

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

S.J.C. COMMUNITY

Applicant: David and Sylvia Kan
4120 Rancho Exultant Drive
Rancho Palo Verdes, CA 90274

SEP 28 2012

DEVELOPMENT & PLANNING

Agent: Francine Shaw
Law Offices of Stephanie Johnson O'Day
PO Box 2112
Friday Harbor, WA 98250

File No.: PSJ000-12-0004

Request: Shoreline Substantial Development Permit

Parcel No: 272541003

Location: 203 Langdon Road
Orcas Island

Summary of Proposal: Joint Use Dock for three parcels

Shoreline Designation: Rural Farm Forest

Hearing Date: September 12, 2012

Application Policies and Regulations: San Juan County Shoreline Master Program

Decision: Approved subject to conditions.

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

Phil Olbrechts, Hearing Examiner

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| RE: David and Sylvia Kan | FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION. |
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Shoreline Substantial
Development Permit
(PSJ000-12-0004)

INTRODUCTION

The Applicants have applied for approval of a Shoreline Substantial Development Permit to build a joint use dock on the east shore of East Sound on Orcas Island. The dock would serve three lots, all under the same ownership and only one currently developed with a single-family residence. The application is approved subject to conditions.

TESTIMONY

Julie Thompson, San Juan County planner, noted that there was no alternative moorage available because of the location of the proposed joint use dock, in the middle East Sound, which is separated a long distance from any marinas. Ms. Thompson noted that she had concluded there was no flushing problem because the proposed dock was to be located in a large water area with no impediments to water movement. She also confirmed there was no aquatic vegetation at the site.

Francine Shaw, Applicants' agent, noted that the project had been previously approved in 2002 for single use when regulations were not as strict, but that the Applicant had not had the opportunity to follow through on the permit. The Applicants are now requesting joint use because that is encouraged by the County and the Applicants own two adjoining lots. The dimensions of the dock are still compliant with single use requirements. She noted that the County has recommended that one of the other lots be sold before any proposal to expand the dock. She noted that the property is owned in a trust so it would probably never be sold separately. The property would likely be developed by one of the Applicants' children. Ms. Shaw noted in the *Innskeep* Shoreline Hearings Board decision there were 13 parcels and a massive dock was authorized. She also noted that aesthetics would be improved by the removal of an existing concrete slab.

EXHIBITS

1 All four exhibits identified on the "Exhibits for Kan Dock", attached to the August
29, 2012 staff report, are admitted into the record.

3 FINDINGS OF FACT

4 Procedural:

- 5 1. Applicant. The Applicants are David and Sylvia Kan.
- 6 2. Hearing. The Hearing Examiner conducted a hearing on the subject
application at 10:00 am on September 12, 2012.

7 Substantive:

8 3. Site and Proposal Description. The Applicants are proposing to build a
9 joint-use residential community dock to serve their three waterfront parcels located
10 along the east shore of East Sound on Orcas Island. The affected parcels are
272541003, 272541006 and 272544005. The project site, TPN 272541003, is
11 currently developed with a single family residence. The dock will be set back a
minimum of ten feet from all side property lines. The other two parcels are
12 undeveloped.

13 The parcel upon which the dock will be constructed is developed with a single family
residence. There is no other form of moorage that serves any of the three subject
14 parcels. It is steep and rocky at the water's edge and there are no feeder bluffs present.
The proposed dock location is the only place that the topography of the site permits
15 while avoiding protected shoreline habitat. The upland portions of the lot are heavily
vegetated except for the area around the existing house. The Applicants also own the
16 two parcels to the south, neither of which is developed and both of which are also
heavily vegetated. The two parcels to the south will have a covenant recorded
17 prohibiting any dock use and authorizing use and access to the proposed joint-use
community dock.
18

19 The joint-use community dock will consist of:

- 20 • An 8' wide x 15' long fixed wooden pier that will be anchored to the top of an
existing seawall at its landward edge with embedded bolts. The pier will be anchored
21 to the seafloor at its most seaward limits through the use of two 10" diameter steel
pilings which will be bolted to a single 8' wide x 3' long x 3' deep precast concrete
22 pier footing;
- 23 • A 3' wide x 40' long aluminum ramp/gangway (120 square feet) attached to the
seaward end of the pier running to
- 24 • An 8' wide x 50' long (400 square feet) float with a 26" wide strip of light
penetrating grating located down the center of the float placed perpendicular to the
25 ramp and anchored to the seafloor with
- Two 34' steel support rods connecting both ends of the float to two 4'x4'x 4'
precast concrete float anchors located at MHHW and

- 3/4" diagonal chains connecting the steel support rods for additional support of the float.

The total area of the pier, ramp and float is 640 square feet (including the ramp-float overlap area). The total length of the dock is approximately 57 feet.

4. Characteristics of the Area. The surrounding neighborhood is similar to the Applicants' parcels. There are subdivisions of smaller parcels uphill and across Olga Road which are more developed, but still retain lots of vegetation. There are no other boating facilities within the area.

5. Adverse Impacts of Proposed Use. There are no significant adverse impacts associated with the proposal. A Determination of Non-significance was issued for the proposal on July 25, 2012. No comments were received regarding the DNS.

As to fish and wildlife impacts, a dive survey was conducted in 2001, 2006 and 2012 which shows no eelgrass offshore that will be impacted by the construction of the proposed dock. There are no known protected habitat or species in the area. The Applicants have acquired approval of a hydraulic permit and the permit is conditioned to ensure that there are no significant impacts to fish. The hydraulic permit conditions are adopted for the subject shoreline permit as well. The float portion of the structure will be fully grated with a minimum of 60% open space to ensure that the project creates no adverse shading impacts to macro-algae and the pier portion of the dock is high enough to allow for the passage of sunlight underneath.

No impacts to water quality are anticipated as the pilings are made of steel and the portions made of wood are required by the hydraulic permit to meet best management practices for treated wood in aquatic environments. As testified by Julie Thompson at hearing, the site has good flushing action because it is in a large water area with no impediments to water movement. No adverse impacts to littoral drift are anticipated as according to the staff report the dock will not prevent the circulation of suspended sediment and sand.

The dock will not impede navigation as the dock is relatively short and it is located close to the bank out of the main waterway. The proposal has no impact on public access as it is on private property and does not interfere with any shoreline access points.

The one impact of concern with this application is aesthetic impacts. From what can be determined from the record, there are no other docks visible from the project site. Interrupting an undeveloped shoreline of this type can be considered to have more visual impact than placing a dock within a heavily built environment. The Shoreline Hearings Board has recognized the undeveloped nature of a shoreline as significant in assessing aesthetic impacts. See *Fladseth v. Mason Cy., Northshore Neighbors*, SHB No. 05-026 (2007). The Board has held that development on a relatively undisturbed

1 beach must be only to the degree and kind that will protect the natural processes and
2 scenic values. *May v. Pierce County*, SHB No. 06-031 (2007). The Applicant
3 counters with *Innskeep v. San Juan County*, SHB No. 98-33 (1999), where the
4 Shoreline Hearings Board determined that a dock with much larger dimensions than
5 those of the subject application did not create any significant adverse visual impacts,
6 despite the fact that the dock was to be the only dock placed within Horeshoe Bay.
7 Of significance to the Board was that the bay was characterized by high rocky bluffs.
8 Another important factor was that the dock was to serve as the only dock for six lots.

9 Under the specific facts of this case, it is determined that the proposal will not create
10 any significant adverse aesthetic impacts. There are several reasons for this finding.
11 First, as in the *Innskeep* decision, the shoreline is composed of rocky banks where a
12 dock will not constitute a significant visual intrusion. Second, the dock will
13 exclusively serve three contiguous lots, thus preventing the addition of additional
14 docks in the future. Third, staff is recommending approval and there is no evidence
15 in the record, other than the undeveloped character of the shoreline, that suggests that
16 the proposal is visually incompatible with the surrounding shoreline. Fourth, the
17 dock will be unpainted and remain unpainted in natural earth tones that blend in with
18 the surrounding environment. Fifth, the construction of the dock will involve the
19 removal of a 2' x 4' x 10' existing concrete slab, which will result in an improvement
20 in shoreline aesthetics. For all these reasons, the proposal is not found to be visually
21 intrusive or to create any significant adverse aesthetic or visual impacts. Further, for
22 the foregoing reasons as well as the fact that there are no homes located close to the
23 proposal other than the Applicants' home, it is also determined that the proposal will
24 not create any significant adverse view impacts.

25 The use of this decision as precedent on visual impacts should be used cautiously.
Francine Shaw, Applicants' representative, rightfully argued at hearing that local
decision makers need to follow precedent such as that set by the *Innskeep* decision to
provide for some consistency and predictability in decision making. However, the
Innskeep decision, decided more than twenty years ago, was fractured by a vigorous
dissent and the ruling is at odds with the much more recent 2007 *Fladseth* and *May*
decisions. In this case there was no opposition to the proposal and staff
recommended approval. A well prepared opposition focused on the pristine nature of
the shoreline could well have led to a different ruling. The applicability of *Innskeep*
to uninterrupted San Juan County shorelines remains an open question, to which
applicants should be prepared to fully address in future applications.

6. Existing and Alternative Moorage. There is no alternative moorage reasonably
available to the property. Buoys and mooring floats are not feasible because there is
no location available on the steep and rocky shoreline to beach a dinghy. As to
marinas, the Applicants submitted letters (Exhibit 3) from the two closest marinas,
Rosario Resort and Lieber Haven Resort, both of whom stated permanent yearly
moorage is not available. Other marinas available on Orcas Island are too distant
from the Applicants' property to provide for adequate or feasible moorage in the

1 opinion of staff as testified during the hearing. Beyond the moorage identified in this
2 finding, there is no other form of moorage available to the site.

3 **CONCLUSIONS OF LAW**

4 **Procedural:**

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

9 **Substantive:**

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

12 3. Zoning Designations. The subject property is designated as Rural Farm
13 Forest.

14 4. Permit Review Criteria. SJCC 18.50.190(K)(3) permits docks serving
15 single family homes in the Rural Farm Forest shoreline designation subject to the
16 policies and regulations of the SMP. SJCC 18.50.190(G)(4) requires a shoreline
17 substantial development permit for development of docks on lots intended for single-
18 family development unless exempt. No exemptions apply to this project. SJCC
19 18.80.110(H) establishes the criteria for approval of shoreline substantial
20 development permits. The criteria include the policies of the Shoreline Management
21 Act (Chapter 90.58 RCW), the policies and use regulations of the San Juan County
22 Shoreline Master Program, and the requirements of the San Juan Municipal Code and
23 Comprehensive Plan. As noted in SJCC 18.50.010(A), Element 3 of the San Juan
24 County Comprehensive Plan comprises the policies of the San Juan County Shoreline
25 Master Program. The applicable policies and regulations are quoted in italics below
and applied through conclusions of law.

20 **RCW 90.58.020 Use Preferences**

21 *This policy (Shoreline Management Act policy) is designed to insure the development
22 of these shorelines (of the state) in a manner which, while allowing for limited
23 reduction of rights of the public in the navigable waters, will promote and enhance
24 the public interest. This policy contemplates protecting against adverse effects to the
25 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.*

5. As determined in Finding of Fact No. 5, the proposal will not interfere
with navigation, there are no significant adverse impacts associated with the proposal
and as conditioned the proposal will prevent any further boat moorage construction

1 for the subject three parcels. For all these reasons the proposal is in the public
2 interest and is consistent with the policy

3 **RCW 90.58.020(1)¹**

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

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

10 **RCW 90.58.020(2)**

11 *Preserve the natural character of the shoreline;*

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

16 **RCW 90.58.020(3)**

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

18 8. The proposed project is a multi-party joint use dock with no significant
19 adverse impacts, which will eliminate further dock development on three parcels.

20 **RCW 90.58.020(4)**

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

22 9. The project minimizes adverse impacts through its design, location and
23 future boat moorage restrictions. As a result, the resources and ecology of the
24 shoreline should be adequately protected.

25 **RCW 90.58.020(5)**

Increase public access to publicly owned areas of the shorelines;

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

RCW 90.58.020(6)

¹ 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 *Increase recreational opportunities for the public in the shoreline;*

2 11. The proposed dock will provide increased private recreational
3 opportunities on the shoreline, but as the shoreline area in question is not public, there
4 will be no impact in public use of the shoreline as a result.

4 **San Juan County Code Regulations**

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

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

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

10 13. According to the staff report the dock is located in the only place available
11 on the subject lot that avoids protected shoreline habitat and that is buildable given
12 the topographical limitations of the rocky banks.

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

16 14. Hydraulic permit approval from the Washington State Department of Fish
17 and Wildlife (“WDFW”) has been issued for this project. The applicants will have to
18 abide by the provisions of the permit, which includes any applicable WDFW criteria
19 identified in SJCC 18.50.190(B)(3) upon approval.

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

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

21 **SJCC 18.50.190(B)(5):** *In general, only one form of moorage or other structure for
22 boat access to the water shall be allowed on a single parcel: a dock or a marine
23 railway or a boat launch ramp may be permitted subject to the applicable provisions
24 of this code. (A mooring buoy may be allowed in conjunction with another form of
25 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*

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

4 16. The project will result in no more than one form of moorage or other
5 structure for boat access to the water on the subject parcels.

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

8 17. No structures are proposed.

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

11 18. There are no other boating facilities within the area.

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

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

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

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

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

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

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

22. Staff has concluded that the bluff in question is not a feeder bluff and there
is no evidence to the contrary.

1 **SJCC 18.50.190(C)(6):** *Abandoned or unsafe docks and piers shall be removed or*
2 *repaired promptly by the owner. Where any such structure constitutes a hazard to the*
3 *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.

4 23. There are no docks or piers present on any of the subject lots.

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

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

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

12 25. No such use is being proposed by Applicants.

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

14 26. The proposal complies with all design standards required by SJCC
15 18.50.190(D)(1)-(11) according to the staff report and as detailed at page 11 of the
16 Applicants' application narrative, Exhibit 3. SJCC 18.50.190(D)(4) requires all floats
17 to include stops "*which serve to keep the bottom off tidelands at low tide*". The
18 application narrative notes that stops are not included in the design because there is
19 no chance that the structure will ground at low tide. Staff apparently concur in this
20 position because the staff report finds that the proposed design comply with SJCC
21 18.50.190(D)(4). Given that no stop can "*serve to keep the bottom off tidelands at*
22 *low tide*" under these circumstances, stops will not be required for this proposal.

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

26 27. The proposed joint use agreement in Exhibit 3 addresses maintenance of
27 the dock as required above.

28 **SJCC 18.50.190(G)(2)(c):** *The maximum dimensions for a joint-use community dock*
29 *(including the pier, ramp, and float) associated with more than two single-family*
30 *residences shall not exceed 2,000 square feet in total area. In addition, the length of*
31 *the dock (including the pier, ramp, and float) may not extend more than 300 feet in*
32 *length seaward of the ordinary high water mark. If a variance is granted to allow a*
33 *dock exceeding these dimensions, its construction may only be authorized subject to*
34 *the regulations for a marina.*

1 28. The proposed pier expansion meets these criteria, as it will be
2 approximately 640 square feet and 57 feet in length.

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

5 29. As conditioned.

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

12 30. The dock will be set back a minimum of ten feet from all side property
13 lines.

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

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

22 31. As determined in Finding of Fact No. 6, existing and alternative moorage
23 is not adequate or feasible for use.

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

General

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

1 5. *In providing boating facilities, the capacity of the shoreline site to absorb the impact should be considered.*

2 *docks and Piers*

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

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

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

6 9. *In many cases, a combination of fixed and floating structures on the same dock may be desirable given tidal currents, habitat protection and topography, and should be considered.*

7 10. *The County should attempt to identify those shorelines where littoral drift is a significant factor and where, consequently, fixed piers probably would be preferable to floating docks.*

8 11. *To spare San Juan County from the so-called "porcupine effect" created by dozens of individual private docks and piers on the same shoreline, preference should be given to the joint use of a single structure by several waterfront property owners, as opposed to the construction of several individual structures.*

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

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

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

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

13 27. The shoreline policies above essentially repeat the requirements and preferences already assessed in the use regulations, specifically that mooring buoys are generally preferred over docks, that joint-use docks are preferred over single-use docks and that environmental, aesthetic and use impacts should be minimized. Policy 13 is partially addressed in the proposed joint use agreement and the conditions of approval will require that it be more comprehensively addressed in the joint use agreement. As previously discussed, the project design, size and location should

1 minimize environmental impacts. For these reasons the proposal is found to be
2 consistent with the shoreline policies applicable to this project.

3 DECISION

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

7 1. The Applicants shall obtain all other required permits and abide by the conditions
8 thereof. Specifically, the conditions of the hydraulic permit, Exhibit 4, are adopted as
9 conditions of this decision as those conditions were critical to findings regarding the
10 environmental impacts of the proposal.

11 2. The dock shall be constructed as proposed in the drawings and other application
12 materials in Exhibit 3, specifically including any depictions in the application
13 narrative; except as modified by the conditions of this decision.

14 3. The existing concrete slab shall be removed prior to construction of the dock.

15 4. Subject to review and approval by County planning staff, a joint use agreement
16 for the proposed dock shall be executed and recorded prior to dock construction. The
17 joint use agreement shall provide exclusive access to the owners of each of the three
18 subject lots to the dock and shall prohibit the construction of any other boat moorage
19 for the lots. The joint use agreement will prohibit recurring waste, oil and gas spills
20 from boats moored at the dock. The joint use agreement shall apply to the Applicants,
21 their successors and assigns. The joint use agreement shall subject the amendment of
22 any terms required by this decision to the approval of the County.²

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

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

7. The General Design and Construction Standards of SJCC 18.50.190(D) shall be
met.

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

9. If the Applicants decide to expand the size of the dock, at least one of the vacant
parcels shall be developed with a single-family residence and a new shoreline
substantial development permit shall be required unless authorized by a shoreline
revision.

² The Examiner is aware that a draft joint use agreement is included in Exhibit 3. 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.

1 10. Development under this permit shall commence within two years of the date of
2 permit approval and shall be substantially complete within five years thereof or the
3 permit shall become null and void.

4 11. Failure to comply with any terms or conditions of this permit may result in its
5 revocation.

6 12. The Applicant shall schedule a site inspection with staff upon completion of the
7 project to verify compliance with this decision and applicable regulations.

8 Dated this 27th day of September, 2012.

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Phil Olbrechts

County of San Juan Hearing Examiner

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Right of Appeal

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

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

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

Change in Valuation

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