EXHIBIT 4

MADISON
PARK LAW
OFFICES

May 2, 2018

Department of Community Development
dcd@sanjuanco.com
Attn: Hearing Examiner
13 5 Rhone Street
Friday Harbor, 98250

S.J.C. DEPARTMENT OF
COMMUNITY DEVELOPMENT

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

Dear Hearings Examiner:

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

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SUITE 210
SEATTLE, WA 98112
(206) 527-8008
FAX (206) 527-0725
TOLL FREE 1-800-SEA-SALT
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EMAIL kelsey@maritimeinjury.com

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

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SEATTLE, WASHINGTON 98112
TELEPHONE (206) 527-8008 • FAX (206) 527-0725

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

Dated this 2nd day of May, 2018.

/s/ Thomas C. Evans

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

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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	[X] Via Email [X] 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*	[X] Via Email [X] Via US Mail, postage prepaid

Dated this 2nd day of May, 2018

s/ Kelsey Demeter
Kelsey Demeter, Paralegal

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SEATTLE, WASHINGTON 98112
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EXHIBIT 5

Lynda Guernsey

From: Erika Shook
Sent: Thursday, May 31, 2018 3:41 PM
To: Tom Evans
Cc: Julie Thompson; Lynda Guernsey; jeremy.eckert@foster.com; 'karlal@stabbertmaritime.com'; Lynda Guernsey; 'Kelsey Demeter'
Subject: PAPL00-18-0001 and PAPL00-18-0002 Stabbert/Evans Appeals

Hello,
Here are the answers to your questions to Julie Thompson:

1) The staff report that will be issued will be responding to the appeal consistent with SJCC 2.22.230. The rules and procedures are spelled out in the Hearing Examiner Rules found in Chapter 2.22, Article II of the San Juan County Code http://www.codepublishing.com/WA/SanJuanCounty/#!/SanJuanCounty02/SanJuanCounty0222.html#2.22.200.
2) Motions and pre-hearing conferences are addressed in SJCC 2.22.230. The only motion received thus far was the motion for a pre-hearing conference, which has been held. There are no pending motions as of the time of this email. The County will respond to issues listed in the appeal in the staff report. If the "jurisdictional" issues below are in the appeal, then the County staff report will respond to those issues.
3) We will send the record of both appealed permits as required by SJCC 2.22.230.I.2. We will prepare it and distribute it to the parties in advance of 8/1/2018, although the county staff report will not be issued until 8/1/2018. Your bate stamped copy is included in your appeal, so you may refer to its page numbers. Staff reviewed the documents and compared them to the County file. PAPL00-18-0002 is the appeal of PPROV0-18-0066. That appeal materials include the application materials and exhibits for PPROV0-18-0066 in the same order as we sent them out on March 12, 2018. PAPL00-18-0001 is the appeal of PPROV0-18-0065. The materials attached to that appeal are the application materials and exhibits for PPROV0-18-0066. In other words, the PAPL00-18-0001 contains no attachments or exhibits referencing PPROV0-18-0065.

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

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From: Tom Evans <tom@maritimeinjury.com>
Sent: Thursday, May 31, 2018 11:09 AM
To: Julie Thompson <JulieT@sanjuanco.com>
Cc: jeremy.eckert@foster.com; chris.osborn@foster.com; Karla Lopez <KarlaL@stabbertmaritime.com>; Lynda Guernsey <LyndaG@sanjuanco.com>; Kelsey Demeter <kelsey@maritimeinjury.com>
Subject: Re: Stabbert Briefing Schedule.docx

Hi Julie! And thank you for the pre-hearing schedule below. I have a couple of quick questions:

(1) It appears there will be no second pre-hearing conference, but a supplemental staff report will be issued on 8/1/18. That's fine with me - If there is a supplemental staff report I presume I will not be required to file new appeal fees and notices, or identify issues of concern in the supplemental report prior to the hearing per SJC 2.22.230 [B]. Also, I presume either party will be able to express their concerns to the 8/1/18 supplement at the time of the 8/15 hearing, and

will not be required to submit specific claims for relief as to conditions in the supplemental staff report until the 8/15 hearing. For example, common conditions imposed by the Examiner in other appeals dealing with conflicting property issues have identified location and number of No Trespassing signs. Am I right, Stabbert may object to placement/number, if any, and we may do likewise?

(Evans/Box Bay Pre-hearing "jurisdictional" motions - there is no time slot for appellants "jurisdictional" motions, but you may be indicating this is not necessary. The two "jurisdictional" issues by Appellants consist of: (1) Use of a private residential abutting joint use dock for vrbo purposes given RCW 79.105.430 /WAC332-30-144, as well as other legal impediments to such use (JUA), prohibit this; (2) Not requiring a Shoreline Management conditional use permit for vrbo s within Shoreline Management Jurisdiction by interpreting such use as categorically exempt per WAC 173-27-040.

Previously Appellants also indicated an intent to challenge SJC 2.22.210 (C) "Evidence" and (H) "burden of appellant to obtain reversal". While I continue to believe these provisions are constitutionally infirm, Appellants hereby withdraw any challenge on those grounds for purposes of this hearing and final determination by the hearing examiner and San Juan County.

So again, my question is, given there is nothing in the schedule for further briefing/motion practice etc on the above two issues (dock/SMA exemption) and further, given that there is already considerable briefing in the record on these two issues,are you requesting anything further from Appellants on those two issues?

(3) Have you had time to compare the planning department file forwarded March 12, 2018 with the Bates Stamped Ex. 1 we sent to all of the parties? I know there likely will be additional staff record given an 8/1 supplementation date has been provided, but for briefing/hearing/etc it would be nice to know when we are all "singing" from the same page and we know what that page is.

Please let me know as soon as you can if additional briefing is necessary on the two issues identified above, or if the existing record suffices. I expect to have the appeal clarification due June 11 finished shortly. Thankyou for your courtesy and co-operation. Tom Evans

Thomas C. Evans ◆ Injury at Sea
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Tel: 206.527.8008, Ext. 2 ◆ **Toll Free:** 1.800. SEA. SALT
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On May 29, 2018, at 9:03 AM, Julie Thompson <JulieT@sanjuanco.com> wrote:

Good morning all,
Attached is the briefing schedule we discussed on our conference call on May 23. Please let me know if you have questions.
Julie

Lynda Guernsey

From: Tom Evans <tom@maritimeinjury.com>
Sent: Thursday, May 31, 2018 11:09 AM
Julie Thompson
Cc: jeremy.eckert@foster.com; chris.osborn@foster.com; Karla Lopez; Lynda Guernsey; Kelsey Demeter
Subject: Re: Stabbert Briefing Schedule.docx
Attachments: Stabbert Briefing Schedule.docx

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Please let me know as soon as you can if additional briefing is necessary on the two issues identified above, or if the existing record suffices. I expect to have the appeal clarification due June 11 finished shortly. Thankyou for your courtesy and co-operation. Tom Evans

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On May 29, 2018, at 9:03 AM, Julie Thompson <JulieT@sanjuanco.com> wrote:

Good morning all,
Attached is the briefing schedule we discussed on our conference call on May 23. Please let me know if you have questions.
Julie

All responses/motions/briefings to be sent to all parties and to the Hearing Examiner by 3:00 pm on the due date. The Hearing Examiner is reached by email via Lynda Guernsey in the Community Development department at lyndag@sanjuanco.com.

Due dates are as follows:

Evans clarification of issues	June 11, 2018
Eckert response to clarification	June 13, 2018
Dispositive motions by Eckert	June 15, 2018
Evans response to dispositive motions	June 29, 2018
Evans and Eckert Briefings/Final Reply	July 11, 2018
Staff report to the Hearing Examiner due	August 1, 2018
Appeal hearings	August 15, 2018 at 10:00 am

EXHIBIT 6

Lynda Guernsey

From: Lynda Guernsey
Sent: Thursday, June 7, 2018 4:03 PM
To: Gary N. McLean
Subject: FW: PAPL00-18-0001 and PAPL00-18-0002 Evans Appeals of Stabberts Provisional Use Permits
Attachments: Appeal Box Bay Revised.pdf

Hi Gary,

Please see the email below and attachment that was emailed today in regards to the afore mentioned Evans appeals PAPL00-18-0001 and 0002.

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: Thursday, June 7, 2018 3:59 PM
To: Erika Shook <erikas@sanjuanco.com>
Cc: Kelsey Demeter <kelsey@maritimeinjury.com>; Lynda Guernsey <LyndaG@sanjuanco.com>; Julie Thompson <JulieT@sanjuanco.com>; chris.osborn@foster.com; jeremy.eckert@foster.com
Subject: PAPL00-18-0001 and PAPL00-18-0002 Appeals

Good Afternoon,

Attached is the **Box Bay Shellfish Farm LLC** supplementation regarding the conditional use requirements appeals Nos PAPL00-18-0001 and PAPL00-18-0002. The other conditional use requirement amendments on behalf of Thomas C. Evans should be completed tomorrow, Thursday June 8th.

Best,
Kelsey Demeter

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Lynda Guernsey

From: Kelsey Demeter <kelsey@maritimeinjury.com>
Sent: Thursday, June 7, 2018 3:59 PM
T Erika Shook
C Kelsey Demeter; Lynda Guernsey; Julie Thompson; chris.osborn@foster.com; jeremy.eckert@foster.com
Subject: PAPL00-18-0001 and PAPL00-18-0002 Appeals
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Kelsey Demeter

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Hearing: August 15, 2018

BEFORE THE SAN JUAN COUNTY HEARING EXAMINER

BOX BAY SHELLFISH FARM L.L.C Appellant, v. DAN & CHERYL STABBERT; SAN JUAN COUNTY PLANNING DEPARTMENT, Respondents.	No. PAPL00-18-0001 PAPL00-18-0002 **NOTICE OF APPEAL-STATEMENT OF ISSUES -PROVISIONAL USE APPROVAL CRITERIA -DEFINITIVE STATEMENT OF ISSUES ON APPEAL**

INTRODUCTION: Respondent has requested and the Examiner has granted Respondents request that Appellant(s) prepare a more definitive statement of issues on appeal and a connection of appeal issues to the applicable provisional use criteria. This Document responds to that request for PAPLOO-18-0001 and PAPLOO-18-002, the appeals (two – two lots/two appeals) of Box Bay Shellfish Farm LLC (Box Bay).

I. SUPPLEMENT TO LEGAL ISSUES ON APPEAL.

Appellants have clearly identified all legal issues in this case, in exacting detail, in Appellants Exhibit 1, pages 1 - 197, and in the Supplemental Notice of Appeal issued (4 separate notices) served May 11, 2018, entitled "Supplemental Appeal". Addressing first, the May 11 Notice which shows it is clear the San Juan County planning department failed to as required by SJC Code contact all agencies with jurisdiction and failed to contact the Department of Natural Resources. As a result no record was made regarding RCW79.105.430 and WAC 332-30-144. These laws mandate that private recreational

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docks and buoys, such as Stabbert proposes to use with his VRBOs, may not be used, advertised or otherwise made to appear they are part of the VRBO rental. Further, by letter dated May 7, 2018 the DNR makes it clear that to allow such use would be a commercial "revenue generating" use and be considered a commercial enterprise. While DNR leases are issued to commercial uses in general they are never issued for private recreational docks. Further, any lease would require both property owners to sign.

Ex. 1 outlines all legal arguments. For example, pages 54 -57 contain detailed argument as to why VRBOs conflict with JUA language regarding the dock being privately used only, why VRBOs are considered a commercial use, and an in-depth argument per RCW 90.58.356(e) of categorical exemptions and that VRBO does not warrant an exemption. Argument is also made, p. 57 as to why under San Juan County code 18.40.270 VRBO is not categorically exempt. P.69 includes a detailed listing and argument as to why owner-occupied Single-family residence **is not** the same as VRBO use and thus a shoreline management conditional use substantial development permit is required. P.65 contains argument dated January 23, 2018 about what, as a matter of law "a use" is, and why classifying a VRBO as a non-use is contrary to SJC 18.50.600. P.65 dated January 24, 2018 contains Appellants argument as to why the zoning of rural forest farm does not include vacation rentals. Pages 66 – 79 contains DOE argument made in *Robin Hood Village* wherein the DOE fined a VRBO for use in a shoreline.

Appellants have withdrawn their challenge, for purposes of this hearing only, issues related to the vagueness of the Examiners rules as to evidence and prevailing party as previously identified. Since there are constitutional issues they may be raised at any time in further proceedings.

II. LINKING ISSUES ON APPEAL TO PROVISIONAL USE PERMIT APPROVAL CRITERIA

Criteria for provisional use permits for VRBO's is stated in SJC 18.40.275 "Vacation rental of residences or accessory dwelling units." Subparts (A) to (M) contain the specific list of provisional use criteria for VRBOs in particular. Each issue in this appeal (non-legal) is identified below along with the appropriate SJC 18.40.275 standard and argument demonstrating why the condition is not met. For the sake of economy reference is made only to the sub-part

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COMES NOW BOX BAY SHELLFISH FARM LLC (BOX BAY) in the above entitled and foregoing matter and does hereby issue formal notice of appeal of the Findings of Fact, Conclusions of Law, and the Decision entered in the above matter on March 12, 2018, copy attached hereto, as follows:

1. Identification of Appellants:

Evans is the owner of the Westerly property described in the Joint Use Agreement attached, and resides immediately adjacent to the Stabbert Property. Box Bay is a non-profit Washington LLC which grows oysters for charitable purposes on the shoreline abutting the Stabbert/Evans properties, and in floating oyster grow cages which float in Box Bay are tied off to the Joint Use Dock and are within easy reach of any dock user. Contact information for Evans is as follows: Thomas C. Evans Attorney At Law c/o Madison Park Law Offices, 4020 East Madison Street, Suite 210, Seattle, Washington 98112. Tel. 206-527-8008 cell: 206-499-8000, E-mail: tom@maritimeinjury.com. For Box Bay: Thomas C. Evans, Manager, Box Bay Shellfish Farm LLC P.O. Box 408 Olga, Washington 98112 Tel. 360-376-5987, E-mail: tom@maritimeinjury.com.

2. Statement Describing Standing To Appeal:

(a) Evans – would be directly and significantly adversely impacted by Stabbert Vacation Rental by Owner (VRBO) in multiple ways, which are all set out in detail in the numerous objections previously submitted to San Juan County (SJC) and are attached hereto. In summary, these impacts include severe traffic conflicts by adding up to 18 renter occupants each likely making use of Obstruction Pass Road on a regular basis where said road is privately maintained, can accommodate only one vehicle in one direction at a time without side-line stand by; noise emanating up and out of the Stabbert property from vacationers whose use of Stabbert property amounts to noise emanating from a megaphone vortex given the configuration of Box Bay, encroachment on privately owned Evans property including privately owned 300 square foot landing at the foot of the entrance to the privately owned joint use dock; trespassers attempting to use the privately owned joint use dock and difficulties in keeping trespassers off the dock. The dock is the centerpiece of the Stabbert VRBO property and Evans will have to, without protective measures such as a locked gate and no trespass signs, constantly restrain trespassers. Renters are also likely to be attracted to use the privately owned dock by

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advertising depicting the property with the dock at the center. Unless large no. 18pt. type is included in all advertisements stating the dock is not available for use, potential renters will naturally believe Stabbert owns the joint use dock and it will be available for their use.

(b) Box Bay Shellfish Farm LLC is partially located in Box Bay, immediately in front of the Stabbert property and has been a shellfish (oyster) farm since 2009. Its sole purpose is to serve the community on a charitable purpose basis by giving away oysters free to charitable dinners and events. It grows large non-commercial amounts of oysters in the areas indicated above and uses them for charitable purposes only. This includes giving bulk supplies to local farm to table programs, allowing students to come and see how a real oyster grow operation works, and allowing specific invitee neighbors including Stabbert to come and take for free as many oysters as they want. Finally, the oysters are sometimes used as a "sentinel" monitoring point for the SJC Health Department. During red tide season samples of Box Bay oysters are given to the Health Department to test for red tide. Given Box Bay's location – where several large flows of waters converge – it is an ideal location for testing. VRBO residents are already invading the Box Bay growth area. A VRBO was recently granted to the Bea property – just to the East of Evans property – and during the summer months VRBO renters are frequently seen on the privately owned Evans tidelands where the oysters are stepped on in their grow cages. In some cases outright theft of tideland based plastic grow cages has occurred. No trespassing signs were placed at the entrance to Evans grow area tidelands but are regularly been ignored. A potential problem with the future exists as to grow cages tied to the Evans side of the dock. VRBO renters, who have no reason to care, can easily access these grow cages, untie them and set them free, or take at will from storage bins on the Evans side of the dock. Adding 18 renters to this same area, where problems are already being experience from just one VRBO (Bea) is guaranteed to negatively impact Box Bay, indeed, it will put Box Bay's future grow viability in question.

3. Identification of application under appeal, date of decision, and grounds for appeal:

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

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STATEMENT OF LINKAGE TO USE CRITERIA

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

Provision was made for signs of "No Trespassing/ Do Not Enter" at Point of View Lane and Obstruction Pass Road keeping renters from entering these private roads instead of turning onto the Stabbert improved roadway. No provision was made requiring the applicant to provide a map or adequate driving directions. (K1E)

C(1) is of particular importance to Box Bay as renters will and already do trespass from the VRBOs onto Box Bay oyster growing grasses and oyster grow bags and cages – rocks stabilizing grow cages have been removed, at least 3 large grow bags have been stolen (this might have been before the Bea VRBO) kids and dogs play in the primary grow area where there over 16 grow bags and a dozen grow cages each with 3 grow bags. Seedlings in the grow area, especially in the saltwater grasses are especially at risk. A "No Trespassing" sign does nothing. It is difficult to see how any condition can be imposed to prevent this damage.

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

C(1) requires full protection against no trespassing – no provision is made to keep renters off the dock, the Evans private storage area. Subpart 4 requires 15 mph limit but nothing requires any signage by applicant. Subpart H does not adequately identify where address is to be posted and sign size.

C(i) requires compliance with all State and other government jurisdiction requirements yet the applicant fails to meet DNR private residential use requires by allowing renters on the dock.

C(2) requires noise mitigation is accordance with SJC9.06 which would require a plan to mitigate inebriated, loud tenants. Recently on the neighboring VRBO, Bea renters trespassed

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onto their private dock and refused to leave when asked. Also when "partying" on the neighbors property (Callison) they refused to leave when asked.

(c) Allowing Stabbert's renters will push Evans/Box Bay off the dock – Evans/Box Bay is guaranteed sole and exclusive use of the South ½ of the dock and float. If Stabbert is allowed to put his renters on the dock his renters will undoubted take up and use Evans/Box Bay's skiff tie up area and Evans will have no way of controlling without confronting the up to 18 renters who come expecting to be able to use the dock.

C(1) again requires no trespassing. The dock is the centerpiece of the Stabbert property. Any renter on the Stabbert property will want to use the dock and buoys. As shown by Callison, a "No Trespassing" sign is not enough – a locked gate preventing access to the dock is absolutely necessary.

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

Again, provision I requires compliance with all State, Local, and Federal requirements. This sort of land use provision ("the rich don't party as much") has no business becoming part of government decision-making and the offending language must be stricken. If not, it is very likely someone will bring a State or Federal civil rights action and SJC will become the laughing stock of the Country. Attorney fees will be awarded. It would (will) make a great news black eye for the island - "Thinking of renting a VRBO in the San Juan Islands? Better be rich if you want to have a good one and don't want to be labeled a partyer."

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

Again, subpart I requires compliance with all State and Federal Law, this SMA failure violates the requirement of section I.

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

C(2) Noise and prohibitions against light and glare are grossly in error in the decision. What the Planning Dept. calls pleasant lighting is glare that makes it look at night like a flying saucer is landing. The VRBO should require the lighting be taken out, period. If anyone from the Planning Dept. ever actually came to our end of the island at night they would see how the Stabbert lights point up in the sky and are absolutely completely totally inconsistent with Island mitigated light requirements. Also, additional conditions prohibiting lighting increases of any sort should be added.

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

Evans owns privately the storage plat form at the entrance to the dock yet no provision to protect this private property, except one "No Trespassing" sign has been allowed. C(1) requires additional protection to keep renter off of the platform area.

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(h) The staff report and decision treats Evans as if his dock interests are really public interests and that Evans has an obligation to allow members of the public to use this joint use dock, even though Evans paid in excess of $90.000 for the construction, several thousand dollars for the occasional repairs made necessary by wind damage, and the very significant amount of real estate tax attributable to the dock (some estimate that a dock adds as much as $500,000 of value to the assessors valuation).

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

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

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

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

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

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Subpart K requires provisions related to putting renters on notice and rules regarding advertising and promotion. It is no way enough. Any advertising must state in at least 14 pt. bold print that the dock, buoys and storage area are not included and may not be used. With this many renters, the contact for complaints should be the Sheriff's office. Also, as stated above signage and mapping/maps given to renters must insure they will not go on roadways they are not supposed to. Significant signage needs to be placed at Point of View Lane and Obstruction Pass Road which will absolutely ensure drivers coming to the area will not go where they are not supposed to.

4. Relief sought, nature and extent:

a) Deny both applications without prejudice to re-application through the Shoreline Management Conditional Use application process. Include in this decision a finding that nothing, anywhere, even arguably suggests vacation rentals are categorically exempt from SMA permit requirements and follow the guidelines of the SMA which disfavor categorical exemptions and doesn't allow for any unless specifically listed as such. (There is no exemption anywhere in the SMA, State Guidelines, or Master Program that lists vacation rental as categorically exempt).

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

c) Allow the posting of prominent no trespassing signs on the dock, platform and trail.

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

WITNESSES AND EXHIBITS

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

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1. Thomas C Evans will testify under oath as per the above.
2. Box Bay will testify under oath by it's representative.
3. Edith Thomsen
   2158 Obstruction Pass Road
   Olga, WA 98279
   (360)376-2446
   rosecovers2@gmail.com
4. John F. and Paula Tiscornia
   2253 Obstruction Pass Road
   Olga, WA 98279
   (360)376-6449
   ptiscornia@aol.com
5. Roy and Susan Beaton
   2159 Obstruction Pass Road
   Olga, WA 98279
   (360)376-6886
   roybeaton@msn.com
6. Kirk and Jill Callison
   Obstruction Pass Road/Meany Way
   Olga, WA 98279
   jill@twist-design.com
7. Julie Thompson, SJC Planner
8. Any witness identified or called by Stabbert
9. Any witness identified or called by SJC
10. Dan and Cheryl Stabbert
11. Any person identified in the attached Exhibits

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Verification

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 7th day of June at Seattle, Washington

/s/ Thomas C. Evans

Thomas C. Evans

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EXHIBIT 7

Lynda Guernsey

From: Lynda Guernsey
Sent: Friday, June 8, 2018 4:32 PM
To: Gary N. McLean
Subject: FW:Supplementation of PAPL00-18-0001 and PAPL00-18-0002 Evans Appeals of Stabberts
Attachments: Appeal TCE Revised.pdf; Appeal Box Bay Revised.pdf

Hi Gary,

Please see the email below and attachments regarding the Evans appeals of Stabberts, PAPL00-18-0001 and 0002.

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, June 8, 2018 4:23 PM
To: Erika Shook <erikas@sanjuanco.com>
Cc: Kelsey Demeter <kelsey@maritimeinjury.com>; Lynda Guernsey <LyndaG@sanjuanco.com>; Julie Thompson <JulieT@sanjuanco.com>; chris.osborn@foster.com; jeremy.eckert@foster.com
Subject: PAPL00-18-0001 and PAPL00-18-0002 Appeals

Good Afternoon,

Attached is the **Thomas C. Evans** supplementation regarding the conditional use requirements appeals Nos PAPL00-18-0001 and PAPL00-18-0002.

Best,
Kelsey Demeter

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MARITIME INJURY ASSISTANCE

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

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On Jun 7, 2018, at 3:58 PM, Kelsey Demeter <kelsey@maritimeinjury.com> wrote:

Good Afternoon,

Attached is the **Box Bay Shellfish Farm LLC** supplementation regarding the conditional use requirements appeals Nos PAPL00-18-0001 and PAPL00-18-0002. The other conditional use requirement amendments on behalf of Thomas C. Evans should be completed tomorrow, Thursday June 8th.

Best,
Kelsey Demeter

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Lynda Guernsey

From: Kelsey Demeter <kelsey@maritimeinjury.com>
Sent: Friday, June 8, 2018 4:23 PM
To: Erika Shook
Cc: Kelsey Demeter; Lynda Guernsey; Julie Thompson; chris.osborn@foster.com; jeremy.eckert@foster.com
Subject: PAPL00-18-0001 and PAPL00-18-0002 Appeals
Attachments: Appeal TCE Revised.pdf; Appeal Box Bay Revised.pdf

Good Afternoon,

Attached is the **Thomas C. Evans** supplementation regarding the conditional use requirements appeals Nos PAPL00-18-0001 and PAPL00-18-0002.

Best,
Kelsey Demeter

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Hearing: August 15, 2018

BEFORE THE SAN JUAN COUNTY HEARING EXAMINER

THOMAS C. EVANS Appellant, v. DAN & CHERYL STABBERT; SAN JUAN COUNTY PLANNING DEPARTMENT, Respondents.	No. PAPL00-18-0001 PAPL00-18-0002 **NOTICE OF APPEAL-STATEMENT OF ISSUES -PROVISIONAL USE APPROVAL CRITERIA -DEFINITIVE STATEMENT OF ISSUES ON APPEAL**

INTRODUCTION: Respondent has requested and the Examiner has granted Respondents request that Appellant(s) prepare a more definitive statement of issues on appeal and a connection of appeal issues to the applicable provisional use criteria. This Document responds to that request for PAPLOO-18-0001 and PAPLOO-18-002, the appeals (two – two lots/two appeals) of Thomas C. Evans "Evans".

I. SUPPLEMENT TO LEGAL ISSUES ON APPEAL.

Appellants have clearly identified all legal issues in this case, in exacting detail, in Appellants Exhibit 1, pages 1 - 197, and in the Supplemental Notice of Appeal issued (4 separate notices) served May 11, 2018, entitled "Supplemental Appeal". Addressing first, the May 11 Notice which shows it is clear the San Juan County planning department failed to as required by SJC Code contact all agencies with jurisdiction and failed to contact the Department of Natural Resources. As a result no record was made regarding RCW79.105.430 and WAC 332-30-144. These laws mandate that private recreational

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docks and buoys, such as Stabbert proposes to use with his VRBOs, may not be used, advertised or otherwise made to appear they are part of the VRBO rental. Further, by letter dated May 7, 2018 the DNR makes it clear that to allow such use would be a commercial "revenue generating" use and be considered a commercial enterprise. While DNR leases are issued to commercial uses in general they are never issued for private recreational docks. Further, any lease would require both property owners to sign.

Ex. 1 outlines all legal arguments. For example, pages 54 -57 contain detailed argument as to why VRBOs conflict with JUA language regarding the dock being privately used only, why VRBOs are considered a commercial use, and an in-depth argument per RCW 90.58.356(e) of categorical exemptions and that VRBO does not warrant an exemption. Argument is also made, p. 57 as to why under San Juan County code 18.40.270 VRBO is not categorically exempt. P.69 includes a detailed listing and argument as to why owner-occupied Single-family residence **is not** the same as VRBO use and thus a shoreline management conditional use substantial development permit is required. P.65 contains argument dated January 23, 2018 about what, as a matter of law "a use" is, and why classifying a VRBO as a non-use is contrary to SJC 18.50.600. P.65 dated January 24, 2018 contains Appellants argument as to why the zoning of rural forest farm does not include vacation rentals. Pages 66 – 79 contains DOE argument made in *Robin Hood Village* wherein the DOE fined a VRBO for use in a shoreline.

Appellants have withdrawn their challenge, for purposes of this hearing only, issues related to the vagueness of the Examiners rules as to evidence and prevailing party as previously identified. Since there are constitutional issues they may be raised at any time in further proceedings.

II. LINKING ISSUES ON APPEAL TO PROVISIONAL USE PERMIT APPROVAL CRITERIA

Criteria for provisional use permits for VRBO's is stated in SJC 18.40.275 "Vacation rental of residences or accessory dwelling units." Subparts (A) to (M) contain the specific list of provisional use criteria for VRBOs in particular. Each issue in this appeal (non-legal) is identified below along with the appropriate SJC 18.40.275 standard and argument demonstrating why the condition is not met. For the sake of economy reference is made only to the sub-part.

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

1. Identification of Appellants:

Evans is the owner of the Westerly property described in the Joint Use Agreement attached, and resides immediately adjacent to the Stabbert Property. Box Bay is a non-profit Washington LLC which grows oysters for charitable purposes on the shoreline abutting the Stabbert/Evans properties, and in floating oyster grow cages which float in Box Bay are tied off to the Joint Use Dock and are within easy reach of any dock user. Contact information for Evans is as follows: Thomas C. Evans Attorney At Law c/o Madison Park Law Offices, 4020 East Madison Street, Suite 210, Seattle, Washington 98112. Tel. 206-527-8008 cell: 206-499-8000, E-mail: tom@maritimeinjury.com. For Box Bay: Thomas C. Evans, Manager, Box Bay Shellfish Farm LLC P.O. Box 408 Olga, Washington 98112 Tel. 360-376-5987, E-mail: tom@maritimeinjury.com.

2. Statement Describing Standing To Appeal:

(a) Evans – would be directly and significantly adversely impacted by Stabbert Vacation Rental by Owner (VRBO) in multiple ways, which are all set out in detail in the numerous objections previously submitted to San Juan County (SJC) and are attached hereto. In summary, these impacts include severe traffic conflicts by adding up to 18 renter occupants each likely making use of Obstruction Pass Road on a regular basis where said road is privately maintained, can accommodate only one vehicle in one direction at a time without side-line stand by; noise emanating up and out of the Stabbert property from vacationers whose use of Stabbert property amounts to noise emanating from a megaphone vortex given the configuration of Box Bay, encroachment on privately owned Evans property including privately owned 300 square foot landing at the foot of the entrance to the privately owned joint use dock; trespassers attempting to use the privately owned joint use dock and difficulties in keeping trespassers off the dock. The dock is the centerpiece of the Stabbert VRBO property and Evans will have to, without protective measures such as a locked gate and no trespass signs, constantly restrain trespassers. Renters are also likely to be attracted to use the privately owned dock by advertising depicting the property with the dock at the center. Unless large no. 18pt. type is included in

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all advertisements stating the dock is not available for use, potential renters will naturally believe Stabbert owns the joint use dock and it will be available for their use.

(b) Box Bay Shellfish Farm LLC is partially located in Box Bay, immediately in front of the Stabbert property and has been a shellfish (oyster) farm since 2009. Its sole purpose is to serve the community on a charitable purpose basis by giving away oysters free to charitable dinners and events. It grows large non-commercial amounts of oysters in the areas indicated above and uses them for charitable purposes only. This includes giving bulk supplies to local farm to table programs, allowing students to come and see how a real oyster grow operation works, and allowing specific invitee neighbors including Stabbert to come and take for free as many oysters as they want. Finally, the oysters are sometimes used as a "sentinel" monitoring point for the SJC Health Department. During red tide season samples of Box Bay oysters are given to the Health Department to test for red tide. Given Box Bay's location – where several large flows of waters converge – it is an ideal location for testing. VRBO residents are already invading the Box Bay growth area. A VRBO was recently granted to the Bea property – just to the East of Evans property – and during the summer months VRBO renters are frequently seen on the privately owned Evans tidelands where the oysters are stepped on in their grow cages. In some cases outright theft of tideland based plastic grow cages has occurred. No trespassing signs were placed at the entrance to Evans grow area tidelands but are regularly been ignored. A potential problem with the future exists as to grow cages tied to the Evans side of the dock. VRBO renters, who have no reason to care, can easily access these grow cages, untie them and set them free, or take at will from storage bins on the Evans side of the dock. Adding 18 renters to this same area, where problems are already being experience from just one VRBO (Bea) is guaranteed to negatively impact Box Bay, indeed, it will put Box Bay's future grow viability in question.

3. Identification of application under appeal, date of decision, and grounds for appeal:

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

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STATEMENT OF LINKAGE TO USE CRITERIA

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

Provision was made for signs of "No Trespassing/ Do Not Enter" at Point of View Lane and Obstruction Pass Road keeping renters from entering these private roads instead of turning onto the Stabbert improved roadway. No provision was made requiring the applicant to provide a map or adequate driving directions. ***Vehicles are likely to go beyond the end of Obstruction Pass Road on and into the Evans property.*** **(K1E)**

C(1) is of particular importance to Evans as renters will and already do trespass from the VRBOs onto oyster growing grasses and oyster grow bags and cages ***which is in plain view from the Evans deck*** **– rocks stabilizing grow cages have been removed, at least 3 large grow bags have been stolen (this might have been before the Bea VRBO) kids and dogs play in the primary grow area where there over 16 grow bags and a dozen grow cages each with 3 grow bags. Seedlings in the grow area, especially in the saltwater grasses are especially at risk. A "No Trespassing" sign does nothing. It is difficult to see how any condition can be imposed to prevent this damage. These activities are also in plain view from the Evans deck.** ***This is a condition that C(1) can really never be met and the permit should be denied on this basis – no amount of "No Trespassing" signs is going to make any difference.***

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

C(1) requires full protection against no trespassing – no provision is made to keep renters off the dock, the Evans private storage area. Subpart 4 requires 15 mph limit but nothing requires any signage by applicant. Subpart H does not adequately identify where address is to be posted and sign size. ***Cars going in opposite directions cannot pass except by one car pulling over.***

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While this may work with a limited number of cars, with 18 renters the amount of traffic is beyond the capabilities of the roadway.

C(i) requires compliance with all State and other government jurisdiction requirements yet the applicant fails to meet DNR private residential use requires by allowing renters on the dock.

C(2) requires noise mitigation is accordance with SJC9.06 which would require a plan to mitigate inebriated, loud tenants. Recently on the neighboring VRBO, Bea renters trespassed onto their private dock and refused to leave when asked. Also when "partying" on the neighbors property (Callison) they refused to leave when asked. ***Noise is also essentially non-mitigatble. Given the shape of the Stabbert property it acts like a megaphone, amplifying noise out into and up from Box Bay. As to the dock, even small amount of regular conversation can be heard on the Evans property as the Evans residence is in fact much closer than what appears on the photos.***

(c) Allowing Stabbert's renters will push Evans/Box Bay off the dock – Evans/Box Bay is guaranteed sole and exclusive use of the South ½ of the dock and float. If Stabbert is allowed to put his renters on the dock his renters will undoubted take up and use Evans/Box Bay's skiff tie up area and Evans will have no way of controlling without confronting the up to 18 renters who come expecting to be able to use the dock.

C(1) again requires no trespassing. The dock is the centerpiece of the Stabbert property. Any renter on the Stabbert property will want to use the dock and buoys. As shown by Callison, a "No Trespassing" sign is not enough – a locked gate preventing access to the dock is absolutely necessary.

(d) Stabbert's reasoning, incorporated by SJC into its decision making, for allowing so many renters is flawed, and a direct violation of the Fourteenth Amendment requiring equal protection of the law. Stabbert/SJC actually opine that the users of the Stabbert properties will only be "high end" (rich) persons who can afford to pay for "high end" rentals. (For this, see p 9, top of page). To make matters worse Stabbert also claims "highenders" don't "party" as much and are naturally quieter. The fact that an applicant would urge a government agency to actually base a land use decision on a presumption

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about the wealthy vs. other individuals is outrageous and would be a civil rights violation were SJC to accept it. This sort of thinking has no place in government decision making yet that's exactly the way the applicant sees it.

Again, provision I requires compliance with all State, Local, and Federal requirements. This sort of land use provision ("the rich don't party as much") has no business becoming part of government decision-making and the offending language must be stricken. If not, it is very likely someone will bring a State or Federal civil rights action and SJC will become the laughing stock of the Country. Attorney fees will be awarded. It would (will) make a great news black eye for the island - "Thinking of renting a VRBO in the San Juan Islands? Better be rich if you want to have a good one and don't want to be labeled a partyer." ***Everyone we show this to is simply appalled that a government planning agency would actually condition a government permit on this basis.***

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

Again, subpart I requires compliance with all State and Federal Law, this SMA failure violates the requirement of section I. ***Making this a shoreline conditional use would help correct the one major error already identified - DNR legal criteria. Also the SMA would insure more protections than are offered by SJC code.***

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

C(2) Noise and prohibitions against light and glare are grossly in error in the decision. What the Planning Dept. calls pleasant lighting is glare that makes it look at night like a flying

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saucer is landing. The VRBO should require the lighting be taken out, period. If anyone from the Planning Dept. ever actually came to our end of the island at night they would see how the Stabbert lights point up in the sky and are absolutely completely totally inconsistent with Island mitigated light requirements. Also, additional conditions prohibiting lighting increases of any sort should be added. ***This glare is particularly noticeable on the Evans property. Although Stabbert did remove one light that was especially offense, the constellation of the remaining lights light up the sky and takes away the nighttime solitude the Island is so well known for.***

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

Evans owns privately the storage plat form at the entrance to the dock yet no provision to protect this private property, except one "No Trespassing" sign has been allowed. C(1) requires additional protection to keep renter off of the platform area.

(h) The staff report and decision treats Evans as if his dock interests are really public interests and that Evans has an obligation to allow members of the public to use this joint use dock, even though Evans paid in excess of $90.000 for the construction, several thousand dollars for the occasional repairs made necessary by wind damage, and the very significant amount of real estate tax attributable to the dock (some estimate that a dock adds as much as $500,000 of value to the assessors valuation).

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

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

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

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

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

Subpart K requires provisions related to putting renters on notice and rules regarding advertising and promotion. It is no way enough. Any advertising must state in at least 14 pt. bold print that the dock, buoys and storage area are not included and may not be used. With this many renters, the contact for complaints should be the Sheriff's office. Also, as stated above signage and mapping/maps given to renters must insure they will not go on roadways they are not supposed to. Significant signage needs to be placed at Point of View Lane and Obstruction Pass Road which will absolutely ensure drivers coming to the area will not go where they are not supposed to. ***As stated above, experience to date shows that renters ignore no trespassing signs and treat the surrounding areas as if they are entitled to use docks, beach areas and anywhere and everywhere they can get to. The conditions established for these VRBOs does not require notice in all literature that the dock is off limits. The brochure conditions are not adequate to keep renters out of private areas or feeling "entitled."***

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4. Relief sought, nature and extent:

a) Deny both applications without prejudice to re-application through the Shoreline Management Conditional Use application process. Include in this decision a finding that nothing, anywhere, even arguably suggests vacation rentals are categorically exempt from SMA permit requirements and follow the guidelines of the SMA which disfavor categorical exemptions and doesn't allow for any unless specifically listed as such. (There is no exemption anywhere in the SMA, State Guidelines, or Master Program that lists vacation rental as categorically exempt).

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

c) Allow the posting of prominent no trespassing signs on the dock, platform and trail.

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

WITNESSES AND EXHIBITS

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

1. Thomas C Evans will testify under oath as per the above.
2. Box Bay will testify under oath by it's representative.
3. Edith Thomsen
   2158 Obstruction Pass Road
   Olga, WA 98279
   (360)376-2446
   rosecovers2@gmail.com

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

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

6. Kirk and Jill Callison
   Obstruction Pass Road/Meany Way
   Olga, WA 98279
   jill@twist-design.com

7. Julie Thompson, SJC Planner

8. Any witness identified or called by Stabbert

9. Any witness identified or called by SJC

10. Dan and Cheryl Stabbert

11. Any person identified in the attached Exhibits

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Hearing: August 15, 2018

Verification

I, Thomas C. Evans do swear and affirm the above and foregoing statements regarding the impacts from VRBO occupancy are true and correct to my best information and belief.

Subscribed and sworn to this 8th day of June at Seattle, Washington

/s/ Thomas C. Evans

Thomas C. Evans

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EXHIBIT 8

Lynda Guernsey

From: Erika Shook
Sent: Tuesday, June 12, 2018 12:07 PM
To: Lynda Guernsey
Subject: FW: Evans adv. Stabbert, PAPL00-18-0001; PAPL00-18-0002
Attachments: Withdrawal and Substitution.pdf

From: Brenda Bole <brenda.bole@foster.com>
Sent: Monday, June 11, 2018 4:06 PM
To: 'tom@maritimeinjury.com' <tom@maritimeinjury.com>; 'kelsey@maritimeinjury.com' <kelsey@maritimeinjury.com>; Erika Shook <erikas@sanjuanco.com>; Julie Thompson <JulieT@sanjuanco.com>
Cc: 'dan@stabbertmaritime.com' <dan@stabbertmaritime.com>; Jeremy Eckert <jeremy.eckert@foster.com>
Subject: Evans adv. Stabbert, PAPL00-18-0001; PAPL00-18-0002

Attached please find a Notice of Withdrawal and Substitution in the above-referenced matter.

Brenda Bole
LEGAL SECRETARY
FOSTER PEPPER PLLC
1111 Third Avenue, Suite 3000
Seattle, WA 98101
brenda.bole@foster.com
Tel: 206-447-2885
F[illegible]06-447-9700
f[illegible].com

BEFORE THE HEARING EXAMINER FOR
SAN JUAN COUNTY

THOMAS C. EVANS; BOX BAY SHELLFISH FARM, LLC, Appellants, v. DAN & CHERYL STABBERT; SAN JUAN COUNTY PLANNING DEPARTMENT, Respondents.	File No. PAPL00-18-0001 PAPL00-18-0002 (re: PPROVO-17-00065 and PPROVO-17-0066) NOTICE OF WITHDRAWAL AND SUBSTITUTION

TO: SAN JUAN COUNTY HEARING EXAMINER; and

TO: ALL PARTIES OF RECORD:

This is NOTICE to the Hearing Examiner and all parties in this action that Jeremy M. Eckert of the law firm of Foster Pepper PLLC, has withdrawn as counsel for Dan & Cheryl Stabbert in this action and that Dan Stabbert, Pro Se, whose address is Dan Stabbert, Stabbert Maritime, 2629 NW 54th St., #201, Seattle, WA 98107, dan@stabbertmaritime.com, Business (206) 547-6161, Fax (206) 547-6010, is substituted.

All further papers and pleadings in this action, except process, shall be served upon aforesaid Respondent by email and leaving a copy of those documents at the above address.

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-3292
PHONE (206) 447-4400 FAX (206) 447-9700

DATED this 11th day of June, 2018.

Foster Pepper PLLC

Jeremy M. Eckert, WSBA No. 42596
1111 Third Avenue, Suite 3000
Seattle, WA 98101
206-447-6284
jeremy.eckert@foster.com

FOSTER PEPPER PLLC
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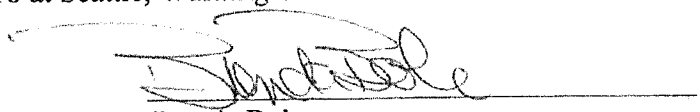
DECLARATION OF SERVICE

I, Brenda Bole, under penalty of perjury under the laws of the State of Washington, declare as follows:

On the date indicated below, I caused the Notice of Withdrawal and Substitution to be served on the persons listed below in the manner indicated:

Erika Shook Julie Thompson SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT 135 Rhone Street PO Box 947 Friday Harbor, WA 98250 Tel: 360-378-2354 JulieT@sanjuanco.com erikas@sanjuanco.com	[ ] Via Facsimile [ ] Via Legal Messenger [X] Via E-mail (courtesy copy) [X] Via US Mail, postage prepaid
Thomas C. Evans, WSBA #5122 4020 East Madison Street, Suite 210 Seattle, WA 98112 Tel: 206-527-5555 Fax: 206-527-0725 tom@maritimeinjury.com Kelsey Demeter kelsey@maritimeinjury.com *Attorney for Appellants/Pro Se*	[ ] Via Facsimile [ ] Via Legal Messenger [X] Via E-mail (courtesy copy) [X] Via US Mail, postage prepaid

DATED this 11th day of June, 2018 at Seattle, Washington.



Brenda Bole

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-3292
PHONE (206) 447-4400 FAX (206) 447-9700

EXHIBIT 9

Lynda Guernsey

From: Lynda Guernsey
Sent: Wednesday, June 13, 2018 3:55 PM
Gary N. McLean
Subject: FW: Stabbert Vs Evans - Appeals PAPL00-18-0001 and 0002
Attachments: Stabber Photos for Appeal 6.13.18.pdf; Box Bay Shellfish Formation 2.23.18.pdf; Stabbert SJC Appeal Response rev1.pdf; DWS Emails for Appeal 61318.pdf

Hi Gary,

Please see the email below and attachments in regards to the Evans appeals of Stabbert provisional use permits, PAPL00-18-0001 and 0002.

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: Karla Lopez <KarlaL@stabbertmaritime.com>
Sent: Wednesday, June 13, 2018 3:39 PM
To: Lynda Guernsey <LyndaG@sanjuanco.com>; Julie Thompson <JulieT@sanjuanco.com>; Erika Shook <erikas@sanjuanco.com>
Dan Stabbert <dan@stabbertmaritime.com>; Karla Lopez <KarlaL@stabbertmaritime.com>; kelsey@maritimeinjury.com
Subject: Stabbert Vs Evans

Good Afternoon,

Attached please find Dan & Cheryl Stabbert's response to Box Bay Shellfish Farm LLC's appeal for **PAPL00-18-0001 and PAPL00-18-0002.**

Thanks for your patience.

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

STABBERT MARITIME

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

Lynda Guernsey

From: Karla Lopez <KarlaL@stabbertmaritime.com>
Sent: Wednesday, June 13, 2018 3:39 PM
Lynda Guernsey; Julie Thompson; Erika Shook
Cc: Dan Stabbert; Karla Lopez; kelsey@maritimeinjury.com
Subject: Stabbert Vs Evans
Attachments: Stabber Photos for Appeal 6.13.18.pdf; Box Bay Shellfish Formation 2.23.18.pdf; Stabbert SJC Appeal Response rev1.pdf; DWS Emails for Appeal 61318.pdf

Good Afternoon,

Attached please find Dan & Cheryl Stabbert's response to Box Bay Shellfish Farm LLC's appeal for **PAPL00-18-0001 and PAPL00-18-0002.**

Thanks for your patience.

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

STABBERT MARITIME

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

Hearing: August 15, 2018

STABBERT` RESPONSE BEFORE THE SAN JUAN COUNTY HEARING EXAMINER

THOMAS C. EVANS Appellant, v. DAN & CHERYL STABBERT; SAN JUAN COUNTY PLANNING DEPARTMENT, Respondents.	No. PAPL00-18-0001 PAPL00-18-0002 **NOTICE OF APPEAL-STATEMENT OF ISSUES -PROVISIONAL USE APPROVAL CRITERIA -DEFINITIVE STATEMENT OF ISSUES ON APPEAL**

INTRODUCTION: Respondent has requested and the Examiner has granted Respondents request that Appellant(s) prepare a more definitive statement of issues on appeal and a connection of appeal issues to the applicable provisional use criteria. This Document responds to that request for PAPLOO-18-0001 and PAPLOO-18-002, the appeals (two – two lots/two appeals) of Thomas C. Evans "Evans".

I. SUPPLEMENT TO LEGAL ISSUES ON APPEAL.

Appellants have clearly identified all legal issues in this case, in exacting detail, in Appellants Exhibit 1, pages 1 - 197, and in the Supplemental Notice of Appeal issued (4 separate notices) served May 11, 2018, entitled "Supplemental Appeal". Addressing first, the May 11 Notice which shows it is clear the San Juan County planning department failed to as required by SJC Code contact all agencies with jurisdiction and failed to contact the Department of Natural Resources. As a result no record was made regarding RCW79.105.430 and WAC 332-30-144. These laws mandate that private recreational

docks and buoys, such as Stabbert proposes to use with his VRBOs, may not be used, advertised or otherwise made to appear they are part of the VRBO rental. Further, by letter dated May 7, 2018 the DNR makes it clear that to allow such use would be a commercial "revenue generating" use and be considered a commercial enterprise. While DNR leases are issued to commercial uses in general they are never issued for private recreational docks. Further, any lease would require both property owners to sign.

Ex. 1 outlines all legal arguments. For example, pages 54 -57 contain detailed argument as to why VRBOs conflict with JUA language regarding the dock being privately used only, why VRBOs are considered a commercial use, and an in-depth argument per RCW 90.58.356(e) of categorical exemptions and that VRBO does not warrant an exemption. Argument is also made, p. 57 as to why under San Juan County code 18.40.270 VRBO is not categorically exempt. P.69 includes a detailed listing and argument as to why owner-occupied Single-family residence is not the same as VRBO use and thus a shoreline management conditional use substantial development permit is required. P.65 contains argument dated January 23, 2018 about what, as a matter of law "a use" is, and why classifying a VRBO as a non-use is contrary to SJC 18.50.600. P.65 dated January 24, 2018 contains appellants argument as to why the zoning of rural forest farm does not include vacation rentals. Pages 66 – 79 contains DOE argument made in Robin Hood Village wherein the DOE fined a VRBO for use in a shoreline. Appellants have withdrawn their challenge, for purposes of this hearing only, issues related to the vagueness of the Examiners rules as to evidence and prevailing party as previously identified. Since there are constitutional issues they may be raised at any time in further proceedings.

RESPONDENT

The SJC in its permit approvals under condition #9 took into account easements, shoreline limitations if any, and the associated JUA that governs its use and rights between the parties. Stabbert has agreed to abide by those rules and to post within the residences maps clearly depicting any limitations or non-trespassing areas.

Follow On Information:

Evans has throughout the course of this dispute taken improper liberty utilizing misdirection, exaggeration, and out-right misleading statements. We encourage the Examiner to pay attention to Evans statements as well as our own as we present our case to determine the veracity and accuracy of the information presented.

1. DNR related issues should not be a part of this appeal as it was not timely raised. Even if it had been allowed, Tom Evans improperly states that the dock situated offshore of these two properties will be a central marketing and key element of the use of these properties. In fact the direct opposite is the case. The dock and use thereof was only minimally discussed in the Stabbert letter of January 21st, 2018 to SJC where it was stated that "The county dock which is only a 3 -4 minute walk from our property is ideal for either water taxi or your own personal boat. The property dock and offshore buoys are adequate for small commuter boats up to 30 feet" specially stating that the nearby county dock was in fact a normal route for those taking the passenger only express ferries and referencing how we as owner use the dock for commuting to and from Orcas Island.

The key elements of the property as situated includes kayaking off of our owned beach, the terrestrial portion of Orcas Island for cycling and hiking, access by water taxi to the local county dock located a short walk away, and quick access to the state park, the city of Eastsound, Mt Constitution, and other key island attractions. The kayaking is launched and retrieved off of the beach due to ease of access and to be quite frank, the small dock, with 30" of depth at low tide, and an average of 52 degree water, no fishing or other valid purpose, is literally something that even living on the property, we rarely use, other than for our own personal commute.

The dock issue is a smoke screen for the Evans true intent, which is to preclude the use of our property as a VRBO, and Evans has been forthright in statements to me in person that he intends to fight and force upon us to install and see every day " large, no trespassing signs in direct line of sight from our master bedroom, our living room, our patio, directly in the line of sight from our home to the waters view/ferries passing, and Salish Sound, making it a sufficient eyesore and an emotional stumbling block that we will give up on applying for the VRBO in any form or fashion. It is not about the dock, it is about stopping you from using your home as a VRBO and making it as uncomfortable as I can for you both emotionally and financially". This effort on the part of Evans is primarily focused on making it as uncomfortable, as visibly offensive, and as emotionally distressing as Evans can make it. Evans has one purpose, to deter us from applying for and carrying through with using our property as a VRBO. On top of this Evans has added onto his threats of harming our "quiet enjoyment and privacy of our property" , threats of lawsuits against us as family, SJC, and resultant large legal bills as he " takes this all the way to the state supreme court" (including even copies of past judgments for legal fees he has obtained) as a threat in what can only be described as a bullying tactic and coercion to forgo our rights.

It is our opinion that SJC properly addressed all issues surrounding our use of our property as a VRBO with guests and that we have agreed to be bound by the permit conditions as required under the permit approvals.

Ex. 1 outlines all legal arguments. For example, pages 54 -57 contain detailed argument as to why VRBOs conflict with JUA language regarding the dock being privately used only, why VRBOs are considered a commercial use, and an in-depth argument per RCW 90.58.356(e) of categorical exemptions and that VRBO does not warrant an exemption. Argument is also made, p. 57 as to why under San Juan County code 18.40.270 VRBO is not categorically exempt. P.69 includes a detailed listing and argument as to why owner-occupied Single-family residence is not the same as VRBO use and thus a shoreline management conditional use substantial development permit is required. P.65 contains argument dated January 23, 2018 about what, as a matter of law "a use" is, and why classifying a VRBO as a non-use is contrary to SJC 18.50.600. P.65 dated January 24, 2018 contains Appellants argument as to why the zoning of rural forest farm does not include vacation rentals. Pages 66 – 79 contains DOE argument made in Robin Hood Village wherein the DOE fined a VRBO for use in a shoreline.

Appellant's issue (e) regarding shoreline regulations must be dismissed as a matter of law. San Juan County's Shoreline Master Program does not require any shoreline permit for a provisional use permit authorizing a vacation rental

use in a previously constructed home located within the Rural Farm Forest shoreline designation.

As background, Appellant argues that Stabbert must obtain a "Shoreline Management Permit" for the vacation rental use. Appeal, p. 4:10. The County's adopted Shoreline Master Program does not have a "Shoreline Management Permit." Presumably, Appellant is arguing that a Shoreline Substantial Development Permit is required. Appellant's clarified appeal now argues that the County erred because not requiring a "Shoreline Management Permit" is in violation of permit approval criteria 18.40.275.I (requiring vacation rental accommodations meet all applicable local and state regulations). Here, Appellant's "clarification" argues for the first time that vacation rental should be made a "shoreline conditional use" to comply with "DNR legal criteria." Revised Definitive Appeal Statement, p. 7:15. To the extent Appellant is making this argument, all arguments addressing "shoreline conditional use" and "DNR legal criteria" must be dismissed because they were not timely raised in Appellant's appeal dated, March 29, 2018. Regardless, no shoreline permit is required for either provisional use permit.

As an initial matter, the residence subject to PPROVO-17-065 (the "Upland Residence") is located outside of the regulated shoreline. Thus, this appeal issue must be dismissed for the Upland Residence because shoreline regulations do not extend beyond the regulated shoreline. See e.g., 18.20.190"S" (defining shoreland as extending landward for 200 feet in all directions).

No shoreline permit is required for PPROVO-17-066 (the "Waterfront Residence"), as described in the County's decision. Page 7 of the Waterfront Decision explains that Appellant believes a shoreline substantial development permit is required. Pages 2 and 14 of the Decision then explain why Appellant's argument fails. As described on page 2, finding of fact 9:

SJCC Table 18.30.040 allows vacation rentals 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 AJCC Table 18.50.600 (the Shoreline Master Program) requires a shoreline substantial development for a 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 water 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 approval are required.

Thus, no SSDP is required because the proposal does not include "development."

Similarly, a shoreline conditional use permit is not required pursuant to SJCC 18.50.600 (identifying when a shoreline conditional use permits is required). The row for "vacation rentals" under the column for Rural Farm Forest is not marked by a CUP. Thus, no CUP is required for a vacation rental use in the Rural Farm Forest shoreline designation.

Finally, Appellant has cited a Shoreline Hearings Board decision in an attempt to support his argument. Darin Barry and Robin Hood Village Resort v. Ecology, SHB 12-008 (SSDP and SCUP required for new trailers parked in the regulated shoreline). This decision analyzes Mason County's Shoreline Master Program, not San Juan County's Shoreline Master Program, which is analyzed above. To the extent that Appellant argues San Juan County should include additional provisions in its SMP, this argument is time barred because the time to appeal San Juan County's adopted SMP passed long ago. SJCC 18.50.600 provides vacation rentals in existing residence in the Rural Farm Forest designation do not require a SSDP or a CUP. Appeal issue (e) regarding shoreline permits must be dismissed as a matter of law.

II. LINKING ISSUES ON APPEAL TO PROVISIONAL USE PERMIT APPROVAL CRITERIA

Criteria for provisional use permits for VRBO's is stated in SJC 18.40.275 "Vacation rental of residences or accessory dwelling units." Subparts (A) to (M) contain the specific list of provisional use criteria for VRBOs in particular. Each issue in this appeal (non-legal) is identified below along with the appropriate SJC 18.40.275 standard and argument demonstrating why the condition is not met. For the sake of economy reference is made only to the sub-part.

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

1. Identification of Appellants:

Evans is the owner of the Westerly property described in the Joint Use Agreement attached, and resides immediately adjacent to the Stabbert Property. Box Bay is a non-profit Washington LLC which grows oysters for charitable purposes on the shoreline abutting the Stabbert/Evans properties, and in floating oyster grow cages which float in Box Bay are tied off to the Joint Use Dock and are within easy reach of any dock user. Contact information for Evans is as follows: Thomas C. Evans Attorney At Law c/o Madison Park Law Offices, 4020 East Madison Street, Suite 210, Seattle, Washington 98112. Tel. 206- 527-8008 cell: 206-499-8000, E-mail: tom@maritimeinjury.com. For Box Bay: Thomas C. Evans, Manager, Box Bay Shellfish Farm LLC P.O. Box 408 Olga, Washington 98112 Tel. 360-376-5987, E- mail: tom@maritimeinjury.com.

RESPONDENT

Contrary to Evans statements, Box Bay Shellfish Farm LLC is a for profit Washington State LLC (see no reference to nonprofit, 501-C-3 or other confirmation of Evans claims) formed February 23, 2018 (per attached certificate of formation) during the time of our application and in our opinion for Evans preparation for appeal should our application be approved. It is our opinion it was formed to be used as a bullying point against Stabbert and used in Evans attempt to prevent Stabbert from pursuing or retaining the VRBO status.

2. Statement Describing Standing To Appeal:

(a) Evans – would be directly and significantly adversely impacted by Stabbert Vacation Rental by Owner (VRBO) in multiple ways, which are all set out in detail in the numerous objections previously submitted to San Juan County (SJC) and are attached hereto. In summary, these impacts include severe traffic conflicts by adding up to 18 renter occupants each likely making use of Obstruction Pass Road on a regular basis where said road is privately maintained, can accommodate only one vehicle in one direction at a time without side-line stand by; noise emanating up and out of the16 Stabbert property from vacationers whose use of Stabbert property amounts to noise emanating from a megaphone vortex given the configuration of Box Bay, encroachment on privately owned Evans property including privately owned 300 square foot landing at the foot of the entrance to the privately owned joint use dock; trespassers attempting to use the privately owned joint use dock and difficulties in keeping trespassers off the dock. The dock is the centerpiece of the Stabbert VRBO property and Evans will have to, without protective measures such as a locked gate and no trespass signs, constantly restrain trespassers. Renters are also likely to be attracted to use the privately owned dock by advertising depicting the property with the dock at the center. Unless large no. 18pt. type is included in all advertisements stating the dock is not available for use, potential renters will naturally believe Stabbert owns the joint use dock and it will be available for their use.

RESPONDENT

The SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations if any. Stabbert has agreed to abide by those rules and to post within the residences rules and maps clearly depicting any limitations including non-trespassing areas. Stabbert objects to all new issues raised in the June 8th, 2018 filing, including but not limited to, all the references to the DNR lease. (PP. 2:2-4, 6:3, and 7:16) To the extent that the June 8th, 2018 filing addresses timely raised issues, Stabbert accepts Appellant's clarification of issues.

Follow On Information:

We have responded to the issue of 18 renters using cars on the road in our previous statements and SJC has taken into account this issue in the requirements related to our conditional use permit. For the size of our property, the parking spaces available, and the access roads in place, having both homes fully utilized would have no additional effect on the ingress and egress. Evans demands that we install a locked gate on the dock, large, no trespass signs around the property, and 18 point type on any advertising. These demands are rather blatant, cohesive, and through them Evans is attempting to limit our enjoyment of our own property.

Just think of how large 18 point type is in any advertising or description of our property. 18 point type stating that you will be punished by the full extent of the law as requested by Evans "Unless large no. 18pt. type is included in all

advertisements stating the dock is not available for use, potential renters will naturally believe Stabbert owns the joint use dock and it will be available for their use" . The request for key pad gates, large no trespass signs, and other Evans claimed "protective measures" is not only not needed but is meant to be punitive at best towards the Stabberts for requesting the VRBO permits and is a method whereby Evans is trying to coerce Stabberts into withdrawing their requests.(Evans communication to Stabbert Counsel-"Thus, I need to be absolutely clear about what my red lines would be at any mediation: 1. The VRBO applications must be withdrawn - I can see of no possible resolution short of this"

Evans understands what his demands, if they were enforced by SJC, would mean to the Stabberts. 18 point font on any advertising. Gates with key codes installed at the entrance to the dock. Large no trespassing signs placed on pathways, large no trespassing signs on the dock, and signs on a shoreside platform that is clearly disputed and the subject of arbitration as we speak. So I would like SJC and the hearing examiner to understand what Evans understands. First that 18 font on legal action would greatly affect the perception of the property in any advertising. Second, that a gate be installed. (Under Evans scheme, we could not use our employees to install this gate but rather we would need to contract it out so that the cost would be elevated and thus more punitive). Third that it have a key code. Evans is aware that my wife Cheryl suffers from MS including limited stability, and cognitive dysfunction precluding memory recall. So each time she needs to come or go or walk out on her dock she would need someone to write down the code and ensure she had it with her. Evans is also aware that key family members who come and go by that dock include stroke victims that Tom is fully aware of. (3/26/18 Evans letter " About one year after Stabbert purchased, Stabbert asked if the platform front end could be moved back a few feet so Dan Stabbert's brother, who was ill, could roll a wheel chair past on the path immediately in front of the platform" would face overwhelming challenges.

It was our need for wheel chair access for family and for Cheryl that caused me to confront Evans on the location of his platform that was not only in our opinion substantially outside of the easement, but it blocked our pathway to and from the dock to our own home. We had to threaten litigation for him to move it back 30" (see attached photos and Evans) so that we could get a wide enough pathway to and from our residence so that we could have handicapped access.

Evans history in fighting with the property owners of this parcel goes way back. Evans had fought with the previous Owner Steve Jacobson but Steve died before the dock was finally finished and his widow Joanne Jacobson was forced to work out of Florida to pay the property expenses until she could sell the property. We purchased the property from Joanne Jacobson, who was the absentee owner. I can only comment on what I have witnessed about Tom Evans from my own experience. When we arrived on this property,

Evans had his boat tied up on the protected north side of the dock. (see photo of Evans skiff tied up on north side of pier and JUA language " To Evans Parcels A & B is allotted the exclusive use of the southerly 30' linear feet of the float" . When I asked Evans about this as I thought the north side belonged to my property he emphatically stated that it did not and he was on the right (north) side. I read the easement and it was clear that he was misstating the fact. Even though we requested, he would not move his boat. So one day I moved it to the

other side for him, receiving a call from Evans shortly later that someone had improperly moved his boat to the wrong side. I informed him it was I who had moved the boat and he had misled me. Well that was the beginning of our relationship with Evans.

Then came the platform he had built completely out of the easement by almost 15' feet, blocking the access between the dock and the house, narrowing the walkway to about 16-18" in width, (see photo) which was not enough to get carts, wheel chairs, or for that matter to even walk safely by. I informed him that the platform was outside of the JUA and clearly outside of the easement and I asked him to cut it back. I offered to allow him to keep it outside of the easement as long as he made sufficient room so that we could get by with a wheelchair. Evans stated that he did not need to move the platform or cut it back and that he had earned ownership to the land over which he had built the platform due to the length of time he had occupied it. I told Evans he was being misleading, but as a good neighbor I would allow him to cut back the storage structure and use a portion of our property outside of the easement and retain the structure which was disallowed within the JUA as long as we remained on good terms. Evans now claims that was never discussed. Evans improper use of our property outside of the JUA is being arbitrated in Seattle this fall.

(b) Box Bay Shellfish Farm LLC is partially located in Box Bay, immediately in front of the Stabbert property and has been a shellfish (oyster) farm since 2009. Its sole purpose is to serve the community on a charitable purpose basis by giving away oysters free to charitable dinners and events. It grows large non-commercial amounts of oysters in the areas indicated above and uses them for charitable purposes only. This includes giving bulk supplies to local farm to table programs, allowing students . to come and see how a real oyster grow operation works, and allowing specific invitee neighbors including Stabbert to come and take for free as many oysters as they want. Finally, the oysters are sometimes used as a "sentinel" monitoring point for the SJC Health Department. During red tide season samples of Box Bay oysters are given to the Health Department to test for red tide. Given Box Bay's location – where several large flows of waters converge – it is an ideal location for testing.
VRBO residents are already invading the Box Bay growth area. A VRBO was recently granted to the Bea property – just to the East of Evans property – and during the summer months VRBO renters are frequently seen on the privately owned Evans tidelands where the oysters are stepped on in their grow cages. In some cases outright theft of tideland based plastic grow cages has occurred. No trespassing signs were placed at the entrance to Evans grow area tidelands but are regularly been ignored potential problem with the future exists as to grow cages tied to the Evans side of the dock. VRBO renters, who have no reason to care, can easily access these grow cages, untie them and set them free, or take at will from storage bins on the Evans side of the dock. Adding 18 renters to this same area, where problems are already being experience from just one VRBO (Bea) is guaranteed to negatively impact Box Bay, indeed, it will put Box Bay's future grow viability in question.

RESPONDENT

The SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations if any. Stabbert has agreed to abide by those rules and to post within the residences rules and maps clearly depicting any limitations including non-trespassing areas. .

Follow On Information:

Evans implies that Box Bay Shellfish has been in existence since 2009 which is misleading. As stated above Box Bay was formed just a few months ago and it is our

opinion that it was formed in order to be a party to an appeal should the VRBO permits be approved by SJC. Evans has been an avid oyster grower and there were as many as 15-20 cages in the bay (up to 24,000 oysters per Evans) when we purchased the property. Throughout the years, Evans left cages hanging off the docks and in mid-air during low tides, broken lines and strings of cages trailing from pilings, and unused but dirty cages stored out of the water on the platform which is the worst for smell. When the cage structures, which are full of muscles and other sea life are dragged ashore and placed on the platform which is about 9 feet from our family gathering area, and about 50 feet from our bedroom, the biological matter starts to rot. It is my opinion that the JUA reference to Evans use of the storage area limited certain uses and became quite specific on how that area was to be maintained just because of this very issue. In any event, Evans has hauled his cages up and over the dock and access path dozens if not hundreds of times, dropping sea life and debris which is left in the sun to rot, often leaving messes on the dock which I have generally cleaned up.

Evans now via affidavit and sworn testimony claims that the dock and the related cages will be damaged by renters and has attested to the truth of his statements in the attached Verification, I find his statements and verification to not only be untrue, but to be misleading in general. First is Evans implication of Box Bay Shellfish LLC being in existence since 2009. Second is his statement that he is using the cages and storage on the dock that will be damaged by Stabberts VRBO guests. Evans decided a number of years ago to move his oyster cages to the outside of his property which abuts Obstruction Pass where there is fresh colder water year round. (See the attached string of Evans emails stating his intentions. Evans responding to my photos of his mess hanging from ropes along the dock, apologizing and letting me know when and how the last of the cages would be moved.)

Evans use of Box Bay Shellfish, Evans oyster farming, and his claim that our guests would damage his oysters that he is growing and storing off of the dock are fabricated and in bad faith at a minimum, and outright falsifications at best. As you can see from the string of emails, Evans had no intention whatsoever of maintaining any growing efforts within the bay or off of the dock. In fact, when I asked him what he did with 24,000 oysters, In four years I have never witnessed one student or school child access the dock , the cages, or any of Evans oysters. Rather it has been friends and other apparent barter type of arrangement which we have never complained about. But nothing like what Evans claims to have been occurring.

Evans oysters are now located off of his property to the south of his home and right on Obstruction Pass where the water flows colder and fresher than in our bay. (see photo) Evans claimed issue with the BEA property which is contiguous to the Evans eastern boundary should not be cause for punitive actions against Stabbert.

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

STATEMENT OF LINKAGE TO USE CRITERIA

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

Provision was made for signs of "No Trespassing/ Do Not Enter" at Point of View Lane and Obstruction Pass Road keeping renters from entering these private roads instead of turning onto the Stabbert improved roadway. No provision was made requiring the applicant to provide a map or adequate driving directions. ***Vehicles are likely to go beyond the end of Obstruction Pass Road on and into the Evans property.*** **(K1E)**

C(1) is of particular importance to Evans as renters will and already do trespass from the VRBOs onto oyster growing grasses and oyster grow bags and cages ***which is in plain view from the Evans deck*** **– rocks stabilizing grow cages have been removed, at least 3 large grow bags have been stolen (this might have been before the Bea VRBO) kids and dogs play in the primary grow aea where there over 16 grow bags and a dozen grow cages each with 3 grow bags. Seedlings in the grow area, especially in the saltwater grasses are especially at risk. A "No Trespassing" sign does nothing. It is difficult to see how any condition can be imposed to prevent this damage.**

These activities are also in plain view from the Evans deck. ***This is a condition that C(1) can really never be met and the permit should be denied on this basis – no amount of "No Trespassing" signs is going to make any difference.***

RESPONDENT

The SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations if any. Stabbert has agreed to abide by those rules and to post within the residences rules and maps clearly depicting any limitations including non-trespassing areas. .

Follow On Information

The Stabbert properties are nowhere near the Evans grow areas, which as Evans states are located in front of their existing home (see attached photo of lines leading down from Evans deck to grow baskets) That a property close to a thousand feet away should be precluded from being allowed their right under the law to operate as a VRBO because of this claim is both unfair and disingenuous. Evans has misrepresented many facts related to this and to name a few, that Box Bay Shellfish has been existing since 2009, that Evans uses the joint use dock for growing areas, that the two remaining Evans cages are actually being used (rather than being discarded per Evans e-mails, that Box Bay is a nonprofit, that Box Bay is an educational endeavor) Even if Evans were to begin growing oysters again in Box Bay, these baskets were years ago tied up out in the bay away from the dock as you can see from the attached photo from where they were previously located (see photo of Evans growing enterprise before he move it) With 52 degree water, 200 pound grow cages, located offshore from Stabbert beach and dock and accessible only by boat, Evans claims that Stabbert VRBO guests will access and damage these units are senseless.

(b) The joint use dock was clearly intended to benefit Stabbert/Evans only, and does not allow or

even suggest that renters paying money to Stabbert are allowed to use this dock at Evans/Box Bay expense. This is completely self-serving and makes Evans have to pay expenses including significant tax levy, repair cost, initial investment of $90,000 all so Stabbert can profit at Evans' direct expense. Evans pays significant real estate taxes attributed to the dock. Evans has to pay (and has paid) ½ of repair costs due to storms.

RESPONDENT

The SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations if any. Stabbert has agreed to abide by those rules and to post within the residences rules and maps clearly depicting any limitations including non-trespassing areas.

Follow On Information

Stabbert has clearly represented that they only want to retain whatever rights they may have to the use of their dock and do not want Evans to use this venue to deny them ownership or use rights if they exist. For this reason Stabbert and Evans are having the JUA arbitrated to ensure clarity. Evans statements about repairs and costs are not quite true as Evans has not made any repairs, undertaken any maintenance, or remedied any of his damage to the dock since Stabbert purchased the property years ago. Stabbert has been the one to make the repairs and care for the dock and make the payments to contractors then has billed Evans back Evans share which Evans has paid at times 6 months after the fact. In addition, it is Stabbert that has had to remind Evans to clean the dock up, stop leaving foul messes on the dock and walkway, to remove foul smelling cages from the platform area, and to remedy tangled cages and eye sores, as these issues do not directly affect Evans home, view, or quiet enjoyment of Evans property but rather Stabberts as they are in full view and smell of key Stabbert living areas. (see attached emails, photos)

C(1) requires full protection against no trespassing – no provision is made to keep renters off the dock, the Evans private storage area. Subpart 4 requires 15 mph limit but nothing requires any signage by applicant. Subpart H does not adequately identify where address is to be posted and sign size. Cars going in opposite directions cannot pass except by one car pulling over. While this may work with a limited number of cars, with 18 renters the amount of traffic is beyond the capabilities of the roadway.

RESPONDENT

The ***SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations if any. Stabbert has agreed to abide by those rules and to post within the residences rules and maps clearly depicting any limitations including non-trespassing areas.***

Follow On Information:

Once again Evans is attempting to enforce punitive actions against the Stabberts for applying for this VRBO by requesting large signage and other deterrents to the enjoyment of the Stabbert property. The present signage on the roads and elsewhere are adequate and have been sufficient. Stabberts have agreed to placement of no trespassing signage and to abide by the covenants, and rules under the conditional use permit which we believe to be sufficient.

C(i) requires compliance with all State and other government jurisdiction requirements yet the applicant fails to meet DNR private residential use requires by allowing renters on the dock.

RESPONDENT

The SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations if any. Stabbert has agreed to abide by those rules and to post within the residences rules and maps clearly depicting any limitations including non-trespassing areas.

Follow On Information

Evans again has misstated the facts. Stabbert has agreed to abide by all regulations and covenants. To project into the future that Stabbert guests are going to not abide by these covenants and regulations is unfair and biased. Nothing in Evans appeal mentioned the DNR or the DNR lease. Stabbert objects to all new issues raised relative to the DNR lease.

C(2) requires noise mitigation is accordance with SJC9.06 which would require a plan to mitigate inebriated, loud tenants. Recently on the neighboring VRBO, Bea renters trespassed onto their private dock and refused to leave when asked. Also when "partying" on the neighbors property (Callison) they refused to leave when asked. ***Noise is also essentially non-mitigatable. Given the shape of the Stabbert property it acts like a megaphone, amplifying noise out into and up from Box Bay. As to the dock, even small amount of regular conversation can be heard on the Evans property as the Evans residence is in fact much closer than what appears on the photos.***

RESPONDENT

The SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations if any. Stabbert has agreed to abide by those rules and to post within the residences rules and maps clearly depicting any limitations including non-trespassing areas. .

Follow On Information:

The issues with the BEA property, if Evans once again is even being factual, are not problems to be laid at the Stabberts feet. The size of the lots and proximity to one another

(see photos of Evans, BEA, and Callison property) present a completely different geographical tie than the Stabbert property. Our 10 acre property with two homes clearly could have full time residents and as such there is no additional noise issues over normal use that exist with Stabbert allowing VRBO guests sporadic use. Evans claim of a megaphone effect is ridiculous and self-serving. The fact is that the prevailing wind comes from the south and blows noise AWAY from the Evans property and onto the Stabberts, not the other way around. And even then noise has never been an issue. Northerly wind that pushes sounds towards the Evans are blocked by the hills and trees north of the Stabbert property so that sound carried northerly is rare if ever. (see attached photo)

(c) Allowing Stabbert's renters will push Evans/Box Bay off the dock – Evans/Box Bay is guaranteed sole and exclusive use of the South ½ of the dock and float. If Stabbert is allowed to put his renters on the dock his renters will undoubted take up and use Evans/Box Bay's skiff tie up area and Evans will have no way of controlling without confronting the up to 18 renters who come expecting to be able to use the dock.

C(1) again requires no trespassing. The dock is the centerpiece of the Stabbert property. Any renter on the Stabbert property will want to use the dock and buoys. As shown by Callison, a "No Trespassing" sign is not enough – a locked gate preventing access to the dock is absolutely necessary.

RESPONDENT

The SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations if any. Stabbert has agreed to abide by those rules and to post within the residences rules and maps clearly depicting any limitations including non-trespassing areas. .

Follow On Information:

Evans is claiming wolf once again. The dock is not a centerpiece of our property as Evans claims. Evans dock side is open at all times and has never been abused. Evans rarely if ever uses the dock as he does not own a boat other than a 6 foot rubber raft that he used to access the oyster growing cages when they were out in the bay and before he moved them. His claim that he will not have access is disingenuous.

C(1) again requires no trespassing. The dock is the centerpiece of the Stabbert property. Any renter on the Stabbert property will want to use the dock and buoys. As shown by Callison, a "No Trespassing" sign is not enough – a locked gate preventing access to the dock is absolutely necessary.

(d) Stabbert's reasoning, incorporated by SJC into its decision making, for allowing so many renters is flawed, and a direct violation of the Fourteenth Amendment requiring equal protection of the law. Stabbert/SJC actually opine that the users of the Stabbert properties will only be "high end" (rich)

persons who can afford to pay for "high end" rentals. (For this, see p 9, top of page). To make matters worse Stabbert also claims "high enders" don't "party" as much and are naturally quieter. The fact that an applicant would urge a government agency to actually base a land use decision on a presumption about the wealthy vs. other individuals is outrageous and would be a civil rights violation were SJC to accept it. This sort of thinking has no place in government decision making yet that's exactly the way the applicant sees it.

2

Again, provision I requires compliance with all State, Local, and Federal requirements. This sort of land use provision ("the rich don't party as much") has no business becoming part of government decision-making and the offending language must be stricken. If not, it is very likely someone will bring a State or Federal civil rights action and SJC will become the laughing stock of the Country. Attorney fees will be awarded. It would (will) make a great news black eye for the island - "Thinking of renting a VRBO in the San Juan Islands? Better be rich if you want to have a good one and don't want to be labeled a partyer." Everyone we show this to is simply appalled that a government planning agency would actually condition a government permit on this basis.

RESPONDENT

The SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations if any. Stabbert has agreed to abide by those rules and to post within the residences rules and maps clearly depicting any limitations including non-trespassing areas. .

Follow On Information:

Evans claim here is erroneous. In our letter to SJC of January 21st , 2018 we specifically stated and I quote " The nature of rentals with the high end agencies do not ONLY undergo background checks but the guests generally have been rated by other venues that they have rented in the past. This rating system helps ensure the quality of both the guest and the home owner, and to ensure that problems do not occur. There is no guarantee of course but the likelihood once again of getting a bad apple is rare and becoming even more so as more historic data is collected. It is something we are thinking through ourselves as we consider lending our beautiful home to another family and an issues we will always treat with respect." The high end agency did not refer to cost, but rather quality representatives and programs such as Orcas Island Windermere Realty, VRBO and Airbnb who have client rating programs to ensure the quality and care for the homes and properties. As usual, Evans is trying to hijack our intent of ensuring quality VRBO guests and claiming this means " rich" , which had nothing at all to do with the statement or its intent about the wealthy vs. other individuals is outrageous and would be a civil rights violation were SJC to accept it. This sort of thinking has no place in government decision making yet that's exactly the way the applicant sees it.

(e) These VRBO's are not categorically or otherwise exempt from obtaining a Shoreline Management Permit (SMP). While SJC admits if someone presented at the permit counter with plans to build a single family residence (SFR) and use it as a VRBO at the same time, this would require a SMP permit, it denies that an SMP permit is necessary when the structure is turned into a completely

different use. ***Use matters***, under the law, it's the land ***use*** that determines permitting and nowhere in the Shoreline Management Act (SMA) is a VRBO a categorical exemption.

Again, subpart I requires compliance with all State and Federal Law, this SMA failure violates the requirement of section I. ***Making this a shoreline conditional use would help correct the one major error already identified - DNR legal criteria. Also the SMA would insure more protections than are offered by SJC code.***

RESPONDENT

SJCC Table 18.30.040 allows vacation rentals 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 AJCC Table 18.50.600 (the Shoreline Master Program) requires a shoreline substantial development for a 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 water 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 approval are required.

Thus, no SSDP is required because the proposal does not include "development."

Similarly, a shoreline conditional use permit is not required pursuant to SJCC 18.50.600 (identifying when a shoreline conditional use permits is required). The row for "vacation rentals" under the column for Rural Farm Forest is not marked by a CUP. Thus, no CUP is required for a vacation rental use in the Rural Farm Forest shoreline designation.

Finally, Appellant has cited a Shoreline Hearings Board decision in an attempt to support his argument. Darin Barry and Robin Hood Village Resort v. Ecology, SHB 12-008 (SSDP and SCUP required for new trailers parked in the regulated shoreline). This decision analyzes Mason County's Shoreline Master Program, not San Juan County's Shoreline Master Program, which is analyzed above. To the extent that Appellant argues San Juan County should include additional provisions in its SMP, this argument is time barred because the time to appeal San Juan County's adopted SMP passed long ago. SJCC 18.50.600 provides vacation rentals in existing residence in the Rural Farm Forest designation do not require a SSDP or a CUP. Appeal issue (e) regarding shoreline permits must be dismissed as a matter of law.

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

C(2) Noise and prohibitions against light and glare are grossly in error in the decision.

What the Planning Dept. calls pleasant lighting is glare that makes it look at night like a flying saucer is landing. The VRBO should require the lighting be taken out, period. If anyone from the Planning Dept. ever actually came to our end of the island at night they would see how the Stabbert lights point up in the sky and are absolutely completely totally inconsistent with Island mitigated light requirements. Also, additional conditions prohibiting lighting increases of any sort should be added. ***This glare is particularly noticeable on the Evans property. Although Stabbert did remove one light that was especially offense, the constellation of the remaining lights light up the sky and takes away the nighttime solitude the Island is so well known for.***

RESPONDENT

The SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations if any. Stabbert has agreed to abide by those rules and to post within the residences rules and maps clearly depicting any limitations including non-trespassing areas. .

Follow On Information:

Evans statement is entirely misleading. The distance between the Stabbert homes and the Evans home is the distance of an average city block. There is not a "slender row of trees" but rather in excess of 150 trees between the two properties. The Evans property is situated with a southerly exposure, 180 degrees in the opposite direction to the Stabberts homes. (Stabbert Photo of Trees)

(g) The decision ignores that Evans owns outright and Box Bay uses for its private purposes the 300 sq. ft. platform at the entrance to the dock. This area was given to Evans by Jacobsen (previous owner) as part of the agreement for a joint use dock. Having 18 renters puts Evans zodiac skiff maintained on the property, its nets and other water related items at direct risk for damage, theft or illegal use, and the SJC decision does nothing to prevent this. Evans owns privately the storage plat form at the entrance to the dock yet no provision to protect this private property, except one "No Trespassing" sign has been allowed. C(1) requires additional protection to keep renter off of the platform area.

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RESPONDENT

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

The SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations if any. Stabbert has agreed to abide by those rules and to post within the residences rules and maps clearly depicting any limitations including non-trespassing areas. .

Follow On Information:

SJC took into account this platform and the associated JUA that governs its use and rights between the parties. Stabbert has agreed to abide by those rules. Evans items stored on this platform include a dilapidated 6' inflatable rubber raft, about five used crab pots, and used oyster cage construction debris. (see photo) Not something anyone would want to even have on their property let alone steal. The platform is 300 square feet when compared to the property size of 430,000 square feet or about 1/1500 of the property. A property that is designed for family life including an art small studio, grand-children's playground, exercise area, an orchard, greenhouse, berry cages, walking paths, and its own beach for kayaking, as well as other amenities. But per the Evans, our guests are going to steal their used oyster cage debris or deflated rubber raft. However, once again, Evans has misrepresented the ownership of the platform and even its location is in question as its existence at all is subject to the JUA which is being arbitrated this fall per the dispute resolution clause. In spite of this and Stabberts agreement to place a no trespassing sign on the storage platform, Evans wants additional signage and "deterrents" which is clearly an attempt to further diminish Stabberts enjoyment of their own property as Evans knows that these signs will be permanently visible from the Stabbert bedroom, main exterior deck, and living room areas. Evans specifically told Stabbert " Do you really want to pursue this VRBO? I will make it so uncomfortable for you, looking out at 36" signs I will place on the platform, on the walkways, on the dock, so you will have to see that every day you use your property. How will that feel to you?" Those statements and his attempt to try to legitimize them in this legal proceeding reflects not only poor character but as we have seen within so many of his claims, a confidence in his own ability to twist the truth and win no matter what the cost.

(h) The staff report and decision treats Evans as if his dock interests are really public interests and that Eva ns has an obligation to allow members of the public to use this joint use dock, even though Evans paid in excess of $90.000 for the construction, several thousand dollars for the occasional repairs made necessary by wind damage, and the very significant amount of real estate tax attributable to the dock (some estimate that a dock adds as much as $500,000 of value to the assessors valuation).

RESPONDENT

The SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations if any. Stabbert has agreed to abide by those rules and to post within the residences rules and maps clearly depicting any limitations including non-trespassing areas. .

Follow On Information:

SJC properly took into account Evans dock rights within the JUA. Stabbert request of SJC for permission to utilize our property under VRBO has been forthright and we are not trying to cut a single corner. Evans, a representative of the court, asked Stabbert to not pursue the VRBO permit but rather rent illegally and Stabbert refused (see Evans email to Stabbert). Stabbert will continue to abide by its commitment to SJC and the conditions it has required of us. (i) On page 10, last paragraph, SJC claims that "The Washington Supreme Court has ruled that VRBO is not commercial" and therefore since the word "commercial" is used once in the joint use agreement, along with multiple other words describing limitations, VRBO use is allowed because (so goes the argument) if the word "commercial" is used then anything and everything that is non- commercial including VRBO must be allowed. Very oddly, a "Washington State Supreme Court Case" is then

cited, Wilkinson v. Chiara Communities Association. Since this case is not properly cited a little digging into the Washington Supreme Court Reports is necessary.

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

The correct cite is: *Wilkinson v Chiwawa Cmtys Ass'n*, 180 Wn.d 241 (2014). The issue in *Wilkinson* are completely irrelevant to the case at hand. *Wilkinson* concerned whether a community association (Chiwawa) could amend its plat declaratory covenants so as to exclude vacation rentals. No Joint Use Agreement, no private rights documents were involved. Nothing in *Wilkinson* addressed or even came close to addressing exclusive private rights in a Joint Use Agreement including a guarantee between land owners of quiet use and enjoyment, a guarantee that the Southerly 1/2 of the dock was for the *exclusive* use of Evans, that the landing 300' Square platform was for the exclusive use of Evans.

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

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

RESPONDENT

Stabbert disagree with Evans, SJC did properly consider the Wilkinson v Chiwawa case and it is properly applied a noncommercial designation to our request.

Subpart K requires provisions related to putting renters on notice and rules regarding advertising and promotion. It is no way enough. Any advertising must state in at least 14 pt. bold print that the dock, buoys and storage area are not included and may not be used. With this many renters, the contact for complaints should be the Sheriff's office. Also, as stated above signage and mapping/maps given to renters must insure they will not go on roadways they are not supposed to. Significant signage needs to be placed at Point of View Lane and Obstruction Pass Road which will absolutely ensure drivers coming to the area will not go where they are not supposed to. ***As stated above, experience to date shows that renters ignore no trespassing signs and treat the surrounding areas as if they are entitled to use docks, beach areas and anywhere and everywhere they can get to. The conditions established for these VRBOs does not require notice in all literature that the dock is off limits. The brochure conditions are not adequate to keep renters out of private areas or feeling "entitled.".***

RESPONDENT

The SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations if

any. Stabbert has agreed to abide by those rules and to post within the residences rules and maps clearly depicting any limitations including non-trespassing areas. .

Follow On Information:

SJC properly addressed this issue in their approval process. Stabbert has agreed to manage and be responsible for renters' actions to adhere to requirements per the SJC rules. Stabbert will have an on island manager that can be contacted. Evans demand for additional signage and that any complaints go directly to the San Juan Sherriff are an attempt to elevate conflict and reduce the enjoyment and use of the property to the point of being punitive, which is his goal.

The SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations.

4. Relief sought, nature and extent:

a) Deny both applications without prejudice to re-application through the Shoreline Management Conditional Use application process. Include in this decision a finding that nothing, anywhere, even arguably suggests vacation rentals are categorically exempt from SMA permit requirements and follow the guidelines of the SMA which disfavor categorical exemptions and doesn't allow for any unless specifically listed as such. (There is no exemption anywhere in the SMA, State Guidelines, or Master Program that lists vacation rental as categorically exempt).

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

c) Allow the posting of prominent no trespassing signs on the dock, platform and trail.

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

RESPONDENT

Stabbert opposes such actions and as stated, feels SJC has adequately addressed these issues. Stabbert has agreed to abide by the JUA and any other regulatory decisions and as such installation of such a gate would be detrimental to the Stabbert's use and access to the dock given this dock is Stabberts sole access to and from the property from the mainland. Evans specificity that the gate be installed by an outside contractor, at Stabberts expense, when he knows Stabbert employs capable journeymen who perform this nature of work, only re-enforces Stabberts claim that this item reflects Evans overall punitive global effort to make Stabberts use of his property under VRBO as expensive and as difficult as possible.

STABBERT WITNESSES AND EXHIBITS

None to be added

Verification

I, Dan Stabbert do swear and affirm the above and foregoing statements regarding the impacts from VRBO occupancy are true and correct to my best information and belief.

Subscribed and sworn to this 13th day of June at Seattle, Washington

UNITED STATES OF AMERICA

The State of Washington

Secretary of State

I, KIM WYMAN, Secretary of State of the State of Washington and custodian of its seal, hereby issue this

CERTIFICATE OF FORMATION

to

BOX BAY SHELLFISH FARM LLC

A **WA LIMITED LIABILITY COMPANY,** effective on the date indicated below.

Effective Date: 02/23/2018
UBI Number: 604 230 821

Given under my hand and the Seal of the State of Washington at Olympia, the State Capital

Kim Wyman, Secretary of State

Date Issued: 02/23/2018

Search Results

1 Result

View this business on a printer-friendly and bookmarkable page (/corps/business.aspx?ubi=604230821)

UBI #	604 230 821
Status	ACTIVE
Expiration Date	**2/28/2019**
Period of Duration	PERPETUAL
Business Type	WA LIMITED LIABILITY COMPANY
Date of Incorporation	2/23/2018
State of Incorporation	WASHINGTON
Registered Agent	SECRETARY 4020 E MADISON ST SUITE 210 SEATTLE, WA 98112
Governing Persons	KELSEY DEMETER THOMAS EVANS DONALD EICHELBERGER

Close

Office of the Secretary of State
Corporations & Charities Division

Filed
Secretary of State
State of Washington
Date Filed: 02/23/2018
Effective Date: 02/23/2018
UBI #: 604 230 821

CERTIFICATE OF FORMATION

UBI NUMBER

UBI Number:
604 230 821

BUSINESS NAME

Business Name:
BOX BAY SHELLFISH FARM LLC

REGISTERED AGENT CONSENT

To change your Registered Agent, please delete the current Registered Agent below.
Registered Agent Consent (Check One):

☑ I am the Registered Agent. Use my Contact Information.

☐ I am not the Registered Agent. I declare under penalty of perjury that the WA Limited Liability Company has in its records a signed document containing the consent of the person or business named as registered agent to serve in that capacity. I understand the WA Limited Liability Company must keep the signed consent document in its records, and must produce the document on request.

RCW 23.95.415 requires that all businesses in Washington State have a Registered Agent.
Some of this information is prepopulated from information previously provided. Please make changes as necessary to provide accurate information.

REGISTERED AGENT RCW 23.95.410

Registered Agent Name	Street Address	Mailing Address
SECRETARY	4020 E MADISON ST, SUITE 210, SEATTLE, WA, 98112-3150, USA	4020 E MADISON ST, SUITE 210, SEATTLE, WA, 98112-3150, USA

CERTIFICATE OF FORMATION

Do you have a Certificate of Formation you would like to upload? - **No**

Certificate of Formation

OTHER PROVISIONS

Other Provisions:

PRINCIPAL OFFICE

Phone:
206-527-8008

Email:
TOM@MARITIMEINJURY.COM

Street Address:
4020 E MADISON ST, SUITE 210, SEATTLE, WA, 98112-3150, USA

Mailing Address:
4020 E MADISON ST, SUITE 210, SEATTLE, WA, 98112-3150, USA

DURATION

Duration:
Perpetual

EFFECTIVE DATE

Effective Date:
02/20/2018

EXECUTOR

Title	Executor Type	Entity Name	First Name	Last Name	Address
EXECUTOR	INDIVIDUAL		THOMAS	EVANS	4020 E MADISON ST, SUITE 210, SEATTLE, WA, 98112-3150, USA
EXECUTOR	INDIVIDUAL		KELSEY	DEMETER	4020 E MADISON ST, SUITE 210, SEATTLE, WA, 98112-3150, USA

RETURN ADDRESS FOR THIS FILING

Attention:
KELSEY DEMETER

Email:
KELSEY@MARITIMEINJURY.COM

Address:
4020 E MADISON ST, SUITE 210, SEATTLE, WA, 98112-3150, USA

UPLOAD ADDITIONAL DOCUMENTS

Do you have additional documents to upload? **No**

AUTHORIZED PERSON

☑ I am an authorized person.

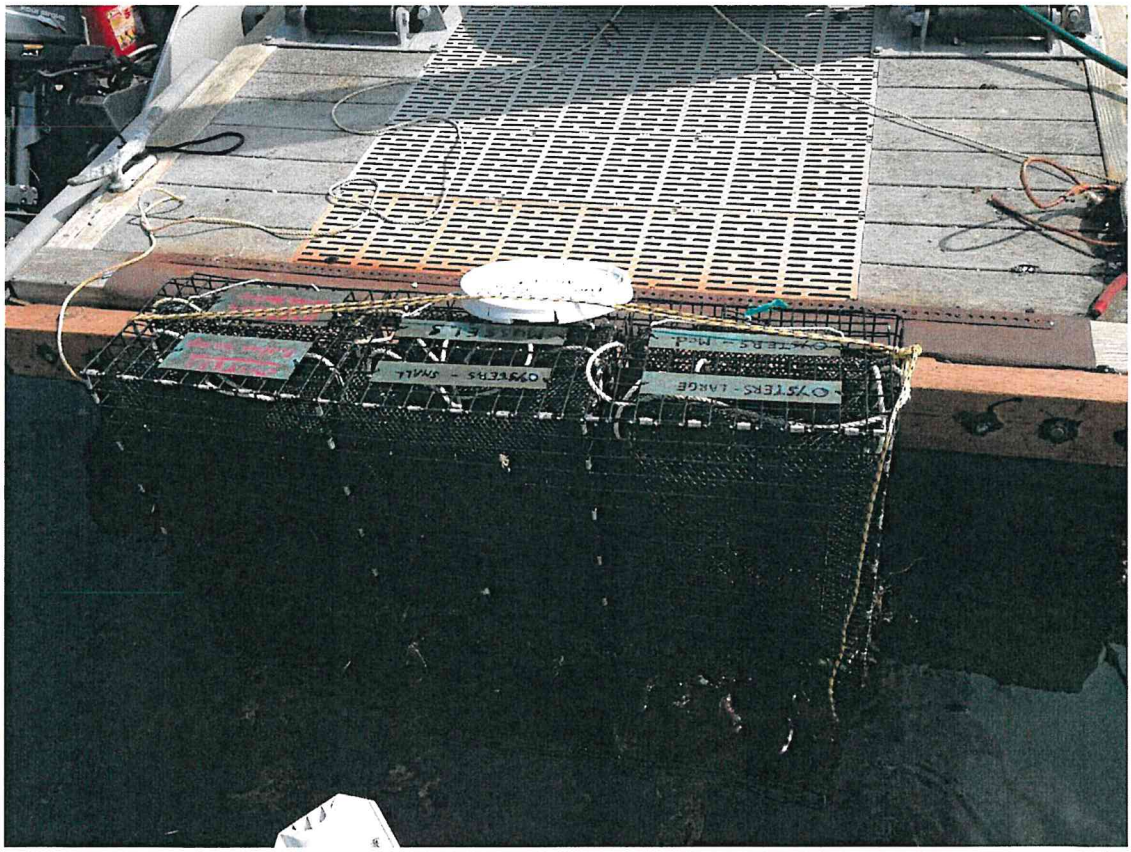
Person Type:
INDIVIDUAL

First Name:
THOMAS

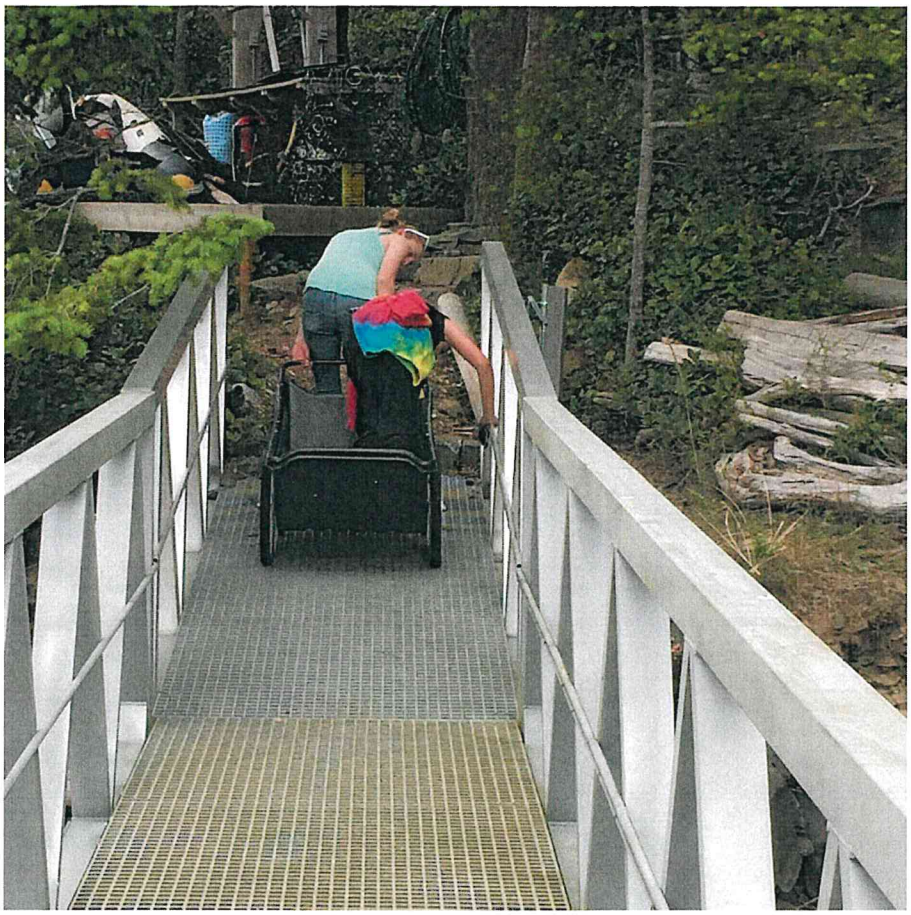
Last Name:
EVANS

This document is a public record. For more information visit www.sos.wa.gov/corps

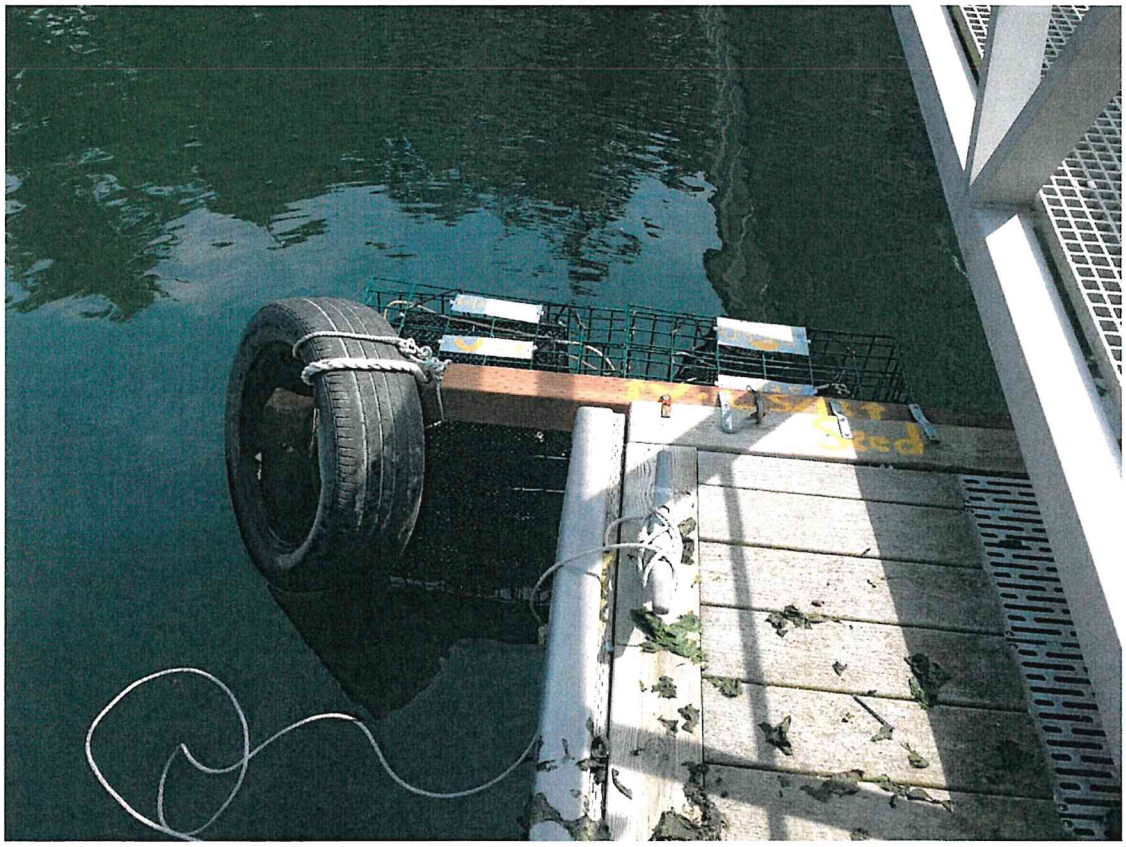
Evans skiff on Stabbert north side contrary to JUA



Evans modification to dock



Evans platform blocking dock egress



Evans modification to dock on Stabbert North side

Platform used by Evans being cut back to allow safe walking

16”-18” from Stabbert property to dock caused by Evans inclusion on Stabbert land

Evans inflatable boat stored on his platform

Evans Platform used for storage

Evans Platform used for storage

Karla Lopez

From: Tom Evans <tom@maritimeinjury.com>
Sent: Thursday, May 11, 2017 12:02 PM
To: Dan Stabbert
Subject: Re: Cages

Dan, sorry for the delay, but hopefully not too much longer. Here is the plan. One, and only one, of the cages, is fully loaded with oysters. I have to, with my friend from Seattle, move that last cage to the beach, unload the oysters (we have been borrowing your wheeled carriers) and move them to reinforced bags that hang from the East side of the slanted rocks in our front yard. We have moved all of the viable oysters for storage and further grow (it makes them meatier to be washed around on the rocks). I also have an underwater grow in the small bay on the eastern part of our property. Now, once that last bag is emptied and moved I am giving all of the remaining floating grow cages to Buck Bay on condition they come and remove them, along with the orange floats, ropes etc. The Frog and Jimmy have also indicated some interest. Bottom line, everything should be gone in I would say, not less than 60 days. If you have any interest in keeping a floating cage you are more than welcome to take one just not the last one with oysters, which is tied to the dock. Finally, our new operation for getting oysters is to just pull a bag up from the 15 bags or so tied off on our front yard, open it, take what you want, then close the top with the plastic ties we have left on site, through back into the water. one over anytime, no need to call first.

Let me know if you have any questions. We are going to be in Hawaii for the next two weeks but I will have email. Take care. Tom

Thomas C. Evans • Injury at Sea
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On May 11, 2017, at 11:44 AM, Dan Stabbert <dan@stabbertmaritime.com> wrote:

Tom. Hope you are well. Tide is about half low and as you can see the cages and lines hanging are not too pretty. Wondered when you can complete the transition? Thanks Dan

Karla Lopez

From: Dan Stabbert <dan@stabbertmaritime.com>
Sent: Friday, February 17, 2017 5:34 PM
To: Tom Evans
Subject: Oyster cages

Tom. The oyster cages tied to the float gangway are getting to be a mess. The lines hanging are damaging the lighting channels and low tide has a menagerie of lines and floats hanging in the air. Same for the cages up in the storage area. Do you mind squaring them away? Thanks. Dan

Sent from my iPhone

Karla Lopez

From: Tom <tom@maritimeinjury.com>
Sent: Saturday, February 18, 2017 11:39 AM
To: Dan Stabbert
Subject: Re: Oyster cages

dan not at all unforuntately events here in seattle have destroyed all of our time julias sister passed away a long agoizing process at u w med she was here from philly on a visit this was followed by julias best friend dieing sort of the same way in idaho and ive been at war with jim johnson of glacier fish with trial starting next week BUT my plan is to get rid of all of that stuff as psrt of dprimg cleaning three of the floaters are loaded with oysters the others are empty my plan is to bring up s big load of longshoreman empty and remove all if the cages store them on oir proprty tansfer the oysters to hanging bags on our rocks give me some more time we will get it done t Sent from my iPhone

> On Feb 17, 2017, at 5:33 PM, Dan Stabbert <dan@stabbertmaritime.com> wrote:
>
> Tom. The oyster cages tied to the float gangway are getting to be a
> mess. The lines hanging are damaging the lighting channels and low
> tide has a menagerie of lines and floats hanging in the air. Same for
> the cages up in the storage area. Do you mind squaring them away?
> Thanks. Dan
>
> Sent from my iPhone

Karla Lopez

From: Tom Evans <tom@maritimeinjury.com>
Sent: Sunday, April 16, 2017 1:26 PM
To: Dan Stabbert
Subject: Re: spring cleaning - Update

Thanks Dan. I have had Raul clean up the platform as best he can for the moment. There still are 2 cages but they have been relocated and some of the stuff cleaned off of them. Of all the cages left only 2 have oysters in them, and those two are crammed full. My friend and I are taking on each of these, one at a time, and transferring the oysters to the hanging bags on the East side of the rocks of our front yard. Once we get these last two transferred, the entirety of the floating cages should be removed shortly thereafter. I would like to make sure we agree on what ever would go between the two pilings and would hope we can just leave it open - does this work for you? Tom

> On Apr 14, 2017, at 12:02 PM, Dan Stabbert <dan@stabbertmaritime.com> wrote:
>
> Tom: Thank you for the offer. We are going to focus our efforts on the greenhouse and small orchard. Let me know what we can if anything to help you the balance of the move. Probably a good idea to get the balance moved before they break free the rest of the way. Dan
>
> On 3/21/17, 9:34 AM, "Tom" <tom@maritimeinjury.com> wrote:
>
> hi dan work progresses on transferring the grow operation to our wast side we have teo more filled cages to transfer then the cages with live oysters will be done. I am going to have Raoul do a spring clean now of the plat form just to make it look cleaner. Once ee get the next teo full cages transferred all of the others will be emptied. At that point we will be bringing to shore and moving to the west the remsing cages. What to do with the 4 cages attached to the two piles remains a dilemma. The State has offered to lease them to me to continue a very down scaled floating grow from there. Open to ideas. I am not refilling the bins on the dock. If you would like an empty floating cage for your own grow happy to give you one. Let me know your thoughts. Tom
>
> Sent from my iPhone
>

Karla Lopez

From: Tom <tom@maritimeinjury.com>
Sent: Friday, May 26, 2017 8:40 PM
To: Dan Stabbert
Subject: Re: grow cages

Dan heard from Mark he came by needs to get his boat pressure washer says there is too much fowling on them to lift in his boat until he blows the fowling off which is easy for him to do will be back soon will keep you posted t

Sent from my iPhone

On May 25, 2017, at 8:19 PM, Dan Stabbert <dan@stabbertmaritime.com> wrote:

> Tom. Thanks and it's nice to be back. If you need help tomorrow just let me know and thanks for the update. Dan
>
> Sent from my iPhone
>
> On May 25, 2017, at 8:15 PM, Tom Evans <tom@maritimeinjury.com> wrote:
>
> Hi Dan, welcome home! Tomorrow, Mark from Buck Bay says he will come by and take/remove the three grow cages on the first piling, and and the single grow cage on the inner piling and associated gear/rope/floats. He is also interested in taking all of the remaining grow cages and gear once we get the last grow cage with oysters in it emptied. Also, all of the grow cages and gear have been removed from the platform, which has also been cleaned up by Raoul. Hope you guys are all well. Tom

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E-mail: tom@maritimeinjury.com www.injuryatsea.com

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Karla Lopez

From: Tom <tom@maritimeinjury.com>
Sent: Friday, June 02, 2017 1:21 PM
To: Dan Stabbert
Cc: Julia Evans
Subject: Re: grow cages

dan julia went to buck bay and spoke with toni she said they definitely still want all of but msrk is gone today buying fish unfortunately i am stuck in seattle my plan b is the frog and jimmy at one time he expressed interest i am not selling i am giving them to whoever wants them and really can use them the only cage i want to keep is the one loaded with oysters my plan c is to have stabbert marine
who take all of them except the one with oysters they are worth about 350 each but like i said they sre available gratis i know its not your responsibility but do feel free anytime to take away to a holding area the ones on the pile poles
i really do spologize for the eyesore i think it makes the modt sense to give msrk another day or two and tell him if he doesnt get them asap then someone else will tell me about a b and c above and if you want to move some now hope both of you are well and sgain apologises for the delay tom

---

On Jun 2, 2017, at 8:09 AM, Tom <tom@maritimeinjury.com> wrote:

> Dan he told me he would take them the next day after i talked to him iam disappointed he did not follow through both Mark and Tony very much want the cages Julia is on island and i am in Seattle i will have julia go over there today and report back to you today more soon tom
>
> Sent from my iPhone
>
> On Jun 2, 2017, at 7:21 AM, Dan Stabbert <dan@stabbertmaritime.com> wrote:
>
> > Tom: When do you think Mark will be back? They aren't getting any prettier☺
> >
> > ---
> >
> > **From:** Tom Evans <tom@maritimeinjury.com>
> > **Date:** Friday, May 26, 2017 at 8:40 PM
> > **To:** Dan Stabbert <dan@stabbertmaritime.com>
> > **Subject:** Re: grow cages
> >
> > Dan heard from Mark he came by needs to get his boat pressure washer says there is too much fowling on them to lift in his boat until he blows the fowling off which is easy for him to do will be back soon will keep you posted t
> >
> > Sent from my iPhone
> >
> > On May 25, 2017, at 8:19 PM, Dan Stabbert <dan@stabbertmaritime.com> wrote:

Tom. Thanks and it's nice to be back. If you need help tomorrow just let me know and thanks for the update. Dan

Sent from my iPhone

On May 25, 2017, at 8:15 PM, Tom Evans <tom@maritimeinjury.com> wrote:

> Hi Dan, welcome home! Tomorrow, Mark from Buck Bay says he will come by and take/remove the three grow cages on the first piling, and and the single grow cage on the inner piling and associated gear/rope/floats. He is also interested in taking all of the remaining grow cages and gear once we get the last grow cage with oysters in it emptied. Also, all of the grow cages and gear have been removed from the platform, which has also been cleaned up by Raoul. Hope you guys are all well. Tom

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E-mail: tom@maritimeinjury.com www.injuryatsea.com

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Sent from my iPhone

Karla Lopez

From: Tom <tom@maritimeinjury.com>
Sent: Saturday, June 03, 2017 9:08 AM
To: Dan Stabbert
Subject: cages

dan if mark doesnt get the piling cages gone by the end of this weekend then monday morning i go to plan b it seemed clear to julia he reslly does want them and can use them t

Sent from my iPhone

Karla Lopez

From: Tom Evans <tom@maritimeinjury.com>
Sent: Tuesday, June 06, 2017 4:47 PM
To: Dan Stabbert
Subject: Cages

Hi Dan - here is the plan for the remaining cages - I will be back on island late saturday pm. My friend was not able to come up with me, but I think I can hand paddle the little inflatable boat out far enough to separate the one cage that has oysters in it from the rest, and then have Mark come and take away all of the remaining stuff except the cage with oysters. I have a couple of other people who I think will then help me move the oysters in the one remaining cage to grow bags on our property. We may need to borrow your 2 wheelbarrows for a short period of time if thats ok. One cage full of oysters fills up two wheelbarrows. Also, I am bringing in some seed which will likely be in 3 grow bags, completely submerged and tied off from our side of the dock. These will not be there long as they are going right out to re-pant 6 submerged cages on our side. Wonder if you will be up next week? If so, maybe see ya then. Let me know if you have any questions. Tom

---

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Karla Lopez

From: Tom Evans <tom@maritimeinjury.com>
Sent: Sunday, June 11, 2017 10:38 AM
To: Dan Stabbert
Subject: final clean up

Dan, I am up for the next few days and my intention is to have all of the deck work done before I leave. My first priority is to get the new seed into the water in the cages which I moved to our side and sunk. This should take a day or two. In between I will be down on the dock figuring out how to cut the cages and stuff loose for Mark to pick up. Once again, there will be one, and only one, cage left which I will try to tie off on a pillar support that is out of the way. When my friend gets back, we will unload and take that cage away.

I wil try to spend a minimum amount of time around the dock. I will not be storing new seed there - it looks like I will be able to get it into the cages here. Let me know if you have any questions. Tom

Thomas C. Evans • Injury at Sea
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Tel: 206.527.8008, Ext. 2 • **Toll Free:** 1.800. SEA. SALT
Cell: 206.499.8000 **Fax:** 206.527.0725
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Karla Lopez

From: Tom Evans <tom@maritimeinjury.com>
Sent: Sunday, June 11, 2017 11:39 AM
To: Dan Stabbert
Subject: Re: final clean up

Thanks Dan, I created the mess. I will clean it up. Take care. Tom

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

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On Jun 11, 2017, at 11:01 AM, Dan Stabbert <dan@stabbertmaritime.com> wrote:

Tom: No worries. Im leaving this afternoon but if you need any help before that let me know. If there is something left when we we get back the same offer. Dan

From: Tom Evans <tom@maritimeinjury.com>
Date: Sunday, June 11, 2017 at 10:37 AM
To: Dan Stabbert <dan@stabbertmaritime.com>
Subject: final clean up

Dan, I am up for the next few days and my intention is to have all of the deck work done before I leave. My first priority is to get the new seed into the water in the cages which I moved to our side and sunk. This should take a day or two. In between I will be down on the dock figuring out how to cut the cages and stuff loose for Mark to pick up. Once again, there will be one, and only one, cage left which I will try to tie off on a pillar support that is out of the way. When my friend gets back, we will unload and take that cage away.

I wil try to spend a minimum amount of time around the dock. I will not be storing new seed there - it looks like I will be able to get it into the cages here. Let me know if you have any questions. Tom

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Karla Lopez

From: Tom Evans <tom@maritimeinjury.com>
Sent: Wednesday, August 09, 2017 4:48 PM
To: Dan Stabbert
Subject: Re: cages

Dan, my plan was to have Raul move them up to the storage unit on our property, but he is not coming until Saturday. If you need to have them moved sooner you can move them up and to the right of our pump house, next to Julia s garden. I am in Seattle maybe for as long as the next 10 days, while Julia is on Island with friends. The cages are not very heavy as they are empty. Don and I just stuck one cage each on top of your two wheeled boxes and easily moved the ones we moved all the way down to the water on our side. Let me know if you move them so I can alert Raul. He is also going to help us move the 2 that are still in the water. Tom

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On Aug 9, 2017, at 4:15 PM, Dan Stabbert <dan@stabbertmaritime.com> wrote:

Tom: We are having a family reunion here this weekend and people will begin arriving tomorrow and staying the weekend. What are your plans with the cages down on the platform as they are fairly ripe? Thanks, Dan

Karla Lopez

From: Tom Evans <tom@maritimeinjury.com>
Sent: Wednesday, August 09, 2017 6:06 PM
To: Dan Stabbert
Subject: Re: cages - PS and PPS

Dan - we won't have anybody on the water this weekend period so feel free to tie up to any of our buoys or off-load, tie up on our side of the dock.

Also, fyi, the whole of San Juan County is closed to all shell specifies of shellfish consumption due to red tide. Commercial operators are supposed to send in samples of each batch they intend to sell before they sell. Unfortunately, I am aware of some who are not doing this. T

On Aug 9, 2017, at 4:48 PM, Tom Evans <tom@maritimeinjury.com> wrote:

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EXHIBIT 10

Lynda Guernsey

From: Lynda Guernsey
Sent: Friday, June 15, 2018 2:58 PM
To: Gary N. McLean
Subject: FW: Motion for Summary Judgment PAPL00-18-0001 and PAPL00-18-0002
Attachments: SJ Motion - Private Joint-Use Dock.pdf; SJ Motion - Conditional Use Permit.pdf

Hi Gary,

Please see the email below and attachments regarding the Evans appeals PAPL00-18-0001 and 0002 of Stabbert.

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, June 15, 2018 2:12 PM
To: Erika Shook <erikas@sanjuanco.com>; Lynda Guernsey <LyndaG@sanjuanco.com>; Julie Thompson <JulieT@sanjuanco.com>; chris.osborn@foster.com; dan@stabbertmaritime.com; Community Development <cdp@sanjuanco.com>
Cc: Kelsey Demeter <kelsey@maritimeinjury.com>; Tom Evans <tom@maritimeinjury.com>
Subject: Motion for Summary Judgment PAPL00-18-0001 and PAPL00-18-0002

Good Afternoon,

Attached please find two motions for Summary Judgment on behalf of Appellants Thomas C. Evans and Box Bay Shellfish Farm LLC.

Best,
Kelsey

INJURY AT SEA
MARITIME INJURY ASSISTANCE

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

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Lynda Guernsey

From: Kelsey Demeter <kelsey@maritimeinjury.com>
Sent: Friday, June 15, 2018 2:12 PM
To: Erika Shook; Lynda Guernsey; Julie Thompson; chris.osborn@foster.com; dan@stabbertmaritime.com; Community Development
Cc: Kelsey Demeter; Tom Evans
Subject: Motion for Summary Judgment PAPL00-18-0001 and PAPL00-18-0002
Attachments: SJ Motion - Private Joint-Use Dock.pdf; SJ Motion - Conditional Use Permit.pdf

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BEFORE THE SAN JUAN COUNTY HEARING EXAMINER

THOMAS C. EVANS, BOX BAY SHELLFISH FARM LLC, Appellants v. DAN AND CHERYL STABBERT; SAN JUAN COUNTY PLANNING DEPARTMENT, Respondents	PAPL00-18-0001 PAPL00-18-0002 **MOTION FOR SUMMARY JUDGMENT-PRIVATE JOINT-USE RESIDENTIAL DOCKS** **NOTE FOR CONSIDERATION JULY 11, 2018**

MOTION FOR SUMMARY ADJUDICATION

Failure to address the State Law mandatory requirements of RCW 79.105.430 and WAC 332-30-144(2)(c), State Department of Natural Resources ownership law, regulation controlling joint use docks would constitute inexcusable neglect of both State law and San Juan County's own requirements. It will also guarantee LUPA litigation to correct an obvious error.

San Juan County VRBO code addresses *at least three times* the importance of abiding by the law of other State and local agencies when considering VRBO permits. The Department of Natural Resources letter (**Exhibit 1**) makes it crystal clear, rental of a private use joint residential dock is considered a commercial use and is not permitted, without a commercial permit. The DNR never has and never will issue a commercial use permit for a private residential dock. Even if the impossible was considered both signatures of both property owners would be required,

Several provisions make it clear SJC by its own code, non-VRBO use of the dock and floats is

not permitted. Those limitations support Appellants proposed methods of controlling access (locked gate, no trespassing signs) and should be added to any permit. SJC **18.40.275(c)(1) specifically states no VRBO may permit trespassing on private property. The dock is private property. Allowing or not controlling access would be supporting trespassing on private property. The dock and floats are private property.** The joint owners paid over $200,000 to build the dock. Each of the owners pay $2,500 per year in taxes and makes the dock makes each owner jointly and severally personally liable to personal Injury. (See: landowner's duty to trespassers on their property).

Next, SJC 18.40.275(I) states that any VRBO "Must meet all applicable local and State regulations". It is absolutely baffling why SJC would, on this clear legal requirement, fail to condition any permit so as to comply with the requirements stated above. These were made so clear in the DNR May 7, 2018 letter to the Stabbert's. It's as if owners of private use residential docks and buoys have a duty to let the public use their property and SJC is responding to some grander moral standard by forcing the owner to allow the public on their land.

There is another (the third) provision in SJC code, SJC 18.40.270(I) which requires compliance with all State and local regulations. It states, in summary:"...VRBO's must meet the requirements of all Sate and local regulations..."

RELIEF REQUESTED

This Motion requests a determination that SJC - planning *shall* impose conditions on these VRBO applications that appropriately prohibit VRBO renters from use of the private joint residential use dock and that the applicant comply with workable and real conditions that will keep renters from using the dock and buoys.

Respectfully submitted this 15th day of June, 2018

/s/ Thomas C. Evans
Thomas C. Evans, *pro se*

/s/ Thomas C. Evans
Thomas C. Evans, Manager
Box Bay Shellfish Farm LLC

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 P.O. Box 947 Friday Harbor, WA 98250 dcd@sanjuanco.com LyndaG@sanjuanco.com EricaS@sanjuanco.com JulieT@sanjuanco.com	[X] Via Email [X] Via US Mail, postage prepaid
Christopher R. Osborn, WSBA #13608 chris.osbom@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, postage prepaid
Dan Stabbert dan@stabbertmaritime.com 2629 NW 54th St., #201 Seattle, WA 98107 P: 206-547-6161 F: 206-547-6010 Dan & Cheryl Stabbert Dan Stabbert, *pro se*	[X] Via Email [X] Via US Mail, postage prepaid

Dated this 15th day of June, 2018

s/ Kelsey Demeter
Kelsey Demeter, Paralegal

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

EXHIBIT 1

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

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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?2l82kh2
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)

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.

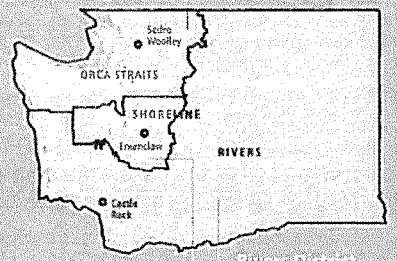
(10) Nothing in this section is intended to address statutes relating to sales of second class shorelands.

[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.

Orca Straits District Aquatic Resources
919 N. Township St.
Sedro Woolley, WA 98284
(360) 856-3500
Fax (360) 856-2150



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

Rivers District Aquatic Resources
601 Bond Rd.
P.O. Box 280
Castle Rock, WA 98611
(360) 577-2025
Fax (360) 274-4196

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

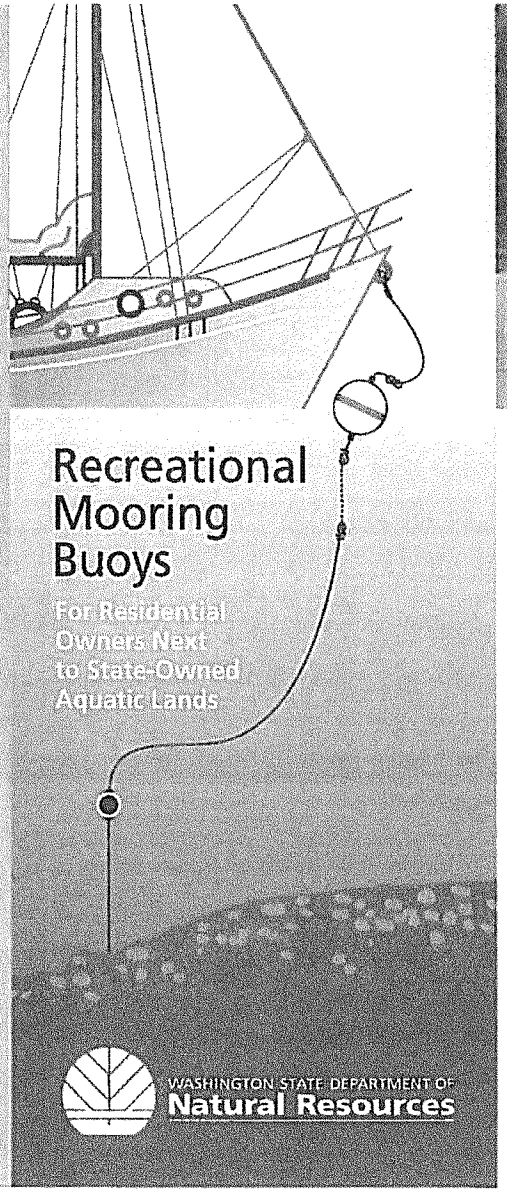
Type 'mooring buoy' in the upper right search tool.

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

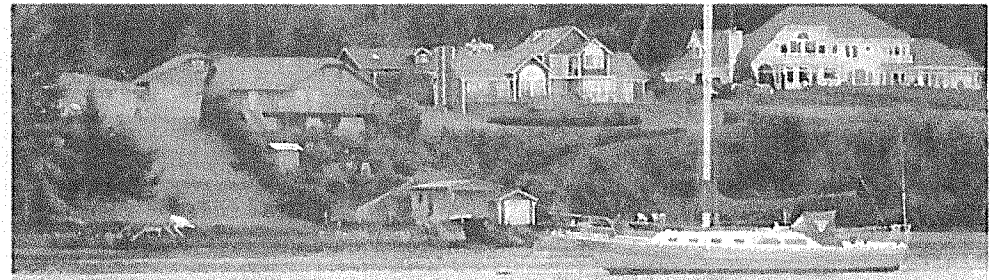
UPDATED 10/14



Recreational Mooring Buoys

For Residential Owners Next to State-Owned Aquatic Lands

WASHINGTON STATE DEPARTMENT OF
Natural Resources



Shoreline Residents May Moor a Boat on State Aquatic Lands

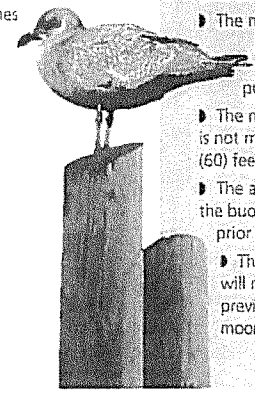
Laws Change for Recreational Mooring Buoys

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 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.

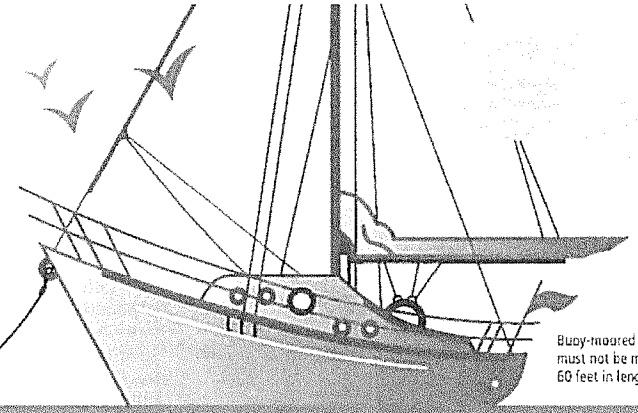
USE REQUIREMENTS

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.



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

PLEASE NOTE

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

FOR RESIDENTIAL PROPERTY OWNERS

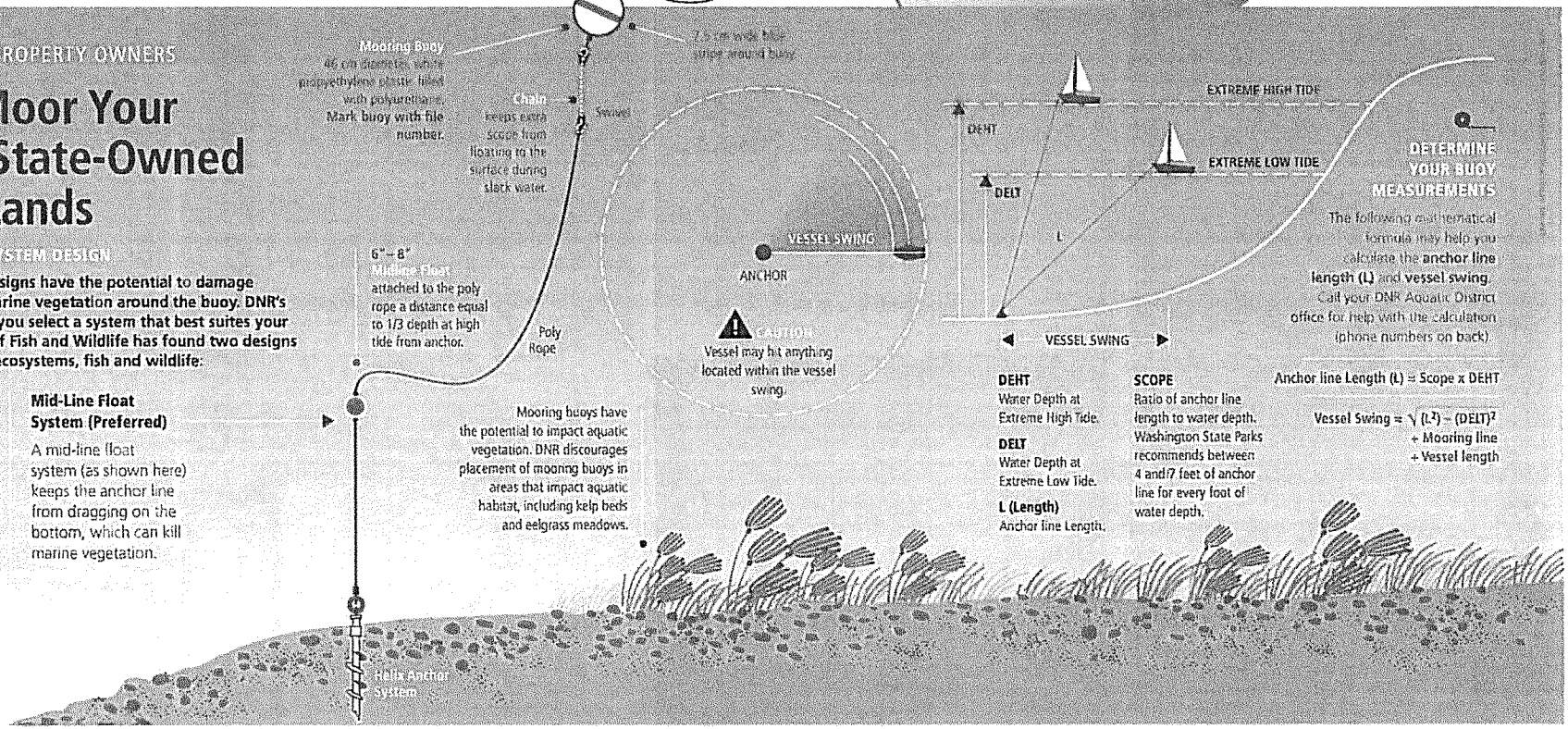
How to Moor Your Boat On State-Owned Aquatic Lands

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

DEHT
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.

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).

Anchor line Length (L) = Scope x DEHT

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

BEFORE THE SAN JUAN COUNTY HEARING EXAMINER

THOMAS C. EVANS, BOX BAY SHELLFISH FARM LLC, Appellants v. DAN AND CHERYL STABBERT; SAN JUAN COUNTY PLANNING DEPARTMENT, Respondents	PAPL00-18-0001 PAPL00-18-0002 **MOTION FOR SUMMARY JUDGMENT-VRBO IS NOT A CATEGORICAL EXEMPTION UNDER THE SHORELINE MANAGEMENT ACT** **NOTE FOR CONSIDERATION JULY 11, 2018**

MOTION FOR SUMMARY ADJUDICATION

If one thing is clear under the Shoreline Management Act, Chapter 90.58 RCW it is that any categorical exemption must be clearly stated and listed in the SMA itself. A jurisdiction cannot "make up" things and strain logic beyond credulity to call something categorically exempt. And thats exactly what San Juan County is doing here. To say that a house used by renters is the same as a house built exclusively by owner/occupier looks at Shoreline land use law as if the word "use" doesn't matter. Nowhere, I repeat, nowhere is there even a hint that renting a house is the same use as the narrow exemption of RCW 90.58.0303(e)(vi) which allows for one (1) single family residence which is owner occupied.

SJC seems stuck on the idea no SMA permit can be required unless there is "dirt" "obstruction of the shoreline" "some form of construction" involved. It completely ignores that change in use; in this case, from owner-occupied house to rented house – which is an action that triggers a SMA condition use permit. Please carefully reread *Robin Hood Village* SHB No. 12-008

(**Exhibit 1**) where the Shoreline Hearings Board finds that taking something that is simply a residential use (RV trailer) and putting out for rent, requires a Shoreline Development Substantial Development permit.

The examiner should also revisit WAC 173-27-040, "Development Exempts from Shoreline Management Permits." This is the codification of the SMA re exempt uses. I challenge anyone to find anything that arguably exempts a VRBO. A VRBO is a commercial use. The DNR has specifically so stated in its May 7, 2018 letter to Stabbert - use if a private residential dock as defined in RCW 79.105.430, regulated by WAC 332-30-144(2)(c) prohibits any revenue generating purpose or use of a private adjoining residential dock and the DNR has found this proposed VRBO to be income producing so as to forfeit its limited license of use without permit by the DNR.

RELIEF REQUESTED

Remand the VRBO applications PPROVO-17-0065 and PPROVO-17-0066 to the San Juan County planning department and require that the applicant obtain a Shoreline Management Act conditional use permit.

Respectfully submitted this 15th day of June, 2018

/s/ Thomas C. Evans
Thomas C. Evans, *pro se*

/s/ Thomas C. Evans
Thomas C. Evans, Manager
Box Bay Shellfish Farm LLC

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 P.O. Box 947 Friday Harbor, WA 98250 dcd@sanjuanco.com LyndaG@sanjuanco.com EricaS@sanjuanco.com JulieT@sanjuanco.com	[X] Via Email [X] Via US Mail, postage prepaid
Christopher R. Osborn, WSBA #13608 chris.osbom@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, postage prepaid
Dan Stabbert dan@stabbertmaritime.com 2629 NW 54th St., #201 Seattle, WA 98107 P: 206-547-6161 F: 206-547-6010 Dan & Cheryl Stabbert Dan Stabbert, *pro se*	[X] Via Email [X] Via US Mail, postage prepaid

Dated this 15th day of June, 2018

s/ Kelsey Demeter
Kelsey Demeter, Paralegal

MADISON PARK LAW OFFICES
4020 EAST MADISON STREET, SUITE 210,
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EXHIBIT 1

SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

DARIN BARRY and ROBIN HOOD VILLAGE RESORT, Appellant, v. STATE OF WASHINGTON DEPARTMENT OF ECOLOGY, Respondents.	SHB No. 12-008 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Shorelines Hearings Board held a hearing in this matter on February 5, 2013, at the Board's office in Tumwater, Washington. The day before the hearing the Board met the parties on site and conducted a site visit. The Board did not take testimony on this day.

The Board was comprised of Board Members Kathleen D. Mix, Chair, Jon R. Wagner, and Dave Somers.[1] Administrative Appeals Judge Kay M. Brown presided for the Board. Attorney Jack W. Hanemann represented the Petitioner Darin Barry/Robin Hood Village Resort (Barry). Assistant Attorney General Sonia A. Wolfman represented the Respondent Washington State Department of Ecology (Ecology).

In addition to the site visit, the Board received sworn testimony of witnesses, exhibits, and arguments on behalf of the parties. Having fully considered this record, the Board enters the following:

[1] This case is being heard by a three member panel pursuant to RCW 90.58.185.

FINDINGS OF FACT

1.

Robin Hood Village is a long-established resort facility on Hood Canal near Union, Washington. Don Beckman, the set designer for the original Robin Hood movie filmed in 1934, built some of its historic cottages, hence the name. The resort includes the forest side, which is on the landward side of East State Route 106, and "The Green", which is on the waterward side of the same highway. The Green is a relatively flat pie shaped area bordered by a curve in the highway to the west, Hood Canal to the east, and a fish bearing stream called Big Bend Creek on the south. *Barry Testimony, Mraz Testimony, Exs. P-2, E-14, E-15.*

2.

The Green has been used for recreational vehicle (RV) parking and tent camping since before the date of the Shoreline Management Act (SMA) and the Mason County Shoreline Master Program (SMP). Barry and the previous four owners have rented RV parking sites for as many as seven RV's at a time. Some of the larger RVs could house six to nine people and have washers and dryers. The campers would pull their RV's onto the Green, park, "hookup" to electrical and water provided by the resort, and enjoy the beach and waterfront view. *Oblizalo Testimony, Barry Testimony, Exs. E-15, P-1, P-2, P-7.*

3.

Barry purchased the resort in 2004. At that time, the Green included a gazebo the resort used as an espresso stand, a fire pit, a low wall along the waterfront, and an old paddle wheel boat. The RV's that were brought onto the site by their owners had self-contained holding tanks.

The RV owners were allowed to empty those tanks in the septic system on the forest side of the resort. *Barry Testimony, Exs. E-15C.*

4.

Barry made some changes to the Green in the period from 2004 to 2011. He discontinued the use of the gazebo as an espresso stand. He added a 3,000 gallon holding tank and acceptance lines to each RV space. The holding tank was installed pursuant to a permit from Mason County. He landscaped the fire pit area and added cement blocks to create a second terrace further landward from the waterfront retaining wall. Each year he added two to three truck-loads of gravel to The Green to fill in rutting caused by the heavy RV's driving on and off of the site. *Barry Testimony, Exs. E-15, P-4, P-12.*

5.

On May 1, 2011, Barry placed four recreation park trailers (RPT) on the Green. Barry purchased the RPTs from a manufacturing facility in Woodburn, Oregon. The RPTs came from the manufacturer with porches. Each RPT cost $20,000, which included delivery to the site. Barry paid an additional $1,000 for each RPT to be professionally anchored and installed, and to obtain an installation certificate. The RPTs are still on their wheels. They do not include self-contained holding tanks. Placement of the units on the site included plumbing work to attach the RPTs to the previously existing connections for the on-site holding tank, construction of a lattice skirt and two-by-four frame for the skirt, an upgrade of some of the existing electrical connections from 30 amps to 50 amps, and construction of steps to the porch of the RPT. Barry also added four planter boxes with approximately 12 trees in each box for privacy screening

between the RPTs. The upgrade in the electrical connections and the addition of the planter boxes were useful improvements even if Barry continues the prior practice of renting RV spaces. While Barry consulted with the Department of Labor and Industries (L&I) and his attorney, Barry did not consult with the County prior to placing the RPTs on site. *Barry Testimony, Exs. P-5, P-8, P-16.*

6.

RPTs are a specific category of trailer-type designed to provide temporary accommodation for recreation, camping or seasonal use. Manufacturers build RPTs on a single chassis and mount them on wheels. Their gross trailer area cannot exceed 400 square feet in the set-up mode. Manufactures certify them as compliant with the American National Standards Institute (ANSI) A119.5 Recreational Park Trailer Standard, not the Department of Housing and Urban Development (HUD) standards for permanent residences. Washington State has adopted the ANSI A119.5 standard for all RPTs that are to be sold in Washington. For purposes of L&I certification, L&I categorizes RPTs as recreational vehicles. *Harvey Testimony, Barry Testimony, Ex. P-5.*

7.

Within days of Barry's placement of the RPTs on the Green, the County received a citizen complaint. The County visited the site on May 5, 2011, and confirmed the placement of the RPTs on the Green without County approvals. The County posted a Correction Notice on the site on May 10, 2011, prohibiting occupation of the site. There was then a series of letters, e-mails, and on-site meetings. The attorney for Barry and the County attorney provided conflicting

legal opinions on whether the placement of the RPTs required shoreline permits. The meetings included Rick Mraz from Ecology, who provided Ecology's opinion that shoreline permits were required for placement of the RPTs on the waterfront. On June 24, 2011, the County sent Barry a letter informing him of its conclusion that the four RV hookups on the Green had been historically used for RV's and were therefore grandfathered for that use. However, the County also concluded that the planned use of the RPTs did not fit the County's requirements for RV site use and therefore was not a continuation of the grandfathered use. This letter also informed Barry of the need to obtain appropriate shoreline permits. The County required Barry to obtain all necessary permits or remove the RPTs. *Mraz Testimony, Barry Testimony, Exs. E-6 through E-11, P-16.*

8.

While Barry made some attempt to begin the County permitting process, including paying a permitting fee, he did not complete the process. Nor did he remove the RPTs. In March of 2012, the County began investigations of parcels adjacent to Big Bend Creek due to elevated fecal coliform levels in the creek. In the course of the investigation, the County communicated internally and with Ecology. On April 5, 2012, Ecology issued a notice of correction (NOC) to Barry for failure to comply with the SMA and SMP. The NOC required Barry to cease advertising and renting the RPTs until he obtained necessary shoreline permits and to apply for shoreline permits. If Barry did not obtain the necessary shoreline permits, Ecology required Barry to remove the RPTs by June 5, 2012. The NOC indicated that Ecology

could impose monetary penalties for failure to comply. *Mraz Testimony, Barry Testimony, Exs. P-3, P-11, E-1, E-4, E-5.*

9.

In response to the NOC, Barry contacted the County and stopped advertising the RPTs as available for rental. He did not, however, contact Ecology and he did not apply for shoreline permits. On May 16, 2012, Ecology sent a follow up letter to Barry requesting a response and warning of penalties. On June 11, 2012, Ecology issued an Order and Notice of Penalty requiring Barry to apply for shoreline permits and assessing a penalty of $12,000. *Mraz Testimony, Barry Testimony, Ex. E-2, E-3.*

10.

Barry has, and intends to continue to use, the RPTs as short-term vacation units. He advertises them as waterfront cottages and charges a nightly rental fee. Barry does not intend to move the RPTs in and out of the Green. Nor does he intend to allow them to become permanent residences. He intends to use them as permanent short-term vacation rental cottages, and indeed, the units appear as small cottages with waterfront views. *Barry Testimony, Ex. E-14.*

11.

Hood Canal is a shoreline of statewide significance under the SMA. RCW 90.58.030(2)(f)(ii)(C). The Green is in an area designated under the Mason County Shoreline Master Program (SMP) as an urban environment. Hood Canal is a distressed waterbody due to increased loading of nitrogen, resulting in a decrease in dissolved oxygen and negative impacts 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.

The same definition is contained in the SMP. See Mason County Code (MCC) 17.50.040.

4.

RCW 90.58.030(3)(e) defines "Substantial development" as:

> [A]ny development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state."

See also MCC 17.50.040.

RCW 90.58.030(3)(e) goes on to direct that the cost figure for substantial development must be adjusted for inflation every five years based on changes in the consumer price index. RCW 90.58.030(3)(e). On September 15, 2012, Washington State increased the threshold to $6,416.00. WSR 12-16-035.

5.

Here, all parties agree that the RPTs placed on the Green are within 200 feet of Hood Canal and therefore within shoreline jurisdiction. RCW 90.58.030(2)(d) and (e); RCW 90.58.040. To determine whether an SSDP is required, the first question is whether the placement of RPTs on the shoreline is development. The Board concludes that it is.

6.

Placing the RPTs on the Green constitutes "placing of obstructions" in the shoreline. The steps Barry constructed for access to the RPTs, and the skirting and two-by-four framework he constructed around the bottom of the RPTs, constitute "construction or alteration of structures." While the RPTs can be moved with some effort and expense, this is not Barry's intent. He intends to leave the RPTs in place on the shoreline and rent them out for short-term vacation

rental cottages. The RPTs are now obstructions in the shoreline, and therefore within the definition of development.[3] This conclusion is consistent with a prior Washington Court case that concluded that the placement of a mobile home, the addition of a septic tank and drain field, and the construction of a deck within shoreline jurisdiction constitutes development. *Hunt v. Anderson*, 30 Wn. App. 437, 439, 635 P.2d 156 (1981).

7.

The next question is whether the development meets the definition of "substantial development" by exceeding the threshold value of $6,416. Barry contends that because the manufacturer constructed the RPTs off site and Barry brought them onto the site, their purchase price cannot be considered in analyzing whether this development is substantial. This argument ignores the definition of substantial development contained in the SMA and the Ecology rules. The definition of substantial development includes "any development of which the total cost or fair market value" exceeds the threshold amount, currently $6,416. RCW 90.58.030(3)(e) (emphasis added).

8.

"Fair market value" of a development for shoreline purposes is defined in Ecology's rules as:

> [T]he open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to 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

[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.

> labor, materials, equipment and facility usage, transportation and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;

WAC 173-27-030(8).

9.

Here, the purchase price of each RPT was $20,000. Their purchase constitutes the purchase of "goods . . . necessary to accomplish the development." The charge to install the RPTs was $1,000 for each unit. Additional costs included the plumbing connection, the electrical upgrade, purchase of the material for the skirting and steps, and the value of Mr. Barry's labor. All of these costs are costs for labor and materials necessary to accomplish the development of the Green with short-term vacation rental cottages, and therefore are part of the development's fair market value. The Board concludes that Barry's development is substantial and requires an SSDP.

10.

B. Conditional use permit (CUP)

To carry out its responsibilities under the SMA, Mason County has promulgated shoreline master program use regulations. MCC 17.50.020. MCC 17.50.050 provides that to conduct a commercial non-water dependent use with waterfront requires a shoreline conditional use permit (SCUP). The requirement to obtain a SCUP is separate from the requirement to 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

placement of RPTs does not constitute a substantial development as the Board has concluded, the use of the RPTs as short-term vacation rental cottages would still require a SCUP.[4] Barry responds that a SCUP is not required because use of the Green for recreational vehicle parking predates the SMA, and therefore is a grandfathered use.

11.

C. Grandfathered use.

Mason County Code 15.09.055(b) addresses nonconforming uses under the SMP. It states:

> Applicability to Nonconforming Development. "Nonconforming development" means a shoreline use or structure which was lawfully constructed or established prior to the effective date of the act or the master program, or amendments thereto, but which does not conform to present regulations or standards of the program or policies of the act. Nonconforming developments may continue to be utilized for the same purpose established on the date of the statute. If a change in use is proposed for such development, any new use must obtain a permit by applicable regulations; provided, that a proposed new use for such development that does not conform to master program policies may be considered as a conditional use.
>
> . . .
>
> Expansion of a nonconforming development is prohibited.
>
> 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.

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

13.

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

14.

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

15.

Barry argues that having short-term vacation rental cottages that are not driven in and out of the Green, do not have to be connected and disconnected to utility hook-ups, and produce only the sewage generated while the occupants are on the site, have less environmental impact on the shoreline than the prior RV rental parking use. Barry also emphasizes that he and prior owners have used the Green for up to seven RV parking sites, but that he has now placed only four RPTs

on the site. Further, he rents the RPTs for two people only, which is a fewer number of people than could arrive in a large RV. While Barry may be right that in some ways the four short-term vacation rental cottages could have fewer environmental impacts than the prior RV parking rental, this misses the point. The use of the Green for RV parking is occurring without the benefit of shoreline permits because it is a grandfathered use. Change and/or expansion of this grandfathered use and development requires appropriate shoreline permitting. The public policy of this state, as well as the spirit of zoning measures, is to restrict rather than increase nonconforming uses in the shoreline area so that they may ultimately be phased out. *Jefferson County v. Seattle Yacht Club,* 73 Wn. App 576, 591, 870 P.2d 987(1994), *citing Keller v. Bellingham*, 20 Wn. App. 1, 9, 578 P.2d 881 (1978*), aff'd*, 92 Wn.2d 726, 600 P.2d 1276 (1979). Instead of allowing changes in use and expansion of development, which would support the increase in non-conformity, the SMA requires Barry to restrict the non-conforming use and obtain appropriate shoreline permits. The shoreline permitting process allows the County and Ecology the opportunity to assess environmental impacts, condition the permits to avoid such impacts, and control future uses. The permitting process also allows the public an opportunity to become involved. For these reasons, Barry's unpermitted use and development of the shoreline cannot be allowed to change or expand, thus encouraging its continuation without the benefit of shoreline permits.

16.

Barry cites to a 1979 Washington Supreme Court case, to support his argument that expansion of a facility is not necessarily an enlargement of a non-conforming use, but can be an

intensification of a use, which in that case the Court determined was permissible. *Keller v. Bellingham*, 92 Wn.2d 726, 600 P.2d 1276 (1979). The *Keller* court, however, specifically based its ruling on the language of the Bellingham zoning code at issue, which expressly prohibited enlargement of a nonconforming use, but was silent as to intensification. This, coupled with the City's interpretation of its own code, which was that it allowed for intensification of a nonconforming use, persuaded the court that the modernization of a nonconforming chlorine plant was permissible. *Keller*, at 732. Here, however, Mason County's code on nonconforming uses expressly prohibits both intensification and expansion. MCC 15.09.055(b) ("Nonconforming development may be continued provided that it is not enlarged, intensified or increased or altered in any way which increases its nonconformity"). Further, Mason County has concluded that a change from RV parking to RPTs used for short-term vacation rental cottages constitutes a change in use requiring shoreline permits. *Ex. E-6*. Therefore the basis upon which the *Keller* court made its decision is not present here.[5]

17.

The Legislature has mandated that the SMA mandate be "liberally construed to give full effect to the objectives and purposes for which it was enacted." RCW 90.58.900. The overriding purpose for which the SMA was enacted was to preserve the natural resources of the state and to regulate construction upon the shorelines in accordance with the public interest. *Hama Hama*

[5] The other case cited by Barry is even less relevant to Barry's situation because it involves the doctrine of 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.

Co. v. Shorelines Hearings Bd., 85 Wn.2d 441, 446-447 (1975)(citing RCW 90.58.010-.020). Ecology and Mason County's conclusion that the placement of RPTs for use as short-term vacation rental cottages along Hood Canal shoreline is a substantial development requiring an SSDP and a SCUP, and that it is not a grandfathered use, is consistent with the SMA and the SMP.

18.

Any finding of fact deemed to be a conclusion of law is hereby adopted as such. Based upon the foregoing Findings of Fact and Conclusions of Law, the Board enters the following:

ORDER

The Board AFFIRMS Ecology's Order and Notice of Penalty.

SO ORDERED this 14TH day of March, 2013.

SHORELINES HEARINGS BOARD

KATHLEEN D. MIX, Chair

JON R. WAGNER, Member

DAVE SOMERS, Member

KAY M. BROWN, Presiding
Administrative Appeals Judge

EXHIBIT 11

Lynda Guernsey

From: Lynda Guernsey
Sent: Friday, June 15, 2018 3:05 PM
To: Gary N. McLean
Subject: FW: Motion to Dismiss - PAPL00-18-0001 & PALL000-18-002
Attachments: 53082638-v1-Stabbert Motion to Dismiss.pdf; Box Bay Shellfish Formation 2.23.18.pdf; Stabber Photos for Appeal 6.13.18.pdf; DWS Emails for Appeal 61318.pdf

Hi Gary,

Please see the email below and attachments from Stabbert regarding the Evans appeals PAPl00-18-0001 and 0002.

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: Karla Lopez <KarlaL@stabbertmaritime.com>
Sent: Friday, June 15, 2018 2:51 PM
To: Lynda Guernsey <LyndaG@sanjuanco.com>; Julie Thompson <JulieT@sanjuanco.com>; Erika Shook <erikas@sanjuanco.com>
Cc: Dan Stabbert <dan@stabbertmaritime.com>; kelsey@maritimeinjury.com; Tom <tom@maritimeinjury.com>
Subject: Motion to Dismiss - PAPL00-18-0001 & PALL000-18-002

Good Afternoon,

On behalf of Dan & Cheryl Stabbert attached please find their Motion to Dismiss. Thank you have a wonderful weekend.

Best Regards,

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

STABBERT MARITIME

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

Lynda Guernsey

From: Karla Lopez <KarlaL@stabbertmaritime.com>
Sent: Friday, June 15, 2018 2:51 PM
To: Lynda Guernsey; Julie Thompson; Erika Shook
Cc: Dan Stabbert; kelsey@maritimeinjury.com; Tom
Subject: Motion to Dismiss - PAPL00-18-0001 & PALL000-18-002
Attachments: 53082638-v1-Stabbert Motion to Dismiss.pdf; Box Bay Shellfish Formation 2.23.18.pdf; Stabber Photos for Appeal 6.13.18.pdf; DWS Emails for Appeal 61318.pdf

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

STABBERT MARITIME

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

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 MOTION TO DISMISS

I. INTRODUCTION AND RELIEF REQUESTED

Respondents Dan and Cheryl Stabbert ("Stabbert") move to dismiss the claims set forth below, which are untimely and therefore outside the scope of the Examiner's jurisdiction. San Juan County Code ("SJCC") 2.22.200.D.8 grants the Examiner the authority "to consider and rule upon all procedural and other motions appropriate to the proceeding." SJCC 2.22.230.B establishes that the filing of a notice of an appeal is jurisdictional, meaning that the appeal is limited to the issued raised in the notice. Moreover, SJCC 2.22.230.C, which authorizes the Examiner to require clarification of an appeal, is not carte blanche for the

Appellants to add new appeal issues that were not part of the original notice of appeal. As explained below, the Appellants are seeking to inject new issues into this appeal in the clarification of issues. Because these issues were untimely raised, the Examiner does not have jurisdiction to hear time, and they should be dismissed pursuant to SJCC 2.22.230.D. Other issues are without merit on their face and are therefore also subject to dismissal per SJCC 2.22.230.D.

II. ARGUMENT

Appellants have raised several arguments that are not based in fact or are beyond the scope of their original appeal.

A. Appellants' Claims Regarding DNR Lease Were Untimely.

In Appellants' May 11, 2018 Supplemental Appeal, Appellants contend that the San Juan County planning department failed to contact all agencies with jurisdiction and failed to contact the Department of Natural Resources. As a result no record was made regarding RCW 79.105.430 and WAC 332-30-144. Appellants' contend that these laws mandate that private recreational docks and buoys, such as Stabbert proposes to use with his VRBOs, may not be used, advertised or otherwise made to appear they are part of the VRBO rental. Further, by letter dated May 7, 2018 the DNR makes it clear that to allow such use would be a commercial "revenue generating" use and beconsidered a commercial enterprise. While DNR leases are issued to commercial uses in general they are never issued for private recreational docks. Further, any lease would require both property owners to sign.

Appellants' notice of appeal ("NOA") Ex. 1 outlines several spurious legal arguments. For example, at pages 54 -57 of NOA Ex. 1, Appellants' allege

that VRBOs conflict with JUA language regarding the dock being privately used only, why VRBOs are considered a commercial use, and why VRBOs do not warrant an exemption to RCW 90.58.356(e). Argument is also made, at NOA Ex. 1 p. 57, as to why under SJCC 18.40.270 VRBO is not categorically exempt. NOA Ex. 1 p.69 includes argument as to why an owner-occupied single-family residence is not the same as VRBO use and thus a shoreline management conditional use substantial development permit is required. NOA Ex. 1 p. 65 contains argument dated January 23, 2018 about what, as a matter of law "a use" is, and why classifying a VRBO as a non-use is contrary to SJC 18.50.600. NOA Ex. 1 p.65 dated January 24, 2018 contains Appellants' argument as to why the zoning of rural forest farm does not include vacation rentals. NOA Ex. 1 pp. 66–79 contains DOE argument made in Robin Hood Village wherein the DOE fined a VRBO for use in a shoreline.

San Juan County in its permit approvals under condition #9 took into account easements, shoreline limitations if any, and the associated JUA that governs its use and rights between the parties. Stabbert has agreed to abide by those rules and to post within the residences maps clearly depicting any limitations or non- trespassing areas.

Appellants have throughout the course of this dispute taken improper liberty utilizing misdirection, exaggeration, and out-right misleading statements. We encourage the Examiner to pay attention to Evans statements as well as our own as we present our case to determine the veracity and accuracy of the information presented.

B. Respondents' Response to Appellants' Arguments Regarding DNR Issues.

DNR related issues should not be a part of this appeal as they were not timely raised. Even if it had been allowed, Appellant Evans improperly states that the dock situated offshore of these two properties will be a central marketing and key element of the use of these properties. In fact the direct opposite is the case. The dock and use thereof was only minimally discussed in the Stabbert letter of January 21, 2018 to San Juan County where Stabbert stated that "The county dock which is only a 3 -4 minute walk from our property is ideal for either water taxi or your own personal boat. The property dock and offshore buoys are adequate for small commuter boats up to 30 feet" specially stating that the nearby county dock was in fact a normal route for those taking the passenger-only express ferries and referencing how Stabbert as owner use the dock for commuting to and from Orcas Island.

The key elements of the property as situated includes kayaking off of the Stabbert-owned beach, the terrestrial portion of Orcas Island for cycling and hiking, access by water taxi to the local county dock located a short walk away, and quick access to the state park, the city of Eastsound, Mt Constitution, and other key island attractions. The kayaking is launched and retrieved off of the beach due to ease of access and to be quite frank, the small dock, with 30" of depth at low tide, and an average of 52 degree water, no fishing or other valid purpose, is literally something that even living on the property, the Stabberts rarely use, other than for their personal commute.

The dock issue is a smoke screen for Appellant Evans' true intent, which is to preclude the use of the Stabbert property as a VRBO, and Appellant Evans has been forthright in statements to me in person that he intends to fight and

force upon us to install and see every day " large, no trespassing signs in direct line of sight from our master bedroom, our living room, our patio, directly in the line of sight from our home to the waters view/ferries passing, and Salish Sound, making it a sufficient eyesore and an emotional stumbling block that we will give up on applying for the VRBO in any form or fashion. It is not about the dock, it is about stopping you from using your home as a VRBO and making it as uncomfortable as I can for you both emotionally and financially". This effort on the part of Evans is primarily focused on making it as uncomfortable, as visibly offensive, and as emotionally distressing as Evans can make it. Evans has one purpose, to deter us from applying for and carrying through with using our property as a VRBO. On top of this Evans has added onto his threats of harming our "quiet enjoyment and privacy of our property", threats of lawsuits against us as family, San Juan County, and resultant large legal bills as he " takes this all the way to the state supreme court" (including even copies of past judgments for legal fees he has obtained) as a threat in what can only be described as a bullying tactic and coercion to forgo our rights.

In short, San Juan County properly addressed all issues surrounding our use of our property as a VRBO with guests and that we have agreed to be bound by the permit conditions as required under the permit approvals.

C. Appellants' Arguments Regarding VRBOs and San Juan County's Shoreline Code.

NOA Ex. 1 outlines Appellants' legal arguments. For example, pages 54 -57 contain argument as to why VRBOs conflict with JUA language regarding the dock being privately used only, why VRBOs are considered a commercial use, and an in-depth argument per RCW 90.58.356(e) of categorical exemptions and that VRBO does not warrant an exemption. Argument is also

made, at NOA Ex.1 p. 57 as to why under San Juan County code 18.40.270 VRBO is not categorically exempt. NOA Ex 1 p.69 includes argument as to why owner-occupied single-family residence is not the same as VRBO use and thus a shoreline management conditional use substantial development permit is required. NOA Ex. 1 p.65 contains argument dated January 23, 2018 about what, as a matter of law "a use" is, and why classifying a VRBO as a non-use is contrary to SJC 18.50.600. NOA Ex. 1 p.65 dated January 24, 2018 contains Appellants' argument as to why the zoning of rural forest farm does not include vacation rentals. NOA Ex. 1 pp. 66 – 79 contains DOE argument made in Robin Hood Village wherein the DOE fined a VRBO for use in a shoreline.

D. Respondents' Response to Appellants' Shoreline Management Act Issues.

Appellants' issue (e) regarding shoreline regulations must be dismissed as a matter of law. San Juan County's Shoreline Master Program does not require any shoreline permit for a provisional use permit authorizing a vacation rental use in a previously constructed home located within the Rural Farm Forest shoreline designation.

As background, Appellant argues that Stabbert must obtain a "Shoreline Management Permit" for the vacation rental use. Appeal, p. 4:10. The County's adopted Shoreline Master Program does not have a "Shoreline Management Permit." Presumably, Appellant is arguing that a Shoreline Substantial Development Permit is required. Appellant's clarified appeal now argues that the County erred because not requiring a "Shoreline Management Permit" is in violation of permit approval criteria 18.40.275.I (requiring vacation rental

accommodations meet all applicable local and state regulations). Here, Appellant's "clarification" argues for the first time that vacation rental should be made a "shoreline conditional use" to comply with "DNR legal criteria." Revised Definitive Appeal Statement, p. 7:15. To the extent Appellant is making this argument, all arguments addressing "shoreline conditional use" and "DNR legal criteria" must be dismissed because they were not timely raised in Appellant's appeal dated, March 29,2018. Regardless, no shoreline permit is required for either provisional use permit.

Moreover, the residence subject to PPROVO-17-065 (the "Upland Residence") is located outside of the regulated shoreline. Thus, this appeal issue must be dismissed for the Upland Residence because shoreline regulations do not extend beyond the regulated shoreline. See e.g., S J C C 18.20.190"S" (defining shoreland as extending landward for 200 feet in all directions).

No shoreline permit is required for PPROVO-17-066 (the "Waterfront Residence"), as described in the County's decision. Page 7 of the Waterfront Decision explains that Appellant believes a shoreline substantial development permit is required. Pages 2 and 14 of the Decision then explain why Appellant's argument fails. As described on page 2, finding of fact 9:

SJCC Table 18.30.040 allows vacation rentals 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 AJCC Table 18.50.600 (the Shoreline Master Program) requires a shoreline substantial development for a 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; bulk heading; 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 water 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 approval are required. Thus, no SSDP is required because the proposal does not include "development."

Similarly, a shoreline conditional use permit is not required pursuant to SJCC 18.50.600 (identifying when a shoreline conditional use permits is required). The row for "vacation rentals" under the column for Rural Farm Forest is not marked by a CUP. Thus, no CUP is required for a vacation rental use in the Rural Farm Forest shoreline designation.

Finally, Appellants have cited a Shoreline Hearings Board decision in an attempt to support his argument. *Darin Barry and Robin Hood Village Resort v.Ecology*, SHB 12-008 (SSDP and SCUP required for new trailers parked in the regulated shoreline). This decision analyzes Mason County's Shoreline Master Program, not San Juan County's Shoreline Master Program, which is analyzed above. To the extent that Appellant argues San Juan County should include additional provisions in its SMP, this argument is time barred because the time to appeal San Juan County's adopted SMP passed long ago. SJCC 18.50.600 provides vacation rentals in existing residence in the Rural Farm Forest designation do not require a SSDP or a CUP. Appeal issue (e) regarding shoreline permits must be dismissed as a matter of law.

E. Appellants Attempt to Link Issues on Appeal to Provisional Use Permit Approval Criteria.

Criteria for provisional use permits for VRBO's is stated in SJC 18.40.275 "Vacation rental of residences or accessory dwelling units." Subparts (A) to (M) contain the specific list of provisional use criteria for VRBOs in particular. Each issue in this appeal (non-legal) is identified below along with the appropriate SJC 18.40.275 standard and argument demonstrating why the condition is not met. For the sake of economy reference is made only to the sub-part.

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

1. Identification of Appellants:

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

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

F. Respondents' Response to Appellants' Claims.

Contrary to Evans statements, Box Bay Shellfish Farm LLC is a for profit Washington State LLC (see no reference to nonprofit, 501-C-3 or other confirmation of Evans claims) formed February 23, 2018 (per attached certificate of formation) during the time of our application and in our opinion for Evans preparation for appeal should our application be approved. It is our opinion it was formed to be used as a bullying point against Stabbert and used in Evans attempt to prevent Stabbert from pursuing or retaining the VRBO status.

G. Appellants' Trespass Arguments Should Be Dismissed.

In Appellants' Statement Describing Standing To Appeal, Appellants make the following representations:

Evans – would be directly and significantly adversely impacted by Stabbert Vacation Rental by Owner (VRBO) in multiple ways, which are all set out in detail in the numerous objections previously submitted to San Juan County (SJC) and are attached hereto. In summary, these impacts include severe traffic conflicts by adding up to 18 renter occupants each likely making use of Obstruction Pass Road on a regular basis where said road is privately maintained, can accommodate only one vehicle in one direction at a time without side-line stand by; noise emanating up and out of the16 Stabbert property from vacationers whose use of Stabbert property amounts to noise emanating from a megaphone vortex given the configuration of Box Bay, encroachment on privately owned Evans property including privately owned 300 square foot landing at the foot of the entrance to the privately owned joint use dock;

trespassers attempting to use the privately owned joint use dock and difficulties in keeping trespassers off the dock. The dock is the centerpiece of the Stabbert VRBO property and Evans will have to, without protective measures such as a locked gate and no trespass signs, constantly restrain trespassers. Renters are also likely to be attracted to use the privately owned dock by advertising depicting the property with the dock at the center. Unless large no. 18pt. type is included in all advertisements stating the dock is not available for use, potential renters will naturally believe Stabbert owns the joint use dock and it will be available for their use.

H. Respondents' Response to Appellants' Trespass Arguments.

The SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations if any. Stabbert has agreed to abide by those rules and to post within the residences rules and maps clearly depicting any limitations including non- trespassing areas. Stabbert objects to all new issues raised in the June 8, 2018 filing, including but not limited to, all the references to the DNR lease. (PP. 2:2- 4, 6:3, and 7:16). In addition, Stabbert responded to the issue of 18 renters using cars on the road in our previous statements and SJC has taken into account this issue in the requirements related to our conditional use permit. For the size of our property, the parking spaces available, and the access roads in place, having both homes fully utilized would have no additional effect on the ingress and egress. Appellant Evans demands that we install a locked gate on the dock, large, no trespass signs around the property, and 18 point type on any advertising. These demands are rather blatant, cohesive, and through them Evans is attempting to limit our enjoyment of our own property.

Just think of how large 18 point type is in any advertising or description of our property. 18 point type stating that you will be punished by the full extent of the law as requested by Evans "Unless large no. 18pt. type is included in all advertisements stating the dock is not available for use, potential renters will naturally believe Stabbert owns the joint use dock and it will be available for their use" . The request for key pad gates, large "no trespass" signs, and other claimed "protective measures" is not only not needed but is meant to be punitive at best towards the Stabberts for requesting the VRBO permits and is a method whereby Appellants Evans is trying to coerce Stabberts into withdrawing their requests.

Evans understands what his demands, if they were enforced by SJC, would mean to the Stabberts. 18 point font on any advertising. Gates with key codes installed at the entrance to the dock. Large "no trespassing" signs placed on pathways, large "no trespassing" signs on the dock, and signs on a shoreside platform that is clearly disputed and the subject of arbitration as we speak. So I would like SJC and the hearing examiner to understand what Evans understands. First that 18 font on legal action would greatly affect the perception of the property in any advertising. Second, that a gate be installed. (Under Evans scheme, we could not use our employees to install this gate but rather we would need to contract it out so that the cost would be elevated and thus more punitive). Third that it have a key code. Evans is aware that my wife Cheryl suffers from MS including limited stability, and cognitive dysfunction precluding memory recall. So, each time she needs to come or go or walk out on her dock she would need someone to write down the code and ensure she had it with her. Evans is also aware that key family members who come and go by that dock include stroke victims that Tom is fully aware of. (3/26/18 Evans letter " About one year

after Stabbert purchased, Stabbert asked if the platform front end could be moved back a few feet so Dan Stabbert's brother, who was ill, could roll a wheel chair past on the path immediately in front of the platform" would face overwhelming challenges.

It was our need for wheel chair access for family and for Cheryl that caused me to confront Evans on the location of his platform that was not only in our opinion substantially outside of the easement, but it blocked our pathway to and from the dock to our own home. We had to threaten litigation for him to move it back 30" (see attached photos and Evans) so that we could get a wide enough pathway to and from our residence so that we could have handicapped access.

Evans' history in fighting with the property owners of this parcel goes way back. Evans had fought with the previous Owner Steve Jacobson but Steve died before the dock was finally finished and his widow Joanne Jacobson was forced to work out of Florida to pay the property expenses until she could sell the property. We purchased the property from Joanne Jacobson, who was the absentee owner. I can only comment on what I have witnessed about Tom Evans from my own experience. When we arrived on this property, Evans had his boat tied up on the protected north side of the dock. (see photo of Evans skiff tied up on north side of pier and JUA language " To Evans Parcels A & B is allotted the exclusive use of the southerly 30' linear feet of the float" . When I asked Evans about this as I thought the north side belonged to my property he emphatically stated that it did not and he was on the right (north) side. I read the easement and it was clear that he was misstating the fact. Even though we requested, he would

not move his boat. So one day I moved it to the other side for him, receiving a call from Evans shortly later that someone had improperly moved his boat to the wrong side. I informed him it was I who had moved the boat and he had misled me. Well that was the beginning of our relationship with Evans.

Then came the platform he had built completely out of the easement by almost 15' feet, blocking the access between the dock and the house, narrowing the walkway to about 16-18" in width, (see photo) which was not enough to get carts, wheel chairs, or for that matter to even walk safely by. I informed him that the platform was outside of the JUA and clearly outside of the easement and I asked him to cut it back. I offered to allow him to keep it outside of the easement as long as he made sufficient room so that we could get by with a wheelchair.

Evans stated that he did not need to move the platform or cut it back and that he had earned ownership to the land over which he had built the platform due to the length of time he had occupied it. I told Evans he was being misleading, but as a good neighbor I would allow him to cut back the storage structure and use a portion of our property outside of the easement and retain the structure which was disallowed within the JUA as long as we remained on good terms. Evans now claims that was never discussed. Evans improper use of our property outside of the JUA is being arbitrated in Seattle this fall.

I. Appellants' Claims Regarding Impacts to Oyster Farm.

(a) Box Bay Shellfish Farm LLC is partially located in Box Bay, immediately in front of the Stabbert property and has been a shellfish (oyster) farm since 2009. Its sole purpose is to serve the community on a charitable purpose basis by giving away oysters free to charitable dinners and events.

It grows large non-commercial amounts of oysters in the areas indicated above and uses them for charitable purposes only. This includes giving bulk supplies to local farm to table programs, allowing students to come and see how a real oyster grow operation works, and allowing specific invitee neighbors including Stabbert to come and take for free as many oysters as they want. Finally, the oysters are sometimes used as a "sentinel" monitoring point for the SJC Health Department. During red tide season samples of Box Bay oysters are given to the Health Department to test for red tide. Given Box Bay's location– where several large flows of waters converge – it is an ideal location for testing.

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

J. Respondents' Response To Claims Regarding Alleged Impacts to Oyster Beds.

The San Juan County permit approval conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations if any. Stabbert has agreed to abide by those rules and to post within the residences rules and maps clearly depicting any limitations including non-trespassing areas.

Evans implies that Box Bay Shellfish has been in existence since 2009 which is misleading. As stated above, Box Bay was formed just a few months ago and it is our opinion that it was formed in order to be a party to an appeal should the VRBO permits be approved by SJC. Evans has been an avid oyster grower and there were as many as 15-20 cages in the bay (up to 24,000 oysters per Evans) when we purchased the property. Throughout the years, Evans left cages hanging off the docks and in mid-air during low tides, broken lines and strings of cages trailing from pilings, and unused but dirty cages stored out of the water on the platform which is the worst for smell.

When the cage structures, which are full of muscles and other sea life are dragged ashore and placed on the platform which is about 9 feet from our family gathering area, and about 50 feet from our bedroom, the biological matter starts to rot. It is my opinion that the JUA reference to Evans use of the storage area limited certain uses and became quite specific on how that area was to be maintained just because of this very issue. In any event, Evans has hauled his cages up and over the dock and access path dozens if not hundreds of times, dropping sea life and debris which is left in the sun to rot, often leaving messes on the dock which I have generally cleaned up.

Evans now via affidavit and sworn testimony claims that the dock and the related cages will be damaged by renters and has attested to the truth of his statements in the attached Verification, I find his statements and verification to not only be untrue, but to be misleading in general. First is Evans implication of Box Bay Shellfish LLC being in existence since 2009. Second is his statement that he is using the cages and storage on the dock that will be damaged by Stabberts VRBO guests. Evans decided a number of years ago to move his oyster cages to the outside of his property which abuts Obstruction Pass where there is fresh colder water year round. (See the attached string of Evans emails stating his intentions. Evans responding to my photos of his mess hanging from ropes along the dock, apologizing and letting me know when and how the last of the cages would be moved.)

Evans use of Box Bay Shellfish, Evans oyster farming, and his claim that our guests would damage his oysters that he is growing and storing off of the dock are fabricated and in bad faith at a minimum, and outright falsifications at best. As you can see from the string of emails, Evans had no intention whatsoever of maintaining any growing efforts within the bay or off of the dock. In fact, when I asked him what he did with 24,000 oysters, In four years I have never witnessed one student or school child access the dock , the cages, or any of Evans oysters. Rather it has been friends and other apparent barter type of arrangement which we have never complained about. But nothing like what Evans claims to have been occurring.

Evans oysters are now located off of his property to the south of his home and right on Obstruction Pass where the water flows colder and fresher than in our bay. (see photo) Evans claimed issue with the BEA property which is

contiguous to the Evans eastern boundary should not be cause for punitive actions against Stabbert.

K. Appellants' Claims Regarding Signage Should Be Dismissed.

Appellant claims that SJC did not include nearly enough private property warning signs or direction signs to make sure VRBO's did not trespass especially on Box Bay grow areas.

Provision was made for signs of "No Trespassing/ Do Not Enter" at Point of View Lane and Obstruction Pass Road keeping renters from entering these private roads instead of turning onto the Stabbert improved roadway. No provision was made requiring the applicant to provide a map or adequate driving directions. *Vehicles are likely to go beyond the end of Obstruction Pass Road on and into the Evans property.* (K1E)C(1) is of particular importance to Evans as renters will and already do trespass from the VRBOs onto oyster growing grasses and oyster grow bags and cages *which is in plain view from the Evans deck* – rocks stabilizing grow cages have been removed, at least 3 large grow bags have been stolen (this might have been before the Bea VRBO) kids and dogs play in the primary grow area where there over 16 grow bags and a dozen grow cages each with 3 grow bags. Seedlings in the grow area, especially in the saltwater grasses are especially at risk. A "No Trespassing" sign does nothing. It is difficult to see how any condition can be imposed to prevent this damage. These activities are also in plain view from the Evans deck. *This is a condition that C(1) can really never be met and the permit should be denied on this basis – no amount of "No Trespassing" signs is going to make any difference.*

L. Respondents' Response Regarding Signage Claims.

The SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations if any. Stabbert has agreed to abide by those rules and to post within the residences rules and maps clearly depicting any limitations including non- trespassing areas. .

The Stabbert properties are nowhere near the Evans grow areas, which as Evans states are located in front of their existing home (see attached photo of lines leading down from Evans deck to grow baskets) That a property close to a thousand feet away should be precluded from being allowed their right under the law to operate as a VRBO because of this claim is both unfair and disingenuous. Evans has misrepresented many facts related to this and to name a few, that Box Bay Shellfish has been existing since 2009, that Evans uses the joint use dock for growing areas, that the two remaining Evans cages are actually being used (rather than being discarded per Evans e-mails, that Box Bay is a nonprofit, that Box Bay is an educational endeavor) Even if Evans were to begin growing oysters again in Box Bay, these baskets were years ago tied up out in the bay away from the dock as you can see from the attached photo from where they were previously located (see photo of Evans growing enterprise before he move it) With 52 degree water, 200 pound grow cages, located offshore from Stabbert beach and dock and accessible only by boat, Evans claims that Stabbert VRBO guests will access and damage these units are senseless.

(a) The joint use dock was clearly intended to benefit Stabbert/Evans only, and does not allow or even suggest that renters paying money to Stabbert are allowed to use this dock at Evans/Box Bay expense. This is completely self-serving and makes Evans have

to pay expenses including significant tax levy, repair cost, initial investment of $90,000 all so Stabbert can profit at Evans' direct expense.

Evans pays significant real estate taxes attributed to the dock. Evans has to pay (and has paid) ½ of repair costs due to storms.

The SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations if any. Stabbert has agreed to abide by those rules and to post within the residences rules and maps clearly depicting any limitations including non-trespassing areas.

Stabbert has clearly represented that they only want to retain whatever rights they may have to the use of their dock and do not want Evans to use this venue to deny them ownership or use rights if they exist. For this reason Stabbert and Evans are having the JUA arbitrated to ensure clarity. Evans statements about repairs and costs are not quite true as Evans has not made any repairs, undertaken any maintenance, or remedied any of his damage to the dock since Stabbert purchased the property years ago. Stabbert has been the one to make the repairs and care for the dock and make the payments to contractors then has billed Evans back Evans share which Evans has paid at times 6 months after the fact. In addition, it is Stabbert that has had to remind Evans to clean the dock up, stop leaving foul messes on the dock and walkway, to remove foul smelling cages from the platform area, and to remedy tangled cages and eye sores, as these issues do not directly affect Evans home, view, or quiet enjoyment of Evans property but rather Stabberts as they are in full view and smell of key Stabbert living areas. (see attached emails, photos).

M. Appellants' Claims Regarding Other Impacts.

C(1) requires full protection against no trespassing – no provision is made to keep renters off the dock, the Evans private storage area. Subpart 4 requires 15 mph limit but nothing requires any signage by applicant. Subpart H does not adequately identify where address is to be posted and sign size. Cars going in opposite directions cannot pass except by one car pulling over. While this may work with a limited number of cars, with 18 renters the amount of traffic is beyond the capabilities of the roadway.

Respondents' Response.

The SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations if any. Stabbert has agreed to abide by those rules and to post within the residences rules and maps clearly depicting any limitations including non-trespassing areas. Once again Evans is attempting to enforce punitive actions against the Stabberts for applying for this VRBO by requesting large signage and other deterrents to the enjoyment of the Stabbert property. The present signage on the roads and elsewhere are adequate and have been sufficient. Stabberts have agreed to placement of no trespassing signage and to abide by the covenants, and rules under the conditional use permit which we believe to be sufficient.

Appellants' Claim:

C(i) requires compliance with all State and other government jurisdiction requirements yet the applicant fails to meet DNR private residential use requires by allowing renters on the dock.

As stated previously, The SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations if any. Stabbert has agreed to abide by those rules and to post

within the residences rules and maps clearly depicting any limitations including non-trespassing areas.

Evans again has misstated the facts. Stabbert has agreed to abide by all regulations and covenants. To project into the future that Stabbert guests are going to not abide by these covenants and regulations is unfair and biased. Nothing in Evans appeal mentioned the DNR or the DNR lease. Stabbert objects to all new issues raised relative to the DNR lease.

> **C(2) requires noise mitigation is accordance with SJC9.06 which would require a plan to mitigate inebriated, loud tenants. Recently on the neighboring VRBO, Bea renters trespassed onto their private dock and refused to leave when asked. Also when "partying" on the neighbor's property (Callison) they refused to leave when asked.** ***Noise is also essentially non-mitigatable.***
>
> Given the shape of the Stabbert property it acts like a megaphone, amplifying noise out into and up from Box Bay. As to the dock, even small amount of regular conversation can be heard on the Evans property as the Evans residence is in fact much closer than what appears on the photos.

Respondents' Response:

The SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations if any. Stabbert has agreed to abide by those rules and to post within the residences rules and maps clearly depicting any limitations including non-trespassing areas. The issues with the BEA property, if Evans once again is even being factual, are not problems to be laid at the Stabberts feet. The size of the lots and proximity to one another (see photos of Evans, BEA, and Callison property) present a completely different geographical tie than the Stabbert property. Our 10 acre property with two homes clearly could have full time residents and as such there is no additional noise issues over normal use that exist with

Stabbert allowing VRBO guests sporadic use. Evans claim of a megaphone effect is ridiculous and self-serving. The fact is that the prevailing wind comes from the south and blows noise AWAY from the Evans property and onto the Stabberts, not the other way around. And even then noise has never been an issue. Northerly wind that pushes sounds towards the Evans are blocked by the hills and trees north of the Stabbert property so that sound carried northerly is rare if ever. (see attached photo).

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

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

C(1) again requires no trespassing. The dock is the centerpiece of the Stabbert property.

Any renter on the Stabbert property will want to use the dock and buoys. As shown by Callison, a "No Trespassing" sign is not enough – a locked gate preventing access to the dock is absolutely necessary.

Respondents' Response:

The SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations if any. Stabbert has agreed to abide by those rules and to post within the residences rules and maps clearly depicting any limitations including non-trespassing areas. .

Evans is claiming wolf once again. The dock is not a centerpiece of our property as Evans claims. Evans dock side is open at all times and has never been abused. Evans rarely if ever uses the dock as he does not own a boat other than a 6 foot rubber raft that he used to access the oyster growing cages when they were out in the bay and before he moved them. His claim that he will not have access is disingenuous.

Appellants' Claim:

C(1) again requires no trespassing. The dock is the centerpiece of the Stabbert property. Any renter on the Stabbert property will want to use the dock and buoys. As shown by Callison, a "No Trespassing" sign is not enough – a locked gate preventing access to the dock is absolutely necessary.

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

Again, provision I requires compliance with all State, Local, and Federal requirements. This sort of land use provision ("the rich don't party as much") has no business becoming part of government decision-making and the offending language must be stricken. If not, it is very likely someone will bring a State or Federal civil rights action and SJC will become the laughing stock of the Country. Attorney fees will be awarded. It would (will) make a great news black eye for the island - "Thinking of renting a VRBO in the San Juan Islands? Better be rich if you want to have a good one and don't want to be labeled a partyer." Everyone we show this to is simply appalled that a government planning agency would actually condition a government permit on this basis.

Respondents' Response:

The SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations if any. Stabbert has agreed to abide by those rules and to post within the residences rules and maps clearly depicting any limitations including non-trespassing areas. .

Evans claim here is erroneous. In our letter to SJC of January 21st , 2018 we specifically stated and I quote " The nature of rentals with the high end agencies do not ONLY undergo background checks but the guests generally have been rated by other venues that they have rented in the past. This rating system helps ensure the quality of both the guest and the home owner, and to ensure that problems do not occur. There is no guarantee of course but the likelihood once again of getting a bad apple is rare and becoming even more so as more historic data is collected. It is something we are thinking through ourselves as we consider lending our beautiful home to another family and issues we will always treat with respect." The high end agency did not refer to cost, but rather quality representatives and programs such as Orcas Island Windermere Realty, VRBO and Airbnb who have client rating programs to ensure the quality and care for the homes and properties. As usual, Evans is trying to hijack our intent of ensuring quality VRBO guests and claiming this means " rich" , which had nothing at all to do with the statement or its intent about the wealthy vs. other individuals is outrageous and would be a civil rights violation were SJC to accept it. This sort of thinking has no place in government decision making yet that's exactly the way the applicant sees it.

Appellants' Claim:

(d) These VRBO's are not categorically or otherwise exempt from obtaining a Shoreline Management Permit (SMP). While SJC admits if someone presented at the permit counter with plans to build a single family residence (SFR) and use it as a VRBO at the same time, this would require a SMP permit, it denies that an SMP permit is necessary when the

structure is turned into a completely different use. *Use matters*, under the law, it's the land *use* that determines permitting and nowhere in the Shoreline Management Act (SMA) is a VRBO a categorical exemption.

Again, subpart I require compliance with all State and Federal Law, this SMA failure violates the requirement of section I. Making this a shoreline conditional use would help correct the one major error already identified - DNR legal criteria. Also the SMA would insure more protections than are offered by SJC code.

Respondents' Response:

SJCC Table 18.30.040 allows vacation rentals 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 AJCC Table 18.50.600 (the Shoreline Master Program) requires a shoreline substantial development for a 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; bulk heading; 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 water 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 approval are required.

Thus, no SSDP is required because the proposal does not include "development."

Similarly, a shoreline conditional use permit is not required pursuant to SJCC 18.50.600 (identifying when a shoreline conditional use permits is required). The row for "vacation rentals" under the column for Rural Farm Forest is not marked by a CUP. Thus, no CUP is required for a vacation rental use in the Rural Farm Forest shoreline designation.

Finally, Appellant has cited a Shoreline Hearings Board decision in an attempt to support his argument. *Darin Barry and Robin Hood Village Resort v. Ecology*, SHB 12-008 (SSDP and SCUP required for new trailers parked in the regulated shoreline). This decision analyzes Mason County's Shoreline Master Program, not San Juan County's Shoreline Master Program, which is analyzed above. To the extent that Appellant argues San Juan County should include additional provisions in its SMP, this argument is time barred because the time to appeal San Juan County's adopted SMP passed long ago. SJCC 18.50.600 provides vacation rentals in existing residence in the Rural Farm Forest designation do not require a SSDP or a CUP. Appeal issue (e) regarding shoreline permits must be dismissed as a matter of law.

Appellants' Claim:

(e) Noise, glare from lights at night, and late night partying will all emanate directly up and into Evans living area. Although the Evans living area appears to be non-existent as to the Stabbert property

it is hidden behind a slender row of trees and is in fact directly above the Stabbert property. The Stabbert property is literally under the nose of the Evans property.

C(2) Noise and prohibitions against light and glare are grossly in error in the decision. What the Planning Dept. calls pleasant lighting is glare that makes it look at night like a flying saucer is landing. The VRBO should require the lighting be taken out, period. If anyone from the Planning Dept. ever actually came to our end of the island at night they would see how the Stabbert lights point up in the sky and are absolutely completely totally inconsistent with Island mitigated light requirements. Also, additional conditions prohibiting lighting increases of any sort should be added. This glare is particularly noticeable on the Evans property. Although Stabbert did remove one light that was especially offense, the constellation of the remaining lights light up the sky and takes away the nighttime solitude the Island is so well known for.

Respondents' Response:

The SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations

if any. Stabbert has agreed to abide by those rules and to post within the residences rules and maps clearly depicting any limitations including non-trespassing areas. .

Evans statement is entirely misleading. The distance between the Stabbert homes and the Evans home is the distance of an average city block. There is not a "slender row of trees" but rather in excess of 150 trees between the two properties. The Evans property is situated with a southerly exposure, 180 degrees in the opposite direction to the Stabberts homes. (Stabbert Photo of Trees).

Appellants' Claim:

(g) The decision ignores that Evans owns outright and Box Bay uses for its private purposes the 300 sq. ft. platform at the entrance to the dock. This area was given to Evans by Jacobsen (previous owner) as part of the agreement for a joint use dock. Having 18 renters puts Evans zodiac skiff maintained on the property, its nets and other water related items at direct risk for damage, theft or illegal use, and the SJC decision does nothing to prevent this. Evans owns privately the storage plat form at the entrance to the dock yet no provision to protect this private property, except one "No Trespassing" sign has been allowed. C(1) requires additional protection to keep renter off of the platform area.

Evans owns privately the storage plat form at the entrance to the dock yet no provision to protect this private property, except one "No Trespassing" sign has been allowed. C(1) requires additional protection to keep renter off of the platform area.

Respondents' Response:

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

The SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations

if any. Stabbert has agreed to abide by those rules and to post within the residences rules and maps clearly depicting any limitations including non-trespassing areas

SJC took into account this platform and the associated JUA that governs its use and rights between the parties. Stabbert has agreed to abide by those rules. Evans items stored on this platform include a dilapidated 6' inflatable rubber raft, about five used crab pots, and used oyster cage construction debris. (see photo) Not something anyone would want to even have on their property let alone steal. The platform is 300 square feet when compared to the property size of 430,000 square feet or about 1/1500 of the property. A property that is designed for family life including an art small studio, grand-children's playground, exercise area, an orchard, greenhouse, berry cages, walking paths, and its own beach for kayaking, as well as other amenities. But per the Evans, our guests are going to steal their used oyster cage debris or deflated rubber raft. However, once again, Evans has misrepresented the ownership of the platform and even its location is in question as its existence at all is subject to the JUA which is being arbitrated this fall per the dispute resolution clause. In spite of this and Stabberts agreement to place a no trespassing sign on the storage platform, Evans wants additional signage and "deterrents" which is clearly an attempt to further diminish Stabberts enjoyment of their own property as Evans knows that these signs will be permanently visible from the Stabbert bedroom, main exterior deck, and living room areas. Evans specifically told Stabbert "Do you really want to pursue this VRBO? I will make it so uncomfortable for you, looking out at 36" signs I will place on the platform, on the walkways, on the dock, so you will have to see that every day you use your property. How will that feel to you?" Those statements and his attempt to try to legitimize them in this legal proceeding reflects not only poor character but as we have seen within so many of his claims, a confidence in his own ability to twist the truth and win no matter what the cost.

Appellants' Claim:

> (h) The staff report and decision treats Evans as if his dock interests are really public interests and that Eva ns has an obligation to allow members of the public to use this joint use dock, even though Evans paid in excess of $90.000 for the construction, several thousand dollars for the occasional repairs made necessary by wind damage, and the very significant amount of real estate tax attributable to the dock (some estimate that a dock adds as much as $500,000 of value to the assessors valuation).

Respondents' Response:

The SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations if any. Stabbert has agreed to abide by those rules and to post within the residences rules and maps clearly depicting any limitations including non-trespassing areas. .

SJC properly took into account Evans dock rights within the JUA. Stabbert request of SJC for permission to utilize our property under VRBO has been forthright and we are not trying to cut a single corner. Evans, a representative of the court, asked Stabbert to not pursue the VRBO permit but rather rent illegally and Stabbert refused (see Evans email to Stabbert). Stabbert will continue to abide by its commitment to SJC and the conditions it has required of us. (i) On page 10, last paragraph, SJC claims that "The Washington Supreme Court has ruled that VRBO is not commercial" and therefore since the word "commercial" is used once in the joint use agreement, along with multiple other words describing limitations, VRBO use is allowed because (so goes the argument) if the word "commercial" is used then anything and everything that is non-commercial including VRBO must be allowed. Very oddly, a "Washington State Supreme Court Case" is then cited, *Wilkinson v. Chiara Communities Association.* Since this case is not properly cited a little digging into the Washington Supreme Court Reports is necessary.

Appellants' Claim:

> (i) On page 10, last paragraph, SJC claims that "The Washington Supreme Court has ruled that VRBO is not commercial" and therefore since the word "commercial" is used once in the joint use
>
> agreement, along with multiple other words describing limitations, VRBO use is allowed because (so goes the argument) if the word "commercial" is used then anything and everything that is non-

commercial including VRBO must be allowed. Very oddly, a "Washington State Supreme Court Case"is then cited, *Wilkinson v. Chiwawa Communities Association.* Since this case is not properly cited a little digging into the Washington Supreme Court Reports is necessary. The correct cite is: *Wilkinson v Chiwawa Cmtys Ass'n*, 180 Wn.d 241 (2014). The issue in *Wilkinson* are completely irrelevant to the case at hand. *Wilkinson* concerned whether a community association (Chiwawa) could amend its plat declaratory covenants so as to exclude vacation rentals. No Joint Use Agreement, no private rights documents were involved. Nothing in *Wilkinson* addressed or even came close to addressing exclusive private rights in a Joint Use Agreement including a guarantee between land owners of quiet use and enjoyment, a guarantee that the Southerly 1/2 of the dock was for the *exclusive* use of Evans, that the landing 300' Square platform was for the exclusive use of Evans.

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

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

Respondents' Response:

Stabbert disagree with Evans, SJC did properly consider the *Wilkinson v Chiwawa* case and it is properly applied a noncommercial designation to our request.

Appellants' Claim:

Subpart K requires provisions related to putting renters on notice and rules regarding advertising and promotion. It is no way enough. Any advertising must state in at least 14 pt. bold print that the dock, buoys and storage area are not included and may not be used. With this many renters, the contact for complaints should be the Sheriff's office. Also, as stated above signage and mapping/maps given to renters must insure they will not go on roadways they are not supposed to. Significant signage needs to be placed at Point of View Lane and Obstruction Pass Road which will absolutely ensure drivers coming to the area will not go where they are not supposed to. As stated above, experience to date shows that renters ignore no trespassing signs and treat the surrounding areas as if they are entitled to use docks, beach areas and anywhere and everywhere they can get to. The conditions established for these VRBOs does not require notice in all literature that the dock is off limits. The

brochure conditions are not adequate to keep renters out of private areas or feeling "entitled.".

Respondents' Response:

The SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations if any. Stabbert has agreed to abide by those rules and to post within the residences rules and maps clearly depicting any limitations including non-trespassing areas. SJC properly addressed this issue in their approval process. Stabbert has agreed to manage and be responsible for renters' actions to adhere to requirements per the SJC rules. Stabbert will have an on island manager that can be contacted. Evans demand for additional signage and that any complaints go directly to the San Juan Sherriff are an attempt to elevate conflict and reduce the enjoyment and use of the property to the point of being punitive, which is his goal.

The SJC in its permit approvals under conditions #1- #10 took into account traffic, property management plan, rules of conduct, easements, and shoreline limitations.

Appellants' Claim:

4. Relief sought, nature and extent:

a) Deny both applications without prejudice to re-application through the Shoreline Management Conditional Use application process. Include in this decision a finding that nothing, anywhere, even arguably suggests vacation rentals are categorically exempt from SMA permit requirements and follow the guidelines of the SMA which disfavor categorical exemptions and doesn't allow for any unless specifically listed as such. (There is no exemption anywhere in the SMA, State Guidelines, or Master Program that lists vacation rental as categorically exempt).

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

c) Allow the posting of prominent no trespassing signs on the dock, platform and trail.

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

Respondents' Response:

Stabbert opposes such actions and as stated, feels SJC has adequately addressed these issues. Stabbert has agreed to abide by the JUA and any other regulatory decisions and as such installation of such a gate would be detrimental to the Stabbert's use and access to the dock given this dock is Stabbert's sole access to and from the property from the mainland. Evans specificity that the gate be installed by an outside contractor, at Stabberts expense, when he knows Stabbert employs capable journeymen who perform this nature of work, only re-enforces Stabberts claim that this item reflects Evans overall punitive global effort to make Stabberts use of his property under VRBO as expensive and as difficult as possible.

Verification

I, Dan Stabbert do swear and affirm the above and foregoing statements regarding the impacts from VRBO occupancy are true and correct to my best information and belief.

DATED this 15th day of June, 2018.

By: _____
Dan Stabbert

CERTIFICATE OF SERVICE

I certify that on this date, I filed a copy of the * 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 [X] Via Efile/Email [X] 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 kelsey@maritimeinjury.com *Attorney for Thomas C. Evans*	[ ] Via Facsimile [ ] Via Legal Messenger [X] Via Email [ ] Via US Mail, postage prepaid
Thomas C. Evans PO Box 408 Olga, WA 98112 360-376=5987 tom@maritimeinjury.com kelsey@maritimeinjury.com *Attorney for Box Bay Shellfish Farm LLC*	

Dated this __15__ day of June, 2018, at Seattle, Washington.

Karla Lopez

Karla Lopez, Executive Assistant

UNITED STATES OF AMERICA

The State of Washington

Secretary of State

I, **KIM WYMAN**, Secretary of State of the State of Washington and custodian of its seal, hereby issue this

CERTIFICATE OF FORMATION

to

BOX BAY SHELLFISH FARM LLC

A **WA LIMITED LIABILITY COMPANY**, effective on the date indicated below.

Effective Date: 02/23/2018
UBI Number: 604 230 821

Given under my hand and the Seal of the State of Washington at Olympia, the State Capital

Kim Wyman, Secretary of State

Date Issued: 02/23/2018

Search Results

1 Result

View this business on a printer-friendly and bookmarkable page (/corps/business.aspx?ubi=604230821)

UBI #	604 230 821
Status	ACTIVE
Expiration Date	**2/28/2019**
Period of Duration	PERPETUAL
Business Type	WA LIMITED LIABILITY COMPANY
Date of Incorporation	2/23/2018
State of Incorporation	WASHINGTON
Registered Agent	SECRETARY 4020 E MADISON ST SUITE 210 SEATTLE, WA 98112
Governing Persons	KELSEY DEMETER THOMAS EVANS DONALD EICHELBERGER

Close

Office of the Secretary of State
Corporations & Charities Division

Filed
Secretary of State
State of Washington
Date Filed: 02/23/2018
Effective Date: 02/23/2018
UBI #: 604 230 821

CERTIFICATE OF FORMATION

UBI NUMBER

UBI Number:
604 230 821

BUSINESS NAME

Business Name:
BOX BAY SHELLFISH FARM LLC

REGISTERED AGENT CONSENT

To change your Registered Agent, please delete the current Registered Agent below.
Registered Agent Consent (Check One):

☑
I am the Registered Agent. Use my Contact Information.

☐
I am not the Registered Agent. I declare under penalty of perjury that the WA Limited Liability Company has in its records a signed document containing the consent of the person or business named as registered agent to serve in that capacity. I understand the WA Limited Liability Company must keep the signed consent document in its records, and must produce the document on request.

RCW 23.95.415 requires that all businesses in Washington State have a Registered Agent.
Some of this information is prepopulated from information previously provided. Please make changes as necessary to provide accurate information.

REGISTERED AGENT RCW 23.95.410

Registered Agent Name	Street Address	Mailing Address
SECRETARY	4020 E MADISON ST, SUITE 210, SEATTLE, WA, 98112-3150, USA	4020 E MADISON ST, SUITE 210, SEATTLE, WA, 98112-3150, USA

CERTIFICATE OF FORMATION

Do you have a Certificate of Formation you would like to upload? - **No**

Certificate of Formation

OTHER PROVISIONS

Other Provisions:

PRINCIPAL OFFICE

Phone:
206-527-8008

Email:
TOM@MARITIMEINJURY.COM

Street Address:
4020 E MADISON ST, SUITE 210, SEATTLE, WA, 98112-3150, USA

Mailing Address:
4020 E MADISON ST, SUITE 210, SEATTLE, WA, 98112-3150, USA

DURATION

Duration:
Perpetual

EFFECTIVE DATE

Effective Date:
02/20/2018

EXECUTOR

Title	Executor Type	Entity Name	First Name	Last Name	Address
EXECUTOR	INDIVIDUAL		THOMAS	EVANS	4020 E MADISON ST, SUITE 210, SEATTLE, WA, 98112-3150, USA
EXECUTOR	INDIVIDUAL		KELSEY	DEMETER	4020 E MADISON ST, SUITE 210, SEATTLE, WA, 98112-3150, USA

RETURN ADDRESS FOR THIS FILING

Attention:
KELSEY DEMETER

Email:
KELSEY@MARITIMEINJURY.COM

Address:
4020 E MADISON ST, SUITE 210, SEATTLE, WA, 98112-3150, USA

UPLOAD ADDITIONAL DOCUMENTS

Do you have additional documents to upload? **No**

AUTHORIZED PERSON

☑ I am an authorized person.

Person Type:
INDIVIDUAL

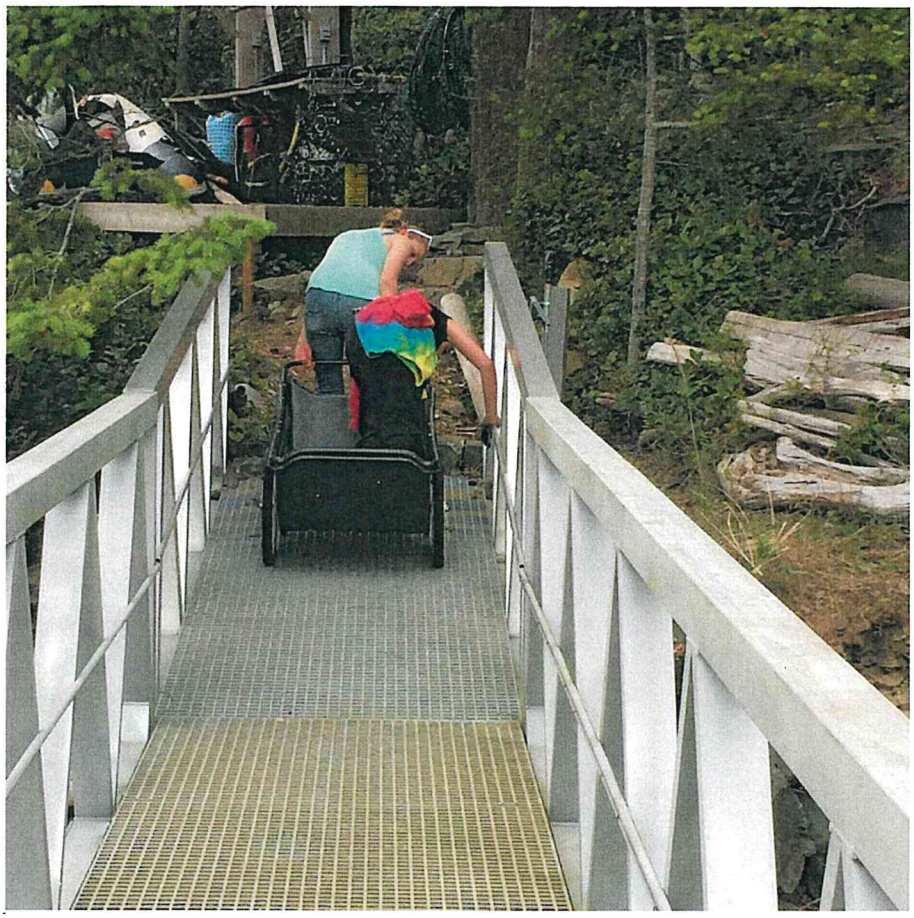
First Name:
THOMAS

Last Name:
EVANS

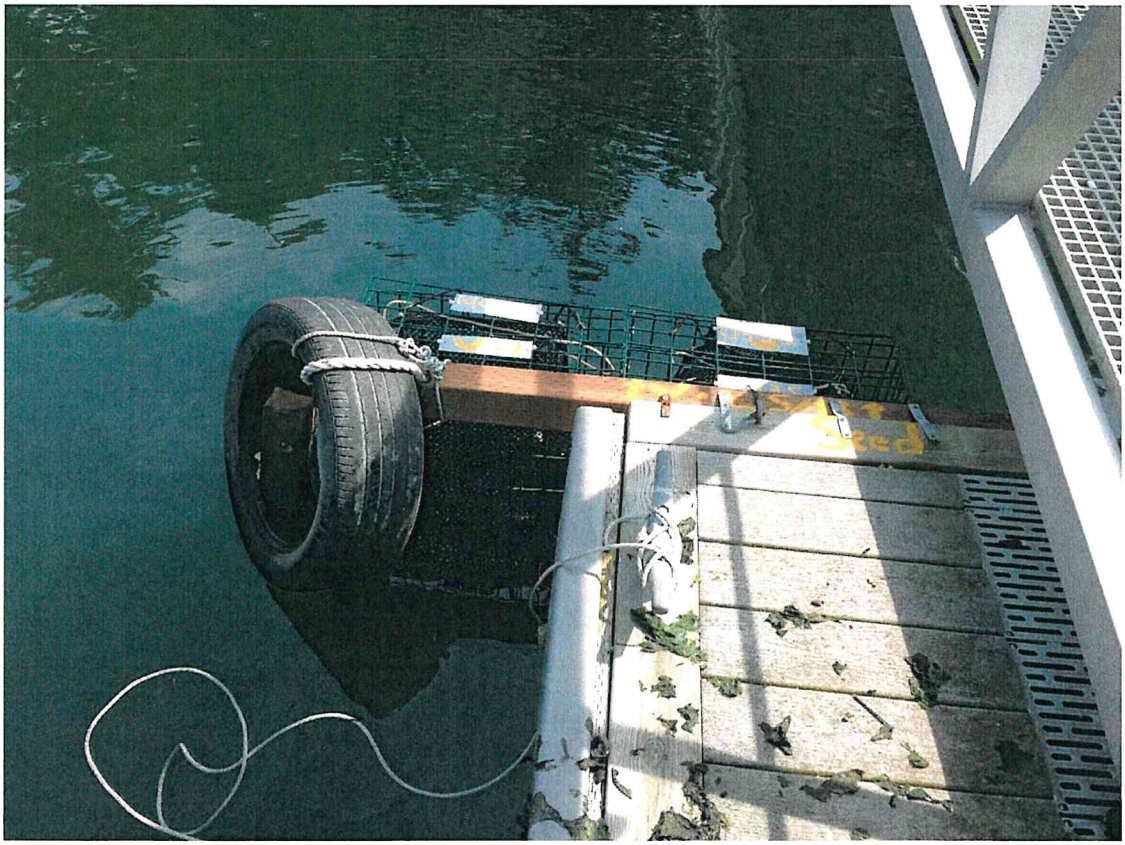
This document is a public record. For more information visit www.sos.wa.gov/corps

Evans skiff on Stabbert north side contrary to JUA

Evans modification to dock



Evans platform blocking dock egress



Evans modification to dock on Stabbert North side

Platform used by Evans being cut back to allow safe walking

16”-18” from Stabbert property to dock caused by Evans inclusion on Stabbert land

Evans inflatable boat stored on his platform

Evans Platform used for storage

Evans Platform used for storage

Karla Lopez

From: Tom Evans <tom@maritimeinjury.com>
Sent: Thursday, May 11, 2017 12:02 PM
To: Dan Stabbert
Subject: Re: Cages

Dan, sorry for the delay, but hopefully not too much longer. Here is the plan. One, and only one, of the cages, is fully loaded with oysters. I have to, with my friend from Seattle, move that last cage to the beach, unload the oysters (we have been borrowing your wheeled carriers) and move them to reinforced bags that hang from the East side of the slanted rocks in our front yard. We have moved all of the viable oysters for storage and further grow (it makes them meatier to be washed around on the rocks). I also have an underwater grow in the small bay on the eastern part of our property. Now, once that last bag is emptied and moved I am giving all of the remaining floating grow cages to Buck Bay on condition they come and remove them, along with the orange floats, ropes etc. The Frog and Jimmy have also indicated some interest. Bottom line, everything should be gone in I would say, not less than 60 days. If you have any interest in keeping a floating cage you are more than welcome to take one just not the last one with oysters, which is tied to the dock. Finally, our new operation for getting oysters is to just pull a bag up from the 15 bags or so tied off on our front yard, open it, take what you want, then close the top with the plastic ties we have left on site, through back into the water. one over anytime, no need to call first.

Let me know if you have any questions. We are going to be in Hawaii for the next two weeks but I will have email. Take care. Tom

Thomas C. Evans • Injury at Sea
4020 East Madison Street, Suite 210, Seattle, WA 98112
Tel: 206.527.8008, Ext. 2 • Toll Free: 1.800. SEA. SALT
Cell: 206.499.8000 Fax: 206.527.0725
E-mail: tom@maritimeinjury.com www.injuryatsea.com
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On May 11, 2017, at 11:44 AM, Dan Stabbert <dan@stabbertmaritime.com> wrote:

Tom. Hope you are well. Tide is about half low and as you can see the cages and lines hanging are not too pretty. Wondered when you can complete the transition? Thanks Dan

Karla Lopez

From: Dan Stabbert <dan@stabbertmaritime.com>
Sent: Friday, February 17, 2017 5:34 PM
To: Tom Evans
Subject: Oyster cages

Tom. The oyster cages tied to the float gangway are getting to be a mess. The lines hanging are damaging the lighting channels and low tide has a menagerie of lines and floats hanging in the air. Same for the cages up in the storage area. Do you mind squaring them away? Thanks. Dan

Sent from my iPhone

Karla Lopez

From: Tom <tom@maritimeinjury.com>
Sent: Saturday, February 18, 2017 11:39 AM
To: Dan Stabbert
Subject: Re: Oyster cages

dan not at all unforuntately events here in seattle have destroyed all of our time julias sister passed away a long agoizing process at u w med she was here from philly on a visit this was followed by julias best friend dieing sort of the same way in idaho and ive been at war with jim johnson of glacier fish with trial starting next week BUT my plan is to get rid of all of that stuff as psrt of dprimg cleaning three of the floaters are loaded with oysters the others are empty my plan is to bring up s big load of longshoreman empty and remove all if the cages store them on oir proprty tansfer the oysters to hanging bags on our rocks give me some more time we will get it done t Sent from my iPhone

> On Feb 17, 2017, at 5:33 PM, Dan Stabbert <dan@stabbertmaritime.com> wrote:
>
> Tom. The oyster cages tied to the float gangway are getting to be a
> mess. The lines hanging are damaging the lighting channels and low
> tide has a menagerie of lines and floats hanging in the air. Same for
> the cages up in the storage area. Do you mind squaring them away?
> Thanks. Dan
>
> Sent from my iPhone

Karla Lopez

From: Tom Evans <tom@maritimeinjury.com>
Sent: Sunday, April 16, 2017 1:26 PM
To: Dan Stabbert
Subject: Re: spring cleaning - Update

Thanks Dan. I have had Raul clean up the platform as best he can for the moment. There still are 2 cages but they have been relocated and some of the stuff cleaned off of them. Of all the cages left only 2 have oysters in them, and those two are crammed full. My friend and I are taking on each of these, one at a time, and transferring the oysters to the hanging bags on the East side of the rocks of our front yard. Once we get these last two transferred, the entirety of the floating cages should be removed shortly thereafter. I would like to make sure we agree on what ever would go between the two pilings and would hope we can just leave it open - does this work for you? Tom

> On Apr 14, 2017, at 12:02 PM, Dan Stabbert <dan@stabbertmaritime.com> wrote:
>
> Tom: Thank you for the offer. We are going to focus our efforts on the greenhouse and small orchard. Let me know what we can if anything to help you the balance of the move. Probably a good idea to get the balance moved before they break free the rest of the way. Dan
>
> On 3/21/17, 9:34 AM, "Tom" <tom@maritimeinjury.com> wrote:
>
> hi dan work progresses on transferring the grow operation to our wast side we have teo more filled cages to transfer then the cages with live oysters will be done. I am going to have Raoul do a spring clean now of the plat form just to make it look cleaner. Once ee get the next teo full cages transferred all of the others will be emptied. At that point we will be bringing to shore and moving to the west the remsing cages. What to do with the 4 cages attached to the two piles remains a dilemma. The State has offered to lease them to me to continue a very down scaled floating grow from there. Open to ideas. I am not refilling the bins on the dock. If you would like an empty floating cage for your own grow happy to give you one. Let me know your thoughts. Tom
>
> Sent from my iPhone
>

Karla Lopez

From: Tom <tom@maritimeinjury.com>
Sent: Friday, May 26, 2017 8:40 PM
To: Dan Stabbert
Subject: Re: grow cages

Dan heard from Mark he came by needs to get his boat pressure washer says there is too much fowling on them to lift in his boat until he blows the fowling off which is easy for him to do will be back soon will keep you posted t

Sent from my iPhone

On May 25, 2017, at 8:19 PM, Dan Stabbert <dan@stabbertmaritime.com> wrote:

> Tom. Thanks and it's nice to be back. If you need help tomorrow just let me know and thanks for the update. Dan
>
> Sent from my iPhone
>
> On May 25, 2017, at 8:15 PM, Tom Evans <tom@maritimeinjury.com> wrote:
>
> Hi Dan, welcome home! Tomorrow, Mark from Buck Bay says he will come by and take/remove the three grow cages on the first piling, and and the single grow cage on the inner piling and associated gear/rope/floats. He is also interested in taking all of the remaining grow cages and gear once we get the last grow cage with oysters in it emptied. Also, all of the grow cages and gear have been removed from the platform, which has also been cleaned up by Raoul. Hope you guys are all well. Tom

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

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Karla Lopez

From: Tom <tom@maritimeinjury.com>
Sent: Friday, June 02, 2017 1:21 PM
To: Dan Stabbert
Cc: Julia Evans
Subject: Re: grow cages

dan julia went to buck bay and spoke with toni she said they definitely still want all of but msrk is gone today buying fish unfortunately i am stuck in seattle my plan b is the frog and jimmy at one time he expressed interest i am not selling i am giving them to whoever wants them and really can use them the only cage i want to keep is the one loaded with oysters my plan c is to have stabbert marine
who take all of them except the one with oysters they are worth about 350 each but like i said they sre available gratis i know its not your responsibility but do feel free anytime to take away to a holding area the ones on the pile poles
i really do spologize for the eyesore i think it makes the modt sense to give msrk another day or two and tell him if he doesnt get them asap then someone else will tell me about a b and c above and if you want to move some now hope both of you are well and sgain apologises for the delay tom

---

On Jun 2, 2017, at 8:09 AM, Tom <tom@maritimeinjury.com> wrote:

> Dan he told me he would take them the next day after i talked to him iam disappointed he did not follow through both Mark and Tony very much want the cages Julia is on island and i am in Seattle i will have julia go over there today and report back to you today more soon tom
>
> Sent from my iPhone
>
> On Jun 2, 2017, at 7:21 AM, Dan Stabbert <dan@stabbertmaritime.com> wrote:
>
> > Tom: When do you think Mark will be back? They aren't getting any prettier☺
> >
> > ---
> >
> > **From:** Tom Evans <tom@maritimeinjury.com>
> > **Date:** Friday, May 26, 2017 at 8:40 PM
> > **To:** Dan Stabbert <dan@stabbertmaritime.com>
> > **Subject:** Re: grow cages
> >
> > Dan heard from Mark he came by needs to get his boat pressure washer says there is too much fowling on them to lift in his boat until he blows the fowling off which is easy for him to do will be back soon will keep you posted t
> >
> > Sent from my iPhone
> >
> > On May 25, 2017, at 8:19 PM, Dan Stabbert <dan@stabbertmaritime.com> wrote:

Tom. Thanks and it's nice to be back. If you need help tomorrow just let me know and thanks for the update. Dan

Sent from my iPhone

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> Hi Dan, welcome home! Tomorrow, Mark from Buck Bay says he will come by and take/remove the three grow cages on the first piling, and and the single grow cage on the inner piling and associated gear/rope/floats. He is also interested in taking all of the remaining grow cages and gear once we get the last grow cage with oysters in it emptied. Also, all of the grow cages and gear have been removed from the platform, which has also been cleaned up by Raoul. Hope you guys are all well. Tom

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E-mail: tom@maritimeinjury.com www.injuryatsea.com

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Sent from my iPhone

Karla Lopez

From: Tom <tom@maritimeinjury.com>
Sent: Saturday, June 03, 2017 9:08 AM
To: Dan Stabbert
Subject: cages

dan if mark doesnt get the piling cages gone by the end of this weekend then monday morning i go to plan b it seemed clear to julia he reslly does want them and can use them t

Sent from my iPhone

Karla Lopez

From: Tom Evans <tom@maritimeinjury.com>
Sent: Tuesday, June 06, 2017 4:47 PM
To: Dan Stabbert
Subject: Cages

Hi Dan - here is the plan for the remaining cages - I will be back on island late saturday pm. My friend was not able to come up with me, but I think I can hand paddle the little inflatable boat out far enough to separate the one cage that has oysters in it from the rest, and then have Mark come and take away all of the remaining stuff except the cage with oysters. I have a couple of other people who I think will then help me move the oysters in the one remaining cage to grow bags on our property. We may need to borrow your 2 wheelbarrows for a short period of time if thats ok. One cage full of oysters fills up two wheelbarrows. Also, I am bringing in some seed which will likely be in 3 grow bags, completely submerged and tied off from our side of the dock. These will not be there long as they are going right out to re-pant 6 submerged cages on our side. Wonder if you will be up next week? If so, maybe see ya then. Let me know if you have any questions. Tom

---

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Karla Lopez

From: Tom Evans <tom@maritimeinjury.com>
Sent: Sunday, June 11, 2017 10:38 AM
To: Dan Stabbert
Subject: final clean up

Dan, I am up for the next few days and my intention is to have all of the deck work done before I leave. My first priority is to get the new seed into the water in the cages which I moved to our side and sunk. This should take a day or two. In between I will be down on the dock figuring out how to cut the cages and stuff loose for Mark to pick up. Once again, there will be one, and only one, cage left which I will try to tie off on a pillar support that is out of the way. When my friend gets back, we will unload and take that cage away.

I wil try to spend a minimum amount of time around the dock. I will not be storing new seed there - it looks like I will be able to get it into the cages here. Let me know if you have any questions. Tom

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Karla Lopez

From: Tom Evans <tom@maritimeinjury.com>
Sent: Sunday, June 11, 2017 11:39 AM
To: Dan Stabbert
Subject: Re: final clean up

Thanks Dan, I created the mess. I will clean it up. Take care. Tom

Thomas C. Evans • Injury at Sea
4020 East Madison Street, Suite 210, Seattle, WA 98112
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On Jun 11, 2017, at 11:01 AM, Dan Stabbert <dan@stabbertmaritime.com> wrote:

Tom: No worries. Im leaving this afternoon but if you need any help before that let me know. If there is something left when we we get back the same offer. Dan

From: Tom Evans <tom@maritimeinjury.com>
Date: Sunday, June 11, 2017 at 10:37 AM
To: Dan Stabbert <dan@stabbertmaritime.com>
Subject: final clean up

Dan, I am up for the next few days and my intention is to have all of the deck work done before I leave. My first priority is to get the new seed into the water in the cages which I moved to our side and sunk. This should take a day or two. In between I will be down on the dock figuring out how to cut the cages and stuff loose for Mark to pick up. Once again, there will be one, and only one, cage left which I will try to tie off on a pillar support that is out of the way. When my friend gets back, we will unload and take that cage away.

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Karla Lopez

From: Tom Evans <tom@maritimeinjury.com>
Sent: Wednesday, August 09, 2017 4:48 PM
To: Dan Stabbert
Subject: Re: cages

Dan, my plan was to have Raul move them up to the storage unit on our property, but he is not coming until Saturday. If you need to have them moved sooner you can move them up and to the right of our pump house, next to Julia s garden. I am in Seattle maybe for as long as the next 10 days, while Julia is on Island with friends. The cages are not very heavy as they are empty. Don and I just stuck one cage each on top of your two wheeled boxes and easily moved the ones we moved all the way down to the water on our side. Let me know if you move them so I can alert Raul. He is also going to help us move the 2 that are still in the water.
Tom

Thomas C. Evans • Injury at Sea
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On Aug 9, 2017, at 4:15 PM, Dan Stabbert <dan@stabbertmaritime.com> wrote:

Tom: We are having a family reunion here this weekend and people will begin arriving tomorrow and staying the weekend. What are your plans with the cages down on the platform as they are fairly ripe? Thanks, Dan

Karla Lopez

From: Tom Evans <tom@maritimeinjury.com>
Sent: Wednesday, August 09, 2017 6:06 PM
To: Dan Stabbert
Subject: Re: cages - PS and PPS

Dan - we won't have anybody on the water this weekend period so feel free to tie up to any of our buoys or off-load, tie up on our side of the dock.

Also, fyi, the whole of San Juan County is closed to all shell specifies of shellfish consumption due to red tide. Commercial operators are supposed to send in samples of each batch they intend to sell before they sell. Unfortunately, I am aware of some who are not doing this. T

On Aug 9, 2017, at 4:48 PM, Tom Evans <tom@maritimeinjury.com> wrote:

Dan, my plan was to have Raul move them up to the storage unit on our property, but he is not coming until Saturday. If you need to have them moved sooner you can move them up and to the right of our pump house, next to Julia s garden. I am in Seattle maybe for as long as the next 10 days, while Julia is on Island with friends. The cages are not very heavy as they are empty. Don and I just stuck one cage each on top of your two wheeled boxes and easily moved the ones we moved all the way down to the water on our side. Let me know if you move them so I can alert Raul. He is also going to help us move the 2 that are still in the water. Tom

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Tom: We are having a family reunion here this weekend and people will begin arriving tomorrow and staying the weekend. What are your plans with the cages down on the platform as they are fairly ripe? Thanks, Dan

EXHIBIT 12

Lynda Guernsey

From: Lynda Guernsey
Sent: Tuesday, June 19, 2018 4:42 PM
'Gary N. McLean'
Subject: RE: Evans Motion to Strike: PAPL00-18-0001 and PAPL00-18-0002

Hi Gary,

Per Erika Shook, the County will not be providing any response or other pleading regarding the recent filings.

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: Gary N. McLean <mcleanlaw@me.com>
Sent: Tuesday, June 19, 2018 4:17 PM
To: Lynda Guernsey <LyndaG@sanjuanco.com>
Subject: Re: Evans Motion to Strike: PAPL00-18-0001 and PAPL00-18-0002

Lynda —

eived.

Question: Will the County be providing any response or other pleading addressing either of the recent filings? Please check with Erika, and let me know.

Thank you.

GNMc

On Jun 19, 2018, at 10:50 AM, Lynda Guernsey <LyndaG@sanjuanco.com> wrote:

Hi Gary,

Please see the email below and attachment in regards to Evans appeals PAPL00-18-0001 and 0002 of Stabbert

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: Tuesday, June 19, 2018 10:45 AM
To: Erika Shook <erikas@sanjuanco.com>; Lynda Guernsey <LyndaG@sanjuanco.com>; Julie Thompson

<JulieT@sanjuanco.com>; dan@stabbertmaritime.com; Community Development <cdp@sanjuanco.com>
Cc: Kelsey Demeter <kelsey@maritimeinjury.com>; Tom Evans <tom@maritimeinjury.com>
Subject: Motion to Strike: PAPL00-18-0001 and PAPL00-18-0002

Good Morning,

Attached please find a Motion to Strike on behalf to Thomas C. Evans and Box Bay Shellfish Farm LLC.

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

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<Motion to Strike Stabbert Pleading.pdf>

Lynda Guernsey

From: Lynda Guernsey
Sent: Tuesday, June 19, 2018 4:39 PM
Gary N. McLean
Subject: FW: PAPL00-18-001 & PAPL00-18-002

Hi Gary,

Please see the email below from Stabbert regarding the Evans appeals PAPLoo-18-0001 and 0002.

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: Karla Lopez <KarlaL@stabbertmaritime.com>
Sent: Tuesday, June 19, 2018 3:30 PM
To: Julie Thompson <JulieT@sanjuanco.com>
Cc: Lynda Guernsey <LyndaG@sanjuanco.com>; Erika Shook <erikas@sanjuanco.com>; Dan Stabbert <dan@stabbertmaritime.com>; Karla Lopez <KarlaL@stabbertmaritime.com>; kelsey@maritimeinjury.com; Tom <tom@maritimeinjury.com>; Community Development <cdp@sanjuanco.com>
Subject: PAPL00-18-001 & PAPL00-18-002

Good Afternoon Julie,

I wish to offer my apologies for referencing only our SJC Permit File # PPROVO-17-0065 in my email motion which was dated last Friday, June 15, 2018. I would like to include for our appeal reference # PAPL00-18-0001 & PALL00-18-0002. This is our first time navigating through such a legal maze I will ensure to be more cautious in the future to avoid a similar mistake.

Thank you for your understanding,

Karla Lopez
Executive Assistant
Stabbert Maritime
p:206.204.4132 m: 206.383.1253
a:2629 NW 54th Street # 201, Seattle, WA 98107
STABBERT MARITIME
w:StabbertMaritime.com e: KarlaL@StabbertMaritime.com

Lynda Guernsey

From: Gary N. McLean <mcleanlaw@me.com>
Sent: Tuesday, June 19, 2018 4:17 PM
To: Lynda Guernsey
Subject: Re: Evans Motion to Strike: PAPL00-18-0001 and PAPL00-18-0002

Lynda —

Received.

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Thank you.

GNMc

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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: Tuesday, June 19, 2018 10:45 AM
To: Erika Shook <erikas@sanjuanco.com>; Lynda Guernsey <LyndaG@sanjuanco.com>; Julie Thompson <JulieT@sanjuanco.com>; dan@stabbertmaritime.com; Community Development <cdp@sanjuanco.com>
Cc: Kelsey Demeter <kelsey@maritimeinjury.com>; Tom Evans <tom@maritimeinjury.com>
Subject: Motion to Strike: PAPL00-18-0001 and PAPL00-18-0002

Good Morning,

Attached please find a Motion to Strike on behalf to Thomas C. Evans and Box Bay Shellfish Farm LLC.

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

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<Motion to Strike Stabbert Pleading.pdf>

Lynda Guernsey

From: Lynda Guernsey
Sent: Tuesday, June 19, 2018 10:51 AM
To: Gary N. McLean
Subject: FW: Evans Motion to Strike: PAPL00-18-0001 and PAPL00-18-0002
Attachments: Motion to Strike Stabbert Pleading.pdf

Hi Gary,

Please see the email below and attachment in regards to Evans appeals PAPL00-18-0001 and 0002 of Stabbert

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>
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Cc: Kelsey Demeter <kelsey@maritimeinjury.com>; Tom Evans <tom@maritimeinjury.com>
Subject: Motion to Strike: PAPL00-18-0001 and PAPL00-18-0002

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Kelsey

INJURY AT SEA
MARITIME INJURY ASSISTANCE

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To: Erika Shook; Lynda Guernsey; Julie Thompson; dan@stabbertmaritime.com; Community Development
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BEFORE THE SAN JUAN COUNTY HEARING EXAMINER

THOMAS C. EVANS, BOX BAY SHELLFISH FARM LLC, Appellants v. DAN AND CHERYL STABBERT; SAN JUAN COUNTY PLANNING DEPARTMENT, Respondents	PAPL00-18-0001 PAPL00-18-0002 **MOTION TO STRIKE IMPROPERLY FILED PLEADINGS – RESPONDENTS MOTION TO DISMISS** **NOTE FOR CONSIDERATION** **Upon Receipt**

INTRODUCTION

Having now fired his attorneys, Stabbert proceeds *pro se.* His document entitled "Motion To Dismiss" is long on personal amines and short on legal argument. Stabbert seems to have come to the conclusion his best argument is proving Evans is a "bad neighbor". Stabbert's 32 pages consist almost entirely of venomous allegations stretching back years. If we are bad neighbors then we apologize. We do not share Stabbert's animus. We believe them to be family-oriented societal neighbors who, like us, never have and never would do anything to intentionally interfere with the quiet use and enjoyment of each of our respective properties. Evans will file a separate and additional response to the legitimate legal argument of Stabbert 's Motion by June 29, if Evans' motion is not granted as of that time.

I. AS A PRO-SE LITIGANT STABBERT IS ACCOUNTABLE TO THE SAME RULES OF PROCEDURE AND SUBSTANTIVE LAW AS AN ATTORNEY

Stabbert must comply with the same rules of administrative procedure and substantive law in the same way as if represented by counsel. Being *pro se* does not excuse him from any of the critical rules related to proper legal procedure and the requirements of law. This is especially important with respect to his "Motion To Dismiss." It absolutely fails to comply with multiple pleading and other rule requirements and for that reason it should be stricken and the document returned to him.

In the case of *In Re Decertification of Martin* 154 Wn. App. 252 (2009) a police officer decided to represent himself, *pro se* at a civil service hearing. Martin, a police officer, had been de-certified for misconduct while serving as a deputy sheriff. Martin claimed he had not kept the drivers license of someone he stopped for a traffic offense when, in fact, he lied. Under the civil service commissions rules, any objection to the fairness of the panel had to be made prior to the commencement of the hearing. Martin claimed ignorance to that requirement and did not raise fairness objections until a Superior Court appeal. This was just one of many errors Martin made acting pro-se. The Superior Court held, as a *pro se* litigant, Martin need not be held to the same high standard as other appellants represented by lawyers. The Court of Appeals ruled firmly to the contrary. Its ruling very clearly states a pro-se litigant *is strictly accountable* to the rules just as if he/she were represented by counsel:

> "Mr. Martin proceeded pro-se at the commission hearing.
> A pro-se litigant is held to the same rules of procedure
> and substantive law as an attorney." Citing to
> -*Westberg vs. All-Purpose Structures*, 86 Wn.App. 405, 411 (1997)

Stabbert falls incredibly short of meeting minimum requirements for filing this pleading. The rules of this administrative hearing process, substantive law, and those of SJC Chapter 2.22, have not been followed. In reality, he has not actually filed any motion on any matter, let alone a motion to dismiss.

II. STABBERT HAS NOT ACTUALLY FILED ANY MOTION:

Stabbert's pleading, "Motion To Dismiss" is filed under "FILE NO. PPROVO-17-0065". There is no such file. The hearing appeal has two file Nos: PAPL00-18-0001 and PAPL00-18-

0002. Any attorney filing a pleading under a cause numbers that does not exist would promptly have that pleading returned. That is exactly what should happen here. If Stabbert can't even get the filing numbers correct, then he should be held accountable just like any attorney. Evans paid $1,200.00 as required for two appeals and has carefully filed all pleadings and documents in the two separate appeal files as required. The Examiner may not "bend the rules" and let Stabbert file papers on files that don't exist. If Stabbert acting pro-se doesn't pay attention to the simple requirement of filing under a proper cause number, where will it end? Will the Examiner now make up a special set of rules just for Stabbert?

The Hearing Examiners own rules require proper filing and service, and failure to properly file and serve within the required time period is considered jurisdictional. See: SJC 2.22.200 (F)(6)(a) "Filing and Service". Stabbert was Ordered to file any motions by June 15, 2018. That timeline has now passed and there are no motions from Stabbert in either of these two appeals.

III. STABBERT'S SUPPOSED VERIFICATION IS COMPLETELY DEFECTIVE AND ANY FACT ASSERTIONS IN HIS MOTION ARE UNVERIFIED

Another rule Stabbert has simply ignored is what it takes for a statement to be under oath or verified. At page 33 Stabbert signs his motion document and adds: "I, Dan Stabbert do swear and affirm the above and forgoing statements regarding the impacts from VRBO occupancy are true and correct to my best information and belief"." This is a meaningless statement. It in no way recites that Stabbert is making a sworn oath *under penalty of perjury or* the other jurisdictional language required by RCW 9A.72.085.

Once again, Stabbert may not be excused from improperly stating this very basic required language for the making a true sworn statement. Cases are routinely dismissed for these failures, often with prejudice. One such example is *Brackman v. City of Lake Forest Park* 163 Wn. App. 889 (2011). There, the City was attempting to appeal for trial de-novo from a mandatory mediation judgment. MAR 7.1(a) required verified proof of service. The office paralegal made a declaration of service much like Stabbert's. The Court stated: "Because the certificate was not made under penalty of perjury, it did not meet the mandatory statutory requirements for an unsworn certification under RCW 9A.72.085" The City's appeal was thrown out and the City was deprived of an appeal resulting in its having to pay the

Judgment as entered. See also: *Johnson v. King County* 148 Wn.App. 220 (2009) There, a litigant was required to file a sworn affirmation before commencing a personal injury claim. Once again, the claim form did not contain the required under penalty of perjury affirmation and the case was dismissed.

IV. STABBERTS MOTION DOCUMENTS ARE MOSTLY STATEMENTS OF PERSONAL ANIMUS AND THESE DEROGATORY COMMENTS SHOULD BE STRICKEN FROM THE RECORD

As stated above, virtually all of Stabbert's motion documents consist of statements of personal animus. This has no part in this hearing. The goal is not to prove Evans is a "bad neighbor". The goal is to argue the legal points. Lets view this the way it should be viewed – an honest difference of opinion of legal matters to be settled through proper legal process.

V. CONCLUSION AND CLOSE:

Stabbert's motion documents should be returned as unfiled. Not filing pleadings in a proper format and correct cause number may not be excused. Stabbert is not privileged to ignore or not comply with the same rules every appellant must comply with. Stabbert has not made any actual statement under penalty of perjury – these statements are not useable in this proceeding as sworn testimony. Finally, personal animus has no place in this hearing. It's not about who is the best neighbor. It's about following the rules and respect for both parties rights.

Respectfully submitted this 19th day of June, 2018

/s/ Thomas C. Evans
Thomas C. Evans, *pro se*

/s/ Thomas C. Evans
Thomas C. Evans, Manager
Box Bay Shellfish Farm LLC

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I served the above document on the following individuals in the manner identified.

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

[X] Via Email
[X] Via US Mail, postage prepaid

Dan Stabbert
dan@stabbertmaritime.com
2629 NW 54th St., #201
Seattle, WA 98107
P: 206-547-6161
F: 206-547-6010
Dan & Cheryl Stabbert
Dan Stabbert, *pro se*

[X] Via Email
[X] Via US Mail, postage prepaid

Dated this 19th day of June, 2018

s/ Kelsey Demeter
Kelsey Demeter, Paralegal

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

EXHIBIT 13

Lynda Guernsey

From: Lynda Guernsey
Sent: Wednesday, June 20, 2018 3:00 PM
Gary N. McLean
Subject: FW: PAPL00-18-001 & PAPL00-18-002

Hi Gary,

Please see the email below from Tom Evans regarding his appeals PAPL00-18-0001 and 0002.

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: Tom <tom@maritimeinjury.com>
Sent: Tuesday, June 19, 2018 5:02 PM
To: Karla Lopez <KarlaL@stabbertmaritime.com>
Cc: Julie Thompson <JulieT@sanjuanco.com>; Lynda Guernsey <LyndaG@sanjuanco.com>; Erika Shook <erikas@sanjuanco.com>; Dan Stabbert <dan@stabbertmaritime.com>; kelsey@maritimeinjury.com; Community Development <cdp@sanjuanco.com>
Subject: Re: PAPL00-18-001 & PAPL00-18-002

For SJC to set a double standard is illegal, immoral, reversible error. People who think all that is required is a simple apology don't understand the law. This case is undoubtedly going to be heard by the Applellate Courts. If SJC wants to set a State wide example of what an illegal quasi judicial looks like be my guest. Fair due process is not made up of "so sorry." Re read the Lake Forest Park case. Please send me notice this illegal filing has been stricken. Likewise the fact statements are not verified. Thomas C Evans

Sent from my iPhone

On Jun 19, 2018, at 3:29 PM, Karla Lopez <KarlaL@stabbertmaritime.com> wrote:

> Good Afternoon Julie,
> I wish to offer my apologies for referencing only our SJC Permit File # PPROVO-17-0065 in my email motion which was dated last Friday, June 15, 2018. I would like to include for our appeal reference # PAPL00-18-0001 & PALL00-18-0002. This is our first time navigating through such a legal maze I will ensure to be more cautious in the future to avoid a similar mistake.
>
> Thank you for your understanding,
>
> Karla Lopez
> Executive Assistant
> Stabbert Maritime
> p:206.204.4132 m: 206.383.1253
> a:2629 NW 54th Street # 201, Seattle, WA 98107
> w:StabbertMaritime.com e: KarlaL@StabbertMaritime.com

Lynda Guernsey

From: Tom <tom@maritimeinjury.com>
Sent: Tuesday, June 19, 2018 5:02 PM
Karla Lopez
Cc: Julie Thompson; Lynda Guernsey; Erika Shook; Dan Stabbert; kelsey@maritimeinjury.com; Community Development
Subject: Re: PAPL00-18-001 & PAPL00-18-002

For SJC to set a double standard is illegal, immoral, reversible error. People who think all that is required is a simple apology don't understand the law. This case is undoubtedly going to be heard by the Applellate Courts. If SJC wants to set a State wide example of what an illegal quasi judicial looks like be my guest. Fair due process is not made up of "so sorry." Re read the Lake Forest Park case. Please send me notice this illegal filing has been stricken. Likewise the fact statements are not verified. Thomas C Evans

Sent from my iPhone

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> Good Afternoon Julie,
> I wish to offer my apologies for referencing only our SJC Permit File # PPROVO-17-0065 in my email motion which was dated last Friday, June 15, 2018. I would like to include for our appeal reference # PAPL00-18-0001 & PALL00-18-0002. This is our first time navigating through such a legal maze I will ensure to be more cautious in the future to avoid a similar mistake.
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> Thank you for your understanding,
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> Karla Lopez
> Executive Assistant
> Stabbert Maritime
> p:206.204.4132 m: 206.383.1253
> a:2629 NW 54th Street # 201, Seattle, WA 98107
> w:StabbertMaritime.com e: KarlaL@StabbertMaritime.com

Lynda Guernsey

From: Karla Lopez <KarlaL@stabbertmaritime.com>
Sent: Tuesday, June 19, 2018 3:30 PM
T Julie Thompson
C Lynda Guernsey; Erika Shook; Dan Stabbert; Karla Lopez; kelsey@maritimeinjury.com; Tom; Community Development
Subject: PAPL00-18-001 & PAPL00-18-002

Good Afternoon Julie,

I wish to offer my apologies for referencing only our SJC Permit File # PPROVO-17-0065 in my email motion which was dated last Friday, June 15, 2018. I would like to include for our appeal reference # PAPL00-18-0001 & PALL00-18-0002. This is our first time navigating through such a legal maze I will ensure to be more cautious in the future to avoid a similar mistake.

Thank you for your understanding,

Karla Lopez
Executive Assistant
Stabbert Maritime
p:206.204.4132 m: 206.383.1253
a:2629 NW 54th Street # 201, Seattle, WA 98107
STABBERT MARITIME
w:StabbertMaritime.com e: KarlaL@StabbertMaritime.com

EXHIBIT 14

Lynda Guernsey

From: Lynda Guernsey
Sent: Wednesday, June 20, 2018 3:08 PM
Gary N. McLean
Subject: FW: Evans/Box Bay adv. Stabbert: PAPL00-18-0001 and PAPL00-18-0002
Attachments: 6-20-18 Ltr.pdf

Hi Gary,

Please see the email below and attachment regarding the Evans appeals of Stabbert PAPL00-18-0001 and 0002.

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: Wednesday, June 20, 2018 2:11 PM
To: Erika Shook <erikas@sanjuanco.com>; Julie Thompson <JulieT@sanjuanco.com>; Community Development <cdp@sanjuanco.com>; Lynda Guernsey <LyndaG@sanjuanco.com>
Cc: Kelsey Demeter <kelsey@maritimeinjury.com>; dan@stabbertmaritime.com; karlal@stabbertmaritime.com
Subject: Evans/Box Bay adv. Stabbert: PAPL00-18-0001 and PAPL00-18-0002

Good Afternoon,

Please find correspondence from Mr.Evans on behalf of himself and Box Bay Shellfish Farm LLC.

Best,
Kelsey Demeter

INJURY AT SEA
MARITIME INJURY ASSISTANCE

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Tel: 206.527.8008 • **Toll Free:** 1.800. SEA. SALT
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From: Kelsey Demeter <kelsey@maritimeinjury.com>
Sent: Wednesday, June 20, 2018 2:11 PM
Erika Shook; Julie Thompson; Community Development; Lynda Guernsey
Cc: Kelsey Demeter; dan@stabbertmaritime.com; karlal@stabbertmaritime.com
Subject: Evans/Box Bay adv. Stabbert: PAPL00-18-0001 and PAPL00-18-0002
Attachments: 6-20-18 Ltr.pdf

Good Afternoon,

Please find correspondence from Mr.Evans on behalf of himself and Box Bay Shellfish Farm LLC.

Best,
Kelsey Demeter

INJURY AT SEA
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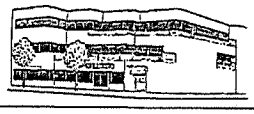
MADISON
PARK LAW
OFFICES



THOMAS C. EVANS

June 20, 2018

US Mail and E-mail
dcd@sanjuanco.com
LyndaG@sanjuanco.com
EricaS@sanjuanco.com
JulieT@sanjuanco.com
Attn: San Juan Hearing Examiner
Department of Community Development
PO Box 947
Friday Harbor, WA 98250

Karla Lopez c/o Stabbert Maritime
karla@stabbertmaritime.com
Dan Stabbert
dan@stabbertmaritime.com
2629 NW 54th St., #201
Seattle, WA 98107

Re: Unauthorized Practice of Law – Karla Lopez: Stabbert Maritime document selection and filing under PPROVO-17-0065 *opposed to* PAPL00-18-001 & PAPL00-18-002

Good Afternoon:

We received an email from Karla Lopez yesterday, June 19, 2018 at 3:30 PM. Therein Ms. Lopez appears to be acting on behalf of and intending to represent Mr. Stabbert in the above proceedings. The e-mail states in pertinent part:

> "I wish to offer apologizes for referencing only our SJC Permit... in my email motion dated last Friday June 15, 2018... I would like to include for our appeal Ref. # PAPL00-18-0001 and PAPLL00-18-002. ***This is our first time navigating through such a legal maze I will ensure to be more cautious in the future to avoid a similar mistake."***

The above suggests Ms. Lopez will be handling the "legal maze" and sends apologizes for improperly filing a determinative motion. A personal secretary may certainly mail documents, and handle secretarial tasks. But selecting filing numbers and being responsible for a "legal maze" is something entirely different and rises to the level of unauthorized practice of law.

4020 EAST MADISON STREET
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FAX (206) 527-0725
TOLL FREE 1-800-SEA-SALT
www.injuryatsea.com

EMAIL tom@maritimeinjury.com

A quasi-judicial proceeding, which this clearly is, is not intended to be a playground for someone wanting to play lawyer. A quasi-judicial proceeding is in very many ways just like a trial proceeding in Superior Court, with very serious potential rulings affecting participant's property rights. A failure in fundamental procedure, including allowing unauthorized persons to represent parties, is grounds for vacation of the proceedings.

Ms. Lopez and Mr. Stabbert appear to have no concept of the seriousness of the legal proceedings in which they are now engaged. This is not a "permit counter" where no specific rules apply. This is equivalent to a Court of Law which will make findings of fact, legal rulings, verbatim record of proceedings. The Examiner has the responsibility to enforce required procedure.

Under State statue case law, and SJC 2.22.200(F)(6)(a), and the State penal code, Ms. Lopez is practicing law without a license, and may not represent Mr. Stabbert (who has the right to appear *pro se*, so long as he does it on his own) and is subject to potential criminal prosecution under RCW 18.130.190. Please see PDFs attached which contain copies of the referenced State statue, as well as a copy of a criminal case where an individual was convicted of the crime of practicing law without a license. See: *State v. Hunt* 75 Wn. App. 795 (1995).

Choosing case numbers for filing, determining whether or not to file in one or both of these proceedings, improperly filing critical pleadings, filing improperly certified testimony, and filing pleadings that are viciously personal, are all evidence of the unauthorized practice of law.

If I receive one more email, piece of paper, or other evidence of Ms. Lopez's participation in these proceedings on a representation basis (secretarial acts are obviously ok), I will refer the documentation involved to and file a request with the Washington State Bar Association to look into her Unauthorized Practice of Law. Further, if they do, in the future, find unauthorized practice of law, I will ask for a referral to the King County Prosecutors Office for the filing of criminal a criminal complaint.

At this point, the Examiner needs to take control of these proceedings – advise Mr. Stabbert that he may, and only him personally, undertake all of the activities described as the practice of law, but in so doing is will be held accountable for the same professional conduct of an attorney. (*Hangman Ridge Training Stables v. Safeco*, 33 Wn. App. 129 (1982). Further, the Examiner must not excuse the inexcusable. The Motion To Dismiss was not properly filed and is no longer timely. The defective and unsworn statements made by Mr. Stabbert should be stricken and the document should be returned to Mr. Stabbert.

I trust I have made my position very clear. I expect direction and a determination on these issues and in a timely fashion.

Very Truly Yours,

/s/ Thomas C. Evans
Thomas C. Evans
Pro se

/s/ Thomas C. Evans
Thomas C. Evans
Box Bay Shellfish Farm LLC

ATTACHMENTS:

State v. Hunt 75 Wn. App. 795 (1995)

Wash. GR 24

RCW 2.48.180

RCW 18.130.190

State v. Hunt 75 Wn. App. 795 (1995)

Positive
As of: June 20, 2018 7:20 PM Z

State v. Hunt

Court of Appeals of Washington, Division Two

July 28, 1994, Filed

No. 15560-5-II

Reporter
75 Wn. App. 795 *; 1994 Wash. App. LEXIS 408 **; 880 P.2d 96

THE STATE OF WASHINGTON, *Respondent*, v. JERRY NATHAN HUNT, Appellant.

Subsequent History: [1]** Order Granting Motions to Publish Opinion September 20, 1994, Reported at: *1994 Wash. App. LEXIS 407*. Petition for Review Denied December 7, 1994, Reported at: *125 Wn.2d 1009, 889 P.2d 498, 1994 Wash. LEXIS 755*.

Core Terms

practice of law, settlement, instructions, counts, documents, pro se, services, unconstitutionally vague, unlawful practice, cases, proscribed, paralegal, checks, theft, preparation, accounting, drafted, lawyers

Case Summary

Procedural Posture

Defendant paralegal sought review of the decision of the Superior Court of Kitsap County (Washington), which convicted him of the unlawful practice of law, a misdemeanor, in violation of *Wash. Rev. Code § 2.48.180*. He was also convicted of operating as a collection agency without a license and for theft.

Overview

Although he did not represent himself as an attorney, defendant performed legal research, drafted pleadings, and performed other such legal work for his clients. The State demonstrated that he had poorly represented some of his clients and acted unethically. Defendant appealed his conviction and on review, the court affirmed. The court held that *Wash. Rev. Code § 2.48.180*, which prohibited the unlawful practice of law, was not unconstitutionally vague, that the evidence was sufficient to convict him on the theft and collection agency counts, and that the jury instructions related to the unlawful practice of law charges were not erroneous. The court found that the nature and character of the services he performed, which included preparing forms and interceding during a hearing, were in clear violation of the law, which prohibited an unlicensed person from conducting such activities. The Due Process Clauses of the Fifth and Fourteenth Amendments, § 2.48.180, and the phrase "practice law" were sufficiently defined to prevent inordinately arbitrary enforcement. Further, the definition of the challenged phrase allowed an ordinary person to know that *§ 2.48.180* proscribed his conduct.

Outcome

The court affirmed defendant's conviction for the unlawful practice of law and on theft and collection agency violations.

LexisNexis® Headnotes

Legal Ethics > Unauthorized Practice of Law

HN1[] **Legal Ethics, Unauthorized Practice of Law**

See Wash. Rev. Stat. *§ 2.48.180*.

Criminal Law & Procedure > Appeals > Standards of Review > General Overview

Governments > Legislation > Interpretation

Governments > Legislation > Vagueness

HN2[] **Appeals, Standards of Review**

When a criminal statute does not define words alleged

to be unconstitutionally vague, the reviewing court looks to existing law, ordinary usage, and the general purpose of the statute to determine whether the statute meets constitutional requirements of clarity. The reviewing court presumes that a statute is constitutional; the burden is on the challenger to prove otherwise beyond a reasonable doubt.

Constitutional Law > ... > Fundamental Freedoms > Judicial & Legislative Restraints > Overbreadth & Vagueness of Legislation

Criminal Law & Procedure > Appeals > Standards of Review > General Overview

Governments > Legislation > Vagueness

Constitutional Law > Bill of Rights > Fundamental Freedoms > General Overview

Constitutional Law > ... > Fundamental Freedoms > Judicial & Legislative Restraints > General Overview

Governments > Legislation > Interpretation

HN3[] Judicial & Legislative Restraints, Overbreadth & Vagueness of Legislation

Unless the challenger claims a violation of First Amendment rights, a reviewing court evaluates the statute by looking to the facts of the particular case. The challenged law is tested for unconstitutional vagueness by inspecting the actual conduct of the party who challenges the ordinance and not by examining hypothetical situations at the periphery of the ordinance's scope.

Constitutional Law > Substantive Due Process > Scope

Governments > Legislation > Overbreadth

Governments > Legislation > Vagueness

HN4[] Constitutional Law, Substantive Due Process

A statute violates Fourteenth Amendment due process protections if it fails to provide a fair warning of proscribed conduct. Although some uncertainty is constitutionally permissible, a statute is unconstitutionally vague if it: (1) does not define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is proscribed, or (2) it does not provide ascertainable standards of guilt to protect against arbitrary enforcement.

Legal Ethics > Unauthorized Practice of Law

HN5[] Legal Ethics, Unauthorized Practice of Law

The term "practice of law" includes not only the doing or performing of services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity with the adopted rules of procedure, but in a larger sense includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured.

Business & Corporate Compliance > ... > Trusts > Trust Administration > Modification & Termination

Legal Ethics > Unauthorized Practice of Law

HN6[] Trust Administration, Modification & Termination

The selection and completion of form legal documents, or the drafting of such documents, including deeds, mortgages, deeds of trust, promissory notes and agreements modifying these documents constitutes the practice of law.

Legal Ethics > Unauthorized Practice of Law

HN7[] Legal Ethics, Unauthorized Practice of Law

It is the nature and character of the service performed which governs whether given activities constitute the practice of law, not the nature or status of the person performing the services. If the activities in question are the practice of law, then the question is whether the person practicing law is authorized to do so.

Legal Ethics > Unauthorized Practice of Law

HN8[] **Legal Ethics, Unauthorized Practice of Law**

Washington law clearly prohibits an unlicensed person from selecting and completing legal forms for another, necessarily including dissolution forms.

Legal Ethics > Unauthorized Practice of Law

HN9[] **Legal Ethics, Unauthorized Practice of Law**

A paralegal is a person with legal skills, but who is not an attorney, and who works under the supervision of a lawyer in performing various tasks relating to the practice of law or who is otherwise authorized by law to use those legal skills.

Headnotes/Syllabus

Summary

Nature of Action: Prosecution for 12 counts of unlawful practice of law, 3 counts of unlicensed operation as a collection agency, and 1 count of second degree theft.

Superior Court: The Superior Court for Kitsap County, No. 91-1-00525-5, James D. Roper, J., on December 10, 1991, entered a judgment on a verdict of guilty of all the charges.

Court of Appeals: Holding that the statute prohibiting nonlawyers from practicing law is not unconstitutionally vague, that there was sufficient evidence to convict on the collection agency and theft counts, and that the instructions were proper, the court *affirms* the judgment.

Headnotes

WASHINGTON OFFICIAL REPORTS HEADNOTES

WA[1][] [1]

Criminal Law > Statutes > Vagueness > Undefined Language > Factors

When a criminal statute does not define words alleged to be unconstitutionally vague, a reviewing court may look to existing law, ordinary usage, and the general purpose of the statute to determine whether the statute meets constitutional requirements of clarity.

WA[2][] [2]

Statutes > Validity > Presumption > Burden of Proof > Degree of Proof

A statute is presumed to be constitutional; the burden is on the challenger to prove otherwise beyond a reasonable doubt.

WA[3][] [3]

Criminal Law > Statutes > Vagueness > Particular Conduct > No First Amendment Issue

Absent a claimed violation of the First Amendment, the vagueness of a criminal statute is determined by examining its application to the defendant's alleged conduct, not to hypothetical situations within the periphery of the scope of the statute.

WA[4][] [4]

Criminal Law > Statutes > Vagueness > Test

A criminal statute is unconstitutionally vague if (1) it does not define the crime with sufficient definiteness so that ordinary people can understand what conduct is prohibited or (2) it does not provide ascertainable standards of guilt to protect against arbitrary enforcement.

WA[5][] [5]

Attorney and Client > Practice of Law > Unauthorized Practice > Legal Documents

For purposes of the misdemeanor of the unlawful practice of law (*RCW 2.48.180*), a person "practices law" by determining for others what legal documents must be executed to carry out their intent and by completing those legal documents.

WA[6][] [6]

Attorney and Client > Practice of Law > Unauthorized Practice > Purpose

The prohibition against unlawfully practicing law (*RCW 2.48.180*) is intended to protect the public.

WA[7] [7]

Attorney and Client > Practice of Law > Unauthorized Practice > Validity > Vagueness > Representation of Clients in Legal Matters

RCW 2.48.180, which prohibits the unlawful practice of law, is not unconstitutionally vague as applied to a nonattorney's representation of clients in legal matters.

WA[8] [8]

Criminal Law > Statutes > Vagueness > Ascertainable Standards

A criminal statute does not violate the due process requirement that it provide ascertainable standards of guilt to protect against arbitrary enforcement unless it invites an inordinate amount of discretion.

WA[9] [9]

Attorney and Client > Practice of Law > Unauthorized Practice > Paralegal > Unsupervised

A paralegal not under the supervision of an attorney is not exempt from the prohibition against unlawfully practicing law (RCW 2.48.180).

WA[10] [10]

Attorney and Client > Practice of Law > Unauthorized Practice > Power of Attorney > Effect

A person's right to practice law on his or her own behalf may not be transferred to another person through a power of attorney. A power of attorney does not authorize the practice of law.

WA[11] [11]

Criminal Law > Trial > Taking Case From Jury > Sufficiency of Evidence > In General

There is sufficient evidence to uphold a conviction if, after viewing the evidence most favorably toward the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

WA[12] [12]

Appeal > Review > Issues Not Raised in Trial Court > Instructions > In General

Unchallenged instructions are accepted on appeal as the law of the case.

Counsel: *David G. Skeen,* for appellant (appointed counsel for appeal).

C. Danny Clem, Prosecuting Attorney, and *Pamela B. Loginsky* and *Karin L. Nyrop, Deputies,* for respondent.

Robert D. Welden on behalf of Washington State Bar Association, amicus curiae.

Judges: Seinfeld, Morgan, Houghton

Opinion by: KAREN G. SEINFELD

Opinion

[*797] Seinfeld, J. -- Jerry Nathan Hunt appeals his convictions of 12 counts of unlawful practice of law, three counts of unlicensed operation as a collection agency, and one count of theft in the second degree. We affirm.

FACTS

Hunt called himself a paralegal and operated a business called Strategic Services. He had no formal or academic **[*798]** paralegal training but had learned something about the law while working with an attorney in Spokane for approximately 2 years.

[2]** The 12 unlawful practice of law counts fall into the following categories. In eight of the counts, Hunt represented people injured in car accidents who had negligence claims against insured drivers. Hunt drafted and had each client sign a limited power of attorney authorizing Hunt to settle the liability claim with the insurer and to collect the settlement amount. He then negotiated with the insurer's adjuster, telling the adjuster he was a "negotiator" or "mediation counsel" retained by the injured party.

Pursuant to these negotiations, Hunt prepared

settlement liens in favor of car rental agencies, medical providers, and drug stores. In one case, he mailed a request for discovery and a request for admissions, although he had not yet filed suit. Hunt sometimes threatened that his client would file suit. He represented to the adjusters that he had researched appropriate amounts for the injuries and made settlement demands. He collected settlement checks and had his clients sign releases. He also signed documents for his clients.

In two cases, Hunt helped prepare and file dissolution forms. The forms indicated the client was proceeding pro se. In one of these cases, Hunt interceded **[**3]** as a "friend of the court" during a hearing at which a superior court judge entered the decree. He later billed the client for this intervention. In another case, Hunt drafted pleadings in response to a motion to modify support. Finally, in one case, Hunt's clients asked him to research some Washington statutes and respond to a letter from the attorney for a well-drilling company with whom they had a dispute. Hunt wrote a letter, based in part on the clients' summary of the facts.

The three unlicensed collection counts were based on debts Hunt either collected or tried to collect for three businesses. In two of the counts, Hunt had the business owner assign him the debt; he then filed a pro se lawsuit seeking payment. In some of the pleadings, however, he listed the original creditor as a plaintiff. In another case, he hounded a **[*799]** drugstore customer about covering a bad check; the drugstore apparently did not assign the debt to Hunt. The clients testified to hiring Hunt to collect their debts; they did not view the transaction as a sale of the debt. In one of the "assignment" cases, Hunt continued to bill his client for various court costs.

The theft count was based on **[**4]** Hunt's representation of two of his personal injury clients, Joe Scott and Pierrette Guimond. As with his other clients, Hunt prepared and had the two sign limited powers of attorney. After settling the cases, he cashed the two settlement checks and had the bank issue seven cashier's checks. One went to each client, several went to doctors, and one went to Hunt's landlord to pay his rent of $ 445. The remainder, $ 683.50, was disbursed to Hunt in cash. The total award was $ 10,200.

The clients became concerned that the amounts of the checks were incorrect, and, after contacting the insurance company to learn the amount of the settlement, requested an accounting, which Hunt did not initially provide. Eventually, he provided an inaccurate accounting. In addition, he told the clients that he believed they had agreed that he would get 7 percent of the settlement for each client, not simply 7 percent of the settlement. He did not list the rent check on the accounting, but did charge the two clients for the $ 5 fee to issue that check.

Eventually, Hunt agreed to remit an additional $ 400 to his clients, but he did not do so until the State filed unlawful practice of law charges. The State **[**5]** filed the theft charges some months after Hunt paid the additional $ 400, even though the clients, by that time, had signed a release indicating they had received full satisfaction from Hunt.

At trial, the prosecution presented evidence that Hunt had poorly represented some of his clients, did not always act in his clients' best interests, and acted unethically or incompetently. Among other things, the state witnesses indicated Hunt did not keep his clients informed of his activities, did not inform clients of the full amount of settlements, reached settlements without consulting with his clients, settled claims **[*800]** of minors without proper safeguards, fought with one of his clients in front of an insurance adjuster, and filed incomplete or improper documents in court. Three lawyers testified: two substantive witnesses who described Hunt's actions representing clients, and Robert Welden, the general counsel to the Washington State Bar Association. Over Hunt's objection, all three lawyers testified as experts as to the definition of the "practice of law".

Hunt testified that he did not represent to anyone that he was a lawyer or could act as one. He also told his clients **[**6]** he could not go to court for them. The defense elicited from several of Hunt's clients that they knew Hunt was acting as a paralegal and not as an attorney.

The jury convicted Hunt on all counts. On appeal, Hunt claims that the law prohibiting unlawful practice of law is unconstitutionally vague, that the evidence was insufficient to convict on the theft and collection agency counts, and that the jury instructions related to the unlawful practice of law charges were erroneous.

UNCONSTITUTIONAL VAGUENESS

The unlawful practice of law, a misdemeanor, is defined in *HN1*[↑] *RCW 2.48.180*. The statute provides, in relevant part:

> Any person who, not being an active member of the

> state bar, . . . as by this chapter provided, shall practice law, or hold himself out as entitled to practice law, shall, except as provided in RCW 19.154.100, be guilty of a misdemeanor[.]

RCW 2.48.180.

Hunt argues that the statutory phrase "practice law" is unconstitutionally vague under the due process clauses of the Fifth and Fourteenth Amendments and under the Washington State Constitution, article 1, section 3. He does not contend, however, that the Washington Constitution provides different or broader **[**7]** protection than the federal constitution.

We note initially that the federal courts have refused to find similar statutes impermissibly vague under the federal constitution. In 1967, the United States Supreme Court dismissed an appeal of an Arizona decision for want of a substantial federal question; the petitioner had challenged a similar **[*801]** Arizona statute as unconstitutionally vague. Hackin v. State, 102 Ariz. 218, 427 P.2d 910, 912, *appeal dismissed,* 389 U.S. 143, 19 L. Ed. 2d. 347, 88 S. Ct. 325 (1967). Since then, other federal courts have followed this binding precedent. Wright v. Lane Cy. Dist. Court, 647 F.2d 940, 941 (9th Cir. 1981); Monroe v. Horwitch, 820 F. Supp. 682, 686 (D. Conn. 1993), *aff'd,* 19 F.3d 9 (1994).

WA[1][↑] [1] WA[2][↑] [2] As we explained in State v. Russell, 69 Wn. App. 237, 245, 848 P.2d 743, *review denied,* 122 Wn.2d 1003, 859 P.2d 603 (1993), HN2[↑]] when a criminal statute does not define words alleged to be unconstitutionally vague, the reviewing court may "look to existing law, ordinary usage, and the general purpose of the statute" to **[**8]** determine whether "the statute meets constitutional requirements of clarity". We must presume that a statute is constitutional; the burden is on the challenger to prove otherwise beyond a reasonable doubt. State v. Coria, 120 Wn.2d 156, 163, 839 P.2d 890 (1992).

WA[3][↑] [3] HN3[↑] Unless the challenger claims a violation of First Amendment rights, we evaluate the statute by looking to the facts of the particular case. Spokane v. Douglass, 115 Wn.2d 171, 182, 795 P.2d 693 (1990). The challenged law

> is tested for unconstitutional vagueness by inspecting the actual conduct of the party who challenges the ordinance and not by examining hypothetical situations at the periphery of the ordinance's scope.

Douglass, 115 Wn.2d at 182-183. Hunt does not claim implication of his First Amendment rights. Thus, we evaluate the statute as applied to Hunt's alleged conduct. *See* Russell, 69 Wn. App. at 245.

WA[4][↑] [4] HN4[↑] A statute violates Fourteenth Amendment due process protections if it fails to provide a fair warning of proscribed conduct. Douglass, 115 Wn.2d at 178. Although some uncertainty is constitutionally **[**9]** permissible, a statute is unconstitutionally vague if:

> (1) . . . [it] does not define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is proscribed, or (2) . . . [it] does not provide ascertainable standards of guilt to protect against arbitrary enforcement.

Douglass, 115 Wn.2d at 178-179.

[*802] WA[5][↑] [5] As Hunt concedes, several Washington cases provide a definition for "practice of law". According to those cases, a person preparing legal forms is practicing law. In re Droker, 59 Wn.2d 707, 719, 370 P.2d 242 (1962); *accord* Bowers v. Transamerica Title Ins. Co., 100 Wn.2d 581, 586, 675 P.2d 193 (1983). The *Droker* court held

> HN5[↑] the term "practice of law" includes not only the doing or performing of services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity with the adopted rules of procedure, but in a larger sense includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured.

59 Wn.2d at 719; **[**10]** *accord* Hagan & Van Camp, P.S. v. Kassler Escrow, Inc., 96 Wn.2d 443, 446-47, 635 P.2d 730 (1981); Washington State Bar Ass'n v. Great W. Union Fed. Sav. and Loan Ass'n, 91 Wn.2d 48, 54, 586 P.2d 870 (1978) (hereinafter *WSBA*); Hecomovich v. Nielsen, 10 Wn. App. 563, 571, 518 P.2d 1081, *review denied,* 83 Wn.2d 1012 (1974).

The Supreme Court expanded on this notion in *WSBA:*

> HN6[↑] the selection and completion of form legal documents, or the drafting of such documents, including deeds, mortgages, deeds of trust, promissory notes and agreements modifying these documents constitutes the practice of law.

WSBA, 91 Wn.2d at 55; *accord* Bowers, 100 Wn.2d at 586; Hagan & Van Camp, 96 Wn.2d at 447. Also, when

"one determines for the parties the kinds of legal documents they should execute to effect their purpose, such is the practice of law." Hecomovich, 10 Wn. App. at 571; *WSBA,* 91 Wn.2d at 58, 60. Services which are ordinarily performed by licensed lawyers and that involve legal rights and obligations were **[**11]** held to be the practice of law in *WSBA.* 91 Wn.2d at 55."*HN7*[] It is the nature and character of the service performed which governs whether given activities constitute the practice of law", not the nature or status of the person performing the services. *WSBA,* 91 Wn.2d at 54; *accord* Hagan & Van Camp, 96 Wn.2d at 448. If the activities in question are the practice of law, then the question is whether the person practicing law is authorized to do so. *WSBA,* at 54.

[*803] *WA[6]*[] [6] The unauthorized practice of law is prohibited to protect the public. *See, e.g.,* Bowers, 100 Wn.2d at 586; Monroe, 820 F. Supp. at 687; Dauphin Cy. Bar Ass'n v. Mazzacaro, 465 Pa. 545, 551-2, 351 A.2d 229, 232-33 (1976); Brown v. Unauthorized Practice of Law Comm., 742 S.W.2d 34, 41-42 (Tex. Ct. App. 1987). As the Washington Supreme Court has stated, "there is no such thing as a simple legal instrument in the hands of a layman." Hagan & Van Camp, 96 Wn.2d at 447 (quoting Washington State Bar Ass'n v. Washington Ass'n of Realtors, 41 Wn.2d 697, 712, 251 P.2d 619 (1952) **[**12]** (Donworth, J., concurring)).

> When a person holds himself out to the public as competent to exercise legal judgment, he implicitly represents that he has the technical competence to analyze legal problems and the requisite character qualifications to act in a representative capacity. When such representations are made by persons not adequately trained or regulated, the dangers to the public are manifest . . ..

Mazzacaro, 465 Pa. at 551, 351 A.2d at 232. As the *Mazzacaro* court noted, a client may entrust confidences, reputation, property, or freedom when he or she entrusts a legal matter to a person practicing law. 465 Pa. at 551, 351 A.2d at 232. The person receiving that trust should be subject to the regulations imposed on lawyers.

WA[7][] [7] Although in certain situations it may be difficult to precisely define the term, "practice of law", Hagan & Van Camp, 96 Wn.2d at 446; *WSBA,* 91 Wn.2d at 54, the general definition is sufficient to allow an ordinary person to know that RCW 2.48.180 proscribes Hunt's conduct. Hunt attempted to settle claims based on negligence liability for clients. When he **[**13]** succeeded, his clients signed forms releasing both the tortfeasor and the insurance company from liability. Insurance companies often issued checks payable to Hunt or to his clients. When representing his clients, Hunt performed legal research and applied the results to the facts of his clients' claims, basing his demands on this application of precedent to facts, and on his analysis of the liability of the insured. When pursuing his clients' tort claims, Hunt documented past and future expenses, prepared affidavits, **[*804]** and mailed discovery demands. He also prepared liens for those providing services to his clients. This conduct is clearly proscribed by RCW 2.48.180; Hunt could not reasonably be surprised by the application of the statute to these activities. *See also* Mazzacaro, 465 Pa. at 554-55, 351 A.2d at 233-34; Brown, 742 S.W.2d at 41-43.

Hunt also performed legal research and drafted, signed, and sent a letter containing several legal assertions or conclusions in response to an attorney's letter to his client. He drafted pleadings and memoranda in response to a motion to modify support; the client filed them, purportedly acting **[**14]** pro se. These actions are also clearly proscribed by the statute.

Hunt also prepared dissolution documents, actually interceding for one dissolution client during a court hearing. *HN8*[] Washington law clearly prohibits an unlicensed person from selecting and completing legal forms for another, necessarily including dissolution forms. *See also* Monroe, 820 F. Supp. at 686-87 (citing to several other courts that have reached the same conclusion). As to the first prong of the vagueness test, an ordinary person would understand that Hunt's actions constituted the practice of law.

WA[8][] [8] Under the due process clause, the statute and the challenged phrase must also provide ascertainable standards of guilt to prevent arbitrary enforcement. A lack of standards allows police, judge, and jury to decide subjectively what conduct violates the law in a given case. Douglass, 115 Wn.2d at 181. However, a statute may require some subjective evaluation by law enforcers; it violates the Fourteenth Amendment "only if it invites an inordinate amount" of discretion. 115 Wn.2d at 181. Even if we assume that the challenged phrase, "practice law", might in **[**15]** some circumstances allow subjective enforcement, as applied here the law is sufficiently defined to prevent inordinately arbitrary enforcement.

WA[9][] [9] Hunt seems to argue that because he claimed to be a paralegal, RCW 2.48.180 is

unconstitutionally vague as applied to him. We disagree. HN9[] A paralegal is "[a] person with legal skills, but who is not an attorney, and who works under the supervision of a lawyer in performing various **[*805]** tasks relating to the practice of law or who is otherwise authorized by law to use those legal skills." Black's Law Dictionary 1111 (6th ed. 1990). Hunt did not work under the supervision of any attorney. His claimed paralegal status does not exempt him from RCW 2.48.180 or make the statute any less sufficiently definite as applied to his clearly proscribed conduct. *See also* Monroe, 820 F. Supp. at 684, 686-87; State v. Thierstein, 220 Neb. 766, 769-70, 371 N.W.2d 746, 748 (1985).

Hunt also appears to argue that the existence of statutes allowing the use of powers of attorney makes the phrase "practice of law" unconstitutionally vague as applied to his actions. He contends that since he essentially became **[**16]** his clients by virtue of the powers of attorney, he could then act pro se for himself/them. A person may represent himself or herself pro se. A person can also draft legal documents to which he or she is a party. Both these exceptions are narrow and limited. *WSBA,* 91 Wn.2d at 56-57.

WA[10][] [10] The exceptions do not apply to Hunt's conduct because (1) "a layperson who receives compensation for such legal services may not rely upon the 'pro se' exception" [1] **[**17]** and (2) Hunt was not performing services solely on his own behalf. [2] The Supreme Court of Alaska has decided that a statutory power of attorney does not authorize the agent to act pro se in the place of the principal. Christiansen v. Melinda, 857 P.2d 345 (Alaska 1993). Furthermore, to the extent that Washington's statutes allowing use of powers of attorney would allow the unlicensed practice of law, they are unconstitutional. *See* Hagan & Van Camp, 96 Wn.2d at 451-53. If the Legislature purported to allow laypersons to practice law, it impermissibly usurped the power of the courts and violated the separation of powers doctrine. 96 Wn.2d at 451-53.

INSUFFICIENCY OF THE EVIDENCE

WA[11][] [11] Hunt contends the State presented insufficient evidence to support the guilty verdicts; he provides argument **[*806]** only as to the theft and collection agency counts. Evidence is sufficient to support a conviction if, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Seattle v. Slack, 113 Wn.2d 850, 859, 784 P.2d 494 (1989).

WA[12][] [12] Hunt does not assign error to the instructions governing the theft charge. Unchallenged instructions are the law of the case. State v. Ng, 110 Wn.2d 32, 39, 750 P.2d 632 (1988). The instructions provide that the State need not prove a permanent intent to deprive the victims of their money. They also provide that the State must prove Hunt "did not appropriate" the money "openly and avowedly under a good faith claim of title". Hunt's insufficiency argument is based on his "good faith" defense.

When **[**18]** Hunt cashed the settlement checks, he disbursed the funds via several cashier's checks, including one to his landlord, and he took the remainder in cash. He initially provided no accounting and did not tell his clients how much the insurance company had paid. To this extent, his "appropriation" was not "open". When his clients confronted him with what they believed were discrepancies, he was flustered and belligerent and threatened to sue them for additional fees. He eventually provided an inaccurate accounting and claimed he was entitled to 14 percent of the total settlement. He never informed his clients of the cashier's check issued to pay his rent, although he charged them the fee for issuing it. He finally agreed that he might have calculated his fees incorrectly and agreed to repay $ 400; eventually, he actually paid this amount. These facts are sufficient to prove an intent to wrongfully deprive, even if the deprivation was not permanent.

Hunt's argument as to the collection agency counts is that he was simply collecting debts assigned to him. However, the evidence is otherwise. Witnesses testified that Hunt was acting as their agent to collect debts; some of Hunt's pleadings **[**19]** designated the original creditor as plaintiff and Hunt obtained various filing fees from the original creditors. All **[*807]** these acts are inconsistent with one who has purchased a debt. This evidence is sufficient to support the conviction.

INSTRUCTIONS

Hunt finally claims that the trial court erred when it issued instructions 13 through 16 defining the practice of law and instructions 20 through 31 using the term "representation" to describe Hunt's relationship to his

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[1] *WSBA,* 91 Wn.2d at 57.

[2] *See* Hagan & Van Camp, 96 Wn.2d at 451.

clients. Instruction 13 [3] **[**20]** simply restates *RCW 2.48.180*. Instruction 14 [4] accurately defines the practice of law as defined by the Washington cases we discussed above. Instruction 15 explains that a person may practice law on his own behalf but "cannot transfer his 'pro se' right to practice law to any other person". As we earlier explained, this is also an accurate statement of Washington law. Instruction 16 describes powers of attorney and states: "A power of attorney does not authorize the practice of law." As noted above, this too is an accurate statement of Washington law.

The use of the term "representation" in the "to convict" instructions (*i.e.,* "[t]he defendant practiced law through his representation of Thomas and Beverly Lee") does not appear to unfairly suggest guilt, as argued to the trial court. As the trial court noted, the term is not used solely in regard to lawyers. Factually, it is correct: Hunt had clients; he represented them. The trial court did not err in instructing the jury as it did.

[*808] Affirm.

[21]** Morgan, C.J., and Houghton, J., concur.

Review denied at *125 Wn.2d 1009, 889 P.2d 498, 1994 Wash. LEXIS 755 (1994).*

End of Document

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[3] Instruction 13 states: "A person commits the crime of unlawful practice of law when, not being an active member of the State Bar, he practices law or holds himself out as entitled to practice law."

[4] Instruction 14 states:

> "The practice of law means:
>
> "(1) Doing or performing services in the courts of justice, and/or;
>
> "(2) Giving legal advice and counsel, and/or;
>
> "(3) The preparation of legal instructions and contracts by which legal rights and obligations are established, including the completion of pre-printed legal document forms.

"The completion of pre-printed legal forms, preparation of legal instruments and the giving of legal advice and counsel are the practice of law irrespective of whether they are used in an action or proceeding pending in a court.

"Items (1), (2), and (3) are alternatives and only one need be proven."

Wash. GR 24

Wash. GR 24

Current with rules received by the publisher through April 25, 2018

Washington Court Rules > STATE RULES > PART I. RULES OF GENERAL APPLICATION > GENERAL RULES (GR)

Rule 24. Definition of the practice of law

(a) General definition: The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. This includes but is not limited to:

(1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.

(2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).

(3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

(4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

RCW 2.48.180

WASHINGTON STATE LEGISLATURE

RCW 2.48.180

Definitions—Unlawful practice a crime—Cause for discipline—Unprofessional conduct —Defense—Injunction—Remedies—Costs—Attorneys' fees—Time limit for action.

(1) As used in this section:

(a) "Legal provider" means an active member in good standing of the state bar, and any other person authorized by the Washington state supreme court to engage in full or limited practice of law;

(b) "Nonlawyer" means a person to whom the Washington supreme court has granted a limited authorization to practice law but who practices law outside that authorization, and a person who is not an active member in good standing of the state bar, including persons who are disbarred or suspended from membership;

(c) "Ownership interest" means the right to control the affairs of a business, or the right to share in the profits of a business, and includes a loan to the business when the interest on the loan is based upon the income of the business or the loan carries more than a commercially reasonable rate of interest.

(2) The following constitutes unlawful practice of law:

(a) A nonlawyer practices law, or holds himself or herself out as entitled to practice law;

(b) A legal provider holds an investment or ownership interest in a business primarily engaged in the practice of law, knowing that a nonlawyer holds an investment or ownership interest in the business;

(c) A nonlawyer knowingly holds an investment or ownership interest in a business primarily engaged in the practice of law;

(d) A legal provider works for a business that is primarily engaged in the practice of law, knowing that a nonlawyer holds an investment or ownership interest in the business; or

(e) A nonlawyer shares legal fees with a legal provider.

(3)(a) Unlawful practice of law is a crime. A single violation of this section is a gross misdemeanor.

(b) Each subsequent violation of this section, whether alleged in the same or in subsequent prosecutions, is a class C felony punishable according to chapter 9A.20 RCW.

(4) Nothing contained in this section affects the power of the courts to grant injunctive or other equitable relief or to punish as for contempt.

(5) Whenever a legal provider or a person licensed by the state in a business or profession is convicted, enjoined, or found liable for damages or a civil penalty or other equitable relief under this section, the plaintiff's attorney shall provide written notification of the judgment to the appropriate regulatory or disciplinary body or agency.

(6) A violation of this section is cause for discipline and constitutes unprofessional conduct that could result in any regulatory penalty provided by law, including refusal, revocation, or suspension of a business or professional license, or right or admission to practice. Conduct that constitutes a violation of this section is unprofessional conduct in violation of RCW 18.130.180.

(7) In a proceeding under this section it is a defense if proven by the defendant by a preponderance of the evidence that, at the time of the offense, the conduct alleged was authorized

by the rules of professional conduct or the admission to practice rules, or Washington business and professions licensing statutes or rules.

(8) Independent of authority granted to the attorney general, the prosecuting attorney may petition the superior court for an injunction against a person who has violated this chapter. Remedies in an injunctive action brought by a prosecuting attorney are limited to an order enjoining, restraining, or preventing the doing of any act or practice that constitutes a violation of this chapter and imposing a civil penalty of up to five thousand dollars for each violation. The prevailing party in the action may, in the discretion of the court, recover its reasonable investigative costs and the costs of the action including a reasonable attorney's fee. The degree of proof required in an action brought under this subsection is a preponderance of the evidence. An action under this subsection must be brought within three years after the violation of this chapter occurred.

[**2003 c 53 § 2; 2001 c 310 § 2.** Prior: **1995 c 285 § 26; 1989 c 117 § 13; 1933 c 94 § 14;** RRS § 138-14.]

NOTES:

Rules of court: *RLD 1.1(h).*

Intent—2003 c 53: "The legislature intends by this act to reorganize criminal provisions throughout the Revised Code of Washington to clarify and simplify the identification and referencing of crimes. It is not intended that this act effectuate any substantive change to any criminal provision in the Revised Code of Washington." [**2003 c 53 § 1.**]

Effective date—2003 c 53: "This act takes effect July 1, 2004." [**2003 c 53 § 423.**]

Purpose—2001 c 310: "The purpose of this act is to respond to *State v. Thomas*, 103 Wn. App. 800, by reenacting and ranking, without changes, legislation relating to the crime of unlawful practice of law, enacted as sections 26 and 27, chapter 285, Laws of 1995." [**2001 c 310 § 1.**]

Effective date—2001 c 310: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2001]." [**2001 c 310 § 5.**]

Effective date—1995 c 285: See RCW **48.30A.900.**

*Practicing law with disbarred attorney: RCW **2.48.220**(9).*

RCW 18.130.190

WASHINGTON STATE LEGISLATURE

RCW 18.130.190

Practice without license—Investigation of complaints—Cease and desist orders—Injunctions—Penalties.

(1) The secretary shall investigate complaints concerning practice by unlicensed persons of a profession or business for which a license is required by the chapters specified in RCW 18.130.040. In the investigation of the complaints, the secretary shall have the same authority as provided the secretary under RCW 18.130.050.

(2) The secretary may issue a notice of intention to issue a cease and desist order to any person whom the secretary has reason to believe is engaged in the unlicensed practice of a profession or business for which a license is required by the chapters specified in RCW 18.130.040. The person to whom such notice is issued may request an adjudicative proceeding to contest the charges. The request for hearing must be filed within twenty days after service of the notice of intention to issue a cease and desist order. The failure to request a hearing constitutes a default, whereupon the secretary may enter a permanent cease and desist order, which may include a civil fine. All proceedings shall be conducted in accordance with chapter 34.05 RCW.

(3) If the secretary makes a final determination that a person has engaged or is engaging in unlicensed practice, the secretary may issue a cease and desist order. In addition, the secretary may impose a civil fine in an amount not exceeding one thousand dollars for each day upon which the person engaged in unlicensed practice of a business or profession for which a license is required by one or more of the chapters specified in RCW 18.130.040. The proceeds of such fines shall be deposited to the health professions account.

(4) If the secretary makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the secretary may issue a temporary cease and desist order. The person receiving a temporary cease and desist order shall be provided an opportunity for a prompt hearing. The temporary cease and desist order shall remain in effect until further order of the secretary. The failure to request a prompt or regularly scheduled hearing constitutes a default, whereupon the secretary may enter a permanent cease and desist order, which may include a civil fine.

(5) Neither the issuance of a cease and desist order nor payment of a civil fine shall relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy of a cease and desist order or civil fine shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed practice and may be enforced under RCW 7.21.060. This method of enforcement of the cease and desist order or civil fine may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders set out in chapter 34.05 RCW.

(6) The attorney general, a county prosecuting attorney, the secretary, a board, or any person may in accordance with the laws of this state governing injunctions, maintain an action in the name of this state to enjoin any person practicing a profession or business for which a license is required by the chapters specified in RCW 18.130.040 without a license from engaging in such practice or operating such business until the required license is secured. However, the injunction shall not relieve the person so practicing or operating a business without a license from criminal prosecution

therefor, but the remedy by injunction shall be in addition to any criminal liability.

(7)(a) Unlicensed practice of a profession or operating a business for which a license is required by the chapters specified in RCW **18.130.040**, unless otherwise exempted by law, constitutes a gross misdemeanor for a single violation.

(b) Each subsequent violation, whether alleged in the same or in subsequent prosecutions, is a class C felony punishable according to chapter **9A.20** RCW.

(8) All fees, fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be remitted to the health professions account.

[**2003 c 53 § 141; 2001 c 207 § 2.** Prior: **1995 c 285 § 35; 1993 c 367 § 19; 1991 c 3 § 271;** prior: **1989 c 373 § 20; 1989 c 175 § 71; 1987 c 150 § 7; 1986 c 259 § 11; 1984 c 279 § 19.**]

NOTES:

Intent—Effective date—2003 c 53: See notes following RCW **2.48.180**.

Purpose—2001 c 207: "The purpose of this act is to respond to *State v. Thomas*, 103 Wn. App. 800, by reenacting and ranking, without changes, legislation relating to the crime of unlicensed practice of a profession or a business, enacted as section 35, chapter 285, Laws of 1995." [**2001 c 207 § 1.**]

Effective date—2001 c 207: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2001]." [**2001 c 207 § 4.**]

Effective date—1995 c 285: See RCW **48.30A.900**.

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

Severability—1987 c 150: See RCW **18.122.901**.

Severability—1986 c 259: See note following RCW **18.130.010**.

EXHIBIT 15

Lynda Guernsey

From: Lynda Guernsey
Sent: Thursday, June 21, 2018 2:38 PM
To: Gary N. McLean
Subject: FW: Stabbert Response to Motion Strike PAPL00-18-0001 & PAPL00-18-002
Attachments: 53093846-v1_Response to Motion to Strike.pdf

Hi Gary,

Please see the email below and attachment regarding the Evans appeals PAPL00-18-0001 and 0002.

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: Karla Lopez <KarlaL@stabbertmaritime.com>
Sent: Thursday, June 21, 2018 12:39 PM
To: Lynda Guernsey <LyndaG@sanjuanco.com>; Julie Thompson <JulieT@sanjuanco.com>; Erika Shook <erikas@sanjuanco.com>; Dan Stabbert <dan@stabbertmaritime.com>; Karla Lopez <KarlaL@stabbertmaritime.com>
Cc: kelsey@maritimeinjury.com; tom@maritimeinjury.com
Subject: Stabbert Response to Motion Strike PAPL00-18-0001 & PAPL00-18-002

Good Afternoon,

Attached please find the Stabbert's response.

Thank you,

Karla Lopez
Executive Assistant

Lynda Guernsey

From:	Karla Lopez <KarlaL@stabbertmaritime.com>
Sent:	Thursday, June 21, 2018 12:39 PM
T	Lynda Guernsey; Julie Thompson; Erika Shook; Dan Stabbert; Karla Lopez
Cc:	kelsey@maritimeinjury.com; tom@maritimeinjury.com
Subject:	Stabbert Response to Motion Strike PAPL00-18-0001 & PAPL00-18-002
Attachments:	53093846-v1_Response to Motion to Strike.pdf

Good Afternoon,

Attached please find the Stabbert's response.

Thank you,

Karla Lopez
Executive Assistant

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. PAPL00-18-0001 PAPL00-18-0002 (re: PPROVO-17-00065 and PPROVO-17-0066) RESPONSE TO MOTION TO STRIKE

Appellant has filed a motion to strike that raises two issues. First, Appellant argues Stabbert failed to file a motion to dismiss because of a technicality. Stabbert concedes that the motion to dismiss included the file numbers of appealed permits, not the appeal file number. This technicality did not prejudice Appellant and provides no basis to strike the Stabberts' motion. Stabbert filed the motion as directed in the Hearing Examiner's pre-hearing order. Appellant, San Juan County, and the Hearing Examiner received the motion. Appellant has even responded to the motion through his motion to strike. Appellant cites no authority in San Juan County Code 2.22.200 that would provide a legal basis to strike an entire motion based upon this technicality. There is no basis to strike here.

Dan Stabbert
2629 NW 54th St., #201
Seattle, WA 98107
Email: dan@stabbertmaritime.com
(206) 547-6161

Second, Appellant's motion to strike argues that Stabbert cites unverified facts. Appellant does not identify what facts are at issue, presumably leaving the Hearing Examiner to guess what facts are at issue. It is possible that Appellant is arguing that the Hearing Examiner should strike the entire motion because Stabbert did not include the language "*under penalty of perjury*" above his signature. Again, Appellant does not cite any authority in the San Juan County Code 2.22.200 that would provide a legal basis to strike an entire motion here. Appellant also fails to acknowledge that the County's record for the permit provides the factual basis for the County's decision and Stabberts' motion to dismiss.

For the foregoing reasons, Stabbert requests that the Hearing Examiner deny Appellant's motion to strike.

DATED this 21 day of June, 2018.

By: _____

Dan Stabbert
2629 NW 54th St., #201
Seattle, WA 98107
dan@stabbertmaritime.com

Dan Stabbert
2629 NW 54th St., #201
Seattle, WA 98107
Email: dan@stabbertmaritime.com
(206) 547-6161

CERTIFICATE OF SERVICE

I certify that on this date, I filed a copy of the Response to Motion to Strike 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 lyndag@sanjuanco.com	[ ] Via Facsimile [ ] Via Legal Messenger [X] Via Efile/Email [X] 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 kelsey@maritimeinjury.com *Attorney for Thomas C. Evans*	[ ] Via Facsimile [ ] Via Legal Messenger [X] Via Email [ ] Via US Mail, postage prepaid
Thomas C. Evans PO Box 408 Olga, WA 98112 360-376=5987 tom@maritimeinjury.com kelsey@maritimeinjury.com *Attorney for Box Bay Shellfish Farm LLC*	

Dated this 21 day of June, 2018, at Seattle, Washington.

53093846 1

EXHIBIT 16

Lynda Guernsey

From: Julie Thompson
Sent: Friday, June 22, 2018 1:15 PM
To: 'Gary N. McLean'
Cc: Erika Shook; Lynda Guernsey
Subject: FW: Evans/Box Bay adv. Stabbert: PAPL00-18-0001 and PAPL00-18-0002 Reply
Attachments: Reply Box Bay.pdf; Reply TCE.pdf

Hi Gary,
Since Lynda is out today, I'm forwarding this to her. I copied her so she would know that I haven't done anything else with it.

Have a great weekend.
Julie

From: Kelsey Demeter <kelsey@maritimeinjury.com>
Sent: Friday, June 22, 2018 12:47 PM
To: Erika Shook <erikas@sanjuanco.com>; Julie Thompson <JulieT@sanjuanco.com>; Community Development <cdp@sanjuanco.com>; Lynda Guernsey <LyndaG@sanjuanco.com>
Cc: Kelsey Demeter <kelsey@maritimeinjury.com>; dan@stabbertmaritime.com; karlal@stabbertmaritime.com; Tom Evans <tom@maritimeinjury.com>
Subject: Evans/Box Bay adv. Stabbert: PAPL00-18-0001 and PAPL00-18-0002 Reply

Good Afternoon,

Please find the Reply of Box Bay Shellfish Farm LLC and Thomas C. Evans, pro se, regarding Respondents Motion to Dismiss.

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: Kelsey Demeter <kelsey@maritimeinjury.com>
Sent: Friday, June 22, 2018 12:47 PM
Erika Shook; Julie Thompson; Community Development; Lynda Guernsey
Cc: Kelsey Demeter; dan@stabbertmaritime.com; karlal@stabbertmaritime.com; Tom Evans
Subject: Evans/Box Bay adv. Stabbert: PAPL00-18-0001 and PAPL00-18-0002 Reply
Attachments: Reply Box Bay.pdf; Reply TCE.pdf

Good Afternoon,

Please find the Reply of Box Bay Shellfish Farm LLC and Thomas C. Evans, pro se, regarding Respondents Motion to Dismiss.

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

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BEFORE THE SAN JUAN COUNTY HEARING EXAMINER

THOMAS C. EVANS, BOX BAY SHELLFISH FARM LLC, Appellants v. DAN AND CHERYL STABBERT; SAN JUAN COUNTY PLANNING DEPARTMENT, Respondents	PAPL00-18-0001 PAPL00-18-0002 **REPLY TO RESPONDENTS MOTION TO DISMISS**

COMES NOW Box Bay Shellfish Farm LLC and offers its Reply to Respondents Motion to Dismiss.

REPLY

(1) Prejudice – Stabbert's "Motion" fails to distinguish what appeal it is aimed at. Is it Box Bay? Is it Evans? The fact allegations sometimes seem to apply only to Box Bay, other times only Evans. At some point one or both appellants will be filing a LUPA action (to determine for finality purposes the issue of whether VRBOs are categorically exempt under the SMA). IF the document is filed the record will be completely corrupted.

(2) *There is nothing on file at this point. Stabbert filed a request* that the clerk change the captions and re-file. Clerks don't do this. They are not there to correct filing errors and it

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

would be improper for them to start doing so. The proper procedure is the Motion document should have been or should now be returned to Stabbert. *Right now there is nothing* in this record about a Stabbert motion to dismiss. It is the Examiners responsibility to maintain a correct record and if an Examiner considers documents that are not actually filed, or argument not properly verified, then that becomes a potential assignment of error for reversal on appeal.

(3) Stabbert doesn't seem to "get it" as to legal requirements for sworn statements. State law and the other authority, as well as case precedent clearly already cited holds a failure to include, at a minimum, the language "sworn to under penalty of perjury" means the document is defective. This is not a rule an Examiner can excuse either. If an Examiner gives the same weight to this document as sworn assertions, that, too, constitutes grounds for assignment of error.

Respectfully submitted this 22nd day of June, 2018

/s/ Thomas C. Evans
Thomas C. Evans, Manager
Box Bay Shellfish Farm LLC

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

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I served the above document on the following individuals in the manner identified.

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

[X] Via Email
[X] Via US Mail, postage prepaid

Dan Stabbert
dan@stabbertmaritime.com
2629 NW 54th St., #201
Seattle, WA 98107
P: 206-547-6161
F: 206-547-6010
Dan & Cheryl Stabbert
Dan Stabbert, *pro se*

[X] Via Email
[X] Via US Mail, postage prepaid

Dated this 22nd day of June, 2018

s/ Kelsey Demeter
Kelsey Demeter, Paralegal

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

BEFORE THE SAN JUAN COUNTY HEARING EXAMINER

THOMAS C. EVANS, BOX BAY SHELLFISH FARM LLC, Appellants v. DAN AND CHERYL STABBERT; SAN JUAN COUNTY PLANNING DEPARTMENT, Respondents	PAPL00-18-0001 PAPL00-18-0002 **REPLY TO RESPONDENTS MOTION TO DISMISS**

COMES NOW Thomas C. Evans, *pro se* and offers his Reply to Respondents Motion to Dismiss.

REPLY

(1) Prejudice – Stabbert's "Motion" fails to distinguish what appeal it is aimed at. Is it Box Bay? Is it Evans? The fact allegations sometimes seem to apply only to Box Bay, other times only Evans. At some point one or both appellants will be filing a LUPA action (to determine for finality purposes the issue of whether VRBOs are categorically exempt under the SMA). IF the document is filed the record will be completely corrupted.

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SEATTLE, WASHINGTON 98112
TELEPHONE (206) 527-8008

would be improper for them to start doing so. The proper procedure is the Motion document should have been or should now be returned to Stabbert. *Right now there is nothing* in this record about a Stabbert motion to dismiss. It is the Examiners responsibility to maintain a correct record and if an Examiner considers documents that are not actually filed, or argument not properly verified, then that becomes a potential assignment of error for reversal on appeal.

(3) Stabbert doesn't seem to "get it" as to legal requirements for sworn statements. State law and the other authority, as well as case precedent clearly already cited holds a failure to include, at a minimum, the language "sworn to under penalty of perjury" means the document is defective. This is not a rule an Examiner can excuse either. If an Examiner gives the same weight to this document as sworn assertions, that, too, constitutes grounds for assignment of error.

Respectfully submitted this 22nd day of June, 2018

/s/ Thomas C. Evans
Thomas C. Evans, *pro se*

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

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I served the above document on the following individuals in the manner identified.

San Juan Hearing Examiner Department of Community Development P.O. Box 947 Friday Harbor, WA 98250 dcd@sanjuanco.com LyndaG@sanjuanco.com EricaS@sanjuanco.com JulieT@sanjuanco.com	[X] Via Email [X] Via US Mail, postage prepaid
Dan Stabbert dan@stabbertmaritime.com 2629 NW 54th St., #201 Seattle, WA 98107 P: 206-547-6161 F: 206-547-6010 Dan & Cheryl Stabbert Dan Stabbert, *pro se*	[X] Via Email [X] Via US Mail, postage prepaid

Dated this 22nd day of June, 2018

s/ Kelsey Demeter
Kelsey Demeter, Paralegal

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

EXHIBIT 17

MADISON
PARK LAW
OFFICES

THOMAS C. EVANS

June 20, 2018

US Mail and E-mail
dcd@sanjuanco.com
LyndaG@sanjuanco.com
EricaS@sanjuanco.com
JulieT@sanjuanco.com
Attn: San Juan Hearing Examiner
Department of Community Development
PO Box 947
Friday Harbor, WA 98250

S.J.C. DEPARTMENT OF
JUN 25 2018
COMMUNITY DEVELOPMENT

Karla Lopez c/o Stabbert Maritime
karla@stabbertmaritime.com
Dan Stabbert
dan@stabbertmaritime.com
2629 NW 54th St., #201
Seattle, WA 98107

Re: Unauthorized Practice of Law – Karla Lopez: Stabbert Maritime document selection and filing under PPROVO-17-0065 *opposed to* PAPL00-18-001 & PAPL00-18-002

Good Afternoon:

We received an email from Karla Lopez yesterday, June 19, 2018 at 3:30 PM. Therein Ms. Lopez appears to be acting on behalf of and intending to represent Mr. Stabbert in the above proceedings. The e-mail states in pertinent part:

> "I wish to offer apologizes for referencing only our SJC Permit... in my email motion dated last Friday June 15, 2018... I would like to include for our appeal Ref. # PAPL00-18-0001 and PAPLL00-18-002. ***This is our first time navigating through such a legal maze I will ensure to be more cautious in the future to avoid a similar mistake."***

The above suggests Ms. Lopez will be handling the "legal maze" and sends apologizes for improperly filing a determinative motion. A personal secretary may certainly mail documents, and handle secretarial tasks. But selecting filing numbers and being responsible for a "legal maze" is something entirely different and rises to the level of unauthorized practice of law.

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TOLL FREE 1-800-SEA-SALT
www.injuryatsea.com

EMAIL tom@maritimeinjury.com

A quasi-judicial proceeding, which this clearly is, is not intended to be a playground for someone wanting to play lawyer. A quasi-judicial proceeding is in very many ways just like a trial proceeding in Superior Court, with very serious potential rulings affecting participant's property rights. A failure in fundamental procedure, including allowing unauthorized persons to represent parties, is grounds for vacation of the proceedings.

Ms. Lopez and Mr. Stabbert appear to have no concept of the seriousness of the legal proceedings in which they are now engaged. This is not a "permit counter" where no specific rules apply. This is equivalent to a Court of Law which will make findings of fact, legal rulings, verbatim record of proceedings. The Examiner has the responsibility to enforce required procedure.

Under State statue case law, and SJC 2.22.200(F)(6)(a), and the State penal code, Ms. Lopez is practicing law without a license, and may not represent Mr. Stabbert (who has the right to appear *pro se*, so long as he does it on his own) and is subject to potential criminal prosecution under RCW 18.130.190. Please see PDFs attached which contain copies of the referenced State statue, as well as a copy of a criminal case where an individual was convicted of the crime of practicing law without a license. See: *State v. Hunt* 75 Wn. App. 795 (1995).

Choosing case numbers for filing, determining whether or not to file in one or both of these proceedings, improperly filing critical pleadings, filing improperly certified testimony, and filing pleadings that are viciously personal, are all evidence of the unauthorized practice of law.

If I receive one more email, piece of paper, or other evidence of Ms. Lopez's participation in these proceedings on a representation basis (secretarial acts are obviously ok), I will refer the documentation involved to and file a request with the Washington State Bar Association to look into her Unauthorized Practice of Law. Further, if they do, in the future, find unauthorized practice of law, I will ask for a referral to the King County Prosecutors Office for the filing of criminal a criminal complaint.

At this point, the Examiner needs to take control of these proceedings – advise Mr. Stabbert that he may, and only him personally, undertake all of the activities described as the practice of law, but in so doing is will be held accountable for the same professional conduct of an attorney. (*Hangman Ridge Training Stables v. Safeco*, 33 Wn. App. 129 (1982). Further, the Examiner must not excuse the inexcusable. The Motion To Dismiss was not properly filed and is no longer timely. The defective and unsworn statements made by Mr. Stabbert should be stricken and the document should be returned to Mr. Stabbert.

I trust I have made my position very clear. I expect direction and a determination on these issues and in a timely fashion.

Very Truly Yours,

/s/ Thomas C. Evans
Thomas C. Evans
Pro se

/s/ Thomas C. Evans
Thomas C. Evans
Box Bay Shellfish Farm LLC

ATTACHMENTS:

State v. Hunt 75 Wn. App. 795 (1995)

Wash. GR 24

RCW 2.48.180

RCW 18.130.190

State v. Hunt 75 Wn. App. 795 (1995)

Positive
As of: June 20, 2018 7:20 PM Z

State v. Hunt

Court of Appeals of Washington, Division Two

July 28, 1994, Filed

No. 15560-5-II

Reporter
75 Wn. App. 795 *; 1994 Wash. App. LEXIS 408 **; 880 P.2d 96

THE STATE OF WASHINGTON, *Respondent*, v. JERRY NATHAN HUNT, Appellant.

Subsequent History: [1]** Order Granting Motions to Publish Opinion September 20, 1994, Reported at: *1994 Wash. App. LEXIS 407*. Petition for Review Denied December 7, 1994, Reported at: *125 Wn.2d 1009, 889 P.2d 498, 1994 Wash. LEXIS 755*.

Core Terms

practice of law, settlement, instructions, counts, documents, pro se, services, unconstitutionally vague, unlawful practice, cases, proscribed, paralegal, checks, theft, preparation, accounting, drafted, lawyers

Case Summary

Procedural Posture

Defendant paralegal sought review of the decision of the Superior Court of Kitsap County (Washington), which convicted him of the unlawful practice of law, a misdemeanor, in violation of *Wash. Rev. Code § 2.48.180*. He was also convicted of operating as a collection agency without a license and for theft.

Overview

Although he did not represent himself as an attorney, defendant performed legal research, drafted pleadings, and performed other such legal work for his clients. The State demonstrated that he had poorly represented some of his clients and acted unethically. Defendant appealed his conviction and on review, the court affirmed. The court held that *Wash. Rev. Code § 2.48.180*, which prohibited the unlawful practice of law, was not unconstitutionally vague, that the evidence was sufficient to convict him on the theft and collection agency counts, and that the jury instructions related to the unlawful practice of law charges were not erroneous. The court found that the nature and character of the services he performed, which included preparing forms and interceding during a hearing, were in clear violation of the law, which prohibited an unlicensed person from conducting such activities. The Due Process Clauses of the Fifth and Fourteenth Amendments, § 2.48.180, and the phrase "practice law" were sufficiently defined to prevent inordinately arbitrary enforcement. Further, the definition of the challenged phrase allowed an ordinary person to know that *§ 2.48.180* proscribed his conduct.

Outcome

The court affirmed defendant's conviction for the unlawful practice of law and on theft and collection agency violations.

LexisNexis® Headnotes

Legal Ethics > Unauthorized Practice of Law

HN1[] **Legal Ethics, Unauthorized Practice of Law**

See Wash. Rev. Stat. *§ 2.48.180*.

Criminal Law & Procedure > Appeals > Standards of Review > General Overview

Governments > Legislation > Interpretation

Governments > Legislation > Vagueness

HN2[] **Appeals, Standards of Review**

When a criminal statute does not define words alleged

to be unconstitutionally vague, the reviewing court looks to existing law, ordinary usage, and the general purpose of the statute to determine whether the statute meets constitutional requirements of clarity. The reviewing court presumes that a statute is constitutional; the burden is on the challenger to prove otherwise beyond a reasonable doubt.

Constitutional Law > ... > Fundamental Freedoms > Judicial & Legislative Restraints > Overbreadth & Vagueness of Legislation

Criminal Law & Procedure > Appeals > Standards of Review > General Overview

Governments > Legislation > Vagueness

Constitutional Law > Bill of Rights > Fundamental Freedoms > General Overview

Constitutional Law > ... > Fundamental Freedoms > Judicial & Legislative Restraints > General Overview

Governments > Legislation > Interpretation

HN3[] Judicial & Legislative Restraints, Overbreadth & Vagueness of Legislation

Unless the challenger claims a violation of First Amendment rights, a reviewing court evaluates the statute by looking to the facts of the particular case. The challenged law is tested for unconstitutional vagueness by inspecting the actual conduct of the party who challenges the ordinance and not by examining hypothetical situations at the periphery of the ordinance's scope.

Constitutional Law > Substantive Due Process > Scope

Governments > Legislation > Overbreadth

Governments > Legislation > Vagueness

HN4[] Constitutional Law, Substantive Due Process

A statute violates Fourteenth Amendment due process protections if it fails to provide a fair warning of proscribed conduct. Although some uncertainty is constitutionally permissible, a statute is unconstitutionally vague if it: (1) does not define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is proscribed, or (2) it does not provide ascertainable standards of guilt to protect against arbitrary enforcement.

Legal Ethics > Unauthorized Practice of Law

HN5[] Legal Ethics, Unauthorized Practice of Law

The term "practice of law" includes not only the doing or performing of services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity with the adopted rules of procedure, but in a larger sense includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured.

Business & Corporate Compliance > ... > Trusts > Trust Administration > Modification & Termination

Legal Ethics > Unauthorized Practice of Law

HN6[] Trust Administration, Modification & Termination

The selection and completion of form legal documents, or the drafting of such documents, including deeds, mortgages, deeds of trust, promissory notes and agreements modifying these documents constitutes the practice of law.

Legal Ethics > Unauthorized Practice of Law

HN7[] Legal Ethics, Unauthorized Practice of Law

It is the nature and character of the service performed which governs whether given activities constitute the practice of law, not the nature or status of the person performing the services. If the activities in question are the practice of law, then the question is whether the person practicing law is authorized to do so.

Legal Ethics > Unauthorized Practice of Law

HN8[] Legal Ethics, Unauthorized Practice of Law

Washington law clearly prohibits an unlicensed person from selecting and completing legal forms for another, necessarily including dissolution forms.

Legal Ethics > Unauthorized Practice of Law

HN9[] Legal Ethics, Unauthorized Practice of Law

A paralegal is a person with legal skills, but who is not an attorney, and who works under the supervision of a lawyer in performing various tasks relating to the practice of law or who is otherwise authorized by law to use those legal skills.

Headnotes/Syllabus

Summary

Nature of Action: Prosecution for 12 counts of unlawful practice of law, 3 counts of unlicensed operation as a collection agency, and 1 count of second degree theft.

Superior Court: The Superior Court for Kitsap County, No. 91-1-00525-5, James D. Roper, J., on December 10, 1991, entered a judgment on a verdict of guilty of all the charges.

Court of Appeals: Holding that the statute prohibiting nonlawyers from practicing law is not unconstitutionally vague, that there was sufficient evidence to convict on the collection agency and theft counts, and that the instructions were proper, the court *affirms* the judgment.

Headnotes

WASHINGTON OFFICIAL REPORTS HEADNOTES

WA[1][] [1]

Criminal Law > Statutes > Vagueness > Undefined Language > Factors

When a criminal statute does not define words alleged to be unconstitutionally vague, a reviewing court may look to existing law, ordinary usage, and the general purpose of the statute to determine whether the statute meets constitutional requirements of clarity.

WA[2][] [2]

Statutes > Validity > Presumption > Burden of Proof > Degree of Proof

A statute is presumed to be constitutional; the burden is on the challenger to prove otherwise beyond a reasonable doubt.

WA[3][] [3]

Criminal Law > Statutes > Vagueness > Particular Conduct > No First Amendment Issue

Absent a claimed violation of the First Amendment, the vagueness of a criminal statute is determined by examining its application to the defendant's alleged conduct, not to hypothetical situations within the periphery of the scope of the statute.

WA[4][] [4]

Criminal Law > Statutes > Vagueness > Test

A criminal statute is unconstitutionally vague if (1) it does not define the crime with sufficient definiteness so that ordinary people can understand what conduct is prohibited or (2) it does not provide ascertainable standards of guilt to protect against arbitrary enforcement.

WA[5][] [5]

Attorney and Client > Practice of Law > Unauthorized Practice > Legal Documents

For purposes of the misdemeanor of the unlawful practice of law (*RCW 2.48.180*), a person "practices law" by determining for others what legal documents must be executed to carry out their intent and by completing those legal documents.

WA[6][] [6]

Attorney and Client > Practice of Law > Unauthorized Practice > Purpose

The prohibition against unlawfully practicing law (*RCW 2.48.180*) is intended to protect the public.

WA[7][7]

Attorney and Client > Practice of Law > Unauthorized Practice > Validity > Vagueness > Representation of Clients in Legal Matters

RCW 2.48.180, which prohibits the unlawful practice of law, is not unconstitutionally vague as applied to a nonattorney's representation of clients in legal matters.

WA[8][8]

Criminal Law > Statutes > Vagueness > Ascertainable Standards

A criminal statute does not violate the due process requirement that it provide ascertainable standards of guilt to protect against arbitrary enforcement unless it invites an inordinate amount of discretion.

WA[9][9]

Attorney and Client > Practice of Law > Unauthorized Practice > Paralegal > Unsupervised

A paralegal not under the supervision of an attorney is not exempt from the prohibition against unlawfully practicing law (RCW 2.48.180).

WA[10][10]

Attorney and Client > Practice of Law > Unauthorized Practice > Power of Attorney > Effect

A person's right to practice law on his or her own behalf may not be transferred to another person through a power of attorney. A power of attorney does not authorize the practice of law.

WA[11][11]

Criminal Law > Trial > Taking Case From Jury > Sufficiency of Evidence > In General

There is sufficient evidence to uphold a conviction if, after viewing the evidence most favorably toward the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

WA[12][12]

Appeal > Review > Issues Not Raised in Trial Court > Instructions > In General

Unchallenged instructions are accepted on appeal as the law of the case.

Counsel: *David G. Skeen*, for appellant (appointed counsel for appeal).

C. Danny Clem, Prosecuting Attorney, and *Pamela B. Loginsky* and *Karin L. Nyrop, Deputies*, for respondent.

Robert D. Welden on behalf of Washington State Bar Association, amicus curiae.

Judges: Seinfeld, Morgan, Houghton

Opinion by: KAREN G. SEINFELD

Opinion

[*797] Seinfeld, J. -- Jerry Nathan Hunt appeals his convictions of 12 counts of unlawful practice of law, three counts of unlicensed operation as a collection agency, and one count of theft in the second degree. We affirm.

FACTS

Hunt called himself a paralegal and operated a business called Strategic Services. He had no formal or academic **[*798]** paralegal training but had learned something about the law while working with an attorney in Spokane for approximately 2 years.

[2]** The 12 unlawful practice of law counts fall into the following categories. In eight of the counts, Hunt represented people injured in car accidents who had negligence claims against insured drivers. Hunt drafted and had each client sign a limited power of attorney authorizing Hunt to settle the liability claim with the insurer and to collect the settlement amount. He then negotiated with the insurer's adjuster, telling the adjuster he was a "negotiator" or "mediation counsel" retained by the injured party.

Pursuant to these negotiations, Hunt prepared

settlement liens in favor of car rental agencies, medical providers, and drug stores. In one case, he mailed a request for discovery and a request for admissions, although he had not yet filed suit. Hunt sometimes threatened that his client would file suit. He represented to the adjusters that he had researched appropriate amounts for the injuries and made settlement demands. He collected settlement checks and had his clients sign releases. He also signed documents for his clients.

In two cases, Hunt helped prepare and file dissolution forms. The forms indicated the client was proceeding pro se. In one of these cases, Hunt interceded **[**3]** as a "friend of the court" during a hearing at which a superior court judge entered the decree. He later billed the client for this intervention. In another case, Hunt drafted pleadings in response to a motion to modify support. Finally, in one case, Hunt's clients asked him to research some Washington statutes and respond to a letter from the attorney for a well-drilling company with whom they had a dispute. Hunt wrote a letter, based in part on the clients' summary of the facts.

The three unlicensed collection counts were based on debts Hunt either collected or tried to collect for three businesses. In two of the counts, Hunt had the business owner assign him the debt; he then filed a pro se lawsuit seeking payment. In some of the pleadings, however, he listed the original creditor as a plaintiff. In another case, he hounded a **[*799]** drugstore customer about covering a bad check; the drugstore apparently did not assign the debt to Hunt. The clients testified to hiring Hunt to collect their debts; they did not view the transaction as a sale of the debt. In one of the "assignment" cases, Hunt continued to bill his client for various court costs.

The theft count was based on **[**4]** Hunt's representation of two of his personal injury clients, Joe Scott and Pierrette Guimond. As with his other clients, Hunt prepared and had the two sign limited powers of attorney. After settling the cases, he cashed the two settlement checks and had the bank issue seven cashier's checks. One went to each client, several went to doctors, and one went to Hunt's landlord to pay his rent of $ 445. The remainder, $ 683.50, was disbursed to Hunt in cash. The total award was $ 10,200.

The clients became concerned that the amounts of the checks were incorrect, and, after contacting the insurance company to learn the amount of the settlement, requested an accounting, which Hunt did not initially provide. Eventually, he provided an inaccurate accounting. In addition, he told the clients that he believed they had agreed that he would get 7 percent of the settlement for each client, not simply 7 percent of the settlement. He did not list the rent check on the accounting, but did charge the two clients for the $ 5 fee to issue that check.

Eventually, Hunt agreed to remit an additional $ 400 to his clients, but he did not do so until the State filed unlawful practice of law charges. The State **[**5]** filed the theft charges some months after Hunt paid the additional $ 400, even though the clients, by that time, had signed a release indicating they had received full satisfaction from Hunt.

At trial, the prosecution presented evidence that Hunt had poorly represented some of his clients, did not always act in his clients' best interests, and acted unethically or incompetently. Among other things, the state witnesses indicated Hunt did not keep his clients informed of his activities, did not inform clients of the full amount of settlements, reached settlements without consulting with his clients, settled claims **[*800]** of minors without proper safeguards, fought with one of his clients in front of an insurance adjuster, and filed incomplete or improper documents in court. Three lawyers testified: two substantive witnesses who described Hunt's actions representing clients, and Robert Welden, the general counsel to the Washington State Bar Association. Over Hunt's objection, all three lawyers testified as experts as to the definition of the "practice of law".

Hunt testified that he did not represent to anyone that he was a lawyer or could act as one. He also told his clients **[**6]** he could not go to court for them. The defense elicited from several of Hunt's clients that they knew Hunt was acting as a paralegal and not as an attorney.

The jury convicted Hunt on all counts. On appeal, Hunt claims that the law prohibiting unlawful practice of law is unconstitutionally vague, that the evidence was insufficient to convict on the theft and collection agency counts, and that the jury instructions related to the unlawful practice of law charges were erroneous.

UNCONSTITUTIONAL VAGUENESS

The unlawful practice of law, a misdemeanor, is defined in *HN1*[↑] *RCW 2.48.180*. The statute provides, in relevant part:

> Any person who, not being an active member of the

> state bar, . . . as by this chapter provided, shall practice law, or hold himself out as entitled to practice law, shall, except as provided in RCW 19.154.100, be guilty of a misdemeanor[.]

RCW 2.48.180.

Hunt argues that the statutory phrase "practice law" is unconstitutionally vague under the due process clauses of the Fifth and Fourteenth Amendments and under the Washington State Constitution, article 1, section 3. He does not contend, however, that the Washington Constitution provides different or broader **[**7]** protection than the federal constitution.

We note initially that the federal courts have refused to find similar statutes impermissibly vague under the federal constitution. In 1967, the United States Supreme Court dismissed an appeal of an Arizona decision for want of a substantial federal question; the petitioner had challenged a similar **[*801]** Arizona statute as unconstitutionally vague. *Hackin v. State, 102 Ariz. 218, 427 P.2d 910, 912, appeal dismissed, 389 U.S. 143, 19 L. Ed. 2d. 347, 88 S. Ct. 325 (1967)*. Since then, other federal courts have followed this binding precedent. *Wright v. Lane Cy. Dist. Court, 647 F.2d 940, 941 (9th Cir. 1981); Monroe v. Horwitch, 820 F. Supp. 682, 686 (D. Conn. 1993), aff'd, 19 F.3d 9 (1994).*

WA[1][↑] [1] *WA[2]*[↑] [2] As we explained in *State v. Russell, 69 Wn. App. 237, 245, 848 P.2d 743, review denied, 122 Wn.2d 1003, 859 P.2d 603 (1993), HN2*[↑]] when a criminal statute does not define words alleged to be unconstitutionally vague, the reviewing court may "look to existing law, ordinary usage, and the general purpose of the statute" to **[**8]** determine whether "the statute meets constitutional requirements of clarity". We must presume that a statute is constitutional; the burden is on the challenger to prove otherwise beyond a reasonable doubt. *State v. Coria, 120 Wn.2d 156, 163, 839 P.2d 890 (1992)*.

WA[3][↑] [3] *HN3*[↑] Unless the challenger claims a violation of First Amendment rights, we evaluate the statute by looking to the facts of the particular case. *Spokane v. Douglass, 115 Wn.2d 171, 182, 795 P.2d 693 (1990)*. The challenged law

> is tested for unconstitutional vagueness by inspecting the actual conduct of the party who challenges the ordinance and not by examining hypothetical situations at the periphery of the ordinance's scope.

Douglass, 115 Wn.2d at 182-183. Hunt does not claim implication of his First Amendment rights. Thus, we evaluate the statute as applied to Hunt's alleged conduct. *See Russell, 69 Wn. App. at 245*.

WA[4][↑] [4] *HN4*[↑] A statute violates Fourteenth Amendment due process protections if it fails to provide a fair warning of proscribed conduct. *Douglass, 115 Wn.2d at 178*. Although some uncertainty is constitutionally **[**9]** permissible, a statute is unconstitutionally vague if:

> (1) . . . [it] does not define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is proscribed, or (2) . . . [it] does not provide ascertainable standards of guilt to protect against arbitrary enforcement.

Douglass, 115 Wn.2d at 178-179.

[*802] *WA[5]*[↑] [5] As Hunt concedes, several Washington cases provide a definition for "practice of law". According to those cases, a person preparing legal forms is practicing law. *In re Droker, 59 Wn.2d 707, 719, 370 P.2d 242 (1962)*; *accord Bowers v. Transamerica Title Ins. Co., 100 Wn.2d 581, 586, 675 P.2d 193 (1983)*. The *Droker* court held

> *HN5*[↑] the term "practice of law" includes not only the doing or performing of services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity with the adopted rules of procedure, but in a larger sense includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured.

59 Wn.2d at 719; **[**10]** *accord Hagan & Van Camp, P.S. v. Kassler Escrow, Inc., 96 Wn.2d 443, 446-47, 635 P.2d 730 (1981); Washington State Bar Ass'n v. Great W. Union Fed. Sav. and Loan Ass'n, 91 Wn.2d 48, 54, 586 P.2d 870 (1978)* (hereinafter *WSBA*); *Hecomovich v. Nielsen, 10 Wn. App. 563, 571, 518 P.2d 1081, review denied, 83 Wn.2d 1012 (1974)*.

The Supreme Court expanded on this notion in *WSBA:*

> *HN6*[↑] the selection and completion of form legal documents, or the drafting of such documents, including deeds, mortgages, deeds of trust, promissory notes and agreements modifying these documents constitutes the practice of law.

WSBA, 91 Wn.2d at 55; *accord Bowers, 100 Wn.2d at 586; Hagan & Van Camp, 96 Wn.2d at 447*. Also, when

"one determines for the parties the kinds of legal documents they should execute to effect their purpose, such is the practice of law." Hecomovich, 10 Wn. App. at 571; *WSBA*, 91 Wn.2d at 58, 60. Services which are ordinarily performed by licensed lawyers and that involve legal rights and obligations were **[**11]** held to be the practice of law in *WSBA*. 91 Wn.2d at 55."*HN7*[] It is the nature and character of the service performed which governs whether given activities constitute the practice of law", not the nature or status of the person performing the services. *WSBA*, 91 Wn.2d at 54; *accord* Hagan & Van Camp, 96 Wn.2d at 448. If the activities in question are the practice of law, then the question is whether the person practicing law is authorized to do so. *WSBA*, at 54.

[*803] *WA[6]*[] [6] The unauthorized practice of law is prohibited to protect the public. *See, e.g.*, Bowers, 100 Wn.2d at 586; Monroe, 820 F. Supp. at 687; Dauphin Cy. Bar Ass'n v. Mazzacaro, 465 Pa. 545, 551-2, 351 A.2d 229, 232-33 (1976); Brown v. Unauthorized Practice of Law Comm., 742 S.W.2d 34, 41-42 (Tex. Ct. App. 1987). As the Washington Supreme Court has stated, "there is no such thing as a simple legal instrument in the hands of a layman." Hagan & Van Camp, 96 Wn.2d at 447 (quoting Washington State Bar Ass'n v. Washington Ass'n of Realtors, 41 Wn.2d 697, 712, 251 P.2d 619 (1952) **[**12]** (Donworth, J., concurring)).

> When a person holds himself out to the public as competent to exercise legal judgment, he implicitly represents that he has the technical competence to analyze legal problems and the requisite character qualifications to act in a representative capacity. When such representations are made by persons not adequately trained or regulated, the dangers to the public are manifest . . ..

Mazzacaro, 465 Pa. at 551, 351 A.2d at 232. As the *Mazzacaro* court noted, a client may entrust confidences, reputation, property, or freedom when he or she entrusts a legal matter to a person practicing law. 465 Pa. at 551, 351 A.2d at 232. The person receiving that trust should be subject to the regulations imposed on lawyers.

WA[7][] [7] Although in certain situations it may be difficult to precisely define the term, "practice of law", Hagan & Van Camp, 96 Wn.2d at 446; *WSBA*, 91 Wn.2d at 54, the general definition is sufficient to allow an ordinary person to know that RCW 2.48.180 proscribes Hunt's conduct. Hunt attempted to settle claims based on negligence liability for clients. When he **[**13]** succeeded, his clients signed forms releasing both the tortfeasor and the insurance company from liability. Insurance companies often issued checks payable to Hunt or to his clients. When representing his clients, Hunt performed legal research and applied the results to the facts of his clients' claims, basing his demands on this application of precedent to facts, and on his analysis of the liability of the insured. When pursuing his clients' tort claims, Hunt documented past and future expenses, prepared affidavits, **[*804]** and mailed discovery demands. He also prepared liens for those providing services to his clients. This conduct is clearly proscribed by RCW 2.48.180; Hunt could not reasonably be surprised by the application of the statute to these activities. *See also* Mazzacaro, 465 Pa. at 554-55, 351 A.2d at 233-34; Brown, 742 S.W.2d at 41-43.

Hunt also performed legal research and drafted, signed, and sent a letter containing several legal assertions or conclusions in response to an attorney's letter to his client. He drafted pleadings and memoranda in response to a motion to modify support; the client filed them, purportedly acting **[**14]** pro se. These actions are also clearly proscribed by the statute.

Hunt also prepared dissolution documents, actually interceding for one dissolution client during a court hearing. *HN8*[] Washington law clearly prohibits an unlicensed person from selecting and completing legal forms for another, necessarily including dissolution forms. *See also* Monroe, 820 F. Supp. at 686-87 (citing to several other courts that have reached the same conclusion). As to the first prong of the vagueness test, an ordinary person would understand that Hunt's actions constituted the practice of law.

WA[8][] [8] Under the due process clause, the statute and the challenged phrase must also provide ascertainable standards of guilt to prevent arbitrary enforcement. A lack of standards allows police, judge, and jury to decide subjectively what conduct violates the law in a given case. Douglass, 115 Wn.2d at 181. However, a statute may require some subjective evaluation by law enforcers; it violates the Fourteenth Amendment "only if it invites an inordinate amount" of discretion. 115 Wn.2d at 181. Even if we assume that the challenged phrase, "practice law", might in **[**15]** some circumstances allow subjective enforcement, as applied here the law is sufficiently defined to prevent inordinately arbitrary enforcement.

WA[9][] [9] Hunt seems to argue that because he claimed to be a paralegal, RCW 2.48.180 is

unconstitutionally vague as applied to him. We disagree. HN9[] A paralegal is "[a] person with legal skills, but who is not an attorney, and who works under the supervision of a lawyer in performing various **[*805]** tasks relating to the practice of law or who is otherwise authorized by law to use those legal skills." Black's Law Dictionary 1111 (6th ed. 1990). Hunt did not work under the supervision of any attorney. His claimed paralegal status does not exempt him from RCW 2.48.180 or make the statute any less sufficiently definite as applied to his clearly proscribed conduct. *See also* Monroe, 820 F. Supp. at 684, 686-87; State v. Thierstein, 220 Neb. 766, 769-70, 371 N.W.2d 746, 748 (1985).

Hunt also appears to argue that the existence of statutes allowing the use of powers of attorney makes the phrase "practice of law" unconstitutionally vague as applied to his actions. He contends that since he essentially became **[**16]** his clients by virtue of the powers of attorney, he could then act pro se for himself/them. A person may represent himself or herself pro se. A person can also draft legal documents to which he or she is a party. Both these exceptions are narrow and limited. *WSBA,* 91 Wn.2d at 56-57.

WA[10][] [10] The exceptions do not apply to Hunt's conduct because (1) "a layperson who receives compensation for such legal services may not rely upon the 'pro se' exception" [1] **[**17]** and (2) Hunt was not performing services solely on his own behalf. [2] The Supreme Court of Alaska has decided that a statutory power of attorney does not authorize the agent to act pro se in the place of the principal. Christiansen v. Melinda, 857 P.2d 345 (Alaska 1993). Furthermore, to the extent that Washington's statutes allowing use of powers of attorney would allow the unlicensed practice of law, they are unconstitutional. *See* Hagan & Van Camp, 96 Wn.2d at 451-53. If the Legislature purported to allow laypersons to practice law, it impermissibly usurped the power of the courts and violated the separation of powers doctrine. 96 Wn.2d at 451-53.

INSUFFICIENCY OF THE EVIDENCE

WA[11][] [11] Hunt contends the State presented insufficient evidence to support the guilty verdicts; he provides argument **[*806]** only as to the theft and collection agency counts. Evidence is sufficient to support a conviction if, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Seattle v. Slack, 113 Wn.2d 850, 859, 784 P.2d 494 (1989).

WA[12][] [12] Hunt does not assign error to the instructions governing the theft charge. Unchallenged instructions are the law of the case. State v. Ng, 110 Wn.2d 32, 39, 750 P.2d 632 (1988). The instructions provide that the State need not prove a permanent intent to deprive the victims of their money. They also provide that the State must prove Hunt "did not appropriate" the money "openly and avowedly under a good faith claim of title". Hunt's insufficiency argument is based on his "good faith" defense.

When **[**18]** Hunt cashed the settlement checks, he disbursed the funds via several cashier's checks, including one to his landlord, and he took the remainder in cash. He initially provided no accounting and did not tell his clients how much the insurance company had paid. To this extent, his "appropriation" was not "open". When his clients confronted him with what they believed were discrepancies, he was flustered and belligerent and threatened to sue them for additional fees. He eventually provided an inaccurate accounting and claimed he was entitled to 14 percent of the total settlement. He never informed his clients of the cashier's check issued to pay his rent, although he charged them the fee for issuing it. He finally agreed that he might have calculated his fees incorrectly and agreed to repay $ 400; eventually, he actually paid this amount. These facts are sufficient to prove an intent to wrongfully deprive, even if the deprivation was not permanent.

Hunt's argument as to the collection agency counts is that he was simply collecting debts assigned to him. However, the evidence is otherwise. Witnesses testified that Hunt was acting as their agent to collect debts; some of Hunt's pleadings **[**19]** designated the original creditor as plaintiff and Hunt obtained various filing fees from the original creditors. All **[*807]** these acts are inconsistent with one who has purchased a debt. This evidence is sufficient to support the conviction.

INSTRUCTIONS

Hunt finally claims that the trial court erred when it issued instructions 13 through 16 defining the practice of law and instructions 20 through 31 using the term "representation" to describe Hunt's relationship to his

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[1] *WSBA,* 91 Wn.2d at 57.

[2] *See* Hagan & Van Camp, 96 Wn.2d at 451.

clients. Instruction 13 [3] **[**20]** simply restates RCW 2.48.180. Instruction 14 [4] accurately defines the practice of law as defined by the Washington cases we discussed above. Instruction 15 explains that a person may practice law on his own behalf but "cannot transfer his 'pro se' right to practice law to any other person". As we earlier explained, this is also an accurate statement of Washington law. Instruction 16 describes powers of attorney and states: "A power of attorney does not authorize the practice of law." As noted above, this too is an accurate statement of Washington law.

The use of the term "representation" in the "to convict" instructions (*i.e.,* "[t]he defendant practiced law through his representation of Thomas and Beverly Lee") does not appear to unfairly suggest guilt, as argued to the trial court. As the trial court noted, the term is not used solely in regard to lawyers. Factually, it is correct: Hunt had clients; he represented them. The trial court did not err in instructing the jury as it did.

[*808] Affirm.

[21]** Morgan, C.J., and Houghton, J., concur.

Review denied at *125 Wn.2d 1009, 889 P.2d 498, 1994 Wash. LEXIS 755 (1994).*

End of Document

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[3] Instruction 13 states: "A person commits the crime of unlawful practice of law when, not being an active member of the State Bar, he practices law or holds himself out as entitled to practice law."

[4] Instruction 14 states:

> "The practice of law means:
>
> "(1) Doing or performing services in the courts of justice, and/or;
>
> "(2) Giving legal advice and counsel, and/or;
>
> "(3) The preparation of legal instructions and contracts by which legal rights and obligations are established, including the completion of pre-printed legal document forms.

"The completion of pre-printed legal forms, preparation of legal instruments and the giving of legal advice and counsel are the practice of law irrespective of whether they are used in an action or proceeding pending in a court.

"Items (1), (2), and (3) are alternatives and only one need be proven."

Wash. GR 24

Wash. GR 24

Current with rules received by the publisher through April 25, 2018

Washington Court Rules > STATE RULES > PART I. RULES OF GENERAL APPLICATION > GENERAL RULES (GR)

Rule 24. Definition of the practice of law

(a) General definition: The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. This includes but is not limited to:

(1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.

(2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).

(3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

(4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

RCW 2.48.180

RCW 2.48.180

Definitions—Unlawful practice a crime—Cause for discipline—Unprofessional conduct —Defense—Injunction—Remedies—Costs—Attorneys' fees—Time limit for action.

(1) As used in this section:

(a) "Legal provider" means an active member in good standing of the state bar, and any other person authorized by the Washington state supreme court to engage in full or limited practice of law;

(b) "Nonlawyer" means a person to whom the Washington supreme court has granted a limited authorization to practice law but who practices law outside that authorization, and a person who is not an active member in good standing of the state bar, including persons who are disbarred or suspended from membership;

(c) "Ownership interest" means the right to control the affairs of a business, or the right to share in the profits of a business, and includes a loan to the business when the interest on the loan is based upon the income of the business or the loan carries more than a commercially reasonable rate of interest.

(2) The following constitutes unlawful practice of law:

(a) A nonlawyer practices law, or holds himself or herself out as entitled to practice law;

(b) A legal provider holds an investment or ownership interest in a business primarily engaged in the practice of law, knowing that a nonlawyer holds an investment or ownership interest in the business;

(c) A nonlawyer knowingly holds an investment or ownership interest in a business primarily engaged in the practice of law;

(d) A legal provider works for a business that is primarily engaged in the practice of law, knowing that a nonlawyer holds an investment or ownership interest in the business; or

(e) A nonlawyer shares legal fees with a legal provider.

(3)(a) Unlawful practice of law is a crime. A single violation of this section is a gross misdemeanor.

(b) Each subsequent violation of this section, whether alleged in the same or in subsequent prosecutions, is a class C felony punishable according to chapter 9A.20 RCW.

(4) Nothing contained in this section affects the power of the courts to grant injunctive or other equitable relief or to punish as for contempt.

(5) Whenever a legal provider or a person licensed by the state in a business or profession is convicted, enjoined, or found liable for damages or a civil penalty or other equitable relief under this section, the plaintiff's attorney shall provide written notification of the judgment to the appropriate regulatory or disciplinary body or agency.

(6) A violation of this section is cause for discipline and constitutes unprofessional conduct that could result in any regulatory penalty provided by law, including refusal, revocation, or suspension of a business or professional license, or right or admission to practice. Conduct that constitutes a violation of this section is unprofessional conduct in violation of RCW **18.130.180**.

(7) In a proceeding under this section it is a defense if proven by the defendant by a preponderance of the evidence that, at the time of the offense, the conduct alleged was authorized

by the rules of professional conduct or the admission to practice rules, or Washington business and professions licensing statutes or rules.

(8) Independent of authority granted to the attorney general, the prosecuting attorney may petition the superior court for an injunction against a person who has violated this chapter. Remedies in an injunctive action brought by a prosecuting attorney are limited to an order enjoining, restraining, or preventing the doing of any act or practice that constitutes a violation of this chapter and imposing a civil penalty of up to five thousand dollars for each violation. The prevailing party in the action may, in the discretion of the court, recover its reasonable investigative costs and the costs of the action including a reasonable attorney's fee. The degree of proof required in an action brought under this subsection is a preponderance of the evidence. An action under this subsection must be brought within three years after the violation of this chapter occurred.

[**2003 c 53 § 2; 2001 c 310 § 2.** Prior: **1995 c 285 § 26; 1989 c 117 § 13; 1933 c 94 § 14;** RRS § 138-14.]

NOTES:

Rules of court: *RLD 1.1(h).*

Intent—2003 c 53: "The legislature intends by this act to reorganize criminal provisions throughout the Revised Code of Washington to clarify and simplify the identification and referencing of crimes. It is not intended that this act effectuate any substantive change to any criminal provision in the Revised Code of Washington." [**2003 c 53 § 1.**]

Effective date—2003 c 53: "This act takes effect July 1, 2004." [**2003 c 53 § 423.**]

Purpose—2001 c 310: "The purpose of this act is to respond to *State v. Thomas*, 103 Wn. App. 800, by reenacting and ranking, without changes, legislation relating to the crime of unlawful practice of law, enacted as sections 26 and 27, chapter 285, Laws of 1995." [**2001 c 310 § 1.**]

Effective date—2001 c 310: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2001]." [**2001 c 310 § 5.**]

Effective date—1995 c 285: See RCW **48.30A.900**.

*Practicing law with disbarred attorney: RCW **2.48.220**(9).*

RCW 18.130.190

WASHINGTON STATE LEGISLATURE

RCW 18.130.190

Practice without license—Investigation of complaints—Cease and desist orders—Injunctions—Penalties.

(1) The secretary shall investigate complaints concerning practice by unlicensed persons of a profession or business for which a license is required by the chapters specified in RCW **18.130.040**. In the investigation of the complaints, the secretary shall have the same authority as provided the secretary under RCW **18.130.050**.

(2) The secretary may issue a notice of intention to issue a cease and desist order to any person whom the secretary has reason to believe is engaged in the unlicensed practice of a profession or business for which a license is required by the chapters specified in RCW **18.130.040**. The person to whom such notice is issued may request an adjudicative proceeding to contest the charges. The request for hearing must be filed within twenty days after service of the notice of intention to issue a cease and desist order. The failure to request a hearing constitutes a default, whereupon the secretary may enter a permanent cease and desist order, which may include a civil fine. All proceedings shall be conducted in accordance with chapter **34.05** RCW.

(3) If the secretary makes a final determination that a person has engaged or is engaging in unlicensed practice, the secretary may issue a cease and desist order. In addition, the secretary may impose a civil fine in an amount not exceeding one thousand dollars for each day upon which the person engaged in unlicensed practice of a business or profession for which a license is required by one or more of the chapters specified in RCW **18.130.040**. The proceeds of such fines shall be deposited to the health professions account.

(4) If the secretary makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the secretary may issue a temporary cease and desist order. The person receiving a temporary cease and desist order shall be provided an opportunity for a prompt hearing. The temporary cease and desist order shall remain in effect until further order of the secretary. The failure to request a prompt or regularly scheduled hearing constitutes a default, whereupon the secretary may enter a permanent cease and desist order, which may include a civil fine.

(5) Neither the issuance of a cease and desist order nor payment of a civil fine shall relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy of a cease and desist order or civil fine shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed practice and may be enforced under RCW **7.21.060**. This method of enforcement of the cease and desist order or civil fine may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders set out in chapter **34.05** RCW.

(6) The attorney general, a county prosecuting attorney, the secretary, a board, or any person may in accordance with the laws of this state governing injunctions, maintain an action in the name of this state to enjoin any person practicing a profession or business for which a license is required by the chapters specified in RCW **18.130.040** without a license from engaging in such practice or operating such business until the required license is secured. However, the injunction shall not relieve the person so practicing or operating a business without a license from criminal prosecution

therefor, but the remedy by injunction shall be in addition to any criminal liability.

(7)(a) Unlicensed practice of a profession or operating a business for which a license is required by the chapters specified in RCW **18.130.040**, unless otherwise exempted by law, constitutes a gross misdemeanor for a single violation.

(b) Each subsequent violation, whether alleged in the same or in subsequent prosecutions, is a class C felony punishable according to chapter **9A.20** RCW.

(8) All fees, fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be remitted to the health professions account.

[**2003 c 53 § 141; 2001 c 207 § 2.** Prior: **1995 c 285 § 35; 1993 c 367 § 19; 1991 c 3 § 271;** prior: **1989 c 373 § 20; 1989 c 175 § 71; 1987 c 150 § 7; 1986 c 259 § 11; 1984 c 279 § 19.**]

NOTES:

Intent—Effective date—2003 c 53: See notes following RCW **2.48.180**.

Purpose—2001 c 207: "The purpose of this act is to respond to *State v. Thomas*, 103 Wn. App. 800, by reenacting and ranking, without changes, legislation relating to the crime of unlicensed practice of a profession or a business, enacted as section 35, chapter 285, Laws of 1995." [**2001 c 207 § 1.**]

Effective date—2001 c 207: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2001]." [**2001 c 207 § 4.**]

Effective date—1995 c 285: See RCW **48.30A.900**.

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

Severability—1987 c 150: See RCW **18.122.901**.

Severability—1986 c 259: See note following RCW **18.130.010**.

EXHIBIT 18

Lynda Guernsey

From: Lynda Guernsey
Sent: Friday, June 29, 2018 4:29 PM
To: Gary N. McLean
Subject: FW: Stabbert Response to Motions PAPL00-18-001 & PAPL00-18-002
Attachments: Response to Motions PAPL00-18-0001 & PAPL00-18-0002.pdf

Hi Gary,

Please see the email below and attachment regarding PAPL00-18-0001 and 0002.

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: Karla Lopez <KarlaL@stabbertmaritime.com>
Sent: Friday, June 29, 2018 2:43 PM
To: Julie Thompson <JulieT@sanjuanco.com>; Community Development <cdp@sanjuanco.com>; Tom <tom@maritimeinjury.com>; kelsey@maritimeinjury.com
Cc: Lynda Guernsey <LyndaG@sanjuanco.com>; Erika Shook <erikas@sanjuanco.com>; Dan Stabbert <dan@stabbertmaritime.com>
Subject: Stabbert Response to Motions PAPL00-18-001 & PAPL00-18-002

Good Afternoon,

Attached please find the Stabbert's response, have a wonderful weekend.

Thank you,

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

STABBERT MARITIME

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

Lynda Guernsey

From: Karla Lopez <KarlaL@stabbertmaritime.com>
Sent: Friday, June 29, 2018 2:43 PM
To: Julie Thompson; Community Development; Tom; kelsey@maritimeinjury.com
Cc: Lynda Guernsey; Erika Shook; Dan Stabbert
Subject: Stabbert Response to Motions PAPL00-18-001 & PAPL00-18-002
Attachments: Response to Motions PAPL00-18-0001 & PAPL00-18-0002.pdf

Good Afternoon,

Attached please find the Stabbert's response, have a wonderful weekend.

Thank you,

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

STABBERT MARITIME

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

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. PAPL00-18-0001 PAPL00-18-0002 **RESPONSE TO 1ST AND 2ND MOTIONS FOR SUMMARY JUDGMENT**

I. INTRODUCTION

On March 12, 2018, San Juan County approved two provisional use permits authorizing vacation rentals for two residences owned by Dan Stabbert. On June 15, 2018 Appellant submitted two separate motions in his appeal of the County's permit decisions. Appellant's first motion to for summary judgment ("1st Motion") argues that the County erred because a shoreline conditional use permit is required for a vacation rental. Appellant's second motion (2nd Motion) argues that the County erred in failing to include conditions "to keep renters from using the dock and buoys." The 2nd Motion is solely directed at the use of a dock, which is incidental to the vacation rental use of the established Stabbert residences.

Appellant's 1st Motion fails as a matter of law and fact. Only one of the residences in question is located within the regulated shoreline. The other residence is located within the Rural Farm Forest Shoreline designation. San Juan County's adopted Shoreline Master Program does not require a conditional use permit for vacation rentals in an existing residence in the Rural Farm Forest designation. SJCC 18.50.600 (not requiring a conditional use permit for vacation rentals in the Rural Farm Forest designation).

Appellant's 2nd Motion also fails as a matter of law and fact. Appellant fails to acknowledge that the County's decision includes conditions that address his dock-related concerns. Regardless, all of Appellant's DNR lease related arguments are untimely, but even if they were timely raised, a DNR lease is not required for the dock if the dock's use is incidental to the vacation rental. There is no basis to issue summary judgement for either motion.

II. LEGAL AUTHORITY

Summary judgment is not appropriate if, based on the pleadings, answers to interrogatories, affidavits, depositions, and admissions on file, there is a genuine issue as to *any* material fact. CR 56(c); *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). The moving party is held to a strict standard. *Atherton Condominium Apartment-Owners Ass'n Bd. Of Dirs. V. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250, 257 (1990) [hereinafter, *Atherton*]. The moving party bears the initial burden of showing an absence of an issue of material fact. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). The Court should view all facts and reasonable inferences in the light most favorably toward the nonmoving party. *Wilson*, 98 Wn.2d at 437. Any doubts as to the existence of a genuine issue of material fact should be resolved against the moving party. *Atherton*, 115 Wn.2d at 516. The motion should be granted only if, from all the evidence presented, reasonable minds could not differ on the subject, and could reach only one conclusion. *Morris v. McNicol*, 83 Wn.2d 491, 494-95, 519

P.2d 7 (1974); *Kadoranian v. Bellingham Police Dep't.,* 119 Wn.2d 178, 190, 829 P.2d 1061 (1992).

Summary judgment is likewise not proper if the moving party is not entitled to judgment as a matter of law. CR 56(c). Thus, summary judgment should not be granted based on an improper statement or interpretation of the law. *E.g., Ervin v. Columbia Distrib.,* 84 Wn.App. 882, 930 P.2d 947 (1997) (summary judgment improper on one of plaintiff's claims where the court erred in interpreting the policies of the National Labor Relations Act); *Atherton,* 115 Wn.2d 506 (summary judgment improper where the court of appeals rejected the moving party's interpretation of the implied warranty of habitability). Summary judgment is reviewed *de novo. Kettle Range Conserv. Group v. DNR*, 120 Wn.App. 434, 456, 85 P.3d 894 (2003).

III. ARGUMENT

A. No Shoreline Permit Is Required For A Provisional Use Permit in the Rural Farm Forest Designation

San Juan County's Shoreline Master Program does not require any shoreline permit for a vacation rental use in a previously constructed home located within the Rural Farm Forest shoreline designation. SJCC 18.50.600.

Appellant argues that Stabbert must obtain a conditional use permit for the vacation rental use. Appellant's 1st Motion, p. 2:10-12. The 1st Motion contains no analysis of San Juan County's adopted Shoreline Master Program and it fails to identify the relevant shoreline designation of the property. Instead, in support of this argument, Appellant raises untimely DNR arguments. Appellant's 1st Motion, p. 2:4-8. This time, Appellant relies upon DNR dock regulations to presumably argue that the San Juan County's adopted Shoreline Master Program requires a conditional use permit for any issued provisional use permit. Appellant's arguments regarding a shoreline conditional use permit and DNR regulations must be dismissed because they were not timely raised in Appellant's appeal dated, March 29, 2018. Appellant's Notice of

Appeal argues that a "Shoreline Management Permit" is required,[1] but the words conditional use and DNR do not appear in the appeal. Notice of Appeal, p. 3:10 – 5:18. Regardless, a shoreline conditional use permit is not required for either provisional use permit.

The residence subject to PPROVO-17-065 (the "Upland Residence") is located outside of the regulated shoreline. Thus, this appeal issue must be dismissed for the Upland Residence because shoreline regulations do not extend beyond the regulated shoreline. *See*, SJCC 18.20.190"S" (defining shoreland as extending landward for 200 feet in all directions).

No shoreline permit is required for PPROVO-17-066 (the "Waterfront Residence"), as described in the County's decision. Page 7 of the County's Waterfront Decision explains that Appellant believes a shoreline substantial development permit is required. Pages 2 and 14 of the Decision then explain why Appellant's argument fails. As described on page 2, finding of fact 9:

> SJCC Table 18.30.040 allows vacation rentals 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 AJCC Table 18.50.600 (the Shoreline Master Program) requires a shoreline substantial development for a 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 water 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 approval are required. Thus, no SSDP is required because the proposal does not include "development."

Similarly, a shoreline conditional use permit is not required pursuant to SJCC 18.50.600 (identifying when a shoreline conditional use permit is required). The row for "vacation rentals" under the column for Rural Farm Forest is not marked by a CUP. Thus, no CUP is required for a vacation rental use in the Rural Farm Forest shoreline designation. San Juan County's Shoreline Master Program explicitly addresses vacation rentals in the Rural Farm and Forest designation, and the Department of Ecology reviewed and approved San Juan County's Shoreline Master Program.

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[1] Notice of Appeal, p. 4:9-13.

Appellant raised this exact issue with the Department of Ecology. Ecology staff also explained to Appellant that his argument fails because vacation rentals in the Rural Farm Forest designation do not require a shoreline conditional use permit:

> A shoreline conditional use permit (CUP) is only required when a Shoreline Master Program (SMP) establishes the specific requirement for one. With the exception of the Rural designation, the San Juan County SMP does not require a CUP for vacation rentals per Table 18.50.600. If the Stabbert property was located in a Rural designation, I would interpret that a CUP is required, even if absent of any development. The Stabbert property is located in a Rural Farm Forest designation and no conditional use permit is required for vacation rental within that designation per Table 18.50.600.

Appellant's Bates Stamped Record, p. 166. Email from Department of Ecology Staff, Chad Yunge to Tom Evans, dated February 2, 2018 (email correspondence between Department of Ecology and Appellant attached as Exhibit A).

Finally, Appellant has cited a Shoreline Hearings Board decision in an attempt to support his argument. *Darin Barry and Robin Hood Village Resort v.Ecology*, SHB 12-008 (SSDP and SCUP required for new trailers parked in the regulated shoreline). Appellant also raised this SHB decision with Ecology Staff. Appellant's Bates Stamped Record, p. 166-176 (email correspondence between Department of Ecology and Appellant). *Barry v. Robin Hood* analyzes Mason County's Shoreline Master Program, not San Juan County's adopted Shoreline Master Program, which is analyzed above. *Barry v. Robin Hood* involved adding new structures into the shoreline, which also is not at issue here because the residences and the dock already exist. To the extent that Appellant argues San Juan County should include additional provisions in its SMP, this argument is time barred because the time to appeal San Juan County's adopted SMP passed long ago. SJCC 18.50.600 provides that vacation rentals in existing residence in the Rural Farm Forest designation do not require a conditional use permit. Appellant is not entitled to summary judgment as a matter of law because no shoreline permit is required for the vacation rental use of the Stabbert residences.

B. Joint Use Of The Dock and Buoys

Appellant and Stabbert share a dock that is subject to a Joint Use Agreement. First Declaration of Dan Stabbert ("Stabbert Decl"), ¶ 2 (attached as Exhibit B). Appellant's 2nd Motion argues that short-term renters must be prohibited from the use of a dock and buoys that is subject to a Joint Use Agreement between Appellant and Stabbert. Thus, the 2nd Motion appears to be a motion that requests additional conditions regarding the dock. 2nd Motion, p. 2: 15-17. Appellant's 2nd Motion fails to acknowledge that Stabbert proposed permit conditions specifically to address Appellant's concerns. More specifically, Appellant proposed to "abide by and communicate the rules outlined in the Joint Use Agreement as regards [to] the use of the dock." Appellant's Bates Stamped Record, p. 10. The County's Finding of Fact 22 and Conditions 8 and 9 accept Stabbert's proposed condition and require Stabbert to submit Rules of Conduct for the County's approval prior to any rental of the residence. Appellant's Bates Stamped Record, p. 4, 16. Appellant provides no evidence or argument to explain why the County's conditions are inadequate to address his concern. Thus, there is no basis for summary judgment here.

Ultimately, Appellant is unhappy with the provisions of a private contractual agreement with Stabbert regarding the use of the dock. The plain language of the Agreement provides: "The owners of each parcel may allow their invitees to use the dock." Appellant's Bates Stamped Record, p. 7. Appellant repeatedly raised private contractual issues with County Staff during the permitting process. *Id.* In response, County Staff refused to engage in a private contractual dispute, but included a condition stating that the permit does not grant Stabbert the right to violate private covenants. Appellant's Bates Stamped Record, p. 4 (Finding of Fact 20) and 17 (Condition 16). Stabbert acknowledges and agrees to abide by this condition.

Stabbert and Appellant are currently engaged in a private mediation to settle their dispute over the use of the dock. Stabbert Decl., ¶ 3. However, as correctly decided by County Staff, a

provisional use permit application is not the appropriate venue to adjudicate private contractual disputes. Appellant's Bates Stamped Record, p. 4 (Finding of Fact 20).

Unhappy with the County's decision, Appellant now attempts to raise untimely appeal issues, arguing that the permits were issued in violation RCW 79.105.430 and WAC 332-30-144(2)(c). Appellant also provides a letter from DNR that was issued on May 7, 2018, the day after the appeal period ended. This line of appeal argument is time barred because these issues were not included in Appellant's appeal. Appellant's Notice of Appeal p. 3:10- 4:18 (not including any reference to DNR leases, RCW 79.105.430, or WAC 332-30-144(2)(c)). The May 7, 2018 DNR letter is also not in the County's file and was not proffered as evidence in support of the 2nd Motion.

Appellant's line of argument is also without legal merit because allowing vacation renters to use a recreational dock is not a violation of state law. The May 7, 2018 DNR letter states: "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 of a lease." 2nd Motion, Exhibit 1 Letter from Gabe Harder, DNR Land Manager to Dan and Cheryl Stabbert, dated May 7, 2018. Mr. Harder issued this letter without contacting Stabbert or receiving any information from Stabbert. Stabbert Decl., ¶ 4. After receiving additional information from Stabbert, Mr. Harder clarified his position stating that Stabbert's vacation rental guests may use the dock without Stabbert obtaining a lease from DNR if the dock use is incidental to the vacation rentals. Incidental uses include allowing guests to use the dock to take photos, view a sunset, or observe wildlife. Stabbert Decl., ¶ 5 and Exhibit 1 ("...DNR would consider the types of uses that you have described as incidental to the dock, which would not preclude the dock from qualifying for a no-fee private recreational dock as long as the dock conforms to local ordinances and shoreline master programs.")

DNR's conclusion that a lease is not required is consistent with state law and DNR regulations. *See e.g.*, WAC 332-30-144(3) (requiring a lease for yacht and boat club facilities,

floating houses, resorts, and multifamily dwellings with more than four units).[2] In contrast to the uses identified in the DNR regulation where a lease is required, the use here is the vacation rental of two single family residences. No lease is required under the plain language of state law and DNR's lease regulations. Even if Appellant timely raised the DNR lease issue, there is no legal basis for summary judgment or the addition of additional conditions.

IV. CONCLUSION

For the foregoing reasons, Stabbert respectfully requests that the Hearing Examiner deny Appellant's 1st and 2nd Motions.

DATED this 29th day of June, 2018.

By:

Dan Stabbert
2629 NW 54th St., #201
Seattle, WA 98107
dan@stabbertmaritime.com

[2] *See also* RCW 79.105.430 (providing no authority for Appellant's argument, prohibiting only mooring boat for commercial or residential use).

CERTIFICATE OF SERVICE

I certify that on this date, I filed a copy of the Response to Motion to Dismiss and Motion for Summary Judgment 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 [X] Via Efile/Email [X] 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 kelsey@maritimeinjury.com *Attorney for Thomas C. Evans*	[ ] Via Facsimile [ ] Via Legal Messenger [X] Via Email [ ] Via US Mail, postage prepaid
Thomas C. Evans PO Box 408 Olga, WA 98112 360-376=5987 tom@maritimeinjury.com kelsey@maritimeinjury.com *Attorney for Box Bay Shellfish Farm LLC*	

Dated this 29th day of June, 2018, at Seattle, Washington.

Dan Stabbert

Julie Thompson

From: Yunge, Chad (ECY) <CYUN461@ECY.WA.GOV>
Sent: Thursday, February 1, 2018 2:19 PM
To: Tom Evans
Cc: Renkor, Betty (ECY); Julie Thompson
Subject: RE: Stabbert Vacation Rentals- One Single Simple Question

Correct.

From: Tom Evans [mailto:tom@maritimeinjury.com]
Sent: Thursday, February 1, 2018 2:16 PM
To: Yunge, Chad (ECY) <CYUN461@ECY.WA.GOV>
Cc: Renkor, Betty (ECY) <EREN461@ECY.WA.GOV>; Julie Thompson <JulieT@sanjuanco.com>
Subject: Re: Stabbert Vacation Rentals- One Single Simple Question

Thank you Chad. I think you answered my question and to make sure I am correct about what you are saying, you are stating: unless there is actual new development involved, i.e. new construction associated with the permit application, which exceeds the categorically exempt cost amount, a shoreline permit is not required. Please correct me if I have that wrong and thank you once again for your courtesies and cooperation. Tom Evans

On Feb 1, 2018, at 1:52 PM, Yunge, Chad (ECY) <CYUN461@ECY.WA.GOV> wrote:

Hi Tom,

I get no pleasure from being correct in this conversation we are having. You raise some good questions and I have tried to answer them as clearly as I can.

Regarding your question below, while Table 18.50.600 shows that a substantial development permit (SD) is required, it is making an assumption that there is development involved with the proposed use. The table itself cannot redefine when a substantial development is required under the SMA. A lot of local governments include a similar matrix in their SMPs as a quick reference guide to what uses/developments are allowed and where. The reader can't stop there however; the text of the applicable sections of the SMP and/or SMA prevail. Perhaps a better term to have used would have been "permitted subject to policies and regulations" rather than use "SD" in the table.

Looks like you have a terrific spot there on Orcas. I do hope we meet someday Tom.

Kind regards,
Chad

From: Tom Evans [mailto:tom@maritimeinjury.com]
Sent: Thursday, February 1, 2018 12:33 PM

EXHIBIT A

To: Yunge, Chad (ECY) <CYUN461@ECY.WA.GOV>
Cc: Renkor, Betty (ECY) <EREN461@ECY.WA.GOV>; Julie Thompson <JulieT@sanjuanco.com>
Subject: Stabbert Vacation Rentals- One Single Simple Question

Thank you again Chad. As before, your arguments are well thought out and well presented, even if I do disagree.

This time, I am going to boil it down to one single simple question. If I agree with your answer I will self-declare you the victor:

The Master Program Matrix clearly states a vacation rental in a Rural Farm Forest Zone is subject to SD, with SD defined as: "Subject to shoreline substantial development permit unless exempt per subsection (B) of this section." (B not applicable, requires an asterix)

Given the above, please state every reason why a shoreline permit is not being required for the Stabbert applications?

Thanks again for sharing your knowledge and experience with me. If you are on Island (Orcas) in the near future I would like to meet you.
Regards. Tom Evans

On Feb 1, 2018, at 8:47 AM, Yunge, Chad (ECY) <CYUN461@ECY.WA.GOV> wrote:

Good morning, Tom.

A shoreline conditional use permit (CUP) is only required when a Shoreline Master Program (SMP) establishes the specific requirement for one. With exception of the Rural designation, the San Juan County SMP does not require a CUP for vacation rentals per Table 18.50.600. If the Stabbert property was located in a Rural designation, I would interpret that a CUP is required, even if absent of any development. The Stabbert property is located in a Rural Farm Forest designation and no conditional use permit is required for vacation rentals within that designation per Table 18.50.600.

Local governments have discretion to create a CUP requirement within their SMP for certain types of uses based on their type, location, etc. San Juan County has chosen to do this only in the Rural designation in regards to vacation rentals. In Mason County, the SMP in effect at the time of the Barry case, required a conditional use permit for new non-water dependent commercial uses on their shorelines. The Shorelines Hearings Board (SHB), which relies heavily on specific language within individual SMPs, correctly determined that the unauthorized developments placed on the Robinhood Village site represented a new commercial use and required a CUP per the Mason County SMP in that case.

Hope this helps,
Chad

From: Tom Evans [mailto:tom@maritimeinjury.com]
Sent: Wednesday, January 31, 2018 2:07 PM
To: Yunge, Chad (ECY) <CYUN461@ECY.WA.GOV>
Cc: Renkor, Betty (ECY) <EREN461@ECY.WA.GOV>; Julie Thompson <JulieT@sanjuanco.com>
Subject: Re: Stabbert Vacation Rentals

Gentlepersons: I have obtained a cop of the actual Findings of Fact and Conclusions of Law in the *Barry* case, attached above. Please note the highlighted sections which clearly state: (1) the fact that something may have been previous constructed - in this case, an RV constructed off site - makes no difference in cost exemption. See: definition of value/cost for shoreline purposes in *Barry* above.. The SHB will undoubtedly find that the fact the Stabbert houses were previously constructed is irrelevant - its not when it was constructed, its what it cost to build and value as of the time its turned into SMA type use - and a house costs much more than a 6k exemption. Further, responding to Chad's comment below that substantial development only applies to actual development, as explained yesterday, that is technically true but it is erroneous to say development has to be some sort of new construction before a SCU permit is required. Once you start using the structure for a shoreline purpose (vacation rental) its the cost of the structure (house) that counts, not when it was built.

You will also see below that the Hearings Board clearly distinguishes between shoreline substantial development permit and shoreline conditional use permit. The Board clearly states that these are separate land use issues, and as shown in green below, use matters, all by itself.

I thoroughly believe its only a matter of time before firm precedent will be established that vacation rentals require a shoreline SCU permit. You might want to think about the consequences of that in terms of the hundreds of permits that have been issued illegally. And, for SJC s sake,its my opinion that there is no use allowed during the period someone applies for an "after the fact" permit. SJC seems to be of the opinion that a person who applies for an after the fact opinion gets to continue the illegal use while they get an after the fact permit. Wont happen here. Not what the law allows.

I am also obtaining a copy of the AGs brief in Barry which makes strong arguments on behalf of the AG as to all of the above. Thank you one again for your courtesy and cooperation. Tom Evans

EXHIBIT A

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.	PAPL00-18-0001 PAPL00-18-0002 First Declaration of Dan Stabbert

Dan Stabbert herby declares and affirms as follows:

1. I am of legal age, have person knowledge of the facts stated herein, and am competent to be a witness in this action.
2. The dock in question is subject to a Joint Use Agreement. The parties to the Joint Use Agreement are Tom Evans, the Appellant in this matter, and the Stabberts.
3. Evans and the Stabberts have a private contractual dispute regarding the use of the dock as authorized by the Joint Use Agreement. Under the terms of the Joint Use Agreement, Evans and Stabbert are currently engaged in mediation to settle this dispute.
4. Mr. Harder, DNR Land Manager, prepared and issued the May 7, 2018 DNR

letter without receiving any information from me or my wife regarding the use of our property or the dock.

5. Since I received the DNR letter, I contacted Mr. Harder and provided him with information regarding the vacation rental use of the property. Mr. Harder clarified his May 7, 2018 letter via an email to me dated June 15, 2018. A true and correct copy of his email to me is attached as Exhibit 1.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Seattle, Washington this 29th day of June, 2018.

By: _____

Dan Stabbert
2629 NW 54th St., #201
Seattle, WA 98107
dan@stabbertmaritime.com

Exhibit 1

Email from Gabriel Harder to Dan Stabbert dated June 15, 2018

From: Harder, Gabriel (DNR) [mailto:Gabriel.Harder@dnr.wa.gov]
Sent: Friday, June 15, 2018 8:56 AM
To: Dan Stabbert
Cc: Karla Lopez
Subject: RE: Follow Up

Good Morning Dan,

Mary and I thank you for your time as well. I appreciate your inquiry below and have provided a response in blue font directly within your email. I hope the response helps clarify things. Please do not hesitate to ask further questions. I appreciate your patience with me getting back to you.

Regards,

Gabe Harder
Aquatic Land Manager
Washington State Department of Natural Resources (DNR)
919 N. Township St.
Sedro-Woolley, WA 98284
Phone (360) 854-2858
gabriel.harder@dnr.wa.gov
www.dnr.wa.gov

From: Dan Stabbert
Sent: Saturday, June 9, 2018 2:12 PM
To: Harder, Gabriel (DNR)
Cc: Karla Lopez
Subject: Follow Up

Dear Gabriel: Thank you for your and Mary's time on Friday. While I don't always like what I hear its ok as Id rather deal with the facts. I want to be sure I fully understand what we can and cannot do and would appreciate your written response.

1. Cannot
    a. utilize the docks as an integral component of any VRBO guest experience as that use would be outside the bounds of " non income producing " as noted under WAC 332 30 144 (2) ©for private recreational purposes. Not for boats and other primary uses.
    Correct, a recreational dock is a fixture which is primarily used as an aid to boating and to accommodate moorage of pleasure boats. Allowing use of the dock by renters of your property for its primary purpose would require a use authorization from DNR.
    b. To use the dock we would need to apply for a lease under DNR rules for utilization different than private recreational purposes.
    Correct, using the dock for anything other than as you described would require a use authorization, most likely in the form of a Lease.

2. Can
    a. Allow guests to use the dock for incidental use such as if they were to walk out to take a photo, look at the bottom for crab, etc., look at a sunset.
    Correct, DNR would consider the types of uses that you have described as incidental to the dock, which would not preclude the dock from qualifying for a no-fee private recreational dock as long as the dock conforms to local ordinances and shoreline master programs.
    b. Question-can we apply for a lease based upon our portion of the dock so ask for lease rights under where we would keep a boat or must it be both owners of the dock?
    No, a lease must be to the owner(s).
3. Buoys
    a. In order to use the buoy under a VRBO guest experience we would need to apply for a lease for the buoy area.
    Correct, similar to 1b above, If you would like to allow renters to use a mooring buoy as a VRBO guest experience you will need a use authorization, likely in the form of a Lease.

Thank you for your help in clarifying this. As I stated, this is an emotional issue as well as a structural one so want to get it right.

Regards, Dan

CERTIFICATE OF SERVICE

I certify that on this date, I filed a copy of the First Declaration of Dan 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 Department of Community Development 135 Rhone Street P.O. Box 947 Friday Harbor, WA 98250 dcd@sanjuanco.com	[ ] Via Facsimile [ ] Via Legal Messenger [X] Via Efile/Email [X] 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 kelsey@maritimeinjury.com *Attorney for Thomas C. Evans*	[ ] Via Facsimile [ ] Via Legal Messenger [X] Via Email [ ] Via US Mail, postage prepaid
Thomas C. Evans PO Box 408 Olga, WA 98112 360-376=5987 tom@maritimeinjury.com kelsey@maritimeinjury.com *Attorney for Box Bay Shellfish Farm LLC*	

Dated this 29th day of June, 2018, at Seattle, Washington.

Dan Stabbert

EXHIBIT 19

Lynda Guernsey

From: Lynda Guernsey
Sent: Wednesday, July 11, 2018 3:26 PM
Gary N. McLean
Subject: FW: PAPL00-18-0001 and PAPL00-18-0002
Attachments: Final Appeal Brief.pdf

Hi Gary,

Please see the email below and attachment regarding the Evans appeals 18-0001 and 18-0002.

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: Wednesday, July 11, 2018 12:56 PM
To: Erika Shook <erikas@sanjuanco.com>; Julie Thompson <JulieT@sanjuanco.com>; Community Development <cdp@sanjuanco.com>; Lynda Guernsey <LyndaG@sanjuanco.com>
Cc: Kelsey Demeter <kelsey@maritimeinjury.com>; dan@stabbertmaritime.com; karlal@stabbertmaritime.com; Tom Evans <tom@maritimeinjury.com>
Subject: PAPL00-18-0001 and PAPL00-18-0002

Good Afternoon,

Please find the final briefing on issues from Box Bay Shellfish Farm LLC and Thomas C. Evans, pro se, regarding the hearing currently set for August 15, 2018.

Best,
Kelsey

INJURY AT SEA
MARITIME INJURY ASSISTANCE

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
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Lynda Guernsey

From: Kelsey Demeter <kelsey@maritimeinjury.com>
Sent: Wednesday, July 11, 2018 12:56 PM
Erika Shook; Julie Thompson; Community Development; Lynda Guernsey
Cc: Kelsey Demeter; dan@stabbertmaritime.com; karlal@stabbertmaritime.com; Tom Evans
Subject: PAPL00-18-0001 and PAPL00-18-0002
Attachments: Final Appeal Brief.pdf

Good Afternoon,

Please find the final briefing on issues from Box Bay Shellfish Farm LLC and Thomas C. Evans, pro se, regarding the hearing currently set for August 15, 2018.

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
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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. PAPL00-18-0001 PAPL00-18-0002 BOX BAY SHELLFISH FARM LLC; THOMAS C. EVANS CLOSING BRIEFING ON REMAINING ISSUES

CLOSING BRIEFING:

The arguments filed in Stabbert's last memorandum addressing summary determination of certain aspects of this case do in fact raise some legitimate legal issues. This filing abandons the "bad neighbor" approach and arguments. This is refreshing.

However, the legal issues raised by Stabbert are not new to the law, and mostly have been previously addressed in the record in this case. The record has become completely scattered as a result of no rulings on any part of the case by the examiner. For example, it is impossible to say what facts remain and indeed what parts of the case. There was no ruling on Box Bay/Evans Motion to Strike Stabbert's initial "Motion" for Summary Judgment. This is significantly prejudicial to appellants as the cut off time for final issues is today. Appellants don't even know what facts remain or don't remain from Stabbert's pleadings and documents. How is it possible to prepare a case when

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you don't even know what the rulings are on very specific issues and facts? Appellants are left in the position of not having a clue as to what part of Stabbert's briefing are in, or are out of this hearing. For example, Stabbert makes many claims about Box Bay/Evans prior use of the dock. Are these facts in? Do they need to be addressed? Why hasn't there been a single ruling in this case on the multitude of pending issues and facts? This case cannot at this juncture be given a fair hearing and the hearing date should be abandoned to give time to the examiner to make proper rulings. Then and then can a truly justiciable date be set. For purposes of this record, appellants strenuously object to this hearing going forward. By responding to some of the issues below appellants are not waiving these objections.

FINAL LEGAL ISSUES RAISED BY STABBERT

1. **Jurisdictional limit of Shoreline Management Act and 200 Foot Criteria**.

Stabbert argues that since one of the proposed rental houses is more than 200 feet from the shoreline it is not subject to Shoreline Management Act jurisdiction. This position is incorrect. Stabberts' two lots both front on the shoreline, thus any proposal anywhere within the perimeter of either of these lots is subject to SMA jurisdiction and requires a shoreline permit under appropriate circumstances. The fact that on one of the lots touching the water the house being rented is more than 200 feet from the shoreline does not mean that the house is exempt from SMA requirements. See: *Juanita Bay Valley Cmty v. Kirkland* 9 Wn. App. 1973. There, a grading permit covering ground that was partially in / partially out of the 200 foot mark did not excuse the uplands portion of the project from SMA compliance. See also: *Merkel v.Port of Brownsville* 8 Wn. App.844 (1973).

2. **Shoreline management Master Program vs. Shoreline Management Act**.

Stabbert argues that since SJC code and the SJC Master Program do not require a SMA permit for a VRBO the Master Program trumps the Act, Chapter 90.58 RCW and no permit is required. This is a clear error of law and on the face of it, completely irrational. The SMA is very clear about categorical exemptions – they are strictly limited to those exceptions listed in State law and cannot be

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amended by Master Programs. See: WAC 173-27-040 "Developments exempt from substantial development permits" and RCW 90.58.030 (3)(e), definition of substantial development.

CONCLUSION AND CLOSE:

This case is not ripe for hearing. Far too many issues remain unresolved. Not a single ruling has been made on multiple motions involving issues of fact and law. It's impossible to prepare a case under these circumstances. Finally, regardless of the forgoing, a VRBO for an existing structure is a change of use and triggers the requirement for an SMA permit. To put it plainly and simply: It's not just about the dirt.

Respectfully submitted this 11th day of July, 2018

/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

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

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I served the above document on the following individuals in the manner identified.

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

[X] Via Email
[X] Via US Mail, postage prepaid

Dan Stabbert
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P: 206-547-6161
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Dan & Cheryl Stabbert
Dan Stabbert, *pro se*

[X] Via Email
[X] Via US Mail, postage prepaid

Dated this 11th day of July, 2018

s/ Kelsey Demeter
Kelsey Demeter, Paralegal

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EXHIBIT 20

Lynda Guernsey

From: Lynda Guernsey
Sent: Wednesday, July 11, 2018 3:35 PM
To: Gary N. McLean
Subject: FW: Stabbert Response to Motions PAPL00-18-001 & PAPL00-18-002
Attachments: Stabbert Dispositive Motion PAPL000-18-0001 & PAPL00-18-0002.pdf

Hi Gary,

Please see the email below and attachment from Stabbert regarding the Evans appeals 18-0001 and 18-0002.

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: Karla Lopez <KarlaL@stabbertmaritime.com>
Sent: Wednesday, July 11, 2018 2:02 PM
To: Julie Thompson <JulieT@sanjuanco.com>; Community Development <cdp@sanjuanco.com>; Tom <tom@maritimeinjury.com>; kelsey@maritimeinjury.com
Cc: Lynda Guernsey <LyndaG@sanjuanco.com>; Erika Shook <erikas@sanjuanco.com>; Dan Stabbert <dan@stabbertmaritime.com>; Karla Lopez <KarlaL@stabbertmaritime.com>
Subject: Stabbert Response to Motions PAPL00-18-001 & PAPL00-18-002

Good day,

Attached please find Dan Stabbert's Reply in support of motion to dismiss.

Thank you and have a wonderful week.

Best Regards,

Karla Lopez
Executive Assistant
Stabbert Maritime
p:206.204.4132 m: 206.383.1253
a:2629 NW 54th Street # 201, Seattle, WA 98107
STABBERT MARITIME
w:StabbertMaritime.com e: KarlaL@StabbertMaritime.com

Lynda Guernsey

From: Karla Lopez <KarlaL@stabbertmaritime.com>
Sent: Wednesday, July 11, 2018 2:02 PM
To: Julie Thompson; Community Development; Tom; kelsey@maritimeinjury.com
Cc: Lynda Guernsey; Erika Shook; Dan Stabbert; Karla Lopez
Subject: Stabbert Response to Motions PAPL00-18-001 & PAPL00-18-002
Attachments: Stabbert Dispositive Motion PAPL000-18-0001 & PAPL00-18-0002.pdf

Good day,

Attached please find Dan Stabbert's Reply in support of motion to dismiss.

Thank you and have a wonderful week.

Best Regards,

Karla Lopez
Executive Assistant
Stabbert Maritime
p:206.204.4132 m: 206.383.1253
a:2629 NW 54th Street # 201, Seattle, WA 98107
STABBERT MARITIME
StabbertMaritime.com e: KarlaL@StabbertMaritime.com

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. PAPL00-18-0001 PAPL00-18-0002 **RESPONDENT'S REPLY IN SUPPORT OF MOTION TO DISMISS**

I. INTRODUCTION

Appellants' appeal should be dismissed in its entirety. The Hearing Examiner can reach this conclusion by applying the law to the Appellants' Notice of Appeal, Appellants' "Definitive Statement of Issues On Appeal," and the County's permit decisions. No additional facts are necessary.

Appellants do not cite any law in response to Stabbert's Motion to Dismiss.[1] Instead, Appellants argue the Motion is invalid because it cited the permit number, not the appeal file

[1] On June 15, 2018, Stabbert filed a Motion to Dismiss. On June 22, 2018, Appellants incorrectly filed a "Reply" to Stabbert's Motion to Dismiss. Appellants' caption should correctly be labeled as a "Response" to the Motion to Dismiss.

numbers. Harmless error provides no basis for invalidating a timely filed and properly served motion under the San Juan County Code and LUPA. RCW 36.70C.130(1)(a).

Appellants are upset about a private Joint Use Agreement for a dock, but a provisional use permit appeal before the San Juan County Hearing Examiner is not the appropriate venue to adjudicate a private contractual dispute.

Ultimately, Appellants' numerous arguments fail to address the heart of the matter: whether Appellants, as a matter of law, can demonstrate that the County erred when it approved Stabbert's two provisional use permits. Appellants have emphatically argued that the County erred because a DNR lease is required and because a shoreline permit is necessary. Appellants' DNR argument was not timely raised and it lacks legal merit. Thus, it should be dismissed pursuant to SJCC 2.22.230.D. Additionally, Appellants' shoreline permit argument must be dismissed as a matter of law because San Juan County's Shoreline Master Program does not require any shoreline permit for a vacation rental use in a previously constructed home located within the Rural Farm Forest shoreline designation pursuant to SJCC 18.50.600. As described in greater detail below, Appellants' remaining legal arguments must be dismissed as a matter of law as well.

II. LEGAL AUTHORITY

San Juan County Code 2.22.230.D states that the hearing examiner *shall* dismiss an appeal, without hearing, "when it is determined by the hearing examiner to be untimely, without merit on its face, incomplete, or frivolous." (Emphasis added).

The purpose of a notice of appeal, like the purpose of pleadings generally, is to put the court and opposing parties on notice that an issue is being raised. *King County v. Wash. State Boundary Rev. Bd.*, 122 Wn.2d 648, 660, 860 P.2d 1024 (1993). Courts have acknowledged a strong public policy supporting administrative deadlines. *Durland v. San Juan County*, 182 Wn.2d 55, 59-60, 340 P.3d 191 (2014) (quoting *Chelan County v. Nykreim*, 146 Wn.2d 904, 933, 52 P.3d 1 (2002)). Thus, an appellant is deemed to have waived any issues that are not raised in

the notice. *See, State v. McAnich*, 189 Wn. App. 619, 628, 358 P.3d 448 (2015) (appellate court declined to address a challenge that was not designated in the notice of appeal). Furthermore, if no set of facts would entitle a plaintiff to relief on its claims, it is appropriate to grant a motion to dismiss. *Halvorson v. Dahl*, 89 Wn.2d 673, 674, 574 P.2d 1190 (1978).

A moving party is entitled to summary judgment if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Kilcullen v. Calbom & Schwab, PSC*, 177 Wn. App. 195, 202, 312 P.3d 60 (2013) (citing CR 56(c)). A material fact is a fact upon which the litigation depends, in whole or in part. *Zedrick v. Kosenski*, 62 Wn.2d 50, 54, 380 P.2d 870 (1963). Thus, summary judgment is proper if there is no legal basis for a case or claim to proceed. *Slack v. Luke*, 192 Wn. App. 909, 919, 370 P.3d 49 (2016).

III. ARGUMENT

A. The Motion To Dismiss Asks The Hearing Examiner To Dismiss Appellants' Appeal In Its Entirety

As background, Appellant Thomas C. Evans and Appellant Box Bay Shellfish Farm, LLC (collectively, "Appellants") appealed two San Juan County decisions regarding Stabbert's provisional use permit applications: PROV0-17-0065 and PROV0-17-0066 (collectively, the "Decision"). To be clear, Appellants filed the same appeal and raised the same legal issues. *See*, Appellants' Notice of Appeal. Stabbert filed a "Motion to Dismiss" on June 15, 2018 asking the Hearing Examiner to dismiss Appellants' appeal as a matter of law. Stabbert's Motion to Dismiss identified both Appellants and explained why the timely filed appeal issues and untimely DNR appeal issue should be dismissed as a matter of law. There is no basis for Appellants' confusion here.

B. Citing the Permit Number Instead of the Appeal Number Is Harmless Error

Stabbert's Motion to Dismiss identified the appealed permit number instead of the appeal file number. Appellants received the Motion to Dismiss and responded to the motion three times: (1) through a motion to strike, (2) through a letter to the Hearing Examiner where Appellants

threaten criminal action against Stabbert's assistant; and (3) through a response to the motion to dismiss. There is no prejudice here. Appellants have had their say.

The plain language of LUPA contradicts Appellants' argument that harmless error provides a legal basis for reversal on appeal. *See e.g.*, RCW 36.70C.130(1)(a) (explicitly exempting harmless error as a basis for granting relief under LUPA). LUPA case law explains that harmless error is one that is "not prejudicial to the substantial rights of the party assigning [error,]" and does not affect the outcome of the case. *City of Bellevue v. Lorang*, 140 Wn.2d 19, 32, 992 P.2d 496 (2000) (*quoting State v. Smith*, 131 Wn.2d 258, 264, 930 P.2d 917 (1997)); *also see Young v. Pierce County*, 120 Wn. App. 175, 188, 84 P.3d 927 (2004) (finding it was harmless error to not include a specific code citation); *Thornton Creek Legal Fund v. Seattle*, 113 Wn. App. 34, 54, 52 P.3d 522 (2002) (finding it was harmless error when a planning director failed to formally adopt an FEIS and circulate a SEPA Addendum). Citing a permit number instead of an appeal number has no effect on the outcome of this appeal. There is no basis here to reject Stabbert's Motion to Dismiss.

C. The County's Decision Complies With the County Code Approval Criteria

Appellants' appeal should be dismissed in its entirety. The County's Decision explains how the permit applications comply with the codified approval criteria. With the exception of the shoreline arguments, Appellants have not attempted to identify any contested finding of fact or permit conditions. Instead, Appellants are attempting to drag a private contractual dispute regarding a dock's Joint Use Agreement into the County's permitting decisions.

Appellants also argue that Stabbert's Motion relies upon unsworn statements of fact because Stabbert's Motion does not include the language "sworn under penalty of perjury." Acknowledging Appellants' concern, Stabbert asks that Hearing Examiner rule on the Motion to Dismiss by solely applying the law to Appellants' Notice of Appeal, Appellant's "Definitive Statement of Issues on Appeal," and the County's Decision, as provided in Stabbert's Motion to Dismiss as summarized below.

1. Permit Approval Criteria

The County may approve a provisional use permit only after finding that the permit application complies with the applicable approval criteria located in SJCC 18.80.080.D(1)-(2). This criteria requires review for consistency with the applicable sections of SJCC 18.40 (Performance Standards), 18.50 (Shoreline Master Program), and 18.60 (Development Standards).[2] The County Decision explains in detail how Stabbert's permit applications comply with these provisions.

2. Stabbert's Motion To Dismiss And Appellants' Response

In support of his Motion to Dismiss, Stabbert repeatedly cites permit conditions 1 through 10, which ensure the permits' compliance with the San Juan County Code's approval criteria. Appellants' response did not address the permit conditions. Instead, Appellants' response improperly raises an untimely DNR issue, continues to argue that a conditional shoreline use permit is required when the County's shoreline management program clearly dictates otherwise, and continues to improperly raise private contractual Joint Use Agreement arguments.

3. Joint Use Agreement

It is now clear that Appellants' appeal stems from a private contractual dispute over a Joint Use Agreement for a dock (the "Private Agreement"), as identified in the County's Decision. *See* Appellants' Bates Stamped Record, p. 4, 7, 10. The plain language of the Private Agreement provides: "The owners of each parcel may allow their invitees to use the dock." Appellants Bates Stamped Record, p. 7. Appellants repeatedly raised Private Agreement issues with County Staff during the permitting process. *Id.* In response, County Staff refused to engage in a private contractual dispute, but included a condition stating that the permit does not grant Stabbert the right to violate private covenants. Appellants' Bates Stamped Record, p. 4 (finding of fact 20) and 17 (condition 16). In addition, during the permitting process Stabbert

[2] Appellants' "definitive statement on issues on appeal" incorrectly cites SJCC 18.40.275 as the applicable short term rental standards. The correct code citation is SJCC 18.40.270, which, in part, provides the codified basis for the County's Decision.

proposed to "abide by and communicate the rules outlined in the Joint Use Agreement as regards [to] the use of the dock." Appellant's Bates Stamped Record, p. 10. The County's finding of fact 22 and conditions 8 and 9 accept Stabbert's proposed condition and require Stabbert to submit Rules of Conduct for the County's approval prior to any rental of the residence. Appellant's Bates Stamped Record, p. 4, 16. Stabbert acknowledges and agrees to abide by this condition.

The County's applicable approval criteria require Stabbert to "provide notice to the tenant regarding the rules of conduct and their responsibility not to trespass on private property or to create disturbances."[3] The approval criteria do not obligate or authorize the County to adjudicate private rights. The approval criteria also do not authorize Appellants' requested relief, such as the posting of "prominent" no trespassing signs or the construction of new physical barriers to the dock ("with construction to be approved by Evans"). Notice of Appeal. p.6:7-9. Instead, with regards to the dock, the County is required to ensure that the vacation rental provides notice to the tenants regarding rules of conduct and their responsibility not to trespass on private property or create other disturbances. Condition 8 for both permits obligates Stabbert to provide tenants with the County-approved rules of conduct. SJCC 18.40.270.K. The County also added an additional condition to protect Appellants by explicitly stating that the permit does not supersede any of Appellants' rights under the Private Agreement even though the interpretation or adjudication of the Private Agreement is beyond the scope of the County's permit review. Appellants' Bates Stamped Record, p. 4 (finding of fact 20) and 17 (condition 16). The County did exactly what the code demands.

4. Appellants' Request For Relief

Dismissal of Appellants' appeal is appropriate here because the relief requested by

[3] SJCC 18.40.270.K provides: "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."

Appellants is not available as matter of law, largely because Appellants are attempting to use the County's Decision to litigate the Private Agreement. Page 10 of Appellants' appeal requests four elements of relief from the Hearing Examiner, enumerated (a) through (d).[4] Appellants' appeal should be dismissed as a matter of law for the following reasons:

Requested relief (a) asks that the Hearing Examiner require a "re-application through the Shoreline Management Conditional Use application process." Notice of Appeal, p. 10:2-5. San Juan County's adopted Shoreline Master Program does not require any shoreline permit for a vacation rental use in a previously constructed home located within the Rural Farm Forest shoreline designation. SJCC 18.50.600. Stabbert's Response to Motions for Summary Judgment provides comprehensive analysis of this point (*see* Respondent's Response to 1st and 2nd Motions for Summary Judgment at 3 – 5).

Requested relief (b) asks the Hearing Examiner to "[p]rohibit any renter from using the joint use dock, the privately owned platform." Notice of Appeal, p. 10:6-9. The County's Decision is already conditioned upon compliance with the Private Agreement. *See* Appellants' Bates Stamped Record, p. 4 (finding of fact 20) and 17 (condition 16). Adjudicating the rights of private parties in contractual disputes over dock use has no connection to the codified provisional use permit approval criteria. The permit approval criteria provide the County with no authority to enact this permit condition.

Requested Relief (c) asks the Hearing Examiner to "[a]llow the posting of prominent no trespassing signs on the dock, platform, and trail." Notice of Appeal, p. 10:10. Again, Appellants are asking the County to adjudicate the Private Agreement by requesting "no trespassing" signs to a dock that is subject to a Private Agreement between Stabbert and Appellants. As identified above, the County's Decision is conditioned upon compliance with the Private Agreement and the codified permit approval criteria do not require the signage requested by Appellants.

---

[4] Appellants' four requests for relief generally correspond with Appellant's appeal issues (a)-(h); thus, this Reply responds to Appellants' appeal issues by addressing Appellants' requests for relief.

Requested relief (d) asks the Hearing Examiner to "[r]equire Stabbert at their expense to hire a well qualified (sic) outside contractor to install an all weather (sic) saltwater proof gate at the entry to the dock that allows access only to persons properly on the dock, with construction to be approved by Evans." Notice of Appeal, p. 10:11-12. Again, Appellants are asking the County to adjudicate the Private Agreement by requiring Stabbert to construct barriers to the dock. No permit approval criterion requires a permit applicant to install barriers that are approved by a neighbor. SJCC 18.40.270 requires a property management plan and giving notice to the tenants of the rules of conduct, which is condition 8 in the Decision.

Appellants have not requested any relief that the Hearing Examiner may grant as a matter of law. This appeal should be dismissed pursuant to SJCC 2.22.230.D.

5. Remaining Appeal Issues

Finally, the Appellant also raised (or attempted to raise in an untimely manner) issues regarding DNR leases, noise, light, directions to the property, and Fourteenth Amendment issues. Appellants did not connect any of these issues to requested relief. Each issue also lacks merit, and they are addressed below for the purposes of clarity.

DNR. Appellants' argument regarding DNR leases is time barred because these issues were not included in Appellant's appeal. Appellant's Notice of Appeal p. 3:10- 4:18 (not including any reference to DNR leases, RCW 79.105.430, or WAC 332-30-144(2)(c)); *State v. McAnich*, 189 Wn. App. 619, 628, 358 P.3d 448 (2015) (dismissing untimely raised appeal issues). The DNR argument is also without legal merit. *See e.g.*, WAC 332-30-144(3) (requiring a lease for yacht and boat club facilities, floating houses, resorts, and multifamily dwellings with more than four units).[5] In contrast to the uses identified in the DNR regulations where a lease is required, the use here is the vacation rental of two single family residences. No lease is required under the plain language of state law and DNR's lease regulations.

[5] *See also* RCW 79.105.430 (providing no authority for Appellant's argument, prohibiting only mooring boat for commercial or residential use).

Noise. For both permits, noise is addressed in findings of fact 12 and 13 and condition 7 (requiring the vacation residence to be operating in a way that will not prevent unreasonable disturbances to residents), condition 8 (requiring a property management plan) and condition 10 (requiring adherence to local noise regulations[6]). Noise is mitigated per the permit conditions and County Code. The permit approval criteria demand nothing else.

Light. Appellants do not like Stabbert's existing lighting, but the Decision does not authorize any additional lighting to be constructed or installed. The Decision simply allows the use of existing lighting just as any other tenant (or owner) would use the existing lighting. No permit approval criterion authorizes light mitigation from existing lighting in existing structures.

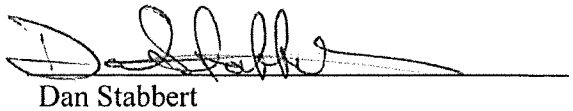
Directions. For both permits, directional requirements are addressed in condition 3 (requiring access via Point of View Lane), condition 7 (requiring the vacation residence to be operated in a way that will prevent unreasonable disturbances to residents) and condition 8 (requiring an up-to-date property management plan).

Fourteenth Amendment. Nothing in the County's Decision supports Appellants' Fourteenth Amendment appeal issue. An email in the file does not constitute the County's decision, which is the subject of this appeal.

IV. CONCLUSION

There is no basis for an evidentiary hearing when Appellants' legal arguments and requested relief fail as a matter of law. For the foregoing reasons and pursuant to SJCC 2.22.230.D, Stabbert respectfully requests that the Hearing Examiner dismiss Appellants' appeal of PPROVO-17-0066 and PPROVO-17-0065.

DATED this 11th day of July, 2018.

By: 
Dan Stabbert

[6] SJCC 9.06.040 makes it unlawful for any person to make loud or unreasonable noise between 10 p.m. and 7 a.m.

2629 NW 54th St., #201
Seattle, WA 98107
dan@stabbertmaritime.com

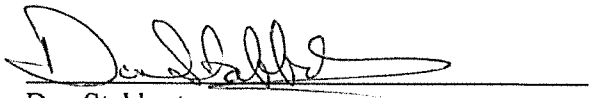
CERTIFICATE OF SERVICE

I certify that on this date, I filed a copy of Respondent's Reply In Support of Motion To Dismiss 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 [X] Via Efile/Email [X] 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 kelsey@maritimeinjury.com *Attorney for Thomas C. Evans*	[ ] Via Facsimile [ ] Via Legal Messenger [X] Via Email [ ] Via US Mail, postage prepaid
Thomas C. Evans PO Box 408 Olga, WA 98112 360-376=5987 tom@maritimeinjury.com kelsey@maritimeinjury.com *Attorney for Box Bay Shellfish Farm LLC*	

Dated this 11th day of June, 2018, at Seattle, Washington.



Dan Stabbert

EXHIBIT 21

Lynda Guernsey

From: Lynda Guernsey
Sent: Thursday, July 26, 2018 12:40 PM
To: Kelsey Demeter; karlal@stabbertmaritime.com
Subject: FW: Order denying prehearing motions and confirming hearing date -- Box Bay/Stabbert Appeal
Attachments: Stabbert, Order denying motions, confirming appeal date.pdf

Hi,

Please see the email and attachment from the Hearing Examiner regarding the Evans and Box Bay Shellfish Farms LLC appeals of the Stabbert provisional use permits, PAPL00-18-0001 and 0002.

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: Gary N. McLean <mcleanlaw@me.com>
Sent: Thursday, July 26, 2018 10:42 AM
To: Lynda Guernsey <LyndaG@sanjuanco.com>
Cc: Erika Shook <erikas@sanjuanco.com>; Julie Thompson <JulieT@sanjuanco.com>
Subject: Order denying prehearing motions and confirming hearing date -- Box Bay/Stabbert Appeal

Lynda Guernsey

From: Gary N. McLean <mcleanlaw@me.com>
Thursday, July 26, 2018 10:42 AM
Lynda Guernsey
Cc: Erika Shook; Julie Thompson
Subject: Order denying prehearing motions and confirming hearing date -- Box Bay/Stabbert Appeal
Attachments: Stabbert, Order denying motions, confirming appeal date.pdf

Before Hearing Examiner
Gary N. McLean

BEFORE THE HEARING EXAMINER
FOR SAN JUAN COUNTY

In the Matter of the Appeal filed by **BOX BAY SHELLFISH FARM LLC / THOMAS C. EVANS,** Appellants, of provisional use permit approvals issued by the **SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT,** Respondent, **DAN AND CHERYL STABBERT,** Applicants/ Respondents	**File Nos. PAPL00-18-0001** **PAPL00-18-0002** **ORDER DENYING PREHEARING MOTIONS AND CONFIRMING APPEAL DATE**

Under SJCC 18.80.140(B), for appeals of administrative permit decisions made by the Director, the San Juan County hearing examiner has full authority and discretion to conduct open-record appeal hearings and to affirm, reverse, modify, or remand the decision that is on appeal.

The numerous pleadings, opposition letters, posturing emails, self-styled motions, and other electronic correspondence filed in this matter as of this date do not present a clear, cogent, or convincing reason to grant summary dismissal of this appeal, or to issue an order in favor of the appellant without need for a hearing.

GARY N. MCLEAN
HEARING EXAMINER
FOR SAN JUAN COUNTY
McLeanLaw@me.com

The materials seem to be of the sort that can be handled as potential evidence or arguments at the upcoming hearing, subject to any objections that can also be addressed at the hearing. That is what a hearing is for. The relief requested by the appellant (reversal or remand) appears to be of the sort that is clearly available under applicable county codes if they prevail at the appeal hearing.

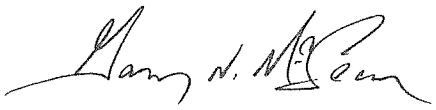
In sum, as in any appeal hearing, if the appellant presents credible, substantial evidence and/or controlling legal authority as part of the hearing record, establishing that the challenged decision was made in error or in violation of law, then the challenged decision may be modified, remanded, or reversed. That will not happen without a hearing, and there has been no clear, cogent, or convincing showing of good cause why the appeal should be delayed or dismissed without need for a hearing.

All dispositive motions are denied, reserving all rights for all parties to include any evidence or legal arguments raised in their numerous pre-hearing materials as part of their case presentation at the appeal hearing, subject to appropriate objections from other parties of record, all of which can and will be addressed at the hearing.

The parties should refrain from making further personal attacks against one another or from filing unnecessary and burdensome paperwork. All parties should focus on preparing for the upcoming hearing, so they can present clear, focused, and relevant evidence, testimony and arguments when their time comes. Civility is expected from all participants.

The appeal hearing will go forward as previously announced, beginning at 10:00 a.m. on August 15, 2018.

ISSUED this 26th Day of July, 2018



Gary N. McLean
Hearing Examiner

GARY N. MCLEAN
HEARING EXAMINER
FOR SAN JUAN COUNTY
McLeanLaw@me.com

EXHIBIT 22

Lynda Guernsey

From: Lynda Guernsey
Sent: Wednesday, August 1, 2018 12:30 PM
To: 'Kelsey Demeter'
Subject: RE: Box Bay/Stabbert Appeal

Hello,

To answer your question, and per the Hearing Examiner, a court reporter can be allowed. The reporter must be certified and the expense would be covered by your office. The Hearing Examiner reserves the right to deem it to be an official transcript and after that is done the County would get a courtesy copy.

You may or may not be aware but the hearings are electronically recorded so if you decided to get something done after the hearing you could use that recording.

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: Wednesday, August 1, 2018 11:10 AM
To: Lynda Guernsey <LyndaG@sanjuanco.com>
Cc: Kelsey Demeter <kelsey@maritimeinjury.com>
Subject: Box Bay/Stabbert Appeal

Good Morning,

Can you advise if the hearing examiner will allow a court reporter for the Evans/Stabbert hearing on the 15th?

Thank you,
Kelsey

INJURY AT SEA
MARITIME INJURY ASSISTANCE

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

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Lynda Guernsey

From: Kelsey Demeter <kelsey@maritimeinjury.com>
Wednesday, August 1, 2018 11:10 AM
To: Lynda Guernsey
Cc: Kelsey Demeter
Subject: Box Bay/Stabbert Appeal

Good Morning,

Can you advise if the hearing examiner will allow a court reporter for the Evans/Stabbert hearing on the 15th?

Thank you,
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

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