

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND FINAL DECISION**

Applicant(s): New RH LLC and Roche Harbor Water Systems, Inc.  
Richard Hobbs  
PO Box 4307  
Roche Harbor, WA 98250

Agent: Rozewood Environmental Services, Inc.  
Scott Rozenbaum  
PO Box 238  
Lopez, WA 98261

File No.: PEXTHX-11-0001

Parcel Nos: 363022002 & 363023001

Location: Briggs Reservoir off Roche Harbor Road  
San Juan Island

Summary of Proposal: Request for 1.25 year extension of shoreline permit  
expiration

Land Use Designation: Rural Farm Forest

Public Hearing: February 8, 2012

Application Policies and Regulations: SJCC 18.80.110(G)

Decision: Permit expiration extended to July 1, 2014.

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

Phil Olbrechts, Hearing Examiner

RE: New RH LLC  Time Extension for Existing Shoreline Permit  (PEXTHX-11-0001)	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</b>
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**INTRODUCTION**

The applicant has applied for a 1.25 year permit expiration extension for an existing shoreline substantial development permit. A one year time extension is approved to July 1, 2014.

**TESTIMONY**

Julie Thompson, San Juan County planner, and the applicant noted that they were requesting an extension beyond the one year authorized by the code.

**EXHIBITS**

The following exhibits are admitted into the record:

1. January 23, 2012 staff report.
2. December 1, 2011 application letter from Richard Hobbs.
3. October 26, 2011 letter from Bruce Estok to Richard Hobbs
4. HE25-08 (07SJ0005) Hearing Examiner Decision and staff report.

**FINDINGS OF FACT**

**Procedural:**

1. Applicant. The applicants are New RH LLC and Roche Harbor Water Systems, Inc.
2. Hearing. The Hearing Examiner conducted a hearing on the subject application on February 8, 2012.

**Substantive:**

1 3. Project/Site Description. The Applicants received approval of a shoreline  
2 substantial development permit and a shoreline conditional use permit on June 10,  
3 2008, to construct a new, more seismically stable earth-filled dam with a higher  
4 freeboard to increase the capacity of the reservoir. The Applicants now request a 1.25  
5 year extension of the two-year period to begin construction under SJCC  
6 18.80.110(G)(8). The Applicants assert in their application that the added time is  
7 needed due to financing problems caused by the downturn in the economy. The  
8 Applicants request a 1.25 year extension as opposed to the one year extension  
9 authorized by SJCC 18.80.110(G)(8) because the 1.25 year period would be  
10 consistent with the extension granted for the Army Corps permit, Ex. 3. The current  
11 shoreline permit is set to expire on July 1, 2013 and the applicants request that it be  
12 extended to October 20, 2014.

8 4. Adverse Impacts of Proposed Use. According to the staff report,  
9 applicable codes have not changed since the approval of the current shoreline permit.  
10 There was no evidence presented on whether surrounding circumstances have  
11 changed in a manner that would result in a denial or modification to permit conditions  
12 if an application for the same project were made today. However, the permit only  
13 authorized a modest increase in the size of the dam, which would result in a modest in  
14 crease in the size of the reservoir behind it. There were no sensitive adjoining land  
15 uses identified in the decision or staff report for the existing shoreline permit and it  
16 can reasonably concluded from these documents that it's very unlikely that any  
17 change in circumstance would lead to a different decision on a permit application  
18 today. The staff report also notes that it is likely that a permit would be approved if  
19 made today. Given these factors and the fact that the original shoreline permit  
20 decision comprehensively mitigated all potential impacts, it is determined that a one  
21 year (or 1.25 year) extension would not result in and significant adverse impacts.

## 17 CONCLUSIONS OF LAW

### 18 Procedural:

19 1. Authority of Hearing Examiner. SJCC 18.80.110(G)(8) authorizes the  
20 Examiner to extend shoreline permits for one year.

### 21 Substantive:

22 2. SJCC 18.80.110(G)(8) provides that all development authorized by a  
23 shoreline permit must be completed within five years, or the permit is void.  
24 However, a permittee may request an extension before the expiration of the permit.  
25 The Examiner may extend shoreline permits for one year upon a finding of "good  
cause."

3. Good Cause. The SJCC does not define "good cause" in the context of  
shoreline permit extensions. However, "good cause" generally implies that a reason  
sufficiently compelling is given which is not self-created by the applicant. The

1 applicants' request is based upon the downturn in the economy, which has served as  
2 ample justification for approved permit extensions throughout Washington State  
municipalities and certainly justifies an extension for the subject shoreline permit.

3 1.25 Year Extension. The Applicants request, and staff recommends, that the  
4 extension be for 1.25 years despite the fact that SJCC 18.80.110(G)(8) only  
5 authorizes a one year extension. The extension is limited to one year. The Examiner  
6 has no authority to extend permit applications beyond the time limits set by the San  
7 Juan County Council. A very similar situation arose in *Graham Neighborhood Ass'n*  
8 *v. F.G. Associates*, 162 Wn. App. 98 (2011). In that case a staff member decided to  
9 allow a permit application to remain active despite the fact that the permit had expired  
10 due to inactivity under the requirements of a County ordinance. In rejecting the  
11 staff's extension, the court found that a staff member had "...unilaterally assumed an  
authority not granted to him by the legislative authority..." and that "...he acted in  
direct contravention of the pertinent act passed by the Pierce County Council.." 162  
Wn. At 116. The hearing examiner, like staff, only has the authority given to it by the  
San Juan County Council. See, *LeJeune v. Clallam County*, 64 Wn. App. 257 (1992);  
*Chaussee v. Snohomish County Council*, 38 Wn. App. 630 (1984); *Exendine v. City of*  
*Sammamish* 127 Wn. App. 574 (2005).

12 If so inclined, the County Council can amend SJCC 18.80.110(G)(8) to extend  
13 shoreline permit expiration dates. RCW 90.58.590 authorizes the adoption of interim  
14 shoreline regulation amendments without prior approval of the Department of  
15 Ecology. The Council could adopt an interim regulation that extends the one year  
16 expiration extension for both new extension requests as well as those that have  
17 already been approved. The *Graham Neighborhood* decision has already held that  
procedural matters such as permit expiration are not subject to the vested rights  
doctrine, so there would be no vested rights issues in extending existing permit  
extensions.

## 18 DECISION

19 The expiration date for the shoreline substantial development permit approved by  
20 HE25-08 (07SJ005) is extended to July 1, 2014.

21 Dated this 23rd day of February, 2012.

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Phil A. Olbrechts  
24 San Juan County Hearing Examiner

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

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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  
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.

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

7 Depending on the subject matter, this decision may be appealable to the San Juan  
8 County Superior Court or to the Washington State Shorelines Hearings Board. State  
9 law provides short deadlines and strict procedures for appeals, and failure to timely  
10 comply with filing and service requirement may result in dismissal of the appeal. See  
11 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.

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