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

CERTIFICATE OF SERVICE

I certify on this date that I served the above document on the following individuals in the manner identified.

San Juan Hearing Examiner
Department of Community Development 135 [X] Via Email
Rhone Street [X] Via US Mail, postage prepaid
P.O. Box 947
Friday Harbor, WA 98250
dcd@sanjuanco.com

Christopher R. Osborn, WSBA #13608
Jeremy M. Eckert, WSBA #42596 [X] Via Email
chris.osbom@foster.com [X] Via US Mail, postage prepaid
jeremy.eckert@foster.com
Foster Pepper PLLC
1111 Third Ave., Suite 3000
Seattle, WA 98101
P: 206-447-4400
F: 206-447-9700
Attorney for Respondents Dan and Cheryl Stabbert

Dated this 2nd day of May, 2018

s/ Kelsey Demeter
Kelsey Demeter, Paralegal

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

BEFORE THE SAN JUAN COUNTY HEARING EXAMINER

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

Appellants,

v.

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

No. PPROVO-17-0065

**NOTICE OF APPEARANCE
(BOX BAY SHELLFISH FARM)**

- TO: San Juan County, Department of Community Development; and
- TO: San Juan County, Office of the Hearing Examiner; and
- TO: Christopher R. Osborn and Jeremy M. Eckert, attorneys for Respondents Dan and Cheryl Stabbert

PLEASE TAKE NOTICE THAT: Thomas C. Evans does hereby appear for Box Bay Shellfish Farm LLC and requests that all pleadings and all papers be served at 4020 E. Madison St., Suite 210, Seattle, WA 98112. Further, service by email, except by original process, is acceptable for all parties who likewise accept such service, so long as a copy of all papers so-served is retained in

1 the file, and simultaneously with service on Thomas C. Evans, tom@maritimeinjury.com and Kelsey
2 Demeter, kelsey@maritimeinjury.com.

3
4 Dated this 2nd day of May, 2018.

5 /s/ Thomas C. Evans

6 THOMAS C. EVANS WSBA #5122
7 4020 East Madison Street, Suite 210
8 Seattle, WA 98112
9 Tel: 206-527-5555
10 Fax: 206-527-0725
11 E-mail: tom@maritimeinjury.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

CERTIFICATE OF SERVICE

I certify on this date that I served the above document on the following individuals in the manner identified.

San Juan Hearing Examiner
Department of Community Development 135 [X] Via Email
Rhone Street [X] Via US Mail, postage prepaid
P.O. Box 947
Friday Harbor, WA 98250
dcd@sanjuanco.com

Christopher R. Osborn, WSBA #13608
Jeremy M. Eckert, WSBA #42596 [X] Via Email
chris.osbom@foster.com [X] Via US Mail, postage prepaid
jeremy.eckert@foster.com
Foster Pepper PLLC
1111 Third Ave., Suite 3000
Seattle, WA 98101
P: 206-447-4400
F: 206-447-9700
Attorney for Respondents Dan and Cheryl Stabbert

Dated this 2nd day of May, 2018

s/ Kelsey Demeter
Kelsey Demeter, Paralegal

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

BEFORE THE SAN JUAN COUNTY HEARING EXAMINER

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

Appellants,

v.

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

No. PPROVO-17-0066

**NOTICE OF APPEARANCE
(THOMAS C. EVANS)**

TO: San Juan County, Department of Community Development; and

TO: San Juan County, Office of the Hearing Examiner; and

TO: Christopher R. Osborn and Jeremy M. Eckert, attorneys for Respondents Dan and Cheryl Stabbert

PLEASE TAKE NOTICE THAT: Thomas C. Evans does hereby appear *pro se* and requests that all pleadings and all papers be served at 4020 E. Madison St., Suite 210, Seattle, WA 98112. Further, service by email, except by original process, is acceptable for all parties who likewise accept such service, so long as a copy of all papers so-served is retained in the file, and simultaneously with

1 service on Thomas C. Evans, tom@maritimeinjury.com service is also made on Kelsey Demeter,
2 kelsey@maritimeinjury.com.

3
4 Dated this 2nd day of May, 2018.

5 /s/ Thomas C. Evans

6 THOMAS C. EVANS WSBA #5122

7 4020 East Madison Street, Suite 210

8 Seattle, WA 98112

9 Tel: 206-527-5555

10 Fax: 206-527-0725

11 E-mail: tom@maritimeinjury.com

1 **CERTIFICATE OF SERVICE**

2 I certify on this date that I served the above document on the following individuals in the
3 manner identified.

4
5 San Juan Hearing Examiner [X] Via Email
6 Department of Community Development 135 [X] Via US Mail, postage prepaid
7 Rhone Street
8 P.O. Box 947
9 Friday Harbor, WA 98250
10 dcd@sanjuanco.com

11 Christopher R. Osborn, WSBA #13608
12 Jeremy M. Eckert, WSBA #42596 [X] Via Email
13 chris.osbom@foster.com [X] Via US Mail, postage prepaid
14 jeremy.eckert@foster.com
15 Foster Pepper PLLC
16 1111 Third Ave., Suite 3000
17 Seattle, WA 98101
18 P: 206-447-4400
19 F: 206-447-9700
20 *Attorney for Respondents Dan and Cheryl Stabbert*

21
Dated this 2nd day of May, 2018

s/ Kelsey Demeter
Kelsey Demeter, Paralegal

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

BEFORE THE SAN JUAN COUNTY HEARING EXAMINER

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

Appellants,

No. PPROVO-17-0065

v.

**NOTICE OF APPEARANCE
(THOMAS C. EVANS)**

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

- TO: San Juan County, Department of Community Development; and
- TO: San Juan County, Office of the Hearing Examiner; and
- TO: Christopher R. Osborn and Jeremy M. Eckert, attorneys for Respondents Dan and Cheryl Stabbert

PLEASE TAKE NOTICE THAT: Thomas C. Evans does hereby appear *pro se* and requests that all pleadings and all papers be served at 4020 E. Madison St., Suite 210, Seattle, WA 98112. Further, service by email, except original process, is acceptable for all parties who likewise accept such service, so long as a copy of all papers so-served is retained in the file, and simultaneously with

1 service on Thomas C. Evans, tom@maritimeinjury.com and Kelsey Demeter,
2 kelsey@maritimeinjury.com.

3 Dated this 2nd day of May, 2018.

4 /s/ Thomas C. Evans

5 THOMAS C. EVANS WSBA #5122
6 4020 East Madison Street, Suite 210
7 Seattle, WA 98112
8 Tel: 206-527-5555
9 Fax: 206-527-0725
10 E-mail: tom@maritimeinjury.com

CERTIFICATE OF SERVICE

I certify on this date that I served the above document on the following individuals in the manner identified.

San Juan Hearing Examiner
Department of Community Development 135
Rhone Street
P.O. Box 947
Friday Harbor, WA 98250
dcd@sanjuanco.com

Via Email
 Via US Mail, postage prepaid

Christopher R. Osborn, WSBA #13608
Jeremy M. Eckert, WSBA #42596
chris.osbom@foster.com
jeremy.eckert@foster.com
Foster Pepper PLLC
1111 Third Ave., Suite 3000
Seattle, WA 98101
P: 206-447-4400
F: 206-447-9700
Attorney for Respondents Dan and Cheryl Stabbert

Via Email
 Via US Mail, postage prepaid

Dated this 2nd day of May, 2018

s/ Kelsey Demeter
Kelsey Demeter, Paralegal

CERTIFICATE OF SERVICE

MADISON PARK LAW OFFICES
4020 EAST MADISON STREET, SUITE 210,
SEATTLE, WASHINGTON 98112
TELEPHONE (206) 527-8008 • FAX (206) 527-0725

Lynda Guernsey

From: Lynda Guernsey
S Monday, April 30, 2018 3:24 PM
T Gary N. McLean
Subject: Amended Notice of Appearance and Motion for Pre-Hearing Conference
Attachments: 2018-04-30_Amended Notice of Appearance_Foster Pepper.pdf; 2018-04-30_Motion for Pre-Hearing Conference_Foster Pepper.pdf

Hi Gary,

Attached I an Amended Notice of Appearance and Motion for Pre-Hearing Conference received today from Foster Pepper in regards to PAPL00-18-0001 and PAPL00-18-0002 about the Stabbert provisional use permit.

Regards,
Lynda

Lynda Guernsey, Administrative Specialist II – Direct Line (360) 370-7579
SAN JUAN COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT
(360) 378-2354 | 135 Rhone Street | PO Box 947 | Friday Harbor, WA 98250

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE HEARING EXAMINER FOR S.J.C. DEPARTMENT OF
SAN JUAN COUNTY

APR 30 2018

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

COMMUNITY DEVELOPMENT

Appellants,

File No. PAPL00-18-0001
PAPL00-18-0002

v.

DAN & CHERYL STABBERT; SAN JUAN
COUNTY PLANNING DEPARTMENT,

(re: PPROVO-17-00065 and
PPROVO-17-0066)

Respondents.

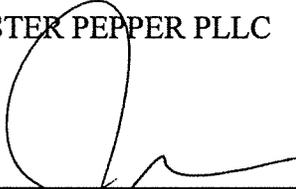
MOTION FOR A PREHEARING
CONFERENCE

On March 12, 2018, the San Juan County Department of Community Development approved two provisional use permits (PPROVO-17-0065 and -0066, the "Permits") for Dan and Cheryl Stabbert ("Stabbert"). Thomas Evans and Box Bay Shellfish Farm ("Appellant") appealed the Permits. Both appeals are 197 pages in length. With the exception of the caption, the 197-page appeal for PPROVO-17-0065 is an identical copy of the 197-page appeal for PPROVO-17-0066. The lengthy appeals raise constitutional, real property, and state law issues, but the appeals fail to specify how the proposal is inconsistent with the provisional use permit approval criteria set forth in the San Juan County Code.

1 Pursuant to SJCC 2.22.200.D, Stabbert requests that the Hearing Examiner schedule a
2 pre-hearing conference for PAPL00-18-0001 and -002. At the pre-hearing conference, Stabbert
3 requests the Hearing Examiner direct the Appellant to prepare a more definitive statement of
4 issues on appeal and connect each issue to the applicable provisional use permit approval
5 criteria. Finally, pursuant to SJCC2.22.200.D.8, Stabbert requests that the Hearing Examiner
6 prepare a schedule that includes dispositive motion briefing.

7 DATED this 27th day of April, 2018.

8 FOSTER PEPPER PLLC

9
10
11 By: 

12 Christopher R. Osborn, WSBA #13608
13 Jeremy M. Eckert, WSBA #42596
14 1111 Third Avenue, Suite 3000
15 Seattle, WA 98101
16 (206) 447-4400
17 chris.osborn@foster.com
18 jeremy.eckert@foster.com

CERTIFICATE OF SERVICE

I certify that on this date, I filed a copy of the Motion for Pre-Hearing Conference with the San Juan Hearing Examiner.

I also certify that on this date, a copy of the same document was sent to the following parties listed below in the manner indicated:

San Juan Hearing Examiner
Department of Community Development
135 Rhone Street
P.O. Box 947
Friday Harbor, WA 98250
dcd@sanjuanco.com

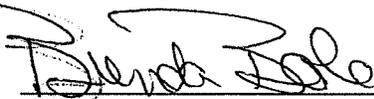
Via Facsimile
 Via Legal Messenger
 Via Efile/Email
 Via US Mail, postage prepaid

Thomas C. Evans
c/o Madison Park Law Offices
4020 Eawst Madison Street, Suite 210
Seattle, WA 98122
206-527-8008
tom@maritimeinjury.com
Attorney for Thomas C. Evans

Via Facsimile
 Via Legal Messenger
 Via Email
 Via US Mail, postage prepaid

Thomas C. Evans
PO Box 408
Olga, WA 98112
360-376-5987
tom@maritimeinjury.com
Attorney for Box Bay Shellfish Farm LLC

Dated this 27th day of April, 2018, at Seattle, Washington.



Brenda Bole

1
2
3
4
5
6
7 BEFORE THE HEARING EXAMINER FOR
8 SAN JUAN COUNTY

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

11 Appellants,

12 v.

13 DAN & CHERYL STABBERT; SAN JUAN
14 COUNTY PLANNING DEPARTMENT,

15 Respondents.

File No. PAPL00-18-0001
PAPL00-18-0002

(re: PPROVO-17-00065 and
PPROVO-17-0066)

AMENDED NOTICE OF APPEARANCE

S.J.C. DEPARTMENT OF

16 TO: San Juan County, Department of Community Development; and

APR 30 2018

17 TO: Thomas C. Evans, Attorney at Law

COMMUNITY DEVELOPMENT

18 PLEASE TAKE NOTICE that Dan and Cheryl Stabbert, by and through their attorneys,
19 Christopher R. Osborn and Jeremy M. Eckert of Foster Pepper PLLC, hereby enter their
20 appearances in the above-entitled actions and request that service of all further pleadings and
21 papers herein, except original process, be made upon each of them at the address below stated.
22 For clarity, this notice of appearance supplements the notice of appearance for PAPL00-18-0001
23 dated April 23, 2018.
24
25
26

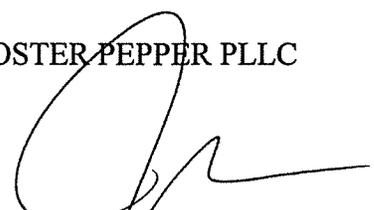
AMENDED NOTICE OF APPEARANCE- 1

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1 We also take this opportunity to advise the Hearing Examiner and the parties that we
2 consent to have documents served upon us by email, so long as the other parties consent to such
3 service.

4 DATED this 27th day of April, 2018.

5 FOSTER PEPPER PLLC

6
7
8 By: 
9 Christopher R. Osborn, WSBA #13608
10 Jeremy M. Eckert, WSBA #42596
11 1111 Third Avenue, Suite 3000
12 Seattle, WA 98101
13 (206) 447-4400
14 chris.osborn@foster.com
15 jeremy.eckert@foster.com

1 **CERTIFICATE OF SERVICE**

2 I certify that on this date, I filed a copy of the Amended Notice of Appearance for Dan &
3 Cheryl Stabbert with the San Juan Hearing Examiner.

4 I also certify that on this date, a copy of the same document was sent to the following
5 parties listed below in the manner indicated:

6 San Juan Hearing Examiner
7 Department of Community Development
8 135 Rhone Street
9 P.O. Box 947
10 Friday Harbor, WA 98250
11 dcd@sanjuanco.com

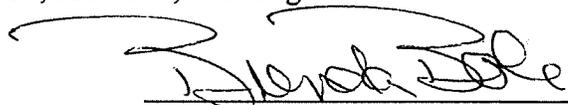
Via Facsimile
 Via Legal Messenger
 Via Efile/Email
 Via US Mail, postage prepaid

12 Thomas C. Evans
13 c/o Madison Park Law Offices
14 4020 Eawst Madison Street, Suite 210
15 Seattle, WA 98122
16 206-527-8008
17 tom@maritimeinjury.com
18 *Attorney for Thomas C. Evans*

Via Facsimile
 Via Legal Messenger
 Via Email
 Via US Mail, postage prepaid

19 Thomas C. Evans
20 PO Box 408
21 Olga, WA 98112
22 360-376-5987
23 tom@maritimeinjury.com
24 *Attorney for Box Bay Shellfish Farm LLC*

25 Dated this 29th day of April, 2018, at Seattle, Washington.

26 
Brenda Bole

Julie Thompson

From: Julie Thompson
Sent: Friday, April 27, 2018 9:42 AM
To: 'Gary N. McLean'
Subject: appeal PAPL00-18-0001
Attachments: PAPL00-18-0001_Evans_App Part 1.pdf

Gary,

Attached is an appeal that was submitted for a provisional use vacation rental permit we recently issued, PROV00-17-0065. This is the first half of the appeal. The second half will come in a separate email. There will be a total of two appeals submitted by Thomas Evans for permits issued to Dan and Cheryl Stabbert. I will also be sending a Notice of Appearance from Jeremy Eckert, Foster Pepper, who is representing the Stabberts. He has indicated he will be submitting information for you in the near future regarding these cases.

Julie

Julie Thompson

From: Julie Thompson
Sent: Friday, April 27, 2018 9:44 AM
To: 'Gary N. McLean'
Subject: PAPL00-18-0001, part 2
Attachments: PAPL00-18-0001_Evans_App Part 2.pdf

Gary,
Here is the second part of PAPL00-18-0001 for PPROV0-17-0065.
Julie

Julie Thompson

From: Julie Thompson
Sent: Friday, April 27, 2018 9:45 AM
To: 'Gary N. McLean'
Subject: Notice of Appearance_Foster Pepper_Re PPROV0-17-0065 Stabbert.pdf
Attachments: 2018-04-26_Notic of Appearance_Foster Pepper_Re PPROV0-17-0065 Stabbert.pdf

Gary,
Attached is the notice of appearance for the appeal of PPROV0-17-0065.
Julie

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE HEARING EXAMINER FOR THE
SAN JUAN COUNTY

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

Appellants,

v.

DAN & CHERYL STABBERT; SAN JUAN
COUNTY PLANNING DEPARTMENT,

Respondents.

FILE NO. PPROVO-17-0065

NOTICE OF APPEARANCE

S.J.C. DEPARTMENT OF

APR 26 2018

COMMUNITY DEVELOPMENT

TO: San Juan County, Department of Community Development; and

TO: Thomas C. Evans, Attorney at Law

PLEASE TAKE NOTICE that Dan and Cheryl Stabbert, by and through their attorneys, Christopher R. Osborn and Jeremy M. Eckert of Foster Pepper PLLC, hereby enter their appearances in the above-entitled action and request that service of all further pleadings and papers herein, except original process, be made upon each of them at the address below stated.

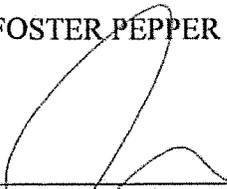
We also take this opportunity to advise the Hearing Examiner and the parties that we consent to have documents served upon us by email, so long as the other parties consent to such service.

NOTICE OF APPEARANCE- 1

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1 DATED this 25th day of April, 2018.

2 FOSTER PEPPER PLLC

3
4 By: 

5 Christopher R. Osborn, WSBA #13608

6 Jeremy M. Eckert, WSBA #42596

7 1111 Third Avenue, Suite 3000

8 Seattle, WA 98101

9 (206) 447-4400

10 chris.osborn@foster.com

11 jeremy.eckert@foster.com

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
NOTICE OF APPEARANCE- 2

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

CERTIFICATE OF SERVICE

I certify that on this date, I filed a copy of the Notice of Appearance for Dan & Cheryl Stabbert with the San Juan Hearing Examiner.

I also certify that on this date, a copy of the same document was sent to the following parties listed below in the manner indicated:

San Juan Hearing Examiner [] Via Facsimile
Department of Community Development [] Via Legal Messenger
135 Rhone Street [X] Via Efile/Email
P.O. Box 947 [X] Via US Mail, postage prepaid
Friday Harbor, WA 98250
dcd@sanjuanco.com

Thomas C. Evans [] Via Facsimile
c/o Madison Park Law Offices [] Via Legal Messenger
4020 Eawst Madison Street, Suite 210 [X] Via Email
Seattle, WA 98122 [] Via US Mail, postage prepaid
206-527-8008
tom@maritimeinjury.com
Attorney for Thomas C. Evans

Thomas C. Evans
PO Box 408
Olga, WA 98112
360-376=5987
tom@maritimeinjury.com
Attorney for Box Bay Shellfish Farm LLC

Dated this 7th day of April, 2018, at Seattle, Washington.



Brenda Bole

Lynda Guernsey

From: Brenda Bole <brenda.bole@foster.com>
S Wednesday, April 25, 2018 4:44 PM
Community Development; 'tom@maritimeinjury.com'
Cc: Jeremy Eckert
Subject: Thomas C. Evans v. Dan & Cheryl Stabbert, San Juan Hearing Examiner, PPROVO-17-0065.pdf
Attachments: Stabbert Appearance, San Juan Hearing Examiner, PPROVO-17-0065.pdf

Attached please find a Notice of Appearance on behalf of Dan and Cheryl Stabbert in the above-referenced matter. Hard copies will follow via US Mail.

Brenda Bole
LEGAL SECRETARY
FOSTER PEPPER PLLC
1111 Third Avenue, Suite 3000
Seattle, WA 98101
brenda.bole@foster.com
Tel: 206-447-2885
Fax: 206-447-9700
foster.com