

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicants: Cayou Quay Marina
440 Channel Road
Deer Harbor, WA 98243

File No.: PEXTHX-10-0001

Request: Extension of two-year construction period

Parcel No: 26073001, 260732012, 260732004

Location: 449, 452, and 508
Channel Road
Deer Harbor

Summary of Proposal: A request for a two-year extension of the original two-year construction period for a shoreline substantial use permit

Land Use Designation: Deer Harbor Hamlet Residential 2 acres/unit

Public Hearing: Held May 6, 2010

Application Policies and Regulations: SJCC 18.80.110(G)(7) Construction Period and Extensions

Decision: The application is approved.

S.J.C. COMMUNITY
MAY 21 2010
DEVELOPMENT & PLANNING

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

3 Phil Olbrechts, Hearing Examiner

4 RE: Cayou Quay Marina	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION.
5 2-Year Building Extension 6 (PEXTHX-10-0001)	

7 **INTRODUCTION**

8 The applicant has applied for a two year extension of the two year construction period
9 for a shoreline substantial development permit. The Examiner approves the request.

10 **TESTIMONY**

11 No testimony was provided.

12 **EXHIBITS**

- 13 Exhibit #1: Staff Report, dated April 5, 2010; prepared by Lee McEnerey
14 Exhibit #2: Extension request letter, dated February 10, 2010
15 Exhibit #3: Hearing Examiner Decision, dated April 2, 2008
16 Exhibit #4: Original Shoreline Permit, Dated April 3, 2008
17 Exhibit #5: Department of Ecology Variance approval, dated April 21, 2008

18 **FINDINGS OF FACT**

19 **Procedural:**

- 20 1. Applicant. The applicant is the Cayou Quay Marina.
21 2. Hearing. The Hearing Examiner conducted a hearing on the subject
22 application on May 6, 2010.

23 **Substantive:**

- 24 3. Site and Proposal Description. The Applicant received approval of a
25 shoreline substantial development permit to build on an existing foundation at an
existing marina and to install underground utilities on the marina and two adjacent
parcels. The Department of Ecology sent the notification on April 21, 2008, with
notice that work could begin after the appeal period ended on May 12, 2008. May 12,
2010 thus became the official start of the two-year period when substantial progress
toward construction should have been made on the project.

However, the applicant has requested an extension for two years because the
project is dependent on a permanent potable water source. This source was to be

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1 provided under contract from another property owner, who has not been able to
2 satisfy the terms of the contract. Additionally, if desalination were used instead, that
3 system would be located on the property that is also part of the defaulted contract.
The applicant has filed suit to resolve the contract dispute, and progress cannot be
made until the legal proceedings are complete.

4 CONCLUSIONS OF LAW

5 **Procedural:**

6 1. Authority of Hearing Examiner. SJCC18.80.110(G)(7) provides the Hearing
7 Examiner with the discretion to extend the two-year construction time period for a
reasonable time.

8 **Substantive:**

9 2. Shoreline Designation. The subject property is designated as Rural.

10 3. Comprehensive Plan and Zoning Designations. The subject property is
11 designated as within the Deer Harbor Hamlet Residential zone, and the current land
12 use is commercial and residential.

13 4. Permit Review Criteria. The San Juan County Code ("SJCC") governs the
14 policies and criteria for shoreline variances. SJCC 18.80.110(G)(7) establishes the
authority for extensions.

15 **San Juan County Code Regulations**

16 **SJCC 18.80.110(G)(7):** *Construction or substantial progress toward construction of*
17 *a project for which a shoreline permit is granted must be undertaken within two years*
18 *after the permit approval. Substantial progress toward construction shall include the*
19 *letting of bids, making of contracts, purchase of materials involved, utility installation*
20 *and site preparation, but shall not include use or development inconsistent with the*
21 *master program or the terms of permit approval. However, the two-year period shall*
22 *not include time during which development could not proceed due to reasonable*
23 *related administrative appeals or litigation, nor include time necessary to obtain*
24 *other required permits for the project from state and federal agencies. The hearing*
25 *examiner may, with discretion, extend the two-year time period for a reasonable time.*

1 5. Due to the construction delays caused by legal complications which are at the
2 heart of the project's utility and water design, the applicant has been unable to begin
3 construction on the permit up to this point. Based on the discretion given to the
4 Hearing Examiner by the code provision to extend the time period for a reasonable
5 time, the initial two-year construction period will be extended by two years.

6 **DECISION**

7 The building extension request is approved, with a two-year extension. The new two-
8 year period shall end May 12, 2012, at which point the applicant must show
9 substantial progress toward completing construction as defined in SJCC
10 18.80.110(G)(7).

11 Dated this 19th day of May 2010.

12 

13 Phil Olbrechts
14 County of San Juan Hearing Examiner

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

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

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

24 Depending on the subject matter, this decision may be appealable to the San Juan
25 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
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.