

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS, AND DECISION

Applicant(s):	Sunflower Properties LLC Sean DeMeritt PO Box 425 Orcas, WA 98280	S.J.C. DEPARTMENT OF AUG 02 2017 COMMUNITY DEVELOPMENT
File No.:	PLALTW-17-0001	
Request:	Preliminary Plat Alteration for Plum Tree Cottages	
Parcel No:	271452102	
Location:	430 Prune Alley Eastsound, WA, Orcas Island	
Summary of Proposal:	An application for a plat alteration to allow for the subdivision of two lots into four single-family residential lots	
Land Use Designation:	Eastsound Village Commercial	
Public Hearing:	May 18, 2017	
Application Policies and Regulations:	SJCC 18.70.050(F) Preliminary Plat Criteria RCW 58.17.110(2) Subdivision Conditions for Approval	
Decision:	Approved subject to conditions	

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

In the Matter of the Application of)
Sunflower Properties LLC)
For Preliminary Plat Alteration)

NO. PLALTW-17-0001

Plum Tree Cottages

S.J.C. DEPARTMENT OF

AUG 02 2017

COMMUNITY DEVELOPMENT

SUMMARY OF DECISION

The requested preliminary plat alteration to subdivide two existing lots into four single-family residential lots is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request:

Sean DeMeritt, on behalf of Sunflower Properties LLC (Applicant), requested approval of a preliminary plat subdividing two existing lots into four single-family residential lots. The subject property is located at 430 Prune Alley in Eastsound, Washington.

Hearing Date:

The San Juan County Hearing Examiner held an open record public hearing on the request on May 18, 2017. In the course of deliberations, the undersigned determined that additional evidence was necessary to decide the issues raised by the parties at hearing, and the record was reopened for submission of additional items of evidence, consisting of the complete building permits. The County submitted digital files containing copies of the building permits, to which the Applicant objected as containing information not included on the originals. The hearing was reconvened on July 13, 2017 to allow testimony clarifying the disagreement as to what information was included on the building permits as issued.

Testimony:

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

Julie Thompson, Planner, San Juan County Department of Community Development
Linda Kuller, San Juan County Department of Community Development
Erika Shook, Director, San Juan Department of Community Development
Nadine Cook, County Building Division Plan Reviewer
Sean DeMeritt, Applicant

Doug Strandberg, Attorney, represented the Applicant.

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Exhibits:

The following exhibits were admitted in the record:

- A. Department of Community Development Staff Report, dated May 5, 2017
1. Request for agency review and comment
 2. Land division application cover sheet, dated received February 24, 2017
 3. Applicant narrative accompanying application, dated received February 21, 2017
 4. Preliminary map
 5. Right-of-Way permit, approved July 15, 2016
 6. Stormwater plan approved by Public Works June 20, 2016
 7. Comments from San Juan County Assistant County Engineer, dated April 3, 2017
 8. Posting and notification verification, dated received March 13, 2017
 9. Legal advertisement of public hearing, published March 8, 2017
 10. Department of Community Development staff report and for PSEPA0-16-0005, dated July 12, 2016
- B. Letter from Erika Shook, Director, to applicant re: approved right-of-way permit, dated April 3, 2017, with attachments:
1. Letter from Applicant to Christine Coray, dated March 23, 2017
 2. Eastsound Subarea Plan Figures 130-3 and 130-4, Streetscape options
 3. Eastsound Street standards, Standard Plan 901
 4. Figure 6.1, Construction standards for driveway access permits
 5. Certified mail receipt for mail to San Juan County Public Works, July 26, 2016
 6. Plum Tree Cottages site plan
 7. Easement 87148478, recorded November 12, 1987, re-recorded 87148537
- C. Email from Sea DeMerritt to Julie Thompson, dated May 10, 2017, with attachments:
1. Typical Driveway Approach Geometry
 2. Building permit BLDG-16-0124 (1 page)
 3. Building permit BLDG-16-0125 (1 page)
 4. Building permit BLDG-16-0126 (1 page)
 5. Building permit BLDG-16-0127 (1 page)
 6. Letter from Applicant to Erika Shook, Director, July 5, 2016 with certified mail receipt
 7. [Repeat] Right-of-way permit application 16-0052, approved July 15, 2016, with certified mail receipt
 8. [Repeat] Construction standards for driveway access permits
 9. Sunflower Properties plat alteration site plan
 10. [Repeat] Easement 87148478, recorded November 12, 1987, re-recorded 87148537
 11. Record of Survey Book 21 Page 97

- D. Applicant's Memorandum in response to staff report, prepared by Douglas Strandberg, dated May 15, 2017, with attachments:
1. SJCC 16.30.630, Off-Street Parking
 2. SJCC 16.30.700 Street Development standards
 3. [Repeat] Easement 87148478, recorded November 12, 1987, re-recorded 87148537
- E. Exhibits to Applicant's memorandum including:
1. San Juan County Polaris map of property and surrounding parcels
 2. Photographs of Sunflower Prune Alley homes and adjoining improved Olson lots
 3. San Juan County summary of the Prune Alley Road improvements
 4. Minutes entries of the Eastsound Planning Review Committee
 5. Public Works design for Sunflower and Eastsound street standards
 6. Grant of Easement, Olson to San Juan County [Repeat]
 7. RCW 82.20.020
 8. Sunflower email exchange with Public Works re: streetscape
 9. Sunflower's County approved revised site plan
 10. AG opinion regarding development conditions pursuant to RCW 82.02.020
- F. Right-of-way permit packet (ROW 16-0052), approved July 15, 2016 (11 pages)
- G. Email from Jeff Sharp to Erika Shook, May 18, 2017
- H. Public Works Streetscape Design, dated April 19, 2017 with applicant annotation¹
- I. Letter from Law Offices of Douglas Strandberg to the Hearing Examiner, dated June 20, 2017
- J. Email exchange between Erika Shook and Douglas Strandberg, last date June 29, 2017, with attachments including previous emails and a highlighted drawing of curb and gutter improvements
- K. Applicant's supplemental memorandum in response to staff report, dated July 12, 2017, with attached:
1. Original site plan
 2. Revised site plan
 3. Original stormwater plan
 4. Revised stormwater plan
- L. Applicant's exhibits in support of supplemental memorandum, including:
1. email exchange between Sean DeMerritt and Christine Coray, dated July 15, 2016 through November 14, 2016
 2. revised stormwater site plan (dated August 12, 2016)

¹ Exhibits A through H were admitted on the original May 18th hearing date. Exhibits I through U were admitted on July 13, 2017.

3. notice of address assignment (dated August 16, 2016)
- M. Right-of-way permit application ROWSJC-16-130, Eastsound Water/Prune Alley, approved August 11, 2016
- N. Right-of-way permit application 16-0058, Centurylink, in future sidewalk at Tax Parcel 271452102100, approved July 15, 2016
- O. Photographs of subject property submitted by the Applicant
- P. Email exchange between Sean DeMerritt, Christine Coray, and Russ Bruland regarding the public parking along the site frontage, last date December 2, 2016
- Q. Complete Building Permit 16-0124, issued August 18, 2016, consisting of:
1. Building permit summary sheet
 2. Required Inspection Summary form
 3. Two receipts
 4. Note stating: "Original SMWMP w/ BUILDG-16-0126 file"
 5. Residential Energy Compliance Packet (4 pages)
 6. Structural Calculations, prepared by Jones Engineer, July 22, 2016 (29 pages)
 7. Full size (18x36) site plans (14 sheets), with attached 11x17 coversheet indicating site plans approved August 10, 2016
- R. Complete Building Permit 16-0125, issued August 18, 2016, consisting of:
1. Building permit summary sheet
 2. Two receipts
 3. Note stating: "Original SMWMP w/ BUILDG-16-0126 file"
 4. Residential Energy Compliance Packet (4 pages)
 5. Structural Calculations, prepared by Jones Engineer, July 22, 2016 (29 pages)
 6. Full size (18x36) site plans (14 sheets), with attached 11x17 coversheet indicating site plans approved August 11, 2016
- S. Complete Building Permit 16-0126, issued August 18, 2016, consisting of:
1. Building permit summary sheet
 2. Three receipts
 3. Required Inspection Summary form
 4. Residential Energy Compliance Packet (4 pages)
 5. Structural Calculations, prepared by Jones Engineer, July 22, 2016 (29 pages)
 6. Plum Tree Cottages Stormwater Site Plan and Stormwater Pollution Prevention Plan (approximately 50 pages)
 7. Full size (18x36) site plans (15 sheets), with attached 11x17 coversheet indicating site plans approved August 11, 2016
- T. Complete Building Permit 16-0127, issued August 18, 2016, consisting of:
1. Building permit summary sheet

2. Two receipts
3. Required Inspection Summary form
4. Note stating: "Original SMWMP w/ BUILDG-16-0126 file"
5. Residential Energy Compliance Packet (4 pages)
6. Structural Calculations, prepared by Jones Engineer, July 22, 2016 (29 pages)
7. Full size (18x36) site plans (14 sheets), with attached 11x17 coversheet indicating site plans approved August 11, 2016

U. A declaration by Erika Shook attesting to accuracy of copies of building permits in Exhibits Q, R, S, and T, dated July 17, 2017

Also included in the record of this matter are:

- Order Reopening Record, issued June 13, 2017
- Order Reconvening Hearing, issued June 23, 2017

Upon consideration of the testimony and exhibits submitted in the record, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

Proposed Subdivision Alteration

1. The Applicant requested approval of a preliminary plat alteration subdividing two existing lots totaling 0.27 acres into four single-family residential lots. The two lots, together referred to as the subject property in these findings, are addressed as 430 Prune Alley, Eastsound, Washington.² *Exhibits A and A.1.*
2. The subject property has an Eastsound Village Commercial land use designation. Density in this land use designation is four to 40 units per acre. Existing land uses to the east are residential use, while land uses to the north, south, and west are commercial. There is no portion of the subject property subject to the jurisdiction of the San Juan County shoreline master program, and aside from the County-wide critical aquifer recharge area, there are no critical areas on-site. *Exhibits A and A.10.*
3. The two existing lots are in the process of being developed with four single-family residential cottage units. In March 2016, the Applicant submitted a State Environmental Policy Act (SEPA) review application for a proposal to develop the subject property with six small cottages without subdivision (PSEPA0-16-0005). After County review, the proposal was granted a determination of non-significance (DNS) on April 13, 2016. Subsequently the cottage proposal was modified to include only four cottages. Building permits for the four cottages were issued August 18, 2016. At the time of the May 18,

² The legal description of the subject property is Lots 2 and 3 of William R. Griffin's 1st Addition to Eastsound. The subject property is shown on County maps as tax parcel 271452102; however, it is actually comprised on two tax parcels that have been combined for tax purposes only. *Exhibit A.*

2017 hearing on the instant permit, the cottages were 65% built. *Exhibits A, A.10, C.2, C.3, C.4, and C.5; Sean DeMerritt Testimony.*

4. Proposed lots would have the following dimensions: Lot 1, 40 by 50 feet; Lot 2, 47 by 50 feet; Lot 3, 45 by 50 feet; and Lot 4, 42 by 50 feet. Lots 1 and 2 abut the north site boundary and Lots 3 and 4 would abut the south site boundary. Lots 2 and 4 would run the length of the eastern site boundary. A common area tract measuring 33 by 100 feet would run the length of the western site boundary, west of Lots 1 and 3. Each lot would be encumbered by a four-foot wide access and utility easement that would abut to form an eight-foot wide easement between Lots 1 and 2, and Lots 3 and 4, which would connect to the common area tract where one site entrance, stormwater management, storage, and parking are proposed. The subject property accesses public right-of-way from a single driveway off Prune Alley, which has a 50-foot right-of-way. Facts related to access are discussed further in Findings 13 through 24 below. *Exhibit A.4.*
5. In review of the cottage proposal, many items required for preliminary plat approval were reviewed and determined to be met. Membership in Eastsound Water Users Association has been obtained for each proposed lot. Sewage disposal for each proposed lot is provided by Eastsound Sewer District. A stormwater site plan and stormwater pollution prevention plan were reviewed and approved on June 20, 2016. *Exhibits A, A.5, A.6, and A.10.*
6. The proposal does not technically meet the concurrency requirements of SJCC 18.60.200; however, at the time of the 2016 SEPA review, the County Engineer determined that the affected road segment would encounter no difficulty in accommodating the vehicular trips generated by this development and recommended approval of the six cottage units. San Juan County Department of Community Development Staff is satisfied that the intent of the County's concurrency provisions is satisfied. *Exhibits A and A.10; Erika Shook Testimony; Julie Thompson Testimony.*
7. The Department of Community Development forwarded the proposed plat alteration to San Juan County Fire Marshal Robert Low for review and comment. The Fire Marshal submitted no comments. Fire protection improvements (SJCC 13.08) would not be required. *Exhibits A and A.1; Julie Thompson Testimony.*
8. Planning Staff reviewed the proposed plat alteration as compared with the previously proposed six cottage project and determined that with the proposed subdivision of the subject property into four lots, health standards would continue to be satisfied because water supply remains consistent with SJCC 13.06, sewage disposal remains consistent with SJCC 13.04, stormwater flows would not impact critical aquifer recharge areas, and fire and utility standards in SJCC 13.08 would remain satisfied. *Exhibits A and A.10; Julie Thompson Testimony.*
9. There are no known outstanding assessments from the former subdivision to be distributed among the created lots. There is no area within the subject property that was

dedicated to the general use of persons residing within the original subdivision. *Julie Thompson Testimony.*

10. San Juan County acted as lead agency for review of the environmental impacts of the proposed plat alteration pursuant to the State Environmental Policy Act (SEPA). As noted above, a DNS was issued (PSEPA0-16-0005) for essentially the same proposal on April 13, 2016. Because there would be no additional environmental impacts from the subdivision of the lots beyond those associated with the development of the cottages as approved, the previous SEPA DNS was adopted for the instant proposal. *Exhibits A and A.10; Julie Thompson Testimony.*
11. The application was submitted and determined to be complete on February 24, 2017. Notice of the application was posted on-site on March 10, 2017 and mailed to surrounding property owners on March 11, 2017. Notice was published on March 8, 2017. *Exhibits A, A.8, and A.9; Julie Thompson Testimony.*
12. Comments on the proposal were submitted by the County Public Works Department, which reviewed the 2016 SEPA proposal and determined the instant proposal continues to satisfy concurrency requirements. Public Works requested that the final map show the existing easement of record per AFN 87148478 and AFN 87148537. The Fire Marshall had no comment. *Exhibits A and A.7.* There was no public comment on the application prior to or at the May 18, 2017 hearing. *Exhibit A; Julie Thompson Testimony.*

Site Access and Frontage Improvements

13. San Juan County Public Works Department approved a right-of-way permit on July 15, 2016 (ROWSJC-16-0052) associated with the revised four cottage project proposed by the Applicant before the instant subdivision was proposed. The approved right-of-way permit and associated site plan referenced eight angle parking spaces, landscape buffer, sidewalk, and curbs that are required along the site frontage.³ Permit ROWSJC-16-0052, which noted that right-of-way is required to be dedicated in accordance with San Juan County Code (SJCC) 18.30.700, was approved with five attached conditions, as follows:
 1. The County Road improvements are approved as shown on the site plan with the corrections to the dimensions.
 2. The County has provided the necessary grades and design standards for the centerline of Prune Alley to the Owner as required by San Juan County Code 18.30.700(E).
 3. Prior to construction, the Owner shall provide to the County, for review and approval, a complete set of construction drawings with all necessary design elevations, survey control, and details. A stormdrain catch basin and necessary connection will be required.

³ Attached to the permit is a site plan depicting eight angle parking stalls, which at the top is labeled with a handwritten notation "Option B parking." *Exhibit F.*

4. Upon completion of the County road improvements, the Property Owner shall dedicate to the County all lands upon which the County road improvements are installed.
5. The Property Owner shall execute, upon receipt from San Juan County Public Works, a maintenance agreement in accordance with San Juan County Code 18.30.700(H).

Exhibit F.

14. On July 19th or 20th, 2016⁴, the Applicant submitted a revised site plan depicting six non-angle parking stalls in a parking area within the common open area tract, set back 4.5 feet from a five-foot sidewalk, outside (towards the right-of-way) of which is a five-foot planter strip, beyond which is curb and gutter abutting the travel lane. This revised parking/frontage plan received County approval on August 10, 2016. The August 10th approved revised site plan contains a handwritten note stating: "See conditions attached to original site plan." *Exhibits B.1, D, and E.9.*
15. On August 18, 2016, building permits were issued for the four cottage units (BUILDG-16-0124, -0125, -0126, and 0127, on receipt of which the Applicant proceeded to commence construction. *Exhibits C.2, C.3, C.4, C.5, Q, R, S, and T; Sean DeMerritt Testimony.*
16. Subsequently, on February 24, 2017, the Applicant submitted an application for land division, requesting to divide the subject property's two lots into four separate fee simple lots, which the County processed as a subdivision alteration. *Exhibit A.2.* Frontage and cottage construction had already commenced, and significant utility work had already been performed. *Sean DeMerritt Testimony; Exhibit E.2.*
17. At hearing, there was no disagreement between the Applicant and Staff with regard to the application's compliance with subdivision alteration criteria; however, there was significant disagreement between the parties as to the frontage improvements required along Prune Alley. Via counsel, the Applicant objected to the following (paraphrased) items in the Department's staff report (Exhibit A) at hearing:
 - Finding 7 (page 3) and Recommendation 9 (page 4) requiring that, prior to final plat, the Applicant be required to complete the required street improvements (streetscape) pursuant to SJCC 18.30.630(A)(8) and SJCC 18.30.700 on the grounds that the requirement would a) violate the terms of a 1987 easement, b) constitute an illegal exaction of tax or fee pursuant to RCW 82.02.020, and c) constitute a "taking" under both the state and federal Constitutions;

⁴ Exhibit B.1 indicates the Applicant submitted a revised proposal on July 20th, while Exhibit D states that the revision was submitted July 19, 2017.

- Recommendation 3 (page 4) requiring all roads serving the proposed lots to comply with the road design and construction standards or SJCC 18.60.100 on the apparent grounds that it would (allegedly) contradict the first sentence of Finding 12 (page 3): "No new roads will be constructed to serve the subdivision...;" and
- The inclusion (without clarification) of the second sentence of Finding 12 (page 3), which states: "A right-of-way permit, ROWSJC-16-052, was approved by Public Works for access to all four lots. ..."

As the basis for objection to the third bulleted item above, the Applicant explained the following in a document submitted in the record:

"The referenced Right of Way permit was issued to Sunflower based on its initial 6 building permit applications which would have required utilization of the County Right of Way for on-street parking for its six homes. On July 19, 2016, Sean DeMerritt, during an in-person meeting with the Director: a) withdrew Sunflower's building permit applications BUILD-16-0139 and BUILD-16-0140; b) advised the Director that Sunflower had elected to provide entirely off-street parking on its two lots without utilizing any of the County Right of Way; and c) advised the Director that it would not dedicate anymore property to the County or build any streetscape. Then in August 2016, Sunflower obtained County approval of a revised site plan showing only the off-street parking and the four homes currently under construction with driveway access. Therefore, Finding 12 at Page 3 should either be rejected in its entirety, or the above clarifying statements should be added to Findings 12."

Exhibits D and E.9.

18. At the reconvened hearing, the Applicant submitted additional argument as follows:

Sunflower takes strong exception to two of the findings and recommendations [in the staff report] which would require Sunflower to excavate and then construct streetscape improvements in the County right-of-way at an estimated cost of \$30,000.00. It is Sunflower's position ... that the challenged findings and recommendations... are unsupported by the Department's own permit files, by the revised site plan and revised stormwater plan, and [that the Department failed] to show any nexus between the estimated cost to Sunflower of complying with the recommendations ... and any burden that would be imposed on the County be approval of the plat alteration.

Exhibit K.

19. The Applicant asserted that the approved revised site plan and approved revised stormwater plan show the sidewalk entirely within the County right-of-way, which were consistent with the Applicant's stated intention of not dedicating right-of-way and not

constructing sidewalk, curb, gutters, or any other streetscape in the County right-of-way. The Applicant argued that after Sunflower abandoned its plans to build six cottages and withdrew its permit applications for two of the residences that would have fronted Prune Alley, it then designed parking on its lot and submitted the revised site and stormwater plans showing no improvements in the right-of-way, at which point the right-of-way permit ROWSJC 16-0052 and its attached conditions became a nullity. *Exhibit K; Sean DeMerritt Testimony.*

20. At the reconvened hearing, Community Development Director Erika Shook testified that the County building permit is comprised of all the documents compiled in each packet offered as Exhibits Q, R, S, and T, and that the complete plan set, in this case as in most cases, has conditions attached to it. At the request of the undersigned, the Department of Community Development reproduced each of the four building permits (16-0124, 16-0125, 16-0126, and 16-0127) in its entirety for the record. Ms. Shook testified under oath and submitted a sworn declaration that the copies provided for the record are identical to the copies provided to the Applicant upon approval. *Erika Shook; Exhibits Q, R, S, and T.*
21. Review of the building permits reveals each of the four plan sets has, on top, an 11x17 - inch approved revised site plan. Each of these site plans says, handwritten in red marker, "See conditions attached to original site plan" (16-0124, 16-0125) or "See original site plan for conditions of approval" (16-127), or "Revised Site Plan: See conditions attached to original site plan" (16-0126). In each plan set, Sheet A1.1 is the six unit site plan originally approved. In permits 16-0125, 16-0126, and 16-0127, Sheet A1.1 has three things attached: a taped-on condition regarding exterior lighting; a stapled-on notice that prior to occupancy permit, the Applicant must provide a landscape plan that complies with the applicable provisions of SJCC 18.30.670(D); and stapled-on right-of-way permit ROWSJC 16-0052, approved July 15, 2016 (11 pages), identical to that detailed in finding 13 above.⁵ At the top of stapled-on right-of-way permit ROWSJC 16-005 attached to all four Sheets A1.1 is a taped-on notice that says:

Pursuant to SJCC 18.30630.A.8 and 9 and SJCC 18.30.700, approval of this building permit (BUILDG-16-0126) is conditioned upon completion of street improvements and compliance with the attached right-of-way permit (ROWSJC 16-0052) prior to final inspection/Certificate of Occupancy.

Exhibits Q, R, S, and T, Sheets A1.1.

22. Plans Reviewer Nadine Cook testified that she recalled coming up with the language that is taped to the right-of-way permit that is stapled to the originally approved site plan included in each plan set at Sheet A1.1. She stated it is typical to tape conditions to site plans. Ms. Cook noted that it is not typical to staple right-of-way permits to building

⁵Sheet A1.1 in Exhibit Q, BUILDG 16-0124 is missing the landscaping requirement attachment in the copy provided for the Examiner's review.

plans, but she specifically recalls doing so for the permits for this project. She also testified that while she doesn't specifically recall stapling the right-of-way permit with its taped notice at the top to the Applicant's copy of the building permit, it is her practice to make each set of building plans identical in all cases, and she believes that the building permits issued to the Applicant were identical to those in the County's possession.
Nadine Cook Testimony.

23. The Applicant had to leave prior to the conclusion of the reconvened hearing. With regard to the handwritten notation on the approved revised site plan that says "See conditions attached to original site plan", before leaving, the Applicant testified that neither the revised site plan nor the original site plan provided to him by the County upon approval contained any conditions referencing SJCC 18.30.700 nor the stapled-on right-of-way permit, nor any notice about complying with streetscape improvements. *Sean DeMerritt Testimony.* After his departure, his attorney offered the Applicant's copy of one of the plan sets for review by the Examiner. There was no right-of-way permit attached, but there were empty staple holes at the top of the page on Sheet A1.1.

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for conditional use permit pursuant to Chapter 36.70.970 of the Revised Code of Washington and San Juan County Code sections 2.22.020 and 18.70.080(3).

Criteria for Review

Pursuant to San Juan County Code 18.70.080(4), an application for alteration of a subdivision may be approved if the following criteria are demonstrated to be satisfied:

- a. The application meets the requirements of this chapter, and complies with the applicable policies and requirements of RCW 58.17.330, the Shoreline Master Program, the State Environmental Policy Act, and the Comprehensive Plan;
- b. The application satisfactorily addresses the comments of the reviewing authorities and is in the public interest (RCW 58.17.100, 58.17.110, and 58.17.215);
- c. Any outstanding assessments (if any land within the alteration is part of an assessment district) are equitably divided and levied against the remaining lots, parcels, or tracts, or are levied equitably on the lots resulting from the alteration; and
- d. Any land within the alteration that contains a dedication to the general use of persons residing within the subdivision is divided equitably.

Additional Relevant Regulations

RCW 58.17.215, Alteration of subdivision—Procedure.

When any person is interested in the alteration of any subdivision or the altering of any portion thereof, except as provided in RCW 58.17.040(6), that person shall submit an application to request the alteration to the legislative authority of the city, town, or county where the

subdivision is located. The application shall contain the signatures of the majority of those persons having an ownership interest of lots, tracts, parcels, sites, or divisions in the subject subdivision or portion to be altered. If the subdivision is subject to restrictive covenants which were filed at the time of the approval of the subdivision, and the application for alteration would result in the violation of a covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the alteration of the subdivision or portion thereof.

Upon receipt of an application for alteration, the legislative body shall provide notice of the application to all owners of property within the subdivision, and as provided for in RCW 58.17.080 and 58.17.090. The notice shall either establish a date for a public hearing or provide that a hearing may be requested by a person receiving notice within fourteen days of receipt of the notice.

The legislative body shall determine the public use and interest in the proposed alteration and may deny or approve the application for alteration. If any land within the alteration is part of an assessment district, any outstanding assessments shall be equitably divided and levied against the remaining lots, parcels, or tracts, or be levied equitably on the lots resulting from the alteration. If any land within the alteration contains a dedication to the general use of persons residing within the subdivision, such land may be altered and divided equitably between the adjacent properties.

After approval of the alteration, the legislative body shall order the applicant to produce a revised drawing of the approved alteration of the final plat or short plat, which after signature of the legislative authority, shall be filed with the county auditor to become the lawful plat of the property.

This section shall not be construed as applying to the alteration or replatting of any plat of state-granted tide or shore lands.

San Juan County Code 18.70.080, Subdivision Alterations

1. Alteration Applications. Alterations of subdivisions shall be processed in accordance with RCW 58.17.060 and 58.17.215 through 58.17.218. Alteration applications shall contain the signatures of the majority of those persons having an ownership interest in lots, tracts, parcels, sites or divisions in the subject subdivision or portion to be altered. If the subdivision is subject to restrictive covenants which were filed at the time of the approval of the subdivision, and the application for alteration would result in the violation of a covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the alteration of the subdivision or portion thereof (RCW 58.17.215).
2. Notice and Public Hearing. Notice of alterations shall be consistent with the notice provisions (SJCC 18.80.030) of this code. Mailing notification shall also include owners of each lot or parcel of property within the subdivision to be altered. A public hearing (SJCC 18.80.040) shall be required for long subdivision alteration proposals.

Conclusions Based on Findings

1. As conditioned, the application meets the requirements of the, and is consistent with the purpose of SJCC Chapter 18.10, the subdivision chapter.⁶ No part of the subject property is within the shoreline jurisdiction and therefore there is no conflict with the County's shoreline master program. The proposal was reviewed for compliance with the requirements of the State Environmental Policy Act and a determination of non-significance was issued; the project subsequently reduced in scale, reducing potential environmental impacts. Adding land division to the proposal does not trigger additional environmental review beyond that required of the previous six unit configuration. In creating lots that comport with the permitted uses and density for the Village East Commercial land use designation, the proposal is consistent with the County's Comprehensive Plan. Each lot would connect to municipal water and sewer. Stormwater runoff would be required to be managed consistent with regulations in effect at the time of complete application. The project was, essentially, excused from compliance with concurrency standards through the discretion of the County Engineer at the time of SEPA review because the project's trips are not anticipated to noticeably degrade traffic flow in the vicinity. As conditioned, adequate provisions are made provision for water supply, drainage, access, sewage disposal, fire protection, schools and other capital requirements including street improvements that would contribute to lessening congestion. The record contains no evidence of detriment to the public health, safety, and welfare. *Findings* 2, 3, 4, 5, 6, 8, 10, 11, 12, 13, and 16.

2. As conditioned, the proposal satisfactorily addresses the comments of the reviewing authorities and its development would be in the public interest. Reviewing agency comments recommended approval with conditions, including construction of streetscape improvements. The Applicant objected to the condition requiring streetscape improvements and has attempted to conduct the instant plat alteration proceedings as an appeal of streetscape requirements. While the conditions of plat alteration approval recommended by Staff reference the streetscape improvements required pursuant to SJCC 18.30.630(A)(8) and (9) and SJCC 18.30.700, those improvements were already required of the project. Both ROWSJC 16-0052 and all four building permits (16-0124, 16-0125, 16-0126, and 16-0127), issued in July and August 2016, contained conditions requiring those improvements to be constructed. Regardless of the basis of the argument (whether it is the earlier easement for the County to construct the frontage, or the Applicant's notice to the County by certified mail that he refused to dedicate land and construct right-

⁶ SJCC 18.70.010 General provisions. A. Purpose. To further the purposes and objectives of the San Juan County Comprehensive Plan established pursuant to Chapter 36.70A RCW, to provide specific standards and administrative arrangements as an official control relating to the division of land in the unincorporated areas; to promote the public health, safety, and general welfare by requiring the division of land to proceed in accordance with controls, standards and procedures set forth in this code; to facilitate the appropriate development of land in accordance with the ability of the natural resources of the County to accommodate such development; to prevent the overcrowding of land with development; to lessen congestion in the streets and highways; to facilitate adequate provision for water supply, drainage, access, sewage disposal, fire protection, schools and other capital requirements; and to require uniform monumentation and conveyancing by accurate legal description.

of-way to streetscape standards, or a nexus/rough proportionality argument⁷), the conditions of the earlier issued permits are not ripe for challenge.

Building permits are reviewed pursuant to the Land Use Petition Act (LUPA). *RCW 36.70C.030*. LUPA bars review of a land use decision unless timely filed within 21 days of issuance of the decision. *RCW 36.70C.040(3)*. The San Juan County Code also provides a 21-day appeal period for development permits issued or approved by the Director. *SJCC 18.80.140.D*. Washington courts have held that even the local government is stuck with conditions on permits not timely appealed. *Chelan County v. Nykreim, 146 Wn.2d 904, 933 (2002)*. The conditions requiring streetscape improvements have been in effect since summer of 2016. The Applicant's assertion that he was unaware of the conditions stapled to his building permits is no grounds for reversing conditions that are legally binding. The conditions recommended by Staff and adopted in this decision merely acknowledge the previous requirement to provide streetscape improvements; they do not impose them anew. The streetscape requirements are not appealable at this late date, and certainly not in the context of a permit hearing. *Findings 3, 4, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23*.

3. There are no known outstanding assessments that must be equitably divided and levied against other remaining lots in the original plat. No land within the alteration contains a dedication to the general use of persons residing within the subdivision. *Finding 9*.

DECISION

Based on the preceding findings and conclusions, the request for a preliminary plat alteration to subdivide two existing lots into four single-family residential lots is **APPROVED** subject to conditions:

1. The instant approval allows the division of 0.27 acres into four lots consistent with the approved attached preliminary subdivision map. This preliminary subdivision alteration approval shall expire if the subdivision is not recorded within 60 months of the approval date. The final long subdivision application shall be submitted to the Department of Community Development at least 90 days in advance of the expiration date.
2. Maintenance of any commonly held areas shall be through provision of a maintenance agreement submitted to and approved by the Department of Community Development, then recorded with the final subdivision alteration approval. All owners of the lots created on the property subject to the instant application shall participate in the maintenance agreement.
3. All roads serving three or more lots shall comply with the road design and construction standards specified in *SJCC 18.60.100* of this Code.

⁷ The Examiner notes, respectfully, that \$7,500.00 per unit for frontage improvements does not seem disproportionate. Certainly, no evidence was offered to support the assertion that the Applicant's estimated costs are not proportional.

4. Drainage from roads shall be controlled using best management practices provided in SJCC 18.60.080 and SJCC 18.60.100 and in the Stormwater Management Manual for the Puget Sound Basin.
5. The created lots shall be served by a public water system. Prior to final subdivision approval, the water lines must be installed to the lot corners. Eastsound Water Users Association must verify, in writing, that the water lines have been installed in accordance with their standards.
6. All survey standards and requirements shall be satisfied consistent with to SJCC 18.70.070(F)(2).
7. Building locations shall be as shown on the preliminary plat.
8. The existing easement of record per AFN 87148478 and AFN 87148537 shall be shown on the final map.
9. Proof of compliance with the street improvements in SJCC 18.30.630(A)(8) and (9) and SJCC 18.30.700 is required prior to final subdivision alteration approval.

The following notes shall be shown as restrictions on the face of the plat, in addition to those restrictions and dedications required by SJCC 18.70.070:

10. Parcels are subject to the Plum Tree Cottages Stormwater Site Plan and Stormwater Pollution Prevention Plan dated May 2016, and prepared by Gregory A. Bronn, PE with Hart Pacific Engineering.
11. All utilities shall be placed underground.
12. All disturbed areas shall be restored to pre-project configurations, replanted with vegetation, and the vegetation maintained until it is firmly established.
13. This subdivision has been approved by the responsible County officials on the premise that each lot will be occupied by no more than one single-family dwelling and lawfully related outbuildings. No lot shall be otherwise occupied unless the owner can first demonstrate to the County's satisfaction that the provisions for water supply, sewage disposal, circulation, lot size and related planning considerations are adequate to serve the proposed use. Compliance with this provision shall be effected by written application to the Subdivision Administrator who shall be responsible for coordinating the review of such requests and for making the required determination.
14. Maintenance of the roads serving the lots in this subdivision is shared equally by the lot owners.

15. There may be additional private declarations, conditions, covenants or restrictions in addition to those shown on the face of this plat. If any private declarations, conditions, covenants and/or restrictions which appear on the face of this plat are different, the more restrictive provisions shall govern. Any private deed restrictions are supplemental to the requirements of the San Juan County Code. The County shall not be party to any private restrictions.
16. Any excavation or construction activity will cease immediately if any material of potential archaeological significance is discovered during such excavation or construction until the Administrator is notified and inspections and disposition of the archaeological material is provided for.

Decided August 2, 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.