

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Before Hearing Examiner
Gary N. McLean

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

S.J.C. DEPARTMENT OF

NOV 07 2019

COMMUNITY DEVELOPMENT

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

BEN STRAUGHAN,)

Applicant,)

PROJECT: *To repair and modify an existing joint-use
dock on tax parcel no. 462650055000, at 95 Garrison
Drive, also known as Lot 55 in the Yacht Haven
Subdivision, on San Juan Island. The joint use dock is
shared with the owners of parcel no. 462650054, Lot 54
in the Yacht Haven Subdivision.*)

File No. PSJ000-18-0009

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION APPROVING SHORELINE
SUBSTANTIAL DEVELOPMENT
PERMIT**

I. SUMMARY OF DECISION.

The Shoreline Substantial Development Permit to repair and modify an existing joint use dock system in a manner that should reduce potential impacts on the shoreline environment is approved, subject to Conditions of Approval that are based upon evidence in the Record.

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 common descriptions of shoreline designation boundaries that do not follow property lines (Ordinance 1-2016, Exhibit D), Section 2(B) Figures 130-6, 130-7 of the Eastsound Subarea Plan, SJCC 18.30.480, the Eastsound Waterfront Access Plan, and SJCC 18.80.110. *See SJCC 18.50.020(A).* The County's current SMP and shoreline regulations took effect on October

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
DECISION – APPROVING SHORELINE
SUBSTANTIAL DEVELOPMENT PERMIT FOR THE
STRAUGHAN JOINT-USE DOCK REPAIR AND
MODIFICATION PROJECT –
FILE NO. PSJ000-18-0009**

GARY N. MCLEAN
HEARING EXAMINER
FOR SAN JUAN COUNTY

McLeanLaw@me.com

1 30, 2017, and apply for purposes of this application, which was filed in December of 2018
2 and deemed complete in January of 2019 for purposes of review and vesting. (*Staff Report,*
3 *page 3*).

4 ***Circumstances that trigger requirement to obtain a Shoreline Substantial***
5 ***Development Permit:*** “Substantial Development” is defined in RCW 90.58.030(3)(e) and
6 SJCC 18.20.190, and means any development proposed in the shoreline areas of San Juan
7 County of which the total cost, or fair market value, exceeds the dollar threshold established
8 by the Washington State Office of Financial Management (RCW 90.58.030(3)(e)) or any
9 development which materially interferes with the normal public use of the water or shorelines
10 of the state, except for the exemptions specified in WAC 173-27-040 or Chapter 18.50 SJCC.
11 The Staff Report explains that SJCC 18.50.600 requires a shoreline substantial development
12 permit for single-family, non-commercial and community use dock projects such as the two-
13 user community use / joint use dock at issue in this application. (*Staff Report, at page 7*).

14 ***Approval Criteria for Shoreline Substantial Development Permits:*** The procedures
15 for review of shoreline permit applications are contained in Chapter 18.80.110 of the county’s
16 code, with the Criteria for Approval of Shoreline Substantial Development Permits found in
17 SJCC 18.80.110(H), which reads as follows:

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

- 20 a. Consistent with the policies of the SMA, Chapter 90.58 RCW and Chapters 173-26 and 173-
21 27 WAC, as amended;
22 b. Consistent with the policies and regulations of this SMP;
23 c. Consistent with other applicable sections of this code; and
24 d. Consistent with the goals and policies of the Comprehensive Plan.

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

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

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

36 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND
DECISION – APPROVING SHORELINE
SUBSTANTIAL DEVELOPMENT PERMIT FOR THE
STRAUGHAN JOINT-USE DOCK REPAIR AND
MODIFICATION PROJECT –
FILE NO. PSJ000-18-0009**

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

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

7 **Review Criteria for the Department of Ecology:** Finally, if the Examiner approves
8 or denies the Shoreline Permit, such decision must be forwarded to the Department of
9 Ecology and the Attorney General, for state review and any appeals of the Shoreline Permit,
10 in accord with Washington Shoreline Management regulations found in WAC 173-27-130.
11 Ecology’s review criteria for Shoreline Substantial Development Permits is found at WAC
12 173-27-150. The San Juan County review criteria for the requested shoreline permit is
13 consistent with and substantially similar to those that will be used by the Department of
14 Ecology.

13 **III. RECORD AND EXHIBITS; SUMMARY OF PUBLIC HEARING.**

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

17 **Exhibits:** The Staff Report, prepared by Ms. Thompson, dated July 8, 2019, for the
18 pending application (28 pages), and all Exhibits, numbered 1 through 15 and identified on
19 page 28 of the Staff Report, are included as part of the Record for this matter. The Exhibits
20 attached to the Staff Report and provided to the Examiner before the hearing are listed below:

- 21 1. Request for review dated June 12, 2019
- 22 2. Application cover sheet dated December 21, 2018
- 23 3. General application narrative dated December 17, 2018
- 24 4. Mitigated Determination of Non-significance dated June 12, 2019
- 25 5. SEPA Environmental Checklist dated December 11, 2018
- 26 6. Existing Joint Dock Use and Easement Agreement dated September 23, 1999
 including legal description

- 1 7. San Juan County Critical Areas Report for Straughan Dock Modification dated
December 5, 2018, prepared by Jen-Jay, Inc.
- 2 8. Email from Jenny Rose dated January 23, 2019 responding to request for more
information
- 3 9. Aerial photo of existing docks in the vicinity
- 4 10. Comment letter from Dr. Megan Dethier, UWFHL, dated June 22, 2019
- 5 11. Comment email from Tamela Smart dated June 17, 2019
- 6 12. Comment letter from Stephanie Joviette dated June 13, 2019
- 7 13. Legal ad dated June 12, 2019
- 8 14. Verification of notification and posting requirements dated June 18, 2019
- 9 15. Permit receipt dated December 21, 2018

7 At the public hearing, Ms. Thompson offered several additional exhibits into the
8 record that were submitted by the applicant in the weeks after the Staff Report was issued.
9 Without objection, those exhibits were numbered, identified, and entered into the record as
10 follows:

11 16. Jen-Jay, Inc. letter dated July 18, 2019 (from Jenny Rose, Applicant's agent), to
12 the Examiner, responding on behalf of the applicant to public comments and
13 information discussed in the Staff Report, including questions raised by UW Friday
14 Harbor Labs (Ex. 10), WA State DAHP (Ex. 12), and the Lummi Nation (Ex. 11);
15 includes an updated/revised project description to amend the Critical Areas Report
16 (Ex. 7) based on such comments, as well as revised project drawings. The letter
17 explains that: "The proposed concrete footings associated with the installation of the
18 pier pile mentioned in the staff report on page 2 are no longer proposed. Instead, two
19 of the nearshore piles will be installed by being bolted into the bedrock avoiding
20 concrete fill. This method was identified as more acceptable to Army Corps of
21 Engineers during the consultation process," concluding that "This change applies to
22 the construction methods and does not reflect a substantive change to the overall
23 proposed dock replacement."

18 17. Cultural Resources Report (Cover Sheet only – to protect archaeological sites,
19 reports of this nature are confidential and not for public distribution), for the proposed
20 dock modification and repair project, dated July 18, 2019, prepared by G.Baldwin, et
21 al., with the Drayton Archaeology firm. (NOTE: RCW 42.56.300(1) expressly
22 protects the following records from public disclosure: records, maps, or other
23 information identifying the location of archaeological sites in order to avoid the
24 looting or depredation of such sites).

23 18. Supplementary comment via email dated July 22, 2019 from Tamela Smart, on
24

1 behalf of the Lummi Nation, confirming they received and reviewed the Cultural
2 Resources Report for the project, that that they concur with the conclusions and
3 recommendations in Ex. 17 (the Baldwin/Drayton report), including: *“As proposed,
4 the project appears to have no potential to impact archaeological, historic, or
5 cultural resources. Further, archaeological oversight appears unwarranted.”* In the
6 comment, the Lummi Nation *“recommends that the project proceed as planned with
7 the San Juan County Inadvertent Discovery Plan (IDP) on site and followed if
8 cultural resources or human remains are encountered.”*

9 **Hearing Testimony:** The following individuals presented testimony under oath at the
10 duly noticed open record public hearing held on July 24, 2019:

- 11 1. Julie Thompson, designated Planner for San Juan County, who prepared the Staff
12 Report for the pending application, summarized her analysis, noting that the
13 project has been changed as noted in Exhibit 16 to satisfy Army Corps feedback,
14 among other things. She confirmed that the SEPA MDNS issued for the project
15 stands as issued because the MDNS was not appealed, and no one submitted
16 comments opposing the MDNS or the project application at issue. The changes
17 in construction methods (i.e. drilling piers into nearshore bedrock locations
18 instead of pouring new concrete footings for piers in the tidal zone as originally
19 proposed) will likely reduce potential for adverse impacts, so the MDNS requires
20 no changes;
- 21 2. Jenny Rose, the applicant’s agent for this project, a Permit Consultant with the
22 Jen-Jay, Inc. firm that prepared the Critical Areas Report for this matter, appeared
23 at the public hearing to represent the applicant. Ms. Rose summarized the design
24 changes made to the Project, as described in her supplemental letter (Ex. 16) and
25 the amended Critical Areas Report (included as part of Ex. 16), reducing potential
26 impacts by drilling into bedrock for the 2 nearshore piers instead of pouring
concrete footings, and by adding spawning gravel to the site to satisfy WDFW /
HPA permit requirements. proposed replacement dock, which were required by
WDFW. Ms. Rose accepted the Staff Report analysis and recommended
conditions of approval without changes, other than those needed to implement the
modifications discussed in her supplementary Exhibit 16.
3. Chris Betcher, Principal with Jen-Jay, Inc., appeared to support the application.
Mr. Betcher prepared the Critical Areas Report (Ex. 7) and the amendment to such
report (part of Ex. 16); and
4. Ben Straughan, the applicant.

1 No one appeared at the public hearing or presented written comments to oppose the
2 pending application.

3 Given the sensitivity appropriately associated with projects that might present
4 archaeological or tribal concerns, and to ensure that state agencies and other tribes had a full
5 and fair opportunity to review and offer additional comments addressing the supplementary
6 exhibits offered on behalf of the applicant at the public hearing, the Examiner held the record
7 open to allow for such feedback. The Examiner has conferred with Staff to verify that no
8 additional comments were provided, so the record is deemed closed. The Examiner has had
9 a full and fair opportunity to consider all evidence and testimony submitted as part of the
10 record, has reviewed and researched relevant codes and caselaw, and is fully advised.
11 Accordingly, this Decision is now in order.

12 IV. FINDINGS OF FACT.

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

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

17 2. On or about December 21, 2018, the applicant and property owner, Ben Straughan,
18 applied for a shoreline substantial development permit to remove components of the existing,
19 deteriorating, and unsafe joint-use dock system on his property and replace it with a new pier,
20 ramp and float. (*Staff Report, pages 2 and 3*). Staff reviewed the application materials and
21 deemed them complete for purposes of review and vesting on or about January 23, 2019.

22 3. The applicant's consultants, reviewing county officials, and comments from the UW
23 Friday Harbor Labs all agree that the proposed new dock system should be an improvement
24 over existing conditions. (*Ex. 3, Application materials, with project narrative; Staff Report,*
25 *page 2; Ex. 10, UW FHL comment letter; Ex. 16, Jen-Jay letter and amended project*
26 *narrative and Critical Areas Report*).

27 4. The entire joint-use dock removal and replacement project would occur on
28 Applicant's property, identified as tax parcel no. 462650055000, at 95 Garrison Drive, also
29 known as Lot 55 in the Yacht Haven Subdivision, on San Juan Island. The joint use dock is
30 shared with the owners of parcel no. 462650054, Lot 54 in the Yacht Haven community.
31 (*Staff Report, page 1; Ex. 3, Application materials; Ex. 6, Joint Dock Use and Easement*
32 *Agreement between the owners of Lots 55 and 54 of the Yacht Haven plat on San Juan*
33 *Island*).

1 *Island).*

2 5. The final Project design and construction methods was/were modified following input
3 from US Army Corps officials and other reviewing entities, as summarized and shown in the
4 applicant's Exhibit 16. (*Testimony of Ms. Thompson and Ms. Rose; Ex. 16*). The Project
discussed and approved with conditions in this Decision is as follows:

5 **EXISTING DOCK STRUCTURES TO BE REMOVED:**

- 6
- Twelve (12) 12-inch diameter creosote piles and associated 18" x 18" concrete footings;
 - An 8' x 12' x 16" concrete pier support;
 - Solidly decked 8' x 78.3' timber pier;
 - Solidly decked 3.54' x 36.16' aluminum ramp;
 - Solidly decked 23.75' x 24' timber float; and
 - Four (4) 12-inch diameter creosote float guide piles.
- 7
8
9

10 **PROPOSED NEW AND IMPROVED DOCK STRUCTURES:**

- 11
- Four (4) 12-inch diameter galvanized steel pier piles, two nearshore pier piles will be installed and bolted into the bedrock and two will be driven or drilled into the substrate. [*NOTE: The original application proposed to anchor the two nearshore piers using concrete footings. This construction method was eliminated in Ex. 16*];
 - Fully grated 4' x 120' elevated aluminum pier;
 - Fully grated 4' x 44' aluminum gangway ramp;
 - Fully grated 8' x 60' mooring float; and
 - Four (4) 12-inch diameter galvanized steel float guide piles with float stops to prevent grounding of the float at low tides.
- 12
13
14
15

16 5. Relying on the applicant's Critical Areas Report prepared for the Project (*Ex. 7, as amended in Ex. 16*), the Staff Report explains that the proposed new dock system is designed to be more compliant with federal, state, and county requirements, and will be an environmental improvement over the existing structure. The existing structure has significant quantities of creosote and the float currently grounds at low tide.

17

18 6. The overall area of the existing dock system is approximately 1,324 square feet. The new dock system will be approximately 1,136 square feet. The existing system will be replaced with a new pier, ramp, and float. The float will be reconfigured to allow a more functional moorage size that extends into deeper water and does not ground out at low tide. The existing float is currently in a deteriorated and unsafe condition for use and access. The proposed changes will be an improvement to the existing condition by the removal of an existing creosote pier and float pile with a reduced number of steel piles installed. Additionally, solid timber structures will be replaced with fully grated surfaces. All work

19
20
21
22
23
24

1 will be completed from a construction barge during appropriate in-water work windows and
2 during appropriate tides to prevent any grounding of the barge. (*Staff Report, pages 1 and*
3 *2*).

4 7. The new pier and ramp components will be placed in approximately the same
5 footprint as existing structures; however the pier will be four feet narrower and the ramp
6 approximately eight feet longer, to place the float in deeper water. Due to the reduction in
7 the number of pier pilings, re-spacing of the piles is necessary. The proposed float is an
8 overall reduction in square footage from the existing condition. The float system will also
9 include float stops to prevent grounding. All new structures are proposed to be fully grated,
10 resulting in improved conditions over the existing solidly-decked structures. (*Ex. 16, final,*
11 *amended Critical Areas Report, at page 7*).

12 8. The existing pier components will be disassembled using hand tools and portable
13 power tools, and then lifted onto a barge for disposal using a barge-mounted construction
14 crane. Timber piles will be removed using a barge-mounted construction crane and a
15 vibratory extractor where necessary. Removed material will be stored on the barge for later
16 disposal at an approved upland facility. (*Id.; and Staff Report, page 2*).

17 9. Both of the proposed 12-inch nearshore pier piles will be installed and bolted into the
18 bedrock during dry conditions with a construction crane and secured with power tools. The
19 remaining piles will be set into place with a construction crane and driven using a vibratory
20 driver mounted to the barge construction crane. In the likely case of encountering rock in the
21 seabed, a rock drill will be used to pre-drill holes for piling placement. All materials and
22 personnel will be transported to the project site via construction barge. (*Id.*).

23 10. Final proposed construction drawings are included as part of the final, amended
24 Critical Areas Report, labeled as Appendices 2 – 5. The only changes made from the original
25 drawings appear on Appendices 4 and 5. (*Testimony of Ms. Rose; Compare drawings*
26 *attached to Ex. 7, the original Critical Areas Report, and those attached to the amended*
Critical Areas Report, found in Ex. 16).

11. Staff reviewed the application materials and relevant environmental documentation
before issuing a SEPA threshold determination for the project, an MDNS (Mitigated
Determination of Non-Significance), published/noticed/distributed on or about June 12,
2019. (*Ex. 4*). The County and the applicant complied with all applicable notice, comment,
posting, and publication requirements. (*Staff Report, pages 3 and 4; Exhibits 1, 4, 13 and*
14). No one offered written comments opposing issuance of the requested permit.

12. The application materials and environmental documentation submitted for the project

1 include an Eelgrass and Macroalgae Habitat Survey for the proposed replacement dock area
2 (*Ex. 7, Appendix 6, which concludes that there is no eelgrass in the survey area, though a*
3 *small amount of kelp was observed approximately 40' waterward of the proposed float*); and
4 a Critical Areas Report (*Ex. 7, amended in Ex. 16*) – prepared by qualified professionals at
5 Jen-Jay, Inc.

6 13. The Jen-Jay Critical Areas report, dated December 5, 2018 and amended on July 18,
7 2019, credibly identifies and evaluates potential impact on Fish and Wildlife Conservation
8 Areas surrounding the proposed dock repair/replacement project. The report expressly
9 concludes that no net loss of County Fish and Wildlife Habitat and Conservation Areas is
10 expected to result from the applicant's project. (*Ex. 7, original Critical Areas Report at page*
11 *20; and Ex. 16, amended Critical Areas Report at page 20*). Jen-Jay's no net loss conclusion
12 is the same in both the original and amended Critical Areas Report.

13 14. Ms. Thompson prepared and submitted the Staff Report, recommending approval of
14 the requested permit, subject to conditions that include the mitigation measures imposed on
15 the project in the unchallenged MDNS.

16 15. A single letter from UW Friday Harbor Labs is included in the record as *Exhibit 10*,
17 noting that:

18 "The proposal will allow the replacement of an old dock with more modern components that are safer
19 and more environmentally friendly. The new dock system, if built as proposed, will have a smaller
20 overall area, grated surfaces, no creosote, and the float will no longer ground out on low tides. Thus
21 overall, the project has the potential to reduce impacts on marine resources relative to the current
22 structure.

23 "Since eelgrass largely disappeared from Westcott and Garrison Bays in the 1990s, there is no concern
24 that replacing this dock will harm that resource; the herring spawn that used to be found on the eelgrass
25 is also no longer present and thus is not currently of concern. It is good to see that this is a joint-use
26 dock (although only in one location could I find the parcel number of the shared user, and nowhere in
the materials sent was there information about the numbers and types of boats that use this dock).
Repairing an old dock is far better environmentally than building a new one. Thus FHL has no
substantive concerns about this proposal.

Thank you for giving FHL the opportunity to comment on this application."

(*Ex. 10, and discussion on page 4 of Staff Report*).

16. Representatives from the Lummi Nation and the Washington Department of
Archaeology and Historic Preservation (DAHP) submitted written comments focused on
ensuring that the project is properly conditioned to protect possible cultural resources that
might be discovered during construction activities. (*Exs. 11 and 12*).

1 17. As noted above, at the public hearing, the applicant's representative, Ms. Rose,
2 summarized new exhibits from the applicant to respond to written comments from Friday
3 Harbor Labs, the Lummi Nation and DAHP. Ms. Thompson shared copies of the new
4 Exhibits with the Examiner, because they were not submitted until after the Staff Report was
5 issued. (See Exhibits 16, 17, and 18).

6 18. Ms. Rose credibly summarized her response letter (Ex. 16), which included an
7 amended version of the Critical Areas Report by Jen-Jay, Inc., revised project drawings, fully
8 responding to public comments and information discussed in the Staff Report, including
9 questions raised by UW Friday Harbor Labs (Ex. 10), WA State DAHP (Ex. 12), and the
10 Lummi Nation (Ex. 11).

11 19. The applicant's response letter, prepared by Ms. Rose, (Ex. 16) explains that:

12 "The proposed concrete footings associated with the installation of the pier pile mentioned in the
13 staff report on page 2 are no longer proposed. Instead, two of the nearshore piles will be installed
14 by being bolted into the bedrock avoiding concrete fill. This method was identified as more
15 acceptable to Army Corps of Engineers during the consultation process," concluding that "This
16 change applies to the construction methods and does not reflect a substantive change to the overall
17 proposed dock replacement."

18 20. The supplementary comment via email dated July 22, 2019 from Tamela Smart (Ex.
19 18), confirms that the Lummi Nation received and reviewed the Cultural Resources Report
20 for the project commissioned by the applicant (Ex. 17), and that the Lummi Nation concurs
21 with the conclusions and recommendations in such Report prepared by Baldwin/Drayton,
22 including: "As proposed, the project appears to have no potential to impact archaeological,
23 historic, or cultural resources. Further, archaeological oversight appears unwarranted."
24 In the comment, the Lummi Nation "recommends that the project proceed as planned with
25 the San Juan County Inadvertent Discovery Plan (IDP) on site and followed if cultural
26 resources or human remains are encountered."

27 21. The conditions of approval have been supplemented to include compliance with the
28 County's Inadvertent Discovery Plan. The Conditions have also been modified to incorporate
29 design changes reflected in the amended project drawings, included as part of Ex. 16,
30 Appendices 4 and 5.

31 22. The MDNS, which was issued before the Project changes described in Ex. 16 were
32 proposed, does not did not require modification, because the design changes reflected in
33 Exhibit 16 serve to reduce the likelihood that any adverse impacts could result from the
34 project. The changes were made to satisfy feedback from the US Army Corps of Engineers.

1 (Testimony of Ms. Rose; Ex. 16, Ms. Rose's letter, at page 2). The Examiner specifically
2 finds that the MDNS stands unchallenged, and that the limited Project changes – which will
3 reduce the potential for adverse impacts – do not warrant additional environmental review.
4 The MDNS and environmental information in the record fully identifies potential impacts
5 and mitigation measures that are capable of accomplishment, allowing for an informed
6 decision regarding the pending application.

7 23. The Critical Areas Report, in its original form and when amended, includes specific
8 construction techniques and sequencing recommendations (sometimes called “Best
9 Management Practices” or “BMPs”) that should be followed for both the demolition and
10 removal of the existing dock facility and installation of the proposed new replacement dock
11 system. (Ex. 7, at pages 9-11; and Ex. 16, amended Report, also at pages 9-11).

12 24. The SEPA MDNS issued for this project included all of the demolition/construction
13 recommendations found in the Critical Areas Report, as well as other specific measures
14 intended to prevent, minimize or mitigate potential environmental impacts associated with
15 the project. No one appealed the MDNS, or offered comments questioning mitigation
16 measures imposed therein. Thus, the MDNS stands unchallenged. Each MDNS mitigation
17 measure is also included as part of the Conditions of Approval issued for this Shoreline
18 Permit.

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

23 26. The Staff Report, the application materials, exhibits, and witness testimony at the
24 hearing, includes facts and analysis that comprise far more than a preponderance of evidence
25 to establish that the pending Shoreline application satisfies all approval criteria.

26 25. For instance, there is substantial, credible, and unrebutted information in the record
and application materials to demonstrate that no net loss of shoreline ecological functions
will occur. These materials include, without limitation, the Critical Areas Report and analysis
prepared by Jen-Jay, Inc. for the project, included as part of Ex. 7.

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

26. Substantial and credible evidence in the record, including without limitation

1 un rebutted findings and analysis provided in the Staff Report and the unchallenged MDNS
2 issued for the project, establishes that the applicant has met its burden to prove that the
3 pending application satisfies all criteria for approval of a Substantial Development Permit,
4 found at SJCC 18.80.110(H). Specifically, the applicant has met its burden to establish that:
5 a) The proposal is consistent with the policies of the Shoreline Management Act and its
6 implementing regulations, Chapter 90.58 RCW and Chapter 173-27 WAC, as amended; b)
7 The proposal is consistent with the policies and regulations of the Shoreline Master Program
8 in Chapter 18.50 SJCC; c) The proposal is consistent with applicable provisions of SJCC
9 chapter 18.80 and other applicable sections of the SJCC; and d) The proposal is consistent
10 with the goals and policies of the Comprehensive Plan.

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

14 28. All findings, statements of fact, and analysis provided in the Staff Report, are
15 incorporated herein as findings of fact by the undersigned hearing examiner, except as
16 modified herein.

17 V. CONCLUSIONS OF LAW.

18 1. The Record, including without limitation the County's Staff Report and the applicant's
19 supporting environmental reports by Jen-Jay, includes substantial, credible and convincing
20 proof that the Shoreline application satisfies the County's approval criteria.

21 2. As shown above, the Record establishes that the removal of a deteriorated dock system
22 that grounds during low tide events and its replacement with a slightly smaller, more
23 environmentally-friendly dock system that will be extended out over deeper water where
24 grounding should be reduced or not occur, and with use of float stops to help prevent
25 grounding of structures, will result in a net reduction of impacts on the applicant's shoreline
26 environment. The original proposal has been modified to eliminate the need to pour concrete
in the shoreline area, instead bolting the two nearshore piles into the bedrock. This method
was identified as more acceptable to the Army Corps of Engineers during the applicant's
consultation process.

3 3. The conditions of approval included as part of this decision are all supported by evidence
in the record and capable of being accomplished.

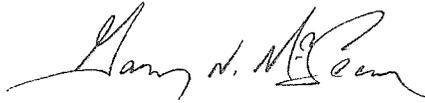
4 4. Any finding or other statement contained in a previous section of this Decision that is
deemed to be a Conclusion of Law is hereby adopted as such and incorporated by reference

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

VI. DECISION, CONDITIONS OF APPROVAL.

Based on the record, and for the reasons set forth above, the Shoreline Substantial Development Permit for the Straughan Joint-Use Dock repair and modification Project is approved, subject to the following Conditions of Approval, which are attached hereto, and incorporated herein by reference.

ISSUED this 6th Day of November, 2019



Gary N. McLean
Hearing Examiner

CONDITIONS OF APPROVAL

Straughan Dock Repair and Modification Project

Shoreline Substantial Development Permit

File No. PSJ000-18-0009

Location: 95 Garrison Lane, on San Juan Island

Parcel No. 462650055000

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.

The Project elements approved by this permit shall be removed and/or constructed substantially as described and depicted in the final, revised project drawings included in the record as part of *Exhibit 16, Appendix Nos. 1 through 5*, and relevant portions of the project narrative included as part of *Exhibit 3*, and amended by *Ex. 16*, except as the same may be modified by the following conditions:

1. All agents and contractors working on behalf of the applicant to construct or develop any aspect of the approved Project shall implement and comply with each and every of the applicable Best Management Practices (BMPs)/Construction Techniques & Sequencing proposed for this project, as set forth in *Exhibits 7 and 16*, the Critical Areas Report prepared by Jen-Jay, Inc., and further restated in these Conditions of Approval.
2. During any demolition, debris removal, construction and/or installation work associated with this Project, barges shall be situated such that they do not ground out.
3. No deleterious materials shall enter state waters.
4. Equipment shall be kept in good running order and engines shall only be run when necessary to help reduce noise and the possibility of deleterious materials entering the water column.
5. Disposal of any waste material will be done appropriately at an approved upland disposal site.
6. Pre-fabricated dock/pier components shall be used to reduce the duration of noise and barge activity disturbance resulting from construction.
7. Grated surfaces on the newly proposed structures shall be used to reduce shading and minimize adverse impacts.
8. Float stops shall be used to prevent grounding of the float during low tide events.

1 9. All over-water structures shall be located 25 feet or more from kelp or other submerged aquatic vegetation.

2 10. Installation activities shall take place at compatible tides during daylight hours to ensure
3 that equipment does not ground out and installations are efficient.

4 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.

5 12. Spill prevention and clean-up plans will be in place and observed for the entire Project as
6 a safeguard against unexpected, accidental contamination. If a spill does occur that causes fish or
7 other wildlife to be in obvious distress, project activity will immediately be halted and a WDFW
8 Area Habitat Biologist will be notified.

9 13. The project shall comply with all applicable provisions of the Unified Development
10 Code, found in Title 18 San Juan County Code.

11 14. Equipment washouts shall be done appropriately at an approved upland site.

12 15. Consistent with SJCC 18.80.110.G.5, construction or substantial progress toward
13 construction of this Project must be undertaken within two years after WDOE's date of
14 filing. Substantial progress toward construction includes letting bids, making contracts, purchase
15 of materials, utility installation and site preparation, but does not include use or development
16 inconsistent with the SMP or the terms of permit approval. However, the two-year period does
17 not include time when development could not proceed due to related administrative appeals or
18 litigation, nor include time necessary to obtain other required permits for the project from state
19 and federal agencies.

20 16. Consistent with SJCC 18.80.110.G.6, all development authorized by this shoreline permit
21 shall be completed within five years of the WDOE date of filing or the permit shall become null
22 and void. A permittee may request a time extension before the permit expires by making a written
23 request to the Director, stating the reasons. The hearing examiner will review the permit, and upon
24 a finding of good cause:

- a. Extend the permit for a period not to exceed one year; or
- b. Terminate the permit.

25 17. The applicant shall obtain any associated permit, license, or approval required by any
26 state, federal, or other regulatory body with jurisdiction over aspects of the project. Any
conditions of regulatory agency permits, licenses, or approvals issued for any aspect of this project
shall be considered conditions of approval for this permit and are incorporated herein by this
reference.

18 18. The applicant shall comply with all professional report conclusions and recommendations
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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

19. During all construction, demolition, or associated work authorized by this permit at the Project site, applicant’s agents and/or contractors shall maintain a complete copy of the most current San Juan County Inadvertent Discovery Plan (IDP), available for review and inspection by contractors and workers at all times while on the site. In the event cultural resources or human remains are encountered at any phase of the Project, immediate contacts, reports and protective measures will be made or undertaken to fully satisfy applicable provisions of the IDP.

20. 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), upon the finding that the permittee has failed to comply with the terms and conditions thereof. In addition, if the permittee is denied any other permit or authorization required by a state or federal agency with jurisdiction over aspects of the Project, the underlying shoreline permit may be rescinded.

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 THE
STRAUGHAN JOINT-USE DOCK REPAIR AND
MODIFICATION PROJECT –
FILE NO. PSJ000-18-0009**

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

McLeanLaw@me.com