

**BEFORE THE HEARING EXAMINER
FOR SAN JUAN COUNTY**

In the Matter of a Shoreline Substantial
Development Permit Application filed by
DAVID DICKHAUS, on his own behalf and
on behalf of several neighboring property
owners,

Applicants,

PROJECT: *Community/ joint-use dock to serve
several properties located in the Westcott Shores
plat, between lots 59 and 63 Wildwood Lane, on
the west side of San Juan Island, on tax parcels
462341009000 and 462341003000.*

File No. PSJ000-18-0003

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION APPROVING SHORELINE
SUBSTANTIAL DEVELOPMENT
PERMIT FOR A JOINT USE DOCK
AND BEACH ACCESS STAIRWAY**

**SJC DEPARTMENT OF
MAR 19 2019
COMMUNITY DEVELOPMENT**

I. SUMMARY OF DECISION.

The Shoreline Substantial Development Permit for the Dickhaus/Westcott Shores joint-use dock and beach access stairway is approved, subject to Conditions of Approval that are based upon evidence in the Record and the unchallenged MDNS issued for the project. The requested over-water storage structure is not part of this permit approval.

II. RELEVANT CODE PROVISIONS.

Shoreline Regulations: The County’s Shoreline Master Plan/Program (SMP) is comprised of Chapter 18.50 of the San Juan County Unified Development Code (UDC),

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1 together with Element 3 of the County's Comprehensive Plan, the official maps and
2 common descriptions of shoreline designation boundaries that do not follow property lines
3 (Ordinance 1-2016, Exhibit D), Section 2(B) Figures 130-6, 130-7 of the Eastsound
4 Subarea Plan, SJCC 18.30.480, the Eastsound Waterfront Access Plan, and SJCC
5 18.80.110, is the Shoreline Master Program (SMP) for San Juan County, Washington. *See*
6 *SJCC 18.50.020(A)*. The County's current SMP and shoreline regulations took effect on
7 October 30, 2017, and apply for purposes of this application, which was filed on or about
8 May 31, 2018. (*Staff Report, page 3; Ex. 2a, application cover page*).

9 ***Circumstances that trigger requirement to obtain a Shoreline Substantial***
10 ***Development Permit:*** "Substantial Development" is defined in RCW 90.58.030(3)(e) and
11 SJCC 18.20.190, and means any development proposed in the shoreline areas of San Juan
12 County of which the total cost, or fair market value, exceeds the dollar threshold established
13 by the Washington State Office of Financial Management (RCW 90.58.030(3)(e))
14 [currently \$7,047¹] or any development which materially interferes with the normal public
15 use of the water or shorelines of the state, except for the exemptions specified in WAC 173-
16 27-040 or Chapter 18.50 SJCC.

17 There is no dispute that the pending joint-use dock and beach access stairway
18 project requires a Shoreline Substantial Development Permit.

19 ***Approval Criteria for Shoreline Substantial Development Permits:*** The
20 procedures for review of shoreline permit applications are contained in Chapter 18.80.110
21 of the county's code, with the Criteria for Approval of Shoreline Substantial Development
22 Permits found in SJCC 18.80.110(H), which reads as follows:

23 1. A shoreline substantial development permit will be granted by the County if the applicant
24 demonstrates the proposal is:

- 25 a. Consistent with the policies of the SMA, Chapter 90.58 RCW and Chapters 173-26 and 173-
26 27 WAC, as amended;
- 27 b. Consistent with the policies and regulations of this SMP;
- 28 c. Consistent with other applicable sections of this code; and
- 29 d. Consistent with the goals and policies of the Comprehensive Plan.

30 2. The conditions specified by the hearing examiner to make the proposal consistent with the SMP
31 and to mitigate or avoid adverse impacts to shoreline ecological functions will be attached to the
32 permit.

33 ¹ *See* Washington State Register 17-17-007, Office of Financial Management filing, dated August 3, 2017.

1 **Jurisdiction:** Under SJCC 18.80.110(E)(1), the Hearing Examiner is given the
2 authority to hear and approve, approve with conditions, or deny shoreline substantial
3 development permits following receipt of the recommendations of the director, based upon
the criteria found in SJCC 18.80.110(H), as set forth above.

4 **Burden of Proof:** Under SJCC 18.80.010(A), “Shoreline Permits” are specifically
5 listed as “Project Permits” covered by the provisions of SJCC Chapter 18.80 re: application,
6 notice, review and appeal requirements for the County’s Unified Development Code, which
7 is found in Title 18 of the SJCC and includes Chapter 18.50, the County’s Shoreline Master
8 Program. SJCC 18.80.040(B) reads as follows:

9 *“[t]he burden of proof is on the project permit applicant. The project permit
10 application must be supported by evidence that it is consistent with the
11 applicable state law, County development regulations, the Comprehensive
12 Plan, and the applicant meets his burden of proving that any significant
13 adverse environmental impacts have been adequately analyzed and
14 addressed.”*

15 **Standard of Review:** SJCC 2.22.210(H) explains that “for an application to be
16 approved, a preponderance of the evidence presented at the hearing must support the
17 conclusion that the application meets the legal decision criteria that apply.”

18 **Review Criteria for the Department of Ecology:** Finally, if the Examiner approves
19 or denies the Shoreline Permit, such decision must be forwarded to the Department of
20 Ecology and the Attorney General, for state review and any appeals of the Shoreline Permit,
21 in accord with Washington Shoreline Management regulations found in WAC 173-27-130.
22 This Decision is subject to review and approval, approval with conditions, or denial by the
23 Washington Department of Ecology. Ecology’s review criteria for Shoreline Substantial
24 Development Permits is found at WAC 173-27-150². The San Juan County review criteria
25 for the requested shoreline permit is consistent with and substantially similar to those that
26 will be used by the Department of Ecology.

² WAC 173-27-150

Review criteria for substantial development permits.

(1) A substantial development permit shall be granted only when the development proposed is consistent with:

(a) The policies and procedures of the act;

(b) The provisions of this regulation; and

(c) The applicable master program adopted or approved for the area. Provided, that where no master program has been approved for an area, the development shall be reviewed for consistency with the provisions of chapter 173-26 WAC, and to the extent feasible, any draft or approved master program which can be reasonably ascertained as representing the policy of the local government.

(2) Local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the local master program.

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III. RECORD AND EXHIBITS; SUMMARY OF PUBLIC HEARING.

Exhibits entered into evidence as part of the record, and an audio recording of the public hearing, are maintained by the San Juan County Department of Community Development, in accord with applicable law.

Exhibits: The Staff Report, prepared by Mr. Maycock, dated January 9, 2019, for the pending application (17 pages), and all Exhibits, numbered 1 through 9 and identified on page 17 of the Staff Report, are included as part of the Record for this matter. At the hearing, the following additional exhibits were added to the record:

10. *Cultural Resources Review of the Proposed Westcott Shores Joint-Use Dock, San Juan Island, Washington*, dated January 16, 2019 – wherein the consultant-firm’s Principal, Garth Baldwin, MA, RPA with Drayton Archaeology, concludes that “we were unable to locate any cultural resources of concern in this project corridor or on the property.” (33 pages);

11. Proposed Joint Use Agreement, dated January 2019, revised by the applicant to recognize the rights for ‘latecomers’ to fully use the joint-use dock, subject to appropriate terms; and

12. Email, with attached letter dated Jan. 13, 2019, from Robert and Scarlett Wood, owners of property located within the Westcott Shores Plat, expressing the Wood’s position regarding the proposed Joint Use Agreement.

Hearing Testimony: The following individuals presented testimony under oath at the duly noticed open record public hearing held on January 23, 2019:

1. Colin Maycock, Planner IV for San Juan County, who prepared the Staff Report for the pending application, summarized his analysis, and expressed his satisfaction with the applicant’s proposed Joint Use Agreement “latecomers” terms, to comply with recommended conditions of approval;
2. David Dickhaus, the applicant, appeared on his own behalf and spoke for several of his neighbors who join in the application, describing his efforts to bring neighbors together to pursue the joint use dock, and answering questions posed by the Examiner;

- 1 3. Jeff Otis, with Otis Land Use Consulting, provided summary testimony
2 regarding detailed exhibits included in the record that address design features
3 and agreed-modifications and conditions that will ensure the project complies
4 with all applicable approval criteria. Mr. Otis authored the 26-page project
5 summary letter that is included in the Record as Exhibit 2i, which includes a
6 discussion of expert consultant reports and assessments regarding the proposal.
7 Attachments to Mr. Otis's letter include but are not limited to the application
8 itself, the applicant's SEPA checklist, a critical areas report and addendum,
9 project drawings, a dive survey report, moorage availability letters to satisfy
10 county requirements, a proposed joint use agreement, a light availability test
11 report, and BMPs for contractors who will work on the project; and
- 12 4. Warren Appleton, appeared at the hearing and spoke in favor of the application,
13 explaining that he and his wife own one of the properties that will be benefitted
14 by the new dock, and that storage for dock-related items may be located
15 somewhere up the driveway on his property.

16 No one appeared at the public hearing to oppose the pending application, and no one
17 commented upon or appealed the SEPA MDNS issued for the project in December of
18 2018³. *Staff Report, page 6; Testimony of Mr. Maycock.*

19 Letters from UW Friday Harbor Labs and the Lummi Tribe are included in the
20 record as part of Exhibit 6. The Staff Report, on page 6, addressed each written comment,
21 noting that the UW comments generally failed to recognize that community use docks are
22 favored in the county's shoreline regulations over individual, single family docks, and that
23 buoys may be used in connection with community use docks (here, it will be necessary as a
24 means to better serve all six benefitted parcel-owners, given that the dock will be restricted
25 to moorage space for just 4 boats); and that the Lummi Tribe's request for additional
26 information should be satisfied as the applicant would be presenting the results of a cultural
resource study at the public hearing. In fact, the applicant team (Mr. Dickhaus and Mr.
Otis) presented a 33-page report at the public hearing, captioned "*Cultural Resources
Review of the Proposed Westcott Shores Joint-Use Dock, San Juan Island, Washington*",
dated January 16, 2019, which is now included in the record as Exhibit 10 – wherein the

³ By operation of WAC 197-11-545 (re: Effect of no comment), if a consulted agency does not respond with written comments within the time periods for commenting on environmental documents, the lead agency may assume that the consulted agency has no information relating to the potential impact of the proposal as it relates to the consulted agency's jurisdiction or special expertise; further, lack of comment by other agencies or members of the public on environmental documents within the applicable time period shall be construed as lack of objection to the county's environmental analysis. Again, the record establishes that the MDNS was not appealed – SJCC 18.80.140(A) provides that a SEPA threshold determination like the MDNS issued for this project may be appealed within 21 days of issuance).

1 consultant-firm's Principal, Garth Baldwin, MA, RPA with Drayton Archaeology,
2 concludes that "we were unable to locate any cultural resources of concern in this project
3 corridor or on the property."

4 The Examiner has had a full and fair opportunity to consider all evidence and
5 testimony submitted as part of the record, has reviewed and researched relevant codes and
6 caselaw, and is fully advised. Accordingly, this Decision is now in order.

7 IV. FINDINGS OF FACT.

8 Based on the Record, the Examiner issues the following findings of fact:

9 1. All statements of fact included in any other section of this Decision, are hereby
10 incorporated by reference and adopted as Findings of Fact supporting this Decision and the
11 attached Conditions of Approval.

12 2. In May of 2018, the applicant, David Dickhaus, acting on his own behalf and for all
13 Westcott Shores' parcel owners named on the application documents (Robinson, Griswold,
14 Dickhaus, Appleton, and Robinson), submitted an application for a shoreline substantial
15 development permit that would authorize a joint-use dock with a beach access stairway that
16 would be located on portions of the two parcels owned by Mr. Dickhaus and the
17 Appleton's. (*Staff Report; Ex. 2a, application cover page; Ex. 2c, sheet 1 of 10 [list of
18 proposed "Joint Users"];* *Ex. 2c, sheet 2 of 10 [site plan for proposed dock and stairs]*).

19 3. The two parcels of land where the joint-use dock and stairs would be located are
20 next door to one another, along the north shore of Westcott Bay, on San Juan Island, in a
21 subdivision generally known as the Westcott Shores plat. The proposed dock, with its
22 fully-grated pier, ramp, and float segments, begins at a point along the southwest corner of
23 the Dickhaus' parcel, addressed as 59 Wildwood Lane, tax parcel no. 462341003000, with
24 a landing and beach access stairs to walk up onto the pier/dock facility located on the
25 southeast corner of the Appleton's neighboring property, addressed as 53 Wildwood Land,
26 tax parcel no. 462341009000. The new stairway will replace some existing stairs on the
27 Appleton and Dickhaus properties, which will be removed as part of the project. (*Staff
28 Report, page 15; Ex. 2l, Addendum to Westcott Shores joint-Use Dock Application,
29 prepared by Jen-Jay, Inc., Revised Site Plan, dated Aug. 29, 2018, sheet 2 of 10; and Ex.
30 2i, Summary of Proposal from Otis Consulting, dated Oct. 10, 2018, on page 2, Project
31 Description*).

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1 4. The two properties will be bound by a proposed joint use agreement, which will be
2 written so as to also provide shared access to the dock by owners of four other properties
3 located in the Westcott Shores Plat – meaning there will be only one moorage facility for
4 the six waterfront parcels of property now included in the Westcott Shores Plat, covering
5 more than 800 lineal feet of shoreline. *Ex. 2i, at page 2.*

6 5. The proposed joint-use dock facility will take full advantage of the elevation rise
7 close to shore, onto which the new pier for the dock will attach, allowing it to remain
8 elevated above the beach surface, with the fully-grated pier surface placed over water with
9 enough elevation to reduce shading impacts commonly associated with ramps that run
10 along floats atop the surface of local waters. The bottom of the pier is designed to be 10'
11 above the bed beneath as measured from the ordinary high water mark, and 12' as measured
12 from the mean low. (*Ex. 2i, Summary of Proposal by Mr. Otis, page 19, re: pier and ramp
13 design.*)

14 6. The final version of the revised proposal at issue during the public hearing is as set
15 forth in Exhibit 2m, submitted in late December of 2018, which is essentially the same dock
16 design from the Aug. 29th revisions (in Ex. 2l), but restricted to accommodate no more than
17 four (4) vessels. (*Staff Report, page 2.*)

18 7. The main elements of the project consist of a 5'7" wide by 176' long fully grated
19 ramp that will run from the land side projecting out to connect with 48' by 4'7" fully grated
20 ramp that will descend onto a 10' x 6' fully grated landing float, attached to the 60' x 8'
21 fully grated float, which runs perpendicular to the ramp structure, where boats will come
22 and go. The applicant's Summary of Proposal notes that the eelgrass and macroalgae
23 survey conducted for the project determined that there was no eelgrass or kelp located
24 within 25' of the proposed dock. *Ex. 2i, discussion on page 18.*

25 8. Given the project's location within the County's regulated shoreline area, and its
26 estimated value, there is no dispute that a Shoreline Substantial Development Permit is
required.

9. The application materials included a number of thorough environmental reports
analyzing potential impacts, and suggesting design features accepted by the applicants, that
will serve to minimize or adequately mitigate potential impacts, including without
limitation: Mr. Otis's Summary of Proposal; a Biological Evaluation prepared by Jen-Jay,
with an addendum; a dive survey; a light availability test report; and Best Management
Practices for contractors to utilize during construction process. (*See Exhibit 2i, with
attachments and reports, revised site plans; and Exs. 2a-2g, original application materials,*

1 with attachments).

2 10. Staff issued public notices regarding the pending application in December of 2018.
3 The public Notice of Application for the pending application was published, posted and
4 mailed on or about the same time frame. (*Staff Report, page 6; Exs. 3a, 3b*).

5 11. The only state government agency to comment on the application was the
6 University of Washington Friday Harbor Laboratories, via a letter from Dr. Megan Dethier,
7 Associate Director for Academics and the Environment, included in the record as *Exhibit*
8 *6a*. The comment letter expressed concern about the size of the dock, shading impacts if
9 eelgrass is ever re-established in Westcott Bay, and asked that existing buoys be removed.
10 As the Staff Report explains, County codes expressly allow a mooring buoy to be placed or
11 remain in conjunction with another type of moorage, in this case the proposed new joint-
12 use/community use dock. *See SJCC 18.50.240(A)(5); Staff Report at page 6*.

13 12. The Lummi Nation Tribal Historic Preservation Office submitted a written
14 comment, included in the record as *Ex. 6b*, expressing the need for a cultural resources
15 assessment for the area where the proposed dock will be located. While not required by the
16 county code, the applicant voluntarily engaged the services of a professional archaeologist
17 to prepare a cultural resources study that was presented at the public hearing, which is now
18 included in the record as *Exhibit 10 (Cultural Resources Review of the Proposed Westcott*
19 *Shores Joint-Use Dock, San Juan Island, Washington*", dated January 16, 2019 – wherein
20 the consultant-firm's Principal, Garth Baldwin, MA, RPA with Drayton Archaeology,
21 concludes that "we were unable to locate any cultural resources of concern in this project
22 corridor or on the property." (33 pages)).

23 13. The Staff Report and Mr. Maycock's testimony confirm that applicable notice,
24 mailing and publication requirements were satisfied. (*Testimony of Mr. Maycock; Staff*
25 *Report, pages 6 and 6; Exhibits 3a and 3b*). Other than the two written comments
26 referenced above, no agency or member of the general public submitted comments of any
kind regarding the pending application.

14 Following review and consideration of all environmental documentation submitted
as part of the application, including a SEPA Checklist (*part of Ex. 2j*) completed by
Applicant's agent, County officials issued a SEPA Mitigated Determination of Non-
Significance (MDNS) for the proposal on December 19, 2018. (*Exhibit 2j*).

15 15. The MDNS includes 16 (sixteen) specific mitigation measures that are intended to
avoid or minimize potential adverse impacts on the environment, particularly aquatic
aspects of the environment. (*See Ex. 2j, MDNS*).

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1 16. The face of the MDNS notification issued by the County specified that the deadline
2 for comments regarding the MDNS was January 3, 2019, and the deadline for any appeals
of the MDNS expired on January 10, 2019. (*See Ex. 2j, MDNS*).

3 17. The County received no comments regarding the MDNS. (*Staff Report, page 6*).

4 18. Because no agency or person submitted comments regarding the MDNS, no party
5 had standing to appeal the determination. In any event, no one submitted an appeal of the
6 MDNS issued for the project.

7 19. By operation of WAC 197-11-545 (re: Effect of no comment), if a consulted
8 agency does not respond with written comments within the time periods for commenting on
9 environmental documents, the lead agency may assume that the consulted agency has no
10 information relating to the potential impact of the proposal as it relates to the consulted
11 agency's jurisdiction or special expertise; further, lack of comment by other agencies or
12 members of the public on environmental documents within the applicable time period shall
be construed as lack of objection to the county's environmental analysis. Again, the record
establishes that the MDNS was not appealed – SJCC 18.80.140(A) provides that a SEPA
threshold determination like the MDNS issued for this project may be appealed within 21
days of issuance.

13 20. All of the unchallenged mitigation measures included in the MDNS are supported
14 by evidence in the Record, reasonable, and capable of being accomplished. Accordingly, as
15 recommended by Staff and fully supported by Applicant witnesses who testified at the
16 public hearing, they are all included as Conditions of Approval for the pending Shoreline
Permit. MDNS mitigation measures 1-16 are included as Conditions of Approval for this
permit, numbered as conditions 3a through 3p.

17 21. No individual or government agency invited to comment on the project application
18 offered any evidence or information that would rebut or materially challenge the findings
19 and analysis provided in applicant's environmental analysis and project construction
recommendations that are included as part of the Record.

20
21
22 **22. *Merits of the project.***

23 22A. *Comprehensive Plan.* The Staff Report and the application materials included as
24

1 part of the Record include facts and analysis that comprise far more than a preponderance
2 of evidence to establish that the pending Shoreline application satisfies, and in many
3 respects, promotes or implements, applicable provisions of the County's Comprehensive
Plan, including without limitation those found in Subsection 3.5.B regarding Boating
Facilities-Policies. (*Staff Report, page 7, Ex. 2i, pages 22-24*).

4 22B. Except as modified in this Decision, the Examiner hereby adopts by reference all
5 statements of fact included in the Staff Report, and the applicant's Project Summary letter
6 (*Ex. 2i*) which address the project's consistency with applicable County Comprehensive
Plan provisions. The statements of fact adopted herein shall be deemed Findings of Fact
supporting this Decision and Conditions of Approval.

7 22C. Substantial evidence in the record, including without limitation the application
8 materials, environmental reports, and testimony by Applicant representatives, fully support
9 Staff's conclusions in the Staff Report, explaining that the proposed project satisfactorily
10 complies with applicable county code provisions, and/or can be mitigated through
conditions set forth in the MDNS issued for this project, to minimize, reduce, or prevent
any probable, significant, adverse, environmental impacts associated with the project.

11 22D. For instance, *there is substantial, credible, and un rebutted information in the record*
12 *and application materials to demonstrate that no net loss of shoreline ecological functions*
13 *will occur.* These materials include, without limitation, the Biological Evaluation prepared
by Jen-Jay, Inc. for the project, included as part of *Ex. 2*.

14 22E. The application materials also include "Best Management Practices" that will be
15 observed throughout the construction process. (*See Ex. 2, section of BMPs recommended*
16 *by Waterfront Construction Inc.*). The MDNS mitigation measures and conditions of
approval mandate compliance with standards that are consistent with the recommended
BMPs.

17 22F. The probable, significant, adverse environmental impacts of the proposal are
18 virtually all related to the construction process, which can be minimized and fully addressed
19 through implementation of the mitigation measures identified in the County's unchallenged
20 MDNS issued for the proposal. The MDNS is fully supported by un rebutted, credible,
21 environmental studies and documentation, including without limitation the environmental
checklist and supporting environmental reports provided for the project.

22 23. The findings, recommendations and conclusions provided in the environmental
23 documentation submitted on behalf of the applicant, are credible and well-reasoned
24 summaries of complicated regulations, conditions, possible impacts and appropriate

1 mitigation measures associated with the proposed project. Applicant's proposal has been
2 designed, planned, and/or conditioned based on input from experts in various fields.

3 24. No one presented any testimony or evidence that would justify denial of the pending
4 shoreline application. While portions of the Staff Report and hearing testimony focused on
5 whether and how various owners of the six parcels of property located in the Westcott
6 Shores plat would participate in the process, via a joint use agreement or otherwise, the
7 applicants fully agree and understand that "latecomers" shall be afforded an equitable
8 opportunity to participate in any joint user agreement associated with the new dock facility,
9 given that construction of the new dock that will effectively prevent development of future
10 docks on the six Westcott Shores parcels, as county codes strongly disfavor the "porcupine"
11 effect that could result from a "dock on every parcel" so to speak.

12 25. The conditions of approval recognize that owners of all six parcels located in the
13 Westcott Shores plat shall have access to the new dock, and that they shall all have an
14 equitable opportunity to participate in use of such dock through terms in the joint use
15 agreement. Terms in a joint use agreement requiring appropriate financial participation by
16 the six parcel owners in order to make use of regular moorage on the dock is fully
17 warranted and understandable. Just because a current parcel-owner may not choose to
18 fully-participate, and fully-use the new dock, does not mean that future parcel-owners may
19 not want to do so. So, conditions of approval are written to allow for "latecomers" to sign
20 the joint use agreement to be executed by the initial permit-applicants, and participate fully
21 in use of the dock or supplemental buoy for regular moorage of their private boat. The
22 parcel-owners using the dock must operate in good faith with one another, particularly
23 given that only four vessels may be attached to the new dock at any one time.

24 ***The Record includes substantial evidence that the application meets requirements to
25 approve the Substantial Development Permit.***

26 26. Substantial and credible evidence in the record, including without limitation
unrebutted findings and analysis provided in the Staff Report, and Applicant's Project
Summary Letter, included in the Record as Exhibit 2i, establishes that the applicant has met
its burden to prove that the pending application satisfies all criteria for approval of a
Substantial Development Permit, found at SJCC 18.80.110(H). Specifically, the applicant
has met its burden to establish that: a) The proposal is consistent with the policies of the
Shoreline Management Act and its implementing regulations, Chapter 90.58 RCW and
Chapter 173-27 WAC, as amended; b) The proposal is Consistent with the policies and
regulations of the Shoreline Master Program in Chapter 18.50 SJCC; c) The proposal is
consistent with applicable provisions of SJCC chapter 18.80 and other applicable sections

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1 of the SJCC; and d) The proposal is consistent with the goals and policies of the
2 Comprehensive Plan.

3 27. Consistent with SJCC 18.80.110(H)(2), the Examiner has conditioned approval of
4 the project to make the proposal consistent with the shoreline master program and to
5 mitigate or avoid adverse impacts.

6 28. Any finding or other statement of fact contained in another section of this Decision
7 that is deemed to be a finding of fact is hereby adopted as such and incorporated by
8 reference.

9 V. CONCLUSIONS OF LAW.

10 1. The Record, including without limitation the County's Staff Report and the
11 applicant's detailed Project Summary letter with its supporting environmental and
12 regulatory analysis reports, includes substantial, credible and convincing proof that the
13 Shoreline application satisfies the County's approval criteria.

14 2. The principal purpose of SEPA is to provide decisionmakers and the public with
15 information about potential adverse impacts of a proposed action. *Save our Environment v.*
16 *Snohomish County*, 99 Wash.2d 363, 373 (1983). "SEPA is primarily a procedural statute
17 that requires the disclosure of environmental information. SEPA does not demand a
18 particular substantive result in government decision making; rather it ensures that
19 environmental values are given appropriate consideration." *Glasser v. City of Seattle*, 139
20 Wn. App. 728, 742 (2007). In this matter, the Record includes substantial, credible, and
21 un rebutted evidence to support issuance of the MDNS, and the marina repair and
22 maintenance proposal is fully justified under SEPA as an appropriate measure that will
23 materially reduce and minimize the existing potential for negative environmental impacts
24 that is presented by the marina in its current condition, especially considering installation of
25 the new boat sewage pumpout facility.

26 3. The state's Shoreline Management Act ("SMA") and the regulatory policies
established thereunder, including those adopted by San Juan County and approved by the
Department of Ecology, does/do not prohibit all development in the shoreline. Rather, its
purpose is to allow careful development of shorelines by balancing public access,
preservation of shoreline habitat and private property rights through coordinated planning.
*Overlake Fund v. Shoreline Hearings Bd. (State Report Title: Overlake Fund v. Shorelines
Hearings Bd.)*, 90 Wash. App. 746, 761, 954 P.2d 304, 312 (1998).

1 4. When it approved the San Juan County Shoreline Master Program, the Department
2 of Ecology approved the County's decision to permit recreation uses, like a joint-use dock,
3 in its waters and along some shoreline areas. It included approval of provisions that allow
4 for joint-use piers and docks through issuance of a shoreline permit. In so doing, both the
5 County and DOE recognized that the area in which this proposal is located is an already-
6 developed area within the county, which is suitable for recreational development. In an
ideal world, we might well choose to preserve all shorelines in a natural, undisturbed state.
But the Shoreline Management Act, DOE and the County understand that, in a practical
world, development pressures exist and permitting a range of uses is necessary to
accommodate those pressures.

7 5. The SMA clearly contemplates a balancing approach. "[C]oordinated planning is
8 necessary in order to protect the public interest associated with the shorelines of the state
9 while, at the same time, recognizing and protecting private property rights consistent with
10 the public interest." RCW 90.58.020. The SMA also recognizes that alterations in the
11 natural condition of the shoreline will occur with priority to be given for shoreline
12 recreational uses like the proposed joint use dock. Id. The SMA does not prohibit
development but attempts to ensure that development will occur in such a way to protect
the public against "adverse effects to the public health, the land and its vegetation and
wildlife, and the waters of the state and their aquatic life." Id. Lastly, the SMA fosters "all
reasonable and appropriate uses" of the shorelines of the state. Id.

13 6. As shown above, the Record establishes that the proposed joint-use dock project has
14 been designed and conditioned to span-over seabeds in a manner that minimizes shadowing
15 below and to comply with appropriate BMPs during construction, to produce a more
environmentally-friendly dock that can serve six residential parcels along the shoreline.

16 7. Any finding or other statement contained in a previous section of this Decision that
17 is deemed to be a Conclusion of Law is hereby adopted as such and incorporated by
reference.

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22 VI. DECISION, CONDITIONS OF APPROVAL.

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25 FINDINGS OF FACT, CONCLUSIONS OF LAW AND
DECISION – APPROVING SHORELINE
SUBSTANTIAL DEVELOPMENT PERMIT FOR
26 DICKHAUS/WESTCOTT SHORES JOINT-USE DOCK
ON SAN JUAN ISLAND –
FILE NO. PSJ000-18-0003

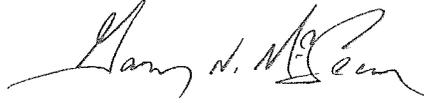
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FOR SAN JUAN COUNTY

McLeanLaw@me.com

1 Based on the record, and for the reasons set forth above, the Shoreline Substantial
2 Development Permit for the Dickhaus/Westcott Shores Joint-Use Dock Project is approved,
3 subject to the following Conditions of Approval, which are attached hereto, and
4 incorporated herein by reference.

5 ISSUED this 18th Day of March, 2019

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7 _____
8 Gary N. McLean
9 Hearing Examiner

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25 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND**
26 **DECISION – APPROVING SHORELINE**
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1 d. Applicants must implement a shoreline planting and monitoring plan identified in Appendices 16-18
the Addendum to Westcott Shores Joint Use Dock Application (Exhibit 21).

2 e. Any barge used during construction or deck maintenance shall be situated such that it does not
3 ground out during construction activities.

4 f. No deleterious material may enter state waters from the facility during construction or maintenance
activities.

5 g. Equipment will be kept in good running order and engines will be run only while needed to help
6 reduce noise and the possibility of deleterious materials entering the water column.

7 h. Disposal of all waste material will be done appropriately at an approved upland disposal site.

8 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.

9 j. The dock system shall be designed to ensure that the overall length is sufficient to prevent grounding
10 of the float or moored boats at low tides.

11 k. Reduction in shading from use of grated surface on the proposed pier, ramp, and float.

12 l. Installation activities will take place at compatible tides during daylight hours to ensure that
equipment does not ground out and installations are efficient.

13 m. Approved in-water work windows will be implemented, and work will occur over an estimated five
14 to ten (5-10) day period.

15 n. Spill prevention and clean-up plans will be in place for this activity as a safeguard against
16 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
17 notified.

18 o. Replanting will be monitored, subject to submittal of monitoring reports to and reviews by the
Director, all in accord with a monitoring plan submitted by the applicant for review and approval by the
19 Director; and

20 p. All construction and operational activities associated with the new dock facility shall comply with all
applicable state, federal and San Juan County codes.

21 4. Pilings must be structurally sound prior to placement in the water.

22 5. Pilings employed in piers or any other structure shall have a minimum vertical clearance of one
23 foot above extreme high water.

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- 1 6. All floats shall include stops to keep the bottom off tidelands.
- 2 7. When plastics or other non-biodegradable materials are used in a float, pier or dock construction, full containment features are required.
- 3 8. Overhead wiring and plumbing are prohibited. Other structures on piers, ramps and floats shall
- 4 be limited to 3' in height.
- 5 9. Dock lighting shall be designed to shine downward, be low wattage and shall not exceed a height
- 6 of 3' above the dock surface.
- 7 10. Completion of prior to approval and compliance with the marine mammal monitoring plan
- 8 during construction is required.
- 9 11. Materials used in dock construction shall be of a color and finish that will blend visually with
- 10 the background. If metal is used it must be treated to comply with this requirement.
- 11 12. Development authorized by this permit shall commence within two years of the date of approval
- 12 and shall be substantially complete within five years or the permit shall become null and void.
- 13 13. Immediately after construction is completed, the owner shall request that Community
- 14 Development and Planning perform an inspection. The request shall contain the permit number
- 15 PSJ000-18-0003 and TPNs 462341009 and 462341003.
- 16 14. Owners of Tax parcel numbers 462341005, 462341001 and 462341011 must not be denied the
- 17 opportunity to: a) access the dock; and/or b) be included in the Joint Use Agreement.
- 18 15. The joint use agreement must provide an equitable procedure by which access and use of the
- 19 dock is distributed to 'optional' users when they choose to become full owners, with all the
- 20 associated rights of ownership including unlimited and exclusive use of the floats, permanent year
- 21 round moorage and the mooring buoy associated with TPN 462341003, while simultaneously
- 22 limiting the number of boats using the dock at any one time to four.
- 23 16. Removal of the stairwells is subject to stormwater pollution prevention plan, minimum
- 24 Requirements 1-12, and certification of such shall be submitted to the department.
- 25 17. The applicant shall comply with all professional report conclusions and recommendations
- 26 submitted in connection with this Shoreline Permit and associated approvals issued by the San Juan
- County for this project, as approved, referenced, relied-upon, and/or modified by the County.
18. Failure to comply with these Conditions of Approval shall be grounds for rescission of the
- Shoreline Permit. As provided in SJCC 18.80.110(L), captioned "Rescission of Shoreline Permits,"
- any shoreline permit may be rescinded by the hearing examiner pursuant to RCW 90.58.140(8),

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1 upon the finding that the permittee has failed to comply with the terms and conditions thereof. In
2 addition, if the permittee is denied any other permit or authorization required by a state or federal
3 agency with jurisdiction over aspects of the Project, the underlying shoreline permit may be
4 rescinded.
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Effective Date, Appeals, Valuation Notices

Hearing Examiner decisions become effective when mailed or such later date in accordance with the laws and ordinance requirements governing the matter under consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be subject to review and approval by the Washington Department of Ecology, pursuant to RCW 90.58.140, WAC 173-27-130 and/or SJCC 18.80.110.

Decisions of the Hearing Examiner are final and not subject to administrative appeal to the San Juan County Council, unless the County council has adopted, by ordinance, written procedures for the discretionary review of such decisions. See Section 4.50 of the San Juan County Home Rule Charter and SJCC 2.22.100.

Depending on the subject matter, this decision may be appealable to the San Juan County Superior Court or to the Washington State Shorelines Hearings Board. State law provides short deadlines and strict procedures for appeals and failure to timely comply with filing and service requirements may result in dismissal of any appeal. See RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to promptly review appeal deadlines and procedural requirements and confer with advisors of their choosing, possibly including a private attorney.

Affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation.

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