# OFFICE OF THE HEARING EXAMINER KING COUNTY, WASHINGTON

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# **REPORT AND DECISION**

SUBJECT: Department of Development and Environmental Services file nos. L02CG047

# **DWIGHT & PAM JEWSON**

SEPA Threshold Determination Appeal

Location:	28416 Point Piner Road SW, Vashon
Appellants:	Dwight & Pam Jewson, represented by George Kresovich, Attorney Hillis Clarke Martin & Peterson 500 Galland Building, 1221 2nd Avenue Seattle, WA 98101-2925 Telephone: (206) 623-1745 Facsimile: (206) 623-7789
King County:	Department of Development and Environmental Services <i>represented by</i> <b>John Briggs</b> , Senior Deputy Prosecuting Attorney 516 3rd Avenue, Room E550 Seattle, WA 98104 Telephone: (206) 205-5064 Facsimile: (206) 296-0191
	Current Planning Section, <i>represented by</i> Rich Hudson 900 Oakesdale Avenue Southwest Renton, Washington 98055-1219 Telephone: (206) 296-7157 Facsimile: (206) 296-7051

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Appeal denied as to the original proposal,
	granted as to MDNS

## **EXAMINER PROCEEDINGS:**

Hearing Opened: Hearing Closed: November 30, 2004 December 8, 2004

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

## FINDINGS:

- 1. On December 20, 1999, Dwight and Pam Jewson applied to the King County Department of Development and Environmental Services for a shoreline exemption for construction of a bulkhead adjacent to their shoreline property located at 28416 Point Piner Road Southwest near the south end of Maury Island. An exemption from shoreline substantial development permit requirements was approved by DDES on March 8, 2000, under file no. L99SX412. A grading permit application was also submitted for the bulkhead on February 26, 2002, under file no. L02CG047.
- 2. After the performance of technical studies and numerous communications between the Jewsons' attorneys and consultants and DDES, the Department on January 30, 2004, issued a notice and order revoking the shoreline exemption on the grounds that it was approved in error and on the basis of incorrect and inadequate information supplied by the Applicant to the Department. Concurrently therewith, DDES issued a determination of significance for the grading permit application requiring the preparation of a limited scope EIS for the bulkhead proposal. The determination of significance identified probable significant adverse impacts from the proposal to slopes, marine beaches, riparian habitat, inter-tidal and sub-tidal habitat, and nearshore plants and fish. The Jewsons have filed timely appeals of both the proposed shoreline exemption revocation and the determination of significance under SEPA. The two appeals have been consolidated for hearing purposes.
- 3. The Jewson property is located near the southern tip of Maury Island, just north of Piner Point. The property consists of two high-bank shoreline lots, the larger primary parcel purchased by the Jewsons in the mid-1980s and the smaller triangular parcel to its north purchased some ten years later. The larger southerly lot contains the Jewson residence, which was constructed in the mid-90s to replace a former vacation dwelling. The northerly lot is undeveloped and mainly serves to provide a buffer to the Jewson residence. To protect their primary residence the Jewsons also installed, with County permits, a protective rock bulkhead. Their proposal is to extend that bulkhead across the northern lot to connect with a timber bulkhead on the adjacent Sprinkle property. It has been determined, however, that the Sprinkle bulkhead was installed without County permits, and it has been cited by DDES within a code enforcement proceeding. The Sprinkle bulkhead is composed of creosote-treated timbers; the question of whether it will be allowed to remain in place has not been resolved.

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- 4. The unarmored bluff on the shoreward side of the northern Jewson lot has experienced substantial erosion in recent years. These erosional issues have been studied on behalf of the Jewsons by civil engineer James Doolittle based on site observations dating back to 1992, supplemented by a review of aerial photographs. Mr. Doolittle has estimated that the bluff recession rate was 9.6 inches a year between 1960 and 1985 and increased to about 14 inches a year from 1985 to 1998. Mr. Doolittle expressed an opinion that the erosion rate had continued to accelerate since 1998 but he has done no specific calculations in support of that observation. The purpose of the current Jewson bulkhead extension proposal is to buttress the toe of the erosional slope and halt or greatly decrease the rate of erosion. It is undisputed that the primary cause of bluff erosion in this location is wave action that undercuts the slope toe resulting in a steepened slope angle which periodically destabilizes and collapses again to an angle of repose.
- 5. The most immediate threat to existing structures on the Jewson property is to utilities buried within an easement that crosses the Jewson parcels in a southwesterly direction, running from the southern terminus of Point Piner Road to the Jewson residence. The easement presently contains electric power, telephone and cable lines that serve the Jewson residence plus a water pipe that serves the Point Piner Water Association. This pipe provides water service to a vacation cabin offsite from the Jewson property. It is, however, linked to the same water system that serves the Jewson residence, and Mrs. Jewson testified as to her belief that a rupture of the pipe within the easement could disable the entire system by dewatering it. DDES has stipulated that the water pipe was placed in its present location prior to 1960 at a time when no County permits would have been required for its installation. The other utility lines, however, were previously located on an overhead pole system and placed underground in 1997 when the pole within the easement began to become destabilized from slope recession. At that time the Jewsons dug a trench along the backside of the easement and Puget Power relocated the lines. There is no evidence that any County permits were issued for this utility relocation procedure.
- 6. Portions of the water line within the easement have been exposed by slope recession since about 2000. Since that time the length of pipe exposed has increased from 5 feet to about 20 feet. DDES contends that the threat to the utility lines within the easement from bluff recession can be adequately addressed by measures less drastic than shoreline armoring at the toe of the slope. It suggests that the electric and other utility lines could be once again strung from overhead poles and the water pipe could be supported and protected. But if the slope toe erosion is allowed to continue, these measures would provide no more than temporary relief. Such measures would require constant maintenance and later removal of utility structures to new locations to stay abreast with the changing conditions imposed by ongoing slope retreat.
- 7. DDES also agrees that the northern end of the existing Jewson bulkhead is being eroded by wave action and is beginning to fail. If not remedied, after a period of some eight or ten years the toe erosion resulting from bulkhead failure could begin to threaten the integrity of the Jewson residence itself. DDES proposes that a 15-foot wing wall could be added to the north end of the existing bulkhead to provide this structure with added protection. Mr. Doolittle believes that a wing wall would be difficult to tie into the soft slope soils and would be in constant need of maintenance and repair. Everyone agrees that a 15-foot wing wall would not be an effective solution for more than about 10 years. As a possible compromise, the Jewsons have also floated a proposal for a 45-foot wing wall, but DDES has declined to view this as an acceptable alternative. In addition, Mr. Doolittle has suggested that as bluff recession moves further toward

the Jewson residence, a higher risk of seismic failure will also be encountered. At this point DDES has not agreed that a higher level of seismic risk is probable from slope recession processes.

8. Mr. Doolittle's analysis of the erosional threats to the Jewson property is summarized within an April 1, 2003, letter:

"Based on our previous site observations and evaluations of air photos and mapping data we have concluded that the area of bluff recession northeast of your residence is expanding at an accelerating rate in both a northwesterly direction and a southwesterly direction towards your house. Based on our observations, we have concluded that the bluff recession is due directly to toe erosion resulting from wave action on the unprotected beach area between the NE end of your existing bulkhead and the SW end of the bulkhead on the adjoining property.

The area of bluff recession has already undermined the existing utilities at the top of the bluff and is imminently threatening the NE end of your existing bulkhead which in turn protects the stability of your residence. As the NE end of your existing bulkhead is destabilized due to the expanding erosion, in our opinion wave erosion will progressively undermine the remaining bulkhead to the south and west towards your residence....

Considering the very steep bluff slopes below your residence site and the cohesionless nature of the soils comprising the slopes, it is our opinion that the potential for lateral and vertical soil displacement at your residence site under seismic ground shaking will increase rapidly with increasing toe erosion."

- 9. The Jewson property is located at the north end of the Summerhurst area on Maury Island, a slightly indented cove located just north of Piner Point. The Coastal Zone Atlas identifies Summerhurst as at the southern end of an approximately two mile long littoral drift cell that runs from Piner Point in a northeasterly direction. The net sediment flow direction for this littoral cell is northward from Piner Point. The Coastal Zone Atlas depicts sandy beaches as predominating in the area from Piner Point north about one mile through Shore Acres, with the Jewson property being the only active feeder bluff in this area. As shown in the photographs and confirmed by the Atlas, most of the shoreline immediately north of Summerhurst is topographically lower in elevation and heavily armored. It is therefore a reasonable supposition that the erosion and transport of materials from the feeder bluff on the Jewson property is a major source of sand for the beaches both in front of the property and north at least one mile. The depth of this sand layer above the harder substrate has not been measured.
- 10. Bluff erosion resulting in the creation of new sedimentary materials for the littoral drift cell tends to be episodic in nature. The bluff remains generally stable, subject to minor undercutting of the toe through constant wave action until a critical slope angle is reached, then major sloughing occurs. Once a sloughing episode has taken place, its further transport depends upon seasonal weather conditions. Generally, newly sloughed

sand will stay in the immediate area until a large winter storm arrives, at which time it is transported to more distant locations within the littoral drift cell. As described by geologist Marc Boule, the materials deposited by a large sloughing episode can take as much as six months to be transported to the further reaches of the drift cell. In order to derive a valid annual erosional rate for a feeder bluff such as exists on the Jewson property, it is necessary to examine data over long enough time to allow episodic variations to average out. Mr. Boule suggested that the 11-year solar storm cycle was a sufficient time frame for this analysis, but with aerial photos dating back to the 1960s a forty year span is feasible in this location. DDES at one point roughly estimated the average annual sediment generation from the Jewson site to be in the vicinity of 600 cubic yards per year.

- 11. The exact parameters of biological activity within the nearshore adjacent to the Jewson property and further north within the littoral drift cell fed by its erosional bluff have yet to be identified. There are, nonetheless, strong indicators that this section of nearshore is highly productive. Eelgrass beds around Piner Point to the northwest in Quartermaster Harbor support a large and stable population of Pacific herring. State Department of Fish and Wildlife mapping for the Quartermaster Harbor herring stock shows its habitat extending around Piner Point into the Summerhurst area. The state mapping also suggests, primarily on the basis of aerial photographs, that eelgrass may exist in patches along the shoreline north of Piner Point. Pacific herring is known to be a preferred forage fish for Chinook and other varieties of salmon, and the nearshore habitat along Maury Island from Piner Point north is documented to support migratory salmon usage.
- 12. The technical literature also suggests that two further forage fish of interest to salmon may be found in the nearshore adjacent to the Jewson parcel. The Washington Department of Fish and Wildlife mapping attached to Mark Pedersen's natural resources evaluation for the Jewson proposal indicates both "documented surf smelt spawning" and "documented sand lance spawning" adjacent to the Jewson property. In fact, when taken in combination with the herring mapping attached to Mr. Pedersen's report, the Summerhurst area north of Piner Point is the only location represented where WDFW has concluded that herring, surf smelt and sand lance spawning all occur simultaneously. Accordingly, a conclusion could be drawn that the Summerhurst area may be the most biologically productive forage fish area in the vicinity of southern Maury Island and Quartermaster Harbor.
- 13. In light of the state agency information cited above, DDES ecologist Jon Sloan was entitled to be dismayed by Mark Pedersen's unsupported conclusion that "no spawning of forage fish has been documented in the action area" and his reluctance to conclude that the loss of sedimentary inputs to species dependent on sandy substrates "would be measurable or significant." In view of Mr. Pedersen's conclusions and egregious avoidance of the ultimate environmental impact issues raised by the Jewson project, Mr. Sloan was entitled to ask further questions and request additional data.
- 14. As expressed in the DDES letters to the Jewsons, their consultants and attorneys, and represented within the determination of significance issued for this proposal, the concern of DDES was that the proposed Jewson bulkhead would armor a highly productive

feeder bluff and result in sediment starvation to the nearshore environment comprised of the beach areas adjacent to the Jewson property and north within its constituent littoral drift cell. Sediment starvation could lead to loss of sandy substrate, depriving eelgrass of its habitat requirements and leading to the loss of herring spawning in eelgrass beds and smelt and sand lance spawning on nearshore beaches. This would lead to a decrease of forage food available to migratory Puget Sound chinook salmon, a federally-listed threatened species, as well as diminishing the protection from predators provided by eelgrass vegetation.

- 15. Mr. Sloan, and DDES management following his lead, asked the Jewsons and their representatives to consider less impactive alternatives to the 185-foot solid wall bulkhead proposal originally put forward. And this is where the review process eventually broke down. The Jewsons were willing to consider revetments instead of vertical wall bulkheads and, more reluctantly, a 45-foot wing wall to be attached to the north end of the existing bulkhead and tied into the slope. Their most ambitious alternative proposal, the one that has been pursued through this appeal, is for a segmented rock bulkhead in three sections separated by two approximately ten-foot gaps above which imported sandy material mixed with organic detritus to approximate the composition of the erosional bluff would be fed down over the bluff and deposited at the wall gaps. Here the materials between the gaps in the bulkhead wall would be exposed to wave action and transported into the littoral drift cell. The system would need to be monitored over a number of years and adjusted to replicate the natural beach feeding process now occurring from the Jewsons' bluff. Downdrift monitoring of sand layer depths would determine the success of the beach nourishment program. If the monitoring indicated a loss of sandy substrate, the amount of material could be increased and the feeder gaps between the wall sections adjusted. The Jewsons' consultants proposed that the vexing problem of perpetual maintenance of an artificial beach nourishment regime would be solved automatically by the fact that if beach nourishment were discontinued for a substantial length of time, the bulkhead segments would begin to erode and fail, with the site eventually reverting to its natural erosional process.
- 16. The Jewson proposal is experimental and does not appear to have been tried at any other location in Puget Sound. DDES staff has not identified any conceptual flaws within the proposed model, so their reluctance to embrace it appears to be based on little more than fear and uncertainty arising out of its novelty. Obviously, baseline conditions would need to be established and a lengthy monitoring plan implemented to assure that any preliminary conclusions about the proposal's success were warranted by the long-term data. The life expectancy of the segmented bulkhead in the absence of beach nourishment may require further assessment, and its design may need to be modified to assure that the bulkhead degrades within an acceptable time frame.
- 17. The least-defined element of the Jewsons' conceptual proposal relates to the mechanism for transporting soil materials from the top of the bluff over the slope to the beach. Options discussed include simply dumping materials on the bluff slope, creating some kind of a chute structure or a Drisco pipe conveyance. As DDES geologist Greg Wessel pointed out, the bluff top soils delivery mechanism will need to comply with the requirements of KCC 21.24.310 regarding alterations of steep slope hazard areas.

Stabilization of sites where erosion threatens development is a permitted alteration under KCC 21A.24.310.D.6 but only when stabilization work is "performed in a manner which causes the least possible disturbance to the slope and its vegetative cover."

18. DDES's preferred alternative to the various Jewson bulkhead proposals remains to allow some stabilization of the utility lines to occur, including possibly overheading the electrical, telephone and cable lines, and to stabilize the north end of the existing Jewson bulkhead with a 15-foot wing wall. It is undisputed that these are temporary expedients that would require constant maintenance. The bluff would continue to erode and eventually the water pipe would either have to be replaced or permanently supported in an exposed, elevated location. A 15-foot wing wall would be exposed to scouring and erosion, resulting in a constant need for repair. The Jewsons are seeking a more permanent solution to their problem, in part based on their experience that dealing with DDES on an ongoing basis is an expensive and exhausting ordeal.

## CONCLUSIONS:

- 1. The basic standard to be applied to the review of a threshold determination appeal is that the SEPA record must demonstrate the actual consideration of relevant environmental impacts. With respect to those relevant impacts shown to be actually considered, the decision of the SEPA official is entitled to substantial weight on review and shall not be overturned unless clearly erroneous based on the record as a whole.
- 2. In conjunction with the SEPA statute and regulations, KCC 20.24.080.B confers upon the Hearing Examiner broad authority to impose such conditions, modifications and restrictions on the appeal decision as may be required to make it compatible with the environment and carry out applicable statutes, regulations, codes, plans and policies. This authority supplements the SEPA appeal standards and allows specific conditions of mitigation to be imposed or modified, independent of whether the threshold determination is found to be clearly erroneous.
- 3. DDES was justified in issuing a determination of significance for the original Jewson bulkhead proposal to create a solid 185-foot rock wall connecting their existing bulkhead with the Sprinkle bulkhead to its south. Implementation of this proposal would have cut off all sediment generation from an active feeder bluff on the Jewson property that appears to be the primary source of beach sands and sandy nearshore habitat for the shoreline area adjacent to the Jewson property and north within its littoral drift cell for a distance of at least one mile. Armoring the shoreline in this location would likely lead to sediment starvation within the littoral drift cell resulting in the loss of beach and nearshore habitat and the biological activity that depends upon such habitat. This would include the loss of eelgrass beds, herring spawning within such beds and protective cover to migrating juvenile salmon. In addition to the loss of herring spawning, it would deplete the sandy substrate necessary to the spawning of sand lance and surf smelt. Herring, sand lance and surf smelt are all forage fish upon which migratory salmon, including listed species of Puget Sound chinook, habitually feed. In the absence of effective mitigation, these environmental impacts would be probable, significant and adverse.

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- 4. The essential question presented by this appeal is whether the Jewsons' proposed mitigation consisting of a segmented bulkhead and beach nourishment process supported by baseline studies, monitoring and adaptive management can reduce the probable significant adverse impacts of the bulkhead proposal to an acceptable level of non-significance. We conclude that no fatal flaws have been identified within the Jewson mitigation proposal, rendering it conceptually reasonable and capable of being accomplished. The fact that it is experimental underscores the need for adequate baseline data and rigorous monitoring, but it does not impair the feasibility of the project.
- 5. Assuming that the beach nourishment materials are constituted to replicate the materials now being transported to the littoral drift cell from the Jewson bluff, the fundamental problem becomes one of identifying and regulating the appropriate quantity. There is no argument to be made that the episodic nature of the natural erosional process must be duplicated. What is critical, rather, is to match generally the long-term sediment input from the bluff system. Removing large episodic events from the cycle is probably beneficial to the extent that such events can temporarily smother forage fish spawning activity. Moreover, there would seem to be little risk that the Jewson proposal will contribute too much sediment to the littoral drift cell, so the essential issue becomes one of assuring a supply adequate to the preservation of nearshore beach forms and habitat.
- 6. There are obstacles to creating a complete mitigated determination of non-significance format for the Jewson proposal that result from certain currently unknown factors beyond the control of this appeal. First, no one presently knows whether the Sprinkle bulkhead to which the southern end of the proposed Jewson structure is to connect will continue to be a viable component of the design. It was built without permits out of biologically unfriendly creosote-treated timbers. The Jewsons' proposal may require consideration of an alternative design based on the potential removal of the Sprinkle bulkhead. Then, too, the actual review and issuance of the grading permit required for the proposed bulkhead and its sediment delivery system is beyond the scope of this appeal proceeding. The "least possible disturbance" standard imposed on proposed slope alterations by KCC 21A.24.310.D.6 is a broad, highly discretionary criterion that can be interpreted either to facilitate the Jewson proposal or to impede it. If the fundamental legitimacy of the beach nourishment proposal is accepted by DDES staff, this language should be interpreted simply to require that the delivery system chosen is the one that has the least impact on the slope. On the other hand, if DDES chooses to subvert the MDNS decision, this language no doubt will become their weapon of choice.
- 7. Some observations may be in order on why the conflict between DDES and the Jewsons has been so difficult to resolve. A previously identified factor was that at a key point in the process Mr. Pedersen's biological study attempted to skate over some critical and fundamental issues, creating skepticism and suspicion among DDES staff concerning the reliability of the analysis overall. On the other side of the equation, another problem seems to have been that DDES insisted upon requiring the Jewsons to look at alternatives that did not accomplish their primary goals and refused to take seriously the alternatives that were presented because these were not the alternatives staff wanted to hear about. The Jewsons' goal was to stabilize an eroding bluff that was threatening their utilities, their existing bulkhead and ultimately could jeopardize their residence and road. DDES insisted on only talking about

temporary expedients that at best would slow down the rate of erosion but not stop it. This gets us into the question of alternatives analysis and mitigation sequencing under SEPA.

- 8. The term "mitigation" is defined for SEPA purposes at WAC 197-11-168. The SEPA definition has been adopted almost verbatim within the King County zoning code at KCC 21A.06.750. The two definitions contain a list of mitigational actions that begins at the top with avoidance and ends at the bottom with compensation and monitoring. But the County zoning code definition contains one important addition: it mandates that the mitigational actions should be regarded as "listed in descending order of preference." Although the relative desirability of the items on the SEPA mitigation list is intuitively obvious, the WAC definition does not impose any kind of mitigation priorities. For SEPA purposes, then, the alternative forms of mitigation listed at WAC 197-11-768 are legally equivalent. The upshot of all of this is that the mitigation sequencing required by KCC 21A.06.750 applies to zoning review but not to the county's SEPA analysis. The county's SEPA regulations are described in KCC Chapter 20.44, and KCC 20.44.010.A simply adopts by reference the WAC definitions.
- 9. Under the applicable SEPA rules a private project proponent is entitled to have his or her proposal accorded a threshold determination in the form that such proposal is actually presented, not in some alternative form that the county prefers. As defined at WAC 197-11-784, a proposal may be "a particular or preferred course of action or several alternatives." While WAC 197-11-060(3)(a)(iii) suggests that "proposals should be described in ways that encourage considering and comparing alternatives," the permissive language indicates that at the threshold determination level the analysis of alternatives is not a mandatory requirement, and especially so where a private project is involved rather than a public or non-project proposal. In short, efficient processing of the Jewson proposal under SEPA seems to have been impeded by DDES's perception that it could mandate the Jewsons to put forward alternative proposals in which they were not in fact interested, rather than actually reviewing and considering the alternatives that the Jewsons were prepared to support.
- 10. A second observation would be that the increasingly commonplace perception of the world as sliding into an era of environmental crisis appears to be engendering an attitude of regulatory rigidity which is both impractical and ultimately self-defeating. A glance at the 2001 Nearshore Ecosystem Reconnaissance Assessment compiled by Pentec for the King County Department of Natural Resources discloses an implicit premise that no further armoring should be allowed to occur on Puget Sound shorelines at any time or in any place. While there may be a scientific case to be made for this position, it is hopelessly naïve to imagine that it can be implemented as public policy by bureaucratic fiat. As long as county zoning allows residential development to occur on shorelines above feeder bluffs, there will be occasions when some level of shoreline armoring will be needed to protect legally established homes. The only way the county can totally preclude further shoreline armoring from happening is by zoning erosional bluff properties to prohibit development taking place anywhere near the bluff top and expending public funds to buy out those already-developed armored shoreline properties where feeder functions need to be restored.

As Voltaire famously observed, too often the perfect is the enemy of the good. Within the current regulatory and fiscal environment, an innovative proposal like the Jewsons' which allows shoreline protection of residential properties to be provided while at the same time replicating

interrupted erosional processes should be embraced as an opportunity to satisfy both human and environmental needs. At worst, even if it turns out to be flawed mitigation strategy, the Jewsons' experimental segmented bulkhead and beach feeding program will generate valuable information regarding the shoreline processes under study. DDES could greatly improve the quality and effectiveness of its regulatory enterprise if it paid some occasional heed to the public process as it actually works instead of continually losing its way in a maze of utopian schemes.

11. Be that as it may, our conclusion is that the Jewson alternative proposal for a segmented bulkhead supported by a beach nourishment regime and monitoring and adaptive management will reduce the probable significant adverse impacts of the original bulkhead proposal to a nonsignificant level and should be approved. Attached to this report are MDNS conditions that undertake to implement this conclusion.

## DECISION:

The appeal is DENIED for the original 185-foot solid rock wall bulkhead proposal, but GRANTED with respect to approving a mitigated determination of non-significance for the segmented bulkhead proposal supported by beach nourishment, monitoring and adaptive management

### ORDER:

- 1. A mitigated determination of non-significance is issued for the Jewson segmented bulkhead and beach feeding proposal, subject to implementation of the MDNS in conformance with the conditions contained herein.
- 2. Upon consultation with the Appellants, DDES shall approve a mitigation plan for the bulkhead proposal that contains the following elements:
  - A. An estimate of the volumes of materials deposited on an average basis annually from the erosive Jewson bluff into the nearshore environment.
  - B. An analysis of the composition of the natural materials subject to erosion from the Jewson bluff and identification of acceptable sources and combinations of replacement materials suitable for beach nourishment.
  - C. Baseline studies to identify the physical nearshore habitat components and locations that require beach nourishment mitigation.
  - D. Baseline studies to identify the biological habitats and species dependent on the nearshore habitats potentially affected by the Jewson proposal and the requirements for their maintenance.
  - E. A detailed design of the Jewsons' segmented bulkhead proposal and its slope-top sediment delivery system. The bulkhead proposal shall include alternatives for construction if the Sprinkle bulkhead is removed. The bulkhead design shall incorporate

features that will allow it to degrade in 10 years' time or less in the absence of beach feeding, unless DDES agrees to a different time frame. The design for the sediment delivery system shall be the least impactive to the slope while still achieving the efficient delivery of required sediments to the bulkhead.

- F. Monitoring timeframes, protocols and performance standards for determining whether the segmented bulkhead and beach feeding procedures are adequately mitigating the impacts of natural sediment loss to the affected near shore environment.
- G. Procedures for effectively amending and managing the beach feeding process as needed to achieve stated mitigation goals based on monitoring results.
- 3. Baseline studies may rely upon the existing literature where such resources are adequate to establish the required parameters. In lieu of costly or lengthy studies, baseline parameters may be established on the grounds of worst-case scenarios where such can be reasonably ascertained.
- 4. The mitigation plan shall be deemed final when agreed to by both DDES and the Appellants; provided that, after May 1, 2005, either DDES or the Appellants may request that the Hearing Examiner resolve any disputes or disagreements regarding the required elements of the plan.
- 5. The Hearing Examiner shall retain jurisdiction in this proceeding to resolve disputes as provided above, including the approval of the mitigation plan required hereunder if the parties fail to reach timely agreement, and to modify this order as needed to carry out the terms of this decision. Unless otherwise provided, Hearing Examiner jurisdiction shall terminate upon approval of the mitigation plan required under condition no. 2 above.

ORDERED this 11th day of January, 2005.

Stafford L. Smith King County Hearing Examiner

TRANSMITTED this 11th day of January, 2005, via certified mail to the following:

Dwight & Pam Jewson 28416 Pt. Piner Rd. SW Vashon WA 98070 George Kresovich Hillis Clark Martin & Peterson 500 Galland Bldg., 1221 2nd Seattle WA 98101-2925

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TRANSMITTED this 11th day of January, 2005, to the following parties and interested persons of record:

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Larry West DDES/LUSD Geo Review MS OAK-DE-0100

## NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were John Briggs, Rich Hudson, Steve Bottheim, Jon Sloan, Larry West, Mark Mitchell, Joe Miles, and Greg Wessel, representing the Department; George Kresovich, representing the Appellants; Keith Landry, Marc Boule, James A. Doolittle, Pam Jewson, and Mark Pedersen.

The following exhibits were offered and entered into the record on November 30, 2004:

- Exhibit No. 1 Department of Development and Environmental Services File No. L02CG047
- Exhibit No. 2 Department of Development and Environmental Services Preliminary Report, dated November 30, 2004
- Exhibit No. 3 Application dated February 28, 2002
- Exhibit No. 4 Environmental Checklist dated February 8, 2002
- Exhibit No. 5 Threshold Determination of Significance dated January 30, 2004
- Exhibit No. 6 Site Plan dated December 28, 1999 (Shoreline Exemption File L99SX412)
- Exhibit No. 7 List of Files/Exhibits per Pages, 10, 22 & 12 of the Staff Report
  - 7-1 Letter dated September 24, 1992 from Geospectrum Consultants (Geospectrum) to Pam & Dwight Jewson, re: Geotechnical Reconnaissance re: Jewsons' proposed residential addition
  - 7-2.1 Letter dated June 21, 1994 from Geospectrum Consultants; re: Geospectrum's supplemental Evaluations on the Jewson Residential Addition
  - 7-2.2 Letter dated June 20, 1995 from Geospectrum Consultants; re: Geospectrum's Updated Geotechnical Reconnaissance for Jewson Addition and Slide Repair
  - 7-2.3 Letter dated January 30, 1996 from Geospectrum Consultants; re: Geospectrum's Supplemental Geotechnical Consultations on the North Bluff Slope Recession to Jewsons
  - 7-3 Letter dated June 19, 1998 from Geospectrum Consultants; re: Supplemental Geotechnical Consultations on the Northern Bluff Slope Recession
  - 7-4 Letter dated May 25, 1999 from Geospectrum to Jewsons and Sprinkles re: Proposed Beach Bulkhead
  - 7-5 Application Letter dated June 15, 1999 for Jewson Shoreline Exemption from Ellisport Engineering, Inc. to DDES
  - 7-6 Letter dated July 22, 1999 from Geospectrum Consultants, Inc. to Jewsons Re: Proposed Beach Bulkhead
  - 7-7 July 26, 1999 SEPA Checklist for Jewson Bulkhead Extension
  - 7-8 December 10, 1999 Letter from Geospectrum Consultants, Inc. to Mark Mitchell re: Subject Slope Recession
  - 7-9 February 10, 2000 Note from Mark Mitchell to Steve Bottheim
  - 7-10 February 23, 2000 Memo from Larry West to Mark Mitchell re: Geotechnical Review of Permit L99SX412
  - 7-11 March 8, 2000 DDES letter approving Exemption from SMSDP Requirement
  - 7-12 May 16, 2001 Letter from Associated Earth Sciences, Inc. to Jewsons re: Geotechnical Engineering Recommendations, Jewson Retaining Wall

- 7-13 January 17, 2002 letter from Joe Miles to the Jewsons re: Emergency Exemption from SEPA Review for 185-foot extension of the bulkhead
- 7-14 January 28, 2002 meeting minutes
- 7-15 February 1, 2002 letter from DDES to the Jewsons Re: "Expedited permit review timeline"
- 7-16 February 22, 2002 letter from Davis Wright Tremaine to DDES Re: SEPA Emergency Exemption Issue About Neighbor's Residence to become precariously exposed
- 7-17 February 28, 2002: Jewsons File on Grading Permit Application
- 7-18 February 26, 2002 letter from Waterfront Construction, Inc. to Joe Miles Re: Top of Slope Recommendations for the Jewsons
- 7-19 February 28, 2002 Complete Application letter for Jewson Permit application L02CG047
- 7-20 March 21, 2002 letter from Caroline Whalen to Donna Larson of Piner Point Improvement and Water Users Association re: Decision to not grant a SEPA exemption for the Jewsons' Project
- 7-21 April 22, 2002 Memo from Jon Sloan to Rich Hudson re: SEPA comments on Jewson Bulkhead L02CG047
- 7-22 April 30, 2002 email chain from Randy Sandin to Greg Sutton then from Greg Sutton to Randy Sandin re: Utilities and their Placement
- 7-23 May 13, 2002 letter from DDES to the Jewsons re: Their Grading Permit Application
- 7-24 July 5, 2002 letter from Geospectrum to the Jewsons re: Alternative Shoreline Protection Methods
- 7-25 July 23, 2002 letter from Davis Wright to Joe Miles: New Mitigated Proposal Provided to the County
- 7-26 October 31, 2002 letter from DDES to Davis Wright, re: Jewson Bulkhead Extension
- 7-27 November 22, 2002 letter from Davis Wright to Joe Miles
- 7-28 December 17, 2002 letter from DDES to Davis Wright
- 7-29 February 10, 2003 letter from DDES to Davis Wright
- 7-30 March 4, 2003 letter tom Davis Wright to Joe Miles
- 7-31 March 31, 2003 letter from Shapiro to Greenfield re: Analysis of Sloan's April 22, 2002 Memo
- 7-32 April 1, 2003 letter from Geospectrum to the Jewsons re: Supplemental Geotechnical Evaluations for Bluff Erosion Effects on Seismic Stability
- 7-33 April 1, 2003 letter from Davis Wright to Joe Miles
- 7-34 April 8, 2003 email from Jon Sloan to Greg Borba addressing Shapiro's comments on Sloan's April 22, 2002 memo
- 7-35 Email dated April 11, 2003 from Wessel to Greg Borba regarding Wessel's review of Geospectrum Geotechnical Report dated April 1, 2003
- 7-36 April 23, 2003 letter from DDES to Davis Wright
- 7-37 June 6, 2003 letter from Geospectrum Consultants, Inc. to the Jewsons re: Response to DDES April 23, 2003 letter
- 7-38 June 10, 2003 letter from Davis Wright to Joe Miles
- 7-39 June 12, 2003 email from Jon Sloan to Joe Miles re: June 10, 2003 response specific to near shore habitat impacts
- 7-40 July 23, 2003 email from Hugh Shipman of the State to Greg Borba re: his comments on the Jewson alternative wall design

- 7-41 July 25, 2003 email from Jon Sloan to the group who reviewed the Jewson mitigated recapping meeting
- 7-42 July 25, 2003 email from Jon Sloan to Greg Borba re: additional information needed for the Jewsons to go with Option #1
- 7-43 July 25, 2003 email from Greg Borba re: his previous email
- 7-44 August 8, 2003 letter from DDES to Davis Wright
- 7-45 September 11, 2003 letter from DDES to Davis Wright
- 7-46 September 22, 2003 letter from Davis Wright to Joe Miles
- 7-47 October 10, 2003 letter from DDES to Davis Wright
- 7-48 December 26, 2003 email chain from Jewson to Ron Sims to Stephanie Warden to Greg Borba re: their proposal
- 7-49 December 29, 2003 email chain from Jewson to Ron Sims to Stephanie Warden et al to Greg Borba to Stephanie Warden to Greg Borba with comments from Jon Sloan and Wessel re: wing wall proposal
- 7-50 December 11, 2003 letter from Davis Wright to DDES
- 7-51 January 30, 2004 letter from DDES to the Jewsons
- 7-52 Beach Nourishment on Puget Sound: A Review of Existing Projects and Potential Application
- 7-53 Application for Right-of-Way Use Permit for Ellisport Engineering, Inc.
- 7-54 May 7, 2002 fax to Greg Sutton from Norm Neifert, Sr. Engineer
- 7-55 May 2001 Reconnaissance Assessment of the State of the Nearshore Ecosystem: Eastern Shore of Central Puget Sound, including Vashon and Maury Islands (WRIAS 8 and 9) Executive Summary
- 7-56 February 26, 2002 Jewson-Vashon Bank Stabilization Project Natural Resources Evaluation
- 7-57 March 15, 2002 letter from DDES to Washington Department of Fish and Wildlife
- 7-58 August 9, 2002 email from Greg Wessel to Richard Hudson re: comments on the Jewson proposal
- Exhibit No. 101 Marc E. Boule résumé
- Exhibit No. 102 Coastal Zone Atlas map of area depicting coastal drift, geology, slope stability, coastal flooding, sand and gravel areas, critical biological areas, and coastal drift
- Exhibit No. 103 Legend for exhibit no. 102

The following exhibits were entered into the record on December 1, 2004:

Exhibit No. 104	James A. Doolittle résumé
Exhibit No. 105	Proposed Bluff Protection & Beach Nourishment System done by Geospectrum
	Consultants, Inc.
Exhibit No. 106	Photograph of area with similar topography as the Jewson property
Exhibit No. 107	Photograph of a site with similar topography as the Jewson property

The following exhibits were entered into the record on December 2, 2004:

Exhibit No. 108 Mark G. Pedersen résumé
Exhibit No. 109 Photographs of Jewson Property; photos 1 & 2 were taken in 1993, photo 3 was taken in 2000

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Exhibit No. 110	Photographs of Beardsley Property; photos 1 & 2 were taken in 1993, photo 3 was
	taken in 2002
Exhibit No. 111	Article – Puget Sound's Health – Herring Populations

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