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**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicants: Allen D. Israel and Paul G. Allen
Kona Residence Trust c/o Anna Henderson
505 5th Ave. S. Suite 900
Seattle, WA 98104

File No: HE25-09 (08SJ017)

Request: Shoreline Substantial Development Permit (SSDP)

Location: 1469 Sperry Road
Lopez Island

Parcel Nos: 140541002, 140544004 and 140543001

Summary of Proposal: This is a request for a SSDP for erosion reduction at two locations on the Sperry Peninsula of Lopez Island.

Shoreline Designation: Rural Farm Forest

Public Hearing: After reviewing the report of the Community Development and Planning Department a public hearing was held on May 20, 2009.

Applicable Policies and Regulations: RCW 90.58 Shoreline Management Act (SMA)
SJCC 18.50 Shoreline Master Program (SMP)
SJCC 18.80.110(H) SSDP Criteria
SJCC 18.30.160 Marine Habitat Standards

Decision: Approval with conditions.

S.J.C. COMMUNITY

JUN 17 2009

DEVELOPMENT & PLANNING

Findings of Fact

1. This is a request for a SSDP for an erosion control project located on the Sperry Peninsula, Lopez Island.
2. The project location is on the Mud Bay side of the spit attaching Sperry Peninsula to Lopez Island. Rosario Strait is located east of the spit.
3. The Kona Residence Trust and Mr. Paul Allen own Sperry Peninsula. The location is a largely undeveloped 387 acre site. There are three residences on the property. The houses were built approximately 10 years ago.
4. Over the preceeding 10 years significant erosion has occurred on the banks of the two locations denominated Indian Rock and Chapel Rock.
5. At both locations approximately eight to 10 feet of shoreline has been lost as shown by the photos in Ex. 1 admitted at the hearing. A number of trees that furnished shoreline habitat have been lost at both locations.
6. The Indian Rock site consists of approximately 480 lineal feet of low bank waterfront where the bluff erosion is causing slope regression and loss of ground.
7. The Chapel Rock site consists of approximately 500 lineal feet of high bank waterfront bluff.
8. As indicated in the geotechnical report No. 21-1-21006-001 the purpose of the project request is to maintain or enhance the shoreline natural appearance while providing erosion protection and slope stability to prevent loss of large trees, soil, existing foot paths, structures and access to the property.
9. At the Indian Rock location the applicants' request involves modification to the current embankment changing it from a single drift cell to a series of smaller drift cells by using hard points called drift sills to form a number of smaller pocket beaches.
10. The Chapel Rock location proposal is to place root wads and limited rocks along the toe of the slope in order to dissipate wave energy and slow down the erosion rate.
11. The undisputed testimony at the May 20, 2009 hearing is that if this "soft" solution to each location is not approved the likelihood of a similar project 10 years from now is virtually zero. With the loss of more shoreline at the current rate a "hard" armoring project would be the only solution to a then direct threat to residential structures. The project is not designed to completely eliminate erosion but to slow down its rate.

12. The project was reviewed for SMP compliance both as a shoreline enhancement project and as a bulkhead under SMP .210. The applicant recognized the lack of clarity in the SMP but expressed a willingness for the project to be reviewed as a .210 bulkhead. This decision accepts that invitation and reviews the project as a bulkhead.
13. The site locations are not Class I marine beaches. They are not a marine feeder bluffs. Neither erosion nor beach starvation is likely. The project has been designed to avoid scouring and erosion on the level of the seaward beach. No work will be done in wetlands or on point and channel bars. There is no salmon or trout spawning areas at the location of the proposed projects.
14. Although the project is not specifically located in a marine habitat area, there will be work done within 300 feet of such area. The project as designed and with approval from the Washington Department of Fish and Wildlife (WDFW) and from the Corp of Engineers (Corp) will meet the habitat standards of SJCC 18.30.160.
15. An extensive series of reports have been prepared and become part of this record. In addition to the previously-referenced geotechnical report a comprehensive biological report was prepared December 10, 2008. A cultural resources survey was prepared December 16, 2008. An updated erosion control plan was prepared and submitted April 1, 2009.
16. WDFW has given preliminary approval to the project on March 25, 2009 as shown by Ex. 5. The proposal has as an integral part, a beach restoration program which includes subsequent monitoring under WDFW oversight. Hydraulic permits have not yet issued.
17. The applicants have been also working closely with the Corp as to endangered species act issues. As of this date the Corp is supportive of this project.
18. The Friends of the San Juans submitted written comments most recently on March 30, 2009 and May 19, 2009. Additionally, a presentation was made at the May 20, 2009 hearing.
19. A Determination of Non-Significance was issued February 18, 2009. Friends of the San Juans requested withdrawal but did not appeal.
20. The notice of public hearing was published February 18, 2009. Mailing and posting occurred on February 17, 2009.
21. The staff report dated March 20, 2009 is incorporated herein by reference as though fully set forth. The analysis and factual statements contained in the staff report are adopted as a finding herein.

22. Any conclusion herein which may be deemed a finding is hereby adopted as such.

Conclusions of Law

1. The Hearing Examiner has jurisdiction over the persons and subject matter of this proceeding.
2. Proper notice was given in compliance with local and state requirements.
3. The proposal has complied with the requirements of the State Environmental Policy Act.
4. Because of the agreement of the applicant and because review as a bulkhead provides more protection to the shoreline, the project is considered a bulkhead under SMP .210.
5. A recent Shoreline Hearing Board (SHB) case of Woodman v. San Juan County No. 08-032 (2009) is instructive as to specific SMP bulkhead requirements. In conclusion of law no. 6 the SHB determined that even the “slow” rate of ongoing erosion could support a finding and conclusion that the erosion was serious under SMP .210(A)(2)(a). In conclusion of law no. 7 the SHB determined that under that same provision a bulkhead project which includes protection of a yard, landscaping and trees which have been stabilizing the bank is sufficient to meet the SMP requirements.
6. The SMP bulkhead requirements under these facts are met by this project.
7. The design and implementation of the project, including approval from WDFW and the Corp, meet the habitat requirements of SJCC 18.30.160.
8. Properly conditioned, the project meets the policies and requirements of the SMA, the SMP and SJCC.
9. Any finding herein which may be deemed a conclusion is hereby adopted as such.

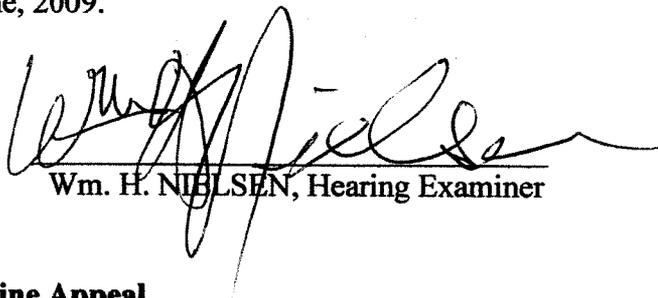
Conditions

1. The project shall be constructed as proposed in the drawings and other materials submitted with the application, except as the same may be modified by these conditions.
2. The applicants shall obtain all other required permits and abide by the conditions thereof.
3. Construction shall not commence until all relevant appeal periods have run.
4. Development under this permit shall commence within two years of the date of permit approval and shall be substantially complete within five years.
5. Failure to comply with any terms or conditions of this permit may result in its revocation.

Decision

The SSDP is approved subject to the conditions set forth above.

DONE this 17th day of June, 2009.



Wm. H. NIELSEN, Hearing Examiner

Shoreline Appeal

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