EXHIBIT 17

SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

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STAFF REPORT TO THE HEARING EXAMINER

REPORT DATE:	December 13, 2017
HEARING DATE:	December 27, 2017
TO:	Hearing Examiner
FROM:	Erika Shook, AICP, Community Development Director
RE:	PAPL00-17-0010, Appeal of MDNS for PSJ000-17-0003 TPN 353344008000, 34041103000, 340411005000 57 Island Marble Lane, San Juan Island

APPELLANTS: University of Washington
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APPLICANT: Orca Dreams LLC
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APPLICANT'S AGENT: Law Offices of Stephanie O'Day

SUBMITTED: PAPL000-17-0010 was submitted on October 11, 2017

LOCATION: 57 Island Marble Lane, San Juan Island (TPN# 353344008000, 34041103000, 340411005000)

STANDING TO APPEAL: Staff analysis of standing is provided in italics. Pursuant to SJCC 18.80.140.C.3 appeals to the hearing examiner may be initiated by:

1. The applicant;
   The appellant is not the applicant.
2. Any recipient of the notice of application (see SJCC 18.80.030);
   The University of Washington is adjacent landowner who received notice of application.

3. Any person who submitted written comments to the director concerning the application; and
   The appellant submitted written comments on these permit applications to San Juan County DCD.
4. Any aggrieved person.
   The appellant has standing pursuant to #3 and #4 above.

DECISION BEING APPEALED: Mitigated Determination of Non-Significance for Shoreline Substantial Development Permit PSJ000-17-0003 for a dock and desalination plant issued on October 4, 2017.

STATEMENT OF GROUNDS FOR APPEAL:
Appellants appeal adequacy of the analysis underlying the MDNS issued for the project and the conclusion that the project will not have a probable significant adverse impact on the environment:

1) The UW challenges the procedural adequacy of the County's SEPA review for the applicant's proposal. These grounds include:

   a) Improper geographic scope of potential adverse impacts:

      i) Scope of analysis too narrow

      ii) Applicant fails to identify the surveyed location of the project proximate to the UW False Bay Tidelands

Staff response: *The Biological Assessment dated 10-24-2017 (hereinafter referred to as the "BA", Exhibit 6 to PSJ000-17-0003) by Fairbanks Environmental Services addresses scope of impacts up to 1.34 miles from the project site. Exhibit 10 contains a surveyed location of the project proximate to the UW False Bay tidelands.*

   b) Insufficient characterization about site conditions in the immediate vicinity of the project

      i) Inadequate dive survey data to identify the presence of eelgrass and kelp near the project. Timing of surveys outside prime growing season inconsistent with WDFW recommendations.

      ii) Inadequate description of discharge location for desalination equipment and range of tidal depth in proposed location.

Staff response: *The BA addresses discharge location, range of tidal depths and includes a fourth dive survey consistent with WDFW recommendations.*

   c) Insufficient disclosure of operational impacts resulting from the proposal:

      i) SEPA Checklist limited to temporary construction impacts

Staff response: *The BA on page 16 provides an estimate of boat traffic anticipated to result from the proposed dock – average of two round trips per day in the summer- and provides an analysis of the impacts. Two round trips per day is not significant when compared to the boat traffic that travels along the west side of San Juan Island without limitation, or even just the commercial traffic that travels along the west side of San Juan Island.*

The staff report includes recommendations to address potential operational impacts of the desalination plant, including monitoring, and also recommends monitoring and mitigation plans for eelgrass and macroalgae.

   d) Insufficient analysis of environmental impacts resulting from temporary and long- term impacts

within highly sensitive shoreline environment, including but not limited to:

i) Impacts of desalination equipment on eelgrass, kelp beds, microalgae, forage fish, and migrating salmon.

ii) Impacts of shading from dock, opaque float tubs, and solid moored boats on eelgrass, kelp beds, microalgae, forage fish, and migrating salmon.

iii) Impacts from operation of water craft and dock maintenance on eelgrass, kelp beds, microalgae, forage fish, and migrating salmon.

iv) Impacts to False Bay resulting from changes in currents, wave energy, sediment supply, and pollutants toxins from the dock and boat traffic.

v) Impacts to priority habitat for pinto abalone.

vi) Impacts on Southern Resident Killer Whales ("SRKW") and other direct, indirect, and cumulative impacts associated with increased boats traffic.

vii) Impacts to visual and aesthetics resulting from dock and four boats extending 260 feet.

Staff response: With the exception of impacts to visual and aesthetics, *The Biological Assessment dated 10-24-2017 (hereinafter referred to as the "BA", Exhibit 6 to PSJ000-17-0003) by Fairbanks Environmental Services addresses the SRKW, habitat impacts, pinto abalone and changes to wave energy. The potential impact of discharge of saline brine on pages 39 – 40. The referenced study (Strathman 2009) is attached to this staff report. It includes analysis of several reverse osmosis plants in San Juan County, including analysis of existing impacts. This study includes analysis showing that mixing of currents in the San Juan Islands tend to rapidly reduce salinity. The conclusions of the Biological Assessment indicate that the location of the outfall is located where the tidal currents are relatively strong and will mix the return brine within 2 to 3 feet from the discharge diffuser pipe. The analysis also addresses pooling of saline brine indicating that the slope seafloor slope is sufficient that brine will not pool. San Juan County staff have recommended a condition requiring that the salinity at a distance of 3 feet from the discharge diffuser pipe be limited to no higher than 29 parts per thousand, and that the salinity at a distance of 3 feet from the discharge pipe be monitored. If salinity is higher than 29 parts per thousand at a distance of 3 feet in any one month period, then the facility shall cease operation until modified to maintain salinity of 29 parts per thousand at a distance of 3 feet from the discharge pipe. Reference page 35 of the staff report for PSJ00-017-0003.*

The biological assessment was revised (dated 10-24-2017 and submitted 12-01-2014) to include a fourth dive survey conducted according to WDFW guidelines. The 25 foot buffers from eelgrass together with the proposed operation requirements for the dock contained in the recommended conservation measures on pages 41-43 of the BA are proposed to protect eelgrass beds. Twenty-five (25) foot buffers from eelgrass beds are standard requirements for docks in San Juan County. Because this protection relies on operational standards for boating, San Juan County staff have recommended a condition requiring submittal of a monitoring and mitigation plan to Department of Community Development. The monitoring and mitigation plan must address mitigation in the event that monitoring demonstrates that there are impacts to eelgrass. Reference page 35 of the staff report for PSJ000-17-0003.

The BA on page 16 provides an estimate of boat traffic anticipated to result from the proposed dock – average of two round trips per day in the summer- and provides an analysis of the impacts. Two

round trips per day is not significant when compared to the boat traffic that travels along the west side of San Juan Island without limitation, or even just the commercial traffic that travels along the west side of San Juan Island.

The dock may be visible, but due to the high bank nature of the adjacent properties, it will not block views. In addition, it is proposed to have no lighting fixtures and the float will be removed during winter months. Both of these will mitigate aesthetic and visual impacts. San Juan County staff have recommended a condition of approval of PSJ000-17-0003 that no lighting fixtures be allowed on the dock or pier. The appellants have failed to provide either the code citation or comprehensive plan policy that they propose to be used to exercise SEPA substantive authority related to visual and aesthetic impacts.

e) Insufficient analysis of need for the proposed dock or reasonable alternatives to the proposed dock.

   i) Insufficient analysis of cumulative impacts resulting from approval of first dock to be developed along west San Juan Island between Cape San Juan to Mitchell Bay.

   ii) Insufficient analysis of how Project achieves no net loss to critical habitat and aquatic species in the immediate vicinity of the Project and surrounding areas, including

   False Bay.

Staff response: *The staff report for PSJ00017-0003 on page 22 addresses the needs analysis required by San Juan County code for docks.*

2) Additionally, based on the information disclosed by the Applicant, the Project will result in significant adverse environmental impacts. The UW comment letters in Attachments B-D identify many of these impacts, including, but not limited to, the following:

   a) Disturbance of False Bay Marine Reserve and Ongoing Research: The disturbance on False Bay created by increased boat traffic will significantly adversely impact the marine reserve, affecting ongoing experiments, teaching and research. Additionally, introduction of gas and oil from operation and maintenance of four pleasure craft into this immediate environment will kill embryos and larvae, which are abundant in the spring and summer months in False Bay.

Staff response: *The BA on page 16 provides an estimate of boat traffic anticipated to result from the proposed dock – average of two round trips per day in the summer- and provides an analysis of the impacts. Two round trips per day is not significant when compared to the boat traffic that travels along the west side of San Juan Island without limitation, or even just the commercial traffic that travels along the west side of San Juan Island. Proposed conservation measures in the BA and staff report for PSJ000-17-0003 address spill containment.*

   b) Displacement of Public Property: The cove and pocket beach where the dock is to be located will extend out over state-owned tidelands and waters, at the very end of a bay that has been studied and preserved for over 40 years.

Staff response: *The applicants will be required to obtain permission from Washington State Department of Natural Resources for placement of the dock on state owned tidelands.*

   c) Loss of Eelgrass and Algae: The dock and boats will displace sea grass habitat used by fish, birds, and invertebrates and increase disturbance at the mouth of False Bay. The BA notes large amounts of kelp under the dock footprint. Recent sea grass surveys done by UW and other

researchers show eelgrass at the mouth of False Bay, which at times extends into the pocket bay where the Project will be located. The accuracy of the Applicant's eelgrass surveys are highly suspect, given the time of year when these were completed. Regardless, the grated docks in combination with the solid boats and opaque floats not allow light transmission and will not eliminate impacts to eelgrass and vegetation below and adjacent to the dock. Boat wakes, gas or oil in water, increased turbidity, and prop wash will damage adjacent eelgrass. To the extent that the 25-foot buffer condition is intended to avoid harm to eelgrass resulting from boat maneuvers, there is no plan for monitoring the effectiveness of this proposed mitigation measure.

Staff response: *The biological assessment was revised (dated 10-24-2017 and submitted 12-01-2014) to include a fourth dive survey conducted according to WDFW guidelines. The 25 foot buffers from eelgrass together with the proposed operation requirements for the dock contained in the recommended conservation measures on pages 41-43 of the BA are proposed to protect eelgrass beds. Twenty-five (25) foot buffers from eelgrass beds are standard requirements for docks in San Juan County. Because this protection relies on operational standards for boating, San Juan County staff have recommended a condition requiring submittal of a monitoring and mitigation plan to Department of Community Development. The monitoring and mitigation plan must address mitigation in the event that monitoring demonstrates that there are impacts to eelgrass or macroalgae. Reference page 35 of the staff report for PSJ000-17-0003.*

d) Impact on Pocket Beach: Research has shown that pocket beaches are the most critical habitat to preserve for juvenile chinook salmon and other fishes, including herring and rockfish. This large dock will adversely affect the ability of fish to use the pocket beach for food foraging, and the gas and oil from boat traffic will kill their eggs and embryos, preventing new generations of fish. Many aspects of the Project are likely to alter the character of the pocket beach and thus reduce or eliminate its use by salmon and forage fish; these include changing wave action and currents, increasing or decreasing sediment supply from the uplands, adding pollution or debris from boats.

Staff response: *The BA on pages 9, 15, and 44-49 provides an analysis of likely impacts to forage fish, migrating salmon, and the pocket beach and concludes that impacts will be minimal.*

e) Impact on Marine Birds: The cove is a refuge for marine birds, including harlequin, goldeneye, bufflehead, merganser, black turnstone, black oystercatcher, grebe, loon, and cormorant. Boat traffic will disrupt this critical refuge for marine birds with noise and disturbance of birds landed to eat and rest.

Staff response: *The BA provides an analysis of likely impacts to critical habitat for species concludes that impacts will be minimal.*

f) Negative Impact on Threatened and Endangered species, including SRKW and juvenile chinook: The west side of San Juan Island is a critical feeding ground for the three resident SRKW pods. The increased boat traffic and degraded environment is likely to negatively affect the SRKW and their salmon food source. Noise has been shown to adversely affect SRKW and they currently have four baby whales, which hare more sensitive to sound than the adults.

Staff response: *The BA on page 16 provides an estimate of boat traffic – average of two round trips per day in the summer- and provides an analysis of the impacts to SRKW. Proposed conservation measures would ensure that there is not a significant impact to SRKW.*

g) Displacement of Existing Recreational Use: A large dock with boat traffic would adversely impact the quiet and natural beauty of False Bay and negatively affect the aesthetics. False Bay is a favorite kayaking spot for many San Juan Island residents and visitors to the area. It is one of the few undeveloped shorelines on San Juan Island that is accessible to the public.

Staff response: *The dock may be visible, but due to the high bank nature of the adjacent properties, it will not block views. In addition, it is proposed to have no lighting fixtures and the float will be removed during winter months. Both of these will mitigate aesthetic and visual impacts. San Juan County staff have recommended a condition of approval of PSJ000-17-0003 that no lighting fixtures be allowed on the dock or pier. The appellants have failed to provide either the code citation or comprehensive plan policy that they propose to be used to exercise SEPA substantive authority related to visual and aesthetic impacts.*

Public access is addressed in the staff report to the Hearing Examiner on page 22 of the staff report. The pier itself is located on private tidelands, so it will not interfere with beach walking. The cove is not normally used by recreational power boaters, and does not contain a recognized navigation channel. Kayakers will have access through the area under the pier at low tide, and around the float at high tide.

h) Impact of desalination system on biological resources and water quality: Effluent from the desalination facility will be concentrated and at a higher temperature than ambient seawater at the site. The proposed location for the discharge of brine does not address shallow water conditions occurring at low tides, which are insufficient to dilute the brine and avoid impacts to critical habitat and forage fish.

Staff response: *The BA addresses the potential impact of discharge of saline brine on pages 39 – 40. The referenced study (Strathman 2009) is attached to the staff report as Exhibit 12. It includes analysis of several reverse osmosis plants in San Juan County, including analysis of existing impacts. This study includes analysis showing that mixing of currents in the San Juan Islands tend to rapidly reduce salinity. The conclusions of the Biological Assessment indicate that the location of the outfall is located where the tidal currents are relatively strong and will mix the return brine within 2 to 3 feet from the discharge diffuser pipe. The analysis also addresses pooling of saline brine indicating that the seafloor slope is sufficient that brine will not pool. San Juan County staff have recommended a condition requiring that the salinity at a distance of 3 feet from the discharge diffuser pipe be limited to no higher than 29 parts per thousand, and that the salinity at a distance of 3 feet from the discharge pipe be monitored. If salinity is higher than 29 parts per thousand at a distance of 3 feet, then the facility shall cease operation until modified to maintain salinity of 29 parts per thousand at a distance of 3 feet from the discharge pipe. Monitoring logs shall be submitted to the Department of Community Development. Reference page 35 of the staff report for PSJ000-17-0003.*

i) Impact of damaged docks, boats and floats: Extreme wind and wave events in the Strait of Juan de Fuca occur in the summer, when afternoon westerly winds commonly reach gale force. The Project is exposed to these south-westerly winds. There is a high likelihood that debris, gas, and oil from vessels damaged during high wind and wave events will spill into eelgrass beds, on the pocket beach, and into the False Bay Marine Reserve

Staff response: *The appellant has not provided evidence of extreme wind and wave events during the summer, nor has the appellant provided evidence that these events occur often enough that there is a high likelihood that vessels will be damaged.*

RELIEF SOUGHT:
Due to the probable significant adverse impacts resulting from the proposed action, the UW requests that San Juan County withdraw the MDNS that is the subject of this appeal, issue a Determination of Significance, and conduct an EIS of the Project.

FINDINGS AND CONCLUSIONS:

1. The appeal is timely.
2. The appellants have standing pursuant to SJCC 18.80.140 only if the Hearing Examiner determines that they are "aggrieved".
3. The appellants have not demonstrated that the proposal as mitigated will have a significant adverse environmental impact requiring preparation of an environmental impact statement.

ATTACHMENTS
See Exhibit List for PSJ000-17-0003