

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS, AND DECISION

Applicant(s):	Bay Head Marina LLC Bret Thurman PO Box 15 Deer Harbor, WA 98243	S.J.C. DEPARTMENT OF MAY 12 2017 COMMUNITY DEVELOPMENT
Agent(s):	Francine Shaw PO Box 2112 Friday Harbor, WA 98250	
File No.:	PEXTHX-17-0001	
Request:	Shoreline Permit Extension for shoreline Permit PSJ000-12-0005	
Parcel No:	262250019	
Location:	372 Killebrew Lake Road, Orcas Island	
Summary of Proposal:	An application for time extension of one year for an existing shoreline substantial development permit	
Shoreline Designation:	Rural	
Public Hearing:	April 20, 2017	
Applicable Policies and Codes:	SJCC 18.80.110(G) Extension of Permit	
Decision:	Approved	

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

In the Matter of the Application of)
)
Bret Thurman, Bay Head Marina LLC) NO. PEXTHX-17-0001
)
) **Bay Head Marina**
)
for an extension of an approved)
shoreline substantial development permit)
at Bay Head Marina, Orcas Island)

S.J.C. DEPARTMENT OF
MAY 12 2017
COMMUNITY DEVELOPMENT

SUMMARY OF DECISION

The request for a one-year extension of the previously approved shoreline substantial development permit authorizing parking area expansion to the existing Bay Head Marina at 372 Killebrew Lake Road, Orcas Island is **APPROVED**.

SUMMARY OF RECORD

Request:

Bret Thurman on behalf of Bay Head Marina LLC (Applicant) requested a time extension of one year for an approved shoreline substantial development permit for parking area expansion to the Bay Head Marina on Orcas Island.

Hearing Date:

The San Juan County Hearing Examiner held an open record public hearing on the request on April 20, 2017.

Testimony:

At the open record public hearing, the following individuals presented testimony under oath:

Julie Thompson, Planner, San Juan County Department of Community Development
Francine Shaw, Applicant Representative

Exhibits:

The following exhibits were admitted in the record:

1. Department of Community Development Staff Report, dated April 6, 2017
2. Request for time extension, dated February 16, 2017
3. San Juan County shoreline permit, dated September 26, 2013
4. Hearing Examiner decision on Bay Head Marina LLC, dated September 26, 2013

5. Department of Ecology letter, dated May 15, 2013
6. San Juan County shoreline permit, dated May 5, 2013
7. O'Day letter to Army Corp of Engineers, dated May 19, 2015
8. Army Corps of Engineers "Notification of Administrative Appeal Options and Process and Request for Appeal" for the dredging, dated March 12, 2015
9. O'Day letter to Army Corps of Engineers, dated September 3, 2014
10. Letter from NOAA to Army Corps, dated August 11, 2014
11. Letter from Army Corps to NMFS and USFWS, dated December 20, 2013
12. Legal notice of hearing

Upon consideration of the testimony and exhibits submitted at the open record public hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. On September 26, 2013, the Applicant received approval of a shoreline substantial development permit (SSDP) for improvements at the Bay Head Marina on Orcas Island (PSJ000-12-0005). *Exhibit 3*. Maintenance dredging of the marina was approved under a separate permit (NWS-20120673) by the Army Corps of Engineers (ACOE) issued March 24, 2015, for which a shoreline exemption was issued by the County (09XMP011). *Exhibits 1 and 2*.
2. The project as initially proposed included expansion of a parking area up to 20 feet waterward by the replacement and relocation of some existing bulkheads and placement of fill behind the bulkhead, as well as relocation of an existing boat launch. Following SSDP approval, the Applicant was unable to obtain ACOE approval for the boat launch relocation. Because the ACOE decision denying the boat launch relocation was issued on May 19, 2015, that date represents the conclusion of all state and federal reviews of the project and is therefore the date the SSDP decision became final. The approved SSDP, which allows relocation of the boat launch, new bulkheads, and landfill, expires on May 19, 2017. Because improvements have not been substantially completed, on February 16, 2017 the Applicant requested a one-year extension of the SSDP approval through May 19, 2018. *Exhibits 1, 2, 3, and 4; Julie Thompson Testimony*.
3. According to the Applicant, construction has not started primarily due to extraordinary banking regulatory requirements on small business and other unforeseen financial delays. Since approval, bids have been taken. Contracts for the maintenance dredging are in progress. Spoils from the dredge would be used as fill in the parking lot expansion. *Exhibit 2; Francine Shaw Testimony*.

4. The Applicant agent indicated that a longer extension would be desirable; however, it is anticipated that substantial progress would be able to be shown by May 19, 2018. *Francine Shaw Testimony*. Planning Staff indicated that no additional extension is possible under the shoreline regulations. *Thompson Testimony*.
5. Notice of application and hearing was published in accordance with the requirements of the County Code on March 22, 2017. There was no public comment on the application. *Exhibits 1 and 12; Julie Thompson Testimony*.
6. Approval of the extension would not result in any conflict with the current adopted San Juan County Shoreline Master Program. Approval of the extension would not allow any additional intrusion into shoreline areas than was previously reviewed and approved. Planning Staff recommended approval of the requested time extension and did not recommend new conditions of approval. *Exhibit 1; Julie Thompson Testimony*.

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to decide applications for revisions to approved shoreline permits pursuant to San Juan County Code 2.22.100(1) and 18.80.110(M), and Revised Code of Washington 36.70.970.

Criteria for Review of Shoreline Permit Extension Requests

Pursuant to SJCC 18.80.110.G:

7. Construction or substantial progress toward construction of a project for which a shoreline permit is granted must be undertaken within two years after the permit approval. Substantial progress toward construction shall include the letting of bids, making of contracts, purchase of materials involved, utility installation and site preparation, but shall not include use or development inconsistent with the master program or the terms of permit approval. However, the two-year period shall not include time during which development could not proceed due to reasonable related administrative appeals or litigation, nor include time necessary to obtain other required permits for the project from state and federal agencies. The hearing examiner may, with discretion, extend the two-year time period for a reasonable time.
8. Unless specified otherwise in permit conditions, all development authorized by a shoreline permit shall be completed within five years of the date of permit approval or the permit shall become null and void. A permittee may request a time extension before the permit expires by making a written request to the administrator, stating the reasons. The hearing examiner will review the permit, and upon a finding of good cause:
 - a. Extend the permit for one year; or

- b. Terminate the permit.

Conclusion Based on Findings

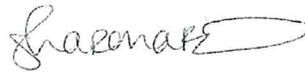
1. The materials submitted demonstrate that the improvements authorized in the previous SSDP have neither languished nor been abandoned. The Applicant submitted a timely request for extension of SSDP approval and the submitted materials made an adequate showing of good cause to extend the permit for one year to May 19, 2018 in order to show "substantial progress toward construction." *Findings 1, 2, 3, 4, 5, and 6.*

DECISION

Based on the preceding findings and conclusion, approval of shoreline substantial development permit PSJ000-12-0005 authorizing parking area expansion at Bay Head Marina on Orcas Island is extended for a one-year period expiring May 19, 2018. Conditions of the previous approval remain in effect.

Decided May 11, 2017.

By:



Sharon A. Rice
San Juan County Hearing Examiner

Effective Date, Appeal Right, and Valuation Notices

Hearing examiner decisions become effective when mailed or such later date in accordance with the laws and ordinance requirements governing the matter under 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.

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

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