

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

3                                   Phil Olbrechts, Hearing Examiner

4                   RE: David and Kristi Petersen	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION.</b>
5                   Shoreline Substantial	
6                   Development Permit (PSJ000-09-0001)	

7                                   **INTRODUCTION**

8                   The applicant has applied for approval of a Shoreline Substantial Development  
9                   Permit to replace the framing and decking of an existing pier and to add 98 square  
10                  feet in order to widen a portion of the pier adjacent to a boom used to raise dinghies  
                  from the water. The Examiner approves the permit subject to conditions.

11                                  **TESTIMONY**

12                  Julie Thompson, senior planner, testified that the grating proposed for the dock  
13                  improvements lets a little more light for microalgae growth. The pier is located in the  
14                  most logical place on the property because it is connected to the part of the shoreline  
15                  that is furthest out, and hence the deepest for boat access. The shoreline is not well  
16                  suited for a mooring buoy because the bank is steep and rocky and there is no beach  
17                  to pull a dinghy into. The area is not suited for forage fish habitat according to maps  
                  used by staff. The dimensions of the dock are the minimum to accomplish moorage  
                  because the current dimensions do not allow for sufficient maneuvering space to  
                  safely raise dinghies with the existing boom.

18                  Pauli Gavora, applicant's representative, testified that HPA permit review does not  
19                  impose any design standards. She noted that the project will not involve any  
20                  replacement or addition of pilings, floats, plumbing, lighting or wiring. The replaced  
21                  decking and expansion will involve new wood, so it will have a slight contrast to the  
                  existing structure.

22                                  **EXHIBITS**

S.J.C. COMMUNITY

23                  See Exhibit List attached to January 21, 2010 staff report.

FEB 22 2010

24                                  **FINDINGS OF FACT**

DEVELOPMENT & PLANNING

25                  **Procedural:**

1.                  Applicant. The applicants are David and Kristi Petersen.

1           2.       Hearing. The Hearing Examiner conducted a hearing on the subject  
2 application on February 4, 2010.

3           **Substantive:**

4           3.       Site and Proposal Description. The applicant requests a shoreline  
5 substantial development permit for repair of an existing pier as well as addition of 98  
6 square feet to its footprint. The existing dock has been in place since approximately  
7 1980. The existing piling and concrete bases are in good condition, but the framing  
8 and decking material need to be replaced. The replacement of those pieces will result  
9 in 98 square feet of additional footprint on the pier. The expansion of the dock will  
10 widen it in order to allow for added maneuverability for use of the boom currently  
11 used to raise dinghies out of the water. The length of the dock will not be increased.  
12 The replacement decking will include grating to allow light penetration. All materials  
13 will be brought in from the landward side of the pier, and there will be no in-water  
14 work.

15           The project site has a single-family residence, a garage, and a small bunkhouse. The  
16 shoreline is composed of fairly steep rock banks with a range of slopes from 8-30%.  
17 There is no beach area to enable the beaching of a dinghy. County records show that  
18 the shoreline area is not an area of forage fish habitat.

19           4.       Characteristics of the Area. The property lies is located within Davison  
20 Head, a residential area. The majority of parcels in the neighborhood are developed  
21 for a single-family use.

22           5.       Adverse Impacts of Proposed Use. There are no adverse impacts  
23 discernable from the record. The dock will not be increased in length and the  
24 addition of grating may serve as a net benefit in terms of providing necessary light to  
25 microalgae. The expansion of the area around the boom will provide for safer  
maneuverability. Overall, it appears that the project will have a net positive public  
benefit.

## CONCLUSIONS OF LAW

### Procedural:

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

### Substantive:

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

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

3 4. Compliance with Notice Requirements. City staff advertised the  
4 application in accordance with RCW 90.58.140, WAC 173-27-110 and the San Juan  
5 County Code Sections 18.80 and 18.50. Notice of the Public Hearing and SEPA  
6 Appeal for the project was properly published, posted on-site, and noticed to parties  
7 of record and adjacent property owners, on December 23, 2009, January 13, 2010 (to  
8 change the hearing date) and January 4, 2010. No letters or comments were received  
9 during the comment period.

10 5. Permit Review Criteria. SJCC 18.50.190(G)(4) requires a shoreline  
11 substantial development permit for development of docks on lots intended for single-  
12 family development unless exempt. No exemptions apply to this project. SJCC  
13 18.80.110(H) establishes the criteria for approval of shoreline substantial  
14 development permits. The criteria include the policies of the Shoreline Management  
15 Act (Chapter 90.58 RCW), the policies and use regulations of the San Juan County  
16 Shoreline Master Program, and the requirements of the San Juan Municipal Code and  
17 Comprehensive Plan. As noted in SJCC 18.50.010(A), Element 3 of the San Juan  
18 County Comprehensive Plan comprises the policies of the San Juan County Shoreline  
19 Master Program. The applicable policies and regulations are quoted in italics below  
20 and applied through conclusions of law.

21 **RCW 90.58.020 Use Preferences**

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

6. The project will not interfere with public access to the shoreline since the  
pier will not be increased in length. The public interest will be served by the addition  
of grating, which will provide needed light to microalgae. There will be no in-water  
work to disturb water habitats and there are no adverse impacts associated with the  
project.

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

---

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

2 7. The project will improve environmental impacts by the addition of grating  
3 and no impairment to navigation will occur. The statewide interest is adequately  
4 protected.

4 **RCW 90.58.020(2)**

5 *Preserve the natural character of the shoreline;*

6 8. The project will only involve a nominal expansion and introduce grating,  
7 thereby improving preservation of the natural character of the shoreline.

8 **RCW 90.58.020(3)**

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

10 9. The project provide for greater safety by providing more maneuvering  
11 room for operation of the boom, which is a long term benefit.

12 **RCW 90.58.020(4)**

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

14 10. Grating will provide an overall positive benefit to resources and ecology.

15 **RCW 90.58.020(5)**

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

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

18 **RCW 90.58.020(6)**

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

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

23 **San Juan County Code Regulations**

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

13. There have been no adverse impacts raised by the repair and replacement  
proposed by this project. The replacement decking material will include grating that  
allows light to penetrate, which the existing pier does not.

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

14. The proposed replacement and expansion will not alter the natural site configuration.

**SJCC 18.50.190(B)(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.*

15. An HPA from the Department of Fish and Wildlife has been issued for this project. The applicants will have to abide by the provisions of the HPA, which includes any applicable WDFW criteria identified in SJCC 18.50.190(B)(3) upon approval.

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

16. This project involves the expansion of an existing pier, as encouraged by the criterion.

**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.*

17. Although mooring buoys are preferred, the current dock has been in place since 1980, and the project requests only to repair and replace elements of the existing dock. As such, to tear down the pier and replace it with a mooring buoy would have a greatly increased environmental as well as economic impact. A mooring system also does not work in this area, since there is no beach upon which a dinghy can be landed.

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

18. As stated above, although moorage floats are preferred, the repair and replacement of the pier proposed, are the more desirable actions for this project.

**SJCC 18.50.190(C)(4):** *Every application for a substantial development permit for a dock or pier construction shall be evaluated on the basis of multiple considerations, including but not 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.*

19. There does not appear to be an impact to littoral drift as this location is not in a drift sector. Also, the shoreline in this area is rocky, not sandy, and water circulation will not likely be impacted since the pier is not in the water and there will

1 be no in-water work. The project will also not impact navigation, since the pier will  
2 not be extended in length and there is only a nominal increase in width.

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

6 20. Staff have concluded that the bluff in question is not a feeder bluff and  
7 there is no evidence to the contrary.

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

10 21. The original permit allowed for the boom to raise and lower small  
11 recreational boats from the water. This element will remain and will not be altered by  
12 the proposal.

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

14 22. The proposal complies with all design standards required by SJCC  
15 18.50.190(D)(1)-(11). Most design requirements do not apply since the proposal does  
16 not involve any floats, pilings, extension of pier length, and replacement of materials  
17 in contact with the water, plumbing or lighting. The project will be conditioned on  
18 compliance with SJCC 18.50.190(D)(10). The applicant's representative testified that  
19 the replacement materials will be primarily composed of natural wood, which will  
20 blend naturally with the background as required by SJCC 18.50.190(D)(11).

21 **SJCC 18.50.190(G)(2)(a):** *The maximum dimensions for a dock (including the pier,*  
22 *ramp, and float) associated with a single-family residence shall not exceed 700 total*  
23 *square feet in area. In addition, the length of the dock (including the pier, ramp, and*  
24 *float) may not extend more than 115 feet in length seaward of the ordinary high water*  
25 *mark. Docks exceeding these dimensions may only be authorized by variance.*

26 23. The proposed pier expansion meets these criteria, as it will be  
27 approximately 420 square feet and 36 feet in length.

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

30 24. The current size of the pier was approved by the permit issued in 1980.  
31 The proposed expansion is limited to provide more pier width adjacent to the boom,  
32 which is necessary to safely operate the boom.

33 **SJCC 18.50.190(G)(3):** *Docks shall be set back a minimum of 10 feet from side*  
34 *property lines. However, a joint use community dock may be located adjacent to or*  
35 *upon a side property line when mutually agreed to by contract or by covenant with*

1 the owners of the adjacent property. A copy of such covenant or contract must be  
2 recorded with the County auditor and filed with the approved permit to run with the  
title to both properties involved.

3 25. The 1980 Department of the Army permit shows that the center of the pier  
4 is 70 feet from the east property line and 30 feet from the west property line. As  
such, the criteria of this section are met.

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

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

12 26. The applicant has demonstrated that although the size and use are feasible,  
13 the current state of the pier is not adequate for use, and as such repairs and  
14 replacements need to be made in order to maintain the use of the pier. The proposed  
expansion is necessary in order to provide for safe operation of the boom. Alternative  
moorage would not be feasible, because the pier is already in place, and switching  
uses would be unreasonable. Also, due to the steep and rocky topography, there is no  
shoreline available for beaching a dinghy used in conjunction with mooring buoy.

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

17 *General*

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

*Docks and Piers*

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

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

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

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

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

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

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

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

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

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

20 27. The shoreline policies above essentially repeat the requirements and  
21 preferences already assessed in the use regulations, specifically that mooring buoys  
22 are generally preferred over docks, that joint-use docks are preferred over single-use  
23 docks and that environmental, aesthetic and use impacts should be minimized. As  
24 previously discussed, the project involves the replacement and modest expansion of an  
25 already existing dock in an area where buoy mooring is not practical due to the  
absence of shoreline that can be used to beach dinghies. Environmental impacts are  
improved through the introduction of grating. For these reasons the Examiner finds  
the project to be consistent with the shoreline policies applicable to this project.

**DECISION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

The proposed project 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:

As required by SJCC 18.50.190(D)(10), all construction related materials shall be disposed of properly and legally. Any debris that enters the water shall be removed promptly.

Dated this 22<sup>nd</sup> day of February, 2010.



Phil Olbrechts  
County of San Juan Hearing Examiner

**Right of Appeal**

As governed by RCW 90.58.180, this decision may be appealed to the Washington State Shoreline Hearings Board within 21 days of the date San Juan County files this decision with the Washington State Department of Ecology.