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

Phil Olbrechts, Hearing Examiner

<p>RE: San Juan County Parks</p> <p style="text-align: center;">Shoreline Substantial Development Permit (PSJ000-13-0006)</p>	<p style="text-align: center;">FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION.</p>
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INTRODUCTION

The applicant has applied for approval of a shoreline substantial development permit to remove and replace a recreational dock at Odlin Park on Lopez Island. Currently the recreational dock at Odlin Park is adjacent to a pier and because of this proximity boats can only moor on one side of the dock, opposite the pier. The dock needs to be replaced because of winter storm damage. The applicant proposes to remove this dock and replace it with a dock involving a float of the same size that is located 25 feet further from the pier so that there is room for boats to moor on both sides of the dock. The proposal is approved subject to conditions.

TESTIMONY

Julie Thompson stated that the application is to repair and replace the float and pile gangway at Odlin Park. The dock is public use, and, in its existing condition, does not allow for moorage on one side of the float. The County received no comments on the project, and staff is recommending approval of the permit. No eel grass is present at the site, but there is some kelp.

Dan Vekved, San Juan Public Works, testified that the new gangway will be one hundred percent grated, and the new float will be fifty percent grated. This grating will help mitigate possible incursion on the kelp habitat. The existing float is wood and not grated. The existing gangway is somewhat graded. Public Works will be removing five pilings from the site and replacing them with steel pilings.

EXHIBITS

Exhibits 1-5 identified in the "Exhibits for Odlin Park Float" appended to the 7/1/13 staff report were admitted into the record during the hearing.

FINDINGS OF FACT

1 **Procedural:**

2 1. Applicant. The applicant is San Juan County Parks.

3 2. Hearing. The Hearing Examiner conducted a hearing on the subject
4 application at 10:00 am on July 18, 2013 at the meeting chambers of the San Juan
5 County Council in Friday Harbor.

6 **Substantive:**

7 3. Site and Proposal Description. The applicant has applied for approval of a
8 shoreline substantial development permit to remove and replace a recreational dock at
9 Odlin Park on Lopez Island. Currently the recreational dock at Odlin Park is adjacent
10 to a pier and because of this proximity boats can only moor on one side of the dock,
11 opposite the pier. The dock needs to be replaced because of winter storm damage.
12 The applicant proposes to remove this dock and replace it with a dock with a float of
13 the same size that is located further from the pier so that there is room for boats to
14 moor on both sides of the dock.

15 The applicant proposes to remove three existing 12-inch diameter creosote-treated
16 timber dolphin float anchor piles, remove three existing 12-inch diameter creosote-
17 treated timber pier fender piles, install four new 14-inch galvanized steel piles, remove
18 one 500 square feet existing timber float, install one 500 square feet new heavy-duty
19 timber float with a 50% grated deck, remove an existing 3 feet by 40 feet gangway and
20 install a 4 feet by 80 feet ADA gangway with a 100% open grated deck, construct a
21 new concrete abutment for the gangway on the landside above MHHW, and install
22 timber pedestrian safety rails to the timber pier.

23 The new float will have the same footprint as the existing float, and be relocated to a
24 new position approximately 25 feet from and parallel to the existing float to allow for
25 moorage on both sides of the float. The existing float does not allow for moorage on
26 both sides.

27 4. Characteristics of the Area. Upright Channel borders the north and west
28 shoreline. To the south is approximately 100 acres of forested public land. Ferry
29 Road provides the east boundary, and there is residential development on the other
30 side of that.

31 5. Adverse Impacts of Proposed Use. Overall, the replacement and change
32 in location of the dock should be environmentally beneficial. As conditioned, the
33 proposal will not create any significant adverse impacts. Creosote pilings will be
34 replaced with steel pilings and the existing float, that has no grating, will be replaced
35 by a float that is 50% grated. Further, the new float will be the same size as the
36 existing float. The dock will also be relatively close to the existing pier, so no
37 significant impacts to navigation or other uses of the waterward side of the shoreline
38 are anticipated. Of course, the greater capacity of the new dock to accommodate boat

1 moorage will provide a public benefit by providing more access to the shoreline.
2 There are no significant impacts to shoreline views since the proposed dock is the
3 same size (albeit with a longer access ramp) as the existing dock and will only be
4 moved 25 feet from its current location.

5 The staff report notes that the proposal will not adversely affect water quality and will
6 not alter littoral drift or associated sand movement. The staff report also concludes
7 that the project area is not characterized by poor flushing action and that the proposal
8 will not interfere with the functions of any feeder bluff. Giving due deference to the
9 expertise of staff in evaluation of shoreline proposals and the fact that the staff
10 findings are consistent with the design and location of the dock, the staff findings are
11 taken as verities.

12 Despite all the positive features of the proposal, there is one area of concern. The
13 dive survey for the proposal, Ex. 3, identifies kelp that will be located below the new
14 proposed dock location. Kelp is a critical area protected by the County's critical area
15 regulations. See SJCC 18.30.160(A)(5)(a). As determined in the Examiner *Beckwith*
16 decision, PSJ000-10-0006, kelp serves as habitat for protected aquatic species and
17 docks can damage that habitat by blocking light. It is recognized that the proposal
18 includes extensive grating and that the amount of kelp at the proposed location
19 appears to be minor. However, given the protected status of the kelp and its function
20 in protecting endangered species, the County should have provided some credible
21 scientific evidence that the proposal would not adversely affect the kelp in any
22 significant manner. The conditions of approval will require this analysis.

23 CONCLUSIONS OF LAW

24 Procedural:

25 1. Authority of Hearing Examiner. Shoreline Substantial Development
26 permit applications are reviewed and processed by Development Services Department
27 staff, and the Hearing Examiner, after conducting an open-record public hearing,
28 renders a decision on the shoreline permit. SJCC 18.80.110(E).

29 Substantive:

30 2. Shoreline Designation. The subject property is designated as
31 Conservancy.

32 3. Permit Review Criteria. SJCC 18.50.190(K)(4) permits recreational¹
33 docks in the Conservancy shoreline designation subject to the policies and regulations
34 of the SMP. SJCC 18.50.020(E)(2) requires a shoreline substantial development

35 ¹ SJCC 18.50.190(K)(4) expressly states that "community" docks are permitted in conservancy
36 shorelines. SJCC 18.20.030 does not define "community dock" for purposes of SJCC
37 18.50.190(K)(4), but the proposal does appear to qualify within the intent of the type of uses allowed
38 in the conservancy shoreline.

1 permit for any project that qualifies as a “substantial development” unless exempt.
2 SJCC 18.20.190 defines a “substantial development” as any development that
3 exceeds \$2,500 in fair market value unless exempt. The proposal presumably
4 exceeds \$2,500 in value and no exemptions apply. SJCC 18.80.110(H) establishes
5 the criteria for approval of shoreline substantial development permits. The criteria
6 include the policies of the Shoreline Management Act (Chapter 90.58 RCW), the
7 policies and use regulations of the San Juan County Shoreline Master Program, and
8 the requirements of the San Juan Municipal Code and Comprehensive Plan. As noted
9 in SJCC 18.50.010(A), Element 3 of the San Juan County Comprehensive Plan
10 comprises the policies of the San Juan County Shoreline Master Program. The
11 applicable policies and regulations are quoted in italics below and applied through
12 conclusions of law.

8 **RCW 90.58.020 Use Preferences**

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

13 4. As determined in Finding of Fact No. 5, the proposal will not interfere
14 with navigation, there are no significant adverse impacts associated with the proposal
15 and the proposal will provide for a significant public benefit by enhancing public use
16 of the shoreline by increasing available boat moorage. For all these reasons the
17 proposal is in the public interest and is consistent with the policy

17 **RCW 90.58.020(1)²**

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

18 5. The statewide interest is protected over local interest because shoreline
19 environmental resources are fully protected and public use of the shorelines is
20 enhanced.

21 **RCW 90.58.020(2)**

22 *Preserve the natural character of the shoreline;*

22 6. The proposal essentially results in the displacement of an existing dock by
23 an identically sized dock by 25 feet. This displacement will not result in any

24 _____
25 ² RCW 90.58.020(1)-(6) applies to shorelines of statewide significance. Section 3.4.F of the San Juan
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 discernible alteration of the natural character of the shoreline. The displacement
2 could potentially alter the amount of kelp at the new location, but the conditions of
approval will require that any significant adverse impacts to kelp be fully mitigated.

3 **RCW 90.58.020(3)**

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

5 7. The proposal will result in long term over short term benefit because
6 shoreline environmental resources are fully protected and public use of the shorelines
is enhanced.

7 **RCW 90.58.020(4)**

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

9 8. As determined in the FOF No. 5, as conditioned there are no significant
10 adverse impacts associated with the proposal, including impacts to the resources and
ecology of the shoreline should be adequately protected.

11 **RCW 90.58.020(5)**

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

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

15 **RCW 90.58.020(6)**

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

17 10. The proposal will increase recreational opportunities by increasing
available public boat moorage.

18 **San Juan County Code Regulations**

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

20 11. As determined in Finding of Fact No. 5, the proposal will not create any
21 significant adverse impacts to the shoreline environment, which includes marine life
and shore processes and operating systems.

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

24 12. The dock will only be displaced 25 feet from an existing dock and there is
25 nothing to reasonably suggest that this displacement is incompatible with the natural
site configuration of the shoreline.

1 **SJCC 18.50.190(B)(3):** *All boating facilities shall comply with the design criteria*
2 *established by the State Department of Fish and Wildlife relative to disruption of*
3 *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
and its operating systems.

4 13. As noted in the staff report, hydraulic permit approval from the
5 Washington State Department of Fish and Wildlife (“WDFW”) is required for the
6 proposal and compliance with WDFW regulations will be assured in that permit
review process.

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

9 14. As determined in Finding of Fact No. 5, the site is not characterized by
10 poor flushing action.

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

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

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

23 15. As conditioned.

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

16. No structures are proposed on the dock.

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

19 17. The proposal is for multiple use.

20 **SJCC 18.50.190(C)(2):** *Mooring buoys shall be preferred over docks and piers on all*
21 *marine shorelines except in the cases of port, commercial, or industrial development*
22 *in the urban environment.*

18. The requirement above is a preference and not mandated in all situations. Given that the proposal involves a recreational dock that replaces and improves upon the environmental impacts of an existing dock, the circumstances justify the construction of a dock.

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

19. For the reasons identified in COL No. 18, a dock is justified for this application.

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. As determined in FOF No. 5, the proposal will not interfere with the functions of feeder bluffs.

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 abandoned docks at the project site and the purpose of the proposal is to repair and replace a dock that has been damaged by winter storms.

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 applicant.

SJCC 18.50.190(C)(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.*

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24. No such use is being proposed by Applicants.

SJCC 18.50.190(D)(1)-(11): 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 surface.*
- 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.*

25. The proposal complies with all design standards quoted above. As depicted in the design drawings, Ex. 4, the pilings will be made of steel such that they will be structurally sound. The proposal is conditioned to require that any chemical treatment of the piles, floats or other structural members of the proposal in direct contact with water shall be approved by the Environmental Protection Agency. The proposal is conditioned to provide that when plastics or other nonbiodegradable

1 materials are used in float, pier, or dock construction, full containment features in the
2 design of the structures shall be required. The proposal is conditioned to require that
3 the pilings will extend more than a foot above extreme high tide. It is unclear from
4 the design drawings whether stops are proposed to keep the floats off the substrate, so
5 that will be made a condition of approval. No overhead wiring, plumbing or
6 structures to be placed upon the dock are proposed. No pier is proposed so there is
7 no issue of the pier extending waterward of the extreme low tide contour. There is no
dock lighting proposed. The design drawings propose the use of only four pilings to
hold the float in place, which appears to minimize the use of pilings. The proposal is
conditioned for the proper disposal of construction debris as required by criteria
above. The proposal is also conditioned to be of a color and finish that will blend
visually with the background.

8 **SJCC 18.50.190(E)(2):** *Proposals for joint-use community piers and docks shall*
9 *demonstrate and document that adequate maintenance of the structure and the*
associated upland area will be provided by identified responsible parties.

10 26. As noted in the staff report, the existing dock has been maintained by San
11 Juan County Public Works since 1992 and they will continue to maintain the new
dock.

12 **SJCC 18.50.190(E)(3):** *Recreational floats shall be placed offshore no farther than*
13 *200 feet beyond extreme low tide, the minus-3 fathom contour, or the line of*
14 *navigation, whichever is closest to shore (WAC 332-30-148(2)).*

15 27. As conditioned.

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

18 *General*

- 19 1. *Locate, design and construct boating facilities to minimize adverse effects upon,*
20 *and to protect all forms of aquatic, littoral or terrestrial life including animals, fish,*
21 *shellfish, birds and plants, their habitats and their migratory routes.*
 - 22 2. *Protect beneficial shoreline features and processes including erosion, littoral or*
23 *riparian transport and accretion shoreforms, as well as scarce and valuable shore*
24 *features including riparian habitat and wetlands.*
 - 25 3. *The location, design, configuration and height of boathouses, piers, ramps, and*
docks should both accommodate the proposed use and minimize obstructions to views
from the surrounding area.
 4. *Boating facilities should be designed to optimize the trade-offs between the number*
of boats served and the impacts on the natural and visual environments.
 5. *In providing boating facilities, the capacity of the shoreline site to absorb the*
impact should be considered.
- docks and Piers*

1 6. *The use of mooring buoys should be encouraged in preference to either piers or floating docks.*

2 7. *The use of floating docks should be encouraged in those areas where scenic values are high and where serious conflicts with recreational boaters and fishermen will not be created.*

3 8. *Piers should be encouraged where there is significant littoral drift and where scenic values will not be impaired.*

4 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.*

5 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.*

6 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.*

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

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

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

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

11 28. The shoreline policies above essentially repeat the requirements and preferences already assessed in the use regulations, specifically that mooring buoys are generally preferred over docks, that joint-use docks are preferred over single-use docks and that environmental, aesthetic and use impacts should be minimized. Policy 13 is addressed in the conditions of approval. As previously discussed, the project design, size and location should minimize environmental impacts. For these reasons the proposal is found to be consistent with the shoreline policies applicable to this project.

DECISION

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2 The proposed recreational dock is consistent with all the criteria for a shoreline
3 substantial development permit. The proposal is approved subject to the following
4 conditions:

- 4 1. The dock shall be constructed as proposed in the drawings and other application
5 materials in Exhibit 4.
- 6 2. As required by SMP Boating Facilities Policy 13 (*see* COL No. 28), County staff
7 shall consider the issue of recurring waste, oil and gas spills from boats moored at the
8 dock and mitigate to the extent found necessary with signage or other measures to
9 prevent these spills from occurring.
- 10 3. All construction-related debris shall be disposed of properly and legally. Any
11 debris that enters the water shall be removed promptly.
- 12 4. All floats shall include stops which serve to keep the bottom off tidelands at low
13 tide.
- 14 5. Construction shall not be commenced until all relevant appeal periods have run.
- 15 6. Development under this permit shall commence within two years of the date of
16 permit approval and shall be substantially complete within five years thereof or the
17 permit shall become null and void.
- 18 7. Failure to comply with any terms or conditions of this permit may result in its
19 revocation.
- 20 8. The applicant shall schedule a site inspection with planning staff upon completion
21 of the project to verify compliance with this decision and applicable regulations.
- 22 9. Chemically treated or coated piles, floats, or other structural members in direct
23 contact with the water shall be as approved by the Environmental Protection Agency.
- 24 10. When plastics or other nonbiodegradable materials are used in float, pier, or dock
25 construction, full containment features in the design of the structures shall be required.
11. Materials used in dock construction shall be of a color and finish that will blend
visually with the background.
12. The proposed pilings will extend more than a foot above extreme high tide.
13. If not done so already, the applicant shall prepare an evaluation by a qualified
professional on the impacts to underlying kelp and the evaluation shall identify any
mitigation measures necessary (including relocation) to assure that the proposal
mitigates to the maximum extent feasible significant adverse impacts to kelp habitat
functions and values. The proposal will implement any recommended mitigation. In
assessing impacts to kelp, no additional mitigation will be necessary if the proposal
will reduce kelp impacts created by the existing dock.
14. As required by SJCC 18.50.190(E), the proposed float shall be placed offshore
no farther than 200 feet beyond extreme low tide, the minus-3 fathom contour, or the
line of navigation, whichever is closest to shore (WAC 332-30-148(2)).

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15. As required by SJCC 18.50.190(B)(5), the only moorage allowed at the project site is the proposed recreational dock and mooring buoys.

Dated this 2nd day of August, 2013.



Phil A. Olbrechts

San Juan County 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.