

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

In the Matter of a Request for Time Extensions for Preliminary Plat, Planned Unit Development, Shoreline Substantial Development and Shoreline Conditional Use Permits filed by

ROSARIO SIGNAL LLC,
DBA ROSARIO RESORT & SPA,
CHRISTOPHER PEACOCK, GENERAL MANAGER

Applicant/Owner,

[Project: Request for one-year extension of Preliminary Plat, Planned Unit Development, Shoreline Substantial Development and Conditional Use Permits all approved by the County's Hearing Examiner in October of 2016, for proposed redevelopment of the existing Rosario Resort, located at 1400 Rosario Road on Orcas Island]

File No. EXT-21-0002

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION APPROVING
REQUEST FOR TIME-EXTENSION
OF SHORELINE PERMITS AND
PLANNED UNIT DEVELOPMENT**

S.J.C. DEPARTMENT OF

MAR 14 2022

COMMUNITY DEVELOPMENT

I. SUMMARY OF DECISION.

The requested one-year time extensions for the Planned Unit Development, Shoreline Substantial Development Permit, and Shoreline Conditional Use Permit, all approved by the County's Hearing Examiner in late October of 2016, are approved. The request to extend the Preliminary Plat is denied.

II. RELEVANT CODE PROVISIONS.

Time extensions for a preliminary plat:

The County's Land Division (i.e. Subdivision/Platting) code includes a provision that allows for time extensions under certain circumstances, which reads as follows:

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1 SJCC 18.70.110 Time extensions. A. An applicant who files a written request with the permit
2 center prior to expiration of the preliminary approval of a subdivision or short subdivision, or
3 prior to the expiration of the preliminary approval of a binding site plan, shall be granted an
4 extension for up to one year for subdivisions or binding site plans, and up to six months for short
5 subdivisions, if the administrator determines that the applicant has received approval of
6 engineering plans, paid all construction inspection fees, submitted the final maps, paid all fees
7 due, and posted all required bonds. (emphasis added).

8 ***Time extensions for a Planned Unit Development.***

9 Where a Planned Unit Development (PUD) requires a land division approval, the
10 time limits found in the County's Land Division Codes, Chapter 18.70 SJCC, shall apply,
11 including SJCC 18.70.110, addressed above, which allows for time extensions under certain
12 circumstances. *SJCC 18.90.060(I)(2)(a).*

13 If no land division or binding site plan is required to move forward with a PUD,
14 construction must be completed within five years of approval of the PUD, but a one-year
15 extension may be granted by the director. *SJCC 18.90.060(I)(2)(b).* Based on this record,
16 particularly the testimony of Ms. Thompson, the Examiner finds that the PUD at issue does
17 not/did not require a preliminary plat (i.e. "land division approval") in order to move forward,
18 so the director holds authority to grant a one-year extension for the PUD. Because the
19 pending extension request involves two shoreline permit extension requests and a separate
20 preliminary plat extension request, all of which are subject to review by the hearing examiner,
21 the Hearing Examiner also holds discretion and authority to consider this PUD extension
22 request, in order to comply with the County's Consolidated Permit Processing requirement
23 found in SJCC 18.80.020(A)(2)¹, which reads as follows:

24 "For a proposal that involves two or more shoreline permits and/or other project permits, such
25 applications shall be consolidated under the "highest" procedure (i.e., the rightmost applicable
26 column in Table 8.1) required for such permits or processed individually under each of the
procedures identified by this code. The applicant may request the consolidation of hearings with
other local, state, regional, federal, or other agencies in accordance with
RCW 36.70B.090 and 36.70B.110. (See also SJCC 18.80.110.4, shoreline permits consolidated
permit processing, and SJCC 18.80.140.)" (emphasis added).

¹ Additional authority is found in Consolidated Review provisions found in the County's Land Division code,
at SJCC 18.70.020(B); and Shoreline codes, including SJCC 18.80.110.4.

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2 ***Time extensions for Shoreline Permit.***

3 “Unless specified otherwise in permit conditions, all development authorized by a
4 shoreline permit shall be completed within five years of the WDOE date of filing or the permit
5 shall become null and void. A permittee may request a time extension before the permit
6 expires by making a written request to the director, stating the reasons. The hearing examiner
7 will review the permit, and upon a finding of good cause:

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1. Extend the permit for a period not to exceed one year; or
 2. Terminate the permit.

8 However, nothing in this section precludes the hearing examiner from issuing a shoreline
9 permit with a fixed termination date of less than five years based upon a finding of good
10 cause.” (Ex. 2, Condition of Approval, C-4, on page 53 of the Hearing Examiner’s Decision
11 approving the Shoreline Permits addressed in this matter, citing County’s Shoreline Codes
12 in effect at time of approval in 2016, then codified as SJCC 18.80.110(G)(8), recently
13 renumbered with minor modifications, now found at SJCC 18.80.110.7(F)).

12 ***Jurisdiction:*** The Hearing Examiner is given the authority to hold open-record pre-
13 decision public hearings and issue decisions regarding shoreline permits, including shoreline
14 substantial development permits, shoreline conditional use permits, and shoreline variances.
15 The Conditions of Approval for the shoreline permits involved in this matter expressly note
16 that the Hearing Examiner will review any requests for time extensions of Shoreline permits.
17 The County’s Consolidated Permit Processing requirements, explained above, place the
18 applicant’s preliminary plat and PUD extension requests under the Hearing Examiner’s
19 jurisdiction.

17 ***Standard of Review:*** SJCC 2.22.210(H) explains that: “for an application to be
18 approved, a preponderance of the evidence presented at the hearing must support the
19 conclusion that the application meets the legal decision criteria that apply.”

20 **III. RECORD AND EXHIBITS.**

21 Copies of all materials in the record and a digital audio recording of the open-record
22 hearing conducted for this application are maintained by the County and may be requested or
23 reviewed by contacting the Community Development Department during regular business
24 hours. Given the Covid-19 health proclamations issued by the Governor and local authorities,
25 the hearing occurred on December 22, 2021, using a teleconference platform coordinated by

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1 county staff. All people who appeared during the course of the hearing and were recognized
2 to offer comments regarding this application provided their testimony under oath, as
administered by the hearing examiner.

3 Julie Thompson, the designated County Planner assigned to review the pending
4 application, appeared at the hearing and summarized the Staff Report and its recommendation
5 of approval to extend the shoreline permits by one year, but to deny the request to extend the
preliminary plat, as there appears to be no legal authority to grant such request.

6 Christopher Peacock, the applicant, appeared on his own behalf, and asked that the
7 prior approvals all be extended and kept active. His written request for a one-year time-
8 extension noted the complexity of the project, how the unprecedented pandemic made it
9 almost impossible to move ahead as planned in the time frame required, and that a new
developer has been brought onboard so they need additional time to fully understand the
project. (*Ex. 1, written request for time extension; Testimony of Mr. Peacock*).

10 Carolyn Morgan-Crawford, a local property owner, spoke during the hearing,
11 reiterating her support for the recommendation in the Staff Report, expressing general
12 concerns with the preliminary plat, her opposition to the preliminary plat extension, all as
detailed in her written comments, now included as part of the record. (*Ex. 7*).

13 The Staff Report, prepared by Ms. Thompson, with 3 pages, dated December 8, 2021,
14 with 6 separate documents as numbered and identified on page 3 of the Staff Report, are all
15 included as part of the Record for this matter. Ms. Morgan-Crawford comment letter is
included as *Exhibit 7*. The complete list of exhibits is as follows:

- 16 1. Mr. Peacock's written request for Time Extension, dated October 1, 2021;
- 17 2. Decision, issued by County's Hearing Examiner, approving Shoreline Permits,
Preliminary Plat and PUD for the Rosario Resort redevelopment project, dated
18 October 21, 2016;
- 19 3. Department of Ecology approval letter, for Shoreline Conditional Use Permit,
20 listing November 25, 2016 as the effective date;
- 21 4. Legal ad;
5. Notice verification;
6. Application fee receipt, paid on October 18, 2021;
7. Written comment/email from Ms. Morgan-Crawford.

22 Upon consideration of all the evidence, testimony, codes, policies, regulations, and other
23 information contained in the record, the undersigned Examiner issues the following findings,
conclusions and Decision.

24 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND**
25 **DECISION – APPROVING REQUEST FOR ONE**
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IV. FINDINGS OF FACT.

Based on the record, the Examiner issues the following findings of fact:

1. Any statements contained in a previous or following sections of this Decision that are deemed to be Findings of Fact are hereby adopted as such and incorporated by reference.

2. There is no dispute that the County’s hearing examiner approved applications from the Rosario Resort property owners for preliminary plat, planned unit development (PUD), shoreline substantial development and shoreline conditional use permits, by a decision issued on or about October 21, 2016. (*Ex. 2*).

3. On or about October 18, 2021, Christopher Peacock, as the General Manager for Rosario Signal LLC, dba Rosario Resort & Spa, submitted a written request and paid application fees to the County, seeking a one-year extension on all approvals issued by the hearing examiner in October of 2016. (*See Ex. 1, Mr. Peacock’s letter dated October 1, 2021, and Ex. 6, receipt of application fees paid*).

4. Following review and public notices issued in accord with applicable law, County Staff set this matter for hearing before the hearing examiner and issued a Staff Report, recommending approval of the request to extend the Shoreline Permits, but denial of the preliminary plat extension, because there did not appear to be any provisions in the County Code or the previous examiner’s decision that would provide a basis to approve that part of the applicant’s request. (*Staff Report; Testimony of Ms. Thompson*).

5. Ms. Thompson testified that the PUD should remain in place and indicated that it did not appear to have an expiration. Based on the record, and a review of the prior approval, the Examiner finds that the PUD does not appear to require a preliminary plat, i.e. a land division, in order to be implemented. If that is the case, then this PUD is subject to a 5-year limit, with an opportunity for a one-year extension. *SJCC 18.90.060(1)(2)(b)*.

6. The Examiner finds that Mr. Peacock provided credible testimony and a credible written explanation that constitutes good cause to grant his request for a one-year time extension for the two Shoreline permits and the PUD at issue, satisfying approval criteria for such requests. There is no dispute that the Covid pandemic has had far-reaching impacts on all aspects of the local economy, specifically including the development and investment sectors. The applicant’s stated reasons for requesting a one-year time-extension, noting the complexity of the project, how the unprecedented pandemic made it almost impossible to

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1 move ahead as planned in the time frame required, and that a new developer has been brought
2 onboard so they need additional time to fully understand the project, all justify his request for
3 extending time periods for the shoreline permits and the PUD. (*Ex. 1, written request for
4 time extension; Testimony of Mr. Peacock*).

5 7. However, there is no evidence in this record showing that the applicant fulfilled the
6 prerequisites required to obtain a time-extension for the preliminary plat. For instance, there
7 is nothing in this record to establish that: the applicant received approval of engineering plans;
8 paid all construction inspection fees; submitted final maps; paid all fees due; and posted all
9 required bonds – all of which are required in order to obtain a time-extension for a preliminary
10 plat. *See SJCC 18.70.110(A)*. Accordingly, the applicant’s request to extend the preliminary
11 plat must be denied.

12 8. The effective date for the Shoreline permits issued for the Rosario project was
13 November 25, 2016. (*See Ex. 3, Department of Ecology letter approving Shoreline permit,
14 and specifying effective date*).

15 9. Based on the record, the Examiner finds and concludes that the applicant’s timely
16 request to extend their Shoreline Substantial Development and Conditional Use Permits by
17 one-year merits approval and should be granted. Therefore, the expiration date for such
18 permits is hereby extended to November 25, 2022.

19 10. The Examiner’s Decision approving the applicant’s Planned Unit Development was
20 issued on October 21, 2016. As explained above, if no land division or binding site plan is
21 required to move forward with a PUD, construction must be completed within five years of
22 approval of the PUD, but a one-year extension may be granted by the director. *SJCC
23 18.90.060(I)(2)(b)*. Based on this record, particularly the testimony of Ms. Thompson, the
24 Examiner finds that the PUD at issue does not/did not require a preliminary plat (i.e. “land
25 division approval”) in order to move forward, so the director holds authority to grant a one-
26 year extension for the PUD. Because the pending extension request involves two shoreline
permit extension requests and a separate preliminary plat extension request, all of which are
subject to review by the hearing examiner, the Hearing Examiner also holds discretion and
authority to consider this PUD extension request, in order to comply with the County’s
Consolidated Permit Processing requirement found in *SJCC 18.80.020(A)(2)*.

11. Based on the record, the Examiner finds and concludes that the applicant’s timely
request to extend their Planned Unit Development approval by one-year merits approval and
should be granted. Accordingly, the expiration date for the Planned Unit Development is
hereby extended to October 21, 2022, meaning that construction activities authorized under
such PUD must be completed on or before such date. *See SJCC 18.90.060(I)(2)(b)*.

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12. A preponderance of credible evidence in the record, including without limitation the analysis provided in the Staff Report, and witness testimony at the hearing, establishes that the applicant has met its burden to prove that the pending application to extend the shoreline permits and PUD approval by one-year satisfies applicable approval criteria.

13. All findings, statements of fact, and analysis provided in the Staff Report are incorporated herein as findings of fact by the undersigned hearing examiner, except as modified herein.

V. CONCLUSIONS OF LAW.

1. The record includes a preponderance of evidence establishing that the applicant's request to extend the Shoreline permits and Planned Unit Development approval by one-year satisfies all applicable approval criteria. Accordingly, such extensions should be granted.

2. The applicant's request to extend the preliminary plat approval issued for their project was not supported by sufficient evidence or legal authority to merit approval, so it must be denied.

3. Any finding or other statement contained in a previous section of this Decision that is deemed to be a Conclusion of Law is hereby adopted as such and incorporated by reference.

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VI. DECISION.

Based on the record, and for the reasons set forth above:

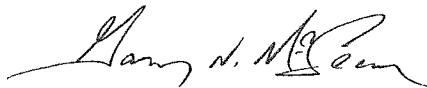
A. The expiration date for the Shoreline Substantial Development and Shoreline Conditional Use Permits issued for the Rosario Resort Redevelopment Project under San Juan County File No. PSJ000-16-0001 is hereby extended to November 25, 2022;

B. The expiration date for the Planned Unit Development approval issued for the Rosario Resort Redevelopment Project under San Juan County File No. PPUD000-16-0001 is hereby extended to October 21, 2022; and

C. The applicant's request to extend the Preliminary Plat approval issued for the project under File No. PLP-16-0001 is denied.

D. All acts taken prior to the effective date of this Decision that are consistent with the permit extensions granted herein are ratified and confirmed, retroactive to and including otherwise applicable expiration dates that occurred shortly after this application was filed but before public noticing, a full hearing, and this final decision could be completed.

ISSUED this 14th Day of March, 2022



Gary N. McLean
Hearing Examiner

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Effective Date, Appeals

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/or SJCC 18.80.110.5.

Decisions of the Hearing Examiner are final and not subject to administrative appeal to the San Juan County Council, unless the County council has adopted, by ordinance, written procedures for the discretionary review of such decisions. See Section 4.50 of the San Juan County Home Rule Charter and 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 any 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 confer with advisors of their choosing, possibly including a private attorney.

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