

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS, AND DECISION**

Applicant(s): Michelle Bayba and Larry Bearg  
16936 Falcon Lane  
Sonoma, CA 95476

File No.: PCUP000-16-0032

Request: Conditional Use Permit (CUP)

Parcel No.: 170731008

Location: 811 Buckhorn Road, Orcas Island

Summary of Proposal: An application for a conditional use permit to allow vacation rental of a single-family home

Land Use Designation: Rural Residential

Public Hearing: February 16, 2017

Application Policies and Regulations: SJCC 18.40.270 Vacation Rentals  
SJCC 18.80.100(D) CUP Criteria

Decision: Approved subject to conditions

S.J.C. DEPARTMENT OF  
MAR 02 2017  
COMMUNITY DEVELOPMENT

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

In the Matter of the Application of )  
Michelle Bayba and Larry Bearg )  
For approval of a conditional use permit )  
to allow vacation rental of the two )  
bedroom residence at 811 Buckhorn Road )  
Orcas Island )

NO. PCUP000-16-0032

S.J.C. DEPARTMENT OF  
MAR 02 2017  
COMMUNITY DEVELOPMENT

**SUMMARY OF DECISION**

The request for conditional use permit to authorize the use of the two bedroom residence at 811 Buckhorn Road, Orcas Island as a vacation rental is **APPROVED** subject to conditions.

**SUMMARY OF RECORD**

**Request:**

Michelle Bayba and Larry Bearg (Applicants) requested a conditional use permit to authorize vacation rental use of the two bedroom residence located at 811 Buckhorn Road, Orcas Island.

**Hearing Date:**

The San Juan County Hearing Examiner held a telephonic open record public hearing on the request on February 16, 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  
Cory Harrington, Permit Resources, Applicant Representative

**Exhibits:**

The following exhibits were admitted in the record:

1. Department of Community Development Staff Report, dated February 2, 2017
2. Application materials, including Applicant narrative, received November 30, 2016
3. Legal Advertisement, published January 4, 2017
4. Posting Materials, posted January 16, 2017, and Notification Materials, mailed January 10, 2017

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. The Applicants requested approval of a conditional use permit to authorize the use of the residence located at 811 Buckhorn Road, Orcas Island as a vacation rental.<sup>1</sup> The 0.52-acre parcel is developed with a two bedroom single-family residence, a garage, and a shed. Rosario Strait lies to the east-northeast of the property, and the parcel enjoys beach access. *Exhibits 1 and 2; Harrington Testimony.*
2. The subject property has a Rural Residential land use designation, and the surrounding neighborhood is rural and residential in nature. To the north, south, and west, the parcel abuts residential development. The subject property is not located near an airfield or airport. *Exhibits 1 and 2.*
3. The subject property has existing access from Buckhorn Road at the end of the driveway. No changes to the existing site access are proposed or required. *Exhibits 1 and 2.*
4. The existing residence is served by the community water system, Eastsound Water Users Association, and an on-site septic system. *Exhibit 1.*
5. Planning Staff submitted that because the subject property is an existing developed site, the proposal is consistent with San Juan County Code (SJCC) Chapter 18.60. *Thompson Testimony; Exhibit 1.*
6. The proposal would allow up to three persons per bedroom at a time to rent the two bedroom residence, for a maximum of six overnight guests at once. The parcel has off-street parking for at least three vehicles, as shown on the site map. No outdoor advertising signs or food service are proposed, except for the use of a small sign indicating the address and the owner's name. *Exhibits 1 and 2; Harrington Testimony.*
7. Planning Staff noted that noise and trespass impacts could be expected to mimic those associated with traditional residential use of the site, and that the potential for disturbance to surrounding properties from temporary occupants could be mitigated by the following measures: restricting the number of vacation rental occupants to three per bedroom; requiring rules of conduct to be posted that specifically prohibit trespass; identification of property lines; providing neighbors with a 24-hour contact phone number; and requiring the contact to keep a written log of complaints. Staff recommended conditions implementing the above measures. *Exhibit 1; Thompson Testimony.*
8. The Applicants would be required to obtain a business license or work through a property management company. *Exhibit 1.*

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<sup>1</sup> The subject property is known as Assessor Parcel number 170731008. *Exhibit 1.*

9. Ms. Thompson testified the original septic system for the residence was designed for a two bedroom occupancy and received a failure diagnosis that “usage exceed[ed] capacity”, according to the San Juan County Repair sewage design application. Mr. Harrington confirmed that the original septic system experienced problems related to overuse. The system was subsequently upgraded, and the residence is currently served by a four-bedroom on-site septic system, which has been approved by Health and Human Services. The upgrade was sought in anticipation of the instant application and also in consideration of possible future expansion to the residence. *Exhibits 1 and 2; Thompson Testimony; Harrington Testimony.*
10. Ms. Thompson and Mr. Harrington both testified that the Applicants have been advised that the current CUP would restrict this residence to a maximum of two bedrooms and six overnight guests for use as a vacation rental. If the residence is expanded in the future, the Applicants would need to seek a new permit to offer the residence as a vacation rental with more than two bedrooms or six overnight guests. *Thompson Testimony; Harrington Testimony.*
11. The application was submitted November 30, 2016 and determined to be complete on the same date. Notice of the application was published on January 4, 2017, mailed to surrounding property owners on January 10, 2017, and posted on-site on January 16, 2017. The County did not receive comments on the proposal. *Exhibits 1, 2, 3, and 4; Thompson Testimony.*
12. Upon review of the complete application materials, Planning Staff determined that the proposal can comply with all applicable criteria and recommended approval with conditions. *Thompson Testimony; Exhibit 1.* The Applicant waived objection to the recommended conditions. *Harrington Testimony.*

## 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 Chapters 2.22 and 18.80 of the San Juan County Code.

### **Criteria for Review:**

#### *Conditional Use Permit*

Pursuant to SJCC 18.80.100.D, a conditional use permit shall be granted by the County only if the following criteria are met:

1. The proposed use will not be contrary to the intent or purposes and regulations of this code or the Comprehensive Plan;
2. The proposal is appropriate in design, character, and appearance with the goals and policies for the land use designation in which the proposed use is located;

3. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval;
4. The cumulative impact of additional requests for like actions (the total of the conditional uses over time or space) will not produce significant adverse effects to the environment that cannot be mitigated by conditions of approval;
5. The proposal will be served by adequate facilities including access, fire protection, water, stormwater control, and sewage disposal facilities;
6. The location, size, and height of buildings, structures, walls and fences, and screening vegetation associated with the proposed use shall not unreasonably interfere with allowable development or use of neighboring properties;
7. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood;
8. The proposal complies with the performance standards set forth in Chapter 18.40 SJCC;
9. The proposal does not include any use or activity that would result in the siting of an incompatible use adjacent to an airport or airfield (RCW 36.70.547); and
10. The proposal conforms to the development standards in Chapter 18.60 SJCC.

*Vacation Rental Standards*

Pursuant to SJCC 18.40.270, the following standards apply to all vacation rentals of single-family residential units and accessory dwelling units or portions thereof:

- A. No more than three overnight guests per bedroom shall be accommodated at any one time.
- B. The vacation rental of a principal residence or accessory dwelling unit shall be operated in a way that will prevent unreasonable disturbances to area residents.
- C. At least one additional off-street parking space shall be provided for the vacation rental use in addition to the parking required for the residence or accessory dwelling unit.
- D. If any food service is to be provided the requirements for a bed and breakfast residence must be met.
- E. No outdoor advertising signs are allowed.
- F. The owner or a long-term lessee may rent either the principal residence or the accessory dwelling unit on a short-term basis (vacation rental), but not both.

- G. Where there are both a principal residence and an accessory dwelling unit, the owner or long-term lessee must reside on the premises, or one of the living units must remain unrented.
- H. In all activity center land use districts, rural residential, and conservancy land use districts, the vacation rental of a residence or accessory dwelling unit may be allowed by provisional (“Prov”) permit only if the owner or lessee demonstrates that the residence or accessory dwelling unit in question was used for vacation rental on or before June 1, 1997. When internal land use district boundaries are adopted for an activity center, this provision will apply to VR and HR districts but not to the activity center in general.
- I. Vacation rental accommodations must meet all local and state regulations, including those pertaining to business licenses and taxes.
- J. Owners of vacation rentals must file with the administrator a 24-hour contact phone number.
- K. The owner or lessee of the vacation rental shall provide notice to the tenants regarding rules of conduct and their responsibility not to trespass on private property or to create disturbances. If there is an easement that provides access to the shoreline, this shall be indicated on a map or the easement shall be marked; if there is no access, this shall be indicated together with a warning not to trespass.
- L. Detached accessory dwelling units established under SJCC 18.40.240 cannot be separately leased or rented for less than 30 days.

**Conclusions Based on Findings:**

- 1. As conditioned, the proposed vacation rental would be consistent with applicable provisions of the SJCC and the Comprehensive Plan. The use would occupy an existing residence without altering the appearance of the structure. Conditions would ensure that even when rented it continues to function like a residence; the residential character of the neighborhood would be unaffected. No adverse cumulative environmental impacts are suggested by the record in the event of additional vacation rental request approvals. As conditioned, the proposal would comply with the applicable standards of sections 18.40 and 18.60 of the SJCC, ensuring there are adequate public services and facilities to serve the proposal. Potential adverse impacts of the vacation rental on neighboring properties would be mitigated by conditions requiring rules of conduct prohibiting trespass, clear presentation of property boundaries to renters, and a 24-hour contact for neighbor complaints (among other requirements). Pedestrian and vehicular traffic would be consistent with that expected of a typical residence. There is no airfield adjacent to this property. *Findings 1, 2, 3, 4, 5, 6, 7, 11, and 12.*
- 2. Regarding the use-specific requirements of SJCC 18.40.270, conditions of approval would limit rental occupancy to six people. This limit would apply regardless of future expansions to the residence. The site is currently served by the community water system

and an on-site septic system. The septic system for this two bedroom residence is designed to accommodate four bedrooms. The site would provide three off-street parking spaces. No outdoor advertising, food service, or accessory dwelling unit are proposed. Potential noise, trespass, and parking impacts to surrounding parcels would be mitigated through conditions requiring posted rules of conduct, identification of property boundaries, provision of a 24-hour contact phone number, and the requirement for the contact to maintain a log of complaints. The rules of conduct would specifically be required to prohibit trespass. Conditions would ensure that the Applicants obtain a business license or work through a property management company. *Findings 1, 4, 6, 7, 8, 9, 10, and 12.*

### DECISION

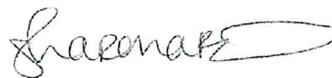
Based on the preceding findings and conclusions, the request for conditional use permit to authorize the use of the two bedroom residence at 811 Buckhorn Road, Orcas Island as a vacation rental is **APPROVED** subject to the following conditions:

1. The two bedroom vacation rental shall be operated as described in the application materials except as modified by these conditions.
2. The residence may be rented as a single unit on a short term basis for periods of less than 30 days. A maximum of six overnight guests shall occupy the vacation rental at any one time.
3. Prior to operation, evidence shall be presented to the Department of Community Development that the driveway has been approved for emergency vehicle access.
4. The vacation rental shall be operated in a way that prevents unreasonable disturbances to area residents. To this end, the Applicants shall:
  - A. Provide copies of this decision to property owners within 300 feet of the subject property, along with a 24-hour local contact phone number, so that complaints can be dealt with in a timely manner. A log of complaints shall be kept by the contact.
  - B. Prominently mark the boundaries of the subject property so that it is clearly evident to guests where those boundaries are.
  - C. Provide notice to the tenants regarding rules of conduct and their responsibility not to trespass on private property or create disturbances. If there is an easement that provides access to the shoreline, this shall be indicated on a map or the easement shall be marked; if there is no access, this shall be indicated together with the warning not to trespass.

- D. Provide copies to the Department of Community Development of the rules of conduct and the 24-hour local contact phone number.
5. No food service is to be provided. No outdoor advertising signs are allowed. At least two off-street parking spaces must be maintained on-site for the life of the vacation rental use.
  6. The rental must meet all local and state regulations, including those pertaining to business licenses and taxes.
  7. No use of the property shall be made that produces unreasonable vibration, noise, dust, smoke, odor, or electrical interference to the detriment of adjoining properties.
  8. Written rules of conduct shall be submitted to the Department of Community Development before rentals commence. These rules shall be distributed to all renters and also sent to all owners of property within 300 feet of the site boundaries.
  9. Since the County is not a party to private covenants, it is not in a position to enforce private covenants between property owners that may prohibit use of a residence as a vacation rental. However, issuance of a permit for a vacation rental does not license the owner to violate private restrictions.
  10. If the conditions of approval are not complied with, the resulting impacts may change a typical residential area to one with frequent incidents of trespass, noise, and traffic from strangers who have no investment in maintaining civil relations with neighbors. For this reason, it is emphasized that failure to comply with conditions of approval is grounds for revocation of this permit.
  11. Upon determination by the Director of the Department of Community Development that any condition listed above has been violated, following issuance of a Notice of Violation, the Director may, in addition to his other code enforcement remedies, revoke the conditional use permit.

**Decided March 2, 2017.**

By:



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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.