SAN JUAN COUNTY
HEARING EXAMINER

FINDINGS, CONCLUSIONS, AND DECISION

Applicant(s):	Inter-Island Propane LLC PO Box 222 Friday Harbor, WA 98250
File No.:	PCUP000-17-0018
Request:	Conditional Use Permit (CUP)
Parcel No:	271158011
Location:	27 Aeroview Lane, Eastsound, Orcas Island
Summary of Proposal:	Inter-Island Propane CUP: an application for a conditional use permit to install a bulk propane storage and distribution facility
Land Use Designation:	Eastsound Service and Light Industrial (SLI)
Public Hearing:	July 13, 2017
Application Policies and Regulations:	SJCC 18.80.100(D) CUP Criteria SJCC 18.30.670 Design standards SJCC 18.35.080 Critical aquifer recharge areas SJCC 18.40.280 Industrial uses SJCC 18.40.420 Tank farm facilities SJCC 18.60.240 Standards for new and substantially altered development – Eastsound
Decision:	The application is denied.

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

BEFORE THE HEARING EXAMINER
FOR SAN JUAN COUNTY

In the Matter of the Application of	)	
	)	NO. PCUP000-17-0018
	)	
Inter-Island Propane	)	
	)	
	)	
for approval of a conditional use permit	)	
to install a bulk propane storage and	)	
distribution facility on Orcas Island	)	
at 27 Aeroview Lane	)	

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

SUMMARY OF DECISION

The application for conditional use permit to authorize installation of a bulk propane storage and distribution facility at 27 Aeroview Lane, Eastsound, Orcas Island is **DENIED**.

SUMMARY OF RECORD

Request:

Inter-Island Propane (Applicant) requested a conditional use permit authorizing installation of a 30,000 gallon propane tank for a bulk propane storage and distribution facility at 27 Aeroview Lane, Eastsound, Orcas Island.

Hearing Date:

The San Juan County Hearing Examiner held an open record public hearing on the request on July 13, 2017. A post hearing order was issued on July 14, 2017, which provided County Staff the opportunity to submit a written response to public comments received up to and at the hearing by July 27, 2017. The order allowed the Applicant to respond to both public comment and the County Staff's submittal by July 31, 2017. The open record was closed July 31, 2017 with a decision deadline of August 14, 2017. On August 14th, the Examiner requested five additional business days, to which the Applicant agreed. On August 21, 2017, Findings, Conclusions, and an order of Remand were issued requiring the Applicant, County Community Development and Planning Staff, both Fire agencies, and the Orcas Island Airport to supplement the record on specific items by September 18, 2017. The timely submitted items are admitted in the record.

Testimony:

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

Julie Thompson, Planner, San Juan County Department of Community Development
RJ Myers, San Juan County Fire Marshall
Donny Galt, Co-owner, Inter-Island Propane, Applicant
Dave Robinson, Gibsons Gas, for the Applicant
Arch Hudleson, Meeder Ransome, for the Applicant

Jimmy Lawson, Co-owner, Inter-Island Propane, Applicant
Paul Kamin
Rick Fant
Barbara Gourley
Pat Muffett
Eric Gourley
Deedre Hildalgo
Wayne Rankin
Kim Middleton
Margie Doyle

Exhibits:
The following exhibits were admitted in the record:

A. Department of Community Development staff report, dated July 3, 2017

1. Request for review
2. Determination of non-significance, dated May 31, 2017
3. SEPA environmental checklist
4. Application materials
5. Legal notice, dated May 24 and 31, 2017
6. Posting and notification requirements
7. Fire Marshal memorandum, dated June 27, 2017
8. Meeder Ransome letter, dated June 15, 2017
9. Gibsons Energy letter, dated June 19, 2017
10. Meeder Ransome letter, dated June 20, 2017
11. Comment letters from the public (listed by date received)
12. Comments and responses from the Applicant (listed by date received)
13. Email, dated July 2, 2017 from the Applicant to the neighbors inviting them to the July 5, 2017 community meeting
14. Email from Donny Galt, dated July 2, 2017 (inviting neighbors to community meeting
15. Correspondence to SJC Fire Marshal from Meeder Ransome, dated July 5, 2017 (safety regulations)
16. Elinor d'Aquitane comments, dated July 5, 2017
17. Kim Middleton and Wayne Munch comments, Dated July 6, 2017
18. Philip McCullum comments, dated July 9, 2017
19. DeeDre Hildago comments, dated July 10, 2017

20. Ethna Flanagan comments, dated received July 10, 2017

21. Evelyn Fuscher comments, dated July 10, 2017

22. Paul Kamin comments, dated July 12, 2017

23. Margie Doyle comments, with attachments, dated July 11, 2017

24. Photos of site and surrounding neighborhood submitted by Eric Gourley at hearing (eight photos, taken by Eric Gourley)

25. Hearing comments submitted by Kim Middleton with photo

26. Gibsons Gas comments submitted at hearing

27. Department of Community Development response to public comment, dated July 25, 2017 with attached:

    1) Memo from Jeff Sharp, SJC Public Works, dated July 17, 2017
    2) Memo from R.J. Myers, SJC Fire Marshal, dated July 18, 2017
    3) Letter from Scott Williams, Orcas Island Fire Chief, dated July 25, 2017
    4) Letter from Paul Kamin, Eastsound Water Users Association, dated July 24, 2017

28. Applicant Response to public comment and to County post-hearing submittals, comprised of:

    1. Memo from Donny Galt, Inter-Island Propane
    2. Memo from Meeder Ransome, dated July 31, 2017
    3. Memo from Dave Robinson, Gibsons Gas, Inc., dated July 27, 2017

29. Post-Remand Staff Report from Department of Community Development, dated September 11, 2017, with the following attachments:

    1. Second Alteration to Aeroview Plat Map,
    2. Deed of Trust between Inter-Island Propane LLC, Sharon Aspinwall, and David Thompson
    3. Staff Report to the Hearing Examiner, dated April 13, 2001, Plat Alteration of Lot 9, Aeroview Subdivision
    4. Map showing distance from Lot 11 to the airport property
    5. Letter from Anthony Simpson, Orcas Airport Manager, dated September 7, 2017
    6. Response from the County Fire Marshal, dated September 11, 2017

30. Applicant's response to the Remand Order:

    1. Meeder Ransome Memo by Arch Huddleson, dated September 18, 2017
    2. Contego International Inc, Contego Original Formula Reactive Fire Barrier Intumescent (RFB) product data sheet

3. Memo from Contego International Inc. to Whom It May Concern, dated September 18, 2017, entitled "Opinion Letter - 1 and 2 hour ratings on steel tanks", with attached:
4. Technical Report, "Investigating into the Effect of Vehicle Fires on the Integrity of LP Gas Containers Installed to AS/NZS 1425:2007" prepared in 2010 by the Energy*Safety* Division of the Western Australian Department of Commerce

Also included in the record are the Post Hearing Order issued July 14, 2017 and the Findings, Conclusions, and Remand Order, issued August 21, 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 Applicant requested a conditional use permit to operate a bulk propane storage and distribution facility at 27 Aeroview Lane, Eastsound on Orcas Island.[1] The proposal calls for the installation of one 30,000-gallon above-ground propane storage tank in a fenced enclosure. *Exhibits A and 4.*

2. The undeveloped subject property is 43,666 square feet (roughly one acre) in area. It slopes gently uphill from east to west. Property boundaries to the north and west are densely vegetated with mature on-site vegetation. The south property line is vegetated with some openings; the east boundary is not densely vegetated. Aside from the San Juan County-wide critical aquifer recharge area, the subject property contains no other regulated critical areas. *Exhibit A.*

3. The subject parcel is located within the boundaries of the Eastsound Subarea Plan with a Service Light and Industrial (SLI) land use designation. The purposes of this land use designation include: a) to accommodate commercial services and light industrial or construction related activities as well as accessory office and retail sales related to such services and activities which may not be appropriate within the Village Commercial District; b) to accommodate the existing airport-related facilities and services which are located outside of the Airport Use District; c) to concentrate the above uses around the Eastsound airport where they have already been established; d) to concentrate the above uses in a manner that will enable efficient use of the transportation system; and e) to prohibit new residential development other than residential units accessory to a commercial or industrial use and located within a commercial or industrial building. *Ordinance 21-2015; Exhibit A.*

[1] The property subject to the application is known as Tax Parcel number 271158011. *Exhibit A.*

4. Seaview Street abuts the subject property to the west.[2] Aeroview Lane is a private road that connects to Seaview Street to the west, and to the Orcas Island Airport to the east of the subject property. Parcels to the north and west have a land use designation of Eastsound Residential 4 to 12 units per acre and are developed with high-density residential use. To the south and east the land use designation is SLI. Parcels immediately adjacent to the east of the site are developed with privately owned aircraft hangars, some of which contain accessory residential uses. Other adjacent land uses are residential to the north, south, and west. Further south are commercial uses including an auto parts retailer, auto repair businesses, a brewery, and other commercial ventures. *Exhibit A; Google Maps site view.*

5. Inter-Island Propane (the Applicant) provides propane delivery service in the San Juan Islands, with a primary business location in Friday Harbor on San Juan Island. In order to improve service to Orcas Island customers, the Applicant proposes to install a bulk propane storage facility at the subject property within a fenced and screened distribution center. Bulk propane would be stored in a new, self-contained above-ground 30,000-gallon storage tank. Other uses and activities included in the proposal are on-site storage of empty consumer-sized propane tanks, connection and safety equipment for transferring propane from the bulk tank to smaller tanks, and parking for trucks used to transport propane tanks. The proposed 30,000-gallon bulk storage tank is pre-built on skids and designed to sit directly on a level graveled ground or a concrete slab. The proposal includes a 12- by 80-foot concrete slab, which would occupy less than a third of the total site area. The 120- by 120-foot fenced enclosure would be placed inside the existing vegetation creating an enclosure setback of 32 feet from the north lot line, 64 feet from the west lot line, approximately 30 feet from the east lot line, and greater than 32 feet from the south lot line.[3] The chain link fence would be fitted with privacy slats for visual screening. Tank, pump, piping, and connections would be designed to meet and exceed National Fire Protection Agencies standard NFPA 58, which is the industry standard for safe liquid propane gas storage, handling, transportation, and use. Electricity is needed to run the pump installed on the tank and to provide low impact security lighting. The proposal includes extending power underground from Seaview Street along the west property line to the storage tank. None of the existing extensive vegetation currently located around the west and north sides of the property is proposed to be removed. The existing vegetation along Seaview Street (west boundary) is greater than 20 feet deep. Approximately 67% of the total site would be retained in open space. No buildings are proposed, though the installation of the storage tank would require a building permit. Compliance with Fire Code and zoning setbacks would be reviewed at time of building permit review. No retail activities would occur on-site; all business activity would continue to occur at the Friday Harbor location. *Exhibits A and 4; Donny Galt Testimony.*

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[2] The site plan identifies the street to the west as Seaview Street, while the Staff report identifies it as Seaview Lane. Seaview Street will be used throughout these findings to refer to the abutting street to the west.

[3] The site plan did not provide measurements for the setbacks from the east and south lot lines; the figures stated are estimates visually based on the measurements provided for the north and west setbacks.

6. The proposed bulk fuel storage facility would be unmanned; no domestic water or sanitary sewer service is proposed. Hours of operation would be between 8:00 am and 5:00 pm Monday through Friday, except in case of emergency. The Applicant projects bulk propane delivery to the storage tank approximately once every two weeks. Trucks servicing customers would access the site by Aeroview Lane once or twice daily during business hours. Lighting on-site would result from truck headlights and from a security light proposed to be installed adjacent to the tank, to be left on at night for security purposes. The security light would be shielded to minimize glare to adjacent properties. During business hours, the use would generate intermittent engine noise when trucks are being warmed up for delivery on Orcas or when the storage tank is being filled. Less frequent noise would result from a crane truck used to lift customer tanks onto flatbed trucks. The noise generated would not be continuous or uninterrupted. The large natural buffer to the west and north and the slatted fencing would mitigate noise and light/glare experienced on adjacent parcels. The Applicant stated that the proposed facility would not produce any visible smoke, gasses, dust, steam, heat, or odor to be emitted into the atmosphere. There would be a 24-hour number available for complaints and concerns. *Exhibits A, 4, and 12; Donny Galt Testimony.*

7. Bulk fuel storage is an allowed use in the Service and Light Industrial district upon review and approval of a conditional use permit.[4] *San Juan County Code (SJCC) 18.30.460 Table 2.*

8. Planning Staff noted that all lighting (including the proposed security lighting and any other) would be required to comply with the standards established in SJCC 18.60.170.A and the landscaping and screening requirements established in SJCC 18.30.500 Table 12. The latter requires a landscaping strip along public street frontages for all new development and screening between existing residential uses, which abut the north, west, and south boundaries, and new nonresidential development. *Exhibit A.*

9. No signs were proposed in the application materials. If signs are proposed in the future, they would be required to undergo review for compliance with the requirements in the applicable section of code in effect at that time. *Exhibit A;* see *SJCC 18.30.660, Signs.*

10. Like all new development, the proposal must conform to the standards and minimum requirements set by the Washington Department of Ecology Stormwater Management Manual for Western Washington. No stormwater management plan was submitted. Planning Staff noted that prior to the time of building permit application, the Applicant would be required to identify with specificity the extent of new impervious surface to be created and what level of storm water plan is required. Depending on the amount of new impervious surface created by the driveway, parking area, and concrete slab under the tank storage area, a stormwater management plan may be required. At a minimum, a

[4] SJCC 18.20.020 defines bulk fuel storage as the storage of fuel in structures or tanks for subsequent wholesale distribution.

stormwater construction pollution prevention plan would be required at the time of building permit application. *Exhibit A; SJCC 18.60.070 Storm drainage standards.*

11. According to the Eastsound Water Users Association (EWUA), there are five fire hydrants within 300 to 550 feet of the subject property. The Orcas Island Fire Department Eastsound station is located less than one-half mile away, south of the airport across Mt. Baker Road. *Exhibit A; Google Maps Site View.*

12. With regard to the regulated critical aquifer recharge area, Planning Staff indicated that it is the policy of the Department of Community Development and Planning to apply critical aquifer recharge area provisions only to chemicals or materials that are stored in proposed structures, and that the provisions of SJCC 18.35.080 only function to require spill prevention and clean up plans for such materials to be stored in buildings. *Exhibit A; Julie Thompson Testimony.* At the time of hearing, the record did not address SJCC 18.35.080.E, which includes fueling facilities in the list of commercial and industrial uses that require inspections performed by registered environmental health specialist or other professional with appropriate training and experience. *SJCC 18.35.080.E.1(k).* Additional information addressing this provision was requested in the remand order.

13. The County Code contains development standards applicable to the proposed new industrial development, detailed at SJCC 18.40.280.A and D. Subsection A.5 states as follows:

    > Use of a County access road or private road for access to new industrial 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 private road are minimized by conditions on the permit.

    The Staff report did not analyze the application's compliance with this subsection, and no conditions were recommended with respect to maintenance of the private road. Subsection D.3 states as follows:

    > No emissions of dust, dirt, odors, smoke, toxic gases or fumes will occur.

    Although the Applicant's materials indicate that no odor and only insignificant releases of propane gas (which is flammable) would occur off-site, the Staff report did not include analysis of these provisions, despite concerns expressed about both impacts to the private road and the smell of propane. *Exhibit A.* Additional information addressing these subsections was requested in the remand order.

14. Consistent with the State Environmental Policy Act (SEPA), San Juan County acted as lead agency for review of the probable, significant adverse environmental impacts of the proposal. A determination of non-significance (DNS) was issued on May 31, 2017. No comments and no appeals were received regarding the DNS. *Exhibits A, 2, and 3; Julie Thompson Testimony.*

15. The application was submitted and deemed complete on May 12, 2017. *Exhibits A and 4*. Notice of application and public hearing consistent with SJCC 18.80.030(A)(2)(a) was published on May 24 and again on May 31, 2017, posted on-site and mailed to owners of surrounding properties within 300 feet on May 24, 2017. *Exhibits A, 5, and 6*.

16. Notice of application was sent to the following agencies: Washington State Department of Ecology (SEPA), San Juan County Fire Marshall, and the Eastsound Planning Review Committee. *Exhibits A and 2*. The Department of Ecology did not submit comments.

17. The San Juan County Fire Marshall submitted comments dated June 27, 2017 noting that the proposal is subject to the requirements of the International Fire Code (IFC) Chapters 50, 57, and 61 and the National Fire Protection Association (NFPA) 58 as a "bulk plant." He outlined seven recommended conditions of approval intended to ensure compliance with those standards, which were incorporated into the Staff report's recommended conditions of approval:

    1. Prior to any construction activities on the site, the following is required:
        a) A building permit that includes construction plans for the foundation and the container shall be submitted and approved by the Department of Community Development.
        b) An operational fire permit is required to be submitted to and approved by the Fire Marshal for the bulk plant. A written operations and maintenance manual (O&M) meeting the requirements of NFPA 58 Chapter 14 shall be submitted to the Fire Marshal's Office prior to an operational permit being issued. The O&M requirements include Fire Response.
        c) Installation of the container, the container specifications and valves, filling station, and equipment on trucks utilizing the site shall meet the requirements of National Fire Protection Association (NFPA) 58 and the IFC.
    2. The container shall meet the setbacks from property lines and public ways per IFC Table 6104.3. A 30,000 gallon container is required to be setback at least 50 feet from property lines and public ways per IFC Table 6104.3.
    3. A designated fire truck turn-around/fire land must be provided on site.
    4. Bollards or other approved collision prevention devices must be installed in compliance with NFPA 58 and the IFC.
    5. Prior to occupancy, a Fire and Life Safety Inspection is required. This will be conducted after or concurrently with acceptance testing of the site in the presence of the Fire Marshal and a designee of the Orcas Island Fire and Rescue Fire Chief.
    6. Prior to occupancy, hydrants shall be installed meeting the requirements of SJCC 13.08 including:
        a) A hydrant installed on the corner of Seaview and Aeroview to fulfill the hydrant distance minimums outlined in SJCC 13.08.080.

b) The hydrant must be tested and demonstrate that it can meet the commercial hydrant flow for this site per SJCC 13.08.010 which is 500 gallons per minute for 60 minutes.

7. If the property is to be gated or fenced, a Knox key box system shall be installed allowing firefighters access to the site.

Exhibit 7.

18. The Fire Marshal's comments also included an additional recommendation that was not made a recommended condition of approval in the staff report. This additional recommendation would require implementation of a fire suppression deluge system that would apply cool water to the storage tank in the event of fire, noting that such a system would supplement fire fighter efforts and would likely reduce the magnitude of an emergency should one arise. At hearing, the Fire Marshal further explained that this recommendation is based on the Orcas Island Fire District's reliance on volunteer firefighters and because mutual aid is not readily available due to the island location. Fire Marshal Myers testified that this prudent measure should be made a recommended condition of approval. *Fire Marshal RJ Myers Testimony; Exhibit 7.*

19. The Eastsound Planning Review Committee (EPRC) provided comment expressing concern as to emergency services access through the single road ingress and egress to the adjacent high density residential neighborhoods and airport facilities in the event of an explosion, fire, or other safety-related event. The EPRC recommended as a condition of approval that the Applicant demonstrate that safety provisions including emergency access and emergency evacuation could be met to ensure the protection of the adjacent residential neighborhoods. *Exhibits A and 11.*

20. About 30 public comments were received on the application, primarily from residents in the surrounding neighborhood who expressed the following concerns: public safety in light of prior emergencies at local facilities with similar circumstances; noise from trucks; the potential for increased insurance rates due to being located next to bulk fuel facility; whether it is appropriate to have a bulk fuel facility in close proximity to the airport, aircraft hangars, and residences; increased truck traffic; unattractive appearance detracting from community; questions of the ability of emergency responders to respond to a leak; whether evacuation in the event of an emergency would be effective; the odor of propane in the neighborhood; noise and light pollution; street maintenance by the proposed commercial use; danger to pedestrians and pets from increased truck traffic; there is already a commercial fueling facility within one-half mile; and whether the proposed facility would pose any danger to the community garden. Members of the public suggested: that Fire and Emergency Management Services should provide mitigation measures; the if approved, the permit limit the number of daily truck trips; and that approval should be conditioned on development of adequate safety measures and provisions for evacuation. *Exhibits A and 11.*

21. At hearing, public comment was offered by Paul Kamin, General Manager from Eastsound Water, the local public water purveyor. Mr. Kamin raised several concerns. First, because Seaview Street dead-ends north of the project site, all egress for the parcels north of the subject property would be cut off in the event of an emergency at the site; these parcels contain approximately 14 single-family residences, 14 apartment units, one duplex, 10 airplane hangars, and three commercial structures. Current residents of these lots have known mobility restrictions and would rely on vehicle egress for evacuation. Mr. Kamin argued that the County's recommendation for approval failed to identify and require adequate emergency egress for Seaview residents. Next, the County Code requires fire flow of 500 gallons per minute for 60 minutes for commercial uses; however, according to materials from Orcas Fire Chief Scott Williams, even higher fire flow of 935 gallons per minute is required for bulk propane storage in order to protect against a boiling liquid expanding vapor explosion (BLEVE) of the storage tank. Eastsound Water did not receive a request for comment on the application, but at the hearing Mr. Kamin reported that the proposed new hydrant location, which is 50 feet higher in elevation than the nearest existing hydrant and is served by a four-inch main, likely cannot provide 500 gallons per minute for 60 minutes, and definitely cannot provide the higher 935 GPM. Mr. Kamin contended that the Orcas Fire Chief recently asked Eastsound Water to increase fire flow capacity for the currently existing other Eastsound propane facility to 1,000 GMP. Next, Mr. Kamin asserted that the Orcas Fire Chief recently confirmed that with two full time employees and volunteers, Orcas Fire cannot manage an evacuation to the minimum evacuation distance of 5,627 feet from the proposed propane facility. Especially with the likely closure of the airport in the event of emergency, it is not clear that emergency response personnel could be brought to Orcas to manage an evacuation. Next, Mr. Kamin asserted that the adjacent airplane hangars are incompatible with the proposed bulk fuel storage use because each hangar has the potential to be an ignition source. Next, Mr. Kamin noted that the County Fire Marshal's comments (at Exhibit 7) recommend an on-site fire suppression system to keep the tank cool in the event of a fire. In order to meet the recommendation of the Fire Marshal, there would need to be on-site water supply, which the proposal does not include. Finally, Mr. Kamin noted that Seaview Street has no pedestrian facilities and is used by children and other pedestrians. He noted that the County's review lacked an analysis of the adequacy of Aeroview Lane and Seaview Street to accommodate the project's traffic. Mr. Kamin argued that the appropriate place for bulk fuel storage is outside the urban growth area, away from residential development. He stated that the existing propane facility was developed prior to the residential development that now surrounds it. *Testimony of Paul Kamin; Exhibit 22.*

22. At hearing, members of the public offered similar concerns those they'd submitted previously in writing, including the following. There are residences on all four sides of the site, including the accessory dwelling in the hangar to the east. Many who testified opposed the project at the subject property due to its proximity to so many residences. People live and work on the surrounding parcels every day. There was a previous propane operator on Seaview Street who experienced a major equipment failure in February 2015, resulting in evacuation of the neighborhood. That propane operator likely

also employed then-state of the art safety features. There is only one emergency access and/or evacuation egress route to/from these residences, which is Seaview Street, unless the airport can and will grant permission to cross the runway for emergency access/evacuation egress. Some noted that there has been no dramatic increase in the cost of propane and questioned why the facility is necessary, since people who want propane service on Orcas already have it. One person testified that he owns a ministorage facility down slope from the existing propane facility on Orcas Island and he has noted that when he mows the brush on his property, he can smell propane. Many questioned where all the water used to fight a fire at the facility would go, other than downhill into the adjacent hangars and potentially as far as the airport to the east. One requested an earthen berm tall enough to contain all water needed to fight a possible fire on-site so that it cannot run downslope into adjacent properties. Some who own property adjacent to or near the site testified that they feel that having a bulk fuel storage facility adjacent to their properties would be detrimental to their property values and thus their primary investment. Some nearby residents expressed concern that the security lighting would negatively impact their quality of life. Some testified that a lot of children play on the street and that additional larger truck traffic would pose a safety threat. A nearby resident who is a chemist challenged some of the assertions made by the Applicant's witnesses about the behavior of spilled propane, asserting that any spilled propane would sink, because it is heavier than air, and would accumulate and flow down slope towards the hangers. Some testified that a resident in the hangars to the east operates a pre-existing welding business out of his property and expressed concern that welding and propane storage are incompatible. One noted that while state of the art safety measures may reduce the chances of an incident, they cannot guarantee an accident will not occur. Over time, safety routines, adherence to training, and equipment maintenance can fall by the way side. The homes and businesses surrounding the site will be occupied for decades to come, and some felt that the chances of an incident at some point are too high to ignore. One neighbor noted that Aeroview Lane is a private road and is not maintained by the County, and that without a traffic plan or site plan showing the access driveway, it is not possible for those who share the private road to even know how much of their roadway is going to be affected by the Applicant's commercial activities. Finally, while the Fire Marshal and the Eastsound Planning Review Committee (EPRC) requested conditions regarding emergency access and life safety protection measures, one member of the public contended that the enforcement of any conditions on the permit would be complaint driven and the County simply lacks adequate staff to ensure that all recommended conditions would be complied with through the life of the use. *Testimony of Rick Fant, Barbara Gourley, Pat Muffett, Eric Gourley, DeeDre Hidlago, Wayne Rankin, Kim Middleton, and Margie Doyle; Exhibits 16, 17, 18, 19, 21, 23, 24, and 25.*

23. The Applicant provided responses to the concerns registered by the public and the County in writing and in testimony at hearing. With regard to the propane spill from February 2015, Arch Hudleson of Meeder Ransome testified as to his knowledge of that incident. He stated that the tank used by the previous company was a temporary tank known as a "porta-pack". Residents speaking of the previous propane activities had stated that they were very noisy. Mr. Hudleson noted that the noise was the result off the

pump being run by the diesel engine of the truck hauling the porta-pack. In contrast, the instant proposal would install a permanent tank and pumping would be accomplished by an electric motor no louder than a vacuum cleaner. The February 2015 incident that caused evacuation of the surrounding community resulted from a driver who began to drive the vehicle away without first disconnecting the propane transfer equipment, causing a release of propane into the air that triggered emergency response and evacuation of the community. In contrast, the instant proposal would utilize safety features including pneumatic value shut off that automatically closes off propane transfer if interrupted; a "tip over" feature would activate the automatic valve shutoff in the event of improper disconnect, such as due to a driver forgetting to disconnect and driving away), which would prevent the discharge of any significant amount of propane. The trucks to be used incorporate an air brake locking device that prevents vehicle movement if transfer hoses are attached. Other features include a thermal release fuse links in the pneumatic system that shut off fuel transfer if the valves experience excessive heat. Mr. Hudleson stated that Inter-Island Propane's equipment is engineered and designed to the most stringent levels of redundant fail-safe product control specified in the National Fire Protection Association (NFPA) pamphlet 58, which are intended to remove human error from the process. *Exhibits 8 and 10; Arch Hudleson Testimony.*

24. In his hearing testimony, Mr. Hudleson noted that propane is a light hydrocarbon gas that is transported and stored in liquid form, but which boils and becomes gas at -45 degrees Fahrenheit. He testified that it is a non-toxic gas in that it produces no reaction to human tissue, other than causing frostbite should it touch human skin. He asserted there is no organic uptake of propane by human tissue, and that propane is non-reactive with steel, rubber, and brass. Because it has a natural antipathy for water, he contended that it cannot harm the ground water under a storage facility; it would become vapor if released and would not get into the ground. He asserted that the odorant placed in propane is detectable at one-tenth of the lowest level of flammability. *Arch Hudleson Testimony.*

25. Dave Robinson from Gibsons Gas submitted written comments and testimony addressing issues of concern identified in public comment. Gibsons Gas would deliver the propane to the bulk storage tank on-site. Mr. Robinson stated that there has never been a propane spill in which a ruptured tank leaked its entire contents. He confirmed that any leak at all would result in a vapor escape, rather than a liquid escape, meaning the propane could be expected to go up into the atmosphere and not go downhill to the east into the adjacent hangars and airport. Gibsons Gas has a perfect delivery record with no reportable problems for nearly 20 years. Drivers are certified with refinery safety cards, and driving records monitored through Department of Licensing. All Gibsons equipment undergoes daily Department of Transportation equipment inspection, including trucks and hoses. Their tanks are inspected yearly by a third party vendor, who services the compressors, inspects the valves, and certifies the hoses, and tanks also undergo an ever stricter five-year inspection. All Gibsons trucks have Dixie gates, which must be dropped to attach hoses. With the gates down, the brakes cannot be released and the trucks cannot drive off with hoses attached. All Gibsons hoses are "smart hoses" which collapse and self seal in the event of breach or break. Based on Mr. Robinson's

professional experience, most storage tank refilling deliveries would come from a barge arriving between 10:00 am to 1:00 pm, restricting the largest vehicles on-site to a short window during business hours. Inter-Island Propane's larger Friday Harbor facility storage tanks are refueled about three times per month, which means the instant single storage tank can be expected to be refilled about once every three to four weeks. The tank location and entrances for the proposal have been determined and were selected to promote truck ingress and egress from the site that involve no backing, thus avoiding back up alarms. All vehicles used in the Applicant's business are Department of Transportation approved and street legal. The bobcat trucks that serve individual customers are no wider than ordinary cars and would have no difficulty accessing on the existing roads, Seaview Street and Aeroview Lane. Mr. Robinson testified that based on his experience, he believes most propane storage facilities have residential development nearby. With regard to the water cooling fire suppression recommendation from the Fire Marshal, Mr. Robinson stated that such water based fire suppression systems create a ball of ice around the breach making it harder to fix the breach, and asserted that such techniques are no longer industry standard. *Dave Robinson Testimony; Exhibit 9.*

26. Applicant agents, co-owners Donny Galt and Jimmy Lawson, also responded to public concerns. Mr. Galt reiterated that the Applicant does not intend to remove any existing mature vegetation, but rather to use it in screening the view of the facility from the road and adjacent lots. He again noted that refilling the storage tank would only occur about once every two to three weeks, and that it would take approximately 30 minutes using an electric motor pump that would be similar in noise impact to a vacuum cleaner. Mr. Galt indicated that Inter-Island Propane would happily train volunteer fire fighters in how to operate safety and emergency shut off equipment at the site. Again, Mr. Galt noted that even a worst case propane spill would not contaminate by groundwater. He stated that his business insurance has extremely rigorous standards. He anticipates that the training program for his employees will exceed any the County has ever seen. Mr. Galt noted that the Inter-Island Propane facility has operated on Friday Harbor for nine months with no complaints to date regarding odorant from surrounding uses. Mr. Lawson emphasized that crane truck is stored in Friday Harbor, and that only brand new pre-purged tanks would be brought to the site to be filled before delivery to local customers. He noted that the security lighting would be a low wattage, LED light that would be downshielded. *Testimony of Donny Galt and Jimmy Lawson.*

27. Regarding the concern expressed by Paul Kamin of Eastsound Water, Mr. Galt noted that Mr. Kamin's concerns are valid and conceded that 500 gallons per minute of fire flow is required by Code. However, he stated that he doesn't feel it is fair that his business would be singled out for denial if the water purveyor is unable to provide the required fire flow. *Donny Galt Testimony.*

Post-Hearing Submittals

28. At the conclusion of the proceedings, the record was held open for submission of post-hearing responses by the County and the Applicant to concerns raised at hearing by members of the public and by Eastsound Water, and the Applicant was offered an

opportunity to respond to the County's post-hearing comments. County Public Works Staff submitted information about the roads serving the site, indicating that Aeroview Lane is a private road for which the County has no maintenance responsibility. Public Works stated, "presumably there is an existing property owners' association and/or maintenance agreement in place." *Exhibit 27(1)*. Staff indicated that the paved two-lane road appears to be of sufficient width for two-way traffic and can therefore serve the proposed use. Regarding Seaview Street, Public Works Staff it is also a two-lane street of sufficient width to serve the proposed use. It is a public road and there are no maintenance concerns with the proposed increase in truck traffic. *Exhibit 27(1)*.

29. The San Juan County Fire Marshal indicated that both Aeroview Lane and Seaview Street are adequate for emergency vehicle access, including turn arounds. The Fire Marshal's comments identified an emergency egress route for residents on Aeroview Lane and Seaview Street north of the site that uses private roads and crosses the Orcas Island Airport runway, and exits via Schoen Lane. The County Fire Marshal again referenced the fire flow requirement of 500 GPM for 60 minutes, established in SJCC 13.08.010, as adequate for the proposal, and conceded while this flow has not been shown to be available prior to the hearing, approval of the conditional use permit can be conditioned upon demonstration of fire flow. *Exhibit 27(2)*.

30. Fire Chief Scott Williams of Orcas Island Fire & Rescue submitted comments recommending the following: 1) removal of tall trees from the perimeter of the property; 2) compliance with Department of Homeland Security current security measures for propane storage facilities; 3) installation of a leak detection system that sends an alarm to a monitoring company and/or provides a visual/audible alarm on-site and at the Fire Department; 4) provision of more than the standard 500 GPM fire flow, either through upgrading water supply to the site to exceed 500 GPM or through installation of one or two 5,000 gallon water storage tanks that could be used to deluge the propane tank in the event of fire and /or for firefighting flow; 5) the following recommendations with regard to emergency evacuation: provision of a Fire Department parking pad on-site for staging fire department operations; use of the reverse 911 system and door-to-door notification of area residents; and fire department use of private roads for emergency access; and 6) that the Applicant provide a dedicated, trained 24-hour staff person to respond to the facility and initiate emergency procedures. *Exhibit 27(3)*.

31. Eastsound Water submitted additional post-hearing comments. The required hydrant for the project would be located on a four-inch main approximately 40 feet higher in elevation than existing hydrants, and the water purveyor cannot confirm or commit to provision of 500 GPM at this location. Chief Williams of Orcas Fire & Rescue has indicated that 1,000 GPM is the better target rate for propane storage at this location. To provide this fire flow, it is likely that the four-inch main on Seaview Street would need to be upsized. Eastsound Water is willing to have its engineer develop a cost estimate for the actual fire flow testing, hydraulic modeling, and upsizing of the water main. The costs of these improvements would be borne by the project proponent, according the water utility's bylaws. *Exhibit 27(4)*.

32. Applicant agents submitted responses to public comment and to the County's post-hearing comments, which in pertinent part included the following. The Applicant is willing to remove whatever trees the County feels are required; they were being retained for visual screening. The Applicant agrees that the Fire Chief's recommended leak detection system would help solve the issues of the downslope live-in hangars and welding business and is considering a system installed on the east downward slope of the hill, potentially including a small berm, with an audible horn and light in the event of a leak. In response to the fire flow information in the Fire Chief, Fire Marshal, and Eastsound Water comments, the Applicant acknowledged that it is not known whether 500 GPM fire flow can be provided at the site. However, the Applicant is concerned that the options for increasing fire flow at the property laid out by the water purveyor seem to be at huge expense to the Applicant and have not been requirements to similar facilities on the Island. The Applicant proposed an alternative to increasing fire flow from its current capacity in the form of intumescent thermal coating installed on the tank, which would greatly reduce the amount of water needed during a fire event, allowing the water to be used elsewhere in the emergency. This option would not require yearly mechanical maintenance and repairs, nor be subject to equipment failure. The Applicant requested that the County allow the thermal coating to be installed if the required 500 GPM fire flow cannot be provided. The Applicant would also like to extend ongoing training to the current staff of firefighters and other first responders at this facility. The Applicant indicated that they will be looking for a full-time employee to live and work on Orcas that will be able to respond to all emergencies and any other after hour calls. *Exhibits 28(1), 28(2), and 28(3).*

33. During deliberation and prior to decision issuance, the matter was remanded for further development of the record on the following topics: how SJCC 18.35.080.E.1(k) applies to the proposal; use of the private road Aeroview Lane for access by the proposed commercial enterprise, and whether the record supported the conclusion that the private road is adequate; additional response to SJCC 18.40.280.D.3 as to potential odors, toxic gases, or fumes; additional response from the County Fire Marshal and the Orcas Fire Chief as to whether the proposal must show 500 gpm fire flow, whether a larger flow volume was required due to the nature of the use, and whether the proposed intumescent thermal coating adequately addresses any portion of required fire flow (if available flow is below 500 gpm, or if more than 500 gpm is required due to nature of use), and whether mature trees need to be removed from the perimeter of the site; additional response from the County Fire Marshal and the Orcas Fire Chief as to whether the emergency evacuation route in the Fire Marshal's post-hearing memo (Exhibit 27(1)) is adequate to meet requirements for emergency evacuation, or alternatively, what level of emergency evacuation plan is required; and comments from the Orcas Island Airport were required addressing the proximity of the bulk fuel storage use and the use of airport property for emergency evacuation. The remand order established a schedule for submittal of the information and allowed time for response by the Applicant to all additional information submitted by the various public agencies. *Findings, Conclusions, and Remand Order, issued August 21, 2017.*

34. Addressing SJCC 18.35.080.E, Planning Staff submitted that the San Juan County Fire Marshal is the official tasked with overseeing operational fire permits issued in the County. If approved, the proposed use would require an approved fire operational permit, which entails an annual inspection that satisfies the requirements of this provision. In his comments in the hearing record, the Fire Marshal did recommend that such a permit be required. *Exhibits 7 and 29.*

35. With regard to the requirements of SJCC 18.40.280.A.5, Planning Staff offered the following. The subject property is Lot 11 of the Second Alteration of Aeroview, recorded in Volume 5, Page 108, Plats of San Juan County. A note on the face of the plat grants:

> the lot owners and affected utility companies a non-exclusive easement over, under, and across the road rights-of-way and the utility easement designated, as a means of ingress and egress and for the location, installation, and maintenance of utilities, with the right to make all necessary slopes for cuts and fills upon the lots shown on the plat and also the right to drain all roads and ways over and across any lot where the water might take a natural course after the roads and ways are graded.

Also, restriction 2 on the face of the plat states:

> Maintenance of the road and roadside ditches, well or other water source, water distribution system, utilities, and any easements serving the lots in this subdivision shall be provided by the maintenance association, of which all property owners within this plat shall be members.

Exhibit 29.1.

36. Finally, the deed of trust between Inter-Island Propane LLC, San Juan Title LLC, Sharon Aspinwall, Trustee of the Sharon Aspinwall 2016 Trust, and David Thompson states as follows:

> Together with and subject to a non-exclusive easement over, under, and across the road rights-of-way as a means of ingress and egress and for the location, installation, and maintenance of utilities as shown on the plat map of Aeroview Lane, and as granted in the Dedication of Aeroview, a private subdivision.

Exhibit 29.2.

37. Planning Staff submitted that these dedications make it clear that the subject property and lawfully sited uses thereon are allowed to use Aeroview Lane and that the Applicant is partly responsible for the maintenance of the private road. *Exhibit 29.* Neither the Applicant nor Planning Staff submitted information about the road maintenance

association that was supposed to have been created with (or prior to) the second alteration of the plat, or any documentation as to a road maintenance agreement. While there are comments in the record questioning the Applicant's right to use a shared private road for commercial purposes, there is no evidence that the Applicant lacks that right or requires permission from a road maintenance association. At the time the Second Alteration was approved, the zoning designation of the site was Eastsound Service and Light Industrial, which presupposes commercial uses on the lots. Bulk fuel storage facilities are a permitted use in that zoning district, as noted above. *Exhibits 29 and 29.3.*

38. With regard to the site development standards for industrial uses in of SJCC 18.40.280.A.4 and D.3 prohibiting emissions of odors, toxic gases, or fumes (among other items), Planning Staff offered the following analysis in the remand staff report. Based on Applicant assertion of not more than two trucks per day accessing the site, Staff finds that during normal operations the possibility of odors off-site is negligible. Staff noted that the proposed equipment is designed to prevent leaks during transfer of product, which would reduce the chances of off-site odor. Staff asserted that even minor emissions of product during normal transfer are likely to dissipate within the site, due to setbacks, rather than be detectable off-site. Planning Staff submitted the position that these provisions address only normal operations and do not require industrial uses to prevent the release of odors and fumes during emergency situations, which by their nature are not under control of industrial use operators. *Exhibit 29.*

39. The San Juan County Fire Marshal and the Orcas Fire Chief collaborated on responses to the remand order and submitted a memo written by the County Fire Marshall. This memo asserts that the only adopted standard that applies to the proposal is the 500 gpm fire flow required of all commercial uses; however, it concedes that the higher flow rate of up to 1,000 gpm as calculated by the Orcas Fire Chief in other comments in the record is "accurate from a worst case scenario/maximum use from a fire fighting operations standpoint." *Exhibit 29.6.* That said, the Fire Marshal submitted the following with regard to fire flow requirements for the instant proposal:

> Per SJCC 13.08, the plant has no requirement for a higher flow, except as may be necessary to meet conditional use permit criteria. Adequate fire flow for firefighting operations have been submitted in earlier correspondence by Fire Chief Williams and those operations numbers can be supported as necessary in the event of an emergency.

Exhibit 29.6. The meaning of the second sentence of that paragraph is not immediately clear and there is no opportunity for clarification at the instant stage of the process.

40. With respect to the Applicant's offer to provide intumescent thermal coating as a means of further preventing worst case scenarios and in the hopes of reducing fire flow requirements, the County Fire Marshal indicated in response to the remand order that more research is required to determine whether such a product could be uses to satisfy some portion of fire flow requirement; however, its use would not under any

circumstances reduce the base requirement for 500 gpm fire flow to be provided. The Fire Marshal recommended a condition of approval requiring demonstration of 500 gpm fire flow and that such capacity should be required to be demonstrated from multiple hydrants in the area, not only the proposed hydrant on Seaview. *Exhibit 29.6.*

41. With regard to CUP criterion 3 and the question of an emergency evacuation route, the County Fire Marshal stated:

> The submitted route was designed as an emergency route that could be utilized in a worst case scenario situation. The route is not a pathway endorsed by the airport and the fact remains that the only public way egress from the proposed site is Seaview Street. With regards to the evacuation planning, I leave that up to the discretion of the Fire Chief as the head of response operations for the department. I will offer that options that could be called fire service best practices include: shelter in place and evacuation of perimeters of varying size depending on the amount of product spilled and the densities of said product within the atmosphere adjacent to the spill as well as weather patterns that could affect the response.

Exhibit 29.6.

42. The eastern edge of the subject property is approximately 585 feet from the boundary of the Orcas Island Airport. *Exhibits 29 and 29.4.* The airport responded to the remand order as requested. The comments indicated the following information. The Airport does not consent to use of airport property as a designated evacuation route to serve in the event of an emergency at the proposed project triggering the need for neighborhood evacuation. The airport is the location at which the fastest off-island assistance would be expected to arrive in the event of any emergency at the proposed facility. A leak of any significance would likely cause the Airport to close. The Airport Manager submitted that

> the residential densities surrounding the airport property in the airport overlay district are intended to reduce the risk of an airplane crash into a residential structure as a surrogate to reducing the life-safety risk to residents based on the statistical rate and location of crashes around airports. Those residential density restrictions were not designed to account for other, higher-risk hazards. The placement of a bulk fuel tank in that area should be viewed as effectively increasing the residential density from a risk perspective. That is, a crash that avoids a house may have to hit the fuel tank, or vice versa.

Exhibit 29.5.

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, including SJCC 18.80.090.C.

Criteria for Review

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.

Other Applicable Code Provisions

SJCC 13.08.010

"Commercial hydrant flow" means a quantity of water to provide for a pumping rate of 500 gpm for a continuous period of time of 60 minutes.

SJCC 18.30.500 Service and Light Industrial District

Table 12 – Service and Light Industrial District‡

Development Standards	Dimensions/Placement	Permits, Conditions and Limits

Table 12 – Service and Light Industrial District‡

Development Standards	Dimensions/Placement	Permits, Conditions and Limits
Residential Density		New residential development is prohibited except as an accessory to a commercial or industrial use and located entirely within a commercial or industrial building.
Minimum Lot Size	20,000 square feet.	
Building Height	Maximum 35 feet.	See SJCC 18.30.600 for the method of measuring height.
Building Front Setback	No structure shall be built within 40 feet of the centerline of public ROW.	
Side and Rear Setback	Side yards = 10 feet from property line. Rear yards = 10 feet from property line.	Architectural appendages (i.e., roof overhangs, chimneys, bay windows, and decks, not over 30 inches above grade) may extend 2 feet into required setbacks.
Utilities	Underground.	Except when enhancing, repairing, replacing, or relocating existing facilities.
Outdoor Storage (including recreational vehicles associated with residential uses)	Storage area must be screened from view from adjoining properties, roads and shoreline.	Screening must be no less than 5 feet high consisting of fencing, evergreen vegetation or other similar materials. Outdoor storage related to allowed nonresidential use must be screened before occupancy permit is issued.
Open Space (area not occupied by buildings, parking and driveways)	5 percent of lot.	Maintained in natural condition or landscaped. Applications to specify open space and identify landscape features.
Lot Coverage (area covered by buildings, parking and driveways)	60 percent of lot.	
Landscaping	New development must be designed to conserve natural site features to the extent possible. Landscaped buffers are required along public street frontage in all new development, and screening is required between existing residential uses and new nonresidential developments. In addition to the landscaping requirements listed in SJCC 18.30.670(D), a landscaping strip with a minimum width of 20 feet must be provided along the entire primary road frontage of the site and along any property line abutting any residential district. The landscaping strip must include evergreen trees.	
Ground Vibration	No approved use may generate ground vibration perceptible without instruments at any point along or outside of the property line of the site of the use, except for motor vehicle operations.	
FAA Recommended Restrictions	All development in this district must comply with the Federal Aviation Regulations Part 77, relating to heights of land uses proximate to airports and protection of airspaces critical to airport operations.	
Noise, Glare and Flashing Lights	Any use, which is allowable under a conditional use permit, on a lot adjacent to or across the street from a residential dwelling (except nonconforming residences), a lot in a platted subdivision, or a residential designation in the subarea plan must not emit continuous and/or	

Table 12 – Service and Light Industrial District‡

Development Standards	Dimensions/Placement	Permits, Conditions and Limits
	uninterrupted noise, glare, flashing lights, or similar disturbances perceptible without instruments more than 200 feet in the direction of the affected residential use or lot.	
Air Emissions	No approved use may generate or cause any visible smoke, gases, dust, steam, heat or odor to be emitted into the atmosphere, except as necessary for the heating or cooling of buildings, and the operation of motor vehicles on the site. Air emissions are allowed for emergency power generation.	

SJCC 18.30.670 Design standards

...

D. Landscaping. Landscaping required by the Eastsound subarea plan shall be designed, installed and maintained in conformance with the following provisions:

1. Types. Landscaping required by this plan is one of the following three types:

   a. Screening. Screening is to provide a visual barrier at least five feet high. When screening is specified, landscaping shall generally consist of a mix of evergreen groundcovers, trees and shrubs. Shrubs shall be at least two feet tall at the time of planting and, if shrubs (or hedges) are to provide the majority of the screen, shall have a minimum height of five feet at maturity. Trees shall be at least four feet tall at the time of planting and all plants shall be spaced so as to grow together within three years of planting to achieve a sight-obscuring screen of at least 80 percent opacity. Required screening shall be at least five feet deep. Existing vegetation, walls, fences or grading (maximum slope three to one) may be incorporated into the design of the screen if they contribute to the intent of this requirement.

   b. Landscaped Buffers. A buffer is a separation, but not necessarily a visual barrier. When landscaped buffers are specified, landscaping shall generally consist of a mix of evergreen and deciduous groundcovers, trees and shrubs, chosen and spaced to cover the buffer area within three years of planting. However, buffers required along public streets shall consist of walkways, groundcovers, shrubs and deciduous trees only. Buffers shall be at least eight feet wide for the length required unless specified otherwise in the Eastsound subarea plan. Deciduous trees shall have a minimum trunk diameter of one and one-half inches at planting and be spaced so that branches will touch after 10 years of normal growth. Along public streets such buffers shall include at least one tree for every 30 feet of lineal street frontage. Existing vegetation, walls, fences or grading (maximum slope three to one) may be incorporated into the design of the buffer if they contribute to the intent of this requirement.

   c. Open Space Landscaping. Open space may be natural or landscaped including grass, paved walkways and open decks, but does not include parking areas or driveways. Ten square feet of open space is required.

2. Maintenance. The property owner and any tenant is responsible for maintenance of all landscaping required by the Eastsound subarea plan, which shall be maintained in good condition so as to present a healthy appearance. All landscaped areas required by the Eastsound subarea plan shall be provided with a readily available water supply. Tree limbs are not allowed to extend over walkways or driveways below a height of eight feet above grade.

3. Plant Selection. Plant varieties selected to fulfill requirements of the Eastsound subarea plan shall be of a type suitable to the climate and site conditions.

Where the director determines a proposed landscaping plan will not meet screening and buffer development standards in subsection (D)(1) of this section, the director may require that plant lists and design for required landscaping be reviewed or prepared by a landscape architect.

SJCC 18.35.080 Critical aquifer recharge areas.

A. Purpose. The purpose of this section is to assure a safe and adequate water supply by protecting the quantity and quality of water available for recharge of the County's aquifers. The quality of groundwater in an aquifer is inextricably linked to its recharge area. An aquifer's vulnerability to contamination is the combined effect of hydrogeological susceptibility to contamination and the contamination loading potential. Because of the hydrogeologic characteristics listed in subsection (B) of this section, all of the land area of San Juan County is classified as highly susceptible. High vulnerability is indicated by activities that contribute to the risk of contamination, such as those listed in subsection (E) of this section. ...

...

E. Activities Requiring Inspection.

1. In addition to the general groundwater protection requirements adopted in Chapters 8.06, 8.16 and 18.60 SJCC, some commercial, industrial, public and institutional facilities are subject to periodic inspection by the department to ensure conformance with the groundwater protection requirements of this chapter. Inspections must be performed by a registered environmental health specialist or other professional with appropriate training and experience. The following types of facilities are subject to inspection:

   ...

   k. Fueling facilities; ...

SJCC 18.40.280 Industrial uses – Standards for site development

A. All Industrial Uses. The following standards apply to all industrial uses as listed in Tables 18.30.030 and 18.30.040 and to those other uses determined by the administrator to be industrial uses.

1. The use of chemicals, industrial solvents, or other noxious or hazardous substances shall comply with all federal, state, and County safety, fire, structural, storage, and disposal standards.

2. Water supplies, wastewater, and sewage disposal facilities adequate to serve the proposed use shall be provided.

3. Retail sales and services incidental to a principally permitted use are allowable, provided:
   a. The operations are contained within the main structure which houses the primary use;
   b. Retail sales occupy no more than 15 percent of the total building square footage;
   c. No retail sales or display of merchandise occurs outside the structure; and
   d. All products offered for retail sales on the site are manufactured, warehoused, or assembled on the premises.

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

5. Use of a County access road or private road for access to new industrial 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 private road are minimized by conditions on the permit.

B. Industrial Uses in Rural Designations. N/A

C. Concrete Batch Plants – Additional Standards. N/A

D. Light Industrial Uses – Additional Standards.
   1. All operations other than loading and unloading shall be conducted within a fully enclosed building.

   2. Production of noise at the property lines of the premises shall not exceed normal ambient noise levels in the vicinity, as discernible without instruments.

   3. No emissions of dust, dirt, odors, smoke, toxic gases or fumes will occur.

SJCC 18.40.420 Tank farm facilities[5]

The following standards apply to all tank farm facilities:

A. 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.

B. All tank farm facilities must meet the site standards for industrial uses (SJCC18.40.280).

C. Type A screening (SJCC18.60.160) shall be provided.

D. All tank farm facilities must comply with applicable state and federal standards.

[5] Per SJCC 18.20.200, "Tank farm" means an area used for the commercial bulk storage of fuel in tanks.

SJCC 18.60.070 Storm drainage standards

...

D. New Development Minimum Requirements.

1. New development that includes (a) the creation or addition of 5,000 or more square feet of impervious surface and (b) land-disturbing activities of less than one acre shall comply with minimum requirements 2 through 11 in Sections I-2.6 through I-2.15 of the SMM, and the small parcel minimum requirements of subsection (C) of this section.

2. New development that includes (a) the creation or addition of 5,000 or more square feet of impervious surface, and/or (b) land-disturbing activities of one acre or more, shall comply with minimum requirements 1 through 11 in Sections I-2.5 through I-2.15 of the SMM, and a stormwater site plan shall be prepared.

3. Stormwater Site Plan. A stormwater site plan required by subsections (D)(2), (E)(1) or (2) of this section shall be developed to the standards of Sections I-3.4 and I-3.5 of the SMM, and include:

   a. Project overview;
   b. Plot plan, including the elements of subsection (C)(2) of this section and:

      i. Locations of structures and other impervious surfaces;
      ii. Locations of stormwater runoff control facilities;
      iii. Road rights-of-way and easements;

   c. Preliminary conditions summary;
   d. Analysis of off-site water quality impacts (including groundwater) resulting from the project, and mitigation measures;
   e. Analysis and design of proposed stormwater runoff control facilities, including treatment and source control BMPs (cf. Section I-4 of the SMM, which provides a list of and selection process for BMPs);
   f. Erosion and sediment control plan;
   g. Special reports and studies;
   h. Stormwater and drainage system maintenance and operations manual.

SJCC 18.60.170.A, Exterior Lighting.

A. Exterior lighting shall be energy-efficient and shielded or recessed so that direct glare and reflections are contained within the boundaries of the parcel. Exterior lighting shall be directed downward and away from adjoining properties and public rights-of-way. No lighting shall blink, flash, or be of unusually high intensity or brightness. Exterior lighting fixtures must be shielded and the light must be directed downward and away from wetlands and wetland buffers, as well as lakes, ponds, the marine shoreline, and habitat of specific animals protected as fish and wildlife habitat conservation areas. All lighting fixtures shall be appropriate in scale, intensity, and height to the use they are serving. Any lighting installed in parking areas shall be of direct cutoff design so that the source is not visible from adjacent

property. Decorative lighting shall be limited to incandescent lamps with a maximum of 25 watts per bulb and 500 watts overall.

SJCC 18.60.240 Standards for new and substantially altered development – Eastsound and Lopez Village urban growth areas

A. Applicability. All new development, and all substantial alterations, within the urban growth areas of Eastsound and Lopez Village.

B. General Regulations.
   1. All development subject to this section that is not served by the existing public sewage treatment system:
      a. Must have sewer capability that meets the design specifications of the sewer district systems for later connection;
      b. Must connect to the public system within one year of such service becoming available to the development.

   2. All development subject to this section that is not served by an existing community Class A water system must connect to the community Class A water system within one year of such service becoming available to the development.

   3. For all development subject to this section the applicant must execute and record with the auditor a statement, binding on the owner, successors, heirs, and assigns, which provides that the owner will not object to the formation of a utility local improvement district for water or sewer.

   4. Development and associated improvements and structures shall be located on the property so that they shall not preclude future potential development at a density of four units per acre or greater.

   5. Land divisions shall provide remainder lots that will allow an average density with the division of four units or greater.

   6. The following note shall be on the face of the plat of all subdivisions and short subdivisions, and on all deeds filed as part of an exempt division:

      This land division is located within an urban growth area. This land division has been designed in a manner to allow the future redivision to achieve an average density of four homes per acre.

   7. Development applications are exempt from the requirements of subsections (B)(4) through (6) of this section where:
      a. Commercial development is both within a land use district that does not prohibit residential development or limits it to accessory use, and the area available for future development is less than 0.5 acre.

b. Residential development will achieve a residential density of four units per acre or greater.

c. Development is within a land use district or density designation that has been indicated on the official maps as not requiring planning to maintain the potential to develop residential densities of four units per acre or greater.

SJCC 18.80.030 Notice of project permit applications, public comment, and notice of hearing
A. Notice of Project Permit Applications.

...

2. Mailing, Publication, and Posting Requirements. Notice of application shall be prepared in accordance with this section and provided within 14 days after the application is determined to be complete; and, if an open-record predecision hearing is required, at least 15 days prior to the open-record hearing, as follows:

   a. The administrator shall publish notice of application in the official County newspaper at least one time;

   b. The applicant shall mail a notice of application, as provided by the administrator, to all owners of property within 300 feet of the boundaries of the subject property, using the names and addresses of those individuals as shown on the tax assessment rolls on the date the project permit application is submitted to the permit center. Notices of application shall be deemed to have been provided on the date the notices are deposited in the mail. The applicant shall provide the administrator with a declaration of mailing and list of those individuals to whom the notice of application was mailed. (See SJCC 18.80.020(C)(9).) All notices which are returned to the applicant must be submitted to the administrator for inclusion in the file.

      Failure to mail such notice as provided in this section shall not invalidate such proceedings as to a property owner who appears at a hearing or receives actual notice.

   c. Posting. The applicant shall post a notice of application on the property on a board purchased from the permit center. Posted notice shall be:

      i. At the midpoint of the site road frontage or as otherwise directed by the administrator for maximum visibility;

      ii. Five feet inside the street property line, except when the board is structurally attached to an existing building; provided, that no notice board shall be placed more than five feet from the margin line of the road or right-of-way without approval of the administrator;

      iii. Between five and eight feet above grade at the top of the notice board;

      iv. Completely visible to pedestrians;

      v. Maintained in good condition by the applicant during the notice period;

      vi. In place at least 30 days prior to the date of hearing; and

      vii. Removed within 15 days after the notice of decision is received by the applicant.

If the property is served by a private road, an additional notice board shall be located at the nearest intersection of the private road with a public road. Where a notice board cannot be placed as indicated or would not provide effective notice, the administrator shall determine a suitable location for posting.

d. The applicant shall submit an affidavit of posting and a photograph showing the location(s) of posting to the administrator prior to the publication of the notice of application.

Conclusions Based on Findings

1. As stated in the findings supporting the remand order, with respect to public comment challenging adequacy of notice to surrounding property owners, the record shows that notice of application and notice of hearing were both provided in accordance with the requirements of the County Code. *Findings 14, 15, and 16.*

2. In order for a conditional use permit to be granted, the Applicant must affirmatively demonstrate compliance with all ten criteria for approval established at SJCC 18.80.100.D. The record presented does not demonstrate compliance with criterion 5, which requires the proposed use to be adequately served by existing public facilities and services including fire protection and water. The information submitted by the water purveyor suggests that while the rate of fire flow at the proposed hydrant on Seaview is not known, it is likely not to be adequate, and that in order to have adequate fire flow at that location, the existing water main would need to be replaced. The costs of the replacement are expected to be borne by the proponent of the project that triggers the need for increased flow volume. The Fire Marshal also recommended that 500 gpm be required to be shown from multiple hydrant locations. The record does not include evidence of the required fire flow volumes at the other nearby hydrants. The Applicant conceded that the applicable standard requires a fire flow of 500 gpm, and that such flow volumes are not known to be present. Further, Orcas Fire & Rescue, the on-island emergency response agency, has low staffing levels and relies on volunteer fire fighters and off-island emergency responders to address incidents such as the possible worst case scenario at a bulk fuel storage facility. The Orcas Fire Chief has reportedly suggested that closer to 1,000 gpm would actually be needed in the event of equipment failure and tank fire on-site. This figure was corroborated by the County Fire Marshal. Clearly, 1,000 gpm is not demonstrated to be available. *Findings 17, 18, 19, 20, 21, 22, 27, 30, 31, 39, and 40.*

3. The record as a whole fails to demonstrate compliance with criterion 3 ("the proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval") in failing to identify an emergency evacuation route. Comments submitted from the Orcas Island Airport tend to show failure to satisfy criterion 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)"). *Findings 19, 20, 21, 41, and 42.*

4. In not demonstrating adequate water supply for fire suppression, the proposal arguably fails to satisfy the site development standards for new industrial uses (SJCC 18.40.280.1 and 280.2), as well as standards for tank farms (SJCC 18.40.420.A and 420.B). *Findings 17, 18, 19, 20, 21, 22, 27, 30, 31, 39, and 40.*

5. Bulk fuel storage is an allowed use in the Service and Light Industrial District. It is possible that a propane storage facility could be approved in the neighborhood, possibly even at the subject property, if adequate fire flow and an emergency-agency approved evacuation route were provided. However, on the record submitted, the proposal does not comply with the CUP criteria and industrial use development standards, and it must be denied. Regarding the Applicant's concern that other commercial uses in Eastsound may not have been held to strict compliance with the 500 gpm fire flow requirement, this concern is understandable, but it is an argument that does not affect the outcome of the instant application. Each land use application is reviewed independently of other land uses for project-specific compliance with criteria for approval. There is no doubt that Inter-Island Propane, as a company, knows and is good at its business. All Applicant assertions about desiring to be a good neighbor and just wanting to provide a competitively priced service to the community are credible. Yet, the instant project must be considered for its appropriateness in the location proposed. The record submitted does not demonstrate compliance with the CUP criteria for approval.

DECISION

Based on the preceding findings and conclusions, the request for conditional use permit requested a conditional use permit to install and operate a bulk propane storage and distribution facility at 27 Aeroview Lane, Eastsound, Orcas Island is **DENIED**.

Decided October 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.