



SAN JUAN COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT

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

**FINDINGS, DECISION AND CONDITIONS OF APPROVAL FOR
TIPTON CONDITIONAL USE PERMIT**

FILE NUMBER:	PCUP00-17-0009	S.J.C. DEPARTMENT OF
OWNER:	MARY TIPTON	JUL 19 2017
APPLICATION:	CONDITIONAL USE PERMIT – TO DEVELOP AND OPERATE AN “ARBOREAL CAMPGROUND” FOR WALK- IN, BIKE-IN, KAYAK-IN CAMPERS TO BE USED SEASONALLY, MAY THROUGH SEPTEMBER; FOR NINE CAMPING SITES WITH TENTS KEPT ABOVE THE GROUND SURFACE, USING LINES ATTACHED TO SURROUNDING TREES.	COMMUNITY DEVELOPMENT
SITE ADDRESS:	76 THATCHER PASS ROAD, DECATUR ISLAND	
TAX PARCEL NUMBER:	152721003	
STAFF RECOMMENDATION:	APPROVAL WITH CONDITIONS	
SUMMARY OF DECISION:	<i>APPROVED – SUBJECT TO CONDITIONS</i>	
DATE OF DECISION:	JULY 18, 2017	

I. INTRODUCTION

Mary Tipton is the owner of a waterfront property located on the southeast side of Decatur Island. Most of the property is wooded with mature evergreen trees. A house and some out buildings are located on a cleared portion of the site, near the access drive onto the property. The land use for the site is Rural General. Rosario Strait abuts the property along its eastern boundary.

The underlying permit request is to allow development and operation of a seasonal campground on the site, utilizing tents that will be suspended above the ground by lines attached to surrounding trees. At the hearing, the applicant clarified that the project will not be providing onsite water or restroom facilities, explaining that they have made arrangements to make such conveniences available at another location not addressed in this matter. In any event, if the applicant intends to install an onsite composting toilet or similar septic system, an additional review and approval will be required by the San Juan County Department of Health and Community Services; and if water services are to be provided, it must be from a public water system. (*Staff Report, Project Data; Testimony of Ms. Thompson; Testimony of Ms. Tipton and Mr. Zaza; Ex. 8, comments from San Juan County Dept. of Health and Community Services*).

S.J.C. DEPARTMENT OF

JUL 19 2017

COMMUNITY DEVELOPMENT

II. CONTENTS OF RECORD

TESTIMONY AT PUBLIC HEARING:

Julie Thompson, the County's planner assigned to review the pending application, provided testimony under oath, summarizing her review, proposed conditions, and recommendation of approval. The applicants appeared at the hearing, after some travel difficulties. The Examiner thanks staff and county officials for accommodating the applicants' late arrival, by holding the hearing open until their arrival. Mary Tipton and Leo Zaza provided testimony under oath, summarizing their application, their "Arboreal Campground" concept, and noting some additional service options that they hope to provide for their visitors using the campground.

No one opposed the pending application, in written comments or at the hearing.

EXHIBITS:

- A. Staff Report, prepared by Project Planner, Julie Thompson, dated May 25, 2017;
 1. Request for review;
 2. Determination of Non-significance;
 3. Environmental checklist;
 4. Application materials, including photos showing "tree-tents" suspended above-ground using lines attached to surrounding trees;
 5. Soil Investigation/Geohazard Study by Western Geotechnical Consultants, Inc. dated April 14, 2017;
 6. Legal ads;
 7. Notification verification; and
 8. Email dated May 19, 2017 from Kyle Dodd, Environmental Health Manager.

III. APPLICABLE LAW

Jurisdiction.

Under SJCC 18.80.090(C), if a development application is processed as a Conditional Use Permit application, “the Hearing Examiner is the decisionmaker.” SJCC 18.80.100(C), captioned “Decisionmaking Authority”, provides that “[t]he hearing examiner has the authority to approve or deny conditional use permit ... applications, and to impose conditions of approval on such permits.”

Conditional Use Permit required for camping facility, or any new camp.

The “allowability” of various land uses, including “camping facilities” is found in a table codified as SJCC 18.30.040. Properties identified under the Rural General (“RGU”) land use designation are required to obtain a Conditional Use Permit for a “camping facility”, and/or any new “resort” and “camp”. See “Allowable and Prohibited Uses in Rural, Resource, and Special Land Use Designations Table”, at SJCC 18.30.040.

Standards for camping facilities.

General standards for developing a commercial use, like a camping facility addressed in this permit, are found in SJCC 18.40.110; and standards for all recreational developments, including camping facilities, are found in SJCC 18.40.330.

Considerations for site that includes Geologically Hazardous Areas.

SJCC 18.35.060 and .070 include provisions that identify and classify various geologically hazardous areas, including sites with slopes that exceed 15%, like the Tipton property, and note when a Geotech report is required as part of a development review process. For this matter, a Geotech Report is included in the Record as Exhibit 5, and Conditions of Approval include provisions that are based on such report.

Criteria for CUP approval.

The Criteria for approval of a Conditional Use Permit are found at SJCC 18.80.100(D), and include ten items that must be considered by the Examiner.

Burden and Nature of Proof.

Under SJCC 18.80.040(B), “[t]he burden of proof is on the project permit applicant. The project permit application must be supported by evidence that it is consistent with the applicable state law, County development regulations, the Comprehensive Plan, and the applicant meets his burden of proving that any significant adverse environmental impacts have been adequately analyzed and addressed.”

IV. ISSUE PRESENTED

Whether a preponderance of evidence demonstrates that the applicant has satisfied her burden of proof to meet the criteria for Conditional Use Permit approval?

Short Answer: Yes, subject to conditions.

V. FINDINGS OF FACT

1. Upon consideration of all the evidence, exhibits, testimony, codes, policies, regulations, and other information contained in the file, the undersigned Examiner issues the following findings, conclusions and Decision approving the Conditional Use Permit as set forth below.
2. Any statements in previous or following sections of this document that are deemed findings are hereby adopted as such, including without limitation the Introduction provided above.
3. The applicant submitted a Conditional Use Permit application to the San Juan County Community Development & Planning Department on or about February 17, 2017, and the county determined that the application was complete on or about April 28, 2017. *(Staff Report at page 8).*
4. As noted above, this application and the permit issued herein is to develop and operate an Arboreal Camping Facility on the Tipton property, which is located on the southeast side of Decatur Island, touching upon and facing Rosario Strait to the east. *(Staff Report; Testimony of Ms. Thompson, Ms. Tipton and Mr. Zaza).*
5. In the Staff Report, Ms. Thompson represented that notices and publication required for the application were provided in accord with applicable county requirements. County staff determined that the application is exempt from SEPA review. *(Staff Report, at page 8; Exhibits 6 and 7, Legal ad and posting/notice verification materials).*

6. There were no written comments from neighbors or other members of the public opposing the application. *Testimony of Ms. Thompson; Staff Report.*

7. The application materials note initial plans to use a composting toilet on the site, but Ms. Tipton and Mr. Zaza explained that other arrangements are now possible for guests, who can use off-site facilities now available to the applicants. In any event, if the applicant intends to install an onsite composting toilet or similar septic system, an additional review and approval will be required by the San Juan County Department of Health and Community Services; and if water services are to be provided, it must be from a public water system. (*Staff Report, Project Data; Testimony of Ms. Thompson; Testimony of Ms. Tipton and Mr. Zaza; Ex. 8, comments from San Juan County Dept. of Health and Community Services*).

8. As with all permits issued by the County, this permit does not waive or excuse an applicant's obligation to comply with any utility service provider's lawful regulations or requirements, including without limitation electrical, telephone, cable, internet, sanitation, and water service providers.

Facts establishing compliance with applicable Standards.

9. SJCC 18.40.110 specifies general standards for site development of all uses determined by the director to be commercial use. The Staff Report analyzes how the pending application satisfies these standards, and are set forth below and included as findings supporting this Decision:

A1 – “Water supplies and sewage disposal facilities adequate to serve the proposed use shall be provided. Occupancy shall not be permitted before water supplies and sewage disposal facilities are approved and installed”. (from SJCC 18.40.110(A)(1), with following portions of the same code provision identified in this section as A2, A3, B1, B2).

The initial proposal was to use composting toilets for the project. Kyle Dodd, Environmental Health Manager for Health and Community Services stated that the applicant must submit an on-site sewage design application and receive a permit for any proposed toilet. He also said that although it appears the applicant is not proposing to provide water to the site at this time, if water is to be provided at some future date, she must get approval for a public water system.

A2 – Use of a County access road or private road for access to new commercial development shall be permitted only if the applicant demonstrates that public health, safety, and welfare will be protected, and if traffic and maintenance impacts to the road are minimized by conditions on the permit.

The amount of vehicular traffic this project will generate is minimal. Most campers will either bike in or kayak in. Getting a personal vehicle onto Decatur Island would require barging it in.

A3 – No use shall be made of equipment or material which produces unreasonable vibration, noise, dust, smoke, odor, or electrical interference to the detriment of adjoining property.

Limited clearing for tent sites, with little to no ground disturbance, will be conducted with small power and hand tools.

B. Commercial Development in Rural Designations. The following standards apply to all commercial uses located in the rural land use designations listed in Table 3.2 in SJCC 18.30.040, as determined by the director.

B1. The proposed use will result in minimal additional demands on services and utilities available in rural areas and will not result in more than a minimal and manageable increase in demand on community water supplies, sewage disposal systems, or roads.

There is no community water supply or sewage disposal system serving this use.

B2. Building coverage impacts identified in Table 8.2 in SJCC 18.80.090 as medium or low may be allowed. Traffic and parking impacts need not necessarily meet the levels criteria of Table 8.2.

There will be no building coverage so no impacts will be created.

10. SJCC 18.40.330 details standards that apply to all recreational developments, such as the proposed camping facility.

Recreational developments are parks, playing fields, and facilities for camping, outdoor sports facilities, and similar developments.

A. All Recreational Developments. The following standards apply to all recreational developments:

1. Recreational areas shall be located so as to protect adjacent properties from adverse impacts. Where the proposed recreational use can reasonably be expected to have adverse impacts on adjacent properties, and where existing ground cover, such as trees or shrubs, will not provide an adequate buffer between the recreational area and adjoining properties, screening or fencing will be required.

The applicant owns the adjoining properties. Vegetation on the Tipton parcel provides substantial screening from adjacent properties and will not be removed.

2. Parks and campgrounds in which individual lots or spaces are to be leased, sold or otherwise transferred are prohibited.

No lots or spaces will be leased, sold or otherwise transferred.

3. Parking areas associated with recreational areas shall be located inland away from the water and beaches and shall be designed to control surface runoff and prevent the pollution of nearby water bodies. Safe access from parking areas to recreation areas shall be provided by means of walkways or other suitable facilities.

Parking areas will be located in the existing parking associated with the residence and will likely include the applicant's vehicles only.

4. Motorized, off-road, and all-terrain vehicle (ATV) parks and recreational areas are not consistent with the confined space and rural, residential nature of the islands and shall not be permitted.

These uses are not planned.

5. Parks in the conservancy district shall not be designed, created, or operated in a manner which would reduce, limit, or degrade the purpose and intent of the conservancy district.

This parcel is in the Rural General designation.

6. Playing fields must meet the following standards:

Playing fields are not planned.

7. No use shall be made of equipment or material which produces unreasonable vibration, noise, dust, smoke, odor, or electrical interference to the detriment of adjoining property.

There will be limited clearing for tent sites, with little to no ground disturbance. The work will be conducted with hand held power equipment or hand tools.

B. Commercial Recreational Development.

1. Recreational uses which are also commercial enterprises are subject to the site standards for commercial uses, SJCC 18.40.110, in addition to the regulations in subsection (A) of this section.
2. Large-scale tourist attractions such as casinos and theme parks (but excluding golf courses) are prohibited. Commercial recreational developments designed primarily as tourist attractions shall not exceed a gross use area of 5,000 square feet.

This is not a large-scale tourist attraction. Nine tree tent campsites are proposed.

C. Outdoor shooting and archery ranges

This is not an application for an outdoor shooting or archery range.

Geotech Considerations.

11. The Geotech Report submitted by the applicant concludes that *“the planned project for the property is appropriate and safe from a geotechnical perspective. The camping facilities are planned for 200 feet back from the OHWM and camping activities should have little or no adverse impact on the property. The rainy months when the ground is saturated and high winds are possible is the time when the soil is the weakest, and slides are most likely to occur during this time, and trees are most likely to blow down during wet, stormy conditions. In that regard, we recommend that the tree camping facilities be used during the dry season, and not be used during times when the soil is saturated and/or the winds are unusually high.”* (Exhibit 5). Conditions of

approval are included as part of this approval, to apply recommendations included in the Geotech Report.

Application meets criteria for CUP approval.

12. The Record establishes that the applicant has met her burden to satisfy the criteria for approval of a Conditional Use Permit, found in SJCC 18.80.100(D)(1-10). The 10 items listed as approval criteria are listed and discussed below. The following findings are written in *italics*, immediately after re-statement of the applicable requirement. Each of the *italicized findings* are supported by previous Findings, and the Staff Report, on pages 4 and 5:

1. The proposed use will not be contrary to the intent or purposes and regulations of this code or the Comprehensive Plan;

According to SJCC 18.10.020, the San Juan County Unified Development Code (UDC) is a principal tool for implementing the goals and policies of the San Juan County Comprehensive Plan, pursuant to the mandated provisions of the State of Washington's Growth Management Act (Chapter 36.70A RCW), Shoreline Management Act (Chapter 90.58 RCW), Subdivisions Code (Chapter 58.17 RCW), State Environmental Policy Act (Chapter 43.21C RCW), and other applicable state and local laws. SJCC 18.40.330 was written to address Upland Commercial Development. Table 18.30.040 allows camping facilities in the Rural General designation subject to a conditional use permit. This proposal meets those standards and is not contrary to the intent or purposes and regulations of the UDC or the SJC 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;

According to the Comprehensive Plan, the goal for the Rural General designation is to provide flexibility for a variety of small-scale, low-impact uses to locate on rural lands (CP 2.3.C.10.a). This proposal conforms to the policies for the Rural General designation.

3. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval;

The proposed use will not cause any impacts on the human or natural environments as no development is proposed.

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;

Cumulative impacts are not anticipated because there are few areas where similar development would be permitted, or where demand for like action (an Arboreal Campground) is likely to occur.

5. The proposal will be served by adequate facilities including access, fire protection, water, stormwater control, and sewage disposal facilities;

The proposal anticipates that access will be by kayak, bicycle, or other non-motorized means, but there is an access road that serves the property. The application materials proposed use of an on-site composting toilet, but at the hearing, the applicants described other arrangements that will be made to provide restroom facilities to guests. In any event, if on-site composting toilet(s) are to be used on the site, such toilets will need to first obtain approval from the Health Department. No water service will be provided. There is no County fire protection district on Decatur, so any fire protection will be provided either by the applicant or the community. New impervious surfaces are not proposed so there is no increase in stormwater generated. The Geotechnical Report has some recommendations for redirecting stormwater where needed.

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;

There will be no buildings, structures, walls or fences so no interference with allowable development on neighboring properties will be created.

7. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood;

There is plenty of sight distance for access to and from the property. Given the short window of time the campground will operate, and the small number of guests, and the alternate means they are expected to use to access the site, there is no expectation that pedestrian or vehicular traffic associated with this CUP will have any material affect on surrounding uses or properties.

8. The proposal complies with the performance standards set forth in Chapter 18.40 SJCC;

SJCC 18.40.110 lists the standards for site development for commercial uses. SJCC 18.40.330 lists the standards for upland commercial development. This proposal has been shown to comply with both sets of standards.

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;

The location is not adjacent to an airport or airfield.

10. The proposal conforms to the development standards in Chapter 18.60 SJCC.

The development standards of Chapter 18.60 SJCC can be met.

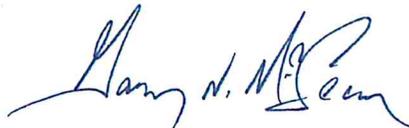
VI. CONCLUSIONS of LAW

1. Based on the Findings as summarized above, the undersigned examiner concludes that the proposed Conditional Use Permit for a vacation rental conforms to all applicable land use requirements and appropriately mitigates adverse environmental impacts. Upon reaching such findings and conclusions as noted above, CUP application meets the standards necessary to obtain approval by the County.
2. The Department's recommended conditions of approval as set forth in the Staff Report are reasonable, supported by the evidence, and capable of accomplishment. Each and every condition is adopted and incorporated herein by reference, except as modified below.
3. Any Finding or other statements in previous or following sections of this document that are deemed Conclusions are hereby adopted as such.

VII. DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, evidence presented through the course of the open record hearing, all materials contained in the record, and the Examiner's online site visit, the undersigned Examiner APPROVES the Conditional Use Permit for the Tipton campground, subject to the attached Conditions of Approval as recommended by the County's staff and adopted herein.

ISSUED this 18th Day of July, 2017



Gary N. McLean
Hearing Examiner

CONDITIONS OF APPROVAL

*Tipton Campground CUP
76 Thatcher Pass Road, Decatur Island
File No. PCUP000-17-0009*

The Tipton CUP is approved, substantially in the form as shown on the project site plan, included in the Record as part of Exhibit 4, and subject to the following Conditions of Approval:

1. Any on-site sewage disposal system shall first be approved by the Health Department prior to use on the site.
2. The campground shall only be used from May 1 to September 30 of each calendar year, to avoid saturated soil and high wind conditions commonly experienced during such time period, as noted in the Geotech Report.
3. If on-site water service is to be provided to campground visitors, a public water system connection/source shall be approved prior to use on the site.
4. Development authorized through this permit shall be completed within five years from the date of permit approval or the permit shall become null and void. An extension of up to one year may be granted by the decision-making authority if the permittee demonstrates good cause for an extension.

EFFECTIVE DATE, APPEALS, 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/or SJCC 18.80.110.

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.

Affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation.