

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

Applicant: Gerhard Rohloff  
18931 Bear Creek Road  
Las Gatos, CA 95033

Agent Francine Shaw  
PO Box 2112  
Friday Harbor, WA 98250

File No.: PSJ000-12-0017

Request: Shoreline Substantial Development Permit

Parcel No: 461451038

Location: 529 Neil Bay Drive, San Juan Island

Summary of Proposal: Single User Dock

Shoreline Designation: Rural Residential

Hearing Date: February 13, 2013

Application Policies and Regulations: Shoreline Master Program

Decision: Denial.

S.J.C. COMMUNITY

MAR 20 2013

DEVELOPMENT & PLANNING

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

Phil Olbrechts, Hearing Examiner

RE: Gerhard Rohloff

Shoreline Substantial  
Development Permit  
(PSJ000-12-00017)

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND FINAL DECISION.**

S.J.C. COMMUNITY

MAR 20 2013

**INTRODUCTION**

DEVELOPMENT & PLANNING

The Applicants have applied for approval of a Shoreline Substantial Development Permit to build a single-use dock on San Juan Island. The application is denied on the basis that there is adequate and feasible alternative moorage and the applicant has not sufficiently demonstrated that existing moorage is not adequate or feasible.

**TESTIMONY**

Lee McEnery stated the application is for a single-user dock in Neil Bay, lot 38. There is an existing structure on the site which consists of wooden stairs down the bank, small pier, and some aluminum stairs. The wooden stairs and small pier were previously approved by a shoreline exemption, but the aluminum stairs were not. The proposal is to construct a pier, ramp, and float. It is for a single-user as the applicant's neighbors did not have use for the new construction. Lot 38 is on a list of lots that is eligible to share another dock to the east; however, the dock that it was eligible to share is now full. The applicants said they would be open to future joint-use, but the lots subject to this joint-use must be listed. In regard to feasible v. adequate, Ms. McEnery noted that a previous Shorelines Hearing Board determined it was based on distance from commercial moorage. The applicant investigated commercial moorage to an extent (a letter was received from Snug Harbor stating the applicant could not moor there, exhibit 5), but did not fully investigate the availability of other mooring locations. Thus, staff recommends denial of the application. In addition to the failure to investigate the available commercial moorage, staff also noted that the applicant already has a form of moorage on the property, thus the new construction is not necessary.

Francine Shaw, land-use planner with the law office of Stephanie O'Day representing the applicant, stated that she prepared the application. She submitted photos of the applicant's existing structures (exhibit 7), an aerial photo of Friday Harbor (exhibit 8), an aerial photo of Neil Bay (exhibit 9), a staff report rebuttal memo (exhibit 10), a declaration of port availability (exhibit 11), an email from the applicant's neighbor

1 expressing his disinterest in a joint-use dock (exhibit 12), and Friday Harbor's slip  
2 availability and billing procedure (exhibit 13). The applicant, Gary Rohloff, has  
3 lived on the island for fifteen years and has visited the island for more than 25 years.  
4 Mr. Rohloff's property is located on the outside edge of Neil Bay. According to Ms.  
5 Shaw, Mr. Rohloff received a shoreline exemption for a fixed kayak dock with buoy  
6 moorage. There is a large difference between the fixed kayak level and the water  
7 level, with a tide swing of 15ft. Most of the time, Mr. Rohloff cannot access the  
8 kayak to travel to the boat because of this tide swing. The staff report notes that,  
9 although the aluminum stairs were not authorized, they are necessary to reach the  
10 kayak (staff report, finding of fact 2). Additionally, the staff report notes that the  
11 fixed nature of the kayak dock/pier does not provide access at all tides, and lack of a  
12 float makes use of the boat difficult (staff report, finding of fact 3). The applicant is  
13 not proposing multiple use of the new facility, though the applicant solicited  
14 neighbors to see if they wished joint-use (staff report, finding of fact 10). Though  
15 Neil Bay is calm water, the bank on the parcel is steep and does not provide ideal  
16 dinghy storage (staff report, finding of fact 11). The staff report's findings of fact  
17 demonstrate that the current structure is not adequate.

18 Ms. Shaw stated that Mr. Rohloff is proposing to construct a 6x30ft fixed pier with a  
19 2ft wide strip of light penetrating graining. The pier will be connected to a 3x30ft  
20 ramp that has 100 percent light penetrating graining. Additionally, there will be an  
21 8x32ft float with 100 percent light penetrating graining. All three will have support  
22 structures, but the plans meet the Army Corp of Engineers requirements. The end of  
23 the float is 35ft out from the edge of the eel grass bed, and there is no kelp in the area.  
24 From an environmental perspective, there are no issues. There is a proliferation of  
25 docks around Neil Bay.

26 Stephanie O'Day stated that the high tide swings in San Juan often make it impossible  
27 for Mr. Rohloff to access his current dock. It is a dangerous situation, and Mr.  
28 Rohloff has fallen into the water in attempting to reach his dinghy. According to Ms.  
29 O'Day, Mr. Rohloff has been a member of the California Sierra Club for over thirty  
30 years and is very involved in environmental issues. He uses his boat on a daily basis  
31 during the summertime. The home is on lot 38 of the Neil Bay subdivision. His lot is  
32 the only lot that has no dock availability. San Juan has been requiring joint-use for  
33 many years to prevent the "porcupine" effect. It is too shallow to have docks at the  
34 end of Neil Bay. There is a dock to the immediate east of the Rohloff property;  
35 however, this dock is full. On the west side of the Rohloff property, a dock was  
36 approved in 1993. However, lot 38 was not part of the joint-use agreement (exhibit  
37 14). Ms. O'Day contacted Barry Jacobson who owns lot 37; however, he said he  
38 does not need a dock at this time.

39 In regard to alternative moorage options, Ms. O'Day testified that there are no  
40 feasible options for placing a dinghy along the shore. At one point, there was a dock  
41 on the property based on piling remnants. In regard to commercial moorage, Ms.  
42 O'Day noted that the code's definition of feasible alternative states that feasible  
43 means it can be accomplished in a reasonable amount of time and attains most or all

1 of the basic objectives of the project. It is out of the question for Mr. Rohloff to drive  
2 to town to reach his boat for multiple reasons. First, Mr. Rohloff would have to travel  
3 very far from Friday Harbor to boat on the north end of the island. Additionally,  
4 there is limited parking in Friday Harbor especially during the summer. Friday  
5 Harbor Marina sells parking passes to slip-renters; however, they do not limit the  
6 number of parking passes to the number of parking spaces. There is an overflow  
7 parking lot in the airport, but it would add a significant amount of travel time. If  
8 Friday Harbor was a feasible alternative, no one would be permitted to build a dock  
9 on the island. Moreover, Mr. Rohloff would have to be added to a waiting list to even  
10 obtain a slip in Friday Harbor. Roche Harbor has been explored as an alternative, but  
11 there is a 10-12 year waiting list for slips. Snug Harbor does not have any options  
12 either because the Harbor has become very shallow due to increased sediment. In  
13 regard to previous decisions, Hearing Examiners have noted that alternative moorage  
14 must be evaluated in the context of all relevant considerations in a particular proposal.  
15 In proposals that have considered other commercial marinas, the location has been  
16 closer than lot 38 or there have been other considerations such as environmental  
17 impacts. The Rohloff dock would not cause any environmental impacts or disrupt  
18 any scenic views. This project is distinguished from the Shorett decision because  
19 they had a boathouse for their dinghy, and once they applied for a joint-use dock, the  
20 dock was approved. Finally, the eagles nest on Mr. Rohloff's property, that is noted  
21 in the staff report, has fallen down, and there have not been eagles for many years.  
22 Mr. Rohloff attempted to build another nest for the eagles, but the birds have not  
23 come back. There should be a condition added to the decision noting that the owners  
24 of lot 37 will be allowed to share in the dock at any time. Mr. Rohloff's boat would  
25 take up only one side so there would be space for joint-use.

Mr. Rohloff stated that he is an environmentalist and loves taking pictures while out on his boat in the summer.

Kyle Loring, Friends of the San Juan Staff Attorney, noted that the alternative and feasible thresholds are very important in making these dock decisions. This proposed dock upgrade does not meet the thresholds. A previous case, Culvert v. San Juan, where the applicant, on a non-ferry serving outer island, was denied an upgrade from a log-floating dinghy use exemplifies the Shoreline Hearings Board feelings on this matter. In this previous case, the Board found that residents of this outer island knew the challenges of reaching the island and had adjusted to these challenges without needing docks. The San Juan County Master Program strongly discourages docks. Friends is urging the hearing examiner to deny the application. The application failed to provide the history of the boat-use, the time of the year that boating will be done, information about the boat itself, and does not make clear if there is alternative moorage options. The Shoreline Hearings Board has not ever considered the availability of parking in their decisions. Snug Harbor has moorage for a 30ft boat, but the applicant has claimed that is inadequate. Although the applicant has claimed there are sediment issues in Snug Harbor, no evidence of this has been provided, and boats do moor in that harbor, currently. The existence of available moorage at Friday Harbor has been used by the Shoreline Hearings Board to deny dock applications on

1 numerous occasions. There is also the issue of cumulative impacts and the  
2 “porcupine” effect. The number of docks in the Neil Bay area has increased from 3  
3 in 1977 (the year before the Shoreline Master Program was adopted) to approximately  
4 13 docks in 2006 (exhibit 15). Convenience does not justify a dock, according to the  
5 Shoreline Hearings Board past decisions. In regard to Friends of San Juan’s threshold  
6 for accepting new dock builds, Mr. Loring noted that this application will result in  
7 cumulative impacts, and there are already a significant number of docks in the  
8 surrounding area. An additional single-user dock is unacceptable.

9 Ms. McEnery stated that multiple lots in the Neil Bay area do not have access to a  
10 dock. She has not seen the Friday Harbor letter. The Shoreline Hearings Board has  
11 previously distinguished between feasibility and inconvenience. A previous dock  
12 application by Alan Stanford on Orcas Island was appealed based on the lack of  
13 parking at the Deer Harbor. However, the Shoreline Hearings Board upheld the  
14 denial and said parking availability should not factor into the decision.

15 Ms. O’Day testified that Mr. Rohloff’s boat has a 4ft draft, thus moorage at Snug  
16 Harbor is an impossible option. Friday Harbor is an absurd alternative because of the  
17 time and money that Mr. Rohloff would waste traveling from his lot to the harbor and  
18 then returning his boat to the north-end of the island. It would take several hours to  
19 get his boat to the north end of the island. There are certain areas of the county where  
20 it is logical to have a dock, and Mr. Rohloff’s property is a logical site. Mr. Rohloff  
21 is willing to have a joint-use dock, and he should not be treated any differently just  
22 because there are already multiple docks in the area.

23 Francine Shaw stated that she has previously commuted to Friday Harbor where her  
24 boat was moored. On multiple occasions, the unavailability of parking in the port  
25 area limited her ability to use her boat. The port parking lot only has 80 parking stalls  
to serve 400 boats and the yacht club. Street parking has a two-hour limit so it is also  
not feasible. Mr. Rohloff will not be able to use his boat everyday with the Friday  
Harbor mooring option.

## EXHIBITS

Exhibit 1 staff report dated 1/24/13

Exhibit 2 Shoreline application w/ attached application materials

Exhibit 3 Determination of non-significance w/ environmental checklist

Exhibit 4 Comment letters and emails, including Friends of San Juans 2/12/13 letter

Exhibit 5 letter from Snug harbor dated 1/29/13

Exhibit 6 HPA from Fish and Wildlife dated 1/31/13

Exhibit 7 series of photographs of the existing stairs and pier (3 Photos)

1 Exhibit 8 aerial photo of Friday harbor

2 Exhibit 9 aerial photo of Neil Bay

3 Exhibit 10 staff report rebuttal dated 2/13/13

4 Exhibit 11 declaration of port availability

5 Exhibit 12 letter from Barry Jacobson

6 Exhibit 13 online information about slip availability from Friday information

7 Exhibit 14 dock use agreements and aerial photo of the surrounding area

8 Exhibit 15 Rohloff Response to Friends comment letter dated 2/20/13

9  
10 **FINDINGS OF FACT**

11 **Procedural:**

12 1. Applicant. The applicant is Gerhard Rohloff.

13 2. Hearing. The Hearing Examiner conducted a hearing on the subject  
14 application at 10:00 am on February 13, 2013. The record was left open through  
15 February 13, 2013 for responsive briefing from the applicant and a site visit with the  
16 applicant on February 25, 2013.

17 **Substantive:**

18 3. Site and Proposal Description. The applicant proposes to construct a single user  
19 dock on lot 38 of the Neil Bay long subdivision on the northern end of San Juan  
20 Island. The dock would have a 6' x 30' pier, a 3' x 30' ramp and a 8' x 32' float. Pairs  
21 of pilings would be located at the seaward end of the pier, and each end of the float.  
The dock would be 526 square feet in area and 86 feet in length as measured from the  
ordinary high water mark. An existing 4' x 8' pier platform, referenced as a kayak  
dock, supports the landward end of the pier. Different amounts of light-permeable  
grating would be used on the pier, ramp and float.

22 The pilings will be made of steel such that they will be structurally sound. ACZA  
23 pressure treated wood will be used to construct the structural portions of the dock.  
24 The pilings have a minimum clearance of at least 2.5 feet at EHHW. The piles which  
25 support the float incorporate stops to prevent the float from grounding. The float tubs  
will be constructed of foam encased entirely in a molded plastic. No overhead  
wiring, plumbing or structures will be placed upon the dock. The pier will not  
extend waterward of the extreme low tide contour. There is no dock lighting  
proposed. The dock will blend visually with the background as it will remain

1 unpainted and in a natural condition resembling earth tones. The dock is set back a  
2 minimum of ten feet from all side property lines.

3 4. Characteristics of the Area. Neal Bay is a shallow bay heavily developed  
4 with docks. The Rohloff property is located at the mouth of the bay.

5 5. Adverse Impacts of Proposed Use. With one potential exception, there  
6 are no significant adverse impacts associated with the proposal. A Determination of  
7 Non-significance was issued for the proposal and no comments were received  
8 regarding the DNS.

9 The site is within a drift sector (SJ-2) but the float is small and is likely to have little  
10 impact on littoral drift. Water quality will not be impacted because Neal Bay has  
11 active water circulation and flushing. A marine habitat survey was submitted with the  
12 application that indicated that no eel grass is present in the immediate vicinity of the  
13 dock expansion. The survey showed laminaria so orientation and surface grating are  
14 proposed to mitigate any potential impacts, though none are expected. The proposed  
15 dock is not expected to interfere with navigation along the shoreline as the size of the  
16 dock meets the dimensional regulations and is not located within a navigation  
17 channel. In addition, the proposal is not expected to substantially interfere with  
18 scenic views as there are already many docks in the vicinity nor is it expected to  
19 impede public access to the shoreline.

20 The one potential exception regarding adverse impacts is prop scour of nearby  
21 eelgrass beds. Friends notes in its briefing that eelgrass lies at -4.5 foot elevation  
22 between the dock and open water. The draft of the boat is four feet. Although the  
23 applicant notes in Ex. 16 that the last time the tidal elevation was at -4.5 was in 1947,  
24 this does not address how prop scour could affect the eelgrass at higher tides with a 4  
25 foot boat draft. If this project were to be approved, the applicant would have to  
provide further evidence that prop scour is not an issue.

Cumulative impacts are not an issue. The parcel is the last or one of the last parcels  
in Neal Bay that does not have any dock access. The proposal will not serve as a  
precedent that sets off a "porcupine effect" and the addition of one more dock to this  
heavily developed shoreline will not create any discernible cumulative impact from  
an aesthetic or environmental standpoint.

6. Existing and Alternative Moorage. Existing moorage is challenging and difficult  
to use. Existing moorage is currently comprised of beach access stairs and a kayak  
dock, which was constructed in 2001. The kayak dock is located thirteen feet above  
ground level. Because of this height, the dock is inaccessible except during extreme  
high tide. Mr. Rohloff added a set of aluminum stairs to extend from the kayak deck  
to the beach below. The aluminum stairs have not been authorized by San Juan  
County. The shallow depth of Neil Bay results in low tides that require Mr. Rohloff  
to land his dingy up to 100 feet away from his dock. Mr. Rohloff must use a pulley

1 system to drag his boat across the beach floor and up the steep bank when the tides  
2 are not high enough to reach the kayak pier.

3 It is unclear whether the record contains a complete listing of all available  
4 commercial marinas. The applicant identified three commercial marinas. It is  
5 undisputed that Roche Harbor, the closest marina, has a 10-12 year waiting list. A  
6 letter from Snug Harbor, located 7.5 miles from the project site, notes that two 32 foot  
7 slips are available, but they are not suitable for a sailboat or power boat with a deeper  
8 draft. See Ex. 5. The letter also states that there is very little turnover in the slips and  
9 it is unlikely any more slips will be available in the near future. The applicant asserts  
10 that their boat has a four foot draft that is not compatible with the two available slips  
11 and there is no evidence to the contrary.

12 The applicant also asserts that moorage in the Port of Friday harbor is not reasonable  
13 or feasible. The applicant's attorney testified that the driving time to the Friday  
14 Harbor marina, located 11 miles from the project site, is a half hour and that the  
15 boating time back to the applicant's property is an hour. The applicant asserts that at  
16 current gas prices it would cost "\$128 for one trip alone". See Ex. 10, p. 15. It is  
17 unclear from this statement whether this cost is for one way, two way or whether it  
18 includes the time recreating near the applicant's property. The applicant also asserts  
19 that the marina has 500 slips with 400 reserved for permanent moorage and 100 for  
20 transient moorage. There is no information provided on the number of slips currently  
21 available for permanent moorage and/or the waiting lists for permanent slips. The  
22 applicant also asserts that parking is not reasonably available at the site, because the  
23 marina only has 90 parking stalls for its 500 slips. The marina sells yearly parking  
24 permits for these stalls. The applicant asserts that the marina likely oversells the  
25 parking permits and that during boating season finding a parking stall at the marina is  
"nearly impossible", that surrounding streets only authorize two hour parking and that  
the closest 8 hour parking is located several blocks away by the courthouse.

The applicant has met their burden in establishing that there is no joint use dock  
available in the vicinity for use and that no other property owners are interested in  
using the applicant's property for a joint use dock.

## CONCLUSIONS OF LAW

### Procedural:

1. Authority of Hearing Examiner. Shoreline Substantial Development  
permit applications are reviewed and processed by Development Services Department  
staff, and the Hearing Examiner, after conducting an open-record public hearing,  
renders a decision on the shoreline permit. SJCC18.80.110(E).

### Substantive:

2. Shoreline Designation. The subject property is designated as Rural  
Residential.

1 3. Permit Review Criteria. SJCC 18.50.190(K)(3) permits docks serving  
2 single family homes in the Rural Residential shoreline designation subject to the  
3 policies and regulations of the SMP. SJCC 18.50.190(G)(4) requires a shoreline  
4 substantial development permit for development of docks on lots intended for single-  
5 family development unless exempt. No exemptions apply to this project. SJCC  
6 18.80.110(H) establishes the criteria for approval of shoreline substantial  
7 development permits. The criteria include the policies of the Shoreline Management  
8 Act (Chapter 90.58 RCW), the policies and use regulations of the San Juan County  
9 Shoreline Master Program, and the requirements of the San Juan Municipal Code and  
10 Comprehensive Plan. As noted in SJCC 18.50.010(A), Element 3 of the San Juan  
11 County Comprehensive Plan comprises the policies of the San Juan County Shoreline  
12 Master Program. The applicable policies and regulations are quoted in italics below  
13 and applied through conclusions of law.

9 **RCW 90.58.020 Use Preferences**

10 *This policy (Shoreline Management Act policy) is designed to insure the development*  
11 *of these shorelines (of the state) in a manner which, while allowing for limited*  
12 *reduction of rights of the public in the navigable waters, will promote and enhance*  
13 *the public interest. This policy contemplates protecting against adverse effects to the*  
14 *public health, the land and its vegetation and wildlife, and the waters of the state and*  
15 *their aquatic life, while protecting generally public rights of navigation and corollary*  
16 *rights incidental thereto.*

14 4. As determined in Finding of Fact No. 5, the proposal will not interfere  
15 with navigation and with the potential exception of prop scour the proposal will not  
16 create any significant adverse environmental impacts. For all these reasons the  
17 proposal is in the public interest and is consistent with the policy

17 **RCW 90.58.020(1)<sup>1</sup>**

18 *Recognize and protect the statewide interest over local interest;*

19 5. The statewide interest is protected. The project minimizes environmental  
20 impacts through its design (most notably grating) and location (away from eelgrass  
21 beds) while facilitating shoreline access.

21 **RCW 90.58.020(2)**

22 *Preserve the natural character of the shoreline;*

23  
24 <sup>1</sup> RCW 90.58.020(1)-(6) applies to shorelines of statewide significance. Section 3.4.F of the San Juan  
25 County Comprehensive Plan identifies all saltwater surrounding the islands of San Juan County as  
shorelines of statewide significance. The policies of 90.58.020(1)-(6) are mirrored in the policies of  
Section 3.4.F of the Comprehensive Plan and for the reasons provided in assessment of RCW  
90.58.020, the Examiner also finds consistency with the policies of Section 3.4.F.

1 6. As previously noted, the project minimizes environmental impacts through  
2 its design (most notably grating) and location (away from eelgrass beds). As a result,  
3 the natural character of the shoreline should be preserved.

4 **RCW 90.58.020(3)**

5 *Result in long term over short term benefit;*

6 7. The proposal facilitates shoreline access with no corresponding significant  
7 adverse impacts except for possibly boat scour impacts to eelgrass. Under these  
8 conditions approval results in long term over short term benefit.

9 **RCW 90.58.020(4)**

10 *Protect the resources and ecology of the shoreline;*

11 8. The project minimizes adverse impacts through its design and location.  
12 As a result, the resources and ecology of the shoreline should be adequately  
13 protected.

14 **RCW 90.58.020(5)**

15 *Increase public access to publicly owned areas of the shorelines;*

16 9. Access to the proposed dock will be on private shoreline, as a result, it will  
17 not impact public access to a publicly owned area of the shoreline.

18 **RCW 90.58.020(6)**

19 *Increase recreational opportunities for the public in the shoreline;*

20 10. The proposed dock will provide increased private recreational  
21 opportunities on the shoreline, but as the shoreline area in question is not public, there  
22 will be no impact in public use of the shoreline as a result.

23 **San Juan County Code Regulations**

24 **SJCC 18.50.190(B)(1):** *Boating facilities shall be designed to minimize adverse  
25 impacts on marine life and the shore process corridor and its operating systems.*

11. As determined in Finding of Fact No. 5, the proposal will not create any  
significant adverse impacts to the shoreline environment with the possible exception  
of prop scour to eelgrass beds, which includes marine life and shore processes and  
operating systems.

**SJCC 18.50.190(B)(2):** *Boating facilities shall be designed to make use of the  
natural site configuration to the greatest possible degree.*

12. The proposed location of the dock would enable use of the existing stairs.  
Locating the dock elsewhere would require new stairs that in turn would involve a  
significant amount of vegetation and tree removal and excavation. Even discounting

1 the stair factor, there is no better location apparent for the dock that would be more  
2 compatible with natural site configuration. Given these factors, the dock has been  
designed to make use of the natural site configuration to the greatest possible degree.

3 **SJCC 18.50.190(B)(3):** *All boating facilities shall comply with the design criteria*  
4 *established by the State Department of Fish and Wildlife relative to disruption of*  
5 *currents, restrictions of tidal prisms, flushing characteristics, and fish passage to the*  
6 *extent that those criteria are consistent with protection of the shore process corridor*  
7 *and its operating systems.*

8 13. As noted in the environmental checklist, Ex. 3, hydraulic permit approval  
9 from the Washington State Department of Fish and Wildlife (“WDFW”) is required  
10 for the proposal. In order to acquire hydraulic permit approval, the Applicants had to  
11 comply with all applicable WDFW shoreline regulations.

12 **SJCC 18.50.190(B)(4):** *Areas with poor flushing action shall not be considered for*  
13 *overnight or long term moorage facilities.*

14 14. As determined in Finding of Fact No. 5, the site has good flushing action.

15 **SJCC 18.50.190(B)(5):** *In general, only one form of moorage or other structure for*  
16 *boat access to the water shall be allowed on a single parcel: a dock or a marine*  
17 *railway or a boat launch ramp may be permitted subject to the applicable provisions*  
18 *of this code. (A mooring buoy may be allowed in conjunction with another form of*  
19 *moorage.) However, multiple forms of moorage or other structures for boat access to*  
20 *the water may be allowed on a single parcel if:*

21 *a. Each form of boat access to water serves a public or commercial recreational use,*  
22 *provides public access, is a part of a marina facility, or serves an historic camp or*  
23 *historic resort; or*

24 *b. The location proposed for multiple boat access structures is common area owned*  
25 *by or dedicated by easement to the joint use of the owners of at least 10 waterfront*  
*parcels.*

15. The proposed dock will be the only form of moorage available to serve the  
project site.

21 **SJCC 18.50.190(B)(6):** *Structures on piers and docks shall be prohibited, except as*  
22 *provided for marinas in subsection (H) of this section.*

23 16. No structures are proposed on the dock.

24 **SJCC 18.50.190(C)(1):** *Multiple use and expansion of existing facilities are*  
25 *preferred over construction of new docks and piers.*

17. The proposal is for single-use, but the applicant has adequately demonstrated that no other property owners in the vicinity are interested in exclusive joint use with him, either on his property or elsewhere.

**SJCC 18.50.190(C)(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.*

18. A mooring buoy is currently used by the applicant and as determined in Conclusion of Law 29(C) the applicant has not sufficiently demonstrated that this buoy is inadequate or infeasible.

**SJCC 18.50.190(C)(3):** *Moorage floats, unattached to a pier or float, are preferred over docks and piers.*

19. A mooring float is a viable alternative and should be employed over a dock for the reasons stated in Conclusion of Law No. 18.

**SJCC 18.50.190(C)(4):** *Every application for a substantial development permit for a dock or pier construction shall be evaluated on the basis of multiple considerations, including but not 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.*

20. The considerations identified above are all addressed in Finding of Fact No. 5.

**SJCC 18.50.190(C)(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.*

21. There are no feeder bluffs on the subject site.

**SJCC 18.50.190(C)(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.*

22. There are no docks or piers present at the site.

**SJCC 18.50.190(C)(7):** *Unless otherwise approved by shoreline conditional use permit, boats moored at residential docks shall not be used for commercial overnight accommodations.*

23. No such use is being proposed by the Applicants.

1 **SJCC 18.50.190(C)(8):** *Use of a dock for regular float plane access and moorage*  
2 *shall be allowed only by shoreline conditional use permit and shall be allowed only at*  
3 *commercial or public moorage facilities or at private community docks.*

4 24. No such use is being proposed by Applicants.

5 **SJCC 18.50.190(D)(1)-(11): General Design and Construction Standards**

6 *1. Pilings must be structurally sound prior to placement in the water.*

7 *2. Chemically treated or coated piles, floats, or other structural members in direct*  
8 *contact with the water shall be as approved by the Environmental Protection*  
9 *Agency.*

10 *3. Pilings employed in piers or any other structure shall have a minimum vertical*  
11 *clearance of one foot above extreme high water.*

12 *4. All floats shall include stops which serve to keep the bottom off tidelands at low*  
13 *tide.*

14 *5. When plastics or other nonbiodegradable materials are used in float, pier, or*  
15 *dock construction, full containment features in the design of the structures shall*  
16 *be required.*

17 *6. Overhead wiring or plumbing is not permitted on piers or docks.*

18 *7. New boathouses or covered moorages are prohibited on floats, piers, and*  
19 *docks. Other structures on floats, piers, and docks shall be limited to three feet in*  
20 *height.*

21 *8. A pier shall not extend offshore farther than 50 feet beyond the extreme low*  
22 *tide contour.*

23 *9. Dock lighting shall be designed to shine downward, be of a low wattage, and*  
24 *shall not exceed a height of three feet above the dock surface.*

25 *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.*

1 25. The proposal complies with all design standards quoted above. As  
2 depicted in the design drawings, Ex. 2, the pilings will be made of steel such that they  
3 will be structurally sound. ACZA pressure treated wood will be used to construct the  
4 structural portions of the dock. The proposed pilings have a minimum clearance of at  
5 least 2.5 feet at EHHW. The piles that support the float incorporate stops to prevent  
6 the float from grounding. The float tubs will be constructed of foam encased entirely  
7 in a molded plastic. No overhead wiring, plumbing or structures will be placed upon  
8 the dock. As proposed in the design drawings, Ex. 2, the pier does not extend  
9 waterward of the extreme low tide contour. There is no dock lighting proposed. If  
10 approved, the proposal could be conditioned for the proper disposal of construction  
11 debris. The proposal will blend visually with the background as it will remain  
12 unpainted and in a natural condition resembling earth tones.

13 **SJCC 18.50.190(G)(2)(a):** *The maximum dimensions for a dock (including the pier,  
14 ramp, and float) associated with a single-family residence shall not exceed 700 total  
15 square feet in area. In addition, the length of the dock (including the pier, ramp, and  
16 float) may not extend more than 115 feet in length seaward of the ordinary high water  
17 mark. Docks exceeding these dimensions may only be authorized by variance.*

18 26. The dock meets these criteria, as it will be approximately 526 square feet  
19 in area and 86 feet in length measured seaward from the ordinary high water mark.

20 **SJCC 18.50.190(G)(2)(d):** *Maximum length and width of a ramp, pier, or dock shall  
21 be the minimum necessary to accomplish moorage for the intended boating use.*

22 27. There is no information that addresses this criterion in the record. The  
23 criterion is not addressed in the application or the staff report. If approved the  
24 applicant would have to demonstrate compliance with this criterion.

25 **SJCC 18.50.190(G)(3):** *Docks shall be set back a minimum of 10 feet from side  
26 property lines. However, a joint use community dock may be located adjacent to or  
27 upon a side property line when mutually agreed to by contract or by covenant with  
28 the owners of the adjacent property. A copy of such covenant or contract must be  
29 recorded with the County auditor and filed with the approved permit to run with the  
30 title to both properties involved.*

31 28. The dock is set back a minimum of ten feet from all side property lines.

32 **SJCC 18.50.190(G)(5):** *Applications for nonexempt docks and piers associated with  
33 single-family residences shall not be approved until:*

- 34 a. *It can be shown by the applicant that existing facilities are not adequate  
35 or feasible for use;*
- 36 b. *Alternative moorage is not adequate or feasible; and*
- 37 c. *The applicant shall have the burden of providing the information  
38 requested for in subsections (a) and (b) of this section, and shall provide  
39 this information in a manner prescribed by the administrator.*

1 29. The criterion above is not met. Existing and alternative moorage is  
2 adequate and feasible for use.

3 A. Past Decisions

4 There is a wealth of administrative and judicial decisions that provide interpretive  
5 guidance on alternative moorage:

6 In *Innskeep v. San Juan County*, SHB No. 98-033 (1999), the Hearings Board  
7 interpreted the test in SJCC 18.50.190(G)(5) to require a showing that “existing  
8 facilities, alternative moorage and alternative sites are not ‘enough or good enough  
9 for what is required or needed’, ‘barely satisfactory,’ ‘suitable’, or ‘capable of being  
10 used.’” (citations omitted).

11 In *Culver v. San Juan County*, SHB No. 98-039, the Hearings Board found a  
12 primitive dock composed of a log float to provide adequate existing moorage. The  
13 existing dock was located in Nelson Bay, a shallow water body located over mudflats  
14 on the east side of Henry Island. During low tides, the log floats grounded and the  
15 applicant had to drag a dinghy across mudflats that were so thick they pulled off his  
16 boots. The Board denied the application, in part because the applicant was only able  
17 to show that the proposed dock would “marginally improve” boat access, since  
18 mudflats would still have to be traversed during the lowest tides.

19 In *Close v. San Juan County*, SHB No. 99-021 (2000), the Hearings Board  
20 determined that a dock applicant for a shoreline permit does not meet the criteria by  
21 showing that a private dock is more convenient to access and use than other facilities  
22 in the area.

23 In *TG Dynamics Group II, LLC v. San Juan County*, SHB No. 08-030, the Shoreline  
24 Hearings Board noted adequacy or feasibility of existing facilities and alternative  
25 moorage must be evaluated in the context of all the relevant considerations related to  
a particular proposal, including but not limited to potential impacts on littoral drift,  
sand movement, water circulation and quality, fish and wildlife, navigation, scenic  
views and public access to the shoreline. *TG Dynamics* involved a community dock  
serving a four lot subdivision on Shaw Island. The applicant testified that the waiting  
list for the only marina on Shaw Island was one to two years. The Hearings Board  
found that, as mitigated, the project did not create any adverse impacts to  
environmental or aesthetic resources and that it did not disrupt navigation.  
Importantly, the Hearings Board did not find that mooring buoys qualified as a  
suitable alternative because the mud flats contained surf spawning habitat that would  
be disrupted by the dragging of boats to access the buoy. The Hearings Board also  
determined that a waiting list of one to two years for the marina was not a reasonable  
or appropriate use for a four lot short subdivision.

1 In *Gray v. San Juan County*, SHB No. 10-001, the Shoreline Hearings Board  
2 Examiner granted the request for a single user dock due to a lack of adequate or  
feasible alternatives for moorage in that there is no commercial marina or ferry  
service available on Decatur Island and the one available public dock had no parking.

3  
4 In *Shorett v. San Juan County*, SHB No. 06-039, the Hearings Board was not  
persuaded by testimony from the Applicant that a three to nine month waiting list for  
5 a marina slip at the Port of Friday Harbor Marina was inadequate and infeasible. In  
6 that case the drive time to the marina was 23 minutes and the boating time was an  
hour to an hour and a half. Despite these distances and the waiting list, the Board  
7 concluded that the applicant had both adequate and feasible alternative moorage at the  
marina, in addition to adequate existing moorage, and on this basis denied the  
shoreline permit application for a proposed dock.

8  
9 In the *Shorett Credit Shelter Trust* examiner decision, PSJ000-09-0002, the examiner  
found compliance with the alternative moorage criteria for a joint use dock where the  
10 applicant demonstrated that although there were commercial marinas on San Juan  
Island within a reasonable distance of the Applicant's parcel, the waiting period was  
11 for an unreasonable amount of time (five years) and the slip size and water depth  
could not accommodate the size of the applicant's boat.

12  
13 In the *Green* examiner decision, PSJ000-10-0005, the examiner determined that the  
applicant failed to meet its burden of establishing inadequate alternative commercial  
14 moorage on San Juan Island because the applicant provided no information on this  
issue.

15  
16 In the *Skott* examiner decision, PSJ000-09-0003, the examiner determined that the  
applicants had failed to establish the inadequacy of alternative moorage on Orcas  
17 Island because the applicants provided no information on waiting periods for nearby  
commercial marinas. There was no indication that the applicants had even inquired  
18 about waiting periods, despite the fact that the Examiner left the record open for this  
purpose.

19  
20 In *Stanford v. San Juan County*, SHB No. 06-004, the Hearings Board concluded  
there are four commercial marinas on Orcas Island: Cayou Quay, Deer Harbor  
21 Marina, West Sound Marina and Bay Head Marina. The marinas were located two to  
eleven miles from the proposed joint use dock. Deer Harbor Marina and Cayou Quay  
22 both had moorage available at the time of or within a week after the hearing on June  
28, 2006. Bay Head had moorage available for three months, with side ties available  
23 afterwards. The Hearings Board concluded that the applicants had multiple  
opportunities to obtain commercial moorage and that they had failed to meet their  
24 burden of demonstrating that commercial moorage is unavailable or unlikely to come  
available within a reasonable waiting period.

25  
Inadequate parking was also addressed in the *Stanford* decision. The Board noted  
that the guideline frequently used for the motor vehicle parking at marinas is one

1 parking space for every two berths and that Deer Harbor Marina had 21 parking spots  
2 for 125 slips. The Board concluded that parking at  
3 Deer Harbor was “*difficult, but not impossible*”. The Board further concluded that  
4 “*absent extreme circumstances such that boat owners would not have access to their  
boats on a recurring basis, the Board concludes that parking is ordinarily a matter of  
convenience*” and that “*some difficulty finding a nearby parking space for a few  
months a year does not prohibit access to a boat so as to justify a private dock...*”

5 In the *Beckwith* examiner decision, PSJ000-10-0006, it was determined that the  
6 applicants failed to meet their burden of proof in establishing the availability of  
7 adequate moorage. The applicants did not provide any information on waiting  
8 periods for any marinas and asserted they were unable to do so because the marinas  
9 did not provide them with the requested information.

10 In *Hamell* PSJ000-11-0009, for a dock on Orcas Island the applicants contacted West  
11 Sound Marina, Bellport/Deer Harbor Marina and Cayou Quay Marina and were told  
12 that moorage during the summer months is very tight to full. The decision noted that  
13 it was entirely unclear whether the Applicants could acquire summer moorage in a  
14 nearby marina by simply placing themselves on a waiting list. The examiner noted  
15 that if such lists were available and of reasonable length (less than a year), it would  
16 have been entirely reasonable to require them to reserve a slip every year in advance.  
17 However, although the evidence presented by the applicants would not usually be  
18 sufficient to establish inadequate alternative moorage, the special circumstances of  
19 the case were found to merit a different result. As discussed in the *TG Dynamics*  
20 Shoreline Hearings Board decision, the assessment of alternative moorage takes into  
21 consideration a wide range of relevant factors. It was found to be significant that the  
22 dock would not create any adverse impacts and would replace a larger dock. For  
23 those reasons the commercial marinas in the vicinity were found to not provide for  
24 adequate alternative moorage because summer moorage is usually full or “very tight”.

18 B. Commercial Moorage. The Port of Friday Harbor serves as adequate and feasible  
19 moorage for the project site. The applicant has met his burden of proof in establishing  
20 that Snug Harbor and Roche Harbor do not have any slips reasonably available for  
21 moorage. The applicant has not provided any information on the availability of slips  
22 for the Port of Friday Harbor. Instead, the applicant argues that the Friday Harbor  
23 marina is not adequate or feasible because of the 11 mile driving distance to Friday  
24 Harbor and the unavailability of parking. As to distance, the Shoreline Hearings  
25 Board determined that the Port of Friday Harbor marina provides adequate alternative  
moorage in the *Shorett* case, summarized above<sup>2</sup>. The *Shorett* property is  
approximately the same driving distance and further from a boating distance from the  
Port of Friday Harbor than Mr. Rohloff’s property.

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<sup>2</sup> The ruling of the shoreline hearings board supersedes any contrary ruling by the examiner in PSJ000-09-0002, identified in the applicant’s briefing, Ex. 15. Further, as noted in the staff report, the Shoreline Hearings Board also ruled in the Gordon case, SHB No. 94-28, that a drive of approximately ten miles does not make moorage infeasible.

1 As to parking, the *Stanford* case, summarized above, determined that Deer Harbor  
2 provided for adequate parking even though it provided parking at a ratio of one  
3 parking stall per six slips. The Port of Friday Harbor provides only moderately worse  
4 parking, at a ratio of one parking stall per 5.5 slips. The applicant's attorney testified  
5 that during the summer months finding parking at the Friday Harbor marina is "nearly  
6 impossible" and that the surrounding streets only authorize two hour parking. In  
7 some responsive briefing, the applicant noted that the closest eight hour parking is a  
few blocks away from the marina. This burden is not significant enough to make a  
determination that parking is so scarce that it constitutes "*extreme circumstances  
such that boat owners would not have access to their boats on a recurring basis*" as  
required by the *Stanford* decision.

8 C. Existing Moorage. There is insufficient evidence in the record to conclude that  
9 existing moorage is inadequate and infeasible. As noted in the Friends briefing, the  
10 Shorelines Hearings Board in the *Culver* decision, summarized above, concluded that  
11 existing moorage involving the dragging of a dinghy across mudflats at low tide was  
12 adequate and feasible. However, a major reason why the Board made this ruling was  
13 because the applicant was only able to demonstrate that his proposed dock would  
14 "marginally" improve upon his situation, since at the lowest tides the mudflats would  
15 be exposed around the proposed dock as well. The elevation drawings submitted with  
16 the Rohloff application, Ex. 2, show mean lower low water at 0.0 feet at the end of the  
17 proposed dock and mean lower low water at 2.5 feet. The applicant testified that his boat  
18 has a draft of 4.0 feet. Consequently, it appears that his boat will be grounded at all  
19 lower tides. There is insufficient information available to ascertain whether this  
20 situation creates a significant improvement over Mr. Rohloff's current moorage. The  
21 site visit did not resolve this issue, as asserted in the applicant's responsive briefing,  
22 Ex. 15, since visual observation of the shoreline did not provide any meaningful  
23 information on the water depths that would predominate at the end of the proposed  
24 dock.

18 An important point to note is that historical use does not support a finding of  
19 adequacy/feasibility as argued by Friends in its briefing. It is obvious that Mr.  
20 Rohloff has gone to great lengths over the last twelve years to provide for shoreline  
21 access, including the initial construction of the kayak deck, then the addition of the  
22 unauthorized stairs and the introduction at some point of his pulley system. These are  
23 not the actions of someone who has had an easy time of it, but rather show a person  
24 going to great lengths to enjoy the privileges of his waterfront property.

23 One point that could make a major difference under both the commercial moorage and  
24 alternative moorage analysis is the benefit, if any, to laminaria if the existing moorage  
25 is replaced with the dock. The staff report notes that laminaria is located in the  
location of the proposed dock. The application, Ex. 2, p. 2, asserts that the applicant's  
pulley system is harmful to this laminaria. However, there is no information on the  
amount of laminaria in the vicinity of the pulley system or how significantly the  
proposed dock would improve upon impacts to the laminaria. A well substantiated

1 opinion from a qualified professional that the proposed dock would significantly  
2 improve upon laminaria impacts could<sup>3</sup> provide the justification necessary to conclude  
3 that commercial and existing moorage is not adequate or feasible under the multi-  
4 factored analysis required by the *TG Dynamics Group* decision summarized above.

5 **San Juan County Comprehensive Plan Element 3, Section (5)(C) Boating**  
6 **Facilities:**

7 *General*

- 8 1. *Locate, design and construct boating facilities to minimize adverse effects upon,*  
9 *and to protect all forms of aquatic, littoral or terrestrial life including animals, fish,*  
10 *shellfish, birds and plants, their habitats and their migratory routes.*
- 11 2. *Protect beneficial shoreline features and processes including erosion, littoral or*  
12 *riparian transport and accretion shoreforms, as well as scarce and valuable shore*  
13 *features including riparian habitat and wetlands.*
- 14 3. *The location, design, configuration and height of boathouses, piers, ramps, and*  
15 *docks should both accommodate the proposed use and minimize obstructions to views*  
16 *from the surrounding area.*
- 17 4. *Boating facilities should be designed to optimize the trade-offs between the number*  
18 *of boats served and the impacts on the natural and visual environments.*
- 19 5. *In providing boating facilities, the capacity of the shoreline site to absorb the*  
20 *impact should be considered.*
- 21 6. *The use of mooring buoys should be encouraged in preference to either piers or*  
22 *floating docks.*
- 23 7. *The use of floating docks should be encouraged in those areas where scenic values*  
24 *are high and where serious conflicts with recreational boaters and fishermen will not*  
25 *be created.*
8. *Piers should be encouraged where there is significant littoral drift and where*  
*scenic values will not be impaired.*
9. *In many cases, a combination of fixed and floating structures on the same dock*  
*may be desirable given tidal currents, habitat protection and topography, and should*  
*be considered.*
10. *The County should attempt to identify those shorelines where littoral drift is a*  
*significant factor and where, consequently, fixed piers probably would be preferable*  
*to floating docks.*
11. *To spare San Juan County from the so-called "porcupine effect" created by*  
*dozens of individual private docks and piers on the same shoreline, preference should*  
*be given to the joint use of a single structure by several waterfront property owners,*  
*as opposed to the construction of several individual structures.*
12. *Preference should be given in waterfront subdivisions or multi-family residential*  
*development to the joint use of a single moorage facility by the owners of the*

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<sup>3</sup> The applicant asserts in its responsive briefing, Ex. 15, that there is only a small amount of laminaria present at the dock site. If that is the route taken by the applicant's pulley system, the dock may well not provide any significant protection to the laminaria.

1 subdivision lots or units, or by the homeowners association for that subdivision or  
2 development, rather than construction of individual moorage facilities. Individual  
3 docks and piers should be prohibited, provided that the county may authorize more  
4 than one moorage facility if a single facility would be inappropriate or undesirable  
5 given the specific site and marine conditions. Such developments should include  
6 identification of a site for a joint-use moorage facility and the dedication of legal  
7 access to it for each lot or unit. However, it should be recognized that identification of  
8 a site for a common moorage facility does not imply suitability for moorage or that  
9 moorage development will be approved.

10 13. The capacity of the shoreline site to absorb the impacts of waste discharges from  
11 boats and gas and oil spills should be considered in evaluating every proposed dock  
12 or pier.

13 14. Expansion or repair of existing facilities should be encouraged over construction  
14 of new docks and piers.

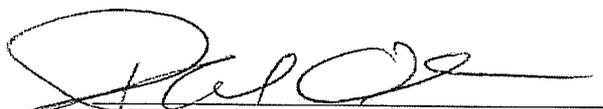
15 15. To reduce the demand for single-user docks, multiple-user docks should be  
16 encouraged through construction and dimensional incentives.

17 30. The shoreline policies above essentially repeat the requirements and  
18 preferences already assessed in the use regulations, specifically that mooring buoys  
19 are generally preferred over docks, that joint-use docks are preferred over single-use  
20 docks and that environmental, aesthetic and use impacts should be minimized. For the  
21 reasons identified in application of the shoreline regulations, the policies are generally  
22 met. The primary reason for denial in this application is the adequacy of existing and  
23 alternative moorage.

#### 24 DECISION

25 The proposed dock is denied due to the availability of adequate and feasible existing  
and alternative moorage.

Dated this 15th day of March, 2013.



Phil Olbrechts  
County of San Juan Hearing Examiner

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**Right of Appeal**

An appeal of this decision may be filed with the Washington State Shoreline Hearings Board as governed by RCW 90.58.180, which provides, **in part**, as follows:

*(1) Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may, except as otherwise provided in chapter 43.21L RCW, seek review from the shorelines hearings board by filing a petition for review within twenty-one days of the date of filing as defined in RCW 90.58.140(6)...*

Reference should be made to RCW 90.58.180 in its entirety as well as the practice rules of the Shoreline Hearings Board for all the requirements that apply to filing a valid appeal. Failure to comply with all applicable requirements can result in invalidation (dismissal) of an appeal.

**Change in Valuation**

Notice is given pursuant to RCW 36.70B.130 that property owners who are affected by this decision may request a change in valuation for property tax purposes notwithstanding any program of revaluation.