

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

Applicant(s): Blakely Island Timber, LLC  
1102 Massachusetts Ave  
Seattle, WA 98134-1030

Applicant Agent: Tina Whitman  
Friends of the San Juans  
PO Box 1344  
Friday Harbor, WA 98250

File No.: PSJ000-13-0004

Parcel No: 163311001

Location: Blakely Island

Summary of Proposal: Shoreline Substantial Development Permit for bulkhead alteration/shoreline restoration

Land Use Designation: Forest Resource-20

Hearing Date: June 12, 2013

Application Policies and Regulations: San Juan County Shoreline Master Program.

Decision: Approved with conditions.

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

3                                   Phil Olbrechts, Hearing Examiner

4                   RE: Blakely Island Timberland 5                    LLC  6                    Shoreline Substantial 7                    Development Permit 8                    (PSJ000-13-0004)	<b>FINDINGS OF FACT, CONCLUSIONS                   OF LAW AND FINAL DECISION</b>
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9                                   **INTRODUCTION**

10                   The applicant has applied for a shoreline substantial development permit to alter the  
11                   location of shoreline armoring in conjunction with a restoration project that involves  
12                   the reduction in size of a barge landing area and removal of a log handling facility  
13                   and its associated concrete, metal and rock fill material from the intertidal beach  
                  located at the northern portion of Thatcher Bay, on the west side of Blakely Island.  
                  The proposal is approved subject to conditions.

14                                   **TESTIMONY**

15                   Lee McEnery, Community Development and Planning , stated that the application is  
16                   for habitat restoration at a log dump and barge landing. Thatcher Bay Log Dump  
17                   wishes to restore the habitat by making the log dump smaller. The skids would be  
18                   removed along with other scattered armoring. Additionally, the staging area size  
                  would be reduced. The applicant also will improve the drainage area. The barge  
                  landing will be retained to transport timber. Staff recommends approval of the permit.

19                   Applicant Testimony

20                   Tina Whitman, Friends of the San Juans, testified that Blakely Island Timberland LLC  
21                   owns the property. The subject site is forest lands. The adjacent property owner is  
22                   Seattle Pacific University. At the subject site, there is an outdated and oversized log  
23                   handling facility. The goal of the project is restoration of beach and inner-tidal  
24                   habitat. This will not be a full restoration because there are ongoing timbering  
25                   activities by other private landowners. The applicants will completely remove the log  
                  handling facility which will uncover upper beach. The site was selected as a  
                  restoration site because it is a documented spawning habitat, and the site has intact  
                  marine, riparian vegetation. The restoration project is funded by the Washington State  
                  Salmon Recovery Board. The majority of the removal process will happen from

1 upland at low tides. The concrete and metal will be taken off island to recycling sites  
2 by barges. Overall, the footprint will be reduced by 40 percent.

## 3 EXHIBITS

- 4 Exhibit 1 application materials
- 5 Exhibit 2 Geotechnical report
- 6 Exhibit 3 Biological evaluation
- 7 Exhibit 4 staff report

## 8 FINDINGS OF FACT

### 9 **Procedural:**

- 10 1. Applicant. The applicant is Blakely Island Timber, LLC.
- 11 2. Hearing. The Hearing Examiner conducted a hearing on the subject  
12 application on June 12, 2013 at 10:00 am in the Islander Bank annexation building on  
13 San Juan Island.

### 14 **Substantive:**

- 15 3. Site and Proposal Description. The applicant has applied for a shoreline  
16 substantial development permit to alter the location of shoreline armoring in  
17 conjunction with a restoration project that involves the reduction in size of a barge  
18 landing area and the removal of a log handling facility and its associated concrete,  
19 metal and rock fill material from the intertidal beach located at the northern portion of  
20 Thatcher Bay, on the west side of Blakely Island. Friends of the San Juans serves as  
21 the applicant's agent on this application because the proposal serves as a major  
22 shoreline restoration project for Blakely Island.

23 Specifically, the proposal is to restore fish habitat which will be accomplished by:

- 24 1. Reducing the size of the barge landing staging area and resurfacing it.
- 25 2. Removing the log skids, pilings, intertidal debris and layers of armoring.
- 3. Regrading and resurfacing the actual landing ramp, while the ramp will remain in  
the same location.
- 4. Installing drainage improvements that will direct and treat drainage running off  
the steep hill above the site.
- 5. Installing gravel and sloping rock revetment to re-form the shoreline side of the  
barge landing staging area.

The site has been used as a log dump and barge landing for many years and shows its  
historic use: various types of armoring retaining fill along the shore, steel log skids,  
scattered pilings in the water, underwater and intertidal rocks which were originally  
part of the armoring, but which are scattered; intertidal concrete debris, and little  
consideration for drainage from the land. The owner's large property is in the DFL  
Shoreline Substantial Development Permit

1 tax abatement program and must retain the ability to transport timber, but they no  
2 longer plan to use log rafts/dumping as a transport method. The landing area was  
3 likely built in phases over time, using some fill. The applicant seeks to reduce its size  
substantially to mimic the shape of the natural shoreline while restoring the seaward  
area that once was likely fish habitat.

4 The proposal has elements of a barge landing and a bulkhead, so those regulations are  
5 reviewed here. The existing armoring extends quite seaward into the intertidal area  
6 and parts of it have become scattered. After removal of the existing armoring, a  
7 more naturally sloping rock revetment will be installed much further landward, to  
8 support one side of the staging area. Without this hard support, the filled, level  
9 staging area (that is now supported by armoring) would collapse and scatter its  
contents, obliterating the staging area and the barge landing itself, making it useless  
and making restoration pointless. The proposed revetment will function as a retaining  
wall/bulkhead, in this situation. The area protected by the revetment does not involve  
any feeder bluff.

10 Retention of the existing barge landing is necessary since it serves as the only landing  
11 facility for Blakely Island and its 4,000 acres of active forest land. Further, Blakely  
12 Island does not have any ferry service

13 The site is at the base of a steep hill on the west side of Blakely, at the end of  
14 Thatcher Bay Road, on Thatcher Bay.

15 4. Characteristics of the Area. There is little visible development in the  
surrounding area.

16 5. Adverse Impacts of Proposed Use. There are no adverse impacts  
17 associated with the proposal. As a restoration project, the proposal will significantly  
18 improve upon the biological functions of the site and return the shoreline to its natural  
19 character, as outlined in detail in the biological evaluation, Ex. 3. Perhaps most  
20 significant, the shoreline area is a documented serf smelt spawning beach and the  
21 restoration actions will uncover 3,500 square feet of smelt habitat that is currently  
22 buried by the existing facilities. Further, the proposed removal of rock, concrete, and  
23 metal fill and debris will expose approximately 9,000 square feet of intertidal area,  
which should improve upon the navigability of these waters. As further noted in the  
biological evaluation, there are several protected species associated with the site. The  
evaluation recommends several mitigation measures to protect these species and  
concludes that the measures "are adequate to minimize adverse impacts" from the  
proposal. The mitigation measures will be imposed as conditions of approval.

24 According to the staff report, there is no littoral drift at the site so beach starvation is  
25 not an issue. Further, the proposal seeks to reduce the amount of shoreline armoring  
at the site, which should serve to reduce any existing erosion or beach starvation  
impacts caused by armoring.

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**CONCLUSIONS OF LAW**

**Procedural:**

1. Authority of Hearing Examiner. The Hearing Examiner issues a final decision on shoreline substantial development permits. Section 3.70 of the San Juan County Charter.

**Substantive:**

2. Zoning/Shoreline Designations. The subject property is zoned Forest Resource-20 and the shoreline designation is Rural Residential.

3. Permit Review Criteria. As noted in the staff report, the alterations to the shoreline armoring of the project require a shoreline substantial development permit. SJCC 18.50.210 requires a shoreline substantial development permit for development of bulkheads. 18.80.110(H) establishes the criteria for approval of shoreline substantial development permits. The criteria include the policies of the Shoreline Management Act (Chapter 90.58 RCW), the policies and use regulations of the San Juan County Shoreline Master Program, and the requirements of the San Juan Municipal Code and Comprehensive Plan. The applicable policies and regulations are quoted in italics below and applied through conclusions of law.

**RCW 90.58.020 Use Preferences**

*This policy (Shoreline Management Act policy) is designed to insure the development of these shorelines (of the state) in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto...Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state....*

4. The proposal has no significant adverse impacts while substantially supporting the public interest by restoring natural shoreline character, function and processes. The proposal is consistent with the general purpose of the Shoreline Management Act.

1 **RCW 90.58.020(1)**

2 *Recognize and protect the statewide interest over local interest;*

3 5. The proposal will restore natural shoreline character, function and processes with  
4 no associated adverse impacts. The proposal is consistent with the policy.

5 **RCW 90.58.020(2)**

6 *Preserve the natural character of the shoreline;*

7 6. The proposal will restore the shoreline to its natural character.

8 **RCW 90.58.020(3)**

9 *Result in long term over short term benefit;*

10  
11 7. The proposal will restore natural shoreline character, function and processes  
12 with no associated adverse impacts. The proposal is consistent with the policy.

13 **RCW 90.58.020(4):** *Protect the resources and ecology of the shoreline;*

14 8. The proposal will restore natural shoreline character, function and processes  
15 with no associated adverse impacts. The proposal is consistent with the policy.

16 **RCW 90.58.020(5):** *Increase public access to publicly owned areas of the  
17 shorelines;*

18 9. The proposal will not appreciably increase public access except by improving  
19 navigation of intertidal areas, but no additional public access can be constitutionally  
20 required of this private proposal.

21 **RCW 90.58.020(6):** *Increase recreational opportunities for the public in the  
22 shoreline;*

23 10. The proposal will serve to remove some obstacles to public navigation of  
24 intertidal waters. Beyond this, no public recreation is included in the proposal nor  
25 could it be constitutionally required.

**San Juan County Shoreline Use Regulations**

**Bulkhead Regulations**

**SJCC 18.50.210(A)(2):** *Nonexempt bulkheads shall be permitted only when  
nonstructural shoreline protection, restoration, or modification techniques have been*  
Shoreline Substantial Development Permit

1 shown to be ineffective and it can be shown that one or more of the following  
2 conditions exists:

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

10 11. As determined in Finding of Fact No. 3, the proposed bulkhead is  
11 necessary to keep an existing staging area from collapsing and eroding into adjacent  
12 waters. In this regard the need for the bulkhead satisfies all four criterion quoted  
13 above.

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

16 12. The bulkhead is necessary to protect an existing use.

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

21 13. As noted in the staff report, the subject "bank" is not a marine feeder bluff.

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

24 14. The subject beach is not a Class I marine beach.

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

15. Compliance with Fish and Wildlife design regulations will be assured via the  
hydraulic permit review for the proposal.

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

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

levels.

16. This information is supplied in the application materials, Ex. 1.

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

17. The proposal will not cause any significant beach erosion or starvation as determined in Finding of Fact No. 5.

**SJCC 18.50.340(H):** *Regulations – Barge Landing Sites and Facilities.*

*1. Barge landing sites and facilities shall not be approved until:*

*a. It can be shown by the applicant that existing facilities are not adequate or feasible for use;*

*b. Alternative access is not adequate or feasible;*

*c. The feasibility and determination of demand for a multiple-user facility has been thoroughly investigated; and*

*d. The applicant shall have the burden of providing the information requested for subsections (A), (B), and (C) of this section, and shall provide this information in a manner prescribed by the administrator.*

*2. Barge landing sites and facilities shall be located, designed, constructed, and maintained in a manner which provides the least adverse impacts to the shoreline environment and which maximizes the opportunity to serve multiple users on a given island.*

*3. The development of a facility for barge landing, or the use of an unimproved shoreline area for a barge landing site, shall be subject to conditional use.*

18. The proposal seeks to reduce the size of an existing barge landing. As noted in Finding of Fact No. 5, the barge must be retained because it is the only land and barge facility available for the 4,000 active forest acres of Blakely Island. Consequently, its proposed reduction in size must be construed as the only adequate and feasible means of maintaining adequate transport service to the island's forest operations. As part of a

1 restoration project that reduces the size of an existing barge landing facility, the  
2 proposal is also construed as minimizing adverse impacts. Since the barge landing is  
3 not being relocated, the proposal is not considered a new barge landing facility and no  
4 conditional use permit is required.

4 **SJCC 18.50.360(A): Regulations.**

5 *1. All applicable federal and state permits shall be obtained and complied with in the*  
6 *construction and operation of shoreline stabilization and flood protection works.*

7 *2. All new development activities shall be located and designed to prevent or minimize*  
8 *the need for shoreline stabilization.*

9 *3. The County shall require and utilize the following information during its review of*  
10 *shoreline stabilization and flood protection proposals: ...*

11 *4. The County shall require and utilize the following information in its review of all*  
12 *shoreline modification proposals: ...*

13 *5. Shoreline stabilization measures shall not be designed and constructed in such a*  
14 *manner as to result in channelization of normal stream flows.*

15 *6. Stream channel direction modification, realignment, and straightening are*  
16 *prohibited unless they are essential to uses that are consistent with this SMP.*

17 *7. Shoreline stabilization shall not be designed in a manner that will permit scouring*  
18 *of the beach at the toe of protective devices nor erosion on the level of the seaward*  
19 *beach.*

20 *8. Upon project completion, all disturbed shoreline areas shall be restored to as near*  
21 *pre-project configuration as possible and replanted with native vegetation.*

22 *9. Shoreline stabilization and flood protection works are prohibited in wetlands and*  
23 *on point and channel bars. They are also prohibited in salmon and trout spawning*  
24 *areas except for fish or wildlife habitat enhancement.*

25 19. The project is conditioned to obtain all required state and federal permits. There  
is no littoral drift at the project area. All application information required by the

1 criteria above were included in the applicant's detailed application materials, Ex. 1-3.  
2 There are no impacts to streams or stream channelization as the nearest stream is 1,200  
3 feet away. The staff report notes that the proposed new armoring will not result in any  
4 scouring and the significant proposed reduction in armoring should serve to reduce  
5 any existing scouring. The proposal will not result in any disturbance of natural areas,  
6 as the natural areas have been eliminated by the current use. There are no wetlands or  
7 point or channel bars on site. The proposal constitutes fish and wildlife habitat  
8 restoration.

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

11 20. The proposal clearly qualifies as a restoration project.

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

15 21. There is no littoral drift at the project site.

16 **SJCC 18.50.370(A)(3):** *Natural Beach Restoration or Enhancement.*

17 *a. Design Alternatives. Design alternatives shall include the best available*  
18 *technology such as:*

19 *i. Gravel berms, drift sills, beach nourishment, and beach enhancement*  
20 *when appropriate;*

21 *ii. Planting vegetation, when appropriate. All plantings must be*  
22 *maintained. Vegetation planted to restore or enhance beaches shall be*  
23 *native plants suited to the habitat characteristics of the site.*

24 *b. Design Criteria. Natural beach restoration or enhancement shall not:*

25 *i. Detrimentially interrupt littoral drift or redirect waves, current, or*  
*sediments to other shorelines;*

*ii. Result in any exposed groin-like structures; however small "drift sill"*  
*groins may be used as a means of stabilizing restored sediment where*  
*part of a well planned beach restoration program;*

*iii. Extend waterward more than the minimum amount necessary to*  
*achieve the desired stabilization;*

1           iv. Result in contours sufficiently steep to impede easy pedestrian passage  
2           or trap drifting sediments;

3           v. Create "additional dry land mass"; and

4           vi. Disturb significant amounts of valuable shallow water fish or wildlife  
5           habitat, unless such habitat is immediately replaced by new habitat that is  
6           comparable or better.

7           c. Natural Beach Restoration Construction Standards.

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

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

14           22. The proposal satisfies the criteria above. The revetment will be composed of on-  
15           site rocks and 75 tons of beach nourishment sediment will be imported to fill voids left  
16           by rock and debris removal. The color and composition of the sediment is laid out in  
17           detail in the geotechnical report, Ex. 2, to assure consistency with natural beach  
18           sediment. The restoration project will significantly reduce waterward encroachments  
19           of armoring and other improvements and as noted previously there is no littoral drift.  
20           The proposed restoration will significantly restore the beach to its natural dimensions  
21           and profile.

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

26           23. All proposed modification activities are in support of an existing use and no new  
27           uses are proposed.

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

31           24. The proposal does not involve any alteration to functional spawning habitat, but  
32           will create new spawning habitat from "buried" areas.

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

3 25. The proposal will only serve to improve navigation within intertidal waters.

4 **DECISION**

5 The proposed bulkhead and associated restoration work is approved as depicted in  
6 Ex. 1-3, subject to the following conditions:

- 7 1. The proposal shall be comply with the recommended mitigation and conservation  
8 measures recommended in the geotechnical report, Ex. 2, and biological  
9 evaluation, Ex. 3.
- 10 2. The proposal shall comply with all applicable state and federal law and acquire all  
11 required state and federal permits prior to construction.
- 12 3. Failure to comply with any terms or conditions of this permit may result in its  
13 revocation.
- 14 4. The applicants shall schedule a site inspection upon completion of the project.

15 Dated this 27th day of June, 2013

16   
17 Phil A. Olbrechts

18 San Juan County Hearing Examiner

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

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

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

Depending on the subject matter, this decision may be appealable to the San Juan  
County Superior Court or to the Washington State Shorelines Hearings Board. State  
law provides short deadlines and strict procedures for appeals, and failure to timely  
comply with filing and service requirement may result in dismissal of the appeal. See  
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1 RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to  
2 promptly review appeal deadlines and procedural requirements and consult with a  
private attorney.

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