



SAN JUAN COUNTY  
DEPARTMENT OF COMMUNITY DEVELOPMENT

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HEARING EXAMINER STAFF REPORT  
PSJ000-18-0003 Dickhaus *Am*

**Report Date:** January 9, 2018  
**Hearing Date:** January 23, 2019  
**Project Planner:** Colin Maycock AICP, Planner IV  
**Request:** Shoreline Substantial Development Permit: Community Joint Use Dock, a staircase and a storage structure.  
**Location:** San Juan Island  
**Recommendation:** Approve with conditions

Project Data	
Island	San Juan
Site Address/Location	Between lots #63 Wildwood Lane and #59 Wildwood Lane
Parcel Numbers	462341009000and 462341003000
Site Size	462341009 is .073 of an acre, 462341003 is 0.66
Owner	Nancy and Warren Appleton and David Dickhaus
Agent	Jeff Otis, 393 Bobbyann Road, Eastsound, WA, 98245
Land Use Designation	Rural Residential (5)
Shoreline Designation	Rural Residential
Existing Land Use	Residential
Surrounding Land Use	<ul style="list-style-type: none"> <li>▪ North: residential South: shoreline</li> <li>▪ East: residential West: undeveloped/residential</li> </ul>
Land Division Status	Westcott Plat and subsequent short plats of Lots, 1, 2 and 3
Critical Areas	<ul style="list-style-type: none"> <li>▪ Aquifer Recharge Areas: yes, whole county</li> <li>▪ Fish and Wildlife Habitat: Chinook salmon, Southern Resident Killer Whale (SRKW) in the water, red sea urchin and eelgrass</li> <li>▪ Wetlands: none mapped</li> <li>▪ Floodplain: yes: VE with a BFE of 16 feet</li> <li>▪ No appreciable shoreline drift</li> <li>▪ Bedrock shoreline</li> </ul>
Joint Use Owners (Exhibit 2h)	<p>Access to the dock would be shared by the following TPNs:</p> <ul style="list-style-type: none"> <li>▪ 462341011: Roy and Jennifer Robinson, 57 Wildwood Lane, FH, WA, 98250;</li> <li>▪ 462341007: Roy and Jennifer Robinson, 57 Wildwood Lane, FH, WA, 98250;</li> <li>▪ 462341003: David Dickhaus, 59 Wildwood Lane C/O 11401 Discovery Heights Circle, Anchorage, AK, 99515;</li> <li>▪ 462341009: Warren and Nancy Appleton, PO Box 1532, Mercer Isl, WA, 98040</li> <li>▪ 46234100: Leonie Griswold, 977 White Point Road, Friday Harbor, WA, 98250</li> <li>▪ 462341005: Wood Family Trust, 207A No Cloverdale Blvd #197, Cloverdale, CA, 95425)</li> </ul>
Other Permits :	<p>TPN 462341009: BPA #12549 (Replacing #12239 and 00BPA690) SFR            TPN 462341003: BPA#4168: SFR – August 27, 1985 and BPA#5096: Decks – February 26, 1988.            TPN 462341007: BPA #9271: SFR – October 12, 1995 and BPA #11547: Garage-February 18, 2000.            TPN’s 462341005, 462341001 and 462341011 are currently undeveloped.            WA – DOE: Section 401 Water Quality Certification; WA – DNR: Aquatic Resource Use Authorization;            WA – DFW: Hydraulic Project Approval and US – Corps: Section 10 Permit</p>

## **Project Description**

The proposal is to construct a new community joint-use dock between TPNs 462341003 and 462341009, 59 and 63 Wildwood Lane, respectively. The dock would also be shared by other property owners in the amended Westcott Shores Plat (TPNs 46462341001, 462341007 and 462341011). There are six properties in the Westcott Shores plat. The owners of three of those lots, TPNs 462341009 (Appleton), 462341003(Dickhaus), and, 462341007(Robinson) would be the primary users of the joint use docks. The owners of two of the other three lots; TPNs 462341011(Robinson), 462341001 (Griswold) would be considered 'optional' users of the dock. The owner of the sixth parcel, TPN 462341005 (Woods family trust), have expressed no interest in participating in the construction or use of the proposed community joint-use dock.

The proposed dock includes a set of beach access stairs and a small overwater storage container.

Originally the proposed dock application stated the dock was sized to accommodate six boats of approximately 20-30 feet in length (Exhibits 2c and 2l). However, due to Westcott Bay's bathometric profile, the moorage clearance during Extreme Low Tide (ELT) events is expected to be minus 4 feet, less than the Department of Natural Resource's minimum moorage clearance of minus 7 feet during such events for docks that serve more than 4 vessels.

The applicant submitted a revised proposal on December 30, 2018, (Exhibit 2m), states the dock will now accommodate no more than four (4) vessels.

The proposed over the water specifications for the community use dock include a:

Fully grated pier:	176 feet x 5 feet, 7 inch =	982 square feet
Fully grated ramp:	48 feet x 4 feet, 7 inch =	220 square feet
Fully grated ramp landing float:	10 feet x 6 feet =	60 square feet
<u>Fully grated float:</u>	<u>60 feet x 8 feet =</u>	<u>480 square feet</u>
Total square footage		1,742 square feet

The dock's over the water footprint, (total square footage minus the ramp overlap) is 1,724 square feet.

The dock system components will consist of galvanized steel piles, epoxy coated steel, fiberglass grating, molded plastic grating, aluminum tubing and Douglas fir joists (Exhibit 2g, pages 13 and 14).

In addition to the dock, the project includes the construction of a beach access stairway attached to the pier. The proposed maximum vertical height will be 12.2 feet. The proposed stairway will be connected to the proposed dock and will terminate landward of the OHWM. The stairs will be constructed of steel pin piles and frame with fiberglass grating (Exhibit 2g, page 14).

The overwater storage structure is mentioned on page 7 of Exhibit 2i; however, the storage structure is not addressed in either of the environmental impact assessments (Exhibits 2g and 2l) and does not appear on the dock construction plans.

No removal of vegetation is proposed.

## **Proposed Mitigation Measures**

To offset potential adverse impacts the applicants propose the following mitigation measures:

1. Removal of two sets of concrete stairwell landings from the upper shore and two stairwells. Areas where these structures are removed will be revegetated (Exhibit 2c, sheet 3; Exhibit 2l, sheet 3);
2. Removal of a derelict float located across Westcott Bay on the shore of English Camp property. The 8 feet X 18 feet (144 square feet) structure rests on the sea-bed and is no longer useful. The float will be removed and disposed of in an upland facility (Exhibit 2l, appendix 12).

3. An attempt will be made to convert a small depression in the shoreline at the applicant property into forage fish habitat. The depression is approximately 35 feet X 55 feet and lies between MHW and 0 feet MLLW. Approximately 1,925 square feet of beach nourishment is proposed (Exhibit 2l, Appendices 13, 14, and 15).
4. The applicants intend to plant 3,400 square feet of woody vegetation in the shoreline areas associated with the application. Planting is proposed within 50 feet of the high tide line and will include various species of native woody vegetation. A vegetation monitoring plan will be in place for 5 years (Exhibit 2l, Appendix 16).

**Background**

1. On October 12, 1976, the County approved the Westcott Shores short plat (Exhibits 4a and 4b). This plat created 4 lots and included the following dedication: "If a dock structure of any kind is built within this community tidelands area, there shall be only one (1) and it shall be for the common use of all four (4) lots (Exhibits 4a-4b)."
2. Over the intervening years the original short plat has been further subdivided in Westcott Shores Lot 1 Short Plat, Westcott Shores Lot 2, Short Plat and Westcott Shores Lot 3 short Plat (Exhibits 4c-4f)
3. The subsequent plats included the original dedication (Exhibit 4d – Restriction 8 (Vol 5, page 6A) and Exhibit 4f – Restriction 7, (Vol 5, page 11A)).
4. The six buildable lots derived from the original Westcott shores plat are identified on Exhibit 2h.
5. A joint-use agreement was signed by owners of five (5) of the six (6) lots. The Wood Family Trust, owners of TPN 462341005, have declined to participate in the agreement (Exhibits 2k, 2n and Exhibit 9).
6. The joint-use agreement identifies Robinson (TPN’s 462341007 and 462341011) and Griswold (TPN 462341001) as optional users. The joint use agreement, (Exhibit 2n), states that ‘optional’ users will have access to the mooring float on a limited basis. The optional user access will include the right to moor for two hours each twenty-four period, to load and unload boats and to launch and recover their kayaks and dinghies.
7. The Robinson’s own both TPN 462341007 and TPN 462341011. As the owners of two properties within Westcott Shores, the Robinsons are both full users and optional users.
8. Ms. Leonie Griswold owns TPN 462341001 that is located within Westcott Shores. She also owns TPN 462342001, which is located immediately adjacent to Westcott Shores and has a dock attached to it that was permitted in 1986, (San Juan County permit number, 33SJ85).

**Findings of Fact**

1. The current shoreline regulations became effective on October 30, 2017.
2. The applicants submitted the shoreline substantial development permit application PSJ000-18-0003 on May 31, 2018 (Exhibit 2a), and paid the required fees (Exhibit 2b). A revised narrative was submitted on October 10, 2018 (Exhibit 2i), including a revised dock layout (Exhibit 2l), a new joint-use agreement (Exhibit 2k), an updated SEPA checklist (Exhibit 2j), and an addendum to the original biological assessment (Exhibit 2l). They propose to build a new community use dock serving up to six vessels with the following over the water dimensions:

Fully grated pier:	176 feet x 5 feet, 7 inch =	982 square feet
Fully grated ramp:	48 feet x 4 feet, 7 inch =	220 square feet
Fully grated ramp landing float:	10 feet x 6 feet =	60 square feet
<u>Fully grated float:</u>	<u>60 feet x 8 feet =</u>	<u>480 square feet</u>
Total		1,742 square feet

The dock’s over the water footprint, (total square footage minus the ramp overlap) will be 1,724 square feet.

3. The structure would be a community joint-use boating facility.

4. The proposed dock would have an over the water footprint of 1,724 square feet and will terminate approximately 210 feet waterward from the ordinary high water mark.
5. On April 20, 2018, Leonie Griswold, the owner of TPN's 462342001 (outside of the Westcott Shores subdivision) and 462341001 (inside the Westcott Shores subdivision) and who has a dock on the property located outside of the Westcott Shores Plat, wrote a note to David Dickhaus stating that she was "not interested" in allowing her current dock to be "used as a docking facility for all the property owners in Westcott Shores subdivision" (Exhibit 2f).
6. On September 5, 2017, Robert and Scarlett Wood, representing the Wood Family Trust, wrote to David Dickhaus, in response to an enquiry regarding the interest in participating in the dock proposal; stating that they declined "to participate in this project, fund same or execute a 'joint-use agreement (Exhibit 9).'"
7. Evidence indicating the applicants have explored commercial moorage was submitted (Exhibit 5). On April 9, 2018, an inquiry regarding the availability of full time moorage for up to five, 20 to 30 foot vessels was submitted to Roche Harbor and Snug Harbor marinas.
8. The marinas' responses were negative indicating the difficulty of finding fulltime moorage without getting on a long waiting list. The marinas' responses, attached in Exhibit 5, are summarized below.
  - Roche Harbor was full with a 30-year wait for slips up 30 feet; slips for vessels 36 feet long and above had a potentially shorter waiting list of between 5 to 15 years.
  - Snug Harbor indicated that at the time of the enquiry there was nothing immediately available and a 2 year waiting list.
9. The marinas' responses illustrate the "*temporal dimension of availability*". The answer to moorage availability questions depends on when you ask and whether a choice is made to act on space when it is actually available. This was raised by the Shorelines Hearings Board in Stanford vs San Juan County (SHB No. 06-004.)
10. There is no evidence to indicate that the applicants placed their name on a waiting list at any of these marinas.
11. Each of the property owners actively pursuing the dock has a mooring buoy in Westcott Bay. Mr. Dickhaus has offered to allow all dock users to have access to his buoy (Exhibit 2n): however the draft joint-use agreement does not specify how access to the buoy will be coordinated.
12. The County's GIS maps show the presence of Dungeness crab and oyster beds. Unmapped Fish and Wildlife Habitat Conservation Areas (FWHCAs) include salmon, rockfish and Southern Resident Killer Whales. The potential impacts on FWHCA's are addressed in the February 26, 2018, Biological Evaluation Westcott Shores Joint-Use Dock Construction Project by Jen-Jay Diving (Exhibit 2g) and the September 26, 2018, Addendum to Westcott Shores joint-use dock application (Exhibit 2l).
13. On December 28, 2018, staff wrote emails (Exhibits 2m and 7a) to the agent asking for additional information related to the Washington Department of Natural Resource (DNR) requirement for a minus seven foot clearance during Extreme Low Tide (ELT) events, the Joint-use agreement and the mitigation actions, specifically the provenance of the float and stairwells to be removed as part of the proposed mitigation.
14. On December 30, 2018, the agent replied to the December 28, 2018, emails (Exhibits 7b and 2m). The agent provided the following responses:
  - a. The Wood family was not included in the agreement because it's only binding on the parties to the agreement. The applicants have agreed to conditioning approval of the dock permit on a provision that will ensure that latecomers will be able to buy into the agreement.
  - b. The requirement for a minus seven foot clearance during ELTs was moot because, when constructed, no more than 4 vessels would use the dock at any one time. Only docks constructed and servicing more than 4 vessels require a lease from DNR. Docks that require a lease from DNR must provide the minus seven foot clearance.

The revised joint use agreement (Exhibit 2n, page 4) contains a provision restricting the use of the dock to no more than four (4) pleasure craft at any time. The joint use agreement does not address the inherent contradiction of an agreement that will allow up to six property owners to become, following the appropriate payments, full owners of the dock, with all the associated rights of ownership including unlimited and exclusive use of the floats, permanent year round moorage and the mooring buoy associated with TPN 462341003, while simultaneously limiting the number of users at any one time to four property owners.

c. The applicant noticed the derelict float in the past, its ownership is unknown. It is clearly derelict and the applicant is offering to remove it in order to offset the dock's impacts.

d. The stairwells are identified on page 3 of the submitted site plans. Applicant states the stairwells were installed 30 years ago (1989) and didn't know whether they had been permitted.

e. The monitoring program is included in the Addendum (Exhibit 2l).

15. On January 7, 2019, the County sent an email to the applicant asking for information regarding the feasibility of a dinghy dock or a ramp (Exhibit 7c).

16. On January 7, 2019, the applicant responded to the County's question (7c):

a. The applicants indicated that a ramp would not be feasible for the following reasons:

- i. It would not alleviate the need for the applicants to drag their dinghy's across the rocky substrate;
- ii. The bank is between 15-20 feet high;
- iii. The bank is too steep;
- iv. It would require a large parking lot as well as turnaround space;
- v. It would require extensive clearing, grading and increases in impervious surfaces.

b. The applicants indicated that a dinghy dock is not ideal for the following reasons:

- i. The intent is provide sufficient moorage for all the six property owners in Westcott Shores;
- ii. The applicants reduced the size of the proposed float in the October 10, 2018, revision (Exhibit 2l);
- iii. The dock would need to have sufficient size and clearance to allow moorage for one or more powerboats or sailboats to allow for loading and unloading;
- iv. The pier and ramp would need to remain the same in order to obtain the same clearance for the periodically moored boats;
- v. The proposal already protects the environment therefore reducing the value of a smaller dock; and
- vi. The proposed dock will serve 800 lineal feet of shoreline.

16. The applicable Comprehensive Plan Section is:

Section B, Element 3, Subsection 3.5.B Boating facilities

17. The applicable regulations are:

SJCC 18.35.110-140	Fish and Wildlife Habitat Conservation Areas
SJCC 18.50.060	Shoreline Modification regulations
SJCC 18.50.120	General environmental protection
SJCC 18.50.130	Critical areas
SJCC 18.50.240	Over the water structures including boating facilities, docks, piers, mooring buoys and mooring and recreational floats
SJCC 18.50.250	Boating facilities – general
SJCC 18.50.330	Boating facilities, docks, piers, floats, and ramps – submittal requirements
SJCC 18.80.020	Application Requirements
SJCC 18.80.030	Public Notice of Applications and Comment
SJCC 18.80.050	SEPA Implementation Rules
SJCC 18.80.110	Shoreline Permit and Exemption Procedures
SJCC 18.50.500	Private pedestrian pathways, stairways and ramps – general regulations

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

*A notice of application was published on December 19, 2018 (Exhibit 3b).*

18. SJCC 18.80.030 requires notification of the application to all property owners within 300 feet of the subject property and posting of the notice of application on the subject property.

*The applicant submitted an affidavit that neighboring properties within 300 feet were notified of the application by mail and by posting a sign (Exhibit 3a).*

19. No public comments were received.

20. Agency comments on the application:

A. UW Friday Harbor Labs, December 20, 2018, (Exhibit 6a): They had concerns about the size of the dock, and the potential impact of the dock's shading particularly if eelgrass is re-established in Westcott Bay in the future. Dr. Dethier identified the applicant's mooring buoys as a particular concern and requested the applicants be directed to remove the buoys as a mitigation measure.

Staff response: SJCC 18.50.240(A)(5) states that:

*"In general, only one form of moorage or other structure for boat access to the water is allowed on a single lot. A mooring buoy may be allowed to serve single lots, and areas with community use docks, boat ramps and railways."*

*Community use docks are not prohibited by the County's shoreline regulations and are listed in SJCC 18.50.240(A)(9) as more preferable than single family docks.*

*As the proposed dock would be restricted to no more than four (4) vessels, access to mooring buoys will be necessary to serve the potential demand from six (6) property owners in future.*

B. On December 20, 2018, the County received a recommendation from the Lummi Nation Tribal Historic Preservation Office (LNTHPO) that the applicants carry out an archaeological assessment prior to development (Exhibit 6b). The LNTHPO based the request on the proximity of an archaeological site.

*County maps show the proximity of an edge of the archaeological buffer, (within 500 feet). SJCC 18.50.100(A) requires that applications for development permits within areas "known to be archaeologically significant, the applicant must submit a cultural resources report with the application." SJCC 18.50.100 does not contain a requirement to carry out a cultural resources assessment for areas that are near known archaeological sites.*

*The applicants retained the services of a professional archaeologist and has carried out a cultural resource study that will be presented at the hearing.*

21. SJCC 18.80.050 requires SEPA review for the project. A mitigated determination of non-significance (MDNS, Exhibit 2j) was issued by San Juan County on December 19, 2018. No comments were received on the SEPA determination (Exhibit 2j). If the permit is approved, the MDNS conditions require the following conditions:

1. Applicant's must remove 2 sets of concrete stairwell landings and stairwells from the upper shore zone.
2. Applicant's must remove a derelict float located on the shore of the English Camp property identified in Appendices 11-12 of the Addendum to Westcott Shores Joint Use Dock Application.
3. Applicant's must provide the beach nourishment to create the proposed potential forage fish spawning habitat identified in Appendices 13-15 of the Addendum to Westcott Shores Joint Use Dock Application.
4. Applicants must implement shoreline planting and monitoring plan identified in Appendices 16-18 the Addendum to Westcott Shores Joint Use Dock Application.
5. The barge shall be situated such that it does not ground out during construction activities.
6. No deleterious material will enter state waters.
7. Equipment will be kept in good running order and engines will be run only while needed to help reduce noise and the possibility of deleterious materials entering the water column.

8. Disposal of all waste material will be done appropriately at an approved upland disposal site;
9. Pre-fabricated dock components will be used so that the duration of noise and turbidity disturbance resulting from installation will be shortened and debris from the project will be minimized.
10. The dock system shall be designed to ensure that the overall length is sufficient to prevent grounding of the float or moored boats at low tides;
11. Reduction in shading from use of grated surface on the proposed pier, ramp, and float
12. Installation activities will take place at compatible tides during daylight hours to ensure that equipment does not ground out and installations are efficient
13. Approved in-water work windows will be implemented, and work will occur over an estimated five to ten (5-10) day period:
14. Spill prevention and clean-up plans will be in place for this activity as a safe-guard against unexpected, accidental contamination. If a spill does occur that causes fish or other wildlife to be in obvious distress, project activity will immediately be halted and a WDFW Area Habitat biologist will be notified.
15. Replanting will be monitored.
16. Comply with all applicable state, federal and San Juan County codes.

### **Code Analysis**

Staff responses are *italicized*.

1. San Juan County Comprehensive Plan, Section B, Element: Subsection 3.5.B Boating facilities- Policies

#### **3.5.B.i General**

1. Locate, design and construct overwater structures to protect all forms of aquatic, littoral or terrestrial life including animals, fish, shellfish, birds and plants, their habitats and their migratory routes.
2. Protect beneficial shoreline features and processes including erosion, littoral or riparian transport and accretion shoreforms, as well as scarce and valuable shore features including riparian habitat and wetlands.
3. Locate, design, configure boathouses, piers, ramps, and docks to both accommodate the proposed use and minimize obstructions to views from the surrounding area.
4. Design overwater structures to optimize the trade-offs between the number of boats served and the impacts on the natural and visual environments.
5. Consider the capacity of the shoreline site to mitigate the impact when permitting overwater structures.

#### **3.5.B.ii Docks and Piers**

1. Give preference to the use of mooring buoys over either piers or floating docks. Marinas are preferred to joint-use or community docks. Joint use or community docks are preferred to single family docks.
2. Give preference to the joint use of a single structure by several shoreline property owners, as opposed to the construction of several individual structures to spare San Juan County from the so-called "porcupine effect" created by dozens of individual private docks and piers on the same shoreline segment.
3. Give preference to the joint use of a single moorage facility by the owners of the land division lots or units, or by the homeowners association for that land division or multifamily residential development, rather than construction of individual moorage facilities. Individual docks and piers should be prohibited, provided that the County may authorize more than one (1) moorage facility if a single facility would be inappropriate or undesirable given the specific site and marine conditions. Such developments should include identification of a site for a joint-use moorage facility and the dedication of legal access to it for each lot or unit. However, it should be recognized that identification of a site for a common moorage facility does not imply suitability for moorage or that moorage development will be approved.
4. Consider the capacity of the shoreline site to absorb the impacts of waste discharges from boats and gas and oil spills when evaluating every proposed dock or pier.
5. Encourage expansion or repair of existing facilities over construction of new docks and piers.
6. Encourage multiple-user docks through construction and dimensional incentives to reduce the demand for single-user docks.

*Adequately addressed in Exhibit 2i, pages 22-24.*

The applicants suggest the shallowness of the bay militates against the development of additional docks apparently without recognizing the same argument applies to this proposal. The bay lacks the depth to provide the seven-foot ELT clearance required by DNR for projects serving six vessels. To address this issue, the applicant's state they will restrict the number of vessels using the dock.

**1. 18.50.240 Over-water structures including boating facilities, docks, piers, mooring buoys, and mooring and recreational floats.**

**A. General Regulations.**

1. All over-water structures including boating facilities, docks, piers, mooring buoys, and mooring and recreational floats must be designed to avoid or minimize adverse impacts on marine and aquatic life, and the shore process corridor and its operating systems. Over-water structures are restricted to the minimum size necessary to meet the requirements of the proposed water-dependent use.

*If a dock is to be built, then the structure will impact the environment; however, the applicants demonstrate that the proposed structure has been designed to minimize its impacts on the shoreline ecological functions. Tables 5 and 6, pages 30 and 33, respectively of Exhibit 2g assess the potential impacts of the community dock on critical habitats and species. The authors of the study indicate that the project is not likely to adversely affect fish and wildlife species and is likely to have no long-term effects on habitats.*

2. All over-water structures must be sited and designed to avoid or minimize the need for new and maintenance dredging.

*Not applicable.*

3. The construction of all over-water structures including new, modifications or replacements of existing facilities must meet the applicable design criteria established by the WDFW in WAC 220-660-140 and 220-660-380 relative to materials, siting, disruption of currents, restrictions of tidal prisms, flushing characteristics, and fish passage to the extent that those criteria are consistent with protection of the shore process corridor and its operating systems.

*Adequately addressed by Exhibit 2i, pages 17-24.*

4. At least one safety ladder must be placed on the long side of all new or enlarged main floats at 60-lineal-foot intervals.

*A ladder will be provided on the main float.*

5. In general, only one form of moorage or other structure for boat access to the water is allowed on a single lot. A mooring buoy may be allowed to serve single lots, and areas with community use docks, boat ramps and railways. In addition, multiple forms of moorage or structures for boat access to the water may be allowed on a single lot if:

- a. Each form of boat access to water serves a public or commercial recreational use, provides public access, is a part of a marina facility, or serves an historic camp or resort; or
- b. The location proposed for multiple boat access structures is common area owned by or dedicated by easement to the joint use of the owners of at least 10 shoreline lots.

*The Dickhaus's, the Appleton's and Robinson's have mooring buoys in the immediate vicinity. Assuming that, at some point in the future, the property owners currently identified as 'optional' users (Robinson and Griswold) choose to exercise their rights to become 'primary' users, the inability to moor more than four (4) boats on the dock, will require that some users moor their vessels on buoys and use a dingy to shuttle back and forth. The joint use agreement does not currently address how space and access will be allocated when optional users exercise their right and become full owners.*

6. Provided the structure will result in no net loss of shoreline ecological functions, storage structures are allowed on private docks, floats, and piers. Except as provided in SJCC 18.50.280, structures on private docks, floats and piers may be up to three feet in height and 24 square feet in size. The height of buildings providing waiting areas on public docks used for marine transportation may be up to 10 feet in height. Storage buildings on publicly owned over-water structures and marinas are allowed where no feasible alternative exists; provided, that they are no larger than 100 square feet and six feet tall. In all cases, height is measured from the deck surface to the highest point of the structure.

While the revised application narrative and joint-use agreement both mention the installation of a 'small communal container for storage of maintenance and safety equipment', the biological assessments (Exhibits 2g and 2l) do not address the potential impacts of the proposed overwater storage unit and the dock construction plans do not indicate the location or size of the proposed storage container.

7. Public access and ecological restoration shall be incorporated into publicly financed projects when feasible.

*This project includes no public financing.*

8. Multiple use and expansion of existing over-water structures are preferred over construction of new over-water structures.

*Addressed on page 7 of Exhibit 2i.*

9. The order of preference for over-water structures is:

- a. Mooring buoys;
- b. Existing marinas;
- c. Moorage and recreational floats unattached to a pier or floating dock;
- d. Boating facilities, docks and ramps serving five or more residences;
- e. Joint use or community docks; and
- f. Single use docks.

*Adequately addressed on pages 7 and 8 of Exhibit 2i.*

10. Applicants for a shoreline substantial development permit for boating facilities, joint use community docks, private docks, piers, moorage floats and buoys shall demonstrate how the proposed development will be designed, constructed and maintained to minimize adverse impacts. Impacts must be mitigated in accordance with SJCC 18.50.140, 18.50.150 and 18.50.160. At a minimum, potential impacts to the following shall be evaluated:

- a. Littoral drift;
- b. Sand movement;
- c. Water circulation and quality;
- d. Fish and wildlife;
- e. Navigation;
- f. Scenic views; and
- g. Public access to the shoreline.

*Adequately addressed on pages 8-11 of Exhibit 2i.*

11. Boating facilities that are expected to interfere with the normal erosion-accretion process associated with feeder bluffs are prohibited.

*Not applicable. The site is not a feeder bluff.*

12. Abandoned or unsafe over-water structures shall be removed or repaired promptly by the owner. The department may abate an abandoned or unsafe structure in accordance with Chapter 7.48 RCW.

*Not applicable. The site has not yet been constructed.*

13. Boats moored at residential boating facilities shall not be used for commercial overnight accommodations.

*The dock will not be used for commercial purposes.*

## **B. Regulations – General Design and Construction Standards.**

1. Nontoxic materials should be used in construction. Use of treated wood containing toxic compounds should be minimized and may only be used where nontoxic materials are deemed infeasible and as allowed by this subsection as follows:

- a. Piers, docks and floats shall be constructed of materials that comply with requirements of federal and state regulations.
- b. Wood products treated with creosote or pentachlorophenol are prohibited on all new structures or repair projects that come in contact with or could leach into water.
- c. No treated wood may be used for the decking on the over-water structures.
- d. Treated wood can be used for all structural elements of the over-water structure.
- e. Treated wood materials may be utilized on pilings in repair projects for timber structures.
- f. All treated wood used in the aquatic environment shall be restricted to those that have met or exceed the industry BMP manual standards found in Best Management Practices for the Use of Treated Wood in Aquatic Environments: USA Version as revised (Western Wood Preservers Institute, Vancouver, WA).
- g. Instead of wood, technologies such as EZ Dock or fiber optic lighting may be allowed consistent with the recommendations of state and federal agencies and with the approval of the director.

*Adequately addressed in Exhibit 2i, page 11.*

- 2. Pilings employed in piers or any other structure shall have a minimum vertical clearance of one foot above the extreme high water of marine shorelines or OHWM of lakes.

*Adequately addressed in Exhibit 2i, page 11.*

- 3. All floats shall have stops that serve to keep the bottom of the float off tidelands at low tide or off the substrate in lakes.

*Adequately addressed in Exhibit 2i, page 11.*

- 4. Nonbiodegradable materials used in float, pier, or dock construction shall be shielded and enclosed to prevent disintegration.

*Not addressed directly in Exhibit 2i; however, see response to B(1) in Exhibit 2i, page 11.*

- 5. Overhead wiring and plumbing are prohibited on boating facilities, joint use and private docks, and piers.

*Adequately addressed in Exhibit 2i, page 12.*

- 6. New or relocated boathouses and covered moorages are prohibited on boating facilities except as allowed for railway systems in SJCC 18.50.290(E).

*Not applicable.*

- 7. Dock lighting shall shine downward, be of a low wattage, and not exceed a height of three feet above the dock surface. All lighting must be consistent with SJCC 18.50.200.

*Adequately addressed in Exhibit 2i, page 12.*

- 8. All construction-related debris shall be disposed of properly and legally. Any debris that enters the water shall be removed promptly. Where feasible, floats shall be secured with anchored cables in place of pilings. The cabling must have a mid-line float or similar mechanism to keep the cable from dragging and disturbing the bottom substrates, vegetation and aquatic life.

*Adequately addressed in Exhibit 2i, page 12 and Exhibit 2i, Section 2.2.3, page 13.*

- 9. Over-water structures must be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night. In general, the exterior finish of all structures shall be nonreflective and a color that will visually blend with the background.

*Adequately addressed in Exhibit 2i, page 12.*

## 2. 18.50.250 Regulations – Boating facilities – General.

A. Boating facilities must not intrude into or over shoreline critical areas unless all of the following criteria are met:

1. The public need for an intrusion is demonstrated and the proposal protects the public trust, as embodied in RCW 90.58.020. To demonstrate how the project protects the public trust, the applicant shall submit a narrative demonstrating that the proposal:

a. Is consistent with the goals and policies and regulations of this SMP;

*The construction of a joint use dock is preferred to the construction of multiple single user docks, Section B, Element 3, Section 3.5.B(ii) policies 1, 2 and 3.*

b. Benefits the public by providing physical or visual access to the shoreline; and

*The construction of the dock will improve the access to the shoreline for at least 3 property owners.*

c. Will not have an adverse impact on the navigability of adjacent waters.

*Adequately addressed in Exhibit 2i, page 13.*

2. No feasible alternative exists.

*SJCC 18.20.060 "F" definitions defines:*

*Feasible alternative" means an alternative that:*

- 1. Meets the requirements of federal, state, and local laws and regulations;*
- 2. Attains most or all of the basic objectives of the project;*
- 3. Is technically and technologically possible;*
- 4. Can be accomplished at a reasonable cost;*
- 5. Can be accomplished in a reasonable amount of time; and*
- 6. Adverse environmental, health, and safety effects are no greater than those of the original proposal.*

*A determination of what is reasonable or feasible is made by the decision-making body on a case-by-case basis, taking into account the:*

- 1. Probable intensity, severity, and cumulative impacts of the original proposal and alternative approaches, and opportunity for the avoidance or reduction in the number, intensity, or severity of significant impacts, or of the aggregate adverse impact;*
- 2. Risk of "upset conditions" (i.e., the risk that the control and mitigation measures will fail, be overwhelmed, or exceed allowed limits), and the potential severity of the impact should control or mitigation measures be ineffective or fail;*
- 3. Capital and operating costs;*
- 4. Period of time to accomplish, costs of additional time or delay, and time constraints for completion; and*
- 5. Location and site-specific factors, such as seasonal or topographic constraints, critical areas, site accessibility, and local community concerns. (For areas within shoreline jurisdiction, see definition of "feasible" in WAC [173-26-020](#).)*

*The only alternative to the proposed structure, the applicants have submitted, is a larger dock, Exhibit 2c. The narrative in Exhibit 2i, page 13, indicates that dinghy's and kayaks left on the marine shoreline are sometimes damaged by the waves, tides, and wind. The applicant's also note that transporting kayaks or dinghy's across the tidelands can be difficult and access is hampered during the summer season because low tides occur during daylight hours.*

*Exhibit 7c adequately addresses the feasibility issues.*

3. The project and any required mitigation will result in no net loss of shoreline ecological functions associated with critical fresh and saltwater habitat.

*Adequately addressed in Exhibits 2g and 2l.*

4. The project is consistent with the state's interest in resource protection and species recovery.

*Adequately addressed in Exhibits 2g and 2l.*

**B.** The location, construction, management, and, if necessary, mitigation of adverse impacts of new and expanded boating facilities and associated accessory uses must conform with SJCC 18.50.140, 18.50.150 and 18.50.160 and result in no net loss of shoreline ecological functions.

*Exhibits 2g and 2l indicate the proposed project will result in no net loss of shoreline ecological functions and suggest the following mitigation actions.*

- 1. Removal of two sets of concrete stairwell landings from the upper shore and two stairwells. Areas where these structures are removed will be revegetated;*
- 2. Removal of a derelict float located across Westcott Bay on the shore of English Camp property. The 8 feet X 18 feet (144 square feet) structure rests on the sea bed and is no longer useful. The float will be removed and disposed of in an upland facility.*
- 3. An attempt will be made to convert a small depression in the shoreline at the applicant property into forage fish habitat. The depression is approximately 35 feet X 55 feet and lies between MHW and 0 feet MLLW. Approximately 1,925 square feet of beach nourishment is proposed.*
- 4. The applicants intend to plant 3,400 square feet of woody vegetation in the shoreline areas associated with the application. Planting is proposed within 50 feet of the high tide line and will include various species of native woody vegetation. A vegetation monitoring plan will be in place for 5 years.*

**C.** Boating facilities must be the minimum size needed to accommodate the intended use as demonstrated by the demand analysis required in SJCC 18.50.330.

*Exhibit 2i, page 15 contains a 'demand analysis' that reiterates the relative absence of commercial mooring facilities within 8 miles of the location. The 'analysis'; however, does not assess or address the demand for the dock. The narrative reiterates the applicant's desire for a dock that serves up to six, 20 to 30 foot vessels. The revision submitted on December 30, 2018, Exhibit 2m indicates the no more than four vessels will be moored at the dock at any given time.*

**D.** Private boating facilities designs may not accommodate more than one boat per residential unit except that one additional space for every 10 residential units served is allowed to accommodate guests.

*The original proposal submitted on May 31, 2018, (Exhibits 2a – 2g) was to provide a dock that will accommodate up six vessels, one for each parcel in the subdivision. The shallow bathymetric profile of Westcott Bay at this site prevents the applicants from obtaining the DNR mandated minus 7 foot clearance at extreme low tide. The shallow location makes the applicants ineligible for a DNR lease. Resulting from the lease ineligibility, the applicants revised their application to limit the number of vessels using the dock at any time to no more than 4 and using the buoys as 'back-ups'.*

*The applicants' have not proposed any change in the size of dock or float despite reduce the number of actual users (Exhibit 2m).*

*The draft joint use agreement does not address the contradiction creating a dock for six potential owners and only providing space sufficient to serve four.*

**E.** Boating facilities shall be set back at least 10 feet from side property lines. However, a boating facility may be located adjacent to or upon a side property line when mutually agreed to by contract or by covenant with the owners of the adjacent property. A copy of such contract or covenant must be recorded with the County auditor in a format approved by the department to run with each parcel's titles. (Ord. 1-2016 § 30)

*Adequately addressed in Exhibit 2i, page 14.*

### **3. 18.50.330 Boating facilities, docks, piers, floats, and ramps – Submittal requirements.**

**A.** For all new or expanded boating facilities, docks, piers, floats, and ramps, applicants must provide a demand analysis demonstrating the need for the proposal that addresses at least the following criteria:

1. The total amount of moorage proposed (except for ramps);

*Exhibit 2i, page 15 states the number of moorage spaces will serve up to six vessels. Exhibit 2m of the revised proposal submitted on December 30, 2018, state the dock will serve no more than 4 vessels.*

2. The total number of commercial moorage spaces within the service range of the proposed facility, including vacancies or waiting lists at facilities existing on the date of the application;

*Exhibit 2i, page 15 reiterates that there are no spaces available at either Roche or Snug harbors and that waiting lists are long. Exhibit 2i, page 15 does not indicate whether any of the applicants has applied for a space at either of the nearby marinas. Exhibit 2i, page 15 does not indicate the total number of commercial moorage spaces in the service area.*

3. The expected service population and boat ownership characteristics of the population, if necessary for specific design elements related to facility length or necessary water depth;

*Exhibit 2i, page 15 states that it is expected that, over time, the two identified 'option users' (or subsequent property owners), as well as the Woods, will become full users and that the dock may accommodate up to six vessels. Exhibit 2m, submitted on December 30, 2018, the final proposal, indicates that a dock of the same size will now only serve 4 vessels and any given time. The contradiction of providing a joint use agreement for up to six owners and only providing space for four has not been addressed.*

4. Approved facilities, or pending applications, within the service range of the proposed facility;

*Adequately addressed in Exhibit 2i, page 15.*

5. Proposals for new boating facilities, docks, piers, floats, and ramps shall provide documentation demonstrating that expansion of facilities existing at the time of application is not feasible or would not be adequate to meet current demand; and

*Exhibit 2i, page 16 indicates that there is no dock within the Westcott Shores subdivision that could be expanded. One of the 'optional' applicants, the Griswolds, already have a dock on a parcel immediately adjacent to the Westcott Shores subdivision (Exhibit 2h). The applicants submitted evidence that the Griswolds are not interested in sharing access to the dock on their property immediately adjacent to Westcott shores with the Appletons, Dickhaus' and Robinsons (Exhibit 2f.)*

6. For new or expanded ramps:

a. Identification of the nearest public or commercial ramp existing at the time of application;

b. Demonstration that planned expansion of existing facilities will not meet current or future demand; and

c. Any other relevant factors related to the need for safe or efficient access to public waters if that information supports justification for specific design elements.

*Not applicable.*

**B.** At the discretion of the director, the following documents for new or expanded boating facilities, docks, piers, floats and ramps may be requested:

1. A mitigation plan in accordance with SJCC 18.50.140, 18.50.150 and 18.50.160 if the project will result in unavoidable adverse impacts to shoreline ecological functions or processes;

*Exhibits 2g and 2l address this.*

2. A biological assessment compliant with the ACOE and FEMA Region 10 floodplain habitat assessment and mitigation guidance, and the demand analysis prepared in accordance with subsection (A) of this section;

The Westcott shores joint-use dock construction project, dated February 26, 2018 (Exhibit 2g) and the Addendum to Westcott shores joint-use dock application, dated September 26, 2018, (Exhibit 2l) by Jen Jay Inc., adequately address this.

3. A slope bathymetry map;

*Adequately addressed in Exhibit 2i, Figure 6, page 9.*

4. An assessment of current water-dependent uses in the vicinity and documentation of potential impacts to those uses and mitigating measures;

*Adequately addressed in Exhibit 2i, page 9.*

5. An assessment of pedestrian shoreline access or the infeasibility of providing public access areas for public ramps;

*Public access will be limited to community access by the property owners within the subdivision.*

6. Location of wetlands within 300 feet and FWHCAs within 200 feet of the project area; and

There are no wetlands within 300 feet. FWHCAs are adequately addressed in Exhibits 2g and 2l.

7. Field location of the OHWM.

*Adequately addressed in Exhibit 2i, page 17.*

#### **4. 18.50.500 Private pedestrian pathways, stairways and ramps – General regulations.**

**A.** Private pedestrian pathways, stairways and ramps used to provide pedestrian access to the OHWM from a single-family residence are normal residential appurtenances.

*The staircase is being considered as part of the SSDP.*

**B.** Private pedestrian pathways, stairways and ramps must not include roofs or roof covering materials such as awnings. They are exempt under SJCC 18.50.050 if the following standards are met:

1. All materials must be finished in subdued natural earth colors;

*If approved the project will be required to meet this standard.*

2. No construction or placement seaward or below the OHWM is allowed unless the private pedestrian pathway, stairway or ramp is physically connected to an exempt or permitted dock;

*Exhibit 2i, page 24, states the proposed stairway will be connected to the proposed dock and will terminate landward of the OHWM.*

3. The maximum vertical height of the structure is 15 feet and the maximum width of the structure is five feet. One intermediate landing or platform with a maximum size of five feet by five feet is allowed. Stairways may not be located on rock faces or bluffs that exceed a 60-degree angle; and

*The staircase is to be considered as part of a SSDP. The proposed maximum vertical height will be 12.2 feet.*

4. The project complies with bank stability requirements of SJCC 18.35.055 through 18.35.070.

*The construction of a staircase is to be considered as part of a SSDP.*

**C.** Every application, whether exempt or nonexempt, for private pedestrian pathways, stairways and ramps will be evaluated on the basis of:

1. Bank stability;

*The bank is bedrock, no impact on stability is expected.*

2. Bank geology;

*The bank is bedrock.*

3. Vegetation removal in Tree Protection Zone 1 and other requirements of SJCC 18.50.130;

No vegetation removal is expected to construct the staircase. Additional planting is along the bank will be carried out consistent with the Army Corps of Engineers; (ACOE) permitting process, (Exhibit 8).

Potential for revegetation;

*Adequately addressed in Exhibits 2l and 17.*

5. Structural stability;

*Adequately addressed in Exhibit 1b, page 25*

6. Adverse impacts on shoreline ecological functions; and

*Adequately addressed in Exhibits 2g and 2l.*

7. Aesthetic impacts.

*Adequately addressed in Exhibit 2i, page 25.*

D. Private pedestrian pathways, stairways and ramps that are likely to interfere with the erosion-accretion process associated with feeder bluffs are prohibited.

*Not applicable.*

E. Where adverse impacts to shoreline ecological functions are expected, private pedestrian pathways, stairways and ramps are subject to the mitigation provisions of SJCC 18.50.140, 18.50.150 and 18.50.160.

*Exhibits 2g and 2l indicate that no net loss of shoreline ecological functions is expected.*

F. Public pedestrian trails identified in County planning documents are allowed in the shoreline and are regulated by SJCC 18.50.550.

*Not applicable.*

### **Conclusions**

The proposal is consistent with SJCC 18.80.110(H) which establishes the following criteria for approval of a Shoreline Substantial Development Permit:

1. A shoreline substantial development permit will be granted by the County if the applicant demonstrates the proposal is:
  - a. Consistent with the policies of the SMA, Chapter 90.58 RCW and Chapters 173-26 and 173-27 WAC, as amended;
  - b. Consistent with the policies and regulations of this SMP;
  - c. Consistent with other applicable sections of this code; and
  - d. Consistent with the goals and policies of the Comprehensive Plan.
2. The conditions specified by the hearing examiner to make the proposal consistent with the SMP and to mitigate or avoid adverse impacts to shoreline ecological functions will be attached to the permit.

### **Recommendation**

Staff recommends that the proposed construction of a community joint-use dock restricted to the use of no more than four (4) vessels and construction of pedestrian stairs between TPNs 462341003 and 462341009 (59 and 63 Wildwood Lane, Friday Harbor) as depicted on the revised site plan dated August 29, 2018, (Exhibit 2l). Staff does not recommend approving the referenced storage container. The dock and stairs construction should be approved subject to the following conditions:

1. This permit allows the construction of a community use boating facility serving Westcott Shores San Juan Island.
2. Boats moored at this residential docks shall not be used for commercial overnight accommodations.

3. The conditions of the MDNS, below, shall be adhered to:
  - a. Applicant's must remove 2 sets of concrete stairwell landings and stairwells from the upper shore zone.
  - b. Applicant's must remove a derelict float located on the shore of the English Camp property identified in Appendices 11-12 of the Addendum to Westcott Shores Joint Use Dock Application (Exhibit 2I).
  - c. Applicant's must provide the beach nourishment to create the proposed potential forage fish spawning habitat identified in Appendices 13-15 of the Addendum to Westcott Shores Joint Use Dock Application (Exhibit 2I).
  - d. Applicants must implement shoreline planting and monitoring plan identified in Appendices 16-18 the Addendum to Westcott Shores Joint Use Dock Application (Exhibit 2I).
  - e. The barge shall be situated such that it does not ground out during construction activities.
  - f. No deleterious material will enter state waters.
  - g. Equipment will be kept in good running order and engines will be run only while needed to help reduce noise and the possibility of deleterious materials entering the water column.
  - h. Disposal of all waste material will be done appropriately at an approved upland disposal site;
  - i. Pre-fabricated dock components will be used so that the duration of noise and turbidity disturbance resulting from installation will be shortened and debris from the project will be minimized.
  - j. The dock system shall be designed to ensure that the overall length is sufficient to prevent grounding of the float or moored boats at low tides;
  - k. Reduction in shading from use of grated surface on the proposed pier, ramp, and float;
  - l. Installation activities will take place at compatible tides during daylight hours to ensure that equipment does not ground out and installations are efficient;
  - m. Approved in-water work windows will be implemented, and work will occur over an estimated five to ten (5-10) day period;
  - n. Spill prevention and clean-up plans will be in place for this activity as a safe-guard against unexpected, accidental contamination. If a spill does occur that causes fish or other wildlife to be in obvious distress, project activity will immediately be halted and a WDFW Area Habitat biologist will be notified;
  - o. Replanting will be monitored; and
  - p. Comply with all applicable state, federal and San Juan County codes.
4. Pilings must be structurally sound prior to placement in the water.
5. Pilings employed in piers or any other structure shall have a minimum vertical clearance of one foot above extreme high water.
6. All floats shall include stops to keep the bottom off tidelands.
7. When plastics or other non-biodegradable materials are used in a float, pier or dock construction, full containment features are required.
8. Overhead wiring and plumbing are prohibited. Other structures on piers, ramps and floats shall be limited to 3' in height.
9. Dock lighting shall be designed to shine downward, be low wattage and shall not exceed a height of 3' above the dock surface.
10. Completion of prior to approval and compliance with the marine mammal monitoring plan during construction is required.
11. Materials used in dock construction shall be of a color and finish that will blend visually with the background. If metal is used it must be treated to comply with this requirement.
12. Development authorized by this permit shall commence within two years of the date of approval and shall be substantially complete within five years or the permit shall become null and void.
13. Immediately after construction is completed, the owner shall request that Community Development and Planning perform an inspection. The request shall contain the permit number PSJ000-18-0003 and TPNs 462341009 and 462341003.
14. Owners of Tax parcel numbers 462341005, 462341001 and 462341011 must not be denied the opportunity to access the dock and to be included in the Joint Use Agreement.

15. The joint use agreement must provide an equitable procedure by which access and use of the dock is distributed to 'optional' users when they choose to become full owners, with all the associated rights of ownership including unlimited and exclusive use of the floats, permanent year round moorage and the mooring buoy associated with TPN 462341003, while simultaneously limiting the number of users at any one time to four property owners.

16. Removal of the stairwells is subject to stormwater pollution prevention plan, minimum Requirements 1-12 and certification of such shall be submitted to the department.

17. Failure to comply with any terms or conditions of this permit may result in its revocation.

**Exhibits**

<b>Exhibit No.</b>	<b>Description of Item</b>	<b>Submitted By</b>	<b>Date</b>
1	Staff Report	Colin Maycock	January 9, 2018
2	Shoreline substantial development permit application (2a-2g) Location of applicants properties (2h) Revised shoreline substantial development application (2i- 2l) Revised Dock layout(2m) Revised Joint Use agreement (2n)	Jeff Otis  Colin Maycock Jeff Otis  Jeff Otis Jeff Otis	May 31, 2018  January 7, 2019 October 10, 2018 December 30, 2018 January 7, 2019
3	Notice of application (3a-3b)	Jeff Otis	December 20, 2018
4	Westcott Shores Plats 4a-4i	Colin Maycock	1976-1995
5	Commercial Moorage Availability	Jeff Otis	May 31, 2018
6	Agency Comments	Megan Dethier Tamela Smart	December 20, 2018
7	Correspondence (7a-7c)	Jeff Otis	December 30, 2018, and January 7, 2019
8	US Army Corps of Engineers NFMS RGP 6, Overwater structure mitigation calculation tool Reference # NWS-2018-274	Jeff Otis	May 31, 2018
9	Correspondence between Woods and Dickhaus	Jeff Otis	January 4, 2019

# EXHIBITS