

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicants: Thomas and Brooke Pigott
1215 Lexington Way E.
Seattle, WA 98112

File No.: PSJ000-10-0003

Request: Shoreline Substantial Development permit to construct a
soft bulkhead to stabilize an eroding bankhead.

Parcel No: 462331001

Location: 1576 White Point Road
Friday Harbor

Summary of Proposal: The request is for installation of a soft shore bulkhead to
stabilize the shoreline which is being undermined and
eroded due to wave action.

Land Use Designation: Rural Residential

Public Hearing: Held June 3, 2010

Application Policies and Regulations: SJCC 18.50.210 Bulkheads

Decision: The application is approved.

S.J.C. COMMUNITY
JUN 21 2010
RG
DEVELOPMENT & PLANNING

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

3 Phil Olbrechts, Hearing Examiner

4 RE: Thomas and Brooke Pigott

5 Shoreline Substantial
6 Development Permit
(PSJ000-10-0003)

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

7 **INTRODUCTION**

8 The applicant has applied for approval of a Shoreline Substantial Development
9 Permit to construct a soft bulkhead to stabilize an eroding bank. The Examiner
10 approves the permit subject to conditions.

11 **TESTIMONY**

12 The applicant was present but did not testify. Ms. Thompson submitted a Hydraulic
13 Permit Approval dated May 21, 2010 as Exhibit 6.

14 The applicant's representative, Bob Querry, stated that an inventory was done in the
15 1980's of the County's shorelines to determine if they were feeder bluffs and that this
16 inventory was used to determine whether the subject bluff was a feeder bluff. He
17 noted that a bluff is considered a feeder bluff based upon the physics of the site and
where the sediments are deposited. He also noted that the house was not in any
imminent danger of damage from shoreline erosion. Ms. Thompson agreed with Mr.
Querry's definition of a feeder bluff.

18 **EXHIBITS**

19 *See Exhibit List attached to May 17, 2010 staff report prepared by Julie Thompson.*

20 **FINDINGS OF FACT**

21 **Procedural:**

- 22 1. Applicant. The applicants are Thomas and Brooke Pigott.
23 2. Hearing. The Hearing Examiner conducted a hearing on the subject
24 application on June 3, 2010.

25 **Substantive:**

3. Site and Proposal Description. The applicant requests a shoreline
substantial development permit for the installation of a soft shore bulkhead to
{PA0765440.DOC;1\13071.900000\}

1 stabilize the shoreline which is being undermined and eroded due to wave action.
2 These improvements should preserve and rehabilitate the shoreline to a healthy
3 vegetated state, prevent further loss of land upslope, and protect native trees and shell
4 middens without using a rock bulkhead. The parcel is level with little elevation
5 change. It is developed with a single-family residence, some outbuildings, a pool
6 area, and landscaped lawn and flower beds. As testified by staff and the applicant,
7 the subject bluff is not a feeder bluff.

8 4. Characteristics of the Area. The property lies within a rural and
9 residential neighborhood. Property to the south and west is residential, to the north
10 is plat common area, and to the east is Mosquito Pass.

11 5. Adverse Impacts of Proposed Use. There are no adverse impacts
12 discernable from the record. The addition of the bulkhead should preserve and
13 rehabilitate the shoreline to a healthy vegetated state, prevent further loss of land
14 upslope, and protect native trees. Overall, the project will have a net positive public
15 benefit.

16 CONCLUSIONS OF LAW

17 Procedural:

18 1. Authority of Hearing Examiner. The Hearing Examiner, after conducting
19 an open-record public hearing, renders a decision on the shoreline permit.
20 SJCC18.80.110(E).

21 Substantive:

22 2. Shoreline Designation. The subject property is designated as Rural
23 Residential.

24 3. Comprehensive Plan and Zoning Designations. The subject property is
25 designated as Rural Residential, and the existing land use is Residential.

4. Compliance with Notice Requirements. County staff advertised the
application in accordance with RCW 90.58.140, WAC 173-27-110 and the San Juan
County Code Sections 18.80 and 18.50. Notice of the Public Hearing and SEPA
Appeal for the project was properly published, posted on-site, and noticed to parties
of record and adjacent property owners, on April 21, 2010, April 19, 2010 and April
23, 2010. No letters or comments were received during the comment period.

5. Permit Review Criteria. 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

1 the requirements of the San Juan Municipal Code and Comprehensive Plan. The
2 applicable policies and regulations are quoted in italics below and applied through
3 conclusions of law.

3 **RCW 90.58.020 Use Preferences**

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

8 6. The project will not interfere with public access to the shoreline since the
9 public interest will be served by preventing further erosion and damage to the
10 shoreline and rehabilitation of shoreline vegetation.

10 **RCW 90.58.020(1)¹**

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

12 7. The project will prevent further erosion of the shoreline while also
13 revegetating damaged habitats. The statewide interest is adequately protected.

14 **RCW 90.58.020(2)**

15 *Preserve the natural character of the shoreline;*

16 8. The project includes the addition of a bulkhead, however such an addition
17 is necessary for the preservation and protection of shoreline habitat and vegetation.

17 **RCW 90.58.020(3)**

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

19 9. The project provides for preservation of the shoreline, which is a long
20 term benefit to not only the property owner but to the public generally.

21 **RCW 90.58.020(4)**

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

23 10. In addition to stabilizing the shoreline, the bulkhead will preserve and
24 rehabilitate the shoreline to a healthy vegetated state and protect native trees.

25 ¹ RCW 90.58.020(1)-(6) applies to shorelines of statewide significance. Section 3.4.F of the San Juan
County Comprehensive Plan identifies all saltwater surrounding the islands of San Juan County as
shorelines of statewide significance. The policies of 90.58.020(1)-(6) are mirrored in the policies of
Section 3.4.F of the Comprehensive Plan and for the reasons provided in assessment of RCW
90.58.020, the Examiner also finds consistency with the policies of Section 3.4.F.

1 **RCW 90.58.020(5)**

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

3 11. The project does not pertain to a publicly owned area of the shoreline.

4 **RCW 90.58.020(6)**

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

6 12. The bulkhead may provide increased private recreational opportunities on
7 the shoreline, but as the shoreline area in question is not public, no further public use
8 of the shoreline will result.

8 **San Juan County Code Regulations**

9 **SJCC 18.50.210(A)(1):** *No bulkhead to protect a single-family residence or*
10 *appurtenant structures shall be constructed until the County has reviewed the*
11 *proposed construction and determined that the project is or is not exempt from the*
12 *shoreline permit requirements and is consistent with the policies of the SMA and this*
13 *SMP.*

14 13. SJCC 18.50.020(F)(2)(c) provides that protective bulkheads common to
15 single-family residences are exempt, subject to WAC 173-27-040(2)(c). WAC 173-
16 27-040(2)(c) provides that in order to qualify for the exemption the sole purpose of
17 the bulkhead must be to protect a single-family residence from loss or damage by
18 erosion. The proposed bulkhead is not exempt because it is not needed to protect a
19 residence..

20 **SJCC 18.50.210(A)(2):** *Nonexempt bulkheads shall be permitted only when*
21 *nonstructural shoreline protection, restoration, or modification techniques have been*
22 *shown to be ineffective and it can be shown that one or more of the following*
23 *conditions exists:*

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

14. The proposed “bulkhead” is itself nonstructural, primarily composed of
soil filled bags. As noted in the Geotest report, Ex. 4, the existing shoreline is
severely eroded and the stability and health of the existing tree lined screening within
the upper portions of the shoreline is threatened. Without mitigation, the bank will
continue to erode and, over time, bank stability will be lost. Consequently, the
bulkhead is needed to protect the established upland uses and the proposed “soft”

1 approach is the most reasonable method of providing this stabilization.

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

4 15. The development was originally from 1995, but was remodeled in 2003.

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

9 16. As discussed in the testimony, San Juan County has inventoried its feeder
10 bluffs and has determined that the subject bluff does not qualify.

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

13 17. SJCC 18.20.030 defines a Class I beach as having dependable, geologically
14 fully developed and normally dry backshore. SJCC 18.20.020 defines a backshore as
15 a berm, together with associated marshes or meadows on marine shores landward of
16 the ordinary high water mark that has been built up by accretion. The staff report
17 concludes that the subject bluff is along a Class III beach, which means no dry
18 backshore as defined in SJCC 18.20.030. There is no evidence in the record that
19 clearly addresses this issue. The Examiner defers to the opinion of staff (unrefuted)
20 and finds that a Class I beach is not involved.

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

24 18. The applicants have acquired approval of a hydraulic permit from DFW, Ex. 6.
25 Beyond the requirements for acquiring a hydraulic permit, there are no DFW design
requirements for bulkheads.

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

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

32 19. The application contains all of the above information.

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

3 20. As testified and explained in the Geotest report, the proposed bulkhead is
4 expected to stop current erosion and will not cause beach starvation as the area in
5 question is not a feeder bluff.

6 **SJCC 18.50.210(B)(4):** *Conservancy. Bulkheads may be permitted in the*
7 *conservancy environment on marine shorelines subject to the policies and regulations*
8 *of this SMP but shall not be allowed on freshwater shorelines.*

9 21. This proposal is consistent with the policies and regulations of the Master
10 Program, specifically as outlined and discussed above.

11 **SJCC 18.80.110(H) Criteria for Approval of Substantial Development Permits**

12 *A shoreline substantial development permit shall be granted by the County only when*
13 *the applicant meets his burden of proving that the proposal is:*

- 14 1. *Consistent with the policies of the Shoreline Management Act and its*
15 *implementing regulations, Chapter 90.58 RCW and Chapter 173-27 WAC, as*
16 *amended;*
- 17 2. *Consistent with the policies and regulations of the Shoreline Master Program*
18 *in Chapter 18.50 SJCC;*
- 19 3. *Consistent with this chapter;*
- 20 4. *Consistent with the applicable sections of this code (e.g., Chapter 18.60 SJCC);*
- 21 5. *Consistent with the goals and policies of the Comprehensive Plan; and*
- 22 6. *All conditions specified by the hearing examiner to make the proposal*
23 *consistent with the master program and to mitigate or avoid adverse impacts are*
24 *attached to the permit.*

25 22. As discussed in depth above, in the evaluation of individual code sections and
regulations, all of the above elements have been met, and the project is consistent
with the applicable policies, goals, and regulations. Section 3.6.B of the San Juan
County Comprehensive Plan specifically addresses bulkheads. In addition to issues
already addressed in the shoreline regulations assessed above, the policies also
require that the bulkhead minimize adverse impacts to fish and shellfish habitats and
scenic quality. There is not much information on these impacts in the record.
However, Hugh Shipman of DOE commented that the proposal would have minimal
impact both off and on the site. The bulkhead bags will be trenched above the mean
higher high water level so it does not appear that any fish or shellfish habitat will be
directly impacted. The use of a soft shore bulkhead as opposed to a concrete wall
serves to minimize any impacts to fish or shellfish habitat caused by disruptions of
natural currents. There is no evidence in the record that the proposal would create
any adverse impacts to fish or shellfish habitat. Given these factors the Examiner
finds none. As to aesthetic impacts, the use of soil bags with hydroseeding instead of

1 large concrete walls combined with the enhancement and retention of vegetation
2 should serve to improve the aesthetics of the area.

3 **DECISION**

4 The proposed project is consistent with all the criteria for a shoreline substantial
5 development permit. The proposal is approved subject to the conditions listed in the
6 staff report.

7 Dated this 17th day of June, 2010.

8 
9 _____
10 Phil Olbrechts
11 County of San Juan Hearing Examiner
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14 **Effective Date, Appeal Right, and Valuation Notices**

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

20 This land use decision is final in accordance with Section 3.70 of the San Juan
21 County Charter. It is not subject to administrative appeal to the San Juan County
22 Council. See SJCC 2.22.100

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

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