

**N JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicants:** Larry and Sandra Walker; Bryce Seidl  
PO Box 859  
Shaw, WA 98286

**Agent:** Pauli Gavora  
PO Box 2838  
Friday Harbor, WA 98250

**File No:** HE28-09 (09SJ004)

**Request:** Shoreline Substantial Development Permit (SSDP)

**Location:** 16 Post Office Bay Loop  
Shaw Island

**Parcel Nos:** 263222003 (Walker) and 263222004 (Seidl)

**Summary of Proposal:** This is a request for a joint-use dock approval for Walker and Seidl

**Shoreline Designation:** Rural Farm Forest

**Public Hearing:** After reviewing the report of the Community Development and Planning Department a public hearing was held on July 1, 2009.

**Applicable Policies and Regulations:** RCW 90.58 Shoreline Management Act (SMA)  
SJCC 18.50 Shoreline Master Program (SMP)  
Comprehensive Plan 3.4.B  
SJCC 18.30.160 Marine Habitat

**Decision:** Denial.

**S.J.C. COMMUNITY  
JUL 15 2009  
DEVELOPMENT & PLANNING**

## Findings of Fact

1. This is a request from Larry and Sandra Walker and Bryce Seidl to approve a SSDP for a joint use dock on the west shore of Shaw Island.
2. The site lies on a medium rock bank shoreline of Post Office Bay. The Seidl property is adjacent to and east of the proposed location.
3. In Post Office Bay there are number of buoys, a railway, a moorage float and a dock on the south point of the bay.
4. The Walker shoreline is a rocky medium bank with small gravel beach outside the bay on San Juan Channel. A pedestrian access easement following a deer trail at the top of the bank would allow Seidl to walk to the dock.
5. A revised plan was submitted on April 16, 2009. The proposed dock would consist of a 4 foot x 60 foot pier, a 4 foot x 52 foot aluminum ramp and an 8 foot by 20 foot float anchored to two pilings. The proposed dock would be approximately 125 feet in length and approximately 600 square feet.
6. There is eelgrass within and adjacent to the proposed dock location even with the re-orientation submitted on April 16, 2009. The two pilings supporting the pier/ramp would be located in the eelgrass. Some of the pier and all of the ramp would span eelgrass while a float would be located in a void where no eelgrass has existed in the last nine years.
7. Although the float is not located over eelgrass, it is surrounded by it. There will be an approximate 10 foot separation from the edge of eelgrass. Boats can only access the float by passing through and over the surrounding eelgrass
8. The pier and ramp are 100 % grated and the float is 50% grated. The deck is smaller than a single user size and according to the applicants the north-south orientation mitigates the impact to existing eelgrass.
9. A Hydraulic Project Approval has been granted but is on appeal.
10. The Seidl family are seasonal residents and have used and continue to use a railway system to provide access to the water. Walkers have recently changed to full time residency on Shaw Island. For a number of years the Walkers have used a dinghy/seasonal mooring buoy to access their boat. The Walker mooring buoy has been used approximately since 1983. The Walkers contend that the buoy is unusable approximately eight months of the year because of winter storms.
11. The mooring buoys and mooring floats used by Troxel, Whitfield and Bartig have all been used on a year-round basis from the last 10 to 25 years.

12. The exhibits submitted at the hearing show that the proposed dock would have a significant impact to the view of the Troxel's from their primary residence.
13. Although the applicants submitted evidence that no current moorage was available at Captain's Landing marina, there is no evidence as to whether moorage would be available within a reasonable time frame. The evidence concerning potential future expansion of that marina is too speculative to be relevant to this proposal.
14. A Determination of Non-Significance was issued March 18, 2009. No comments were received.
15. The notice of public hearing was published March 18, 2009. Mailing occurred on March 20, 2009 and the site was posted April 3, 2009.
16. The staff report of April 3, 2009 is incorporated herein by reference as though fully set forth. The analysis and factual statements contained in the staff report are adopted as a finding herein.
17. Any conclusion herein which may be deemed a finding is hereby adopted as such.

#### **Conclusions of Law**

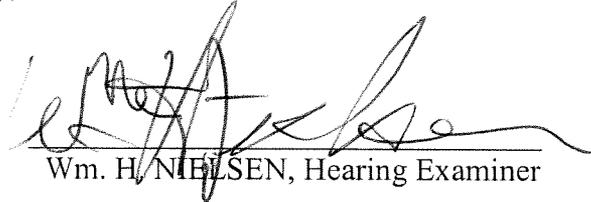
1. The Hearing Examiner has jurisdiction over the persons and subject matter of this proceeding.
2. Proper notice was given in compliance with local and state requirements.
3. The proposal has complied with the requirements of the State Environmental Policy Act.
4. The proposal for a joint use dock requires that the applicants sustain the burden of proof of showing that existing facilities are not adequate or feasible for use and that alternative moorage is not adequate or feasible. SJCC 18.50.190(G)(5). The applicants in this case have failed to sustain their burden of proof.
5. There is a failure to show that moorage at Captain's Landing marina may become available within a reasonable waiting period.
6. The continued use of the railway and mooring buoy on a year-round basis is feasible and adequate.
7. The dock would adversely impact the view of the surrounding neighbors and of the public.

8. The proposal is inconsistent with the marina habitat regulations contained in SJCC 18.30.160. Marine habitat areas include eelgrass beds and the area within 300 feet of those beds for environmentally sensitive area protection standards. The priority mitigation for adverse impacts to habitat functions and values is avoiding the areas. Contrary to the applicants' claim, the avoidance standard does not apply to placing a majority of the project within the eelgrass void, but applies to everything in the surrounding eelgrass area. The placing of pilings and shaded dock facilities have been determined by the county to have an adverse impact to marine habitat. There is no evidence in this case that overcomes the avoidance criterion.
9. Any finding herein which may be deemed a conclusion is hereby adopted as such.

### Decision

The application for a SSDP is denied.

DONE this 15<sup>th</sup> day of July, 2009.



Wm. H. NIELSEN, Hearing Examiner

### Shoreline Appeal

Any appeal of the shoreline substantial development permit shall be made to the Washington State Shoreline Hearings Board pursuant to RCW 90.58.180 and the rules adopted by said hearings board.

S.J.C. COMMUNITY  
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