

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicants: Warren Lueth
457 Dusty Road
Lopez, WA 98261

File No.: PSJ000-10-0010

Request: Shoreline Substantial Development Permit

Parcel No: 241322004

Location: Lopez Island

Summary of Proposal: Desalination facility

Shoreline Designation: Conservancy

Hearing Date: February 3, 2011

Application Policies and Regulations: SJCC 18.50.350

Decision: Approved subject to conditions.

S.J.C. COMMUNITY

FEB 18 2011

DEVELOPMENT & PLANNING

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

3 Phil Olbrechts, Hearing Examiner

4 RE: Warren Lueth	
5 Shoreline Substantial 6 Development Permit (PSJ000-10-0010)	7 FINDINGS OF FACT, CONCLUSIONS 8 OF LAW AND FINAL DECISION.

9 **INTRODUCTION**

10 The Applicant has applied for approval of a shoreline substantial development permit
11 to construct a desalination facility. The proposal is approved subject to conditions.

12 **TESTIMONY**

13 Andrew Evers, Applicant's agent, testified that the cleaning filters would be cleaned
14 off-site. He also noted that the increase in salinity would not have any adverse
15 impacts because the salinity level returns to background levels within six inches of
16 the outtake.

17 Julie Thompson requested that the Examiner add a condition requiring an inspection
18 when the project is completed.

19 **EXHIBITS**

20 All documents are admitted as identified in the "Attachments" list on page 4 of the
21 staff report dated January 12, 2011.

22 **FINDINGS OF FACT**

23 **Procedural:**

24 1. Applicant. The applicant is Warren Lueth, through his agent Andrew
25 Evers.

2. Hearing. The Hearing Examiner conducted a hearing on the subject
application on February 3, 2011.

Substantive:

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DEVELOPMENT & PLANNING

Shoreline Substantial
Development Permit

1 3. Site and Proposal Description. The Applicant has applied for a shoreline
2 substantial development permit to construct a desalination facility. The facility will
3 consist of two 2" HDPE pipes in the MacKaye Harbor tidal zone for seawater intake
4 and saline water discharge. Each of the pipes will extend into the marine water. A 4"
5 high pressure pump will be provided at one end of the 2" pipes for seawater intake
6 and saline water dispersion to the other 2" pipe. The 2" pipes will be outside the
7 extreme low tide boundary, the intake being -4' below Mean Lower Low Water
8 (MLLW) and outfall -10' below MLLW.

9 The 2" HDPE pipes located landward of the shoreline will be installed at a 36"
10 minimum depth to accommodate current Washington State Department of Health
11 regulations on minimum pipe burial depth. Seawater will be pumped to an upland
12 building in which a reverse osmosis desalination water system will be installed.

13 4. Characteristics of the Area. The neighborhood is rural and residential in
14 nature, with lots of forested land.

15 5. Adverse Impacts of Proposed Use. The Examiner finds that the proposed
16 project will have no significant adverse impacts. The project will not be visible from
17 the shoreline (except for the upland building housing the reverse osmosis facility) and
18 will not increase saline levels to any level that would adversely impact aquatic life.
19 Saline levels return to normal levels within inches of the terminus of the outtake pipe.
20 Construction will only take one day and is primarily composed of trenching the intake
21 and outtake pipes within the shoreline area. Native materials will be used to refill the
22 pipe trenches and natural contours will be maintained. The Applicant has prepared a
23 thorough analysis of impacts to federally managed species in the September 2010
24 Informal ESA Consultation report, Ex. 3. With the conservation measures
25 recommended in the report, the project will create no significant adverse impacts.

CONCLUSIONS OF LAW

Procedural:

1 1. Authority of Hearing Examiner. The Hearing Examiner issues final
2 decisions on shoreline substantial development permit applications after holding a
3 public hearing. SJCC 18.80.110(E) and SJCC 18.80.020.

Substantive:

1 2. Shoreline Designation. The subject property is designated as
2 Conservancy.

3 3. Comprehensive Plan and Zoning Designations. The subject property is
4 designated as Rural Farm Forest and the existing land use is Residential.

1 4. Permit Review Criteria. The proposal is within 200 feet of the shoreline
2 of MacKaye Harbor, a shoreline of statewide significance. The costs of the
3 development presumably exceed those of the exemption levels set in WAC 173-27-
4 040(2)(a) so the project must acquire a shoreline substantial development permit.
5 SJCC 18.80.110(H) establishes the criteria for approval of shoreline substantial
6 development permits. The criteria include the policies of the Shoreline Management
7 Act (Chapter 90.58 RCW), the policies and use regulations of the San Juan County
8 Shoreline Master Program, and the requirements of the San Juan Municipal Code and
9 Comprehensive Plan. The applicable policies and regulations are quoted in italics
10 below and applied through conclusions of law.

11 **RCW 90.58.020 Use Preferences**

12 *This policy (Shoreline Management Act policy) is designed to insure the development*
13 *of these shorelines (of the state) in a manner which, while allowing for limited*
14 *reduction of rights of the public in the navigable waters, will promote and enhance*
15 *the public interest. This policy contemplates protecting against adverse effects to the*
16 *public health, the land and its vegetation and wildlife, and the waters of the state and*
17 *their aquatic life, while protecting generally public rights of navigation and corollary*
18 *rights incidental thereto.*

19 5. The project will have no appreciable impact on aquatic resources and will
20 not interfere with shoreline use or access.

21 **RCW 90.58.020(1)**

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

23 6. The project has been found to have no adverse impacts and as such the
24 statewide interest in the preservation of the shoreline and surrounding habitats is
25 protected, in addition to the local interest of providing usable potable water.

RCW 90.58.020(2)

Preserve the natural character of the shoreline;

7. There will be no discernable impact on natural character. Salinity levels
will not be materially altered and the project will not be visible from the shoreline.

RCW 90.58.020(3)

Result in long term over short term benefit;

8. The project will benefit up to fourteen homes that are currently
experiencing saline intrusion into their freshwater wells. As previously determined,
there will be no impact to the shoreline as a result of this project. Given these
circumstances, the project results in long term over short term benefit.

RCW 90.58.020(4)

1 *Protect the resources and ecology of the shoreline;*

2 9. There are no adverse environmental impacts to the shoreline associated
3 with this project.

4 **RCW 90.58.020(5)**

5 *Increase public access to publicly owned areas of the shorelines;*

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

7 **RCW 90.58.020(6)**

8 *Increase recreational opportunities for the public in the shoreline;*

9 11. This project will have no impact on recreational opportunities for the
10 public in the shoreline.

11 **San Juan County Code Regulations**

12 **SJCC 18.50.350(A)(1):** *In shoreline areas, utility transmission lines, pipelines, and
13 cables must be placed underground unless demonstrated to be infeasible. Further,
14 such lines must utilize existing rights-of-way whenever possible. Proposals for new
15 corridors in shoreline areas involving water crossings must fully substantiate the
16 infeasibility of existing routes.*

17 12. The intake and outtake pipes will be underground.

18 **SJCC 18.50.350(A)(2):** *Utility development must, through coordination with
19 government agencies, provide for compatible multiple use of sites and rights-of-way.
20 Such uses include shoreline access points, trails, and other forms of recreation and
21 transportation systems, providing such uses will not unduly interfere with utility
22 operations or endanger public health and safety.*

23 13. The proposal will be used by up to fourteen homes, according to the ESA
24 consultation report, p. 1, Ex. 3.

25 **SJCC 18.50.350(A)(3):** *Sites disturbed for utility installation must be stabilized
during and following construction to avoid adverse impacts from erosion.*

14. The ESA consultation report states that typical stormwater runoff
prevention controls will be used, including placement of straw wattles, seeding and
mulching. This will be made a condition of approval.

SJCC 18.50.350(A)(4): *Immediately following the completion of utilities installation
or maintenance projects on shorelines, disturbed areas must be restored to project
configurations, replanted with local vegetation, and the vegetation maintained until it
is firmly established.*

1 15. As proposed and as conditioned.

2 **SJCC 18.50.350(A)(5):** *Utility lines, pipes, stations, plants, and other apparatus*
3 *shall not be installed in shoreline areas unless there is no feasible alternative.*

4 16. There is no feasible alternative – the project is dependent upon acquisition
5 of seawater.

6 **SJCC 18.50.350(A)(6):** *Utility lines shall be installed underground. Desalination*
7 *intake and discharge lines shall be located underground wherever feasible, except for*
8 *that portion located underneath or along any docks, piers, walkways, stairs, or other*
9 *shoreline improvements located on the site.*

10 17. As proposed.

11 **SJCC 18.50.350(A)(8):** *Where installation of utility lines, pipes, or other apparatus*
12 *in shoreline areas is approved, clearing shall be confined to that which is absolutely*
13 *necessary to permit the installation and to prevent interference by vegetation once the*
14 *system is in operation.*

15 18. In sub-tidal areas, the pipes and associated structures to anchor them will
16 likely displace macro algae, but it is likely that the macro algae will recolonize
17 disturbed areas only resulting in a temporary displacement. It is unclear whether any
18 vegetation would be disturbed in intertidal or upland areas, but the conditions of
19 approval require re-vegetation of any cleared areas. Further, the work corridor will
20 be limited to a strip ten feet wide on either side of the pipes, which appears to be the
21 minimum reasonably necessary for installation.

22 **SJCC 18.50.350(9):** *Where utility lines, pipes, or other apparatus must cross*
23 *shoreline areas, they shall do so by the route which will cause the least damage to the*
24 *shoreline, both physically and visually.*

25 19. As conditioned and proposed, the pipes will cause inconsequential damage
to the shoreline and the route appears to be the least damaging.

SJCC 18.50.350(A)(10): *Drainage and surface runoff from utility installation areas*
shall be controlled so that pollutants will not be carried into water bodies.

20. The project is conditioned to implement drainage and surface runoff
control measures.

SJCC 18.50.350(A)(11): *Applications for outfalls and underwater pipelines that*
transport substances harmful or potentially harmful to aquatic life or water quality
shall not be approved unless the applicant has demonstrated that no significant

1 *adverse impacts will result. Desalination and reverse osmosis brine discharge is not*
2 *considered to be potentially harmful to aquatic life or water quality provided all*
3 *required state and federal requirements are met.*

4 21. The project is for desalination and is conditioned on meeting all required
5 state and federal requirements.

6 **SJCC 18.50.350(B)(1):** *Desalination lines must be located along existing paths,*
7 *trails, or connected to existing docks and beach access structures wherever feasible.*

8 22. There is no existing beach access structure to connect to. The upland lines
9 are going to be located in the existing driveway.

10 **SJCC 18.50.350(B)(2):** *Desalination and reverse osmosis systems on shorelines that*
11 *are known or demonstrated to be eroding bluffs, unstable bluffs, eroding beaches, or*
12 *exposed cliffs, will require design and engineering which will assure that no*
13 *significant visual or environmental impacts will be created and that effects on the*
14 *natural shoreline conditions will be minimized.*

15 23. The Coastal Zone Atlas shows the shoreline to be stable and rocky. As
16 noted previously, there are no adverse aesthetic impacts associated with the proposal.

17 **SJCC 18.50.350(B)(3):** *All desalination and reverse osmosis production equipment*
18 *and necessary pumping equipment, utility connections, and pipelines must be located*
19 *and designed to blend in with the natural surroundings to the extent feasible to*
20 *reduce visual impacts. Existing vegetation and terrain features must be used*
21 *whenever possible for screening.*

22 24. All of the upland lines will be underground. The reverse osmosis system
23 itself will be enclosed in a building and not visible to the outside.

24 **SJCC 18.50.350(B)(4):** *Desalination and reverse osmosis facilities must not*
25 *impede public access to public tidelands or materially interfere with normal public*
26 *use of public waters.*

27 25. Since the pipes will be underground or under water, there will be no
28 interference with public use or access of the shoreline.

29 **SJCC 18.50.350(B)(5):** *Desalination and reverse osmosis systems will not be*
30 *allowed for the purposes of providing the primary water supply within new*
31 *subdivisions and short subdivisions. Such facilities may be allowed for the purpose of*
32 *supplying water for an established community water system.*

33 26. A new subdivision is not involved. The proposal will be used to serve
34 existing homes.

1 **SJCC 18.50.350(B)(6):** *Desalination intake and discharge lines shall be located*
2 *underground wherever feasible, except for that portion located underneath or along*
3 *any docks, piers, walkways, stairs, or other shoreline improvements located on the*
4 *site.*

4 27. The intake and discharge lines will be underground, except of course at
5 the intake and discharge points located underwater.

6 **SJCC 18.50.350(B)(7):** *Desalination and reverse osmosis brine discharge is not*
7 *considered to be potentially harmful to aquatic life or water quality provided all*
8 *required state and federal requirements are met.*

8 28. The staff report notes that all applicable regulations are satisfied and there
9 is no evidence to the contrary. The project will also be conditioned to satisfy all
10 applicable regulations.

10 **SJCC 18.50.350(B)(8):** *All desalination and reverse osmosis installations shall*
11 *comply with the following regulations:*

12 *a. The intake and discharge lines must be trenched, run, or located together except*
13 *where necessary to provide adequate separation between intake and discharged*
14 *water.*

14 *b. The intake and discharge lines must be engineered so as to not materially interfere*
15 *with normal public use of public tidelands or navigation. The intake point shall not*
16 *float on the surface.*

17 *c. Intake and discharge lines must not be placed through or over any known or*
18 *discovered archaeological resources, unless the location is approved by the*
19 *Washington Office of Archaeology and Historic Preservation.*

19 *d. The use of existing wells with salt water contamination or intrusion as the intake*
20 *source for desalination or reverse osmosis systems is prohibited unless specifically*
21 *authorized by the County department of health and community services.*

21 *e. The use of pre-filtration beach wells located landward of the line of mean lower*
22 *low water is allowed provided all state and federal requirements are met.*

23 29. The proposal meets all the regulations quoted above. The Applicant had a
24 survey done and there is an archaeological resource on site. The Washington State
25 Department of Archaeology and Historic Preservation (“DAHP”) is requiring that a
professional archaeologist be present to monitor excavation for this project under an
approved monitoring plan and/or a DAHB permit.

1 **SJCC 18.50.350(C)(3)(Regulation by Environment):** *Conservancy. Utility*
2 *transmission, distribution, or collection facilities are permitted in the conservancy*
3 *environment subject to the policies and regulations contained in this master program;*
4 *provided, that the applicant can demonstrate that no feasible alternative exists, and*
5 *that the utility line shall follow a route which will minimize the adverse impacts on*
6 *the physical and visual resources of the area. Desalination and reverse osmosis*
7 *systems shall be permitted in the conservancy environment subject to the policies and*
8 *general regulations contained in this master program.*

9 30. As discussed in the preceding conclusions of law, the proposal is
10 consistent with the policies and regulations of the shoreline master program.

11 **DECISION**

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

- 14 1. The project shall implement the Essential Fish Habitat conservation measures
15 identified at p. 25 of the ESA informal consultation report, Ex. 3
- 16 2. Only native materials shall be used to refill the trenching of the project and all
17 activities shall maintain the natural contours of the site.
- 18 3. Upon completion of the project the Applicant shall schedule an inspection
19 with staff for purposes of verifying compliance with this decision and
20 applicable regulations.
- 21 4. Typical stormwater runoff control measures will be implemented during
22 construction, including straw wattles, seeding and mulching.
- 23 5. Immediately following the completion of pipe installation, disturbed areas
24 must be restored to pre-project conditions and any removed vegetation
25 (excluding macro algae) must be replanted and maintained until it is firmly
established.
6. The work corridor for pipe installation shall be limited to ten feet on either
side of the pipes.
7. All required state and federal requirements pertaining to desalination shall be
met by the project.

Dated this 17th day of February 2011.



Phil Olbrechts
County of San Juan Hearing Examiner

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

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

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

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

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