

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

In the Matter of a Shoreline Substantial )  
Development Permit Application filed by )

**ALLEN AND CLAUDIA BOUDREAU** )  
(AS OWNERS OF LOT 1), AND )  
**HENRY ISLAND 2 LLC** )  
(AS OWNERS OF LOT 2), )

Applicants, )

PROJECT: *Joint-use dock to serve two parcels )  
identified as Lots 1 and 2 of the Driftwood Shores )  
of Henry Island Subdivision, located along the )  
north shore of Little Henry Island on tax parcels )  
462250001 and 462250002.* )

**File No. PSJ000-18-0006**

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

**S.J.C. DEPARTMENT OF**

**JUL 16 2019**

**COMMUNITY DEVELOPMENT**

**I. SUMMARY OF DECISION.**

The Shoreline Substantial Development Permit for the Boudreaux/Henry Island LLC joint-use dock is approved, subject to Conditions of Approval that are based upon evidence in the Record and the unchallenged MDNS issued for the project.

**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), together with Element 3 of the County's Comprehensive Plan, the official maps and

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
DECISION - APPROVING SHORELINE  
SUBSTANTIAL DEVELOPMENT PERMIT FOR  
BOUDREAU/HENRY ISLAND 2 LLC JOINT-USE  
DOCK ON HENRY ISLAND -  
FILE NO. PSJ000-18-0006**

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HEARING EXAMINER  
FOR SAN JUAN COUNTY**

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1 common descriptions of shoreline designation boundaries that do not follow property lines  
2 (Ordinance 1-2016, Exhibit D), Section 2(B) Figures 130-6, 130-7 of the Eastsound  
3 Subarea Plan, SJCC 18.30.480, the Eastsound Waterfront Access Plan, and SJCC  
4 18.80.110. (*See SJCC 18.50.020(A)*). The County's current SMP and shoreline regulations  
5 took effect on October 30, 2017, and apply for purposes of this application, which was filed  
6 in October of 2019 and deemed complete for purposes of vesting and review in February of  
7 2019. (*Staff Report, page 4*).

8 ***Circumstances that trigger requirement to obtain a Shoreline Substantial***  
9 ***Development Permit:*** "Substantial Development" is defined in RCW 90.58.030(3)(e) and  
10 SJCC 18.20.190, and means any development proposed in the shoreline areas of San Juan  
11 County of which the total cost, or fair market value, exceeds the dollar threshold established  
12 by the Washington State Office of Financial Management (RCW 90.58.030(3)(e))  
13 [currently \$7,047<sup>1</sup>] or any development which materially interferes with the normal public  
14 use of the water or shorelines of the state, except for the exemptions specified in WAC 173-  
15 27-040 or Chapter 18.50 SJCC. Further, SJCC 18.50.600 expressly requires a Shoreline  
16 Substantial Development Permit for a community/joint use dock in all shoreline  
17 environment designations except the Natural shoreline designation, where they are  
18 prohibited. This project is located in the Conservancy shoreline designation. There is no  
19 dispute that the request dock requires a Shoreline Substantial Development Permit.

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

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

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

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

34 <sup>1</sup> *See* Washington State Register 17-17-007, Office of Financial Management filing, dated August 3, 2017, explaining that  
35 the figure is adjusted every five years, with most recent update in 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  
4 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:

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

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

14           **Review Criteria for the Department of Ecology:** Finally, if the Examiner approves  
15 or denies the Shoreline Permit, such decision must be forwarded to the Department of  
16 Ecology and the Attorney General, for state review and any appeals of the Shoreline Permit,  
17 in accord with Washington Shoreline Management regulations found in WAC 173-27-130.  
18 This Decision is subject to review and approval, approval with conditions, or denial by the  
19 Washington Department of Ecology. Ecology’s review criteria for Shoreline Substantial  
20 Development Permits is found at WAC 173-27-150<sup>2</sup>. The San Juan County review criteria  
21 for the requested shoreline permit is consistent with and substantially similar to those that  
22 will be used by the Department of Ecology.

20           <sup>2</sup> WAC 173-27-150

21           **Review criteria for substantial development permits.**

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

23           (a) The policies and procedures of the act;

24           (b) The provisions of this regulation; and

25           (c) The applicable master program adopted or approved for the area. Provided, that where no master program has been approved for an  
26 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.

25           **FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
26           DECISION – APPROVING SHORELINE  
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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 comprehensive and credible Staff Report, prepared by Ms. Thompson, dated April 10, 2019, for the pending application (30 pages), and all Exhibits, numbered 1 through 17 and identified on page 30 of the Staff Report, are listed below and included as part of the Record for this matter:

1. Request for review dated February 6, 2019;
2. Application cover sheet dated October 7, 2018;
3. Mitigated Determination of Nonsignificance dated February 6, 2019;
4. SEPA Environmental Checklist dated September 18, 2018;
5. Letter from agent James P. Grifo dated October 19, 2018 evaluating proposal and compliance with applicable regulations;
6. Seattle Yacht Club letter dated November 3, 1995 about public dock usage at their Henry Island Outstation facility;
7. Legal description of the property;
8. Biological Evaluation for the Boudreaux Joint-Use Dock Construction prepared by Jen-Jay, inc. dated May 9, 2018;
9. Proposed Joint-Use Dock Agreement date stamped October 19, 2018;
10. Comment letter from Dr. Megan Dethier, UWFHL, dated February 14, 2019;
11. Comment email from Tina Whitman, Friends of the San Juans, dated March 6, 2019;
12. Comment letter from Bryan and Deanna Sires, neighboring property owners on Henry Island, date stamped April 4, 2019;
13. Response to public comments from James P. Grifo dated April 5, 2019. Includes signed letter from the current owners of Lot 3 (the Sires) and Lot 4 (the Schroeders), all supporting the requested permit for new joint use dock serving Lots 1 and 2, explaining the challenges presented in using the existing 40' dock located on Lot 3, especially for regular residents on a non-ferry served island;
14. WAC 220-660-380 Residential and public recreational docks, piers, ramps, floats, watercraft lifts, and buoys in saltwater areas;
15. Legal ad dated February 6, 2019;
16. Verification of notification and posting requirements dated February 19, 2019; and

17. Permit receipt dated October 19, 2018.

At the public hearing, the following additional exhibits were added to the record:

18. Aerial photos of the parcels at issue, showing shoreline, existing docks in vicinity, site where new dock would be constructed, 3 pictures, marked 18a, 18b, and 18c;

19. Letter to prior property owner from Seattle Yacht Club, dated Nov. 3, 1995, explaining SYC's non-negotiable position regarding use of its docks at the nearby Henry Island Outstation, with Rules attached, including requirement that a boat owner must always be present on their boat when using the SYC dock;

20. Preliminary Eelgrass Macroalgae Habitat Survey map for the Boudreaux dock proposal, showing location of eelgrass beds in the area, including some very close to the east side of the existing dock on Lot 3 (the side facing the Boudreaux property). Depicts 176 "site-checks" for eelgrass conducted by JenJay dive staff, described by witnesses as a large survey;

21. Aerial photo from Google Earth, showing the proposed Boudreaux Dock Site, which witnesses described as less visually obtrusive;

22a. Joint Use Covenant from 1992, generated and recorded by the previous owners of Lots 3 and 4 in the Driftwood Shores of Henry Island plat, granting limited access and use rights to the dock now located on Lot 3 to owners of Lots 1, 2, and 5 in the same plat, including provisions: limiting moorage to 10 days, without approval of the owners of Lot 3 and 4 (Sec. 4a); detailing a long, indirect, access easement to the dock (Sec. 9); and prohibiting use of the dock to load building materials, equipment or appliances; and

22b. Joint Use Covenant (First Revision), recorded in 1997 by the same previous owners of Lots 3 and 4 reflected in Ex. 22a, repeating same limitations and restrictions on use of dock by joint users, including owners of the applicants' lots, i.e. Lots 1 and 2.

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2           **Hearing Testimony, Written Comments:** The following individuals presented  
3 testimony under oath at the duly noticed open record public hearing held on April 24, 2019:

- 4           1. Julie Thompson, Planner for San Juan County, who prepared the Staff Report  
5 for the pending application, summarized her analysis, noting that Henry Island is  
6 not served by Ferry service, and has no joint use dock for residents, that the  
7 Seattle Yacht Club does not readily allow use of its facilities by local residents,  
8 that the proposal meets all code requirements and merits approval, subject to  
9 conditions;
- 10           2. Allen and Claudia Boudreaux, applicants and owners of Lot 1 since some time  
11 in 2016, both appeared at the hearing, requesting approval of their permit,  
12 described their plans to remodel/build a home on their property, noting the  
13 current access is very difficult, especially when loading/unloading heavy  
14 materials, noted that the requested dock is limited to just a “dinghy” dock, not to  
15 be used by much larger boats, that a buoy would be very difficult to use, as it  
16 would have to be located far out into the water so as to avoid eel grass beds;
- 17           3. Dan Schroeder, current owner of Lot 4, explained how the existing 40’ dock  
18 gets used up, and that as a neighbor, he fully supports the Boudreaux’s proposed  
19 new dock. He described how difficult it is for the applicants to move/haul items  
20 up and down the beach in current conditions.
- 21           4. Jenny Rose, Permit Specialist with Jen-Jay Inc., appeared for the applicants, and  
22 explained that her office has performed 4 surveys for this proposal, first for a  
23 possible mooring buoy, then an eelgrass survey of the vicinity, then delineation  
24 of eelgrass, then one to assess conditions of the existing dock. She noted that  
25 the application is now for just a “dinghy” dock, because it would be located in  
26 fairly shallow water, so boats with around 1 foot or less draft should be the only  
ones using the dock, to avoid bottoming out. She presented Exhibits 20 and 21,  
showing the 176 specific locations where divers performed “site-checks” for  
eelgrass, the location of eelgrass beds, and how the proposed new dock will be  
less visually obtrusive than other options. She also explained the discovery of  
an existing “mooring block” located right along eelgrass contour, meaning it is  
not a good option to use for a buoy;
5. Chris Betcher, professional biologist, diver, and Principal with Jen-Jay Inc.,  
described how eelgrass surveys were conducted in the area, credibly explained

1 how a buoy would not be a practical or feasible alternative to the proposed dock,  
2 and how the proposed dock has been designed to enhance light-penetration and  
maximize 'open space', so as to reduce impacts;

- 3 6. James Grifo, attorney for the applicants, appeared at the public hearing and  
4 submitted Exhibits 22a and 22b, the existing joint use dock covenant(s) for the  
5 existing dock on Lot 3, highlighting provisions that make use of the existing  
6 dock difficult and impractical for the applicants/owners of Lots 1 and 2,  
7 highlighting caselaw and Shorelines Board decisions that provide support for the  
8 requested new Joint Use Dock, emphasizing that mooring buoys are not  
adequate or practical means for year-round residents to access their homes on  
9 Henry Island, which does not receive Ferry service and has no public joint use  
10 dock available for use by Henry Island residents, like the applicants.

11 No one appeared at the public hearing to oppose the pending application, and no one  
12 commented on or appealed the SEPA MDNS issued for the project on February 6, 2019.  
13 (*Staff Report, page 4*).

14 Comment Letters from UW Friday Harbor Labs and Friends of the San Juans are  
15 included in the record as part of Exhibits 10 and 11. A supportive comment letter from the  
16 current owners of Lot 3 (the Sires) is included in the record as Ex. 12, and a supporting  
17 letter from the current owners of Lot 4 (the Schroeder's) is included in the record as part of  
18 Ex. 13. The applicants' attorney, Mr. Grifo, submitted two well-crafted and thorough  
19 letters, explaining conditions and circumstances that demonstrate how the requested permit  
20 satisfies all relevant approval criteria, included in the record as Exhibits 5 and 13.

21 The Examiner has had a full and fair opportunity to consider all evidence and  
22 testimony submitted as part of the record, has visited the shoreline area where the proposal  
23 would occur on several occasions over the last few years, reviewed and researched relevant  
24 codes and caselaw, and is fully advised. Accordingly, this Decision is now in order.

#### 25 IV. FINDINGS OF FACT.

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

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

1 attached Conditions of Approval.

2 2. In October of 2018, the above-named applicants submitted materials seeking the  
3 requested shoreline permit, which submittal was deemed complete for purposes of vesting  
4 and review in February of 2019. (*Staff Report, page 4*).

5 3. The pending application for a shoreline substantial development permit would  
6 authorize development and use of a new joint-use dock that will serve two abutting  
7 shoreline properties, identified as Lots 1 and 2 of the Driftwood Shores of Henry Island  
8 Subdivision, located along the north shore of Little Henry Island, on tax parcels 462250001  
9 and 462250002. The new dock would be constructed on Lot 1. (*Staff Report, pages 1 and*  
10 *2*).

11 4. The proposed joint-use dock system will consist of:

- 12 • A fully-grated aluminum pier, measuring 6' x 80' (480 sq. ft.) with four (4) associated 10" diameter  
13 galvanized steel pier piles;
- 14 • A fully-grated aluminum ramp, measuring 4' x 40' (160 sq. ft.) that will be connected to the pier and  
15 float;
- 16 • A fully-grated in-line float, measuring 8' x 40' (320 sq. ft.);
  - 17 a. The float will be held in place by four (4) 10" diameter galvanized steel float guide piles.
  - 18 b. The float will be supported by HDPE pipe floats, and will be placed on float stops to ensure the  
19 float will remain a minimum of 1' from the seabed at low tides.
  - 20 c. The resulting float system will have 100% grated decking with 70% open area.

21 5. The Staff Report explains that the cumulative overwater coverage of the dock  
22 structure (minus the ramp overlap of about 20 square feet) will total approximately 940  
23 square feet. All decking on the new dock system will be fully-grated for increased light  
24 penetration to the environment below. All development will occur within nearshore waters  
25 at tides sufficient to prevent grounding of barge equipment. The pier has been designed to  
26 work around existing trees and shrubs. No disturbance of vegetation is anticipated,  
therefore, no re-vegetation is required. Construction is anticipated to begin upon receiving  
all necessary permit approvals and within approved work windows, at the earliest after  
September 1, 2019. (*Staff Report, page 2*).

6. There is no ferry service to Henry Island. There is no public-access community  
dock on Henry Island with dock space or moorage available to serve island residents.  
Properties on Henry Island are only accessible by boat, as there is no commercial air service  
on the island.

7. Lot 1 is developed with a cabin on the waterfront and a house further upland. Lot 2  
is undeveloped. County Assessor records show that Lot 1 has 156 feet of waterfront

1 exposure, and Lot 2 has 109 feet of waterfront. Both parcels are heavily treed. The land  
2 slopes upward from the northeast to the southwest.

3 8. Properties to the west are part of the same subdivision, known as Driftwood Shores  
4 of Henry Island. The parcels that are developed are mostly developed as vacation cabins  
5 with few full time residents. There is an existing dock on Lot 3 that now serves the owners  
6 of Lots 3 and 4, with language in covenants purporting to allow for joint use by the owners  
7 of Lots 1-5 in the same plat. To the east is a large tract of land owned by the Seattle Yacht  
8 Club (SYC), for recreational use by its members. There are two community docks for use  
9 by Yacht Club members. There is no dispute that the SYC facility does not and cannot  
10 provide adequate and feasible alternative moorage options for the applicants, because Club  
11 rules (included in the record as part of Ex. 19) require that a boat owner must always be  
12 present on their boat when using the SYC dock.

13 9. Both of the subject properties are in the Rural Residential land use designation and  
14 the Conservancy shoreline environment. SJCC 18.50.600 requires a shoreline substantial  
15 development permit for any single-family, noncommercial or community use dock  
16 proposed in the Conservancy shoreline designation, as well as all other shoreline  
17 designations except the Natural shoreline designation, where such docks are prohibited.  
18 The County Code and staff use the terms community use dock, community joint use dock,  
19 and joint use dock to mean the same thing.

20 10. As part of satisfying the approval criteria for a Shoreline Substantial Development  
21 Permit, found in SJCC 18.80.110(H), an applicant for a joint use dock such as that proposed  
22 in this matter must demonstrate compliance with specific standards and requirements found  
23 in SJCC 18.50.260, captioned "Regulations – Single-family and community joint use  
24 docks, and moorage and recreational floats." The Staff Report provides a thorough analysis  
25 with reference to portions of the record that show how the pending application meets all  
26 applicable regulations, including without limitation those found in SJCC 18.50.260.

27 11. The only written comment generally questioning the need for the requested joint use  
28 dock (*Ex. 11, Whitman letter*) focused on whether some other alternative (like the existing  
29 joint use dock on Lot 3, or a buoy) could provide the applicants with adequate and feasible  
30 access to their properties. As explained below, and based on credible and unrebutted  
31 evidence in the record, the Examiner finds and concludes that there is no other adequate or  
32 feasible means of access to the applicants' properties. Evidence supporting this finding  
33 includes without limitation the following: *the Staff Report; the project summary, factual  
34 statements, and regulatory analysis provided in Exhibits 5 and 13; and the testimony of  
35 applicant witnesses.*

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
DECISION – APPROVING SHORELINE  
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BOUDREAUX/HENRY ISLAND 2 LLC JOINT-USE  
DOCK ON HENRY ISLAND –  
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1 12. The proposed new joint-use dock will be smaller than what could be permitted to  
2 serve four or fewer residential units applying standards found in the Table at SJCC  
3 18.50.260. For example, the Staff Report, at pages 18-20, explains that: the applicants'  
4 new dock ramp would be just 4 feet wide instead of 5 feet; pier and ramp length would be  
5 just 40.5 feet instead of the 60 feet allowed for a joint use dock; and the dock area will be  
6 about 940 sq.ft. instead of the 1,400 sq.ft. allowed for a joint use dock. There is no credible  
7 dispute that the proposed dock fully satisfies all other standards found in SJCC 19.50.260.

8 13. The applicant's attorney and agent, Mr. Grifo, submitted a detailed and credible  
9 written summary of the pending application, with specific reference to facts and  
10 circumstances that establish how the pending application complies with applicable  
11 shoreline regulations and merits approval. (*Ex. 5, letter dated Oct. 19, 2018, particularly*  
12 *pages 8-10*). Mr. Grifo's letter credibly explains why existing facilities are not adequate or  
13 feasible for the applicants use.

14 14. Based on evidence in the record, the Examiner finds that the applicants do not have  
15 adequate or feasible alternatives to access their property on Henry Island. There is no ferry  
16 service or public dock on Henry Island. The record shows that a new mooring buoy would  
17 need to be placed much further out into the water than the proposed new dock to reach a  
18 point that would avoid eelgrass. The existing dock on Lot 3 is located very near eelgrass,  
19 and any expansion would very likely impact eelgrass.

20 15. Common sense and knowledge of boating conditions in the vicinity makes it highly  
21 likely that vessels operating to and from the east side of the current dock on Lot 3 (the side  
22 nearest to Lots 1 and 2) are likely to swing out on a pretty regular basis and travel over  
23 adjacent eelgrass areas. More use on such dock by additional owners would only increase  
24 the likelihood that eelgrass beds near the existing dock would be adversely impacted by  
25 boat travel. (*See Ex. 20, Jen-Jay Eelgrass Survey, particularly top left side of illustration*  
26 *showing existing dock and its close proximity to adjacent eelgrass beds observed by divers;*  
*Testimony of Ms. Rose and Mr. Betcher, explaining dives and eelgrass survey findings*).

16. The proposed new dock on the applicant's property has been carefully designed to  
determine a specific placement, features, and construction methods that would minimize,  
prevent, and/or avoid most impacts on the shoreline environment. There is no dispute that  
the only professional reports generated based on data collected and eelgrass surveys on the  
affected area were un rebutted, particularly the findings and conclusions in the Jen-Jay  
Biological Evaluation prepared for this project to the effect that there will be no net loss of  
shoreline ecological functions, so long as the new dock is placed where proposed and  
specific BMPs are followed throughout the construction process. (*Ex. 8*).

1 17. As conditioned and designed, no remaining environmental concerns have been  
2 identified for this project, and the County concedes that eelgrass is not an issue with this  
3 proposed project, given its proposed location – carefully sited so as to avoid eelgrass beds  
4 identified and mapped using Jen-Jay’s thorough dive survey observations. (*See dock’s  
5 proposed location, pulled back towards land, away from edge of eelgrass beds shown on  
6 Ex. 20*).

7 18. In addition, the proposed dock is relatively small, called a “dinghy dock” by the  
8 applicants, effectively preventing use by large boats that need deeper water to avoid  
9 grounding during low tides or significant storms.

10 19. Expansion of, or increased use of the existing dock on Lot 3, which was shown to be  
11 in very close proximity to sensitive eelgrass beds, or use of a new mooring buoy instead of  
12 the proposed new dock, all raise potential environmental concerns of their own, and none of  
13 these other options are truly adequate for loading and unloading groceries, luggage, and  
14 people – all reasonable expectations for any Henry Island resident who intends to access  
15 their property in any season, not just mild days during summer months, and especially for  
16 those people who have plans to be in residence on a year-round basis, like the applicants in  
17 this matter.

18 20. A buoy is inadequate as the sole access point for intended year round use. In *Gray  
19 v. San Juan County*, SHB No. 10-001 (2010), the Shorelines Hearings Board restated and  
20 confirmed previous holdings that a mooring buoy was inadequate as the sole access point to  
21 a home on Henry Island, a non-ferry served island.

22 21. In another Shorelines Hearings Board case involving a proposed dock in San Juan  
23 County, the Board held that while failure to obtain a joint use agreement with other  
24 property owners after a good faith effort does not justify approval of a single-user dock,  
25 neither does it mandate disapproval. Here, there will be a joint use agreement, applying to  
26 two separate tax parcels, identified as Lots 1 and 2 in the affected plat. One comment (*Ex.  
11*) indicated that common ownership of both affected lots may render any “Joint Use”  
12 suggestion a nullity. Common ownership of two lots should not mandate disapproval of a  
13 proposed new dock, especially given the circumstances presented in this matter, where  
14 neighboring Lots 3 and 4 were held in common ownership for many years, but are now held  
15 by two separate owners, (the Sires now own Lot 3 and the Schroeder’s now own Lot 4)  
16 demonstrating how Lots 1 and 2 might one day be owned by some other person or entity  
17 besides the current applicants, as individuals or via the LLC they created.

18 22. Under SJCC 18.50.240(A)(9), the order of preference for over-water structures is:  
19 mooring buoys, existing marinas, moorage and recreational floats unattached to a pier or  
20  
21  
22

1 floating dock, boating facilities, docks and ramps serving five or more residences, joint-use  
2 or community docks, and single use docks. In this matter, the applicants propose a joint-  
use dock, because they view other alternatives inadequate or not feasible.

3 23. Moving through the list of preferred over-water structures, the record shows that  
4 there is no mooring buoy serving either of the Applicants' properties. The Applicants  
5 presently use a rope with pulleys to move a dinghy waterward and landward based upon  
6 tidal elevations. Even at regular low tides the rope and pulley system is causing an impact  
to shoreline ecological function, and is impacting the substrate. At low tides, the exposed  
tideland beds are muddy, and it is challenging for the Applicants to continue to walk and  
drag their dinghy through the flats. (*Ex. 5*).

7 24. The Applicants' current use of their shoreline has to be timed with the higher tide  
8 elevations, and this significantly restricts the Applicants' ability to access, use, and enjoy  
9 their properties. The Applicants explain that the proposed joint-use dock will have less of  
10 an impact on shoreline ecological functions than ropes and pulleys or a mooring buoy. (*Ex.*  
5).

11 25. Given the site conditions and tidal elevations, a mooring buoy would not satisfy the  
12 requirements for mooring buoys established by the Department of Natural Resources, and  
13 will result in significant impacts to the shoreline environment. The application materials  
14 direct attention to the Department of Natural Resources' Mooring Buoy Guidelines, which  
15 require mooring buoys to be anchored where the water will be deeper than seven feet at  
16 extreme low tide or at eleven and one-half feet at mean lower low water. Respecting the  
17 hierarchy of over-water structures preferred in the County's Shoreline Master Program,  
18 un rebutted testimony and materials in the record establish that the Applicants initially  
19 explored the possibility of installing a mooring buoy to serve their property and engaged  
20 Jen-Jay, Inc. to complete an eelgrass survey; but, Jen-Jay, Inc. was unable to find a feasible  
21 location to meet the Department of Natural Resources' depth requirements for mooring  
22 buoys. More significantly, it would not be feasible or practical for the property owners to  
23 rely on a mooring buoy as the principal means of accessing their Henry Island property on a  
24 regular basis.

25 26. The applicants also presented a preponderance of evidence establishing how the  
26 other preferred over-water structures (other than their proposed joint use dock) are not  
feasible or possible for the project site.

27 27. For instance, even if the Lot 3 Dock could provide year-round moorage serving Lots  
1 and 2, there is inadequate upland access to the Lot 3 Dock for the owners of Lots 1 and 2.  
28 Under the current Joint-Use Covenant addressing potential use of the dock on Lot 3, upon

29 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND**  
30 **DECISION - APPROVING SHORELINE**  
31 **SUBSTANTIAL DEVELOPMENT PERMIT FOR**  
32 **BOUDREAUX/HENRY ISLAND 2 LLC JOINT-USE**  
33 **DOCK ON HENRY ISLAND -**  
34 **FILE NO. PSJ000-18-0006**

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HEARING EXAMINER  
FOR SAN JUAN COUNTY

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1 payment of a non-refundable fee to the owners of the Lot 3 Dock, the owners allegedly will  
2 grant a pedestrian access easement to the joint-users, but this pedestrian easement  
3 purportedly travels from the common property line of Lots 3 and 4 up to the plat road  
4 serving the Driftwood Shores community. Thus, the owners of Lots 1 and 2 would have to  
5 walk from their homes, up inland towards to the plat road, then west to the common  
6 boundary of Lots 3 and 4, and then walk all the way down towards the shoreline and the  
7 dock, as the designated route to get to and from the Lot 3 Dock. Such a journey would  
8 make even getting groceries to and from the Lot 3 Dock to the cabin on Lot 1 a difficult  
9 task, and even more so when the weather is unfavorable. Lot 2 is even further away. In  
10 most other joint use agreements viewed by the Examiner, access provisions designate a  
11 more direct path for shared users to access the dock right along and/or certainly much  
12 closer to the shoreline than the potential route set forth in the existing covenants for the Lot  
13 3 Dock. (See Exs. 22a and 22b, at Section 9 re: Access, with the owner of Lot 3 reserving  
14 the right to relocate such access easement, with reasonable notice).

15 28. The Lot 3 Dock consists of just one 40' float. Under the current San Juan County  
16 Code, a 40' float is the standard permitted length for a joint-use dock to serve two  
17 properties. (SJCC Table 18.50.260). The applicants argue that it is unreasonable, and  
18 quite impossible, for one 40' float to meaningfully serve the moorage needs of five  
19 properties. Even if the Lot 3 Dock's float space were divided pro rata among Lots 1 - 5,  
20 then this would only entitle each property to just 16' of lineal dock space, which would only  
21 allow each property owner to have a very small dinghy and would have to also  
22 accommodate space for outboard motors and safety clearances. The Lot 3 Dock is not  
23 capable of meaningfully providing moorage to five properties, and all of the current owners  
24 of Lots 1 through 4 support the pending application. Applicant representatives claimed that  
25 the common owners of Lots 5 and 6 also support this application, and that Lot 6 already has  
26 a dock on its shoreline serving both Lots 5 and 6, but there was no written statement in the  
27 record from such owners expressing support, or opposition, to this proposal for a new dock  
28 on Lot 1 to serve both Lots 1 and 2.

29. The applicants' written response to public comments credibly summarizes  
30 environmental reports in the record that establish how the potential expansion of the Lot 3  
31 Dock is unlikely to be permitted and would probably cause significant environmental  
32 impacts. (Ex. 13, Grifo letter, dated April 5, 2019, at page 5).

33 30. For instance, during their dives, Jen-Jay discovered that there is a notable population  
34 of eelgrass located around and near the Lot 3 Dock. Chris Betcher, Jen-Jay Owner/Marine  
35 Biologist, completed exploratory dives identifying the extent of existing eelgrass habitat  
36 adjacent to the proposed dock location and around the existing Lot 3 Dock. Mr. Betcher  
37 delineated the inner edge of existing eelgrass along the Lot 3 Dock. The inner edge of the

1 eelgrass continues along the Lot 3 Dock on both sides of the float and has a void in the  
2 eelgrass bed within the footprint of the existing float. (See *Eel Grass map, Ex. 20*). It is the  
3 professional opinion of Jen-Jay, Inc. that the existing dock structure on Lot 3 is having an  
4 impact on eelgrass. (*Ex. 13, at page 5*). The Lot 3 Dock's float currently grounds out,  
5 which causes it to rest on the seabed at low tides, and it has a solid decked surface. *Id.* The  
6 proposed new dock structure will have less impact on the marine environment than the  
7 existing structure due to the proposed design and location, and both of which will meet  
8 current regulatory standards. The applicants submitted un rebutted evidence that the  
9 existing dock on Lot 3 does not comply with current regulatory standards, and that any  
10 increase or modification of the Lot 3 Dock is very likely to cause additional impacts to  
11 eelgrass habitat in the immediately surrounding area. On the other hand, the proposed  
12 joint-use dock will not have any impact upon eelgrass habitat, and the dock has been  
13 designed to have a minimal effect on the marine environment in general.

14 31. The application materials and other reports in the Record include thorough  
15 summaries and environmental reports analyzing potential impacts, and suggesting design  
16 features accepted by the applicants, that will serve to minimize or adequately mitigate  
17 potential impacts, including without limitation: Mr. Grifo's Summary of Proposal and  
18 Response to comments (*Ex. 5 and Ex. 13*); a Biological Evaluation prepared by Jen-Jay (*Ex.*  
19 *8*); eelgrass map, based on thorough dive surveys (*Ex. 20*); and Best Management Practices  
20 for contractors to utilize during construction process (*referenced in Ex. 8*). More  
21 importantly, the MDNS issued for this project was not challenged or appealed.

22 32. The applicants' proposed Joint Use agreement seeks to avoid problematic language  
23 found in the existing legal instruments applicable to use of the existing dock on Lot 3  
24 (*compare Lot 3 dock covenants included as Exhibits 22a and 22b with the proposed new*  
25 *Joint Use Agreement for the new dock that would serve Lots 1 and 2, included in the record*  
26 *as Ex. 9*). For instance, it formally includes the owners of both the burdened and the  
benefitted lots, and it is a binding agreement that will run with the land. It is also written in  
a manner that will not permit one owner to unilaterally restrict the reasonable and regular  
use of the dock by the other party.

33. The Staff Report and Ms. Thompson's testimony confirm that applicable notice,  
mailing and publication requirements were satisfied. (*Testimony of Ms. Thompson; Staff*  
*Report, page 4; Exhibits 15 and 16*).

34. The only state government agency to comment on the application was the  
University of Washington Friday Harbor Laboratories, via a February 6, 2019 letter from  
Dr. Megan Dethier, Associate Director for Academics and the Environment, included in the  
record as *Exhibit 10*, which reads in relevant part as follows:

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HEARING EXAMINER  
FOR SAN JUAN COUNTY

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1 While I am never happy to read of another dock being proposed in the County, because docks  
2 do have long-term and cumulative impact even when built to state specifications, this proposal  
3 was unusually well justified. The applicants include not just the required surveys but a  
4 genuinely thoughtful analysis of need. It is frustrating that the adjacent docks cannot  
5 accommodate another household using them, but a realistic appraisal of this situation has been  
6 conducted. As a manager of marine resources, I don't like the bristling-with-docks outcome for  
7 the shorelines of Henry Island, but the county's rules are being followed. When we allow  
8 development on non-ferry served islands, these requests are inevitable.

9 The siting of the dock and the proposed construction methods will minimize damage to marine  
10 resources in the area.

11 35. Tina Whitman, Science Director for the Friends of the San Juans, sent an email  
12 dated March 6, 2019, included in the record as *Exhibit 11*, emphasizing the need to  
13 carefully review the existing joint use agreement purportedly allowing use of the existing  
14 dock on Lot 3, to consider all alternatives, and to clarify construction/design details to  
15 determine whether the no net loss requirement can be satisfied for this project.

16 36. The current owners of Lot 3, where an existing dock is placed, submitted a detailed  
17 letter supporting the application, noting that "*there is nowhere on our property where the*  
18 *owners of Lots 1 and 2 (or Lot 5 for that matter) can easily park a vehicle or other*  
19 *equipment while using the Lot 3 Dock, and the increased use of our property by our*  
20 *neighbors would significantly interfere with our privacy.*" (*Ex. 12, Sires letter, dated April*  
21 *4, 2019*).

22 37. The current owners of Lot 4, the Schroeder's, also submitted a letter supporting the  
23 pending application. (*Schroeder letter, part of Ex. 13*). Mr. Schroeder personally appeared  
24 at the public hearing to support the applicants' request for a new dock.

#### 25 ***SEPA review.***

26 38. Following review and consideration of all environmental documentation submitted  
as part of the application, including a SEPA Checklist (*Ex. 4*) and Biological Evaluation  
prepared by Jen-Jay (*Ex. 8*), County officials issued a SEPA Mitigated Determination of  
Non-Significance (MDNS) for the proposal on February 6, 2019. (*Exhibit 3*).

39. The MDNS includes 12 (twelve) specific mitigation measures that are intended to  
avoid or minimize potential adverse impacts on the environment. (*See Ex. 3, MDNS*).

40. The face of the MDNS notification issued by the County specified that the deadline

1 for comments regarding the MDNS was February 20, 2019, and the deadline for any  
2 appeals of the MDNS expired on March 13, 2019. (See Ex. 3, MDNS).

3 41. The County received no comments regarding the MDNS. (Staff Report, page 4).

4 42. 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 43. 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  
13 be construed as lack of objection to the county's environmental analysis. Again, the record  
14 establishes that the MDNS was not appealed – SJCC 18.80.140(A) provides that a SEPA  
15 threshold determination like the MDNS issued for this project may be appealed within 21  
16 days of issuance.

17 44. All of the unchallenged mitigation measures included in the MDNS are supported  
18 by evidence in the Record, reasonable, and capable of being accomplished. Accordingly, as  
19 recommended by Staff and fully supported by Applicant witnesses who testified at the  
20 public hearing, they are all included as Conditions of Approval for the pending Shoreline  
21 Permit. MDNS mitigation measures 1-12 are included as Conditions of Approval for this  
22 permit, numbered as conditions 2 - 13.

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

27 ***Merits of the project.***

28 46. *Comprehensive Plan.* The Staff Report and the application materials included as  
29 part of the Record include facts and analysis that comprise far more than a preponderance  
30 of evidence to establish that the pending Shoreline application satisfies, and in many  
31 respects, promotes or implements, relevant provisions of the Shoreline Master Program,  
32 including without limitation those found in Comprehensive Plan Subsection 3.5.B regarding  
33 Boating Facilities-Policies. The pending application demonstrated that a mooring buoy is  
34

1 not feasible, and that no marina moorage is available to serve Henry Island residents. This  
2 is not a single dock serving just one private property, but a joint use dock that will provide  
3 access to two separate lots, with covenants that will run with the land and bind current and  
4 future owners of both lots. With a binding agreement applicable to two buildable lots, and  
5 a design that is actually smaller in scale than could otherwise be allowed under applicable  
6 county development standards for docks, the proposal makes a genuine effort to minimize  
7 the so-called "porcupine effect" created by individual docks serving a single property. The  
8 application materials and environmental reports thoroughly analyzed the potential  
9 expansion of the existing Lot 3 dock, and possible use of a buoy, but both alternatives were  
10 shown to be inadequate, infeasible, and likely to result in adverse environmental impacts,  
11 especially on sensitive eelgrass beds. The applicants undertook studies to respect and  
12 implement relevant Comprehensive Plan policies. Their application adequately explored  
13 alternatives, and the requested joint use dock satisfies all applicable provisions of the  
14 County's Shoreline Master Program. The thorough review and analysis conducted for this  
15 application demonstrates how relevant provisions of the County's Comprehensive Plan  
16 were fully considered and implemented to the fullest extent possible, based on  
17 environmental conditions presented at the site.

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

24 48. For instance, there is substantial, credible, and un rebutted information in the record  
25 and application materials to demonstrate that no net loss of shoreline ecological functions  
26 will occur. These materials include, without limitation, the Biological Evaluation prepared  
by Jen-Jay, Inc. for the project, included as part of Ex. 8.

49. The application materials also include "Best Management Practices" that will be  
observed throughout the construction process. (*See Biological Evaluation, Ex. 8, Sec. 7.3,  
on page 42, list of BMPs recommended to minimize potential direct and indirect impacts of  
the proposed project*). The MDNS mitigation measures and conditions of approval  
mandate compliance with standards that are consistent with all of the recommended BMPs  
found in the Biological Evaluation prepared for this proposal. (*Ex. 3, MDNS, all mitigation  
measures imposed therein; and Conditions of Approval 2-12, as set forth below*).

50. The probable, significant, adverse environmental impacts of the proposal are  
virtually all related to the construction process, which can be minimized and fully addressed

1 through implementation of the mitigation measures identified in the County's unchallenged  
2 MDNS issued for the proposal. The MDNS is fully supported by unrebutted, credible,  
3 environmental studies and documentation, including without limitation the environmental  
4 checklist and supporting environmental reports provided for the project.

5 51. The findings, recommendations and conclusions provided in the environmental  
6 documentation submitted on behalf of the applicant, are credible and well-reasoned  
7 summaries of complicated regulations, conditions, possible impacts and appropriate  
8 mitigation measures associated with the proposed project. The Applicants' proposal has  
9 been designed, planned, and/or conditioned based on input from experts in various fields.

10 52. No one presented any testimony or evidence that would justify denial of the pending  
11 shoreline application.

12 *The Record includes substantial evidence (far more than just a preponderance of  
13 evidence) showing that the application meets requirements to approve the Substantial  
14 Development Permit.*

15 53. Substantial and credible evidence in the record, including without limitation  
16 unrebutted findings and analysis provided in the Staff Report, the Applicant's Project  
17 Summary Letter, included in the Record as Exhibit 5, and response letter (Ex. 13),  
18 establishes that the applicant has met its burden to prove that the pending application  
19 satisfies all criteria for approval of a Substantial Development Permit, found at SJCC  
20 18.80.110(H). Specifically, the applicant has met its burden to establish that: a) The  
21 proposal is consistent with the policies of the Shoreline Management Act and its  
22 implementing regulations, Chapter 90.58 RCW and Chapter 173-27 WAC, as amended; b)  
23 The proposal is Consistent with the policies and regulations of the Shoreline Master  
24 Program in Chapter 18.50 SJCC; c) The proposal is consistent with applicable provisions of  
25 SJCC chapter 18.80 and other applicable sections of the SJCC; and d) The proposal is  
26 consistent with the goals and policies of the Comprehensive Plan.

27 54. The major question presented in this application is whether the applicants  
28 demonstrated that the existing joint use dock on Lot 3, a new buoy, or some other option  
29 could serve as an adequate or feasible alternative to the Boudreaux's proposed new dock.  
30 Based on credible and substantial evidence in this record, including all findings as set forth  
31 above and in the Staff Report, the Examiner finds and concludes that there are no other  
32 adequate or feasible alternatives to the smaller-than-could-be-allowed new joint use dock  
33 serving Lots 1 and 2. Consistent with guidance provided by Shorelines Board decisions  
34 addressing other docks in San Juan County, this finding is not based on the applicants'

35 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
36 DECISION – APPROVING SHORELINE  
SUBSTANTIAL DEVELOPMENT PERMIT FOR  
BOUDREAUX/HENRY ISLAND 2 LLC JOINT-USE  
DOCK ON HENRY ISLAND –  
FILE NO. PSJ000-18-0006**

**GARY N. MCLEAN  
HEARING EXAMINER  
FOR SAN JUAN COUNTY**

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1 physical condition, their possible desire to use the dock to simplify construction oversight  
2 or materials delivery, or to simply provide a more convenient means of access to the  
3 properties in question. Instead, a preponderance of other facts and circumstances fully  
4 supports approval of the requested joint use dock, including without limitation: the  
5 inability to use the neighboring Seattle Yacht Club dock facilities unless a boat owner is  
6 always present on their boat when using a SYC dock (*See Ex. 19*); the physical conditions  
7 of the shoreline and privacy considerations of the Lot 3 owners which makes it very  
8 difficult to carry groceries and other necessities of daily life directly to and from Lots 1 or 2  
9 and the Lot 3 dock; the lack of adequate and feasible access for owners of Lots 1 and 2  
10 to walk to and from the Lot 3 dock under terms of the one-sided covenants found in Exhibits  
11 22a and 22b; the inadequate size of the existing Lot 3 dock to serve two additional lot  
12 owners; the proximity of eelgrass beds to any alternative overwater structure/device like an  
13 expanded Lot 3 dock or a new buoy; the environmental impacts (especially to adjacent  
14 eelgrass beds) presented by expanding the Lot 3 dock; and the fact that a mooring buoy  
15 does not and cannot provide an adequate and feasible means of access to the applicants'  
16 Henry Island properties on a year-round basis.

17 55. Consistent with SJCC 18.80.110(H)(2), the Examiner has conditioned approval of  
18 the project to make the proposal consistent with the shoreline master program and to  
19 mitigate or avoid adverse impacts.

20 56. All findings, statements of fact, and analysis provided in the Staff Report, are  
21 incorporated herein as findings of fact by the undersigned hearing examiner, except as  
22 modified herein.

## 23 V. CONCLUSIONS OF LAW.

24 1. The Record, including without limitation the County's Staff Report, and the  
25 applicants' environmental and regulatory analysis reports, includes substantial, credible and  
26 convincing proof that the Shoreline application satisfies the County's approval criteria.

2. The principal purpose of SEPA is to provide decisionmakers and the public with  
information about potential adverse impacts of a proposed action. *Save our Environment v. Snohomish County*, 99 Wash.2d 363, 373 (1983). "SEPA is primarily a procedural statute that requires the disclosure of environmental information. SEPA does not demand a particular substantive result in government decision making; rather it ensures that environmental values are given appropriate consideration." *Glasser v. City of Seattle*, 139 Wn. App. 728, 742 (2007). In this matter, the Record includes substantial, credible, and

1 un rebutted evidence to support issuance of the MDNS, and all of the unchallenged  
2 mitigation measures that are also included as Conditions of Approval for this permit.

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

10 4. When it approved the San Juan County Shoreline Master Program, the Department  
11 of Ecology approved the County's decision to permit recreation uses, like a joint-use dock,  
12 in its waters and along some shoreline areas. It included approval of provisions that allow  
13 for joint-use piers and docks through issuance of a shoreline permit. In so doing, both the  
14 County and DOE recognized that the area in which this proposal is located is an already-  
15 developed area within the county, on a non-ferry served island, which is suitable for  
16 potential year-round use and enjoyment by property owners. In an ideal world, we might  
17 well choose to preserve all shorelines in a natural, undisturbed state. But the Shoreline  
18 Management Act, DOE and the County understand that, in a practical world, development  
19 pressures exist and permitting a range of uses is necessary to accommodate those pressures.

20 5. As noted by Dr. Dethier, this proposal is unusually well justified, and the applicants  
21 include not just the required surveys but a genuinely thoughtful analysis of need. While it  
22 is frustrating when new docks are needed, a realistic appraisal of this situation has been  
23 conducted and the county's rules are being followed. Because the County allows  
24 development on non-ferry served islands, requests such as this are inevitable. The siting of  
25 the dock and the proposed construction methods will minimize damage to marine resources  
26 in the area. The Examiner concurs with Dr. Dethier's succinct summary of the situation  
27 presented in this matter. (*See Ex. 10, written comment from Dr. Megan Dethier, UW  
28 Friday Harbor Labs*).

29 6. The SMA clearly contemplates a balancing approach. "[C]oordinated planning is  
30 necessary in order to protect the public interest associated with the shorelines of the state  
31 while, at the same time, recognizing and protecting private property rights consistent with  
32 the public interest." RCW 90.58.020. The SMA also recognizes that alterations in the  
33 natural condition of the shoreline will occur with priority to be given for shoreline  
34 recreational uses like the proposed joint use dock. *Id.* The SMA does not prohibit  
35 development but attempts to ensure that development will occur in such a way to protect  
36 the public against "adverse effects to the public health, the land and its vegetation and  
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FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
DECISION - APPROVING SHORELINE  
SUBSTANTIAL DEVELOPMENT PERMIT FOR  
BOUDREAUX/HENRY ISLAND 2 LLC JOINT-USE  
DOCK ON HENRY ISLAND -  
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HEARING EXAMINER  
FOR SAN JUAN COUNTY

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1 wildlife, and the waters of the state and their aquatic life.” Id. Lastly, the SMA fosters “all  
2 reasonable and appropriate uses” of the shorelines of the state. Id.

3 7. As shown above, the Record establishes that the proposed joint-use dock project has  
4 been designed and conditioned in a manner that minimizes shadowing below and to comply  
5 with appropriate BMPs during construction, to produce a more environmentally-friendly  
6 dock that can serve two residential parcels along the shoreline.

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

10 **VI. DECISION, CONDITIONS OF APPROVAL.**

11 Based on the record, and for the reasons set forth above, the Shoreline Substantial  
12 Development Permit for the Boudreaux/Henry Island 2 LLC Joint-Use Dock Project is  
13 approved, subject to the following Conditions of Approval, which are attached hereto, and  
14 incorporated herein by reference.

15 ISSUED this 16<sup>th</sup> Day of July, 2019

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18 Gary N. McLean  
19 Hearing Examiner

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**CONDITIONS OF APPROVAL**

**Boudreaux/Henry Island 2 LLC Joint-Use Dock Project**  
*Shoreline Substantial Development Permit*  
*File No. PSJ000-18-006*

Based on the Record, and under authority of applicable county code provisions, the Examiner imposes the following Conditions of Approval on the above-referenced permit.

1. The Project elements approved by this permit include the proposed new joint-use dock and associated features, which shall be developed in a manner and design substantially consistent with that described in the Staff Report and explained in Exhibit 8 (particularly the Project Description provided in Sec. 2 of Ex. 8, on pages 11-16, and site plans included as appendices).
2. Vibratory driving is proposed for this project. Sound attenuation measures have been estimated based on the WSDOT Practical Spreading Loss equation and reported sound pressures associated with pipe pile. These measures and means for protecting acoustically sensitive marine mammals have been prepared in the marine mammal monitoring plan. Compliance with these measures is required. The Marine Mammal Monitoring Plan is included in the Record as part of Exhibit 8, at Appendix 5.
3. No deleterious material will enter state waters. Construction Best Management Practices shall be used in accord with a Stormwater Pollution Prevention Plan Minimum Requirements 1-12. Certification of compliance with these MRs shall be submitted to the DCD with specific reference to this permit number PSJ000-18-0006.
4. Overwater structures will be placed a minimum of 25 feet from eelgrass habitat.
5. 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.
6. Disposal of all waste material will be done appropriately at an approved upland disposal site.
7. 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.

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8. Float stops will be used to prevent grounding of the float at low tide.
9. Grated surfaces on the proposed pier, ramp, and float will be used to reduce shading impacts.
10. Installation activities will take place at compatible tides during daylight hours to ensure that equipment does not ground out and installations are efficient.
11. In accord with the required HPA, WDFW approved in-water work windows will be implemented and work will occur over an estimated one-week period.
12. Spill prevention and cleanup plans will be in place for this activity as a safeguard 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.
13. The project shall comply with all applicable provisions of the Unified Development Code, Title 18 San Juan County Code.
14. The applicant shall obtain any associated permit, license, or approval required by any state, federal, or other regulatory body with jurisdiction over aspects of the project; any conditions of regulatory agency permits, licenses, approvals or leases shall be considered conditions of approval for this project.
15. As with the disposal of waste materials (See Condition No. 6, above), all equipment washouts performed in connection with this project shall be performed in compliance with all applicable regulations at an approved upland disposal/equipment cleanup site.
16. Compliance with the Marine Mammal Monitoring Plan, Appendix 5 of the Biological Evaluation, Exhibit 8, shall be required.
17. A Joint-Use Dock Agreement approved by DCD shall be recorded prior to construction of the dock. Owners of both Lots 1 and 2 must be allowed access to and use of the new joint-use dock, and must be included as parties to the Joint Use Agreement, on reasonable and appropriate terms developed by the private parties, subject to review and approval by the Director.

1 18. Development under this permit shall commence within two years of the date of permit  
2 approval and shall be substantially complete within five years thereof or the permit shall  
become null and void.

3 19. The applicant shall comply with all professional report conclusions and  
4 recommendations submitted in connection with this Shoreline Permit and associated  
5 approvals issued by the San Juan County for this project, as approved, referenced, relied-  
upon, and/or modified by the County.

6 20. Failure to comply with these Conditions of Approval shall be grounds for rescission of  
7 the Shoreline Permit. As provided in SJCC 18.80.110(L), captioned "Rescission of  
8 Shoreline Permits," any shoreline permit may be rescinded by the hearing examiner  
9 pursuant to RCW 90.58.140(8), upon the finding that the permittee has failed to comply  
10 with the terms and conditions thereof. In addition, if the permittee is denied any other  
11 permit or authorization required by a state or federal agency with jurisdiction over aspects  
12 of the Project, the underlying shoreline permit may be rescinded.

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25 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND**  
26 **DECISION – APPROVING SHORELINE**  
**SUBSTANTIAL DEVELOPMENT PERMIT FOR**  
**BOUDREAUX/HENRY ISLAND 2 LLC JOINT-USE**  
**DOCK ON HENRY ISLAND –**  
**FILE NO. PSJ000-18-0006**

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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.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
DECISION – APPROVING SHORELINE  
SUBSTANTIAL DEVELOPMENT PERMIT FOR  
BOUDREAUX/HENRY ISLAND 2 LLC JOINT-USE  
DOCK ON HENRY ISLAND –  
FILE NO. PSJ000-18-0006**

**GARY N. MCLEAN  
HEARING EXAMINER  
FOR SAN JUAN COUNTY**  
*McLeanLaw@me.com*