

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

3 Phil Olbrechts, Hearing Examiner

4

RE: Wallace Jr. and Susan Gudgell	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION S.J.C. COMMUNITY MAR 23 2010
Time Extension for Existing Shoreline Permit	
(PEXTHX-09-0001)	

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8 **INTRODUCTION**

DEVELOPMENT & PLANNING

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10 The applicant has applied for a one-year time extension for an existing shoreline
11 substantial development permit. The Hearing Examiner approves the time extension,
12 and the permit will be extended until May 16, 2012.

13 **TESTIMONY**

14 Staff indicated that substantial construction on the project has already been
15 completed. Nearly half the project is completed, with one building already
16 constructed. Mr. Gudgell also testified that he believed another reason the extension
17 should be granted is that he has had to redesign his project to accommodate county
18 code changes in 2007 and 2009.

19 **EXHIBITS**

20 *See* the San Juan County Department of Planning Staff Report, prepared by Julie
21 Thompson, dated February 18, 2010, for a full list of exhibits presented.

22 **FINDINGS OF FACT**

23 **Procedural:**

- 24 1. Applicant. The applicants are Wallace Jr. and Susan Gudgell.
- 25 2. Hearing. The Hearing Examiner conducted a hearing on the subject
application on March 4, 2010.

Substantive:

3. Project/Site Description. The subject site is located on the corner of Main
Street and Haven Road, Eastsound, Orcas Island, on the shore of Fishing Bay. The
original Shoreline Substantial Development (SSD) permit was sought to build two

1 mixed-use buildings along the waterfront of Eastsound. Hearing Examiner Wick
2 Dufford approved the SSD permit, subject to conditions, on September 20, 2005. The
3 applicants received their permit on December 27, 2005, and an appeal was settled on
4 May 16, 2006. One of the buildings was completed in February 2009. The second
5 building's infrastructure has been installed, but has not yet been built. The applicants
6 have requested an extension for three specific reasons: (1) new fire sprinkling
7 requirements may result in a redesign of the building so that appropriate space
8 between septic and water lines can be accomplished; (2) the property where the
9 offsite parking is located is currently under construction for another business; and (3)
10 design and permit times are taking longer than expected.

11 4. Characteristics of the Area. The general area is characterized by
12 commercial and residential development, as well undeveloped land.

13 5. Adverse Impacts of Proposed Use. There have been no adverse impacts
14 identified for a time extension, as the construction for the project is already
15 underway.

16 CONCLUSIONS OF LAW

17 Procedural:

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

20 Substantive:

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

3. 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.

4. In the present case, the applicants' need for an extension was not self-
created. As Mr. Gudgell testified, he has had to contend with project redesigns due to
changing codes. Furthermore, the purpose of the five-year expiration date does not
seem to be undermined here because the applicants have made significant progress on
the project, having completed one building in February 2009 and installed
infrastructure for the second building. Consequently, the Examiner concludes that the
reasons given by the applicant are sufficiently compelling to warrant a one-year
permit extension.

1 **DECISION**

2 The one-year time extension for the SSD permit effective on May 16, 2006, is
3 granted. The permit will now expire on May 16, 2012.

4 Dated this 23rd day of March, 2010.

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8 Kristin Eick, WSBA #40794 for
9 Phil A. Olbrechts
10 San Juan County Hearing Examiner

11 **APPEAL RIGHTS**

12 An appeal of this decision may be filed with the Washington State Shoreline Hearings
13 Board as governed by RCW 90.58.180, which provides, **in part**, as follows:

14 *(1) Any person aggrieved by the granting, denying, or rescinding of a*
15 *permit on shorelines of the state pursuant to RCW 90.58.140 may, except*
16 *as otherwise provided in chapter 43.21L RCW, seek review from the*
17 *shorelines hearings board by filing a petition for review within twenty-one*
18 *days of the date of filing as defined in RCW 90.58.140(6)...*

19 Reference should be made to RCW 90.58.180 in its entirety as well as the practice
20 rules of the Shoreline Hearings Board for all the requirements that apply to filing a
21 valid appeal. Failure to comply with all applicable requirements can result in
22 invalidation (dismissal) of an appeal.
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