

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS, AND DECISION

Applicant(s): Washington State Parks
c/o Kira Swanson
220 N. Walnut Street
Burlington, WA 98233-1138

Agent: Kira Swanson
220 N. Walnut Street
Burlington, WA 98233-1138

File No.: PSJ000-15-0006

Request: Shoreline Substantial Development Permit

Parcel No: 152312001

Location: Due east of Decatur Head, James Island State Park

Summary of Proposal: Application for a shoreline substantial development permit
for proposed upgrade to the existing moorage facility

Land Use Designation: Rural Residential

Public Hearing: January 21, 2016

Application Policies and Regulations

- SJCC 18.30.110 Critical areas
- SJCC 18.30.160 Fish and wildlife habitat conservation areas
- SJCC 18.50.070 Environmental impacts
- SJCC 18.50.150 Water quality
- SJCC 18.80.020 Project permit applications—procedures
- SJCC18.80.030 Notice of project permit applications
- SJCC18.80.110 Shoreline permit and exemption procedures

Decision: Approved subject to conditions

S.J.C. DEPARTMENT OF
FEB 05 2016
COMMUNITY DEVELOPMENT

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

In the Matter of the Application of

Washington State Parks

NO. PSJ000-15-0006

for approval of a shoreline substantial
development permit for replacement and
upgrade of the existing moorage facility
at James Island State Park

S.J.C. DEPARTMENT OF
FEB 05 2016
COMMUNITY DEVELOPMENT

SUMMARY OF DECISION

The request for shoreline substantial development permit to authorize the replacement and upgrade to the existing moorage facility at James Island State Park is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request:

Kira Swanson on behalf of Washington State Parks (Applicant) requested a shoreline substantial development permit to authorize replacement and upgrade to the existing moorage facility consisting of a pier, ramp, and floats at James Island State Park.

Hearing Date:

The San Juan County Hearing Examiner held an open record public hearing on the request on January 21, 2016.

Testimony:

At the open record public hearing, the following individuals presented testimony under oath:

Julie Thompson, Planner, San Juan County Department of Community Development
Kira Swanson, Washington State Parks, Applicant Representative
Tom Murley, Washington State Parks, Applicant Representative

Exhibits:

The following exhibits were admitted in the record:

1. Staff Report, dated January 5, 2016
2. Request for review
3. Application cover sheet and Project Narrative
4. SEPA DNS and Environmental Checklist

5. Legal description
6. Completed JARPA and approved HPA
7. Eelgrass Macro Algae Habitat Survey
8. Biological Evaluation
9. Transmittal, dated October 6, 2015 to amend the JARPA and BE
10. Fish and Wildlife Habitat Conservation Area Assessment
11. Cultural Resources Survey for the James Island State Park Moorage Improvement Project
12. Legal advertisement
13. Posting and Notification affidavit
14. UW Friday Harbor Labs comments, dated November 3, 2015
15. Applicant's requested changes to conditions of approval, from Kira Swanson, via email dated January 15, 2016

Upon consideration of the testimony and exhibits submitted at the open record public hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. James Island State Park is a 113-acre marine camping and moorage park with 12,335-feet of saltwater shore line on Rosario Strait; it occupies all of James Island.¹ The federal government acquired the island and transferred it to the Washington State Parks and Recreation Commission in 1964. The park offers a moorage dock, 1.5 miles of hiking trails, three composting toilets, 13 campsites, a picnic shelter, and two picnic sites. James Island is only accessible by boat and is not served by Washington State Ferry system. In 2013, the park received over 15,000 visitors, including 3,500 moorage guests. *Exhibits 1 and 6.*
2. The existing moorage facility is beyond its original design life; it was built in the 1970s using old construction methods including creosote timber piles and timber floats. It was built within eelgrass beds. The current moorage facility only has one float, measuring approximately 12 feet by 46 feet, which also serves as the landing float. It does not have capacity to serve current levels of use. Boaters frequently anchor in the vicinity of the moorage dock, disturbing the eelgrass beds. Washington State Parks (the Applicant) requested a shoreline substantial development permit to authorize replacement of the existing moorage facility with a new, upgraded facility with improved ADA accessibility capable of accommodating current use demands, built in compliance with current code/regulatory requirements, and to minimize impacts to nearshore eelgrass habitat by relocating the facility beyond the outer (seaward) limits of eelgrass and adding a buoy to

¹ The parcel is legally described as a portion of Section 23, Township 35 North, range 1 West; the full legal description of the parcel is in Exhibit 5; it is also known as parcel number 152312001. *Exhibits 1 and 6.*

designate an existing eelgrass bed as a no-anchoring area. *Exhibits 4 (see photos of existing condition) and 6; Swanson Testimony.*

3. James Island is located due east of Decatur Head in Rosario Strait. It has a Conservancy land use designation. Its coastline is characterized by rocky shorelines, rocky subtidal habitats, and deep narrow channels between it and other islands. Its upland is characterized by steep forested slopes predominantly covered with conifer and madrona trees. Washington Department of Natural Resources (DNR) Natural Heritage Program data indicates there is semi-native grassland approximately 160 feet north of the project site, with various native trees and shrubs approximately 75 feet north of the project site. Similar vegetation regimes are found to the south approximately 1,000 feet from the project site. Both the existing and the proposed piers connect to the uplands in a grassy picnic area. The proposal would not result in ground disturbance or vegetation removal in the DNR Natural Heritage Program-identified areas. *Exhibits 1 and 6.*
4. According to both the National Wetland Inventory and San Juan County's online Polaris mapper, there are wetlands on the subject property: a freshwater forested/shrub wetland and a non-tidal wetland, each over 800 feet from the actual project site. The National Wetland Inventory mapper indicates the proposed project site is within an estuarine and marine wetland, due to work adjacent to and below the OHWM of Rosario Strait. *Exhibit 6.* Washington Department of Fish and Wildlife (WDFW)'s online Priority Habitat and Species (PHS) mapper and data indicate that there are red sea urchin and Pandalid shrimp within the project area, as well as aquatic habitat for these species. There are identified bald eagle and peregrine falcon breeding areas approximately 1,000 feet from the project site. There are cliffs approximately 250 south of the project site and wetlands approximately 800 feet south of the project site. There are also Townsend's big-eared bat communal roosts and pinto abalone within the township. However, the proposed project is not anticipated to affect PHS listed species or habitats. *Exhibits 1 and 6.* The project area is also classified as a Fish and Wildlife Habitat Conservation Area (FWHCA) pursuant to the San Juan County critical areas ordinance. *Exhibits 1 and 10.*
5. The existing moorage facility consists of a pier, ramp, and float. The entirety of the float and ramp, and a portion of the pier, were constructed within an eelgrass bed. In its existing location, the facility inhibits eelgrass growth beneath and adjacent to the structure. Eelgrass habitat is further compromised by boaters who anchor in the eelgrass beds adjacent to the pier and float. The proposed moorage facility would consist of a pier, ramp and floats with additional moorage capacity. The pier would be extended to locate the floats into deeper water where eelgrass does not occur. The proposal includes placement of a marker buoy at the edge of the eelgrass to delineate "no mooring" zones. The existing moorage facility would be demolished. As proposed, work would occur both below and above the ordinary high water mark (OHWM), as well as above and below the mean higher high water (MHHW) mark (+7.84 ft. mean lower low water (MLLW)). No dredging is proposed. A more detailed description of the proposal, taken from the Joint Aquatic Resources Permit Application [and amended by an October 6, 2015 letter], follows.

Marine Work

Demolition will involve the removal of the existing moorage facility including the moorage/landing float, timber access pier, and pier and moorage pile. Demolition will be completed waterside using a crane barge. Creosote treated material will be disposed of at an approved facility. The float will be disposed of offsite at an upland facility. The gangway will be salvaged for use at other State Parks' facilities. During removal of the existing creosote-treated pile, full-length extraction will be attempted through the use of a barge-mounted crane with a vibratory hammer attachment. Depressions created from removal of the pile will be capped with approximately 2-cubic feet of clean sand or gravel to match the existing substrate. If a pile breaks at or below the mudline during extraction, the void will be capped with clean sand or gravel to match the existing substrate. If a pile breaks above the mudline during extraction, the pile will be cut off one to two feet below the mudline and the depression will be capped with clean gravel or sand to match the existing substrate. [Pile removal is projected to last one to two days.]

Steel Pipe Pile Installation The pier and floats will be supported by steel galvanized pipe piles. Seven, 18-inch steel piles will support the floats and six, 16-inch steel piles will support the fixed pier. The proposed facility was designed to the minimum number and size of pile required to safely support the facility in an effort to limit environmental impacts. The pile for the floats will be used to keep the floats in position during high tides and storms and are designed to resist operational and environmental loads. The number and type of pile are summarized in Table 2 [in the JARPA, in the record at Exhibit 6]. The steel pipe pile will be driven waterside from a crane barge and will require the use of a vibratory and impact hammer. Review of the 2008 geotechnical analysis at the site indicates that the substrate at the project site appears to be conducive to at least partial vibratory pile driving. The soil logs indicate that auger drilling will not be necessary. However, pre-driving may be required. If implemented, pre-driving would involve the use of a separate "H" shaped steel pile, known as an HP pile, to break up obstructions. Pre-driving utilizes an impact hammer to drive the HP pile through boulders or other obstructions at the location of the permanent pile. The HP pile may then be extracted utilizing a vibratory hammer or left in place (at the Contractor's option) and the permanent steel pipe pile would be installed the same location using a vibratory and/or impact hammer. In the case that the HP pile was left in place, the pipe pile would be driven over it such that the HP pile would be inside the pipe pile. The estimated time to drive a pile with the vibratory hammer is 15-45 minutes depending on the substrate conditions. An impact hammer will be used to pre-drive piles (if required to break through obstructions), pile driving (if soil substrate conditions are not conducive to vibratory pile driving) and to proof select piles to verify vertical pile capacity. Piles for the fixed pier will require proof loading to verify vertical pile capacity. However, the piles for the floats will only need to be driven with an impact hammer if a vibratory hammer is incapable of achieving the minimum required embedment depth for lateral capacity due to soil substrate conditions. It is assumed the impact hammer will have to be utilized at 30-40 blows/feet for the last 5 feet of embedment. It is estimated that pile driving will take approximately [six] days, averaging 1,000 to 1,500 strikes per day. A bubble curtain will be used for sound attenuation during impact pile driving.

Fixed Pier A pile-supported fixed pier structure will be installed to provide access from upland facilities to the moorage floats. The structure will be supported by galvanized steel pipe pile and galvanized steel pile caps. The fixed pier will have a total length of 119-feet and will consist of three aluminum truss spans with a fiberglass grated walking surface.

The fiberglass grating walking surface will have a minimum 60% open area, and the overall pier structure will have a net structure open area of around 50%. The fixed pier spans and supports will be fabricated offsite, delivered by barge and constructed from the water using a crane barge.

Moorage Floats Three moorage floats will be positioned for boaters to access the park's day use and the camping facilities. These floats will be constructed off-site and carried in by boat. The floats will be oriented to provide alignment to the predominate wind/wave direction in order to minimize weather related impacts and reduce support pile size. The floats will be 32-feet long and 10-feet wide and constructed of pressure treated timber framing, foam flotation fully encapsulated within polyethylene (PE) flotation drums, and a grated top surface. The fiberglass grated decking will have a minimum 60% open area. Net structure open of the moorage floats will be approximately 35%. An evaluation of the size of the float and required flotation was conducted based on the exposure of waves at the site and the size of vessels utilizing the facility. An L-shape configuration was considered but determined to be infeasible due to conditions at the site. Due to the wind and wave direction, boats moored against an L-shaped facility have the potential to be damaged. Considering site conditions, vessel mooring/berthing loads and live loads, a 10-foot wide float was determined to be the narrowest float that is feasible without compromising stability, safety or deviating from industry standards. Flotation impacts several components of float performance. For exposed sites, boat safety is a driving factor of float design with the object of providing an adequately stable float for safe access to moored vessels. Flotation area affects stability. The use of deeper but narrower flotation decreases flotation footprint but produces a float that is less stable. Industry guidelines for float design provide a minimum uniform live load capacity, which indirectly specifies the float stability required for safe use of floats during wave events. Minimum live load capacity in conjunction with freeboard limitations lead to a minimum flotation footprint, which for James Island results in a net structure open area of around 35%. Like the existing facility, the proposed facility is designed for summer use and the floats (both moorage and landing floats) will be removed from the site during the winter months. The floats will be stored at the Cornet Bay marine facility in Deception Pass State Park during the winter months. The floats are tied to the existing (or proposed) marine facilities beyond the limits of existing eelgrass beds.

Landing Float The gangway will rest on a landing float. This landing float will be of the same size and configuration and constructed of the same materials as the moorage floats. The landing float will also be constructed off-site and brought in by boat. Though the surface of the landing float will be grated with 60% open area grating, it will have around 15% net structure open area given the amount of flotation required to accommodate loading from the gangway.

Access Gangway A new gangway will be installed to connect the pier to the floats. The proposed gangway is 80-feet long and 6-feet wide with a fiberglass grating walking surface which will have a minimum 60% open area, and the overall gangway structure will have a net structure open area of around 50%. The existing pier does not provide ADA access. The proposed gangway will improve access in accordance with the American Disability Act (ADA). The gangway will rest on rollers upon the landing float. These rollers will accommodate fluctuation in water depth due to tides and provide the required dead and live load capacity for the new gangway. The facility was designed to have the floats removed and stored during the winter months. During the off season the gangway will be hoisted by

a frame supported by steel pipe piles and stored in an upright position. The gangway will be fabricated off-site and installed from the water using a crane barge.

Installation of "No Anchoring Buoy" The new "No Anchoring" buoy will be installed to help prevent boats from anchoring within the existing eelgrass bed when the available moorage space is fully utilized. The buoy will be anchored to the seabed using a concrete block anchor with an approximately 2 foot by 2 foot footprint that would be installed by boat.

Upland Work

Demolition The demolition and removal of the existing timber abutment will be performed from the water using a crane barge. All abutment material will be disposed of at an approved upland facility.

Construction The new abutment will consist of two galvanized steel pipe piles with a double HP galvanized steel cap. These piles will be driven on the beach below the OHWM. The steel pipe pile abutment will reduce excavation and eliminate the need to pour a large concrete abutment. The pipe piles will be installed from the water using a crane barge (see above description of marine work). A transition ramp will connect the fixed pier to the uplands. The transition ramp will be installed from the water using a crane barge. The upland side of the transition ramp will rest on a small concrete pad on land above the OHWM. A gravel pad will be installed between the transition ramp and existing signs located west of the pier. Concrete edging will extend around three sides of the gravel pad to contain the gravel. A gravel and cobble mix will be placed on existing grade below the abutment to protect against shoreline erosion. The ground work for the concrete slab and gravel landing pad will be completed by hand or using a small mini-excavator. The mini-excavator will be lifted from the barge using a crane and placed in the uplands.

Construction Sequence

State Parks anticipates the following construction sequence, though it could vary depending on the Contractor's approach to the project:

- Existing fixed pier, gangway, floats demolished by a crane barge, work skiff, vibratory pile extractor, and mini excavator (if required for removal of existing facility in uplands).
- New fixed pier piles driven by a crane barge and work skiff.
- New float piles driven through new float pile hoops by a crane barge and work skiff and pile tops trimmed to the proper height by use of a hand-held cutting torch. Floats will be in place during pile driving to assure proper alignment of piles.
- New prefabricated fixed pier including pile caps installed by use of a crane barge and work skiff. Installation will include field welding, field repair of galvanizing coatings.
- Installation of new concrete pad and edging for upland connection.
- New crushed rock pad and concrete landing pad area excavated either by hand or by mini excavator. Crushed rock will be placed either by hand or mini excavator.
- New precast concrete landing pad installed by crane barge or mini excavator.
- New gravel/cobble mix placed below concrete landing pad.
- New transfer ramp installed by crane barge.
- New gangway installed by crane barge.

Exhibits 6 and 9.

6. The project was designed to provide a net benefit to the environment over the existing condition. The Applicant obtained a professional survey of eelgrass beds in the project area. *Exhibit 7.* In addition to locating the proposed floats beyond the seaward extent of eelgrass, the surface of the proposed pier, gangway, and floats would be grated with a minimum 60% open space grating. This is anticipated to reduce impacts to the eelgrass bed, provide opportunities for eelgrass to recolonize, and provide a net benefit to aquatic species. The facility was designed to use the minimum number and diameter of piles required to safely support the structure. The existing creosote-treated timber piles would be replaced with steel pipe piles. The floats were designed to provide the maximum net open space feasible without compromising stability/safety or deviating from industry standards. The proposal included best management practices (BMPs) and minimization measures to be implemented during construction to reduce impacts. Piles would be driven with a vibratory hammer to the extent feasible, and a bubble curtain would be employed during pile driving with an impact hammer. Marine mammal (Southern Resident killer whale and humpback whale) and marbled murrelet monitoring was initially proposed during pile driving; however, after further discussion with state and federal agencies, recommended monitoring provisions have been changed as described below. The proposed construction window would run from September 1, approaching the end of the murrelet molting period, through February 15th. *Exhibits 6, 7, 8, and 9.*
7. No excavation or dredging is proposed below the OHWM. Excavation proposed above the OHWM is limited to approximately three cubic yards for construction of the concrete landing pad. Approximately 16 cubic yards of gravel and gravel/cobble mix would be imported to create a gravel landing pad and prevent erosion near the proposed transition ramp above the OHWM. Measures would be implemented to prevent erosion and sediment transport into Rosario Strait. *Exhibit 6.*
8. Estimate fair market value of the project is approximately one million dollars. *Exhibit 6.*
9. The Applicant has applied for a permit for authorization from the US Army Corps of Engineers (USACOE) under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, to ensure that the project would not jeopardize the continued existence of species listed as threatened or endangered under the federal Endangered Species Act (ESA), or would not result in the destruction or adverse modification of Critical Habitat for listed species. Preliminary consultation with USACOE have indicated ESA-listed species in the area may include Chinook salmon, bull trout, steelhead trout, bocaccio, canary rockfish, yelloweye rockfish, orca whales, humpback whales, leatherback sea turtles, and marbled murrelet, as well as Chinook salmon, bocaccio, canary rockfish, and yelloweye rockfish and orca critical habitat. The initial biological evaluation (BE) prepared for the proposed project concluded that the project may affect but is not likely to adversely affect listed species and their critical habitats if the BE's recommended best management practices and mitigation measures are

implemented. *Exhibits 6 and 8*. As of the public hearing, consultation with USACOE was ongoing. *Swanson Testimony*.

10. The Applicant applied for a hydraulic project approval (HPA) application, which was approved by Washington Department of Fish and Wildlife (WDFW) on October 28, 2015. Approval expires October 15, 2020. Restrictions/conditions imposed in the HPA include the following (paraphrased, among others): an in-water work window limited to September 1 through March 1; construction plan approval by WDFW; pre- and post-construction notification; fish kill and water quality incident notification; restrictions as to staging, job site access, and equipment; avoidance of shading seagrass and kelp with the on-water portions; prohibition of the use of treated wood for decking; prohibition against storage of the floats on the beach off-season; minimum percentages of grating for ramp and float surfaces; full enclosure of flotation materials; specifications regarding removal of existing and driving of new piles; protection of specified habitat features; requirements for demobilization and post-construction clean up; and specifications for the “no anchoring buoy” design and placement. *Exhibit 6*. Planning Staff indicated that the HPA’s requirements are consistent with applicable requirements of the County’s SMP for moorage facilities. *Exhibit 1; Thompson Testimony*.
11. The Applicant submitted a FWHCA assessment report to address the requirements of San Juan County Code (SJCC) 18.30.160. *Exhibit 10*. The report addressed federally listed species, habitats of local importance, and species of local importance in the project vicinity, and it analyzed potential project impacts to the FWHCA as well as measures that could be implemented to minimize or avoid such impacts. Proposed measures included (paraphrased): use of a vibratory hammer for pile driving, impact hammer use, pile proofing, use of a bubble curtain to curtail noise, use of a debris boom to collect and contain debris, specifications for removal of creosote timber members, avoidance of eelgrass during construction, the development and implementation of a spill prevention plan, and other measures to prevent petroleum or other equipment fluids from entering waters of the state, among other measures. The proposal would implement all mitigation measures from the assessment. *Exhibit 10*. Most of these measures were incorporated into Planning Staff’s recommended conditions of approval. *Exhibit 1*.
12. Rosario Strait is not considered to have poor flushing action. *Exhibit 1*.
13. The nearest property owned by others is more than 1,000 away feet across the water on Decatur Head. The proposal is not anticipated to impact any adjacent properties. *Exhibit 6*.
14. The Applicant submitted a cultural resources survey prepared for the subject property, dated August 20, 2015. During the field study, shell midden was discovered widely along the beach and the bank in the project area, as well as on the trails leading to the beach from the dock/pier intersection; however, no cultural finds were discovered on the gravel beach beneath the moorage facility. The survey included recommended actions

for further observation and monitoring during upland ground disturbing activities for possible cultural finds. *Exhibits 1 and 11.*

15. Consistent with the State Environmental Policy Act (SEPA), Washington States Parks and Recreation Commission acted as lead agency for review of the proposal's probable, significant adverse environmental impacts pursuant to SEPA. The State agency issued a determination of non-significance (DNS) on August 27, 2015. *Exhibits 1 and 4.* The DNS was not appealed. *Swanson Testimony.*
16. The application was submitted and determined to be complete on September 22, 2015. Notice of the application was posted on-site on November 23, 2015, and published on November 25, 2015. There are no adjacent property owners within 300 feet. *Exhibit 1; Thompson Testimony.*
17. Notice of the application was sent to four public agencies for comment: Washington State Department of Ecology (DOE) Wildlife section; DOE Shoreline section; Washington Department of Natural Resources; and University of Washington Friday Harbor Laboratories. *Exhibit 2.*
18. The University of Washington Friday Harbor Laboratories submitted comments dated November 30, 2015, with the following comments:

That the project, although large, is well justified in terms of both high level of current public use, and need for replacement of creosote and solid dock surfaces with steel pipes, fiberglass and open grating dock. The applicant has clearly done its homework in terms of investigating an optimal, safe dock design. The “no anchoring” buoy is an excellent idea to reduce further damage to the eelgrass bed and allow it to self-heal. The increase in size of the mooring facility is justified by the increased use and the need to get the dock out beyond the eelgrass depth limits. Overall, we anticipate that this project will ultimately result in improvement to rather than degradation of marine resources in the area.

Exhibit 14.

19. There was no other comment on the application or the DNS. *Exhibit 1.*
20. At hearing, Applicant representatives testified that DNR has requested the Applicant obtain an aquatic lease. In discussions prior to the hearing, DNR had indicated that they might require more than one “no anchoring” buoy to be installed, specifically up to two more. *Swanson Testimony.* Regarding “enforcement” of the buoys, representatives for the Applicant testified that only the Coast Guard is allowed to tell navigators where they can and cannot anchor with any enforcement authority; however, it is known that boaters are subject to peer pressure from among fellow users of the waterfront and “no anchoring” buoys are intended as a peer pressure campaign, which has been known to be ineffective. *Murley Testimony.*

21. At hearing, Applicant representatives indicated that consultation with the United States Fish and Wildlife Service and the National Marine Fisheries Service (the Services) for the U.S. Army Corps of Engineers permit is underway and may continue for several additional months. The reason marbled murrelet and marine mammal monitoring was included as conservation measures in the Biological Evaluation (BE) was because it was anticipated monitoring would be required from the Services. Concurrent with ongoing consultation with the Services, additional assessment is underway and the BE may be amended. Any ESA monitoring requirements imposed by the USFWS and the NMFS would be stated as conditions of the Corps permit and implemented by the Applicant. Applicant representatives requested that conditions imposed by the County's shoreline permit be flexible enough to be consistent with conditions that will be included in the U.S. Army Corps of Engineers permit. Because of this, they asked that recommended conditions 8 and 9 (regarding marbled murrelet and marine mammal monitoring) be modified to require whatever monitoring is imposed by the Services. Applicant representatives provided proposed replacement language that combined conditions 8 and 9 into one condition. Applicant representatives also requested modification of recommended condition 17 also (regarding imposition of the BMPs listed in the current BE), suggesting instead that the BMPs imposed by the US Army Corps be implemented in place of those listed in the initial BE, again, to maintain consistency and avoid conflicting requirements. *Swanson Testimony; Murley Testimony; Exhibit 15.*
22. Planning Staff requested that, if the application is approved, the recommended condition regarding the “no anchoring” buoy be revised to allow more than one buoy and that it be flexible enough to allow the decision as to how many buoys to be made after SSDP issuance. Staff also waived objection to the Applicant’s requested amendments to recommended conditions 8, 9, and 17. *Thompson Testimony.*
23. Upon review of the complete application materials and consideration of testimony at hearing, Planning Staff determined that the proposal would enhance public access to public shorelines and waterways and would therefore, as conditioned, comply with all applicable criteria in the Unified Development Code, the Comprehensive Plan, and the Shoreline Master Program with the recommended conditions. *Thompson Testimony; Exhibit 1.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for shoreline substantial development permit pursuant to Chapter 36.70.970 of the Revised Code of Washington and Chapters 2.22 and 18.80 of the San Juan County Code.

Criteria for Review

Pursuant to SJCC 18.80.110.H, a shoreline substantial development permit shall be granted only when the applicant meets the burden of proving that the proposal is:

1. Consistent with the policies of the Shoreline Management Act and its implementing regulations, Chapter 90.58 RCW and Chapter 173-27 WAC, as amended;
2. Consistent with the policies and regulations of the Shoreline Master Program in Chapter 18.50 SJCC;
3. Consistent with this chapter;
4. Consistent with the applicable sections of this code (e.g., Chapter 18.60 SJCC);
5. Consistent with the goals and policies of the Comprehensive Plan; and
6. All conditions specified by the hearing examiner to make the proposal consistent with the master program and to mitigate or avoid adverse impacts are attached to the permit.

Applicable Provisions of the San Juan County Code

SJCC 18.35.020 Critical Areas—Purpose

Critical areas overlay districts are adopted to protect the functions and values of critical areas in conformance with the requirements of the Washington Growth Management Act and the policies of the San Juan County Comprehensive Plan. There are five types of critical areas as defined in SJCC 18.35.055 through 18.35.140:

- A. Geologically hazardous areas.
- B. Frequently flooded areas.
- C. Critical aquifer recharge areas.
- D. Wetlands.
- E. Fish and wildlife habitat conservation areas.

SJCC 18.35.025 Critical areas—Applicability

These overlay districts provide regulations for land use, and development and vegetation removal in critical areas and areas adjacent to critical areas as established in SJCC 18.35.055 through 18.35.140.

- A. Applicability to Uses and Structures within the Shorelines of the State. Notwithstanding any provision in this code to the contrary, any use or structure legally located within shorelines of the state that was established or vested on or before the effective date of the County's development regulations to protect critical areas shall be regulated consistent with RCW 36.70A.480(3)(c). Such uses or structures may continue as a conforming use and may be redeveloped or modified if the redevelopment or modification is consistent with Chapter 18.50 SJCC and either: (1) the proposed redevelopment or modification will result in no net loss of shoreline ecological functions; or (2) the redevelopment or modification is consistent with SJCC 18.35.020 through 18.35.140. If the applicant chooses to pursue option (1), the application materials for required project or development permits must include information sufficient to demonstrate no net loss of shoreline ecological functions. For purposes of this subsection, an agricultural activity that does not expand the area being used for the agricultural activity is not a redevelopment or modification. For purposes of this subsection,

“agricultural activity” has the same meaning as defined in RCW 90.58.065.

SJCC 18.50.050 Archaeological and historic resources

- A. When an application for a development permit is received for an area known to be archaeologically significant, the County will not take action on the application and the applicant will not initiate any excavation or development activity until the site has been inspected by a qualified archaeologist. No application will be delayed more than 10 working days for such an inspection. If the application is approved by the County, conditions will be attached reflecting the recommendations of the archaeologist regarding preservation or protection of the site.
- B. All development permits will contain a special provision advising the permit holder that if during excavation or development of the site an area of potential archaeological significance is uncovered, all activity in the immediate vicinity of the find must be halted immediately, and the administrator must be notified at once. Activities authorized by the permit will not be delayed more than five working days for a finding of significance by the administrator, following the administrator’s receipt of notification, unless the permit holder agrees to an extension of that time period.
- C. All development proposed for location adjacent to sites which are included in the state or national registers of historic places, or are determined to be eligible for listing, must be located so as to complement the historic site. Development which degrades or destroys the historical character of such sites is not permitted.
- D. Prior to the issuance of a permit in areas known to contain archaeological artifacts and data, the County requires that the developer provide for a site inspection and written evaluation by an archaeologist. Significant archaeological data or artifacts must be recovered before work begins or resumes on a project.
- E. In the event that unforeseen factors constituting an emergency as defined in RCW 90.58.030 necessitate rapid action to retrieve or preserve archaeological artifacts or data, the project may be exempted from the permit requirements of these regulations. The County shall notify the Washington Department of Ecology, the State Attorney General’s Office, and the Washington Office of Archaeology and Historic Preservation of such a waiver in a timely manner.
- F. Archaeological sites located both in and outside the shoreline jurisdiction are subject to Chapter 27.44 RCW (Indian Graves and Records) and Chapter 27.53 RCW (Archaeological Sites and Records) and must comply with Chapter 25-48 WAC (Archaeological Excavation and Removal Permit) as well as the provisions of this code.
- G. Archaeological excavations are allowed subject to the provisions of this master program and applicable state laws.
- H. Identified historical or archaeological resources must be considered in park, open space, public access, and site planning, with access to such areas designed and managed so as to give maximum protection to the resource.

SJCC 18.50.070 Environmental impacts

- A. The location, design, construction, and management of all shoreline uses and activities must protect the quality and quantity of surface and ground water adjacent to the site and must adhere to the policies, standards, and regulations of applicable water quality management programs and related regulatory agencies.
- B. Solid waste disposal and liquid waste treatment facilities are prohibited on shorelines. Solid and liquid wastes, biosolids, and untreated effluents shall not be allowed to enter any bodies of water or to be discharged onto land.
- C. The release of oil, chemicals or hazardous materials onto land or into the water contrary to state or federal law is prohibited. Equipment for the transportation, storage, handling or application of such materials in association with a lawful shoreline use must be maintained in a safe and leak-proof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.
- D. All shoreline uses and activities shall be located, designed, constructed, and managed in a manner that minimizes adverse impacts to surrounding land and water uses and must be aesthetically compatible with the affected area.
- E. All shoreline uses and activities must utilize effective erosion control methods during construction and operation. Proposed methods must be included in the project description submitted with any permit application.
- F. All shoreline uses and activities must be located, designed, constructed, and managed to avoid disturbance of and minimize adverse impacts to fish and wildlife resources, including spawning, nesting, rearing and habitat areas, and migratory routes.
- G. All shoreline uses and activities must be located, designed, constructed, and managed to minimize interference with natural shoreline processes such as water circulation, sand and gravel movement, erosion, and accretion.
- H. Land clearing, grading, filling, and alteration of natural drainage features and land forms must be designed to prevent maintenance problems or adverse impacts to adjacent properties or shoreline features.
- I. All shoreline developments must be located, constructed, and operated so as not to be a hazard to public health and safety.
- J. All shoreline uses and activities must be located and designed to minimize or prevent the need for shoreline defense and stabilization measures and flood protection works, such as bulkheads, other bank stabilization, landfills, levees, dikes, groins, jetties, or substantial site regrades.
- K. Herbicides and pesticides may not be applied to or allowed to directly enter water bodies or wetland unless approved for such use by the appropriate agencies.

SJCC 18.50.150 Water quality

- A. During and after construction, all shoreline developments shall minimize any increase in surface runoff through control, treatment, and release of surface water runoff so that the receiving water quality and shore processes are not adversely affected. Control measures

include dikes, catch basins or settling ponds, oil interceptor drains, grassy swales, planted buffers, and fugitive dust controls. All surface water shall be retained on site unless discharge to road ditches or other drainage channels is approved in writing by the County engineer.

- B. All industrial, institutional, commercial, residential, recreational, and agricultural uses shall adhere to all required setbacks, buffers, and standards for stormwater. (Refer to shoreline use and environment designation regulations for specific limits.)
- C. All shoreline development must comply with the applicable requirements of the Stormwater Management Manual for the Puget Sound Basin or a County-approved program that meets or exceeds the requirements of the manual. (See also SJCC 18.60.060(B) and (C) and 18.60.070.)

SJCC 18.50.190 Boating facilities

- A. Exemptions. Docks, as specified in SJCC 18.50.020(F), are exempt from the requirement for a shoreline substantial development permit pursuant to RCW 90.58.030(3)(e)(vii) and WAC 173-27-040(2)(h).
- B. General Regulations.
 - 1. Boating facilities shall be designed to minimize adverse impacts on marine life and the shore process corridor and its operating systems.
 - 2. Boating facilities shall be designed to make use of the natural site configuration to the greatest possible degree.
 - 3. All boating facilities shall comply with the design criteria established by the State Department of Fish and Wildlife relative to disruption of currents, restrictions of tidal prisms, flushing characteristics, and fish passage to the extent that those criteria are consistent with protection of the shore process corridor.
 - 4. Areas with poor flushing action shall not be considered for overnight or long term moorage facilities.
 - 5. In general, only one form of moorage or other structure for boat access to the water shall be allowed on a single parcel: a dock or a marine railway or a boat launch ramp may be permitted subject to the applicable provisions of this code. (A mooring buoy may be allowed in conjunction with another form of moorage.) However, multiple forms of moorage or other structures for boat access to the water may be allowed on a single parcel if:
 - a. Each form of boat access to water serves a public or commercial recreational use, provides public access, is a part of a marina facility, or serves an historic camp or historic resort; or
 - b. The location proposed for multiple boat access structures is common area owned by or dedicated by easement to the joint use of the owners of at least 10 waterfront parcels.
 - 6. Structures on piers and docks shall be prohibited, except as provided for marinas in subsection (H) of this section.

C. General Regulations—Docks, Piers, and Recreational Floats.

1. Multiple use and expansion of existing facilities are preferred over construction of new docks and piers.
2. Mooring buoys shall be preferred over docks and piers on all marine shorelines except in the cases of port, commercial, or industrial development in the urban environment.
3. Moorage floats, unattached to a pier or floating dock, are preferred over docks and piers.
4. Every application for a substantial development permit for dock or pier construction shall be evaluated on the basis of multiple considerations, including but not necessarily limited to the potential impacts on littoral drift, sand movement, water circulation and quality, fish and wildlife, navigation, scenic views, and public access to the shoreline.
5. Docks or piers which can reasonably be expected to interfere with the normal erosion-accretion process associated with feeder bluffs shall not be permitted.
6. Abandoned or unsafe docks and piers shall be removed or repaired promptly by the owner. Where any such structure constitutes a hazard to the public, the County may, following notice to the owner, abate the structure if the owner fails to do so within a reasonable time and may impose a lien on the related shoreline property in an amount equal to the cost of the abatement.
7. Unless otherwise approved by shoreline conditional use permit, boats moored at residential docks shall not be used for commercial overnight accommodations.
8. Use of a dock for regular float plane access and moorage shall be allowed only by shoreline conditional use permit and shall be allowed only at commercial or public moorage facilities or at private community docks.

D. Regulations—General Design and Construction Standards.

1. Pilings must be structurally sound prior to placement in the water.
2. Chemically treated or coated piles, floats, or other structural members in direct contact with the water shall be as approved by the Environmental Protection Agency.
3. Pilings employed in piers or any other structure shall have a minimum vertical clearance of one foot above extreme high water.
4. All floats shall include stops which serve to keep the bottom off tidelands at low tide.
5. When plastics or other nonbiodegradable materials are used in float, pier, or dock construction, full containment features in the design of the structures shall be required.
6. Overhead wiring or plumbing is not permitted on piers or docks.
7. New boathouses or covered moorages are prohibited on floats, piers, and docks. Other structures on floats, piers, and docks shall be limited to three feet in height.
8. A pier shall not extend offshore farther than 50 feet beyond the extreme low tide contour.
9. Dock lighting shall be designed to shine downward, be of a low wattage, and shall not exceed a height of three feet above the dock.

10. All construction-related debris shall be disposed of properly and legally. Any debris that enters the water shall be removed promptly. Where feasible, floats shall be secured with anchored cables in place of pilings.
 11. Materials used in dock construction shall be of a color and finish that will blend visually with the background.
- E. Regulations—Joint-Use Community Piers, Docks, and Floats.
 - F. Regulations—Commercial/Industrial Docks.
 - G. Docks—Residential Docks.
 - H. Regulations—Marinas.
 - I. Regulations—Boat launches (including marine railways).
 - J. Mooring buoys.
 1. Buoys shall not interfere with navigation and shall be visible in daylight 100 yards away. Buoys shall have reflectors for night visibility.
 2. Mooring buoys shall be installed so as not to interfere with or obstruct legally existing piers, docks, floats, or other buoys.
 - K. Regulations by Environment.
 1. Urban.
 2. Rural.
 3. Rural Residential and Rural Farm Forest.
 4. Conservancy. Boat launches, marine railways, and boathouses associated with them, may be allowed as conditional uses only. Other boating facilities serving single-family residences and community docks shall be permitted in these environments subject to the policies and regulations of this SMP. Marinas shall not be permitted.
 5. Natural.
 6. Aquatic. Marina facilities, docks, and boat launches which are shoreline dependent shall be permitted in the aquatic environment subject to the policies and regulations of this SMP and to the regulations by environment applicable to the abutting shoreline area. Where a proposed boating facility abuts more than one shoreline environment, the policies and regulations for the most restrictive abutting environment shall govern.

Conclusions Based on Findings

1. As conditioned, the proposed moorage facility would be consistent with the Shoreline Management Act (SMA). The policy of the SMA, as set forth in RCW 90.58.020, is to “provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses.” This policy “contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.” *RCW 90.58.020*. Compliance with

the recommendations of the Final BE, the mitigation measures imposed in the approved HPA, and those adopted by the instant decision would ensure that adverse effects to the waters of the state and to federally listed species and their critical habitat are avoided. Approval would remediate an existing and ongoing source of adverse impacts to the waters of the state and to the eelgrass beds beneath the existing facility. *Findings 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 21, 22, and 23.*

2. The proposal is consistent with the applicable SMP provisions relating to moorage facilities. The proposed improvements to an existing dock would reduce historic and ongoing environmental impacts from the existing facility while better accommodating the current use demand, increasing ADA accessibility to promote public access, and bringing the facility into compliance with current code requirements. The project would not result in a marina, a joint-use community pier, dock, or float, or a commercial/industrial or residential dock. The proposed renovated recreational dock is not prohibited in the Conservancy shoreline environment. No structures, boathouses, or covered moorages, and no wiring or plumbing, are proposed; regular float plane access is not proposed. Approval would result in only one form of moorage on the island. A USACOE permit would be required prior to construction, which instigates Section 106 of the National Historic Preservation Act of 1966, and USACOE is the agency responsible for consultation with the Department of Archaeology and Historic Preservation (DAHP) and interested and affected tribes. However, the initial cultural resources survey in the record showed no cultural finds in the immediate vicinity of the moorage facility. Compliance with its recommendations, together with any further requirements imposed through the federal agency consultation, would ensure no adverse impacts to cultural resources. Implementation of the conservation measures in the FWHCA assessment would ensure that the project would not adversely impact the County-regulated critical areas. Replacement pilings would be galvanized steel and would be reviewed to ensure they are structurally sound prior to installation. Construction materials would remain unpainted and in a natural condition (wood, aluminum and galvanized steel). The only chemically treated material in the new facility that could come in contact with waters of the state are the pressure treated timber in the new floats; however, the approved HPA permit requires the bottom of the floats to be at least one foot above the substrate so that the structure would not rest on the bottom (Provision 19). The moorage floats' foam floatation would be fully encapsulated within polyethylene floatation drums. Per HPA requirements, the pier would not reach the extreme low tide contour. The record submitted demonstrates that, as conditioned, the project would result in no net loss of shoreline ecological functions. *Findings 2, 3, 4, 5, 6, 7, 9, 10, 11, 14, 17, 21, 22, and 23.*
3. Notice and other procedural requirements were performed consistent with the requirements of SJCC 18.80. Compliance with 18.60 would be ensured through the building permit process. Planning Staff indicated the proposal is consistent with the Comprehensive Plan in that it facilitates environmentally friendly recreational use of a public shoreline area. The proposal was reviewed for compliance with SEPA and a DNS was issued. *Findings 9, 10, 15, 17, 18, 19, 20, 22, and 23 .*

DECISION

Based on the preceding findings and conclusions, the requested shoreline substantial development permit to authorize the replacement of and upgrade to the existing moorage facility at James Island State Park is **APPROVED** subject to the following conditions applicable to the Applicants, agents, and successors:

1. All piles shall be driven with a vibratory hammer to the greatest extent feasible.
2. An impact hammer will be used for pre-driving (to advance through obstructions), pile driving (if substrate conditions are not conducive to vibratory pile driving), and proofing select piles to verify vertical capacity.
3. A bubble curtain shall be required during pile driving with an impact hammer.
4. A debris boom shall be required during demolition work to keep any debris from leaving the project site.
5. Creosote piles and timbers from the existing pier and floats shall be removed from the site and disposed of in an approved facility. Under no circumstances shall creosote-treated pilings or timbers be used for construction of the replacement moorage facility.
6. In-water construction activities shall be scheduled according to the in-water construction window for salmonids, bull trout, and forage fish as required by WDFW and other regulatory agencies.
7. Marbled murrelet monitoring and marine mammal monitoring will occur if required by the United States Fish and Wildlife Service and the National Marine Fisheries Service (the Services) as conditions of the Endangered Species Act consultation for the US Army Corps of Engineers permit, and will follow the Services requirements as detailed in those consultations and permit.
8. The new moorage floats shall be positioned beyond the limits of the existing eelgrass beds to allow eelgrass recovery.
9. Eelgrass beds, as delineated in the eelgrass survey in the record, shall be identified in the construction drawings. The contractor will be required not to disturb existing eelgrass during demolition and construction. Construction equipment shall not be allowed to moor or spud into eelgrass beds.
10. No petroleum products or other deleterious materials will be allowed to enter waters of the state.
11. The contractor shall be required to develop a spill containment plan and have the necessary materials on site prior to and during construction.

12. If a leak or spill should occur, all in-water work (below extreme high water) will cease until the source of the leak is identified and corrected and the contaminants have been removed from the water.
13. The project contractor shall use equipment having the least impact necessary to accomplish the authorized work (e.g., low ground pressure, minimally sized, rubber-tired), or shall use steel plates or tracks to minimize disturbance of the intertidal beach substrate.
14. All construction equipment shall be maintained in good working order to minimize the risk of fuel and fluid leaks or spills.
15. All the BMPs contained in the BE prepared for this project, or as amended during Endangered Species Act consultation for the U.S. Army Corps of Engineers (USACE) permit, shall be implemented or as required/directed by the USACE permit.
16. The number of “no anchoring” buoys shall be determined in consultation with Washington DNR, but at least one “no anchoring” buoy shall be installed.
17. Development shall comply with the recommendations in the Cultural Resources Survey in the record at Exhibit 11.
18. The project shall comply with all applicable provisions of the Unified Development Code, Title 18 San Juan County code.

Dated February 4, 2016.

By:



Sharon A. Rice
San Juan County Hearing Examiner

Effective Date, Appeal Right, and 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 SJCC 18.80.110.

This land use decision is final and in accordance with Section 3.70 of the San Juan County Charter. Such decisions are not subject to administrative appeal to the San Juan County Council. See also, 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 the 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 consult with a private attorney.

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