

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

3 Phil Olbrechts, Hearing Examiner

4 RE: Kathleen Dickinson Trust

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

5 Conditional Use Permit
6 (PSJ000-09-0004)

7 *TPN# 47272300/020*

INTRODUCTION

8 The applicant has applied for approval of a Shoreline Substantial Development
9 Permit to construct a proposed 2-user dock. The Examiner approves the permit
subject to conditions. **S.J.C. COMMUNITY**

10 **TESTIMONY**

APR 20 2010

11 Lee McEnery – Community Development and Planning

DEVELOPMENT & PLANNING

12 Ms. McEnery began by giving a brief overview of the application. The property
13 is currently 42 acres, but will be split into one 7-acre property and one 35-acre
14 property. As such, the dock will be used by both properties, once split. The property
15 is on an outer island, and is also essentially landlocked, preventing any other access
16 points. The proposed location is the only viable choice given the constraints of their
17 property, and the planned dock is small and reasonable. The property and size meet
the single user requirements, but will instead be used by both properties. It does not
18 appear that anyone has resided on the property. Additionally, Stuart Island Runway
has denied access twice now in the last ten years. Staff recommends approval of this
project.

19 Jeff Otis – Representative of Applicants

20 The building permit for the house has been submitted. Additionally, regarding the
21 archaeologist, the site has been evaluated, and no archeological significance has been
22 found on the site. There is a conservation easement on the property, which covers 20
23 acres, which reduces the allowable dwelling units from 8 to 2, which will be the
24 maximum ever allowed on the property. There are a few docks in the surrounding
area, some of which are associated with the nearby subdivision; including a
community dock within the same water. These docks are visible from the subject
property.

1 Paul Wilcox – Dock Builder

2 There have been scuba surveying done, and there is no eel grass. The dock is
3 being built with light permeable decking, and other features from best-science as
4 determined by the County and State. The docking will be either plastic or composite,
5 and the pilings are steel.

6 EXHIBITS

7 See Attachments list on page 5 of the staff report dated March 11, 2010.

8 FINDINGS OF FACT

9 Procedural:

- 10 1. Applicant. The applicant is the Kathleen Dickinson Trust.
- 11 2. Hearing. The Hearing Examiner conducted a hearing on the subject
12 application on April 1, 2010.

13 Substantive:

14 3. Site and Proposal Description. The applicant requests a shoreline
15 substantial development permit for construction of a dock for the use of two proposed
16 undeveloped parcels in their ownership. The property is 42 acres on Stuart Island,
17 and lies between Stuart Island State Park on the west and Stuart Island Airway Park
18 on the east. The proposed dock consists of an 8' x 8' pier, a 5'6" x 48' ramp landing
19 on a 6' x 8' flared float and an 8' x 41'6" moorage float. Without the ramp landing
20 overlap, the structure will be approximately 700 square feet. The dock will extend
21 56' feet from the ordinary high water mark, making it consistent with the size
22 requirements for a single user dock; even though it is being proposed as a 2-user
23 dock. As discussed during the hearing, the property is planned to be subdivided into
24 a 7-acre parcel and a 35-acre parcel, with construction of a single-family residence on
25 one of the lots. Reid Harbor was chosen as the dock site due to deeper water and no
habitat concerns, as well as because the bank is an accessible height.

4. Characteristics of the Area. The property is located on an outer island,
and is not accessible by land. There is an airstrip to the east, state park to the west,
and water on the other sides.

5. Adverse Impacts of Proposed Use. The Examiner finds that the proposed
project will have no significant adverse impacts. Additionally, the project was issued
a Determination of Non-significance (DNS) for SEPA, on January 20, 2010.

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.

3. Comprehensive Plan and Zoning Designations. The subject property is designated as Rural Residential, and the existing land use is Residential.

4. Compliance with Notice Requirements. City staff advertised the application in accordance with RCW 90.58.140, WAC 173-27-110 and the San Juan County County Code Sections 18.80 and 18.50. Notice of the Public Hearing and SEPA Appeal for the project was properly published, posted on-site, and noticed to parties of record and adjacent property owners, on January 20, 2010. No letters or comments were received during the comment period.

5. Permit Review Criteria. The San Juan County Code ("SJCC") governs the policies and criteria for shoreline permit review including the shoreline substantial development permit that is the subject of this Decision. SJCC 18.80.110(H) establishes the criteria for approval.

The applicable shoreline policies, use regulations, and criteria are quoted (in italics) and addressed below.

RCW 90.58.020 Use Preferences

This policy (Shoreline Management Act policy) is designed to insure the development of these shorelines (of the state) in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. 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.

1 6. The project will not interfere with public access to the shoreline or interfere with
2 navigation of water areas, and will actually increase overall access and enjoyment.
3 The proposal has been thoroughly mitigated to ensure that it will not have any
4 adverse impacts upon the shoreline environment. As evidenced in the staff report and
5 during the public hearing, the applicant has attempted to obtain access to their
6 property from other sources that already have established docks. However, they have
7 been denied on both occasions, and their property is only accessible by water, and
8 thus they need their own dock.

9
10 **RCW 90.58.020(1)**

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

12 7. The project has been thoroughly mitigated to address all adverse impacts and as
13 such Statewide interest in the preservation of the shoreline and surrounding habitats is
14 protected, in addition to the local interest of economic and housing interests.

15 **RCW 90.58.020(2)**

16 *Preserve the natural character of the shoreline;*

17 8. The project includes plans to construct a dock of approximately 700 square feet in
18 size, using County and State approved building techniques. The site has been
19 thoroughly studied, and building materials have been chosen to preserve both the
20 character of the shoreline and habitats in the water. Through these activities, the
21 natural character of the shoreline will be preserved and enhanced.

22 **RCW 90.58.020(3)**

23 *Result in long term over short term benefit;]*

24 9. The applicants have attempted to access their site using neighboring docks, but
25 have been denied the right to do so on multiple occasions. Additionally, the property
is essentially landlocked, and cannot be reached by road. As such, the only way for
the applicants to access the property is by water, and without their own dock this is
difficult to do. As such, the long-term public benefits of the project will outweigh
any short-term benefits.

RCW 90.58.020(4)

Protect the resources and ecology of the shoreline;

10. All adverse environmental impacts have been thoroughly addressed and mitigated
and, therefore, the resources and ecology of the shoreline are adequately protected.
The SEPA responsible official issued a Determination of Non-Significance on
January 10, 2010.

1 **RCW 90.58.020(5)**

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

3 11. The project does not pertain to a publicly owned area of the shoreline.

4 **RCW 90.58.020(6)**

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

6 12. The repair of this pier will provide increased private recreational opportunities on
7 the shoreline, but as the shoreline area in question is not public, no further public use
8 of the shoreline will result.

8 **San Juan County Code Regulations**

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

11 13. There have been no adverse impacts raised by the repair and replacement
12 proposed by this project. The decking material will include grating that allows light
13 to penetrate, to best preserve the underwater habitat.

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

16 14. The proposed design of the dock takes into full consideration the existing
17 configuration of the property, and due to such considerations, Reid Harbor was
18 chosen as the site of the dock rather than Prevost Harbor.

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

24 15. An HPA from the Department of Fish and Wildlife has been issued for this
25 project. The applicants will have to abide by the provisions of the HPA upon
approval.

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.*

16. Although mooring buoys are preferred, the proposed system is the most
appropriate for use on this site.

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

3 17. As stated above, although moorage floats are preferred, the choice of a pier is
4 more desirable actions for this project.

5 **SJCC 18.50.190(C)(4):** *Every application for a substantial development permit for a*
6 *dock or pier construction shall be evaluated on the basis of multiple considerations,*
7 *including but not limited to the potential impacts on littoral drift, sand movement,*
8 *water circulation and quality, fish and wildlife, navigation, scenic views, and public*
9 *access to the shoreline.*

10 18. There does not appear to be an impact to littoral drift as this location is not in a
11 drift sector. Also, the shoreline in this area is rocky, not sandy. The pier will also not
12 impact navigation, as it is located very close to the shore.

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

15 19. No structures have been proposed.

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

17 20. The proposal has been designed to meet all of the design standards stated.

18 **SJCC 18.50.190(G)(2)(c):** *The maximum dimensions for a dock (including the pier,*
19 *ramp, and float) associated with a two-user dock shall not exceed 1,400 total square*
20 *feet in area. In addition, the length of the dock (including the pier, ramp, and float)*
21 *may not extend more than 200 feet in length seaward of the ordinary high water*
22 *mark. Docks exceeding these dimensions may only be authorized by variance.*

23 21. The proposed pier falls just short of 700 square foot, below half the maximum
24 allowance. In addition, the maximum length of the dock at its greatest is only 48',
25 well shy of the 200' allowance.

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

22 22. The current size of the pier has been designed to meet the basic needs of the
23 applicants to access their property, and is also being used as a 2-user dock. As such,
24 the pier will be the minimum necessary to accomplish the intended use.

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

7
8 23. As a joint use dock, the location may be adjacent to or upon a side property line,
9 which will occur upon approved subdivision of the lot. Currently however, the
10 property has not been subdivided, and as such meets the minimum side property
11 setbacks.

12 **SJCC 18.50.190(G)(4):** *Development of a dock on a lot intended for single-family*
13 *residential development shall require a shoreline substantial permit or a statement of*
14 *exemption issued by the County.*

15 24. The current permit is under evaluation as a result of this code section.

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

- 18 a. *It can be shown by the applicant that existing facilities are not adequate*
19 *or feasible for use;*
20 b. *Alternative moorage is not adequate or feasible; and*
21 c. *The applicant shall have the burden of providing the information*
22 *requested for in subsections (a) and (b) of this section, and shall provide*
23 *this information in a manner prescribed by the administrator.*

24 25. The applicant has demonstrated that they have made valid attempts to gain access
25 to the site through other means; including both adjoining properties. As the property
is essentially landlocked and no neighboring properties will allow easements to
access the property by land, construction of the dock is necessary for access.

SJCC 18.80.110(H) Criteria for Approval of Substantial Development Permits

*A shoreline substantial development permit shall be granted by the County only when
the applicant meets his 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);*

- 1 5. Consistent with the goals and policies of the Comprehensive Plan; and
2 6. All conditions specified by the hearing examiner to make the proposal
3 consistent with the master program and to mitigate or avoid adverse impacts are
4 attached to the permit.

5 26. As discussed in depth above, in the evaluation of individual code sections and
6 regulations, all of the above elements have been met, and the project is consistent
7 with the applicable policies, goals, and regulations.

8 **DECISION**

9 The proposed project is consistent with all the criteria for a shoreline substantial
10 development permit. The proposal is approved subject to the conditions listed in the
11 staff report.

12 Dated this 20th day of April 2010.

13 
14 Phil Olbrechts
15 County of San Juan Hearing Examiner

16 **Change in Valuation**

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