Before Hearing Examiner
Gary N. McLean

BEFORE THE HEARING EXAMINER
FOR SAN JUAN COUNTY

In the Matter of the After-the-Fact Shoreline Substantial Development Application filed by **WHALEBACK LLC (RUNSTAD),** Applicant *[Project: After-the-fact SSDP to authorize a) continued existence of a 288 linear foot portion of a 413 linear foot bulkhead/shoreline stabilization structure comprised of mostly stacked boulders about 6 feet high running along the shore of Armitage Bay on the south end of Blakely Island, facing Thatcher Pass; and b) the removal of a 125 foot segment of the same bulkhead, all constructed in 2010-11 without necessary permits or approvals.]*	)	**File No. PSJ000-12-0019** **FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION**

I. SUMMARY OF DECISION.

Portions of the Shoreline Substantial Development application that involve removal, restoration and beach nourishment activities for a 125 linear foot segment of bulkhead in front of the applicant's beach house, which was constructed without necessary permits and approvals, are approved, subject to conditions – provided that the Director should determine if any needed notice to proceed should be coordinated with any subsequent determination regarding additional beach nourishment, wetland or stream restoration/remediation, removal of additional un-permitted bulkhead segments, or other related actions that may follow this Decision.

All elements of the proposed removal project are subject to compliance with

applicable development, design, building code, engineering and other regulations, including without limitation those requiring verification of performance, inspections, and maintenance associated with conditions or mitigation measures that might be imposed consistent with this Decision or any subsequent approval issued by any state or federal agency or county department with jurisdiction over a particular aspect of the Project as the development review and possible removal and restoration processes unfold.

The remaining portion of the application that seeks authorization to retain an un-permitted segment of bulkhead constructed along the applicant's beach area below an access road is denied.

II. APPLICABLE LAW, RELEVANT CODE PROVISIONS.

The pending application was accepted and reviewed under provisions of the County's Shoreline Master Program that were in effect prior to the October 2017 amendments approved by the Department of Ecology. Citations used in this Decision are to provisions of the County's "old" shoreline code, unless noted otherwise.

Jurisdiction: Under SJCC 18.80.110 and 18.80.020, at Table 8.1, the Hearing Examiner is given the authority to hold open-record pre-decision public hearings and issue decisions regarding shoreline permits, including shoreline substantial development permits, shoreline conditional use permits, and shoreline variances.

Burden of Proof: Under SJCC 18.80.010(A), "Shoreline Permits" are specifically listed as "Project Permits" covered by the provisions of SJCC Chapter 18.80 re: application, notice, review and appeal requirements for the County's Unified Development Code, which is found in Title 18 of the SJCC and includes Chapter 18.50, the County's Shoreline Master Program. SJCC 18.80.040(B) reads as follows:

> *"[t]he burden of proof is on the project permit applicant. The project permit application must be supported by evidence that it is consistent with the applicable state law, County development regulations, the Comprehensive Plan, and the applicant meets [their] burden of proving that any significant adverse environmental impacts have been adequately analyzed and addressed."*

Standard of Review: SJCC 2.22.210(H) explains that: "for an application to be approved, a preponderance of the evidence presented at the hearing must support the conclusion that the application meets the legal decision criteria that apply."

Requirement and Review Criteria for a Shoreline Substantial Development Permit: "Substantial Development" is defined in RCW 90.58.030(3)(e) and SJCC 18.20.190. There is no dispute that the pending project meets the definition for a 'substantial development.' Substantial developments proposed in shoreline areas of San Juan County require a Substantial Development Permit. *See* SJCC 18.50.020(E)(2*)("No substantial development may be undertaken unless a valid shoreline substantial development permit is first issued by the County…"*). The approval criteria for a Shoreline Substantial Development Permit application is set forth in SJCC 18.80.110(H), which reads as follows:

> **18.80.110(H). Criteria for Approval of Substantial Development Permits.** A shoreline substantial development permit shall be granted by the County only when the applicant meets his burden of proving that the proposal is:
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> 1. Consistent with the policies of the Shoreline Management Act and its implementing regulations, Chapter 90.58 RCW and Chapter 173-27 WAC, as amended;
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> 2. Consistent with the policies and regulations of the Shoreline Master Program in Chapter 18.50 SJCC;
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> 3. Consistent with this chapter;
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> 4. Consistent with the applicable sections of this code (e.g., Chapter 18.60 SJCC);
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> 5. Consistent with the goals and policies of the Comprehensive Plan; and
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> 6. All conditions specified by the hearing examiner to make the proposal consistent with the master program and to mitigate or avoid adverse impacts are attached to the permit.

Shoreline Master Program: SJCC 18.50.010 explains that the San Juan County Shoreline Master Program ("SMP") was adopted pursuant to RCW 90.58.140(3) and 90.58.200, the Shoreline Management Act of 1971 ("SMA"), Chapters 173-26 and 173-27 WAC, Element 3 of the Comprehensive Plan, and Chapter 18.50 SJCC, the San Juan County Shoreline Master Program. *SJCC 18.50.010(C).* Chapter 18.50, together with Element 3 of the Comprehensive Plan and SJCC 18.80.110(I)(3), 18.80.110(J)(4) and 18.80.120(D), is the Shoreline Master Program for San Juan County, Washington. *SJCC 18.50.010(A).*

Liberal Construction: As provided in RCW 90.58.900, the SMA is exempted from the rule of strict construction, and it and the Shoreline Master Program shall be liberally construed to give full effect to the purposes, goals, objectives, and policies for which the

SMA and the County's SMP were enacted and adopted, respectively. *SJCC 18.50.010(C)(1).*

Conflicting Policies or Regulations: The SMA and the County's Shoreline Master Program comprise the basic state and local law regulating the use of shorelines in the County. Unless specifically provided otherwise, in the event that provisions of the Shoreline Master Program conflict with other applicable state or local policies or regulations, the SMA and Shoreline Master Program shall control. Where the Shoreline Master Program is more restrictive than other applicable state or local policies or regulations, the SMA and Shoreline Master Program shall control. Where other applicable state or local policies or regulations are more restrictive than the SMA and/or Shoreline Master Program, such policies or regulations control. *SJCC 18.50.010(C)(3).*

Cumulative Impacts: The County's Shoreline Master Program expressly provides that: "Analysis of off-site and cumulative impacts should be conducted for all proposed bank stabilization, restoration and enhancement […]." *SJC Comprehensive Plan, Shoreline Master Program Policy 3.6.D(11).*

"Emergency" Exemption: State and County codes provide that true emergency construction work is generally exempt from otherwise applicable Shoreline permitting requirements, provided that exemptions from Shoreline Substantial Development Permit Requirements do not constitute an exemption from the policies of the Shoreline Management Act, the policies and regulations of the County's SMP, or other applicable local, state, or federal permit requirements, and that exemptions shall be construed narrowly in accordance with WAC 173-27-040(1)(a). *See SJCC 18.50.020(F)(1) and (F)(2)(d).* These provisions of the County's applicable Shoreline code explain that "Emergency construction necessary to protect property from damage by the elements is generally exempt from Shoreline permitting requirements, in accordance with WAC 173-27-040(2)(d)," which reads:

> "(d) Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to chapter 90.58 RCW, these regulations, or the local master program, obtained. All emergency construction shall be consistent

with the policies of chapter 90.58 RCW and the local master program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency." WAC 173-27-040(2)(d).

Review Criteria for the Department of Ecology: Finally, if the Examiner approves or denies the Shoreline Permit, such decision must be forwarded to the Department of Ecology and the Attorney General, for state review and any appeals of the Shoreline Permit, in accord with Washington Shoreline Management regulations found in WAC 173-27-130. This Decision is subject to review and approval, approval with conditions, or denial by the Washington Department of Ecology within thirty days of submittal by the County. WAC 173-27-130, and -200. Ecology's review criteria for Shoreline Substantial Development and Shoreline Conditional Use Permits are found at WAC 173-27-150 and WAC 173-27-160. The San Juan County review criteria for the requested shoreline permit is generally consistent with and substantially similar to those that will be used by the Department of Ecology.

III. RECORD.

The Record for the matter includes all application materials and exhibits marked and numbered during the course of the public hearing. Copies of all materials in the record and a digital audio recording of the open-record hearing conducted for this application are maintained by the Community Development Department.

Exhibits: County Staff generated a summary list of Exhibits included in the Record for this hearing process. The Exhibit List, with 52 numbered items, most with sub-parts, is attached to this Decision. As directed by the Examiner before the hearing closed, staff submitted two post-hearing exhibits: Exhibit 53 is a short memo from Ms. Shook to the Examiner, dated May 30, 2018, as a supplement to her Staff Report, briefly summarizing Wetland and Stream Protection requirements arising from applicant's disclosure that portions of construction work impacted a stream and wetland buffers on the property; and Exhibit 54 is a short memo dated June 4, 2018, from Ms. Shook to the Examiner, confirming that no agencies submitted additional written comments by the close of business on May 30th, an extended deadline announced at the public hearing in response to a request from Mr. Loring.

Hearing Testimony: The following individuals presented testimony under oath at the duly noticed open record public hearing held on May 23, 2018:

1. Erika Shook, Director of the San Juan County Community Development Department, who prepared the Staff Report for the pending application;

2. Joe Brogan, appeared as an attorney for the applicant, serving as the applicant's primary hearing representative;

3. Michelle Rush, appeared as an attorney for the applicant, assisting witnesses and other participants with exhibits;

4. Garry Horvitz, Senior Geotech Engineer with the Hart-Crowser firm, appeared for the applicant and summarized his analysis of conditions on the applicant's property, and directing attention to written reports that he and his office prepared as part of the application review process;

5. Dr. Vladimir Shepsis, PhD, PE, appeared for the applicant, summarized wave-modeling analyses that he conducted for the Runstad beach site;

6. Dr. Houghton, Senior Marine Ecologist with the Hart-Crowser firm, appeared for the applicant, summarized his role providing analysis of biological issues associated with the project, including fish and wildlife, eelgrass monitoring, beach nourishment, high-water-mark determination, and the like, noting that he conducted 8-site visits to the Runstad's property;

7. Stephanie Buffum, Executive Director for Friends of the San Juans, spoke in opposition to the application, emphasizing problems caused by shoreline armoring;

8. Tina Whitman, nearshore habitat biologist for Friends of the San Juans, defended her written comments provided in Ex. 50, emphasized that she disagrees with the applicant's consultants, and that their "no net loss" determination for the project is "not correct" and is not supported by evidence in the record; and

9. Kyle Loring, counsel for Friends of the San Juans, summarized legal arguments made in his written materials, part of which are included in the Record as Exhibits 20(f), 24(a) and 50.

Ms. Shook opened the hearing with a summary of the Staff Report, the staff process in reviewing the matter and consideration of comments received, concluding with

their recommendation to approve the requested permit, subject to conditions. The applicant, Whaleback LLC, was represented by attorneys Mr. Brogan and Ms. Rush. Mr. Brogan responded to procedural issues raised during the course of the hearing and called several professional consultants to support the pending application. The owners/members of the Whaleback LLC, sometimes referenced in this decision as the applicant or applicants, Jon and Judy Runstad, were present in the hearing room but did not come forward to provide any sworn testimony during the hearing. Ms. Buffum, Ms. Whitman, and Mr. Loring provided testimony during the public comment portion of the open-record hearing. The applicant team and county staff were both provided an opportunity to respond to the public comments made during the hearing, and to make closing arguments, after which time the hearing closed.

Shortly after the public hearing for this matter concluded, a family illness, where the Examiner was the primary caretaker, consumed every free moment. Death, grieving, memorial events, cross-county trips, family demands, and estate issues all followed. Simply put, the Examiner did not anticipate or fully comprehend the impact that losing one's father would have on every aspect of life. And work. For that, the undersigned extends sincere apologies to all participants for the delay in issuing a final Decision in this matter.

Upon consideration of all the evidence, testimony, codes, policies, regulations and other information contained in the file, the undersigned Examiner issues the following Findings, Conclusions, and Decision.

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IV. FINDINGS OF FACT.

Based on the record, the Examiner issues the following findings of fact:

1. Any statements contained in a previous or following sections of this Decision that are deemed to be Findings of Fact are hereby adopted as such and incorporated by reference.

2. In this matter, the applicant is requesting approval of an after-the-fact Shoreline Substantial Development Permit to authorize: a) continued existence of a 288 linear foot portion of a 413 linear foot bulkhead/shoreline stabilization structure comprised of mostly stacked boulders about 6 feet high running along the shore of Armitage Bay on the south end of Blakely Island, facing Thatcher Pass; and b) the removal of a 125 foot segment of the same bulkhead, all constructed in 2010-11 without necessary permits or approvals.

3a. The expanse of bulkhead at issue runs along the shore of some or all of two San Juan County tax parcels – both owned by the applicant, an LLC owned and managed by the Runstad family, with H. Jon Runstad listed as Manager of Whaleback LLC – numbered 151024002 (where the applicant's "Beach House" is located) and 151024003[1] (immediately east of the beach house parcel, used as a common shoreline area by family members owning adjoining parcels and the Caretaker's House on the abutting upland parcel, numbered 151024001), on the south shore of Blakely Island, along Armitage Bay facing Armitage Island and Thatcher Pass. *(Staff Report, Project Data; San Juan County Assessor's website, Property Details; Exhibit 11-a, Property Information/Topographic Survey for Jon Runstad, dated March 9, 2016).*

3b. The applicant's beach area is of such regional significance that it was used as the featured example of a "pocket beach" in the "Beamer and Fresh" report, prepared for San Juan County, dated December of 2012, entitled *"Juvenile Salmon and Forage Fish Presence and Abundance in Shoreline Habitats of the San Juan Islands, 2008-2009."* The following photo appears as Figure A7 in the Beamer and Fresh report, with the caption reading "Photo of pocket beach on Blakely Island (Runstad Cove). *(See Ex. 20(f), discussion on page 13, fn. 76; and Ex. 50, Attachment A, discussion on page 2, fn. 1).* The aerial view of the applicant's property, taken in August of 2006 before the beach house and bulkhead projects were constructed, is provided to provide the reader with a visual appreciation for the "Pocket Beach" form of the area in question.

[1] The parcel legal description reads in part: "SHORELINE COMMON AREA TGW TDS (FOR TPNS 151024001 & 151024002), roughly translated to mean 'shoreline common area together with tidelands for tax parcel numbers 151024001 & 151024002'.

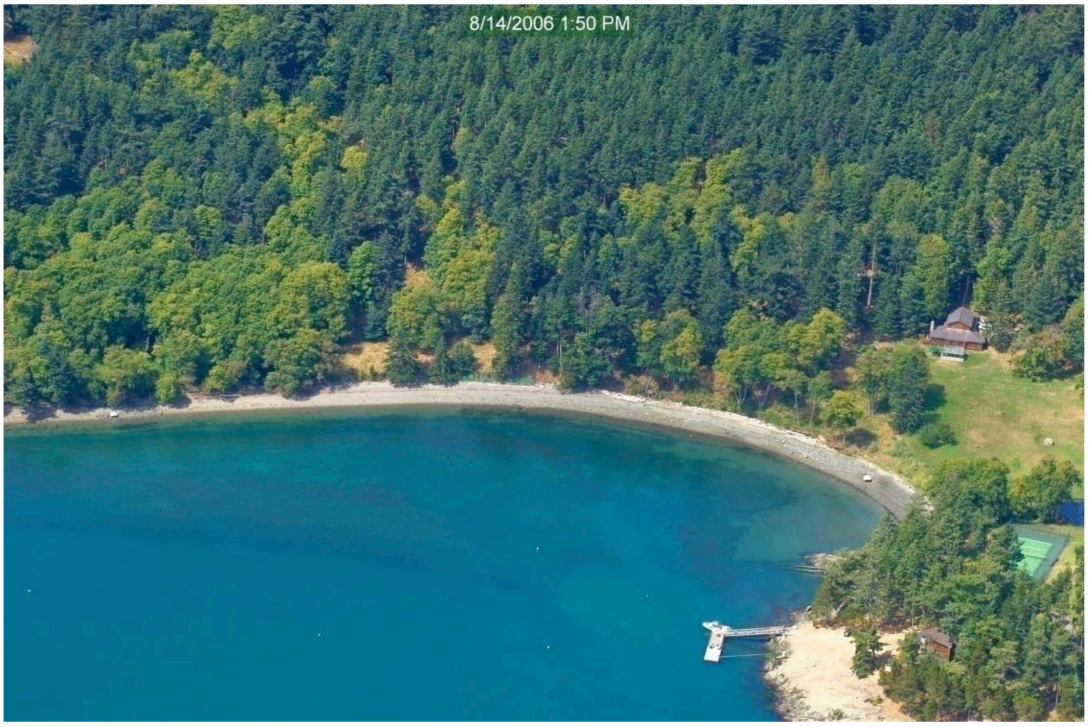

Figure A7. Photo of pocket beach on Blakely Island (Runstad Cove).

4. The Beach House parcel (151024002) is about 11 acres, and the neighboring common-area shoreline parcel (151024003) is 0.8 acres. *(Staff Report, Project Data).* The Caretaker's House parcel (151024001) is 5.8 acres. *(San Juan County Assessor's website, Property Details for parcel).*

5. Applicant's Beach House is now served by a private access road running to and from the Caretaker's House parcel to the east, where the access road eventually intersects with Spencer Road to the north of all structures at issue in this application. The access road is also where utility lines are located to serve the Beach House. *(Ex. 11-a; Ex. 1, Shoreline Permit Application).*

6. The applicant's project narrative reads in relevant part as follows:

> "The purpose of the Project is to stabilize an oversteepened and eroding bank that is adjacent to a single-family home and its appurtenant structures, specifically a primary access road, stormwater systems and utilities. Serious erosion is threatening an established use and the bulkhead is the most reasonable method of stabilizing the existing beach and slope condition." *(Exhibit 1, Shoreline Permit Application, first page of project narrative 'addressing compliance with county regulations').*

7. The County's Land Use Designation for all parcels at issue is "Rural Farm Forest", and the relevant shoreline is designated "Rural Residential". The land immediately upland and north of Spencer Road is undeveloped, and sites to the east and west are used for residential purposes, some with houses, a tennis court, boat docks, and/or a swimming pool. *(Staff Report, Project Data; Aerial photos in various exhibits, including slides presented at the hearing by Applicant's Coastal Engineer, Dr. Shepsis).*

8. The applicant, via the same LLC, or as an individual, owns most of the neighboring parcels that form Armitage Bay, which is the body of water generally lying between Armitage Island and the crescent-shaped "pocket-beach" on the south end of Blakely Island, where the bulkhead at issue is located. The applicant, Whaleback LLC, also owns Armitage Island itself. *(See San Juan County Assessor website records for parcels 151050015, 0016, and 0017, all owned by H. Jon Runstad; parcels 151050018, 0019, and 0020, all owned by Whaleback LLC; and parcel 151031001 [aka Armitage Island], previously owned by H. Jon and Judith M. Runstad, now held by Whaleback LLC; Exhibit 1, Shoreline Permit Application, page 2, vicinity map with some property data, NOTE: some ownership information found in Ex. 1 is now outdated, and has been corrected using Assessor's website data providing information through the date of the public hearing).*

9. The application materials include an outdated "Preliminary Plan and Profile" which shows project details for the Beach House along with a vicinity map illustrating most of the parcels now owned by the applicant, collectively referenced on applicant's site plan as the "Runstad Estate". *(Ex. 1, Application materials).*

Background –

10. There is no dispute that the applicants received permits to begin construction of a new house on their beachfront property in the Fall of 2010. In fact, they revised their original building permit application and obtained approval on October 13, 2010 to commence foundation-only work before the rest of the permit review was complete. The permit for the remaining aspects of the project was issued on November 15, 2010. *(Staff Report, page 3, Project History).*

11. The applicants' Stormwater Plan for the beach house construction project expressly called for construction of an upslope diversion channel with specific capacity, along the existing main access road "as part of the site preparation work". The purpose was to prevent runoff in the "hillside tributaries" from damaging the proposed improvements and from causing erosion. There is no dispute that the applicants' contractors did not complete the stormwater control measures called for in the Stormwater Plan as part of the site preparation work for the project. Instead, the record confirms that such work was not done,

and that other, substantially modified stormwater control measures, were implemented at some point in January of 2011. *(See Applicants' Stormwater Plan for the project, Ex. 23(a); Supplemental Stormwater Plan, Ex. 23(b); Staff Report, page 3).*

12. There is no dispute that rainfall, which is not uncommon in the Fall or Winter in this area, was more substantial than usual in the Fall of 2010 and into early 2011. The Record shows that the applicants' contractors were engaged in substantial earthwork activities on the site, to make way for utility connections, creating the new driveway to the new house and the like, all before stormwater control measures called-for in the applicants' Stormwater Plan were fully in place. *(See Ex. 23(b), Stormwater Site Plan Addendum, for Runstad Beach House, at top of page 3, part of which explains: "Construction began at the Beach House site in late 2010 [...] and construction had not yet progressed to completion of the planned permanent runoff handling facilities - including rock erosion protection - at the time when heavy runoff occurred.").*

13. At some point in December of 2010, the applicants' contractors started construction activities along the Runstad's beach area focused on a ramp area, meant to fortify the ramp for landing of a barge vessel that was to be used for the movement of machinery and building materials on the island and to the construction sites. The applicant's contractor, David Needham, said that he had been advised by the Runstad's that the ramp area was historically used for this purpose and that no additional permitting would be required for the activity. *(Ex. 14a, WDFW Incident Report, at page 6, and at page 14, interview with David Needham, applicants' contractor).*

14. An excavator contractor was engaged at the beginning of the construction project, to complete projects such as building up the ramp area, dig-outs for the building sites, as well as road and utility projects. *(Ex. 14a, Incident Report, on page 14).*

15. Bulkhead construction work began at some point in January of 2011, reportedly to control erosion and repair areas where erosion had occurred. The WDFW Officer on the scene in early 2011 noted how the applicants' contractor, Mr. Needham, agreed with his assessment – that construction activity that included road widening and the placement of underground utilities probably worsened the water runoff and erosion issues. *(Ex. 14a, Incident Report, on page 14).* Needham told WDFW officers that the wall project (bulkhead) had originally been in response to excessive water runoff caused by heavy rains and melting snow a few weeks prior, acknowledging that the new (upland) road work and construction projects added to the erosion issue. *(Ex. 14a, Incident Report, on page 6).*

16. The applicants' contractor, Mr. Needham, said that two main areas upland of the beach had suffered from erosion issues and were the first project sites to be addressed. He said that the work had originally been focused to prevent portions of the road from washing

out and then the work had continued to the beach where a new bulkhead had been constructed. *(Ex. 14a, Incident Report, on page 14).* There is no evidence in the Record showing that the applicants or any of their contractors considered moving the road, moving the proposed utility line route, using a parking area from one parcel with a walk-path to the new beach house, using flexible conduit and other materials that are commonly used in unstable soils to prevent overstretching, rupturing and the like. Clearly, the applicant never entertained options other than building the house with the road and utility corridor as drawn on their plans.

17. Needham explained to WDFW officials that once the bulkheads had been constructed water-ward of the erosion areas, the Runstad's then instructed him that they wanted the bulkhead to be continued along the shoreline. He went on to say that he had been told by the Runstad's to continue the bulkhead project along the shoreline and that they would take care of any permitting issues "after-the-fact". *(Ex. 14a, Incident Report, on page 15).* In his first conversation with WDFW officers, Needham stated that his crew originally constructed a short section of wall on the beach incorporating an upland drain where a portion of bank had washed out, and that once the property owner saw the project "he liked the way it looked and told us to continue the wall down the beach". Needham confirmed that he was referring to Jon Runstad. *(Ex. 14a, Incident Report, on page 7).*

18. The sequence of events described in the previous paragraphs are memorialized in the WDFW Incident Report that is included in the Record as Ex. 14a, which originated with observations first made by a Washington Department of Fish and Wildlife marine patrol crew on February 4, 2011. On that date, the WDFW marine crew observed a large landing craft on what turned out to be the applicant's beach on the southern end of Blakely Island, northwest of Armitage Island. *(Ex. 14a, Incident Report, on page 4).*

19. The WDFW crew saw equipment being offloaded from the vessel and moving upland to what appeared to be a construction site, and they could clearly see that the portion of the beach utilized as a ramp by the vessel had been fortified with gravel and rock. They also saw what appeared to be construction of a new rock wall along the shoreline to the north and east of the ramp. Since both of the projects appeared to be occurring well-below the mean higher high water (MHHW) line, the DFW officers followed-up to see if a Hydraulic Project Approval (HPA) had been issued by their department. They learned that no permits or approvals had been issued for the projects they observed along the applicants' shoreline area. *(Ex. 14a, Incident Report, on page 4).*

20. A WDFW marine patrol crew returned to the same area on February 10, 2011, and observed construction activity continuing along the same shoreline location as they first observed on February 4th. As they entered Armitage Bay, in the waters fronting the applicants' property, they could see a large excavator on the beach, actively working below

the MHHW line. The Incident Report notes that – "The excavator had what looked to be a driftwood log in the bucket and the operator appeared to be using the log to smooth a portion of the beach below where a rock wall had been constructed." *(Ex. 14a, Incident Report, on page 4, attached photos 1 and 2, taken by WDFW Officer Rosenberger).*

21. On the same date, February 10, 2011, the WDFW marine patrol crew landed their vessel and made contact with the applicant's contractor, Mr. Needham, at the site. After Mr. Needham provided some of the information noted in previous paragraphs, derived from the WDFW Incident Report, the WDFW marine crew walked along the Runstad's beach area and could clearly see that: mechanized activity had occurred below the MHHW line across hundreds of feet of shoreline; there were areas where natural substrate appeared to have been scraped from the shore and others where it was evident that the natural material had been scooped away leaving large depressions on the beach; there were other areas where it was clear that natural substrate and woody debris had been removed and deposited at the base of the wall; and that – contrary to the contractor's initial claims – beach materials had, in fact, been used during the construction of the face of the wall as well as backfill behind the wall, confirmed by the presence of attached barnacles and visible marine algae. *(Ex. 14a, Incident Report, pages 7 and 8, attached photos 4, 5, 6, 7, 8, 9, 10, 11, and 12).*

22. Eventually, WDFW conducted follow-up interviews with the Runstad's and other individuals, resulting in an HPA Violation Report detailing various WDFW-related approvals that the applicants did not seek or obtain before commencing work described above. *(Ex. 13, "Runstad Blakely Island Rock Bulkhead Hydraulic Project Approval Violation Report", dated April 11, 2011).* These interviews included one point where Mr. Runstad admitted that the dock at their Blakely Island property had been replaced about 5-years ago (interview occurred in 2011), and that they did not obtain a permit for the dock replacement. *(Ex. 14a, Incident Report, on page 18).*

23. Based on much of the same information and observations described in the WDFW Incident Report, San Juan County officials issued a Notice of Correction and stop work order for the bulkhead work on March 7, 2011, re-issued on March 22, 2011, requiring an application for a shoreline substantial development permit, among other things, with opportunities for appeal that were not pursued by the applicants. *(Staff Report, at page 4; Ex. 15, Letter from SJCo Code Enforcement Officer to applicants' attorney, dated April 5, 2011, re: Runstad Notice of Correction).*

24. There is no dispute that the unauthorized bulkhead work that occurred along the applicant's beach in December of 2010 and early 2011 was substantially complete well before the beach house project was finished. The building permit for the beach house did not receive final occupancy approval until April 31, 2011. *(Staff Report, page 3, Project*

History). In other words, the beach house project, with its associated access road and utility lines, was not complete and was not an "established use" at the time the bulkhead was constructed.

25. On or about November 9, 2012, the applicants submitted their first iteration of the underlying shoreline substantial development application that is at issue in this matter, assigned File No. PSJ000-12-0019. *(Ex. 1, Shoreline Permit Application)*. As noted elsewhere in this Decision, the narrative provided as part of the application materials offered the following explanations and justifications for the requested after-the-fact shoreline permit approval:

> *The Runstad Bank Stabilization Project ("Project") is a reasonable and appropriate permitted use under the County's SMP. SJCC 18.50.210 (Bulkheads); RCW 90.58.200. Thus, the Project may be permitted under the policies and regulations of the Act and the County SMP. The purpose of the Project is to stabilize an oversteepened and eroding bank that is adjacent to a single-family home and its appurtenant structures, specifically a primary access road, stormwater systems and utilities. Serious erosion is threatening an established use and the bulkhead is the most reasonable method of stabilizing the existing beach and slope condition.*
>
> *a. Serious erosion is threatening an established use on the adjacent uplands;*
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> *The technical memorandum and modeling results submitted by the Applicant and prepared by Vladimir Shepsis, Principal Coastal Engineer, Coast and Harbor Engineering, demonstrates that use of non-structural stabilization methods would be ineffective based on site conditions, including wave energy impacting the toe of the oversteepened slope. See Coastal Technical Memorandum, Runstad Property-Shoreline Erosion Protection, November 26, 2012.*
>
> *The technical memorandum submitted by the Applicant's geotechnical engineer, Garry Horvitz, Hart Crowser, documents that serious erosion is threatening the existing oversteepened slope and the established use and appurtenant structures directly uphill from the bulkhead. Both Horvitz and Shepsis conclude that it is their shared professional opinion that the erosion is caused by a combination of wave runup and overland stormwater flow. See Coastal Technical Memorandum, Runstad Property-Shoreline Erosion Protection, November 26, 2012 at pp 1-4; Hart Crowser Memorandum RE: Summary of Site Reconnaissance, Runstad Residence, Blakely Island, November 26, 2012 at pp.1-2.*
>
> *b. A bulkhead is needed and is the most reasonable method of stabilizing an existing beach condition;*
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> *Coastal Engineering constructed two numerical modeling grids to model and document the significant amount of wave energy impacting the bulkhead location.*

Photos are included in their report documenting erosion scarps and bank failures at the site prior to installation of the bulkhead.

Both experts' technical memoranda directly address why a bulkhead is the most reasonable method of stabilizing the existing beach condition. See Coastal Technical Memorandum at pp. 4-6; Hart Crowser Memorandum at p. 2.

"The Washington Department of Fish and Wildlife has submitted recommendations to the County Prosecutor that permit the existing bulkhead to remain "as constructed," conditioned upon obtaining a Hydraulic Project Approval and completing certain beach nourishment and vegetation mitigation, spawning surveys and monitoring measures. Brian Williams, WDFW, Communication to San Juan County (undated).

26. Two and a half years later, on or about June 9, 2015, the applicants submitted a shoreline exemption application for portions of their bulkhead constructed in connection with their new beach house, which was assigned File No. PSJXMP-15-0028.

27. The first page of the application's project narrative *(in Ex. 1)* states that the Shoreline Management Act (Chapter 90.58 RCW) "goes as far as exempting construction of normal protective bulkheads common to single-family residences." It also includes a footnote, which reads as follows:

> The Applicant reserves all rights and is submitting this application under protest whereas despite the language of WAC 173-27-040 mandating that an after-the-fact substantial development permit be obtained, no such language appears in RCW 90.58.030(3)(e)(iii). *See Also, AWB, et al. v. Department of Ecology*, Order Granting and Denying Appeal at pp. 13-14 (2001)(Shoreline Guidelines improperly regulate exempt uses under the SMA).

28. Presumably, at the time the after-the-fact shoreline permit application was submitted, the applicant believed the Project should be exempt from Shoreline Permit requirements, because they claim it was meant to be a normal protective bulkhead common to single-family residences. But it was not.

29. The applicant's Joint Aquatic Resources Permit Application (JARPA) Form for the same after-the-fact bulkhead Project is signed and dated July 5, 2013, and includes the following Project Description: "This is an after-the-fact permit application for bank stabilization (bulkhead) construction that was necessary due to emergency conditions; the Project was necessary to stabilize an oversteepened and eroding bank that is adjacent to a single-family home and its appurtenant structures." *(Ex. 7, JARPA Form, at page 4, Part 6a)*. The "purpose of the project" included in the JARPA Form reads: "Storm conditions in late December 2010 and January 2011, which resulted in heavy rains and melting snow, caused two areas along the property's bank to wash out. The Project was constructed to stabilize the bank, to prevent further shoreline erosion, and to protect a slope that supports

primary access, drainage systems, and utilities to a single-family home on the adjacent parcel." *(Ex. 7, at page 4, Part 6b).* However, the applicant's subsequent consultant reports submitted over the years all downplay the role that storm conditions and upland stormwater had on the problem, instead focusing on the toe of the slope at the shoreline. Such a change of tune is not in harmony with the sequence of events described elsewhere in the application materials and exhibits in the record.

30. In any event, on April 30, 2018, the Director issued a formal administrative decision, concluding that the applicant's bulkhead project addressed in this application is not exempt from the requirement to obtain a substantial development permit. *(Exhibit 31, Administrative Decision in File No. PSJXMP 15-0028).* That Decision stands unchallenged, as no one appealed any part of the Director's decision.

31. Accordingly, County Staff concluded their review of the voluminous record for the underlying after-the-fact shoreline permit, issuing a Staff Report addressing the subject and provided legal notices scheduling a public hearing for the matter. The public hearing took place on May 23, 2018.

32a. At the public hearing, Ms. Shook summarized the County's review process and Staff Report. The applicant's Geotechnical Engineer, Mr. Horvitz, summarized his opinions on the stability of the slopes beneath the roadway towards the beach, as marginally stable at the top, and in a failed condition at the bottom. His borings showed soft clay material instead of glacial till that he expected to find, what he explained to be the 'worst case' for erosion, and he summarized Ex. 28, which provides his opinion that the cost of relocating the road and utilities would be greater than keeping the roadway and bulkhead in place. Mr. Horvitz explained that without stabilization, he believes the slope will fail in 3 years. He confirmed that he did not look into using stairs instead of a road to access the applicant's beach house. He did not describe any other alternatives (i.e. something other than the roadway) considered as feasible access to the beach house – none.

32b. Dr. Shepsis, summarized his wave modeling work for the applicants, describing the applicant's beach area as a "high energy shoreline," and emphasized that soft-stabilization measures, like large woody debris, would be torn away by waves. Dr. Houghton summarized his work for the applicants studying the shoreline biological and ecological functions, including fish habitat and eelgrass among other things. He confirmed that none of his forage fish surveys found any fish near the applicant's beach. Dr. Houghton described how there is no drift, because this is a pocket beach so that sand and sediment do not move away. He explained that he believed there would be no benefit to nearshore functions if the bulkhead is removed, focusing on adverse impacts that could occur from bulkhead removal work. He offered his opinion that the continued presence of the bulkhead would not cause any net loss of shoreline ecological functions. Neither Dr.

Shepsis or Dr. Houghton adequately explained how a "high energy shoreline" condition and a sleepy pocket beach with no drift condition, with no sediment moving into or away from the beach, can both exist at the same time.

32c. Ms. Buffum, Ms. Whitman, and Mr. Loring provided testimony and referenced materials in the Record opposing the requested after-the-fact shoreline permit. They generally focused on the long-term, adverse impacts that shoreline armoring, like bulkheads, has had on fish and the marine environment throughout San Juan County and the Puget Sound area, with Ms. Whitman directing attention to her written comments that include reference to the lack of cumulative impacts analysis anywhere in the record, that the applicant's fish surveys failed to follow WDFW protocols, that the applicant failed to provide information regarding impacts on wetlands and stream buffers, and her opinion that the applicant's "no net loss" determination is not correct and is not adequately supported.

33. In the application materials and during the course of the public hearing, the applicant did not offer any testimony or evidence regarding meaningful consideration of other upland options that would eliminate the alleged 'need' for shoreline armoring on their property – other than a very expensive steel curtain wall proposal to firmly support the access roadway on the applicant's property. This is highly relevant in this matter, only heightened by the fact that this application is for a permit regarding a beach house and utilities, all located on a non-ferry served island. The need for a full-blown roadway as the 'primary access' to the beach house is, at best, questionable.

34. The County's code defines the term "Feasible alternative" to mean an alternative that:

1. Meets the requirements of federal, state, and local laws and regulations;
2. Attains most or all of the basic objectives of the project;
3. Is technically and technologically possible;
4. Can be accomplished at a reasonable cost;
5. Can be accomplished in a reasonable amount of time; and
6. Adverse environmental, health, and safety effects are no greater than those of the original proposal.

Further, a determination of what is reasonable or feasible is made by the decision-making body on a case-by-case basis, taking into account the: Probable intensity, severity, and *cumulative impacts* (emphasis added) of the original proposal and alternative approaches, and opportunity for the avoidance or reduction in the number, intensity, or severity of significant impacts, or of the aggregate adverse impact, among other things. *See SJCC 18.20.060.*

35. The Examiner finds and concludes that the applicant failed to adequately consider "no roadway" and some other means of pedestrian access and utility routing to the beach house. A roadway leading to a garage or front door is not necessary to support every beach house, especially on a non-ferry served island. A pedestrian walking path, with more flexible utility routing, conduit, pipes and the like, were not analyzed in the record. Any of these options could have attained most of the basic objectives of the project – i.e. providing reasonable access and utility connections to the beach house. The record is absent any analysis of the cumulative impacts of retaining the bulkhead as is/where is vs. some other alternative that would not require the bulkhead to remain in place, and could possibly allow the stream course and previous wetlands to be restored to some semblance of a pre-construction condition.

36. Many lots and homes throughout the San Juan Islands do not have direct vehicular access to all parts of their lot. Many have walking paths from parking areas placed on flat land or other sites less exposed to landslides, erosion, tidal events or similar challenges. Here, there is a complete absence of any discussion other than using *"a primary access road"* as a way to get to and from the beach house, and where utilities will be located. State and County Shoreline policies require that reasonable upland options that could protect the shoreline from the need for armoring should be considered. The only options referenced by the applicants' consultants were tremendously expensive steel curtain walls or something similar that could be installed to retain the primary access road. But, eliminating an access road as the means of occupant-access to a beach house on a non-ferry served island is a valid option that should have been explored.

37. Similarly, the Record does not show that the simplest brainstorming session for non-bulkhead options ever occurred. Examples of measures undertaken by other shoreline property owners to make the best use of their property without resort to armoring the shoreline exist throughout San Juan County. For instance, pedestrian-only pathways, steps, and other non-motorized access routes to homes are not unusual. Small spans of elevated bridge-like landscape features for pedestrians to walk over portions of a ditch or stream, around significant trees or vegetation, are not unusual, and may provide adequate access to the beach house (and an adequate utility conduit route) instead of the roadway. The Examiner finds that upland options exist to provide reasonable access to and from the beach house, all without need for a bulkhead to hold up a roadway. These options were not adequately explored or considered. They should have been.

38. Based on credible, unrebutted, and substantial evidence in this Record, including without limitation the contemporaneous descriptions of the bulkhead work catalogued in Exhibit 14(a) and summarized in previous findings above, the Examiner finds and concludes that the applicants' bulkhead project was not an "emergency" project. Emergency construction does not include development of a new permanent protective

structure, such as the bulkhead in question, where none previously existed. And, as a general matter, seasonal events that can be anticipated, like the potential for concentrated water runoff of the sort described in the applicant's Stormwater Plan for the beach house project *(Ex. 23a)*, and may occur but are not imminent, are not an emergency, especially in this situation, where there is no credible dispute that the applicants' contractor had not fully installed stormwater control measures explicitly called for in the Stormwater Plan before undertaking major earthwork on the site, after which time the site erosion problems on the property occurred. *See WAC 173-27-040(2)(d), definition of "Emergency".*

39. The bulkhead was not an emergency construction measure. Instead, it was a unilateral modification to a building site plan made after contractors failed to fully implement and install approved stormwater controls. Unrebutted evidence, including contractor observations made at the time of the incident, establish that the sloughing on the applicants' property was caused by premature earthmoving, clearing, vegetation removal, and/or significant construction activities undertaken on the site before stormwater "site preparation work" was complete. Waves happen, and they have happened along the applicants' beach for many years prior to the new beach house project, without reports of troublesome erosion at the site. The Examiner is not persuaded that wave action at the toe of the slope, by itself, would have generated any of the sloughing that served as the applicants' "justification" for the bulkhead installation. The sloughing appears to have occurred largely due to the applicants/contractors failure to comply with their building permit stormwater control requirements by not installing stormwater control features before undertaking major earthwork and clearing on the site. So, not only does the bulkhead not qualify as an emergency exemption to otherwise applicable shoreline permit requirements, it would also fail to qualify for any shoreline variance because the circumstances that led to construction of the un-permitted bulkhead were primarily caused by the applicant's own actions. *(See SJCC 18.80.110(I)(3)(a)(ii), re: Criteria for Approval of Shoreline Variances, explaining that variances from the provisions of the Shoreline Master Program may be granted when the applicant has proved that certain criteria have been met, including that the hardship supporting a requested variance is specifically related to the property and is the result of unique conditions such as irregular lot shape, size, or natural features, and the application of the Shoreline Master Program, and not, for example, from deed restrictions or the applicant's own actions (emphasis added)).*

Importance of the applicant's Pocket Beach.

40a. The "Beamer and Fresh" report, dated December 2012, titled *"Juvenile Salmon and Forage Fish Presence and Abundance in Shoreline Habitats of the San Juan Islands, 2008-2009"*, includes two summary paragraphs that emphasize the importance of "pocket beach" environments, which read as follows:

> Pocket beaches were an important shoretype in the San Juan Islands for all seven species or species groupings with respect to fish density or presence. In Puget Sound, pocket beaches are relatively rare (Fresh et al. 2011) but because of the extensive rocky shoreline geology of the San Juan Islands, they are relatively common in this area (Figure 6).
>
> Pocket beaches are typically semi enclosed so they are relatively protected from the strong tidal currents and wind driven waves that characterize straighter unprotected shorelines. As such, these "backwater" areas of the nearshore may provide a hydrodynamic refuge where small migratory fish (e.g., juvenile salmon) and other young fishes may be using tidal currents as highways and pulling off into these calm relatively enclosed areas for transitory rearing. The semi enclosed nature of pocket beaches and their smaller and unconsolidated substrate (compared to adjacent rocky shoreline beaches) may offer juvenile fish a higher quality environment for feeding on certain substrate associated food items such as amphipods and copepods. *(Beamer and Fresh, at page 63).*

40b. The report also notes that: "*Pocket beaches* are a particular variation of a beach that can look like 'bluff-backed beach' at the base of rocky bluffs. Unlike bluff-backed beaches, however, pocket beaches have no adjacent sediment source from drift cells and thus are not part of drift cell systems. Beach sediments in pocket beaches are derived locally". *Id., at page 7 (emphasis added).*

40c. As noted in credible written comments and reports opposing the bulkhead, armoring the beach impounds sediment behind the rock wall, instead of allowing it to naturally nourish, and "feed," the pocket beach. *Ex. 43, written reports submitted by Dr. Megan Dethier, UW Friday Harbor Labs; Ex. 50, Attachment A, Whitman Report.*

40d. As mentioned above, some of the data and photos referenced in the Beamer & Fresh Report make specific reference to the applicant's pocket beach that is at issue in this matter. For instance, the Beamer report includes the color, aerial photo of the applicant's pocket beach, dated 8/14/2006, attributed to a publicly-available photo on a Department of Ecology website, which is labeled "Runstad Cove". *Id., at page 73, Figure A7.*

40e. The color photo is highly relevant for another reason, because it corroborates comments from Friends of the San Juans that most portions of un-permitted shoreline armoring along the applicant's pocket beach were not built until sometime between 2006 and 2008, just several years before the "beach house" bulkhead was built without permits in early 2011. *(See Ex. 20(f), discussion on pages 2, 3, and Attachment E to same Exhibit, on pages 2, 15, and 19).* Clearly, the photo establishes that the un-permitted bulkhead segments were built at some point after the photo was taken in 2006 – because the unpermitted segments of bulkhead located to the east of the beach house/roadway bulkhead segments do not appear in the photo.

40f. Substantial evidence in the Record establishes that the applicant's Pocket Beach area has unique characteristics, and that it is listed as a potential refuge site for juvenile fish moving from mainland breeding sites towards the open ocean beyond, increasing the importance that all development reviews along this pocket beach should be undertaken with a full and complete understanding of natural conditions – like an un-armored shoreline – and the ongoing impacts that segments of bulkhead will have on the project area and the viability of marine life, or making it conducive for restoration of inviting habitat and conditions that are attractive to fish, marine mammals, Southern Resident Killer Whales and the like.

40g. "Pocket beach" means a Class II or Class III beach, which does not depend on littoral drift accretion. It depends on the erosion of immediately adjacent sources. *SJCC 18.20.160.* "Littoral drift" means the natural movement of sediment, particularly sand and gravel, along marine or lake shorelines as a result of wave and wind action. *SJCC 18.20.120*

40h. The applicant's pocket beach appears to rely primarily on erosion of immediately adjacent sources. Bulkheading blocks those sources. The applicant's consultant reports confirm that the applicant's property is not a "feeder bluff", but that the pocket beach is also not filled and refilled with sediment from any local river, or from tidal action that re-deposits sands and materials from the bottom of the surrounding waters onto the beach during extreme weather or tide events.

40i. Written reports submitted by Dr. Megan Dethier, the University of Washington's Associate Director for Academics and the Environment at Friday Harbor Labs, are included in the Record as part of Exhibit 43, and strongly support a full analysis of cumulative impacts on the surrounding area when shoreline armoring measures are proposed. Among other reasons is the fact that shoreline environments experience impacts on spatial and temporal scales that are difficult for the ordinary bystander (like the Examiner) to fully appreciate or understand with a quick snapshot summary of conditions on parts of a beach located on relatively small parcels of property that are connected to a larger pocket beach ecosystem, most of which is owned by the same applicant, and much of which has been fortified with bulkheading materials.

40j. One of Dr. Dethier's articles, titled "Multiscale impacts of armoring on Salish Sea shorelines: Evidence for cumulative and threshold effects", released in 2016, and included as part of Exhibit 43, explains that: "Armoring marine shorelines can alter natural processes at multiple spatial and temporal scales; some, such as starving the beach of sediments by blocking input from upland bluffs may take decades to become visible, while others such as placement loss of armoring construction are immediate." She notes that her academic team's "broad study covering a wide range of beaches and drift cells with

different types, elevations, and degrees of armoring has allowed us to quantify hitherto elusive patterns of impacts of armoring on beach processes. Armoring alters beach conditions from the local to the sound-wide scale, with its effects likely emerging on time scales that range from immediate to years or decades."

40k. Dr. Dethier's studies are also cited and summarized in Ms. Whitman's written report, included in the Record as Attachment A to Exhibit 50, on pages 10-13. Ms. Whitman's report credibly summarizes area shoreline expert studies, including some of her own, that explain the long-term impacts known to occur when beaches – like the applicant's – are armored with bulkheads.

40l. Comments provided by Friends of the San Juans provide a better baseline understanding for what the pocket beach might have once been, and the special role it plays in the surrounding ecosystem. Ms. Whitman, the FOSJ Science Director, correctly notes that "no information is provided [by the applicant] that compares pre and current conditions to show that the volumes of wood and vegetation are comparable." She continued by explaining that "[w]hile some impacts may take longer to appear than others that are immediate, impacts are well documented to occur, and include burial of beach spawning habitat for forage fish, a reduction in organic material accumulation, reductions in the quantity and quality of prey for juvenile salmon, reductions in egg survival of incubating forage fish eggs and changes to the beach substrate and slope that further reduce habitat quantity and quality. Impacts of armor are likely to increase in severity over time […]." *(Attachment A to Ex. 50, on page 10, footnotes omitted).*

40m. Based on substantial evidence derived from materials in the Record for this matter, the Examiner finds and concludes that the applicant owns and controls most parcels along the pocket beach that should be reviewed for purposes of reaching a determination regarding the propriety of bulkheads, or segments of bulkhead, along the shoreline of such beach area. It is clear that the applicant has undertaken actions over the years to install several shoreline projects – without permits or approvals – and without any comprehensive study or analysis as to the cumulative effects of any project on the entire pocket beach ecosystem. This is especially relevant for this application, where the facts establish the existence of a large rock bulkhead system, running far to the east of where the pending application would apply. None of the studies in the record adequately analyze or shed light on the potential for cumulative impacts on the pocket beach, or mitigation measures that should be undertaken based on the existence of so much un-permitted bulkheading along the shoreline.

40n. None of the applicant's reports provide a full explanation as to what the pocket beach would be like if there were no bulkheads at all – i.e. how it would function if left to its natural condition, without rock walls or other fortifications. Observations regarding

current conditions are of some value, but the fact remains – there is insufficient appreciation or explanation in any of the applicant's studies for what the beach would be like without any bulkheads or significant shoreline alterations as have occurred over the years.

40o. Without such evidence and information, the Examiner cannot reach an informed decision on this matter, and the applicant's cannot meet their burden to demonstrate compliance with all applicable shoreline regulations and policies.

Lack of complete information and analysis.

41. The Examiner presumes that most property owners only want the best for their piece of Earth. Here, the applicant owns virtually all of the properties surrounding the site of the bulkhead in question, including parcel(s) where other segments of bulkhead structures have been placed over the years. *(Staff Report, page 5; Exhibit 20(f), Friends of the San Juans' request for enforcement action regarding previous unpermitted bulkhead to the east of the bulkhead at issue in this shoreline application).* But, the record is clear that the applicants had little regard for applicable shoreline permitting requirements over the years, with some significant and troubling admissions by the applicants found in WDFW investigation reports that are included in the record as part of Exhibit 14.

42. In this matter, the applicant's SEPA Checklist does not mention that another un-permitted bulkhead segment is already in place and attaches to the beach house bulkhead beginning on the parcel of land below the Caretaker's House and running to the east. *(See SEPA Checklist, response to item 8, "Describe any structures on the site").* The Checklist also fails to identify or disclose the presence of any wetlands, streams, or their buffers on the parcels in question. The Record establishes that the applicant did not provide any delineation of wetland areas located in the project area until almost six years passed from their initial application submittal, and with less than a week before the public hearing.

43. Again, the original application materials, with a SEPA Checklist, were submitted in November of 2012 *(Ex. 1)*, but the applicant's Wetland Delineation was not ever submitted to the County until May 18, 2018 *(Ex. 36)* – about 5 days before the public hearing was set to occur – which, for the first time, revealed the existence of two wetlands, with buffers, and a stream, in the area that was all heavily-impacted by the applicant's roadway and bulkhead construction work.

44. Wetland A is approximately 3,039 square feet and is rated a category IV wetland, which has a 40/40 water quality/habitat buffer; Wetland B is approximately 5,663 square feet and is rated a category III wetland, which has a 60/110 water quality/habitat buffer; and the Stream is rated a NS5 stream, which requires a 75-foot water quality buffer and a 30-

foot tree protection zone. *(See Ex. 36, Runstad Wetland and Stream Reconnaissance, prepared by Applicant's wetland biologist with the Hart Crowser, dated May 9, 2018 – "The site reconnaissance conducted on April 23, 2018 identified two wetlands and one stream near the project," data provided on pages 1 and 3).*

45. The stream on the applicant's property flows from somewhere on the north side of Spencer Road, which is uphill and to the north of the parcels at issue in this matter, before it receives water from Wetland A, and then it flows down underneath Spencer Road in a culvert, exiting on the south side of Spencer Road. The stream continues downhill for about 200 feet before entering a catch basin that carries it under the applicant's driveway in a culvert, then exiting the culvert and flowing east into Wetland B, and then south to the marine waters of Thatcher Pass, i.e. onto the applicant's beach area. Wetland B is adjacent to marine waters and is situated immediately above the shoreline. *See descriptions for wetlands and stream provided in Ex. 36, on pages 1 – 3, particularly illustration provided on Figure 1, on page 2.*

46. The geotechnical peer-review report generated for the County by GeoEngineers, included in the record as Exhibit 10-d, relied upon a site visit and reports generated by the applicant's consultants. Among its conclusions, the peer-review report explains that: *"In our estimation, the most compelling argument for the presence of the bulkhead is visual evidence of movement of the slope above the bulkhead (between the bulkhead and the driveway)."* (Ex. 10-d, page 9, part of 5th bullet point). But the peer-review report also concludes that "conditions in front (south) of the beach house are very different," explaining "[i]t is our opinion that removing rocks in front of the beach house area would not result in a significant increase in bank erosion and retreat in this area."

47. The peer-review report *(Ex. 10-d)* is dated August of 2017, so it did not include review or consideration of the wetlands and stream on the property, which were finally identified and briefly discussed in the applicant's Wetland and Stream Reconnaissance report, submitted in May of 2018, and included in the record as *Exhibit 36*. The peer review did not account for the existence of wetlands, a stream, and affected buffers. Because the information was not properly disclosed in the application materials, SEPA Checklist, or other items in the record that should have been made available for meaningful review and public comment before the public hearing, it was not known to the 3rd party consultant, or other interested parties. Thus, a full public comment period addressing the "complete picture" and independent consultant reviews did not occur.

48. Under the circumstances presented in this Record, at the very least, applicable Shoreline regulations require preparation of a new threshold determination for the project. Omission of details regarding the hundreds of feet of other un-permitted, connected bulkhead segments running to the east on the applicant's property, and the lack of

disclosure regarding the wetlands and stream on the property, among other things, require the lead agency to withdraw the DNS that was issued for this application. (See WAC 197-11-600(b) – *"For DNSs and EISs, preparation of a new threshold determination or supplemental EIS is required if there are: (ii) New information indicating a proposal's probable significant adverse environmental impacts. […];* and WAC 197-11-340(3)(a) – *"The lead agency shall withdraw a DNS if: […] (ii) There is significant new information indicating, or on, a proposal's probable significant adverse environmental impacts; or (iii) The DNS was procured by misrepresentation or lack of material disclosure; if such DNS resulted from the actions of an applicant, any subsequent environmental checklist on the proposal shall be prepared directly by the lead agency or its consultant at the expense of the applicant." (emphasis added))*.

49. The critical difference between an addendum and a threshold determination is that a threshold is subject to an open public comment period, whereas an addendum is not. WAC 197-11-502(3)(b). *(See discussion in Maytown Sand & Gravel, LLC v. Thurston County, 191 Wn.2d 392 (2018)).*

50a. The pending application has never been complete for purposes of allowing for appropriate public notice and comment, complete SEPA review, and a fully informed Decision by the hearing examiner.

50b. Under SJCC 18.80.020(C), all project permit applications "shall include" a graphic depiction of wetlands and environmentally sensitive areas.

50c. WAC 173-27-180 clearly states that an SSDP application must contain, among other things:

> "(8) A general description of the vicinity of the proposed project including identification of the adjacent uses, structures and improvements, intensity of development and physical characteristics;" and
>
> "(9) A site development plan consisting of maps and elevation drawings, drawn to an appropriate scale to depict clearly all required information, photographs and text which shall include: […]
>
> (d) A delineation of all wetland areas that will be altered or used as a part of the development (emphasis added). […]
>
> (i) Quantity, source and composition of any fill material that is placed on the site whether temporary or permanent. [and]
>
> (j) Quantity, composition and destination of any excavated or dredged material."

50d. As discussed above, the applicant only disclosed the presence of two wetlands and a stream on the property in the week before the hearing, years after most public notices for the application were issued. And, the SEPA Checklist and other application materials all failed to adequately disclose the existence and specific details about hundreds of feet of other, un-permitted bulkhead armoring that has taken place along the shoreline of the applicant's properties over the years.

50e. Comments in the Record from Friends of the San Juans make reference to evidence in the record that shows how substantial fill materials were placed in portions of the site, and that excavation work may have occurred along the beach area as the shoreline armoring work took place. For instance, some rocks were removed from the beach itself and placed up along the area where the bulkhead now exists.

50f. As noted above, on February 10, 2010, a WDFW marine patrol crew landed their vessel and made contact with the applicant's contractor, Mr. Needham, at the site, and the WDFW marine crew walked along the Runstad's beach area and could clearly see that: mechanized activity had occurred below the MHHW line across hundreds of feet of shoreline; there were areas where natural substrate appeared to have been scraped from the shore and others where it was evident that the natural material had been scooped away leaving large depressions on the beach; there were other areas where it was clear that natural substrate and woody debris had been removed and deposited at the base of the wall; and that – contrary to the contractor's initial claims – beach materials had, in fact, been used during the construction of the face of the wall as well as backfill behind the wall, confirmed by the presence of attached barnacles and visible marine algae. *(Ex. 14a, Incident Report, pages 7 and 8, attached photos 4, 5, 6, 7, 8, 9, 10, 11, and 12).*

50g. Clearly, the SSDP application materials do not satisfy the content requirements of WAC 173-27-180(8) and (9). They completely failed to make a full and adequate disclosure identifying the connected portions of unpermitted bulkhead-work that took place along the applicant's pocket beach in recent years leading up to construction of the new caretaker's house and beach house. Without such information, as to its composition, specific placement, the type of construction methods used to install the bulkhead, and the like, there can be no informed decision regarding the cumulative effects of the beach-house segment of bulkhead on the pocket beach itself. Existing conditions on the pocket beach were not natural as of the date the beach house was built, because the pocket beach was already armored over a wide segment running to the east of the newest project site.

50h. Any "no net loss" determination would be incomplete, uninformed, and baseless without first understanding how an already-altered pocket-beach could be functioning without improper shoreline armoring features in place. That does not appear in this record.

The public was never given adequate information or notice regarding the existence of other, clearly-connected bulkhead work, the existence of wetlands, a stream, and their buffers, all in the construction area at issue. Without such disclosures, and the opportunity for full and thorough comment and analysis by interested members of the general public, or relevant public agencies, the Record for this matter is incomplete and insufficient to support approval of the requested after-the-fact shoreline permit application.

50i. There is insufficient information in the record to demonstrate that there will be no net loss (or that there has been no net loss) of shoreline functions and values along the applicant's pocket beach. Here, this is especially true, given the absence of discussion addressing the cumulative and long-term impacts of this bulkhead and connecting portions of bulkhead that were built without necessary permits or approvals in previous years.

The application is not consistent with the Shoreline Management Act or the policies and regulations in the County's Shoreline Master Program.

51. The application was modified in 2016 to request authorization to remove a 125 foot bulkhead segment in front of the beach house, after analysis confirmed that it was not necessary to protect the home itself from erosion or associated risks. *(Testimony of Ms. Shook).* What remains from the original application is a request to authorize the continued existence of bulkhead segments that are purportedly necessary to protect the access road and utilities.

52. Any after-the-fact shoreline permit application, like that requested in this matter, must be consistent with the Shoreline Management Act and its implementing regulations, and with the policies and regulations of the San Juan County Shoreline Master Program – which this is not.

53. Normal protective measures are only permitted where serious erosion is threatening an established use. *See SJCC 18.50.210.* In this case, the beach house and roadway were not established uses when this bulkhead segment was constructed, and the applicant failed to show that serious erosion is occurring to justify the bulkhead.

54. As discussed above, the applicant failed to consider practical alternatives to the bulkhead. The applicant failed to consider no action as an option – including without limitation the possible elimination or modification of the access road so that it would not need to rely on shoreline armoring for support. Again, other pedestrian-only access features were not addressed and should have been. Presumably, a footpath, and conduit for utilities, could be more flexible and easier to protect than a heavier road surface that

completely filled the course of an intermittent stream that once ran through the applicants' property. Further, re-vegetation and re-grading parts of the site to minimize erosion problems were not adequately considered. Bulkheads are not permitted in conjunction with new projects when practical alternatives are available. *SJCC 18.50.210(A)(3).*

55. Based on the Record, the Examiner finds and concludes that the applicant failed to adequately explore re-sloping, upland-rock placement, and re-vegetation, among other things, as alternatives to the bulkhead. Comments in the Record from Friends of the San Juans suggest viable options that the applicant did not adequately explore, some of which appear to be quite effective on the site, especially given that the stormwater problems all appear to have been eliminated.

56. Based on the sequence of events that occurred when the bulkhead in question was constructed, the Examiner finds and concludes that the applicants' beach house project was not coordinated in a manner consistent with the approved Stormwater Plan, and that construction activities associated with the beach house, roadway, and bulkhead were not designed or located so as to conserve natural shoreline features and to minimize physical impacts, all in contravention of the purpose statement for Comprehensive Plan Policy 3.5.M.

57. This after-the-fact application for a bulkhead permit is not consistent with Comprehensive Plan Policy 3.5.M.3, which provides that: "Residential development should not be permitted if it would require bulkheading or other shoreline fortification, at the time of construction or in the foreseeable future, in order to protect the development. Residential development should not be allowed on eroding, slumping or geologically unstable shorelines unless it can be set back from such shorelines so that hazardous conditions will not be created, erosion or slope instability will not be aggravated, and natural shoreline processes will not be impeded".

58. This application for an after-the-fact shoreline permit to authorize the continued existence of a non-emergency bulkhead built before the applicant's beach house, roadway, and utilities were complete, is inconsistent with multiple County Shoreline codes and policies, including without limitation the following:

> Policies 3.6.D, re: Shoreline Stabilization, Restoration, Enhancement, and Flood Protection Activities [Note: the text of policies and codes that are highlighted in this Decision are followed by Findings by the Examiner, provided in italics]:
>
> 1. Locate and design all new development to prevent the need for shoreline stabilization measures and flood protection works. New development that requires shoreline stabilization should not be allowed. – *Finding: The facts speak for themselves, and firmly establish that the applicant's beach house project was not constructed in a manner that prevented the alleged 'need' for a bulkhead,*

most significantly due to the failure to fully complete stormwater control features before more substantial clearing and grading work took place on the site.

4. Permit structural solutions to reduce shoreline damage only after it is demonstrated that non-structural solutions would not be able to achieve the same protective purpose. – *Finding: The applicant failed to consider viable non-structural solutions, including without limitation eliminating the roadway, and designing some other pedestrian route to access the new beach house and route utilities; and failed to adequately explore re-sloping, upland-rock placement, and re-vegetation, among other things, as alternatives to the bulkhead.*

11. Analysis of off-site and cumulative impacts should be conducted for all proposed bank stabilization, restoration and enhancement, and flood protection activities. Such activities should be prohibited if they would result in beach or bank erosion along nearby shorelines. *Finding: The applicant did not provide reports or analysis addressing the cumulative impacts associated with the un-permitted bulkhead, adjacent bulkhead-segments, impacts on wetlands and stream buffers, and other aspects of the project.*

59. The applicant's un-permitted bulkhead is not and was not constructed in a manner that is/was consistent with SJCC 18.50.070(A), (D) and (E), re: Environmental impacts. Specifically, it was not located, designed, constructed or managed in a manner that: A) protects/protected the quality and quantity of surface and ground water adjacent to the site and adheres to the policies, standards, and regulations of applicable water quality management programs and related regulatory agencies; D) minimizes adverse impacts to surrounding land and water uses and must be aesthetically compatible with the affected area – the Examiner expressly finds that the applicant's un-permitted bulkhead is not aesthetically compatible with the area, where many miles of beach all around Blakely Island exist with no bulkhead at all; and E) utilizes/ed effective erosion control methods during construction.

60. Based on findings set forth above, the pending application is also not consistent with applicable County Shoreline Codes found in SJCC 18.50.070(F), (G), (H) and (J), which read as follows:

F. All shoreline uses and activities must be located, designed, constructed, and managed to avoid disturbance of and minimize adverse impacts to fish and wildlife resources, including spawning, nesting, rearing and habitat areas, and migratory routes.

G. All shoreline uses and activities must be located, designed, constructed, and managed to minimize interference with natural shoreline processes such as water circulation, sand and gravel movement, erosion, and accretion.

H. Land clearing, grading, filling, and alteration of natural drainage features and land forms must be designed to prevent maintenance problems or adverse impacts to adjacent properties or shoreline features.

J. All shoreline uses and activities must be located and designed to minimize or prevent the need for shoreline defense and stabilization measures and flood protection works, such as bulkheads, other bank stabilization, landfills, levees, dikes, groins, jetties, or substantial site regrades.

61. Given how the bulkhead was constructed, under conditions that did not constitute an emergency, and in a manner that directly impacted sensitive shoreline area, wetland and stream buffers only identified in the week before the public hearing, the pending application is inconsistent with SJCC 18.50.080 re: Environmentally sensitive areas, which provides that: When located in an environmentally sensitive area overlay district or its buffer, shoreline uses and activities must be located, designed, constructed, and managed in accordance with the applicable requirements of SJCC 18.30.110 through 18.30.160, environmentally sensitive areas. This project was not located, designed, constructed or managed in accord with such codes and policies. Its continued existence is also inconsistent with such regulations.

Cumulative impacts were not analyzed. Piecemeal development and SEPA segmenting are not appropriate.

62. In this matter, the County's Shoreline Management Plan expressly mandates that an analysis of off-site and cumulative impacts should be conducted for all proposed bank stabilization activities. *SJC Comprehensive Plan, Shoreline Policy 3.6.D(11).*

63. As noted above, the application materials and consultant reports fail to provide a complete analysis of off-site or cumulative impacts associated with the applicant's bulkhead.

64. The Washington Court of Appeals has ruled that "the consideration of a cumulative impact analysis prior to approval of [a shoreline substantial development] permit is consistent with the purpose of the SMA and clearly furthers the goal of the SMA to prevent 'uncoordinated and piecemeal development'" (*Darrell de Tienne and Chelsea Farms, LCC v. Shorelines Hearings Board*, 197 Wn. App. 248, 290-91, 391 P.3d 458 (2016)). Also see RCW 90.58.030(3)(e) and WAC 173-27-150.

65. The Washington legislature recognizes the "necessity of controlling the cumulative adverse effect" of "'piece-meal development of the state's shorelines' through 'coordinated planning' of all development, not only 'substantial development.'" RCW 90.58.020, .030(3)(e)).

66. SEPA "Segmentation" occurs when project proponents divide their proposals into SEPA-exempt segments and, thus, avoid SEPA review of individual applications'

environmental impacts. *See* WAC 197-11-305(1)(b). Similarly, a single project may not be divided into segments for purposes of avoiding compliance with the SMA. *Bartchelder v. City of Seattle*, 77 Wn.App. 154 (Div. I, 1995), summarizing holding in *Merkel v. Port of Brownsville,* 8 Wn. App. 844, at 851 (1973).

67. Substantial, unrebutted evidence in this Record establishes that the applicants have undertaken significant shoreline fortification and modification projects over the years without permits or approvals, for example: the long segment of bulkhead running to the east of the bulkhead in question, and the dock that was rebuilt without a permit. Each of these projects would have triggered SEPA and/or shoreline permitting reviews, and would have likely required a cumulative impact analysis. It never happened, and it has not been provided as part of this after-the-fact application for a shoreline substantial development permit for a segment, i.e. some, not all, of the applicant's bulkhead that runs along their pocket beach area. The circumstances presented in this application provide a textbook example of improper piecemeal development on protected shorelines.

Discussion.

68. The DNS and Staff Report were issued without sufficient information to appropriately conclude that the project will not cause significant adverse environmental impacts on the parcel of land where the newest bulkhead has been constructed and the surrounding pocket bay area where it is located. The Record does not adequately analyze cumulative impacts associated with the project and the connected portions of un-permitted bulkhead segments. And, as noted elsewhere, the wetlands were only disclosed days before the hearing.

69. Under WAC 197-11-794: "(1) "Significant" as used in SEPA means a reasonable likelihood of more than a moderate adverse impact on environmental quality; and (2) Significance involves context and intensity (WAC 197-11-330) and does not lend itself to a formula or quantifiable test. The context may vary with the physical setting. An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred". The Longman Dictionary of Contemporary English Online defines the term "Contextualize" to mean considering something together with the situation, events, or information related to it, rather than alone. The newest part of the Runstad's bulkhead cannot be considered as a single, isolated "piecemeal" shoreline project. Instead, it should have been considered as part of a larger, connected bulkhead/shoreline armoring system that has been installed by the applicants on their waterfront parcels, all of which adjoin one another along a pocket beach area that has been deemed to be of special significance to marine ecosystems throughout the County.

70. A preponderance of evidence in the record adequately supports the analysis,

findings, and recommendation of approval provided in the Staff Report that involve removal and restoration of the bulkhead segment in front of the applicant's beach house. The same cannot be said of the remaining portions of the bulkhead in question, largely because there is insufficient information in the record to conclude that critical area regulations can be or have been satisfied, specifically those applicable to the recently-identified wetlands and stream that are located in the same area as the road and utility corridor that serves the beach house.

71. The existence of these critical areas was not identified in the SEPA checklist submitted for this application. The various reports and environmental documentation on file did not seek public comment or agency feedback regarding the existence of wetlands and the stream, all critical areas under applicable county codes. Thus, the public and interested agencies did not have any opportunity to weigh-in on probable significant adverse environmental impacts that should be addressed with respect to such critical areas, or any possible mitigation measures that should be considered. In any event, the Examiner finds and concludes that omission of such information is, at best, a lack of material disclosure.

72. The application materials in existence at the time public and agency comments were solicited as part of the SEPA process were silent on the subject of the on-site wetlands and stream, so there was no analysis of any specially-tailored range of alternatives or potential mitigation measures dealing with such critical areas, or if the probable significant adverse environmental impacts caused by the bulkhead project can be avoided or mitigated to an appropriate level.

73. Comments provided by Friends of the San Juans are directly on point where they direct attention to the fact that the applicant's Wetland and Stream Reconnaissance *(Ex. 36)* omits any discussion of the impact that the new development (bulkhead) caused to the two wetlands and the stream, all critical areas; and that the applicant's Wetland and Stream Reconnaissance fails to provide any meaningful discussion or analysis of potentially less-impactful alternatives or options for compensating or mitigating for such impacts. (*Ex. 50, FOSJ Supplemental Comments, dated may 22, 2018, at pages 4 and 5; Ex. 50, attached memo from Tina Whitman, FOSJ Science Director, comments regarding Wetlands and Streams on pages 11 and 12).*

74. While there are few precise measurements in the record regarding the volume of materials that were imported or moved from one place to another as the bulkhead project was constructed, based on evidence in this record, there is no credible dispute that substantial excavation and earth moving activities occurred within the required buffers for Wetland B (located immediately above the shoreline) and the stream itself. For example, Ms. Whitman's written memo summarizes materials provided by the applicant, which note

that excavation activities occurred from the bank, just above the shoreline, landward 5 to 10 feet in width for a 275 linear feet, and that illustrations show such work occurred within applicable critical area buffers. *(Ex. 50, Whitman memo at page 12, directing attention to relevant portions of applicant's Exhibits 36 and 25, particularly Figure 1 in Ex. 36, the aerial photo illustration depicting the location of critical areas on the applicant's property).*

75. Additionally, the record includes substantial, unrebutted evidence that establishes the existence of additional bulkhead segment(s) that abut and continue in an easterly direction along the applicant's shoreline property. For instance, the Staff Report, at page 5, notes that no shoreline permit or exemption approvals were found that authorized the construction or maintenance of all portions of bulkhead work to the east of the portions of bulkhead addressed in the instant application, explaining that some work was authorized under a 1986 exemption granted to the applicant at the time but that the existing bulkhead does not match the site plan approved for the 1986 exemption.

76. *Exhibit 20(f)* is referenced in the Staff Report as the source of further information for the additional, unpermitted segments of bulkhead that run to the east of the project addressed in this application. It includes a copy of the shoreline permit exemption issued by the County in 1986 to Mr. Runstad, for work valued at less than $2,500, comprised of "rip-rap" to be placed along a short segment of the beach that is well to the east of the bulkhead addressed in the current application, which is shown as ending somewhere near a "path to beach" below tennis courts shown on a marked photo attached to the 1986 exemption documents. Aerial photos referenced on page 3 of Ex. 20(f) indicate that the "tennis-court" bulkhead was eventually constructed at some point between August of 2006 and June of 2008. Although they were present at the public hearing, neither of the applicants, John or Judy Runstad, offered any testimony rebutting the timeframe identified in Ex. 20(f), which used photos to estimate the construction timeframe for portions of bulkhead below the tennis-court area.

77. In any event, there is no credible dispute that the segments of additional bulkhead run for somewhere near 300 feet to the east of the one at issue in this application, and that much of that bulkhead work was not covered by the 1986 Shoreline exemption, and that it would stretch common sense and fundamental economics of shoreline construction to say that the full extent of work should be valued anywhere near as low as $2,500.

78. Some of the applicant's current reports acknowledge the existence and continuation of bulkhead structures to the east of the pending project, but none address, discuss or analyze any impacts that occurred within critical areas or their buffers, specifically those identified in *Exhibit 36*.

79. To adequately consider probable significant adverse environmental impacts associated with bulkhead construction activities within critical area boundaries or buffers, caused by the pending project, the applicant should have identified the extent to which any wetland or stream has been altered by previous work. Cumulative impacts to the pocket beach system have not been fully analyzed, because the SEPA Checklist and application materials did not acknowledge the existence and possible impacts of the large expanse of bulkheading that expands well beyond those portions for which the applicant seeks after-the-fact permit approval in this matter.

80. The after-the-fact reason for constructing the bulkhead, that erosion from the toe of the slope along the shoreline caused by wave action is a contributing factor to erosion problems on the applicants' property, is too conveniently focused on new wave action theories, to the exclusion of potential, long-term, cumulative impacts caused by existing, un-permitted segments of shoreline armoring installed over several of the applicants' other, adjacent, pocket beach parcels. The applicant's justification for retaining the un-permitted bulkhead is outweighed by the project's inconsistency with multiple policies, goals and objectives in the County's Shoreline Master Program, including without limitation the policy that mandates an analysis of cumulative impacts and standards that prohibit bulkheads in conjunction with new projects when practical alternatives are available, all of which are to be liberally construed. *See SJCC 18.50.010(C)(1) and RCW 90.58.900.*

81. The application materials direct narrow focus upon statements in the Shoreline Management Act (SMA) and County shoreline polices which generally provide that single-family residences and their appurtenant structures shall be given priority under the SMA. These statements cannot be read in isolation from the other statements of purpose in the SMA and County Shoreline policies. Here, the applicant bears the burden of proving that all of the requirements of the SMA and County SMP have been met for issuance of the requested shoreline permit. Based on substantial evidence in the Record, the undersigned Examiner finds and concludes that the applicant has not met its burden.

82. The Hearing Examiner finds and concludes that the after-the-fact shoreline permit to allow portions of un-permitted bulkhead to remain in place would not be consistent with the policies of the SMP and is not consistent with the County SMP.

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V. CONCLUSIONS OF LAW.

1. Based on the record, except for the proposal detailing the removal of the 125-foot portion of bulkhead placed in front of the beach house, the pending application does not merit approval.

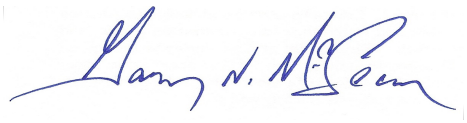
2. The portion of the pending Shoreline permit application that seeks authorization to retain segments of un-permitted bulkhead on the applicant's beach area fails to satisfy all applicable approval criteria, including without limitation those found at SJCC 18.80.110(H).

3. Any finding or other statement contained in a previous section of this Decision that is deemed to be a Conclusion of Law is hereby adopted as such and incorporated by reference.

VI. DECISION, CONDITIONS OF APPROVAL.

Based on the record, and for the reasons set forth above, except for authorization to remove the 125-foot beach house segment of bulkhead, the Shoreline Substantial Development Permit application to authorize the continued existence of other segments of un-permitted bulkhead on the applicant's beach area is hereby denied. The Conditions of Approval for removal of the beach house segment of bulkhead shall be the recommended conditions of approval numbered 2 through 13, as set forth on pages 16 and 17 of the Staff Report.

ISSUED this 2nd Day of May, 2019



Gary N. McLean
Hearing Examiner

Effective Date, Appeals, 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/or SJCC 18.80.110.

Decisions of the Hearing Examiner are final and not subject to administrative appeal to the San Juan County Council, unless the County council has adopted, by ordinance, written procedures for the discretionary review of such decisions. See Section 4.50 of the San Juan County Home Rule Charter and 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 requirements may result in dismissal of any 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 confer with advisors of their choosing, possibly including a private attorney.

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

Exhibit List

Whaleback LLC - Bulkhead

Shoreline Substantial Development Permit Application No. PSJ000-12-0019

- 1A - 2018-05-07_DCD_Shook_Staff Report HEX - PSJ000-12-0019- Whaleback
- 1B - PSJ00012-0019_Exhibit List_Updated_2018_05-04
- 1C - PSJ00012-0019_Exhibit List_FINAL HEARING_2018_05-23
- Exhibit 1 Shoreline Permit Application
- Exhibit 2 Permit Receipt
- Exhibit 3 McEnery Brogan requesting site plan
- Exhibit 4 Brogan McEnery content of site plan
- Exhibit 5 Request for Review
- Exhibit 6a EMAIL_legal ad
- Exhibit 6b EMAIL_revised legal ad
- Exhibit 6c Publication Notice
- Exhibit 6d Declaration of Mailing Notice
- Exhibit 6e Declaration of Posting Sign
- Exhibit 7 JARPA
- Exhibit 8a email cover for 8 b and 8c
- Exhibit 8b Potential effect of removal
- Exhibit 8c Ordinary High Water
- Exhibit 9 Potential effects of partial removal of new shoreline protection
- Exhibit 10a Geotech engineering evaluation, proposed new beach house BUILDG 10 0268
- Exhibit 10b Geotechnical considerations related to removal of bulkhead
- Exhibit 10c Geotech engineering conclusions and recommendations
- Exhibit 10d Peer Review of geotechnical and associated reports
- Exhibit 11a Topo Site Plan
- Exhibit 11b Topo Site Plan, Red marked WDFW Reaches
- Exhibit 11c cropped Site Plan BUILDG-10-0268
- Exhibit 11d Shoreline jurisdiction on aerial photo
- Exhibit 11e WDFW Reach Map
- Exhibit 11f Site Plan and cross section BUILDG-10-0268
- Exhibit 11g Cross section BUILDG-10-0268
- Exhibit 12a Chaffee Photos 06-27-2010
- Exhibit 12b Applicant Photos 01-16-2011
- Exhibit 12c Needham photos 01-27-2011 and 02-01-2011 and 02-03-2011
- Exhibit 12d Runstad photos 01-16-2011
- Exhibit 12e Laws Photos - 02-22-2011
- Exhibit 12f Laws Photos - 03-22-2011
- Exhibit 12g Hensel photos 10-31-2012
- Exhibit 12h McEnery photos 01-15-2013
- Exhibit 12i Assessor and Ecy Photos
- Exhibit 13 WDFW HPA Violation Report
- Exhibit 14a WDFW report Case WA-11-001018
- Exhibit 14b WDFW report color photos
- Exhibit 15 STAFF_LAWS_Letter to Atty Brogan re Notice of Correction
- Exhibit 16 STAFF_Beliveau to PA Analysis

- Exhibit 17a FEMA requirements
- Exhibit 17b FEMA flood hazard boundary
- Exhibit 17c Grading seaward of house
- Exhibit 17d Drainage Plan
- Exhibit 17e FEMA info, change hearing date
- Exhibit 17f HPA submittal requirements
- Exhibit 17g DFW beach gravel
- Exhibit 18a FEMA information
- Exhibit 18b updated FEMA requirements
- Exhibit 18c Update application status
- Exhibit 18d Laws to WDFW update application status
- Exhibit 19a Potala decision vesting
- Exhibit 19b timeline for submittal of additional information
- Exhibit 20a Site Plan Request
- Exhibit 20b Procedure for removal of round rock
- Exhibit 20c procedure for removal of round rock
- Exhibit 20d Process to revise applications
- Exhibit 20e Cover letter for 4616 Horvitz geotech memo
- Exhibit 20f FSJ request for enforcement on previous unpermitted bulkhead
- Exhibit 20g Cover sheet for FSJ previous unpermitted bulkhead
- Exhibit 20h Timeline
- Exhibit 21 Gaylord memo on FSJ request for enforcement
- Exhibit 22 86XMP023 1986 Exemption
- Exhibit 23a Stormwater Plan (Gossett) for BUILDG 10 0268
- Exhibit 23b Revised stormwater Plan (Gossett) BUILDG-10-0268
- Exhibit 24a FSJ ATF Bulkhead
- Exhibit 24b Ecology Comments
- Exhibit 25 Application Packet
- Exhibit 26 Permit Receipt
- Exhibit 27 GIS Maps
- Exhibit 28 Supplemental Application Info
- Exhibit 29a Vesting and status of exemption
- Exhibit 29b Status of exemption
- Exhibit 29c Submittal information
- Exhibit 29d Brogan Gaylord McEnery email
- Exhibit 29e Brogan McEnery update on site plan
- Exhibit 30a DNR McEnery request for review
- Exhibit 30b Clarify site plan
- Exhibit 30c Clarifyi site plan 2nd request
- Exhibit 30d Modify site plan, removal of round rock
- Exhibit 30e Response to modification
- Exhibit 30f Acknowledgment of process
- Exhibit 31 2018-04-30_DCD_ADMINISTRATIVE DECISION PSJXMP15-0028
- Exhibit 32 2018-04-30_Notice of Intent to Supplement Record
- Exhibit 33 2018-05-04_ Affidavit of Posting and Mailing
- Exhibit 34 Permit PSJ000-12-0009 Record Supplementation Letter to E. Shook
- Exhibit 35 Considerations for moving driveway and utilities Hart Crowser 05-16-2018
- Exhibit 36 Runstad Wetland Reconnaissance_Draft_20180509
- Exhibit 37 Declaration of Grant Gelb 20180517
- Exhibit 38 Runstad - Jon Runstad Declaration and Exhibit A
- Exhibit 39 San Juan County Code Chapter 18.20 excerpt

- Exhibit 40 11-020 RUNSTAD PG1 TOPO 4-17-18
- Exhibit 41 11-020 RUNSTAD PG2 PROFILES 4-17-18
- Exhibit 42 Comment from Kyle Loring Friends of the San Juans 05-21-2018
- Exhibit 43 Comment from Megan Dethier Friday Harbor Labs 05-22-2018
- Exhibit 44 Notice of Hearing 05-02-2018
- Exhibit 45 Email correspondence from Ralph Downes WDFW 05-15-2018
- Exhibit 46 Declaration of Dr Jon Houghton
- Exhibit 47 Summary of Forage Fish Surveys 03-29-2017
- Exhibit 48 Email Shook to Loring 05-22-2018
- Exhibit 49 Illustrative exhibits for testimony
- Exhibit 50 Comment letter from Friends of the San Juans
- Exhibit 51 Forage Fish Spawning Chart
- Exhibit 52 Seattle Times article lawsuit on shoreline armoring 05-22-2018