

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicants: Louise and Richard Boone
12804 139th Court
Kirkland, WA 98034

File No.: PSJ000-10-0011

Request: Shoreline Substantial Development Permit

Parcel No: 271124009

Location: 686 Blanchard Road
Eastsound

Summary of Proposal: Replacement/restoration of berm

Shoreline Designation:

Hearing Date: December 2, 2010

Application Policies and Regulations: San Juan County Shoreline Master Program

Decision: Approved subject to conditions.

S.J.C. COMMUNITY
DEC 20 2010
DEVELOPMENT & PLANNING

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

3 Phil Olbrechts, Hearing Examiner

4 RE: Louise and Richard Boone

5 Shoreline Substantial
6 Development Permit
7 (PSJ000-10-0011)

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

8 **INTRODUCTION**

9 The applicant has applied for approval of a Conditional Use Permit to allow for the
10 vacation rental of a three bedroom residential dwelling. The Examiner approves the
11 permit subject to conditions.

12 **TESTIMONY**

13 Lee McEnery, Senior Planner, testified that the application is for restoration of an
14 existing beach berm that has been haphazardly built up over the years. She noted the
15 application was so well put together there was no need for much additional comment.
16 She identified a letter from a neighboring property owner requesting that the
17 application not be acted upon due to an on-going civil dispute over boundary lines that
18 is in court. She noted that the Friends of the San Juans spawning maps show no
19 spawning grounds at the project site.

20 Jeff Otis, agent for the project, testified that the berm will be over 11 feet landward of
21 mean higher high water so water will only reach the berm during extreme storm
22 events. In response to neighbor concerns over boundary lines, the project has been
23 revised to not encroach into the disputed area. Mr. Otis noted that the project will
24 reduce wave energy generation onto the neighbor's property because the berm will
25 taper down towards the neighbor's property and will be lower in height than the
current berm on the neighbor's end of the property. He noted that the gradual slope of
gravel will absorb wave energy instead of redirecting it onto the neighbor's property.
There may be an increase in littoral sediment drift that will benefit the neighbor's
property. The work will not affect a drain pipe referenced by the neighbor since the
work is landward of the pipe. He noted that the structure was built over the years a
long time ago and is probably a legal nonconforming use. The new berm will be
tapered down to the neighbor's property as opposed to the level height of the existing
berm.

Jonathan White, Applicant's contractor, noted that the project involves the removal of a lot of garbage such as tires and appliances and will restore the ecological functions of the site.

Richard Boone, Applicant, testified that he viewed the project as an opportunity to restore the site to a more natural and pristine state.

No one other than the Applicant and staff were present.

EXHIBITS

The following exhibits were admitted during the hearing in addition to the November 18, 2010 staff report:

1. 10/15/10 Application and accompanying letter dated 10/15/10 from Jeff Otis
2. Coastal Geologic Services, Inc. geotechnical report dated 9/22/10.
3. SEPA Checklist dated 10/15/10.
- 3.5 Johannessen email to Lee McEnery dated 11/17/10.
4. Hydraulic Project approval.
5. Vegetation plan.
6. Reddick letter dated 11/19/10.
7. Lis pendens.
8. 11/18/10 Email from Otis to McEnery

FINDINGS OF FACT

Procedural:

1. Applicant. The applicants are Louse and Richard Boone.
2. Hearing. The Hearing Examiner conducted a hearing on the subject application on December 2, 2010.

Substantive:

3. Site and Proposal Description. The Applicants propose to replace a berm that was haphazardly built up over the years with a berm that resembles an adjacent restored berm. The new berm would be 143 feet wide and about two feet higher than the restored berm to the east, but lower than the existing berm. The waterward portion of the berm would consist of a native washed gravel berm two to three feet high with the thickest portion near the center and limited to approximately 18 feet wide. Imported backshore sand would be placed behind (landward) and atop the gravel portion of the berm and planted with native vegetation. All work and placement of equipment will be placed on the landward end of the proposed berm. More details of

1 the proposal are identified in the application letter, Ex. 1. According to the staff
2 report, the existing berm probably was at one point the same height as adjacent
3 berms, but fill was added to increase the height of the structure over the years. The
4 berm would taper down to ground level on either end. According to the geotechnical
5 report, Ex. 2, p. 3, the primary element of the proposed project is removal of non-
6 native material and replacing it with material that is of the same composition as native
7 material of the site. The staff report notes that the proposal will restore the beach to
8 its natural configuration.

9 The project site contains a shoreline home under construction and a couple smaller
10 outbuildings. An older home has been removed. The existing berm was placed on
11 the site more than 40 years ago and is composed of rock, soil, tires, appliances and
12 other debris. The waterward face of the existing berm is three to four feet high.

13 4. Characteristics of the Area. The neighborhood is one of the older
14 subdivisions along the north shore of Orcas Island, on the outer edge of Eastsound. A
15 past owner declined to participate when the beach to the east underwent a similar
16 restoration several years ago.

17 5. Adverse Impacts of Proposed Use. The project will create a net positive
18 impact on the environment, as detailed below:

19 A. Littoral Drift. The geotechnical report concludes, at p. 4, that the proposal
20 will “in no way” negatively impact littoral drift because it constitutes an
21 addition of appropriate beach sized sediment while removing a partial barrier
22 to beach erosion. The sediment will positively contribute to the natural littoral
23 or shore-drift system when absorbed by waves in storm events. Staff appears
24 to agree with this conclusion and there is no evidence to the contrary. The
25 Examiner finds no adverse impacts to littoral drift.

B. Water Quality/Aquatic Habitat. Aquatic habitat will not be affected because
the berm will be separated at least 125 horizontal feet from the closest eelgrass
beds. No impacts to aquatic habitat are discernable from the record or
reasonably expected given the separation from the shoreline and eelgrass.

As to water quality, the project is a significant improvement over current
conditions because the proposed berm will be further from the shoreline than
the existing berm. The gravel portion of the proposed berm, which is the most
waterward portion of the project, is composed of native washed gravel so
additional sedimentation and turbidity will be minimized. This is in stark
contrast to the existing berm, which is composed of soil, rocks and debris that
is apparently not compatible with the littoral drift system of the site. Since the
waterward portion of the proposed berm will be located 11 feet of mean
higher high water, water will only reach the proposed berm during storm
events.

1 C. Public Shoreline Access. Since the waterward portion of the berm will be
2 located 11 feet of mean higher high water, public shoreline access will not be
3 materially affected.

4 D. Wave Impacts on Neighboring Properties. Given the distance between mean
5 higher high water and the berm, any adverse impacts on displacement of wave
6 energy to neighboring properties would be limited to storm events. Further,
7 according to the testimony of the Applicant, the proposal would reduce this
8 impact compared to the existing berm because the proposed height of the
9 berm is lower than the currently existing berm, especially near the adjoining
10 properties, where the berm is tapered. The Examiner finds that the proposal is
11 an improvement over existing conditions in regards to displacement of wave
12 energy.

13 E. Drainage Pipe. Adjoining neighbors to the east, the Reddicks, expressed
14 concerns of impacts to a buried drainage pipe by disturbing a gravel beach
15 that changes with tides and seasons. The Applicants counter that their project
16 will be located landward of the drainage pipe. Nothing in the record suggests
17 that the project will have any impacts on the drainage pipe. As previously
18 noted, the proposal will decrease the displacement of wave energy, so it is not
19 apparent how the project would negatively impact a buried drainage pipe
20 located waterward and on an adjoining parcel.

21 6. Reddick Property Line Dispute. The Applicants are currently in litigation
22 with their neighbors to the east, the Reddicks, over the location of the eastern
23 property line of the Reddicks. See Ex. 6 and 7. The Applicants have revised their
24 proposal to exclude it from the disputed boundary line area. See Ex. 8. The Reddicks
25 were sent a copy of the revisions and stated that they continued to object to the
project, but they did not dispute that the revised application avoided the disputed
boundary area. The Examiner finds that revised proposal will be outside of the
disputed boundary area subject to the litigation with the Reddicks.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. The Hearing Examiner issues a final decision on
shoreline substantial development permits. SJCC18.80.110(E); Section 3.70 of the
San Juan County Charter.

1 **Substantive:**

2 2. Shoreline Designation. Eastsound Residential.

3 3. Permit Review Criteria. SJCC 18.50.370(B)(7) authorizes shoreline restoration
4 and beach enhancement in the Eastsound Residential designation. As noted in the
5 geotech (Ex. 2) and staff reports, the project is designed to restore the shoreline to its
6 natural character and configuration with the use of native materials and plants and
7 serves to enhance the beach by replacing the current berm materials with materials
8 more suitable for littoral drift sediment. SJCC 18.50.020(E)(2) requires a shoreline
9 substantial development permit for all substantial development within the jurisdiction
10 of the Shoreline Management Act (Chapter 90.58 RCW, "SMA"). SJCC 18.20.190
11 defines "substantial development" as any development that exceeds \$2,500 in value.
12 The proposal is over \$2,500 in fair market value and located with the jurisdiction of
13 the SMA. SJCC 18.80.110(H) outlines the criteria for approval of a shoreline
14 substantial development permit. It requires consistency with the SMA and associated
15 regulations, with the County's shoreline master program, Chapter 18.80 SJCC and
16 other applicable provisions of the San Juan County Code and the San Juan County
17 Comprehensive Plan. Applicable code provisions are quoted below and applied with
18 corresponding conclusions law.

13 **San Juan County Comprehensive Plan ("SJCCP") Policy 3.6.D(3):** *Use*
14 *stabilization and protection works which are more natural in appearance, more*
15 *compatible with on-going shore processes, and more flexible for long-term*
16 *streamway management, such as protective berms or vegetative stabilization, over*
17 *structural means such as bulkhead, concrete revetments or extensive riprap.*

18 4. As discussed in the Findings of Fact, the berm will protect upland properties from
19 storm events and rises in sea level. These protection works use native materials and
20 vegetation and replace more obnoxious materials such as tires and other debris. The
21 gravel for the waterward portions of the berm will be washed and of appropriate size
22 to contribute in a beneficial manner to littoral sediment drift. No bulkheads, concrete
23 revetments or riprap are involved. The proposal is clearly consistent with the policy
24 quoted above.

21 **SJCCP Policy 3.6.D(8):** *Ensure that aquatic habitats, existing water quality levels*
22 *and flood holding capacities are maintained in all beach enhancement projects.*

23 5. As discussed in the Findings of Fact, the proposal's use of native materials and
24 washed gravel protects water quality. As further discussed, the proposal is located far
25 from eelgrass and has no discernable adverse impacts on aquatic habitat. The
proposal will also be located further from the shoreline than the current berm and take
up less volume (see Sheet 3 of cross sections attached to Geotech Report, Ex. 2) so
that it will not decrease holding capacity.

- 1 **SJCCP Policy 3.6.D(9):** *Use naturally regenerating enhancement systems if:*
2 *a. The length and configuration of the beach will accommodate such systems;*
3 *b. Such protection is a reasonable solution to the needs of the specific site; and*
4 *c. Shoreline Restoration/Enhancement will accomplish one or more of the*
5 *following:*
6 *(1) Recreate or enhance natural conditions;*
7 *(2) Create or enhance natural habitat;*
8 *(3) Mitigate erosion;*
9 *(4) Enhance public access to the shoreline.*

7 6. Natural vegetation will be used to stabilize the soil portion of the berm and will
8 help protect uplands from storm action and rising sea levels, which serves as a
9 reasonable solution to the needs of the site. By the use of native materials and
10 vegetation and removal of the existing berm, the project will recreate and enhance
11 natural conditions, continue to protect against erosion and create habitat in the
12 vegetated areas.

11 **SJCCP Policy 3.6.D(10):** *Encourage supplementary beach nourishment where*
12 *existing shoreline stabilization is likely to increase impoverishment of existing beach*
13 *materials at or down drift from the project site.*

13 7. As discussed in the findings of fact and the geotech report (Ex. 2), the materials
14 used for the proposed berm will positively contribute to littoral sedimentation drift.
15 The current berm apparently does not.

15 **SJCCP Policy 3.6.D(11):** *Analysis of off-site and cumulative impacts should be*
16 *conducted for all proposed bank stabilization, restoration and enhancement, and*
17 *flood protection activities. Such activities should be prohibited if they would result in*
18 *beach or bank erosion along nearby shorelines.*

18 8. As discussed in the Findings of Fact, the proposal will not create any
19 adverse off-site impacts. As further noted in the Findings of Fact, the proposal will
20 have a net positive impact on environmental resources. Consequently, cumulative
21 impacts should be positive as well.

21 **SJCC 18.50.370(A)(1):** *Beach enhancement in all environments shall be undertaken*
22 *only for restoration, enhancement, or maintenance of natural resources.*

23 9. As previously discussed, the proposal will restore the shoreline to its
24 natural configuration. As further previously discussed, the use of native vegetation
25 and washed gravel will provide for shoreline habitat and enhance littoral sediment
drift.

1 **SJCC 18.50.370(A)(2):** *Beach enhancement may be permitted when the applicant*
2 *has demonstrated that no significant change in littoral drift will result which will*
3 *adversely affect adjacent properties or habitats.*

4 10. The staff report concludes that the project will not affect littoral drift since
5 it is well above the ordinary high water mark. The geotechnical report also concludes
6 that the project will have a positive impact on littoral sediment drift. The criterion is
7 satisfied.

8 **SJCC 18.50.370(A)(3)(a):** *Design alternatives. Design alternatives shall include*
9 *the best available technology such as:*

- 10 *i. Gravel berms, drift sills, beach nourishment, and beach enhancement when*
11 *appropriate;*
12 *ii. Planting vegetation, when appropriate. All plantings must be maintained.*
13 *Vegetation planted to restore or enhance beaches shall be native plants suited to*
14 *the habitat characteristics of the site.*

15 11. The project meets all the criteria above. The waterward portion of
16 the berm is composed of gravel that is sized to provide beach nourishment (littoral
17 sediment drift) while also being washed to avoid generating turbidity. Native
18 vegetation will be planted in the landward, soil portion of the berm. The vegetation
19 plan, imposed through the conditions of approval, requires two year maintenance.

20 **SJCC 18.50.370(A)(3)(b):** *Design criteria. Natural beach restoration or*
21 *enhancement shall not:*

- 22 *i. Detrimentially interrupt littoral drift or redirect waves, current, or sediments to*
23 *other shorelines;*
24 *ii. Result in any exposed groin-like structures; however small "drift sill" groins may*
25 *be used as a means of stabilizing restored sediment where part of a well planned*
beach restoration program;
iii. Extend waterward more than the minimum amount necessary to achieve the
desired stabilization;
iv. Result in contours sufficiently steep to impede easy pedestrian passage or trap
drifting sediments;
v. Create "additional dry land mass"; and
vi. Disturb significant amounts of valuable shall water fish or wildlife habitat, unless
such habitat is immediately replaced by new habitat that is comparable or better.

12. The project meets all the criteria above. As previously discussed the
project has no adverse impacts on littoral drift and does not redirect wave energy to
any significant degree. The project does not involve any groin-like structures. The
project does not extend waterward of the shoreline and does not affect pedestrian
traffic since it is well landward of the ordinary high water mark. No appreciable
additional dry land mass is created. No aquatic habitat is disturbed.

SJCC 18.50.370(A)(3)(c): *Natural Beach Restoration Construction Standards.*

i. *The size and/or mix of new materials to be added to a beach shall be as similar as possible to the natural beach sediment, but large enough to resist normal current, wake or wave action at the site.*

ii. *The restored beach shall approximate, and may slightly exceed, the natural beach width, height, bulk or profile (but not enough to obviously create additional dry land mass).*

13. The project will involve sediment materials that are similar to the natural sediments of the beach. According to the geotech report, the berm will approximate the size of a natural beach berm. The criterion is satisfied.

SJCC 18.50.370(A)(4): *All shoreline modification activities must be in support of an allowable shoreline use that is in conformance with the provisions of this master program. All shoreline modification activities not in support of a conforming shoreline use are prohibited.*

14. The proposal is designed to protect a single family residence, which is allowed by SJCC 18.50.330(H)(9) in the Eastsound Residential shoreline designation.

SJCC 18.50.370(A)(5): *Beach enhancement is prohibited within spawning, nesting, or breeding habitat and also where littoral drift of the materials used adversely effects adjacent spawning grounds or other areas of biological significance.*

15. There is no evidence to suggest that the project is within any of the habitat areas identified in the criterion above. Staff specifically checked maps for spawning areas and found that the project is not within a spawning area. According to the geotechnical report, which is undisputed and written by a highly credible expert, the sedimentation contributed to littoral drift by the project will be beneficial and is designed to approximate natural erosion processes.

SJCC 18.50.370(A)(6): *Beach enhancement is prohibited if it interferes with normal public use of the navigable waters of the state.*

16. The project is far landward of the ordinary high water mark and will have no impact on public use of the shoreline.

DECISION

The application for a shoreline substantial development permit is approved subject to the conditions identified in the November 18, 2010 staff report.

Dated this 16th day of December, 2010.



Phil Olbrechts
County of San Juan Hearing Examiner

Effective Date, Appeal Right, and Valuation Notices

Hearing examiner decisions become effective when mailed or such later date in accordance with the laws and ordinance requirements governing the matter under 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 appeal. See RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to promptly review appeal deadlines and procedural requirements and consult with a private attorney.

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