

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

Applicant: David Milne  
18727 114<sup>th</sup> Pl SE  
Snohomish, WA 98290

Cecil Accurso  
18727 114<sup>th</sup> Pl. SE  
Turlock, CA 95380

Agent Jeff Otis  
393 Bobbyann Road  
Eastsound, WA 98245

File No.: PSJ000-12-0007

Request: Shoreline Substantial Development Permit

Parcel No: 152950043

Location: 1047 Chinook Way, Center Island

Summary of Proposal: Joint Use Dock

Shoreline Designation: Rural Residential

Hearing Date: January 9, 2013

Application Policies and Regulations: Shoreline Master Program

Decision: Approved subject to conditions.

S.J.C. COMMUNITY

JAN 29 2013

DEVELOPMENT & PLANNING

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

3 Phil Olbrechts, Hearing Examiner

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RE: David Milne and Ceil Accurso Shoreline Substantial Development Permit (PSJ000-12-0007)	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION.</b>
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8 **INTRODUCTION**

9 The Applicants have applied for approval of a Shoreline Substantial Development  
10 Permit to build a joint use dock on Center Island. The dock would serve two lots by  
11 two different owners. The application is approved subject to conditions.

12 **TESTIMONY**

13 Lee McEnergy stated the application is to build a dock that will be shared by two neighbors. The  
14 properties are in a subdivision that has a community dock; however, the community dock  
15 cannot support every lot in the subdivision. She submitted a HPA and a letter from a  
16 geotechnical engineer (exhibits 5 and 8). The dock is the size of a single-user dock, thus it is  
17 relatively small. Staff recommends approval.

18 Mr. Otis noted that the currents are very strong along the shore in this area, thus pollutants will  
19 be flushed away. Eelgrass will not be impacted because it is located at least 70 feet away from  
20 the dock. There is kelp throughout the site. In order to minimize the impacts to the kelp, the  
21 dock will be built at a north-south orientation to create minimal shading. The kelp will not  
22 grow as fast, but the actual kelp numbers will not be lowered.

23 **EXHIBITS**

- 24 Exhibit 1 Staff Report  
25 Exhibit 2 Application w/ narrative outlining proposal  
Exhibit 3 Diving Survey  
Exhibit 4 Joint-Use Declaration  
Exhibit 5 8/20/12 Geotech Report  
Exhibit 6 12/11/12 Dept. of Army letter

1 Exhibit 7 12/21/12 Shannon-Wilson Kelp Assessment

2 Exhibit 8 Hydraulic Permit Approval

3 Exhibit 9 Drawings, site diagrams w/ aerials

4  
5 **FINDINGS OF FACT**

6 **Procedural:**

7 1. Applicant. The Applicants are David Milne (owner of Lot 43) and Ceil Accurso (owner of Lot 44).

8 2. Hearing. The Hearing Examiner conducted a hearing on the subject  
9 application at 10:00 am on January 9, 2013.

10 **Substantive:**

11 1. Site and Proposal Description. The Applicants propose to construct a joint use  
12 dock on lot 43, to be shared with lot 44, on Center Island. The proposed design is  
13 depicted in a series of design drawings in Ex. 2 and the proposal is approved as limited  
14 to this design. The dock would have a 5' x 24' pier, a 3'8" x 44' ramp and a 7' x 60'  
15 float. The area of the dock would be 653 square feet and 115' in length, as measured  
16 from the ordinary high water mark. Stairs on the Milne property would provide access  
to the dock, if a separate permit is approved for their placement (see PSJ000-12-0016).  
The proposal is conditioned to serve as the only source of moorage for Lots 43 and 44.  
Both Lots 43 and 44 are each developed with a single-family residence.

17 4. Characteristics of the Area. Aerial photographs, Ex. 3, show the proposed  
18 dock to be located in an area characterized by rural residential development. An  
existing dock is located within view to the north east.

19 5. Adverse Impacts of Proposed Use. There are no significant adverse  
20 impacts associated with the proposal. A Determination of Non-significance was  
21 issued for the proposal on September 19, 2012. No comments were received  
regarding the DNS.

22 There is no evidence of impacts to littoral drift because the site is not within a drift  
23 sector. Water quality will not be impacted because it is not located in a protected  
24 location so water circulation is active. A marine habitat survey was submitted with  
the application that indicated that no eel grass is present in the immediate vicinity of  
25 the dock expansion. The survey showed laminaria, a kind of kelp so orientation to  
minimize shading and surface grating are proposed to mitigate any potential impacts.  
The Applicant's provided a biological assessment, Ex. 5, of a larger joint use dock  
(called Haugen dock) also located over laminaria on Center Island. As with this

1 proposal, the Haugen dock was grated and oriented in a north-south direction to  
2 minimize shading impacts and like this proposal the other dock also benefited from  
3 significant flushing action. The biological assessment concluded that the dock would  
4 not adversely impact laminaria growth. Those conclusions can be credibly applied to  
5 this application given the similarities between the two proposals. A second biological  
6 assessment provided by the Applicants, Ex. 7, specifically determined that the  
7 biological assessment conclusions of the Haugen dock are applicable to the subject  
8 proposal because they both involve the same site conditions and mitigation measures.  
9 The proposed dock is not expected to interfere with navigation along the shoreline as  
10 the size of the dock meets the dimensional regulations and is not located within the  
11 navigation channel. In addition, the proposal is not expected to substantially interfere  
12 with scenic views as there are already docks in the vicinity nor is it expected to  
13 impede public access to the shoreline. Aesthetically, the proposed dock will be  
14 constructed of wood which will blend visually with the background. The ramp will  
15 be made of aluminum and the approval should be conditioned to require that the  
16 aluminum ramp be treated to blend visually with the background. This may require  
17 that metal parts be painted.

11 6. Existing and Alternative Moorage. There is no reasonably available alternative  
12 moorage. Moorage on Center Island is either by private dock or community dock.  
13 The community dock accommodates boats up to 24'. Milne has a larger boat. The  
14 community docks do not reserve space and are full in summer. Alternative moorage  
15 would be a buoy which, in this location, is not feasible. The rocky and steep  
16 shoreline, as depicted in the photographs of the site, Ex. 3, do not allow for the  
17 beaching of dinghies that would serve as transport to moorage buoys.

## 18 CONCLUSIONS OF LAW

### 19 **Procedural:**

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

### 21 **Substantive:**

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

23 3. Permit Review Criteria. SJCC 18.50.190(K)(3) permits docks serving  
24 single family homes in the Rural Residential shoreline designation subject to the  
25 policies and regulations of the SMP. SJCC 18.50.190(G)(4) requires a shoreline  
substantial development permit for development of docks on lots intended for single-  
family development unless exempt. No exemptions apply to this project. SJCC  
18.80.110(H) establishes the criteria for approval of shoreline substantial  
development permits. The criteria include the policies of the Shoreline Management

1 Act (Chapter 90.58 RCW), the policies and use regulations of the San Juan County  
2 Shoreline Master Program, and the requirements of the San Juan Municipal Code and  
3 Comprehensive Plan. As noted in SJCC 18.50.010(A), Element 3 of the San Juan  
4 County Comprehensive Plan comprises the policies of the San Juan County Shoreline  
5 Master Program. The applicable policies and regulations are quoted in italics below  
6 and applied through conclusions of law.

7 **RCW 90.58.020 Use Preferences**

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

15 4. As determined in Finding of Fact No. 5, the proposal will not interfere  
16 with navigation, there are no significant adverse impacts associated with the proposal  
17 and as conditioned the proposal will prevent any further boat moorage construction  
18 for the subject two parcels. For all these reasons the proposal is in the public interest  
19 and is consistent with the policy

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

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

22 5. The statewide interest is protected. As noted above, the project minimizes  
23 environmental impacts through its design, location and restriction on the two subject  
24 parcels' opportunity to develop their own individual docks. As a result, it should  
25 insure shoreline development and planning in a coordinated manner while promoting  
and enhancing the public interest and protecting private property rights.

**RCW 90.58.020(2)**

*Preserve the natural character of the shoreline;*

6. The project minimizes environmental impacts through its design, location  
and restriction on the two subject parcels' opportunity to develop their own individual  
docks. As a result, the natural character of the shoreline should be preserved.

**RCW 90.58.020(3)**

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

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

2 7. The proposed project is a joint use dock with no significant adverse  
3 impacts, which will eliminate further dock development on two parcels.

4 **RCW 90.58.020(4)**

*Protect the resources and ecology of the shoreline;*

5 8. The project minimizes adverse impacts through its design, location and  
6 future boat moorage restrictions. As a result, the resources and ecology of the  
7 shoreline should be adequately protected.

8 **RCW 90.58.020(5)**

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

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

11 **RCW 90.58.020(6)**

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

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

15 **San Juan County Code Regulations**

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

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

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

21 12. The dock is designed to be located as far from the eelgrass of the site as  
22 possible while also providing for a north-south orientation to minimize shading  
23 impacts to laminaria. Given these factors, the dock has been designed to make use of  
the natural site configuration to the greatest possible degree.

24 **SJCC 18.50.190(B)(3):** *All boating facilities shall comply with the design criteria  
25 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.*

1 13. As noted in the environmental checklist, Ex. 2, hydraulic permit approval  
2 from the Washington State Department of Fish and Wildlife (“WDFW”) is required  
3 for the proposal and in fact has already been acquired as evidenced by Ex. 8. In order  
4 to acquire hydraulic permit approval, the Applicants had to comply with all  
5 applicable WDFW shoreline regulations.

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

8 14. As determined in Finding of Fact No. 5, the site has good flushing action  
9 due to unimpeded water circulation.

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

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

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

22 15. The proposal is conditioned to serve as the only on-site moorage for Lots  
23 43 and 44.

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

16. No structures are proposed on the dock.

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

17. The proposal is for multiple use.

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

18. The shoreline is too rugged to drag dinghies upon it, so a mooring buoy is  
not feasible.

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

3 19. As stated above, there is no place to beach a dinghy.

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

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

11 **SJCC 18.50.190(C)(5):** *Docks or piers which can reasonably be expected to*  
12 *interfere with the normal erosion-accretion process associated with feeder bluffs*  
13 *shall not be permitted.*

14 21. It was determined in the corresponding stair decision, PSJ000-12-0016,  
15 that the shoreline bank associated with the proposal is not a feeder bluff.

16 **SJCC 18.50.190(C)(6):** *Abandoned or unsafe docks and piers shall be removed or*  
17 *repaired promptly by the owner. Where any such structure constitutes a hazard to the*  
18 *public, the County may, following notice to the owner, abate the structure if the*  
19 *owner fails to do so within a reasonable time and may impose a lien on the related*  
20 *shoreline property in an amount equal to the cost of the abatement.*

21 22. There are no docks or piers present on any of the subject lots.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19           10. *All construction-related debris shall be disposed of properly and legally. Any*  
20           *debris that enters the water shall be removed promptly. Where feasible, floats*  
21           *shall be secured with anchored cables in place of pilings.*

22           11. *Materials used in dock construction shall be of a color and finish that will*  
23           *blend visually with the background.*

24           25.       The proposal complies with all design standards quoted above. As  
25           depicted in the design drawings, Ex. 2, the pilings will be made of steel such that they  
will be structurally sound. The proposal is conditioned to require that any chemical  
treatment of the piles, floats or other structural members of the proposal in direct  
contact with water shall be approved by the Environmental Protection Agency. The  
proposal is conditioned to provide that when plastics or other nonbiodegradable  
materials are used in float, pier, or dock construction, full containment features in the  
design of the structures shall be required. The pilings will extend more than a foot  
above extreme high tide. It is unclear from the design drawings whether stops are  
proposed to keep the floats off the substrate, so that will be made a condition of  
approval. No overhead wiring, plumbing or structures to be placed upon the dock are  
proposed. As proposed in the design drawings, Ex. 2, the proposed pier does not  
extend waterward of the extreme low tide contour. There is no dock lighting

1 proposed. The design drawings propose the use of only to pilings to hold the float in  
2 place and the use in conjunction with four anchors, which appears to minimize the  
3 use of pilings. The proposal is conditioned for the proper disposal of construction  
debris as required by criteria above. The proposal is also conditioned to be of a color  
and finish that will blend visually with the background.

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

7 26. As conditioned.

8 **SJCC 18.50.190(G)(2)(c):** *The maximum dimensions for a joint-use dock (including*  
9 *the pier, ramp, and float) associated with two single-family residences shall not*  
10 *exceed 1,400 square feet in area. In addition, the length of the dock (including the*  
11 *pier, ramp, and float) may not extend more than 200 feet in length seaward of the*  
12 *ordinary high water mark. Docks exceeding these dimensions may only be authorized*  
13 *by variance.*

14 27. The proposed pier expansion meets these criteria, as it will be  
15 approximately 653 square feet and 115 feet in length measured seaward from the  
16 ordinary high water mark.

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

19 28. The application materials, at p. 3 of the narrative, Ex. 2, give a compelling  
20 explanation of the need for the size of the float. However, the need for the length of  
21 the dock facility is not addressed. The proposal will be conditioned for staff to  
22 determine compliance with the criterion quoted above.

23 **SJCC 18.50.190(G)(3):** *Docks shall be set back a minimum of 10 feet from side*  
24 *property lines. However, a joint use community dock may be located adjacent to or*  
25 *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.*

26 29. As depicted in the design drawings, the dock will be set back more than  
27 ten feet from Lot 42, which adjoins the projects site to the northeast. It is unclear  
28 from the record whether the lot lines at issue extend into the tidelands such that the  
29 southern end is more than ten feet from the side property line of Lot 44. The  
30 conditions of approval will require the joint use agreement to include mutual consent  
31 to the location of the dock if the dock is located closer than ten feet to the Lot 44 side  
32 property line.

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

- 3 a. *It can be shown by the applicant that existing facilities are not adequate*  
4 *or feasible for use;*  
5 b. *Alternative moorage is not adequate or feasible; and*  
6 c. *The applicant shall have the burden of providing the information*  
7 *requested for in subsections (a) and (b) of this section, and shall provide*  
8 *this information in a manner prescribed by the administrator.*

9 30. As determined in Finding of Fact No. 6, existing and alternative moorage  
10 is not adequate or feasible for use.

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

13 *General*

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

27 *docks and Piers*

- 28 6. *The use of mooring buoys should be encouraged in preference to either piers or*  
29 *floating docks.*  
30 7. *The use of floating docks should be encouraged in those areas where scenic values*  
31 *are high and where serious conflicts with recreational boaters and fishermen will not*  
32 *be created.*  
33 8. *Piers should be encouraged where there is significant littoral drift and where*  
34 *scenic values will not be impaired.*  
35 9. *In many cases, a combination of fixed and floating structures on the same dock*  
36 *may be desirable given tidal currents, habitat protection and topography, and should*  
37 *be considered.*  
38 10. *The County should attempt to identify those shorelines where littoral drift is a*  
39 *significant factor and where, consequently, fixed piers probably would be preferable*  
40 *to floating docks.*  
41 11. *To spare San Juan County from the so-called "porcupine effect" created by*  
42 *dozens of individual private docks and piers on the same shoreline, preference should*

1 *be given to the joint use of a single structure by several waterfront property owners,*  
2 *as opposed to the construction of several individual structures.*

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

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

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

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

21 31. The shoreline policies above essentially repeat the requirements and  
22 preferences already assessed in the use regulations, specifically that mooring buoys  
23 are generally preferred over docks, that joint-use docks are preferred over single-use  
24 docks and that environmental, aesthetic and use impacts should be minimized. Policy  
25 13 is addressed in the conditions of approval for addressing the joint use agreement.  
As previously discussed, the project design, size and location should minimize  
environmental impacts. For these reasons the proposal is found to be consistent with  
the shoreline policies applicable to this project.

## DECISION

The proposed joint use dock is consistent with all the criteria for a shoreline  
substantial development permit. The proposal is approved subject to the conditions  
listed in the staff report, with the following additional condition:

1. The proposal shall serve as the only on-site moorage for Lots 43 and 44.
2. The dock shall be constructed as proposed in the drawings and other application materials in Exhibit 2, specifically including any depictions in the application narrative; except as modified by the conditions of this decision.
3. Subject to review and approval by County planning staff, a joint use agreement for the proposed dock shall be executed and recorded prior to dock construction. The joint use agreement shall provide exclusive access to the owners Lost 43 and 44 and shall prohibit the construction of any other boat moorage for the lots. The joint use agreement will prohibit recurring waste, oil and gas spills from boats moored at the dock. The joint use agreement shall apply to the Applicants, their successors and

1 assigns. The joint use agreement shall subject the amendment of any terms required  
2 by this decision to the approval of the County.<sup>2</sup> The joint use agreement shall provide  
3 for adequate maintenance of the joint use dock and the associated upland areas. If the  
4 proposed dock is to be located closer than ten feet to the side property line of Lot 44,  
5 the joint use agreement shall contain a provision providing for mutual agreement of  
6 this location.

7 5. All construction-related debris shall be disposed of properly and legally. Any  
8 debris that enters the water shall be removed promptly.

9 6. The Applicants shall demonstrate to the satisfaction of staff that the length and  
10 width of the dock is the minimum necessary to accomplish moorage for their intended  
11 boating use as required by SJCC 18.50.190(G)(2)(d).

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

14 8. Construction shall not be commenced until all relevant appeal periods have run.

15 9. Development under this permit shall commence within two years of the date of  
16 permit approval and shall be substantially complete within five years thereof or the  
17 permit shall become null and void.

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

20 11. The Applicant shall schedule a site inspection with staff upon completion of the  
21 project to verify compliance with this decision and applicable regulations.

22 12. Chemically treated or coated piles, floats, or other structural members in direct  
23 contact with the water shall be as approved by the Environmental Protection Agency.

24 13. When plastics or other nonbiodegradable materials are used in float, pier, or dock  
25 construction, full containment features in the design of the structures shall be required.

14. Materials used in dock construction shall be of a color and finish that will blend  
visually with the background.

Dated this 18th day of January, 2013.



Phil Olbrechts  
County of San Juan Hearing Examiner

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<sup>2</sup> The Examiner is aware that a draft joint use agreement is included in Exhibit 4. However, it is unclear whether staff have reviewed and approved the contents of the agreement. Further, the joint use agreement does not prohibit the construction of any alternative boat moorage, which is one of the primary benefits of joint use from a shoreline management standpoint and an important reason why the proposal was found to not create any adverse aesthetic impacts. The reference to "exclusive" use in paragraph 2 of the joint use agreement can easily be interpreted as granting the property owners exclusive rights to the joint dock, as opposed to requiring that the dock is to serve as their only boat moorage.

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**Right of Appeal**

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

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

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

**Change in Valuation**

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