

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Harry and Martha Dickenson

Agent Francine Shaw
PO Box 2112
Friday Harbor, WA 98250

File No.: PSJ000-12-0010

Request: Shoreline Substantial Development Permit

Parcel No: 462350021

Location: San Juan Island

Summary of Proposal: Bulkhead

Shoreline Designation: Rural Residential

Hearing Date: 12/12/12

Application Policies and Regulations: San Juan County Shoreline Master Program

Decision: Approved subject to conditions.

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

3 Phil Olbrechts, Hearing Examiner

4 RE: Harry and Martha Dickenson

5 Shoreline Substantial
6 Development Permit
(PSJ000-12-0010)

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND FINAL DECISION.**

7 **INTRODUCTION**

8 The Applicants have applied for approval of a Shoreline Substantial Development
9 Permit to construct a bulkhead to stabilize an eroding bank. The application is
10 approved subject to conditions.

11 **TESTIMONY**

12 Julie Thompson, San Juan County Planner, stated that the Applicants wish to place an
13 80 ft long bulkhead on their property's shoreline. The Applicants believe the wind and
14 wake action along the shoreline is causing bank instability; however, county staff
15 determined that the applicant failed to answer several key questions such as the rate of
erosion. The Applicants did not provide the necessary analysis to receive a staff
recommendation of approval.

16 Francine Shaw, representing the Applicants, testified that the Applicants purchased the
17 property in 1995. Since purchasing the property, the Applicants have attempted to
18 maintain a natural wooded look. The Applicants maintained the wooded area between
19 their home and the waterline when constructing their home. Beginning in the mid-90s,
20 erosion threatened this wooded area. Tree roots are visible along the embankment.
21 Additionally, the claims made by Friends of the San Juans are not specific to this
22 property. Ms. Shaw referenced the subject property site plan, which she noted
23 demonstrates the location of the water frontage, shoreline and house location. She
24 stated that early in the 2000s, the county had issued an RPA with a 50-foot setback,
25 based on the screening that existed at that time, and that the applicants sited and built
their house based on this RPA. When construction began in 2002, the Applicants
noticed that the bank had started to erode. The area where the erosion was occurring
was glacial till, as opposed to bedrock, and that outcroppings of bedrock channeling
water towards the Applicants' shoreline, had combined with waves of increased
velocity to produce what was known as the Venturi Effect, causing serious erosion of at
least 2 ½ feet over the past ten years. Through extrapolation, within 75 years the house
would be only 30 feet from the top of the bank. A bulkhead will protect screening and
prevent the erosion from jeopardizing residential use of the property.

1 The Examiner asked Ms. Shaw if erosion of the land – not the house itself - was viewed
2 as jeopardizing residential use. Ms. Shaw replied that intended residential use included
the yard, not only the house.

3 The Examiner asked Ms. Shaw why no serious erosion was anticipated initially. She
4 stated that according to Mr. Dickenson, there was no erosion noted when he purchased
5 the property in the 1990s, and she suggested that potentially the issue was increased use
of the water, and possibly tourism.

6 Stephanie Johnson O'Day stated that the group, Friends of San Juan, have had a
7 vehement opposition to bulkheads, and that, currently, there were changes being made
8 to the Critical Areas Ordinance, readdressing bulkhead regulation; however, the current
9 application fell under the current CAO.. She noted a prior case, *Woodman v. San Juan*
10 *County*, which addressed similar erosion issues connected to wind and wave action, and
11 indicated the Woodman property position on the San Juan Island map, showing its
12 proximity to the Applicants' property. The Applicants' property is near the entrance to
13 Roche Harbor, with a lot of summer boat action, and winter storm and wave action.
Ms. O'Day referred to a color-coded site plan that they had provided, which illustrates
the ordinary high water mark (OHWM). She also addressed issues that she stated were
of concern to the Friends of San Juan, and noted that the Applicants' property was not
at or near a surf smelt spawning beach nor was it near a herring eel grass area, so there
should be no concern regarding those issue.

14 Mr. Levinson's CV was admitted as Exhibit 16. Mr. Levinson received a Bachelor's
15 degree in Civil Engineering in 1960, and since then has practiced as a Geotechnical
16 Engineer. He has worked in numerous U.S. States and Territories, and in Africa and
17 Asia. He has lived on San Juan since 1988, and since then has performed dozens of
18 jobs as Geotechnical engineer, largely focused on slope stability, foundation and
19 bulkhead design, and evaluation of shorelines. He is considered a soil specialist. He
20 lives on the west side of the island, is familiar with the project, and has visited the site 4
21 or five times, the most recent being yesterday at low tide. Three photographs taken by
22 Mr. Levinson at the shoreline were entered as Exhibits 17A, B and C. Using the
23 photographs as illustration, he described the unusual nature of the site in its geology.
He noted that the 2 ½ foot undercutting noted under the back of the property most likely
doesn't show the full extent of the erosion. The area which was eroded was glacial till,
a substance not easily eroded, and stated that he was concerned with the rapid rate of
erosion. He indicated that photo 17B showed bedrock outcroppings, which feeds the
water toward the shoreline. He describes this as the Venturi Effect. The wind and
waves move the water toward the shore, and as the flow is narrowed it picks up in
velocity creating swirling water moving into the back and removing soil.

24 The Examiner asked M. Levinson if there was significantly more erosion in this area.
25 Mr. Levinson replied that he had never seen that amount of erosion on glacial till in
such a short period of time. With regard to the proposed bulkhead (rockery), he noted
that it would be built at the top of the bank and would be built only where there was no
natural rock. With regard to trees and vegetation on the shoreline, Mr. Levinson stated

1 that some trees would be lost where they were too far undercut, but that they would be
2 placing rocks underneath the overhang to conserve vegetation where there is no
3 bedrock. The San Juan Islands are geomorphically different than areas like Puget
4 Sound. The Applicants' property is a unique situation where glacial erosion is
5 occurring rapidly. It is not a feeder bluff. A feeder bluff is 20-40 ft high, but the
6 property only has a bank. The reflective energy coming off a tilled bank is similar to
7 the rock. The energy goes back to its original source. Soft armoring is not possible
8 because of the high pressure levels. High energy levels will disturb any rocks placed
9 through soft-armoring. The rockery will not starve the beach of sediment because there
10 is no sediment on the applicant's shoreline. In his professional opinion, the rockery is
11 necessary to save the bank and the trees. The trees that are already undercut cannot be
12 saved, but there are many more trees that can be saved. Mr. Levinson has never seen
13 such a severe rate of erosion, and the rockery method is the most reasonable way of
14 stabilizing the applicant's property. On the east side of the shoreline outcropping,
15 erosion is not occurring because the pressure is not high, thus no rockery will be placed
16 in that area.

17 Stephanie Johnson O'Day stated that the Woodman decision discusses the permitting of
18 bulkheads, including the 4 conditions that can necessitate building one based on the
19 county's present code. One of the conditions is that serious erosion is threatening
20 established use, and another condition is that the bulkhead is the most reasonable
21 method of stabilizing the bank. Both of these conditions are met by this application.
22 There have been no relevant changes to the code since the Woodman decision.

23 Kyle Loring, Friends of the San Juans, stated that Friends is not making claims about
24 the spawning habitats along the shoreline of the property. Friends appreciates that the
25 landowners have not removed the trees and vegetation along the shoreline of their
property. This property is not a feeder bluff and the overhanging vegetation is very
important to the area. However, the property is a pocket beach. A 2012 draft report
found that pocket beaches are associated with Chinook salmon. There is a greater
likelihood of finding salmon in pocket beaches than along rock areas. The Applicants
are requesting to change a pocket beach into a rocky shoreline. The property has a
softer shoreline and adding rock will change the way the shoreline operates. Friends
urges a denial for the application.

Mr. Loring added that there is a significant amount of time, at least 75 years, before any
structures are threatened by the erosion. Additionally, the trees will not be protected by
the building of a bulkhead. The San Juan Initiative performed an analysis in 2008
which determined, based on a sampling, that the overhanging vegetations in areas with
bulkheading was twenty percent less than in areas without it. Moreover, armored
parcels lost twice as much forest covering. The wave energy created by bulkheads can
be damaging to trees, and bulkheads are not associated with retaining vegetation and
trees. In addition, the Applicants failed to illustrate which trees would be removed to
construct the bulkhead. Trees provide habitats for insects that salmon eat and help
stabilize the soil. The Applicants did not provide any erosion rates. The Shoreline
Master Plan requires that the shoreline be protected against degradation. The house did

1 not have to be placed so close to the shoreline when it was built. In regard to the
2 *Woodman* case, Friends participated in the Hearing Examiner portion, but not the appeal
3 process. In the case, the Shoreline Hearings Board did not cite any legal authority in
4 suggesting that lawns and landscaping are considered a "use." Additionally, the county
5 did not argue that the legal term "use" referred to land use designation as opposed to
6 any activity that occurs on a parcel. A court in South Carolina determined that "use" is
7 a term of art, and county codes determine many different "uses," but the term does not
8 indicate an actual activity done on the land. Activities and uses need to be distinguished
9 from one another. The erosion that is occurring is not preventing the property from
10 being used for residential purposes. The Applicants gave no analysis of wave or wake
11 action. The Applicants can continue to use the property as a residence for at least
12 another 75 years, and the bulkhead is not necessary. The application states that the
bulkhead would be placed several feet above the ordinary high water mark, once again
suggesting that the bulkhead is not needed at this point. It is difficult to determine the
environmental impacts of the bulkhead because it is being placed 8-15 ft above the
ordinary high water mark. Typically, a bulkhead will have more impacts if placed
below the ordinary high water mark due to wave action. However, even though this
application places the bulkhead above the water mark, it will still impact the water
pressure and redirect the wave energy. In conclusion, the current system causes erosion
through turbidity, but the proposed system will still have problems despite solving the
problem of turbidity. The beach will still be scoured under the new system.

13 Julie Thompson testified that the current county code does not allow bulkheads if it
14 appears erosion will occur when they are built.

15 Stephanie O'Day stated that the photo of the rockery in Roche Harbor provided by
16 Friends of the San Juans is irrelevant to this application. The Applicants' bulkhead will
17 be much more natural than the bulkhead featured in the Roche Harbor photo. The
18 planned bulkhead will be around 4 ft high. The property is undergoing severe erosion.
19 It is not practical for the Applicants to move the home they built on their property. The
20 Friends of The San Juans' letter is a general attack on bulkheads and does not address
21 the specifics of this application. The Woodman decision illustrates that any erosion is a
22 threat. The Applicants wish to save as many trees as possible when building the
23 bulkhead. The Applicants do not know when the erosion began on the property and can
24 only testify that, when the property was purchased in 2000, the bank went straight
25 down. There was no overhang or undercutting when the property was purchased.
Additionally, at least 2.5 ft of erosion occurred in the last 12 years.

Mr. Levinson noted that when he visited the site glacial till indicated that the bank had
been at least 2 ft further out.

EXHIBITS

All exhibits identified in the exhibit list attached to the 11/30/12 staff report were
admitted into the record at the hearing. In addition, the following exhibits were also
admitted:



- 1 Exhibit 7 12/11/12 email from Harry Dickenson
2 Exhibit 8 12/10/12 letter from Friends of the San Juans
3 Exhibit 9 12/12/12 rebuttal statement to the staff report w/attachments
4 Exhibit 10 Woodman Decision
5 Exhibit 11 11/29/12 email from contractor responsible for building the bulkhead
6 Exhibit 12 page from Enviro-Vision Herrera document
7 Exhibit 13 10/2012 Stormwater plan for the project
8 Exhibit 14 08/2012 email from Chris Laws
9 Exhibit 15 11/28/2012 memorandum from Dept of Ecology
10 Exhibit 16 Six photographs of bank and funnel area on two 8 x 11 sheets
11 Exhibit 17 Photographs of shoreline
12 Exhibit 18 12/12/12 email from Kyle Loring
13 Exhibit 19 12/13/12 email from Stephanie O'Day

FINDINGS OF FACT

Procedural:

- 11 1. Applicant. The Applicants are Harry and Martha Dickenson.
12 2. Hearing. The Hearing Examiner conducted a hearing on the subject
13 application on 12/12/12 on or about 10:00 am. The record was left open for written
14 testimony on the meaning of “use” for Friends of the San Juans and rebuttal from the
15 Applicant.

Substantive:

- 16 3. Site and Proposal Description. The Applicants propose to build an eighty
17 foot long by four foot tall natural rock bulkhead along the shoreline of their property
18 on San Juan Island, bordering Roche Harbor. The bulkhead will be constructed out of
19 a single row of man-sized boulders about four feet in height and four feet in width,
20 each weighing between 15,000 and 20,000 pounds. The boulders will be set in a
21 newly excavated trench approximately four feet wide and one foot deep. In areas of
22 bedrock the boulders will be placed directly on grade. The bulkhead will be placed 8-
23 15 feet above the ordinary high water mark. Less than 80 cubic yards of fill will be
used to fill in spaces between the bulkhead and bank. The Applicants assert their bank
is being undercut by heavy Roche Harbor boat traffic and seasonal storm events.
There are two rock outcroppings on either side of the property which funnels these
waves into a concentrated area consisting of dirt, sand and clay. The undercutting
action is threatening existing shoreline trees.

24 The subject property is 140 feet wide and slopes moderately down to a shoreline
25 bank. As confirmed by a site visit, the entire width of the lot is heavily treed along
the top of the bank, with trees in place up to the edge of the bank. The lot is
developed with a residence, accessory dwelling unit, garage and storage shed. A
large rock outcrop is located near the center of the property and is located about 20

1 feet waterward from the shoreline bank. The bank is undercut in an area that is about
2 2.5 feet deep and 80 feet long. The roots of the trees located along the top edge of the
3 bank are clearly exposed in the undercut area. It is along this undercut area that the
4 Applicants propose to place their bulkhead.

5 4. Characteristics of the Area. The surrounding area is rural and residential
6 in nature.

7 5. Adverse Impacts of Proposed Use. There are no significant adverse
8 impacts associated with the proposal. As well established in the materials supplied by
9 Friends of the San Juans, Ex. 8, bulkheads typically do create significant adverse
10 impacts to the shoreline environment. These impacts are largely caused by the
11 displacement of wave energy, which causes scouring along the front and ends of the
12 bulkhead (referenced as “scour trough” and “end scour” at Ex. 8, att. D. Loss of
13 feeder bluff deposits is another impact associated with bulkheads. However, this
14 application is unique in that the bulkhead site is already subject to scouring wave
15 action due to the presence of the rock outcroppings waterward of the proposed
16 bulkhead site. As testified by Mr. Levenson, a highly qualified geotechnical
17 engineer, this outcropping creates a funnel that increases wave velocity. This
18 “Venturi” effect essentially masks any scouring impact that would be created by a
19 bulkhead, i.e. scouring already occurs. The glacial till of the bank also has properties
20 similar to rock in terms of scour impacts. For these reasons, Mr. Levinson concludes
21 that the proposed rock bulkhead will not create scour impacts. Mr. Levinson also
22 testified that since the bank is composed of glacial till it is not a feeder bluff, so that
23 no significant feeder function would be lost by the construction of the bulkhead. Mr.
24 Levinson’s conclusions are based upon a high degree of expertise and upon the
25 unique site specific characteristics of the project site. Given that there was no site
specific evidence of equal competence provided against the project, it is determined
that his opinions and conclusions are the most compelling and lead to the
determination that the proposal will not create any significant scour or “feeder”
impacts.

It is acknowledged that Mr. Levenson’s assessment of the Venture effect was based in
part upon his understanding that the bank had eroded 2.5 feet over a ten year period.
As determined in Finding of Fact No. 6, there is no basis in the administrative record
for this rate of erosion. However, Mr. Levinson’s conclusions were primarily based
upon the location of the rock outcropping and the characteristics of the near shore
wave action. The rate of erosion does not appear to significantly affect his
conclusions regarding the impacts of a bulkhead within the Venturi “funnel” area.

Scouring impacts are also not a significant concern at the site because it is
uncontested that there is no eelgrass or surf smelt spawning area in the funnel area.
Scour impacts are further minimized by the fact that the bulkhead will be several feet
landward from the ordinary high water mark.

1 Mr. Loring testified that a higher incidence of Chinook Salmon is associated with
2 pocket beaches and that the bulkhead site is in a pocket beach. While this may
3 generally be true, there is nothing to suggest that these general findings would apply
4 to a pocket beach with the relatively high water velocities associated with the project
5 site. Without any further information on why Chinook Salmon would be attracted to
6 pocket beaches, it is reasonable to conclude that pocket beaches typically have calmer
7 waters than surrounding areas and it is this feature that attracts the salmon. Of
8 course, that factor is not in play for the pocket beach of this application.

9
10 A final issue raised by Mr. Loring was a reference to studies that show the bulkheads
11 are associated with the loss of trees rather than their protection. Again, the
12 applicability of these general studies to the unique wave dynamics of the site is
13 dubious. The undercutting of the bank and resultant exposure of tree roots will most
14 likely increase if not prevented by a bulkhead. It is difficult to see how a bulkhead of
15 the proposed design could possibly exacerbate the loss of trees in this area.

16
17 6. Rate of Erosion. The bank is eroding at a rate that poses an imminent
18 threat to the viability of trees located along the top of the shoreline bank. However,
19 the record does not support the erosion rates asserted by the representatives of the
20 Applicant.

21 Both Ms. Shaw and Ms. O'Day in their testimony and written submissions assert that
22 the bank has eroded 2.5 feet in a ten year period. They base this assertion on
23 comments allegedly made by Mr. Dickenson in an email dated December 11, 2012¹,
24 Ex. 7. Ms. Shaw and Ms. O'Day assert that Mr. Dickenson started observing erosion
25 when his house was built in 2000 or 2002. This is not what Mr. Dickenson said in his
12/11/12 email. Mr. Dickenson makes no mention of 2000 or 2002 or that he
observed the commencement of erosion in those years. In that email he notes that he
purchased the subject property in 1995 and that "*[t]he erosion we have seen since the
mid nineties has compromised those screening trees...*" There is nothing to support
the assertions of Ms. Shaw and Ms. O'Day that the undercutting of the bluff
commenced in 2000 or 2002. Based upon Mr. Dickenson's comments, erosion at the
bluff has been occurring since at least 1995 when he purchased the property.

Absent any additional information, there is no reason to conclude that the erosion that
has caused the 2.5 foot undercutting of the shoreline bank magically commenced just
when the Dickensons purchased their property in 1995. However, the Dickensons do
note that when they purchased their property in 1995, tree roots were not exposed.
Ex. 16 and 17 show a significant amount of tree root exposure. The significant

¹ In a legal brief submitted by Ms. O'Day, Ex. 10, Ms. O'Day at p. 1 references an email from Mr. Dickenson, dated 12/11/12, as "attached". No such email is attached to the brief. Since the email is the same date as the Dickenson email submitted into the record as Ex. 7 and Ex. 7 addresses the rate of erosion, it is presumed that the Dickenson email reference in Ex. 10 is in fact a reference to Ex. 7. In any event, if the emails are not the same then the Dickenson email referenced in Ex. 10 was not admitted into the record.

1 amount of tree root exposure that has occurred since 1995, the 2.5 feet of
2 undercutting observed by Mr. Levinson and the “Venturi” effect testified by Mr.
3 Levinson marginally supports a determination that more likely than not the bank will
continue to erode at a significant enough rate to jeopardize the viability of the trees on
the top edge of the bank.

4 7. Alternative Armoring. The bulkhead proposed by the Applicants is the
5 most reasonable method of stabilization. As concluded by Bob Levinson in his
6 geotechnical report, Ex. 4, soft armoring will not adequately stabilize the bank
7 because of the high energy wave dynamics caused by the
Venturi effect discussed in Finding of Fact No. 5. There is no competent expert
testimony in the record to refute this conclusion.

8 CONCLUSIONS OF LAW

9 Procedural:

10 1. Authority of Hearing Examiner. The Hearing Examiner, after conducting
11 an open-record public hearing, is authorized to issue a final decision on shoreline
12 substantial development permits. SJCC18.80.110(E).

13 Substantive:

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

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

17 4. Permit Review Criteria. SJCC 18.50.210 requires a shoreline substantial
18 development permit for development of bulkheads. 18.80.110(H) establishes the
19 criteria for approval of shoreline substantial development permits. The criteria
20 include the policies of the Shoreline Management Act (Chapter 90.58 RCW), the
21 policies and use regulations of the San Juan County Shoreline Master Program, and
the requirements of the San Juan Municipal Code and Comprehensive Plan. The
applicable policies and regulations are quoted in italics below and applied through
conclusions of law.

22 RCW 90.58.020 Use Preferences

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

1 5. The project will not interfere with public access to the shoreline or
2 navigation and is not associated with any significant adverse impacts. The policy is
3 met.

4 **RCW 90.58.020(1)²**

Recognize and protect the statewide interest over local interest;

5 6. The project will protect upland uses while not creating any significant
6 damage to the shoreline. The statewide interest is adequately protected.

7 **RCW 90.58.020(2)**

Preserve the natural character of the shoreline;

8 7. Natural character is preserved to the extent possible by the use of rock
9 instead of concrete. Beyond this, softer armoring will not provide sufficient
10 protection to this shoreline area due to the wave dynamics of the site as determined in
11 Finding of Fact No. 7.

12 **RCW 90.58.020(3)**

Result in long term over short term benefit;

13 8. The project provides for preservation of the shoreline, which is a long
14 term benefit to not only the property owner but to the public generally. The unique
15 wave dynamics of the site prevent the bulkhead from creating any significant impacts
16 and also prevent the creation of any precedent that would facilitate the proliferation of
17 bulkheads to other shoreline areas of the San Juan Islands.

18 **RCW 90.58.020(4)**

Protect the resources and ecology of the shoreline;

19 9. As determined in Finding of Fact No. 5 there are no significant adverse
20 impacts associated with the proposal.

21 **RCW 90.58.020(5)**

Increase public access to publicly owned areas of the shorelines;

22 10. The project does not pertain to a publicly owned area of the shoreline.

23 **RCW 90.58.020(6)**

24 _____
25 ² 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. Since this is a private proposal with no public impacts no public recreation
3 mitigation may be constitutionally imposed.

4 **San Juan County Code Regulations**

5 **SJCC 18.50.210(A)(1):** *No bulkhead to protect a single-family residence or*
6 *appurtenant structures shall be constructed until the County has reviewed the*
7 *proposed construction and determined that the project is or is not exempt from the*
8 *shoreline permit requirements and is consistent with the policies of the SMA and this*
9 *SMP.*

10 12. SJCC 18.50.020(F)(2)(c) provides that protective bulkheads common to
11 single-family residences are exempt, subject to WAC 173-27-040(2)(c). WAC 173-
12 27-040(2)(c) provides that in order to qualify for the exemption the sole purpose of
13 the bulkhead must be to protect a single-family residence from loss or damage by
14 erosion. The proposed bulkhead is not exempt because it is not needed to protect a
15 residence. The threat is to the yard and trees of the residence as opposed to the
16 residence itself.

17 **SJCC 18.50.210(A)(2):** *Nonexempt bulkheads shall be permitted only when*
18 *nonstructural shoreline protection, restoration, or modification techniques have been*
19 *shown to be ineffective and it can be shown that one or more of the following*
20 *conditions exists:*

- 21 *a. Serious erosion is threatening an established use on the adjacent uplands;*
22 *b. A bulkhead is needed and is the most reasonable method of stabilizing an*
23 *existing beach condition;*
24 *c. There is a demonstrated need for a bulkhead in connection with water-*
25 *dependent or water-related commerce or industry in an appropriate environment;*
d. A bulkhead is the most desirable method for stabilizing a landfill permitted
under this master program.

13. As determined in Finding of Fact No. 7, nonstructural methods of
shoreline stabilization are not feasible due to the high wave energies of the site. As
determined in Finding of Fact No. 6, the subject shoreline bank has been subject to
serious wave erosion. Although it cannot be determined from the record
approximately how much erosion has occurred over time, it is deemed serious
because it has been sufficient to expose an extensive network of tree roots over a 17
year period and numerous trees are threatened by continued erosion.

One issue raised by the Examiner at hearing was whether the screening trees on the
edge of the bank are considered an “established use” pursuant to SJCC
18.50.210(A)(2)(a) above. As argued by the Applicants, the issue has been directly
addressed by the Shoreline Hearings Board in *Woodman v. San Juan County*, SHB
No. 08-032. The *Woodman* opinion interpreted the “established use” language above,

1 concluding at COL No. 7 that an established residential use of the applicants included
2 “their yard, landscaping and most importantly, their trees which are stabilizing the
3 bank.” Friends of the San Juan submitted a South Carolina court opinion to argue an
4 alternative interpretation of “use”. See Ex. 18. However, the *Woodman* case is a
5 local decision more directly on point. Its holding is determinative in this case and the
6 trees must be construed as part of the established residential use of the Applicants.

7 **SJCC 18.50.210(A)(3):** *Bulkheads shall not be permitted in conjunction with new
8 projects or development when practical alternatives are available.*

9 14. The proposal is not associated with any new development.

10 **SJCC 18.50.210(A)(4):** *Bulkheads shall be permitted on marine feeder bluffs only
11 where (a) a clear and significant danger to established development exists and (b)
12 there is reasonable cause to believe that the bulkhead will in fact arrest the bluff
13 recession and will not seriously disrupt the feeder action or the driftway.*

14 15. The subject bank is not a marine feeder bluff.

15 **SJCC 18.50.210(A)(5):** *Bulkheads constructed on Class I marine beaches shall be
16 located behind the berm.*

17 16. The staff report notes that the subject beach is not a Class I marine beach.

18 **SJCC 18.50.210(A)(6):** *All bulkheads shall conform to the design requirements of
19 the Washington Department of Fish and Wildlife, except where such design would be
20 incompatible with protection of the shore process corridor and operating systems.*

21 17. As conditioned.

22 **SJCC 18.50.210(A)(7):** *Applications for bulkhead permits shall include at least the
23 following information:*

- 24 *a. Purpose of proposed bulkhead;*
- 25 *b. Low, normal, and high elevations, when appropriate;*
- c. Direction of net longshore drift, when appropriate;*
- d. Type of construction proposed; and*
- e. Elevation of the toe and crest of the proposed bulkhead with respect to water
levels.*

18. The application contains all of the required information.

SJCC 18.50.210(A)(8): *Bulkheads shall be prohibited for any purpose if it will cause
significant erosion or beach starvation.*

19. As determined in Finding of Fact No. 5, the bulkhead will not create any beach
starvation or erosion.

1 **DECISION**

2 The proposed project is consistent with all the criteria for a shoreline substantial
3 development permit. The proposal is approved subject to the following conditions:

- 4 1. The Applicants shall obtain all other required permits and abide by the conditions
5 thereof.
- 6 2. Construction shall not be commenced until all relevant appeal periods have run.
- 7 3. Development under this permit shall commence within two years of the date of
8 permit approval and shall be substantially complete within five years thereof or the
9 permit shall become null and void.
- 10 4. Failure to comply with any terms or conditions of this permit may result in its
11 revocation.
- 12 5. The Applicants shall schedule a site inspection upon completion in order to
13 provide staff an opportunity to verify consistency with the proposed project design and
14 the conditions of approval.
- 15 6. The bulkhead shall conform to the design requirements of the Washington
16 Department of Fish and Wildlife, except where such design would be incompatible
17 with protection of the shore process corridor and operating systems.

18 Dated this 1st day of January, 2013.

19 
 20 Phil Olbrechts
 21 County of San Juan Hearing Examiner

22 **Effective Date, Appeal Right, and Valuation Notices**

23 Hearing examiner decisions become effective when mailed or such later date in
24 accordance with the laws and ordinance requirements governing the matter under
25 consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may
be subject to review and approval by the Washington Department of Ecology
pursuant to RCW 90.58.140, WAC 173-27-130 and SJCC 18.80.110.

This land use decision is final and in accordance with Section 3.70 of the San
Juan County Charter, such decisions are not subject to administrative appeal to
the San Juan County Council. See also, SJCC 2.22.100

Depending on the subject matter, this decision may be appealable to the San Juan
County Superior Court or to the Washington State shorelines hearings board.
State law provides short deadlines and strict procedures for appeals and failure to
timely comply with filing and service requirement may result in dismissal of the

1 appeal. See RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are
2 encouraged to promptly review appeal deadlines and procedural requirements and
consult with a private attorney.

3 Affected property owners may request a change in valuation for property tax
4 purposes notwithstanding any program of revaluation.
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