SAN JUAN COUNTY
HEARING EXAMINER

FINDINGS, CONCLUSIONS, AND DECISION

Applicant(s):	Encore Family, LLC 2625 Northrup Way Bellevue, WA 98004 Second Wave, LLC c/o Jackson Hole Trust Company P.O. Box 1150 Jackson, WY 83001
Agent(s):	Jeff Otis 393 Bobbyann Rd. Eastsound, WA 98245 Virginia Nicholson and Keith Dearborn Schwabe, Williamson & Wyatt 1420 5th Avenue, Suite 3400 Seattle, WA 98101-4010
File No.:	PSJ000-15-0003
Request:	Shoreline Substantial Development Permit
Parcel Nos:	462334006 (Encore), 462334005 (Second Wave)
Location:	1713 White Point Road, Westcott Bay, San Juan Island
Summary of Proposal:	Application for a shoreline substantial development permit for authorization to construct a joint use dock
Land Use Designation:	Rural Residential
Public Hearing:	January 21, 2016
Application Policies and Regulations:	SJCC18.35.110-140 Fish and wildlife habitat conservation areas SJCC18.60.210 Archaeological and historic resources SJCC18.50.190 Shoreline master program – boating facilities SJCC18.80.020 Application requirements SJCC18.80.030 Public notice of applications and comment SJCC18.80.050 SEPA implementation rules SJCC18.80.110 Shoreline permit and exemption procedures
Decision:	Approved subject to conditions

S.J.C. DEPARTMENT OF
MAR 10 2016
COMMUNITY DEVELOPMENT

BEFORE THE HEARING EXAMINER
FOR SAN JUAN COUNTY

In the Matter of the Application of	)	NO. PSJ000-15-0003
Encore Family, LLC and	)	
Second Wave, LLC	)	
	)	
for approval of a shoreline substantial	)	
development permit for construction of a	)	
dock at 1713 White Point Road, in Westcott	)	
Bay, San Juan Island	)	

S.J.C. DEPARTMENT OF
MAR 10 2016
COMMUNITY DEVELOPMENT

SUMMARY OF DECISION

The request for shoreline substantial development permit to authorize the construction of a joint use dock at 1713 White Point Road composed of a pier, ramp, and float with a landing to serve two adjacent properties in Westcott Bay, San Juan Island is APPROVED subject to conditions.

SUMMARY OF RECORD

Request:

Encore Family, LLC and Second Wave, LLC (Applicants) requested a shoreline substantial development permit to authorize construction of a joint use dock serving two adjacent parcels consisting of 1,397-foot dock consisting of a six- by 147-foot pier, a four- by 48-foot ramp, and an eight- by 40-foot float with a six- by eight-foot landing located at 1713 White Point Road in Westcott Bay, San Juan Island.

Hearing Date:

The San Juan County Hearing Examiner held an open record public hearing on the request on January 21, 2016. At the conclusion of the hearing, the record was held open to allow the County additional time to address arguments raised by counsel for Applicants at hearing, though February 4th, and for the Applicants to submit a final response to the County's comments, through February 18, 2016. The items requested were timely submitted. The parties agreed to a decision issuance date of March 3, 2016; however, unforeseen circumstances unrelated to the application arose after the close of the record that resulted in delayed issuance.

Testimony:

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

Lee McEnery, Planner, San Juan County Department of Community Development
Steve Zuvela, Waterfront Construction, Inc., Applicant Representative
Jeff Otis, Otis Land Use Consulting, Applicant Representative
Peter Powell, Applicant
Francine Shaw

The Applicants were represented by Keith Dearborn and Virginia Nicholson, Attorneys.

Exhibits:
The following exhibits were admitted in the record:

1. Staff Report, dated November 25, 2015
2. Application cover sheet
3. Project Narrative
4. Additional project information, dated September 15, 2015 from Schwabe, Williamson and Wyatt
5. Determination of Non-Significance (MDNS)
6. SEPA checklist
7. Shannon and Wilson Habitat Report, dated April 10, 2015
8. Marine Mammal Monitoring Plan, dated April 2015
9. Dock drawings
10. Eelgrass Macro Algae Habitat Survey text, photos and map
11. Commercial moorage solicitations
12. Draft Joint Use Agreement
13. Email regarding Russo withdrawal from joint use discussion, dated October 1, 2015
14. Map locating sources of public comment letters and comment letters
15. Department of Archaeology and Historic Preservation comment, dated October 29, 2015
16. Department of Energy comment, dated November 19, 2015
17. Vicinity map of private boating facilities
18. Hearing Examiner Decision for 95SJ002, Hayhoe (now Pigott)
19. Solicitation for Russo joint use dock, dated September 26, 2012
20. Ordinance 10-2000, Amendment regarding floating planes
21. Legal Memorandum Addressing Float Plane Use, submitted by the Applicants, January 20, 2016, with attachments:
    a. Sea Pilots Association correspondence from Michael Volk, September 14, 2000
    b. Proposed Amendments to UCD regarding Float Plane Facility Regulation, San Juan County Planning Department, August 3, 2000
22. Additional documents from Applicants (Notebook), with 12 subparts:
    1. Westcott and Garrison Bay Aerial photo
    2. Map Identifying Neighbors
    3. Joint use dock locations

4. Existing Marine Rail System pictures (four photos)
5. Letter of support/potential joint use requests to share neighbor's dock
6. Moorage Availability Chart
7. Ecology, WSDNR, Fish & Wildlife Approvals, including:
    a. Hydraulic Project Approval, issued December 17, 2015
    b. Department of Natural Resources letter, June 2, 2015
    c. US Army Corps of Engineers Letter of Permission, August 13, 2015
8. Seaplane Float Drawing/Lift pictures
9. Illustrative – staff report issues
10. Illustrative – staff report recommended action
11. Chart of San Juan Island Dock Decisions
12. Final executed Joint Use Agreement

23. Westcott and Garrison Bay Aerial photo (Google Earth, duplicated of 22.1), offered by Mr. Powell
24. Map of Letters in Support (Assessor's Office, duplicate of 22.2), offered by Mr. Powell
25. Shared Dock Locations (Assessor' Office, duplicate of 22.3), offered by Mr. Powell
26. Existing Marine Rail photos (duplicate of 22.4), offered by Mr. Powell
27. Photo of Mr. Powell's Float Plane, offered by Mr. Powell
28. Plat Alteration of Lots 3 & 4, White Point 1 Short Plat, Sheets 2/3 and 3/3, revised date December 1, 2010, offered by the Applicant
29. Referenced Dock Locations (relating to docks from previous San Juan County joint use dock applications), offered by the Applicants
30. Critical Areas Map depicting critical areas in the vicinity of the subject property, offered by Mr. Powell
31. Previous San Juan County Hearing Examiner Decisions from joint use dock applications:
    a. Shorett, PSJ000-09-0002
    b. Rohloff, PSJ000-12-0017 (February 2013)
    c. Rohloff, PSJ000-12-0017 (June 2013)
    d. Swindells, PSJ000-13-0005
    e. TG Dynamics, SHB-08-030
    f. TG Dynamics, HE46-08 (07SJ001) (cover sheet only)
32. Boundary Line Modification 03BLM010, offered by Mr. Powell

33. Planning Staff's Post-Hearing response to Applicants' evidence and argument at hearing, submitted on February 4, 2016 in accordance with post-hearing schedule

34. Applicants' Response to County's Post-Hearing comments, submitted on February 18, 2016 in accordance with post-hearing schedule

Also included in the record is the January 28, 2016 Post-Hearing Order setting the submission schedule for post-hearing information.

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

FINDINGS

1. The Applicants requested a shoreline substantial development permit (SSDP) to authorize construction of a joint use dock to serve two adjacent parcels on the northwest shore of Westcott Bay, San Juan Island. The land use designation for the subject property for the purposes of the San Juan County Shoreline Master Program (SMP) is Rural Residential outside the shoreline, Conservancy within the shoreline jurisdiction (200 feet landward of the ordinary high water mark), and Aquatic below the ordinary high water mark. *Exhibits 1, 2, 3, 9, 12, 22, and 24.*

2. The property on which the proposed dock would be located (Parcel number 462334006) is addressed as 1713 White Point Road. Owned by Encore Family, LLC (Encore), the subject property is developed with a single-family residence and residential appurtenances including a tennis court, landscaping, and steps down to the beach to access an existing marine railway and associated pier. The second parcel to be served by the proposed dock (Tax Parcel Number 462334005) is owned by Second Wave, LLC (Second Wave) and is currently vacant.[1] *Exhibits 1, 2, 3, 23 (aerial photo as visual), and 26 (photos marine railway and shoreline); Powell Testimony.*

3. Encore owns a float plane and occasionally borrows a boat, both of which are currently stored outside the islands. Encore representatives plan to purchase an approximately 35-foot boat to be stored in the islands, if the request is approved. Second Wave owns a 24-foot boat, stored on a trailer. The float plane provides transportation from Seattle to San Juan Island and would be present on a transient basis. Only periodic moorage of a private float plane is proposed; there would be no commercial float plane use of the dock. The Applicants estimated that, if approved, the float plane would access the dock once per month or less frequently from November through March, approximately twice per month in October, April, and May, and about once a week from June through September. *Exhibits 1, 3, 27; Powell Testimony.* Float planes are an essential part of the San Juan Island transportation network, bringing property owners to their homes, business

[1] Planning Staff confirmed that although the owners of the two parcels are related, there is no overlap in ownership. *Exhibits 1 and 4.*

professionals to and from the islands, and tourists to and from the lodging accommodations, shops, and restaurants in the islands. *Exhibit 21.A.*

4. The existing marine railway, submitted by former Encore property owner Powell, was approved in 2005 (04SJ019). Information in the record indicated that the railway can be used only when the tide is above plus 1, restricting its usefulness. The instant application proposes to remove the railway if the dock is approved. A mooring buoy was also previously approved for the site in 2005 (05XMP062). According to the Applicants, the buoy is no longer there and was rarely used when in place. Applicants' representatives indicated that neither the marine railway nor a replacement buoy are feasible alternatives to meet the instant project objectives because of the shallow depth of the bay, the steepness of the on-site bank, and the fact that a buoy and railway wouldn't serve the proposed joint use or float plane. *Exhibits 1, 3, 9, and 26.*

5. The proposal would build a dock comprised of the following parts: a six- by 147-foot pier, a four- by 48-foot ramp, and an eight- by 40-foot float with a six- by eight-foot landing. The dock itself would be 1,397 square feet, terminating 200 feet seaward from the ordinary high water mark, with the base of the pier three feet above the extreme high tide of 11 feet. It is expressly proposed as a joint use dock to serve the two parcels, meaning that if approved, the Second Wave parcel would be precluded from applying for any boating facilities along its waterfront. Approval would result in removal of the existing marine railway and pier. The Applicants asserted that approval would allow only one dock for 967 of shoreline. The proposed dimensions for the float (eight by 40 feet) were sized to serve the existing boat and float plane owned by the owners of the two adjacent parcels, and the boat Encore intends to purchase.[2] The maximum structure height proposed would be the dock at approximately 18 feet above mean low low water (MLLW). The proposal would place the dock near the existing beach access stairs, which are at a rocky point in shoreline where the bluff is eight feet high. No new pedestrian pathways are proposed. Minimal shrub and grass removal is proposed at the landward end of the pier. No signage, structures, lighting, or commercial overnight accommodations are proposed on the dock. The proposed dock would extend approximately 200 feet into a shallow portion Wescott Bay, which at the site is more than 1,600 feet wide; it would not create a navigation hazard. *Exhibits 1, 3, 9, 23, and 26.*

6. Placement of the dock at the rocky point at the shared property boundary is intended to provide the following benefits. It would minimize site disturbance by allowing use of the existing beach access. This location would facilitate joint access and provide maximum setback from other adjoining parcels. Placement of the dock where the existing marine railway is would result in the least visual impact to the shoreline from the water or adjoining properties by essentially replacing the existing facilities in the same location. Finally, the deepest water along the subject property shoreline is found off the rocky

[2] The application indicates the vehicles to be served are 24- and 38-foot powerboats and a floatplane with a float length of about 33 feet and wing span of 48 feet. *Exhibit 3, page 15; Powell Testimony.*

point and potential impacts to surf smelt and sand lance habitat would be avoided by use of this location. *Exhibits 3 and 26.*

7. Impact avoidance, minimization, and mitigation measures proposed for the project include: removal of little to no vegetation; use of non-pollution generating construction materials; surfacing the pier, ramp, and float with grated materials that would allow 69.9% direct and ambient light to reach the water below the structure; north-south orientation of the float to minimize shading; placement of the float above an area free of eelgrass and kelp; use of vibratory hammer and a cushion block pile to reduce underwater noise during construction; restriction of pile drive to a window not more than two hours after sunrise and not more than two hours before sunset; not allowing the construction barge to ground; implementation of a contractor spill prevention plan; observation of construction windows as required by state and federal permits; and removal of the existing marine railway and access pier, with restoration of the disturbed shoreline. A marine mammal monitoring plan was prepared for implementation during construction. *Exhibits 3, 7, 8, and 26.*

8. The Applicants attempted to secure commercial moorage for the two boats and the float plane, as required by the County's Shoreline Master Program (SMP) as a condition precedent to permission to build a new dock. *SJCC 18.50.190.G.5*; *Exhibit 3*. Applicants attempted to obtain the required moorage at Snug Harbor, Roche Harbor, Port of Friday Harbor, Jensen's and Shipyard Cove marinas for the float plane, a 24-foot boat, and a 38-foot boat. Roche Harbor had winter moorage available, but a waiting list for year-round boat moorage. Snug Harbor initially replied that they may be able to accommodate the boats next year, but more recently indicated no availability for either boat. The Port of Friday Harbor was able to accommodate both boats in the off season but not in the summer, which is peak moorage demand season. Jensen's and Shipyard Cove each had space for one of the boats at various times, but did not keep a waiting list and did not anticipate having room in the summer. None of the commercial marinas could accommodate the float plane. *Exhibits 1, 3, and 22.6; Otis testimony.*

9. According to the Applicants' marine construction consultant, the existing marine railway cannot be expanded to serve the intended two boats and a float plane. Its launch rail system can accommodate only one boat at a time. The existing pier adjacent to the rails extends only to just above the mean high water (MHW), rendering it useless for moorage. With its elevated rails and launch cradle bed, boats cannot access the system at any tide lower than plus 1. Extending the existing pier to provide better access to the railway system would not solve the issues of three vehicles requiring moorage or inadequate water depth for moorage at lowest tides. In order to extend it to reach the area of deepest water, it would be longer than the maximum length allowed by Code. It cannot accommodate a float plane. *Exhibits 3 and 26; Zuvela Testimony.*

10. Similarly, replacement of the previously approved moorage buoy would not meet the project objectives. Because the bay is so shallow, the buoy would have to be located 800 feet from shore to satisfy US Army Corps of Engineers' minimum depth of 15 feet to

prevent grounding at low tides. Such buoys would be in the navigation channel, creating hazards. It would not be possible to store a dinghy on the shoreline of either parcel due to the rocky bank. Additionally, a mooring buoy would not be capable of providing moorage for the float plane, because a float plane cannot transport a dinghy by which passengers could access the shore. The float plane would not be able to land at the shore of the subject property due to the high rocky bank and/or the need to walk through mud substrate to reach the float plane during low tides. *Exhibit 3; Powell Testimony, Otis Testimony.*

11. Presently, there are few docks inside Westcott Bay. The closest is approximately 0.7 miles to the east by road, owned by Griswold. Across Westcott Bay to the east is the oyster farm dock. The proposal, if approved, would be the third dock. To the north on the Mosquito Pass side of White Point, there are five existing private docks that are geographically closer to the subject property than either of the docks on Westcott Bay: these five docks (west to east) are owned by Conner; Komen, Rautenberg & Wright (shared via short plat of White Point 1); Pigott; Shaque LLC; and Pignataro. *Exhibits 1, 17, 23, 24, and 25.*

12. Westcott Bay is known to have strong, observable tidal currents and is not considered to have poor flushing action. The shoreline of the subject parcels is rocky and is not a known drift sector, accretion shoreline, feeder bluff, or transport zone. Oriented north-south, the dock would be in line with the predominant wind direction and would not disrupt wave action. *Exhibit 3, pages 6-8, 12; Exhibit 30.*

13. The Applicants commissioned a professionally prepared habitat assessment to determine what impacts the proposal would have on aquatic fish and wildlife habitat conservation areas (FWHCAs) and what mitigations could mitigate any impacts pursuant to SJCC 18.35.130. In the current condition, there is a sand/mud substrate in the area under the proposed dock alignment. The primary algae present appears to be sea lettuce. There is no evidence of the presence of eelgrass or kelp within 50 feet of the proposed dock location. The habitat assessment concluded that the following impacts would result from the proposal. Removal of the marine railway and construction of the project would replace the concentrated shade under the current structure with more diffuse shade under the dock, which would have approximately 58% grated surfacing. Encrusted filter feeding organisms attached to the underwater portions of the marine railway system would be removed. Overtime, a similar population would develop on the new facility. The north-south orientation proposed would maximize sunlight under the dock. Overall, the project would facilitate kelp and eelgrass recovery in the project area, should those species return. No adverse impacts to kelp/eelgrass beds, forage fish habitat, salmon habitat, or crab habitat are projected, and no net loss of ecological function would result. *Exhibits 1, 7, 9 and 10.* Planning Staff concurred with the findings of the habitat assessment. *Exhibit 1.*

14. The subject properties are located in an archeological buffer zone to a site of known archeological importance. An archeological investigation was prepared in February 2005

during development of the plans for the existing marine railway. No shell midden or protected cultural material was observed in shovel test holes or in the exposed wave cut banks along the shoreline within 40 meters of the marine railway. *Exhibit 3.*

15. Consistent with the State Environmental Policy Act (SEPA), San Juan County acted as lead agency for review of the proposal's probable, significant adverse environmental impacts pursuant to SEPA. A determination of non-significance (MDNS) with conditions was issued on October 21, 2015. The following mitigation measures were imposed by the MDNS:
    1. The proposal shall maximize light penetration (thereby avoiding impacts caused by shading) with deck grating, float orientation and minimized size.
    2. BMPs shall prevent erosion and sediments from entering the marine waters.
    3. Equipment used for installation of the proposal shall be maintained to be leak-free while on the site.
    4. During dock construction, equipment engines shall not be idled unnecessarily.
    5. Dock components shall be built with materials suitable for kelp attachment and remain year-round to allow growth/attachment of kelp and filter-feeding organisms.
    6. Comply with all applicable state, federal and San Juan County codes.

    Exhibits 1, 5, and 6. The DNS was not appealed. *McEnery Testimony.*

16. The Applicants submitted correspondence from the Washington State Department of Natural Resources (DNR), dated June 2, 2015, indicating that no DNR aquatic lease would be required for the proposal. *Exhibit 22.7.*

17. The US Army Corps of Engineers (Corps) issued a letter of permission for the proposed dock, dated August 13, 2015. *Exhibit 22.7.*

18. The Applicants obtained approval of a hydraulic project approval (HPA) permit from the Washington State Department of Fish and Wildlife. Permit HPA #2015-4-966+01, approved December 17, 2015 and expiring December 31, 2017, contains both standard and project specific conditions addressing water quality and wildlife habitat protection during construction. *Exhibit 22.7.*

19. The SSDP application was submitted on May 13, 2015. *Exhibit 2.* No letter of application completeness nor request for additional necessary information was issued by the Community Development and Planning Department within 28 days. The application was complete by operation of law on the 28th day after submittal, consistent with County Code. *SJCC 18.80.020.D; Exhibit 34.*

20. Notice of the application was published on October 21, 2015. It was posted on-site and mailed to adjacent property owners within 300 feet. The Applicants notified owner of

property within 300 feet of the subject property boundaries consistent with the requirements of County Code. *Exhibit 1.*

21. The County received several responses to notice of the proposal.

    The Department of Archaeology and Historic Preservation (DAHP) submitted October 29, 2015 comments indicating that based on the earlier survey and minimal proposed ground disturbance, DAHP feels the project may proceed so long as an inadvertent discovery plan is implemented. *Exhibit 15.*

    Department of Ecology (DOE) submitted November 19, 2015 comments questioning the argument that the proposed dock size is justified because the island lacks commercial moorage facilities for the three vessels in question. Noting that commercial boat storage is more easily come by, DOE questioned whether the dock could be sized for the float plane alone and boats stored commercially off-site. *Exhibit 16.*

    Prior to hearing, the Department received letters in support of the application from several surrounding and adjacent property owners. *Exhibit 14.*

    At hearing, there was public comment from one person disputing that moorage at the Port of Friday Harbor can be considered feasible for residents of White Point. According to this public comment, Friday Harbor marina has 500 slips and a 90-stall parking lot, with 10 ten spaces reserved for staff. She noted there is on-street parking nearby, but it is limited to two hours. She indicated there are eight hour parking stalls somewhat farther away by the courthouse and the post office, and that the marina recommends patrons park at the port airport; however, the commenter contended that even those stalls are full early in the boating season. She noted you can sometimes get moorage, but that doesn't mean you can get to your boat. *Shaw Testimony.*

22. The Applicants provided additional correspondence from DOE in which the state agency reviewing personnel acknowledged the acceptable documentation of the ordinary high water mark on-site (December 11, 2015) and indicated that DOE would not take WQC or CZM action on the proposal due to the issuance of a Corps letter of permission (August 17, 2015). *Exhibit 22.7.*

23. In the Staff Report, Planning Staff took the position that the materials presented fail to demonstrate compliance with criteria for approval. Staff submitted the following:
    - Presently only the Encore property has a residence. There is not even an application to develop the vacant Second Wave property with a residence submitted to the County. Staff questions whether the proposal comports with the intent of the joint use dock policies of the SMP based on this.
    - Inadequate information was presented to rule out improvement of the existing marine railway to partially or completely meet the project objectives.
    - The application doesn't affirmatively indicate that the two boats would be moored at the dock year round, and if that is not the case, then negative inquiries into the

availability of year round commercial moorage fails to address the availability of alternative moorage.

- Staff noted that float planes are only tangentially referenced in the SMP, that they do not operate the same as boats (in terms of recreational access to the marine environment), and that they are regulated by the FAA instead of the Coast Guard. In the future, owners of the subject properties would not necessarily own a float plane or desire to store one at the joint use dock if approved. Because of these considerations and the fact that the float plane would only be present occasionally on a transient basis, Staff doubts that sizing a joint use dock to accommodate it comports with SMP policies regarding boating facilities.
- Including the float plane in inquiries regarding available commercial storage renders all answers no, because no marina has such storage. Removing the float plane from such inquiries would likely have result in a different availability response from existing commercial facilities.
- All lots of the White Point 1 plat have access to the use of a dock on the Mosquito Pass side of White Point, sited on tax parcel 462333008. The short plat of White Point 1, recorded October 25, 1978 contains this restriction: "All applications for mooring structure in this short subdivision shall be subject to the provision of the County's Shoreline Master Program which, in general gives preference to mooring buoys over docks and requires joint use docks, as opposed to individual docks, in all new plats. Adequate pedestrian easements must be provided from all lots to any joint mooring facility. Easement "F" as shown on this short plat is created for the mutual benefit of all lot owners for access to a moorage area." *Exhibit 28*. A 2003 boundary line modification (03BLM010) added a portion of White Point 1 short plat Lot 4 to the west side of the Encore parcel. Lot 4 has rights to use the community dock. Planning Staff asserted that the Encore property thereby could have legal access to use the White Point 1 community dock.
- The existing dock owned by Pigott (built by Hayhoe, file number 95SJ002) was approved by the County hearing examiner in 1995. *Exhibit 18*. Condition J on page 8 of the approval states, "If, in the future, landowners in the near vicinity are interested in sharing the permittee's dock and there is space available and reasonable terms for cost sharing and access can be agreed upon, a joint use agreement shall be entered into. Prior to recording the agreement with the County Auditor, it shall be reviewed and approved by the Planning Department." The Pigott driveway is 800 feet from the Encore driveway and between 575 and 700 feet from a future Second Wave driveway. The materials presented do not address whether expansion of this existing facility was investigated.
- The materials submitted do not assure Staff that the Applicants made good faith efforts to find accommodations at existing private moorage facilities in the vicinity.[3]

[3] Planning Staff noted that the previous owner of the Encore property declined to participate in a joint use dock proposal submitted in 2013 by a neighbor (Russo, PSJ000-13-0002). *Exhibit 19*. Now, the successor owner of the Encore property has applied for their own joint use dock. As stated in the Staff Report: " If you say you don't want

- At hearing, Staff contended that the materials submitted failed to show how facilities at the Port of Friday Harbor are not acceptable alternative arrangements for the proposal's objectives.

Exhibit 1; McEnery Testimony.

24. The Applicants contended that as of November 2015, Department Staff informed them that all information necessary to process the application had been submitted. The Applicants were surprised to receive a Staff Report indicating that information was missing such that approval could not be recommended. *Dearborn Argument; Exhibit 34.*

25. Regarding whether the Code allows float plane use of private joint docks, Applicant representatives argued that the existing County regulations permit outright the non-commercial, non-regular float plane use of private docks. In support of this position, they offered a discussion of the legislative history and actual comments submitted by aviation industry shareholders during the process leading up to the adoption of the current regulations. They noted that Staff didn't point to any policy or regulation in the SMP that requires bifurcated review based on vessel types under consideration for private joint use docks, and contended that the County has never previously required bifurcated review. Applicants' representatives noted that Planning Staff conceded that the proposal does not exceed the threshold for frequency of "regular use" established at SJCC 18.20.180. They contended that requests for approval of individual joint use docks for the temporary, transient storage of float planes are not likely to overrun the islands in the event the instant application is approved. *Exhibits 1, 20, and 21; Dearborn Argument.*

26. In response to Staff's concerns, Peter Powell testified on behalf of the Applicants. He indicated the dock would remain in place year round, but that the three vessels would not remain moored there year round. Mr. Powell testified that the former owner of the Encore property, his father, obtained permission to build the marine railway; however, he found the railway was difficult and sometimes dangerous to use due to wind. Tidal elevations can range by 12 feet at the subject shoreline, meaning the access to the railway would at times be too steep. Regarding the proposed size of the float, Mr. Powell testified that prevailing winds at the subject property generally come from north to northeast, and the float plane would land from the south. Forty feet is the minimum space he needs to safely park the float plane. As proposed, the outer side of dock would be 56 feet long and the inside would be 48 feet. He does not consider either eight or 16 feet of spare room to be excessive. Float planes do not have breaks and the extra dock length is needed in case of overrun. *Powell Testimony.*

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to share a proposed dock, then you can still apply for your own dock later (having said no to sharing someone else's) without consequence. The process for investigation of joint-use is not formalized, solicitations and responses are not easily trackable nor do negative responses seem to impose long-term commitment or consequence." The undersigned notes that these comments are perhaps more appropriately relevant in the context of potential amendment of the existing regulations rather than in discussion of whether the present application complies with the regulations in effect.

27. The Applicants consulted with Waterfront Construction, Inc., a marine construction company that works throughout the state. Their consultants considered attempting to construct moorage for the float plane on the subject shoreline, looking at various moorage options in use on Lake Washington and other lakes in which the float planes are pulled up onto very large ramps and elevated out of the water. Such facilities are not feasible in the marine environment due to tidal changes. To choose this option would require a very large structure because the finger piers would have to be far enough apart to accommodate wings. Such a structure would occupy a larger portion of the shoreline visually and would result in more shading and construction impacts environmentally. Buoys cannot effectively accommodate float planes. Moorage buoys would have to be placed no closer to the shore than -8 feet MLLW to prevent grounding, which would place the buoy(s) in the center of Westcott Bay at least 500 feet from shore. This would create navigation hazards. The use of buoys would also necessitate access to the moorage by dinghy, and the use of a dinghy would require more structures on the shoreline to lift the dinghy above the steep rocky bank. *Zuvela Testimony; Otis Testimony.*

28. Regarding the availability of commercial accommodations to serve the three vessels in question, Applicants' agent Jeff Otis testified that he sought moorage for both or either boat on a seasonal and a permanent basis. Applicants prepared a graphic showing which commercial marinas were contacted, the dates of contact, and the availability indicated by each venue on each date of contact. Roche Harbor indicated there was an eight to 10 year waiting list for both boats, and no float plane accommodations. Snug Harbor indicated there was a wait list for both boats and no room for the float plane. Jensen's Marina could accommodate one or neither of the boats at the three dates of contact, and could not take the float plane. Ship Yard Cove was full, or could take the larger boat, but could not offer summer moorage and could not take the plane. Port of Friday Harbor said it could accommodate both boats off-season, but that it does not offer monthly slip rental in the summers, when it is generally full, and that it cannot accommodate the float plane. Regarding feasibility of Friday Harbor, Mr. Powell testified that it is a 25 minute drive across the island and parking demand far exceeds supply in good boating weather. Once on board, it is a two hour boat ride to the house to gather guests and gear. Doing the reverse at the end of the day means most of the day is spent getting to and from the boat. He does not consider this reasonable or feasible. *Exhibits 11 and 22.6; Otis Testimony; Powell Testimony.*

29. Regarding Applicants' potential use of existing private docks in the vicinity, the Applicants asked surrounding dock owners if they could use their existing docks (depicted in Exhibit 24), offering to pay for use. The owners indicated that their existing docks are fully subscribed and they do not have room to accommodate the vessels the proposal seeks to serve. Surrounding property owners with and without private docks signed letters in support of the proposal. *Exhibits 17, 22.5, 23, and 24; Powell Testimony; Otis Testimony.*

30. Specifically with regard to the White Point short plat community dock, the Applicants dispute Staff's contention that any boundary line modification provided access to the White Point dock for the subject property. A review of the 2003 boundary line modification involving the subject property (2003 0611001, Exhibit 32) reveals that BLM did not convey right of access to White Point community dock to the Encore property. A 2010 plat alteration of Lots 3 and 4 of the White Point 1 Short Plat (in the record at Exhibit 28) reportedly included some area from Parcel 462333008000 (Komen) into the Encore parcel in order to allow access to White Point Road. Nothing in the documentation provided shows that the Encore parcel was expressly conveyed access to the White Point community dock as a result. The Applicants requested to share use of the White Point community dock and were told it did not have room to accommodate them. *Exhibits 22.5, 28, 32, and 34; Powell Testimony; Dearborn Argument.*

31. Applicants' agent Jeff Otis, a former San Juan County planner, testified about several previous San Juan County dock approvals with which he is familiar. In several previous SSDP approvals, one or more of the single-family parcels involved was not yet developed with a residence. According to Mr. Otis, in none of the cases he was familiar with was an applicant required to prove lack of feasible alternative accommodation in the manner and to the extent that Planning Staff suggests the instant Applicants must satisfy. In three previous joint use dock approvals (Rohloff, PSJ000-12-0017, Shorett, PSJ000-09-0002, and Swindells, PSJ000-13-0005), partial, potential availability for moorage at Friday Harbor of some of the boats proposed to be served by the joint use docks was not considered to render Friday Harbor a feasible alternative. He asserted that the County has not previously interpreted the code from prohibiting a property owner who declines from participating in a given joint use dock project from later applying for their own dock. Mr. Otis, who was the planner in the Hayhoe SSDP, disagreed that Condition J of the Hayhoe/Pigott dock SSDP mandates the Pigottt's to accommodate future joint users, or precludes construction of the proposal. *Otis Testimony; Exhibits 22.11 and 29.*

32. Applicants' representatives contended that the shoreline would be benefited by the removal of the marine railway system location and that the proposed facility would provide more light and less physical contact to the substrate, with grated surfaces placing vessels farther preventing grounding at low tides. Approval would ensure only one dock can ever be built for the 967 feet of shoreline because the joint use agreement would run with the land, regardless of future development. Finally, Applicants contended that the proposal would not create or contribute to a dock "porcupine effect" along the shoreline because the majority of the lots in the area are already served by joint docks. *Otis Testimony; Powell Testimony.*

33. After considering the evidence presented at hearing, Planning Staff revised its position on two of Staff's pre-hearing concerns during the post-hearing period established on the record. First, Staff came to agree that the Encore property does not have any access right to the White Point 1 community dock as a result of boundary line modifications. Second, Staff concluded that the Applicants had established, through testimony of Waterfront Construction, low feasibility for modification of the railway or a simple structural

solution for float plane moorage in tidal waters. However, as to the following questions regarding potential alternative moorage, Staff remained unconvinced that Applicants had met their burden of proof.

Staff asserted that the Applicants have not shown they asked Pigott to expand the existing Hayhoe/Pigott dock, and that failing this, they have not fully addressed the requirement to investigate expansion of existing facilities.

Staff asserted that because the two parcels are in separate ownerships, there is no reason the two boats must be located at the same commercial moorage site or the same site as the float plane.

Staff argued that Applicants' submittals show availability for each boat at various commercial marinas over time, citing Shoreline Hearings Board (SHB) decisions that deny new facilities based on "multiple opportunities throughout the relevant time period for the Stanfords to obtain commercial moorage… ." *Stanford, SHB 06-004*. Staff argued that SHB cases had dismissed both distance to commercial moorage (*Gordon, SHB 94-028, re:* Port of Friday Harbor) and difficult summer parking (*Stanford, re:* Deer Harbor Marina).

Planning Staff could not recommend approval in their post-hearing submittal due to these questions which they contend remain unanswered. *Exhibit 33.*

34. In their post-hearing submittal, the Applicants asserted the following responses to Staff's remaining grounds for not recommending approval.

First, on the issue of the Hayhoe/Pigott dock, Applicants contended that neither the County's SMP nor any caselaw interpretation of the SMP support the notion that residential dock applicants must prove neighboring dock owners cannot expand existing docks to serve their vessels. The language of the Hayhoe/Pigott Condition J cited by Staff states that "if there is space.... and reasonable terms for cost sharing and access can be agreed upon...". Current owner Pigott indicated there is not space, and, according to Applicants the inquiry was complete at that point. The Pigott dock cannot accommodate a float plane. The Applicants argued that the question of "expansion of existing facilities" has previously only focused on facilities under an applicant's control, i.e., ownership, not private facilities owned by persons not involved in the application. No SSDP applicant can dictate neighboring property owners' willingness to allow their use of private property by neighboring boat owners.

Second, Applicants contended that neither the plain language of the SMP nor any caselaw requires the "adequate and feasible" investigation to include separate options for the vessels in question. There is no code requirement that all would-be joint dock users address alternative moorage individually. The Applicants argued that in previous SSDP approvals (Swindells), joint users' vessels were considered as a group, and that there is no precedent for looking at each user's needs separately. Regarding the SHB cases argued by Staff, the Applicants note that in both Gordon and Stanford, the SHB decision was based in part on the finding that those applicants had "behaved in an underhanded manner", which is not asserted here. Applicants also note that neither Gordon nor Stanford required

the applicants of each respective case to inquire after separate moorage for each vessel in question. Finally, Applicants continued to maintain that the proposed irregular float plane moorage must be considered in the alternate moorage investigation. There is no commercial float plane moorage available on San Juan Island.

Regarding the Port of Friday Harbor, the record shows occasional off-season availability for either of the Applicants' boats, but also shows there is no reliable summer (prime boating season) availability for either boat, because the Harbor does not do monthly leases in the summer. Friday Harbor cannot accommodate the float plane. Applicants continued to assert that having to drive half an hour, struggle to get parking, undertake a two hour boat ride back to the subject property to load gear and guests, and reverse the process at the end of the boating day renders Friday Harbor not adequate or feasible alternative moorage.

Exhibit 34. More generally, the Applicants contended in their final response that Planning Staff could and should have required all of these questions to be answered prior to hearing, and that allowing Staff to continue to require more information even after hearing is to set a never ending task for an applicant. They noted that if approved, the instant dock would be one of only three in Westcott Bay, and the only one for approximately 20,000 feet of lineal shoreline. They argued that the unique pattern of land ownership, existing joint use docks, and the natural shallow condition of the bay render any future porcupine effect from later requested docks unlikely. *Exhibit 34.*

35. Staff recommended that the permit, if approved, limit float plane use to the frequency spelled out in the application materials (detailed in Finding3) above. *Exhibits 1 and 33; McEnery Testimony.* The Applicants argued there is no basis in the code for establishing specific numeric limits on the number of times a joint use dock can be accessed by a private float plane. *Exhibit 34.*

CONCLUSIONS

Jurisdiction

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

Criteria for Review

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

1. Consistent with the policies of the Shoreline Management Act and its implementing regulations, Chapter 90.58 RCW and Chapter 173-27 WAC, as amended;
2. Consistent with the policies and regulations of the Shoreline Master Program in Chapter 18.50 SJCC;
3. Consistent with this chapter;
4. Consistent with the applicable sections of this code (e.g., Chapter 18.60 SJCC);

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

Applicable Provisions of the San Juan County Code

SJCC 18.35.130 Protection standards for aquatic fish and wildlife habitat conservation areas (FWHCAs).

...

G. Standards and Requirements for Shoreline Modifications. Shoreline modifications, including shoreline stabilization measures, are allowed within and over aquatic FWHCAs and their buffers subject to this section and Chapter 18.50 SJCC. These requirements remain in effect until they are replaced with an approved comprehensive update of the Shoreline Master Program. Unless specifically allowed by this section and Chapter18.50 SJCC, construction of new shoreline modifications is prohibited.

1. General Standards.

   a. Definitions. Definitions applicable to this subsection (G) are found in RCW 90.58.030 and WAC 173-26-020 and 173-27-030.

   b. Mitigation Sequencing. Per WAC 173-26-201(2)(e), adverse impacts associated with new, expanded or replacement shoreline modifications must be mitigated consistent with the requirements of SJCC 18.35.020 through 18.35.050 and the following mitigation sequence:

      i. Avoiding the impact altogether by not taking the action or part of the action.

      ii. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts.

      iii. Rectifying the impact by using appropriate technology or by repairing, rehabilitating or restoring the affected environment.

      iv. Reducing or eliminating the impact over time by preservation and maintenance operations.

      v. Compensating for the impact by replacing, enhancing or providing substitute resources or environments.

      vi. Monitoring the impact and compensation projects and taking appropriate corrective measures.

   c. In accordance with WAC 173-26-221(2)(c)(iii)(C), if inventories of critical salt water habitats have not been completed, overwater and nearshore developments in marine waters designated as FWHCAs may not be approved without an inventory of the site and adjacent shoreline parcels to assess the presence of these habitats and their functions. The methods and extent of the inventory shall be consistent with accepted

research methodology, in consultation with Department of Ecology technical assistance materials.

d. Public docks and docks serving five or more single-family residences, piers, bulkheads, bridges, fill, floats, jetties, utility crossings, lifts, stairs, ramps, and other human-made structures .... (N/A)

e. When feasible, public access and ecological restoration shall be incorporated into publicly financed projects.

2. Additional Standards for Docks.

a. Private, noncommercial docks and associated piers and floats for individual residential use, or for community use by the owners of no more than four adjacent or nearby residences, will be permitted over critical salt and fresh water habitats if the application complies with the applicable federal and state regulations and shows that:

i. Avoidance of impacts to critical salt and fresh water habitats by an alternative alignment or location is not feasible; and

ii. The project, including any required mitigation, will result in no net loss of ecological functions associated with critical salt water habitat.

SJCC 18.50.190 Boating facilities (including docks, piers, and recreational floats).

Notwithstanding any other provision of this code, all docks, floats, piers or other moorage structures in village and hamlet activity centers, including any breakwater attendant to such moorage structures, except those regulated under subsection (G) of this section (residential docks) shall be prohibited. This provision shall not affect the ability of an applicant to obtain required approvals to repair, replace, enhance, modify, or enlarge any existing dock, float, pier or other moorage structure in a manner consistent with existing law.

A. Exemptions. Docks, as specified in SJCC 18.50.020(F), are exempt from the requirement for a shoreline substantial development permit pursuant to RCW 90.58.030(3)(e)(vii) and WAC 173-27-040(2)(h).

B. General Regulations.

1. Boating facilities shall be designed to minimize adverse impacts on marine life and the shore process corridor and its operating systems.

2. Boating facilities shall be designed to make use of the natural site configuration to the greatest possible degree.

3. All boating facilities shall comply with the design criteria established by the State Department of Fish and Wildlife relative to disruption of currents, restrictions of tidal prisms, flushing characteristics, and fish passage to the extent that those criteria are consistent with protection of the shore process corridor and its operating systems.

4. Areas with poor flushing action shall not be considered for overnight or long term moorage facilities.

5. In general, only one form of moorage or other structure for boat access to the water shall be allowed on a single parcel: a dock or a marine railway or a boat launch ramp may be permitted subject to the applicable provisions of this code. (A mooring buoy may be allowed in conjunction with another form of moorage.) However, multiple forms of moorage or other structures for boat access to the water may be allowed on a single parcel if:
   a. Each form of boat access to water serves a public or commercial recreational use, provides public access, is a part of a marina facility, or serves an historic camp or historic resort; or
   b. The location proposed for multiple boat access structures is common area owned by or dedicated by easement to the joint use of the owners of at least 10 waterfront parcels.
6. Structures on piers and docks shall be prohibited, except as provided for marinas in subsection (H) of this section.

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

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

D. Regulations – General Design and Construction Standards.

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

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

E. Regulations – Joint-Use Community Piers, Docks, and Floats.[4]

...

G. Regulations – Residential Docks.

1. New Shoreline Subdivisions. New subdivisions with shoreline frontage shall be required to provide community docks rather than individual, private docks, if any docks are proposed, as set forth in subsection (E) of this section.
2. Size and Dimensions of Docks, Piers, and Floats.
   a. The maximum dimensions for a dock (including the pier, ramp, and float) associated with a single-family residence shall not exceed 700 total square feet in area. In addition, the length of the dock (including the pier, ramp, and float) may not extend more than 115 feet in length seaward of the ordinary high water mark. Docks exceeding these dimensions may only be authorized by variance.
   b. The maximum dimensions for a joint-use dock (including the pier, ramp, and float) associated with two single-family residences shall not exceed 1,400 square feet in area. In addition, the length of the dock (including the pier, ramp, and float) may not extend more than 200 feet in length seaward of the ordinary high water mark. Docks exceeding these dimensions may only be authorized by variance.

[4] SJCC 18.50.190.E does not apply because the proposal is a private joint use dock shared by two parcels rather than a community facility.

c. The maximum dimensions for a joint-use community dock (including the pier, ramp, and float) associated with more than two single-family residences shall not exceed 2,000 square feet in total area. In addition, the length of the dock (including the pier, ramp, and float) may not extend more than 300 feet in length seaward of the ordinary high water mark. If a variance is granted to allow a dock exceeding these dimensions, its construction may only be authorized subject to the regulations for a marina.

d. Maximum length and width of a ramp, pier or dock shall be the minimum necessary to accomplish moorage for the intended boating use.

3. Side Yard Setbacks. Docks shall be set back a minimum of 10 feet from side property lines. However, a joint use community dock may be located adjacent to or upon a side property line when mutually agreed to by contract or by covenant with the owners of the adjacent property. A copy of such covenant or contract must be recorded with the County auditor and filed with the approved permit to run with the title to both properties involved.

4. Development of a dock on a lot intended for single-family residential purposes shall require a shoreline substantial development permit or a statement of exemption issued by the County.

5. Applications for nonexempt docks and piers associated with single-family residences shall not be approved until:

a. It can be shown by the applicant that existing facilities are not adequate or feasible for use;

b. Alternative moorage is not adequate or feasible; and

c. The applicant shall have the burden of providing the information requested for in subsections (A) and (B) of this section, and shall provide this information in a manner prescribed by the administrator.

K. Regulations by Environment.

1. Urban. Marinas, marine railways, docks, and boat launches shall be permitted in the urban environment subject to the policies and regulations of this SMP.

2. Rural. Same as urban.

3. Rural Residential and Rural Farm-Forest. Boat launches, marine railways, and boathouses associated with them may be allowed as conditional uses only. Other boating facilities serving single-family residences, and community docks, shall be permitted in these environments subject to the policies and regulations of this SMP. Marinas shall not be permitted; however, the expansion or alteration of a marina legally established prior to the effective date of this code may be allowed subject to the policies and regulations of this SMP.

4. Conservancy. Boat launches, marine railways, and boathouses associated with them, may be allowed as conditional uses only. Other boating facilities serving single-family residences and community docks shall be permitted in these environments subject to the policies and regulations of this SMP. Marinas shall not be permitted.

5. Natural. Marinas, boat launches, docks, boathouses, and marine railways are prohibited in the natural environment.
6. Aquatic. Marina facilities, docks, and boat launches which are shoreline dependent shall be permitted in the aquatic environment subject to the policies and regulations of this SMP and to the regulations by environment applicable to the abutting shoreline area. Where a proposed boating facility abuts more than one shoreline environment, the policies and regulations of the most restrictive abutting environment shall govern.

G. Regulations – Float Plane Facilities. (See the definition of "float plane" in Chapter 18.20 SJCC.)

1. Use of docks for scheduled commercial float plane service shall be allowed only in public or private marinas or established port areas and shall be subject to conditional use permit for float plane use.
2. Use of docks for regular float plane access or moorage shall be allowed only at public or private marinas or private community docks and shall be subject to a shoreline conditional use permit for float plane use.[5]
3. Any shoreline conditional use permit for float plane use shall specify:
   a. Taxiing patterns to be used by float planes that will minimize noise impacts on area residents and wildlife and minimize interference with navigation and moorage;
   b. Fuel spill and oil spill clean-up materials and firefighting equipment commensurate with the size of the facility and use by float planes; and
   c. Hours of the day in which float plane access is allowed.
4. Float plane access shall be prohibited at County road ends, County parks, and at fresh water shorelines at the point where public shoreline access exists.

SJCC18.50.340 Transportation facilities

A. Regulations – General.

1. Transportation facilities located in shoreline areas must be designed and maintained to prevent erosion and to permit the natural movement of surface water.
2. The filling of wetlands for the construction of transportation facilities is not permitted unless it can be clearly shown that no feasible alternative exists.
3. All overburden, debris, and other waste material resulting from the construction of transportation facilities shall be disposed of in a fashion which will prevent their entry into any water body.
4. Excess construction materials shall be removed from the shoreline immediately following completion of the construction project.

[5] SJCC 18.20.180 R: "Regular use," for the purposes of SJCC 18.50.190(C)(8) and 18.50.340(G), means a pattern of use that is intensive and sustained, including, but not limited to, daily commuter use.

5. Where appropriate, provisions for pedestrian access to or along the water shall be included in the plans for all new public transportation facilities.
6. Commercial watercraft and seaplane operations at public access points require a substantial development permit.

...

G. Regulations – Float Plane Facilities. (See the definition of "float plane" in Chapter 18.20 SJCC.)

1. Use of docks for scheduled commercial float plane service shall be allowed only in public or private marinas or established port areas and shall be subject to conditional use permit for float plane use.
2. Use of docks for regular float plane access or moorage shall be allowed only at public or private marinas or private community docks and shall be subject to a shoreline conditional use permit for float plane use.
3. Any shoreline conditional use permit for float plane use shall specify:
   a. Taxiing patterns to be used by float planes that will minimize noise impacts on area residents and wildlife and minimize interference with navigation and moorage;
   b. Fuel spill and oil spill clean-up materials and firefighting equipment commensurate with the size of the facility and use by float planes; and
   c. Hours of the day in which float plane access is allowed.
4. Float plane access shall be prohibited at County road ends, County parks, and at fresh water shorelines at the point where public shoreline access exists.

Conclusions Based on Findings

1. Whether the float plane is appropriately included in the joint use dock proposal is a threshold question that must be addressed first. There is agreement among all parties that the float plane use patterns proposed in the application - periodic, irregular, and not commercial - do not trigger evaluation SJCC 18.50.340 (Transportation). The only current regulations that address non-commercial, periodic moorage of float planes is the boating facilities provisions, which regulate the moorage and access facilities, not the vehicles specifically. The question of whether future owners would also have float planes, as it relates to the sizing of the dock, is irrelevant. It is true in every land use application that applicants can sell property after obtaining permit approvals. The number and size of boats owned by a given property owner commonly changes overtime. The code requires investigation of the proposed use and does not speak to the potential needs of future owners. Moorage of the float plane is appropriately considered as part of the joint dock intended use. *Findings 1, 2, 3, 4, 5, 8, 9, 10, 21, 22, 23, 24, 25, 27, 28, 33, and 34.*

2. As conditioned, the proposed moorage facility would be consistent with the Shoreline Management Act (SMA). The policy of the SMA, as set forth in RCW 90.58.020, is to "provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses." This policy "contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto." *RCW 90.58.020*. Pursuant to the County's Shoreline Master Program, moorage facilities are allowed in both the Conservancy and Aquatic shoreline environments. Compliance with the conditions imposed herein, the mitigation measures imposed in the MDNS, the approved HPA, and the Corps Letter of Permission would ensure that adverse effects to the waters of the state and to federally and locally protected species and habitats would be avoided. *Findings 1, 4, 5, 6, 7, 8, 13, 15, 16, 17, 18, 21, 22, 23, 24, 25, and 34.*

3. The proposal satisfies applicable Shoreline Master Program criteria as follows. The proposed multi-user dock would remove the existing marine railway system and replace it and the earlier approved buoy as the only form of moorage allowed for both subject parcels. The proposed project location at the rocky point would ensure the facility is located in the deepest possible water, would utilize existing shore access stairs, and would minimize sediment disturbance during construction. The project location is not known to have poor flushing action, and the proposed dock site is located outside of a drift cell and is not on a feeder bluff. This placement would also minimize visual disruption of the existing view of the shoreline. The proposed dock would not interfere with navigation, because the channel is more than 1,600 feet wide. Approval would result in construction of a third dock on the north side of Westcott Bay, and would prevent a second individual dock on the other parcel. There would be no affect to public shoreline access, as the shoreline is private property. Impacts to the shoreline environment would be avoided and minimized through implementation of the measures identified in Finding 7, as well as those imposed in the various state and federal approvals. The maximum height of the dock would be 18 feet above MLLW and no structures are proposed on the dock. Conditions would ensure compliance with the general design and construction standards at SJCC 18.50.190.D; however, the dock was designed to meet these standards and the residential dock standards at SJCC 18.50.190.G.2. The size of the float was selected to serve the three vessels in question with minimal excess space as a safety measure for difficult weather conditions. No new bank disturbance, pathways, significant vegetation removal, lighting, signage, or commercial overnight moorage would result. A condition of approval would ensure protection of cultural and archeological resources through implementation of an inadvertent discovery plan. Presently there is no significant kelp or eelgrass in the project area. The record submitted demonstrates that, with conditions, the project would result in no net loss of shoreline ecological functions. *Findings 1, 2, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 21, 22, 32, 33, and 34.*

4. Regarding the requirement to show that existing facilities are not adequate or feasible, the submitted materials demonstrate the following. It is not possible to expand or alter the

existing marine railway system, nor the previously approved mooring buoy, to provide moorage for more than one boat. Buoy storage, which is not feasible for the float plane, would require access by dinghy, which would necessitate additional structure construction on the shoreline for dinghy storage and would result in dinghy impacts to the substrate in lower tides. The Applicants adequately demonstrated that there is no commercial accommodation available for the three vessels in question. There are communications from all of the potential commercial moorage facilities on San Juan Island in the record with negative responses to the Applicants' inquiries. The applicable SMP boating facilities provisions do not require the Applicants to demonstrate that commercial accommodation is not available for each vessel individually. Friday Harbor was the only marina that could likely accommodate both boats, but it does not offer monthly slip rentals in the high demand season, which is the time the application indicates most of the proposed use is intended. No commercial facility can accommodate the float plane. The SMP does not mandate that an applicant for joint use dock must show that owners of other private docks in the vicinity cannot or will not expand those off-site private facilities. Condition J of the Hayhoe/Pigott dock approval does not mandate the instant Applicants' use of that facility. The record submitted shows that existing facilities are not adequate or feasible to serve the intended purpose. *Findings 1, 4, 8, 9, 10, 11, 21, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, and 34.*

5. Notice and other procedural requirements were performed consistent with the requirements of SJCC 18.80. Compliance with 18.60 would be ensured through the County building permit and inspection processes. The proposal was reviewed for compliance with SEPA and an MDNS was issued. Compliance with adopted regulations shows compliance with applicable Comprehensive Plan goals and policies. *Findings 1, 15, 16, 17, 18, 19, 20, 21, 22, and 27.*

DECISION

Based on the preceding findings and conclusions, the requested shoreline substantial development permit to authorize the construction of the proposed joint use dock for storage of boats and a float plane on two adjacent lots at 1713 White Point Road in Westcott Bay is APPROVED subject to the following conditions applicable to the Applicants, agent(s), and successor(s) in interest:

1. The instant approval allows the construction of a pier, ramp, and float as shown in the drawings at Exhibit 9.

2. Commercial overnight accommodations are prohibited on the moorage facility for the life of the joint dock use.

3. Use of the dock for regular float plane access and moorage as defined in SJCC 18.20.180 is prohibited.

4. Pilings must be structurally sound prior to placement in the water.

5. Chemically treated piles, floats or other structural members in direct contact with the water shall comply with state and federal regulations.

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

7. All floats shall include stops to keep the bottom off tidelands.

8. When plastics or other non-biodegradable materials are used in a float, pier or dock construction, full containment features are required.

9. Overhead wiring and plumbing are prohibited. Other structures on piers, ramps and floats shall be limited to three feet in height.

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

11. Materials used in dock construction shall be of a color and finish that will blend visually with the background. If metal is used it must be treated to comply with this requirement.

12. All debris entering the water or shoreline area shall be removed immediately and disposed of in a legal manner.

13. The float shall be secured with anchored cables rather than pilings.

14. The conditions of the MDNS shall be adhered to:
    a. The proposal shall maximize light penetration (thereby avoiding impacts caused by shading) with deck grating, float orientation and minimized size.
    b. BMPs shall prevent erosion and sediments from entering the marine waters.
    c. Equipment used for installation of the proposal shall be maintained to be leak-free while on the site.
    d. During dock construction, equipment engines shall not be idled unnecessarily.
    e. Dock components shall be built with materials suitable for kelp attachment and remain year-round to allow growth/attachment of kelp and filter-feeding organisms.
    f. Comply with all applicable state, federal and San Juan County codes.

15. The Applicants shall prepare and submit to the Department an inadvertent discovery plan for review and approval prior to commencement of construction. The inadvertent discovery plan shall, at a minimum, require all work to cease in the event that items of archeological or historical value are discovered during construction.

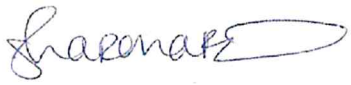
16. Development authorized by this permit shall commence within two years of the date of approval and shall be substantially complete within five years or the permit shall become null and void.

17. The Applicants shall record a deed restriction that provides for access to and joint use of the dock by the current owner and successor(s) in interest of Tax Parcels 462334006 and 462334005, which tax parcels are located along the shoreline of Westcott Bay, San Juan Island. The Applicants shall submit a copy of the recorded deed restriction to the Department of Community Development, which deed restriction shall be substantially in the form attached to this condition. The owners of both tax parcels shall abide by the terms and conditions of the recorded deed restriction. Joint use and access to the dock shall be automatically conferred on the successor(s) in interest of Tax Parcels 462334006 and 462334005. In the event agreement on reasonable terms and conditions for use cannot be reached or otherwise resolved, or in the event the owner of Tax Parcel 462334006 (the Applicants) declare by action or deed that joint use is no longer available, this permit shall immediately be deemed rescinded after notice and an opportunity to cure is provided by the County, and the dock shall be removed from the shoreline.

18. Immediately after construction is completed, the Applicants shall request that Community Development and Planning perform an inspection.

19. Failure to comply with any conditions of this permit may result in its revocation.

Decided March 10, 2016.

By: 

Sharon A. Rice
San Juan County Hearing Examiner

Effective Date, Appeal Right, and Valuation Notices

Hearing examiner decisions become effective when mailed or such later date in accordance with the laws and ordinance requirements governing the matter under consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be subject to review and approval by the Washington Department of Ecology pursuant to RCW 90.58.140, WAC 173-27-130 and SJCC 18.80.110.

This land use decision is final and in accordance with Section 3.70 of the San Juan County Charter. Such decisions are not subject to administrative appeal to the San Juan County Council. See also, SJCC 2.22.100.

Depending on the subject matter, this decision may be appealable to the San Juan County Superior Court or to the Washington State Shorelines Hearings Board. State law provides short deadlines and strict procedures for appeals and failure to timely comply with filing and service

requirements may result in dismissal of the appeal. See RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to promptly review appeal deadlines and procedural requirements and consult with a private attorney.

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