

EXHIBIT 1



SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

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STAFF REPORT TO THE HEARING EXAMINER

REPORT DATE: August 1, 2018
HEARING DATE: August 15, 2018
TO: Hearing Examiner
FROM: Julie Thompson, Planner III
RE: PAPL00-18-0001, Appeal of PPROV0-17-0065 for a vacation rental permit

APPELLANTS: Thomas C. Evans
c/o Madison Park Law Offices
4020 East Madison Street, Suite 210
Seattle, WA 98122

Box Bay Shellfish Farm, LLC
c/o Thomas C. Evans
4020 Madison Street, Suite 210
Seattle, WA 98122

APPLICANT: Dan and Cheryl Stabbert
2629 NW 54th Street #201
Seattle, WA 98107

APPLICANT'S AGENT: Foster Pepper PLLC
Jeremy M. Eckert
1111 Third Avenue, Suite 3000
Seattle, WA 98101

SUBMITTED: PAPL0018-0001 was submitted on March 30, 2018, Exhibit 2

LOCATION: 2318 Obstruction Pass Road, Orcas Island, TPN 161643003

Subject of Appeal: The appellant is appealing the decision on PPROV0-17-0066, provisional use permit approval for a vacation rental permit to a neighboring property. The provisional use permit was issued

on March 12, 2018.

SJCC 18.80.140 Appeals

D. Time Period and Procedure for Filing Appeals.

1. Appeals to the hearing examiner must be filed (and appeal fees paid) within 21 calendar days following the date of the written decision being appealed; and

The appeal was filed and the fee paid on March 29, 2018. The provisional use permit was approved on March 12, 2018. The appeal period was up on April 2, 2018 so the appeal was filed in a timely manner.

2. Appeals of a SEPA threshold determination or an FEIS must be filed within 21 days following the date of the threshold determination or FEIS.

This is not an appeal of a SEPA determination. Vacation rental applications are exempt from SEPA review.

3. All appeals shall be delivered to the director by mail, personal delivery, or fax, and received before 4:30 p.m. on the due date of the appeal period. Applicable appeal fees must be paid at the time of delivery to the director for the appeal to be accepted.

The appeal and its fee was received before 4:30 p.m. prior to the end of the appeal period.

4. For the purposes of computing the time for filing an appeal, the date of the decision being appealed shall not be included. If the last day of the appeal period is a Saturday, Sunday, or a day excluded by RCW 1.16.050 as a legal holiday for the County, the filing must be completed on the next business day (RCW 36A.21.080).

5. Content of Appeal. Appeals must be in writing, be accompanied by an appeal fee, and contain the following information:

- a. Appellant's name, address and phone number;

This information is included.

- b. Appellant's statement describing standing to appeal (i.e., how he or she is affected by or interested in the decision);

The appellant describes his standing to appeal on page 2, number 2, of the appeal as follows:

"Evans—would be directly and significantly adversely impacted by Stabbert Vacation Rental by Owner (VRBP) in multiple ways, which are all set out in detail in the numerous objections previously submitted to San Juan County (SJC) and are attached hereto. In summary, these impacts include severe traffic conflicts by adding up to 18 renter occupants each likely making use of Obstruction Pass Road on a regular basis where said road is privately maintained, can accommodate only one vehicle in one direction at a time without side-line stand by; noise emanating up and out of the Stabbert property from vacationers whose use of Stabbert property amounts to noise emanating from a megaphone vortex given the

configuration of box Bay, encroachment on privately owned Evans property including privately owned 300 square foot landing at the foot of the entrance to the privately owned joint use dock; trespassers attempting to use the privately owned joint use dock and difficulties in keeping trespassers off the dock. The dock is the centerpiece of the Stabbert VRBO property and Evans will have to, without protective measures such as a locked gate and no trespass signs, constantly restrain trespassers. Renters are also likely to be attracted to use the privately owned dock by advertising depicting the property with the dock at center. Unless large no. 18pt. type is included in all advertisements stating the dock is not available for use, potential renters will naturally believe Stabbert owns the joint use dock and it will be available for their use.”

“Box Bay Shellfish Farm LL is partially located in Box Bay, immediately in front of the Stabbert property and has been a shellfish (oyster) farm since 2009. Its sole purpose is to serve the community on a charitable purpose basis by giving away oysters free to charitable dinners and events. It grows large non-commercial amounts of oysters in the areas indicated above and uses them for charitable purposes only. This includes giving bulk supplies to local farm to table programs, allowing students to come and see how a real oyster grow operation works, and allowing specific invitee neighbors including Stabbert to come and take for free as many oysters as they want. Finally, the oysters are sometimes used as a “sentinel” monitoring point for the SJC Health Department. During red tide season samples of Box Bay oysters are given to the Health Department to test for red tide. Given Box Bay’s location—where several large flows of waters converge—it is an ideal location for testing. VRBO residents are already invading the Box Bay growth area. A VRBO was recently granted to the Bea property—just to the East of Evans property—and during the summer months VRBP renters are frequently seen on the privately owned Evans tidelands where the oysters are stepped on in their grow cages. In some cases outright theft of tideland based plastic grow cages has occurred. No trespassing signs were placed at the entrance to Evans grow area tidelands but are regularly been ignored. A potential problem with the future exists as to grow cages tied to the Evans side of the dock. Adding 18 renters to this same area, where problems are already being experience from just one VRBO (Bea) is guaranteed to negatively impact Box Bay, indeed, it will put Box Bay’s future grow viability in question.”

- c. Identification of the decision which is the subject of the appeal, including date of the decision being appealed;

This information is included on page one of the appeal. However, the copy of the staff report and its exhibits that was included with this appeal were for PPROVO-17-0066. The file number for this appeal is PPROVO-17-0065, which will be included as an exhibit with this staff report.

- d. Appellant’s statement of grounds for appeal and the facts upon which the appeal is based;

This information is included in the appeal and reviewed in Statement of Grounds for Appeal, below.

- e. The relief sought, including the specific nature and extent; and

The relief sought is included in the appeal and is included in Relief Sought, Nature, and Extent, below.

- f. A statement that the appellant has read the appeal and believes the contents to be true, signed by the appellant.

This is included on page 8 of the appeal.

STANDING TO APPEAL: Staff review of standing to appeal criteria is provided in italics. Pursuant to SJCC 18.80.140(C)(3), appeals to the hearing examiner may be initiated by:

1. The applicant;

The appellant is not the applicant.

2. Any recipient of the notice of application (see SJCC 18.80.030);

The appellant received notification of the application. See Exhibit 9 of the staff report for PPROVO-17-0065.

3. Any person who submitted written comments to the director concerning the application; and

The appellant submitted written comments to San Juan County Department of Community Development on numerous occasions with differing subject lines.

The appellant's detailed statement describing both his and Box Bay Shellfish Farm LLCs' standing to appeal is located in the appeal on page 2, Number 2.

4. Any aggrieved person.

The appellant has standing to appeal based on his written comments.

DECISION BEING APPEALED: Provisional use permit PPROVO-17-0065 is an approval to use the single family residence on tax parcel number 161643003 as a three-bedroom vacation rental for periods of less than thirty days. The permit was issued on March 12, 2018

BACKGROUND:

1) December 11, 2017, the applicant submitted a provisional use permit application (PPROVO-17-0065) for a vacation rental permit on tax parcel number (TPN) 161643003 located at 2318 Obstruction Pass Road on Orcas Island. The property is 6.82 acres. The applicant also owns a neighboring property to the south, TPN 161650403, which shares the same driveway and address. They also applied for a vacation rental on that property in PPROVO-17-0066 which is also subject to another appeal submitted by the same appellants, PAPL00-18-0002.

2) This property is in the Rural Farm Forest land use designation. No part of this parcel is within shoreline jurisdiction.

3) San Juan County Code (SJCC) Table 18.30.040 lists the allowable and prohibited uses in the rural,

resource, and special land use designations. Vacation rental is permitted with a provisional use permit in the Rural Farm Forest land use designation.

4) On March 12, 2018, provisional use permit PPROVO-17-0065 was approved by the San Juan County Department of Community Development after finding that SJCC 18.40.270, Vacation (short-term) rentals of residences or accessory dwelling units performance standards; SJCC 18.80.020, Project permit applications—Procedures; SJCC 18.80.030, Notice of project permit applications, public comment, and notice of hearing; and SJCC 18.80.080, Permit procedures for provisional uses were all complied with.

6) A prehearing conference was held by conference call on May 23, 2018 which included the applicant and his representatives, the appellant, the SJC Hearing Examiner, the director of the Department of Community Development, and the staff planner. That call resulted in a schedule for the submittal of responses, motions and/or briefings to all parties and to the Hearing Examiner. Issues that had not been identified in the original appeal were not allowed to be included. The submittals were for clarification of the original issues and responses to those clarifications. The schedule was as follows:

Evans clarification of issues	June 11, 2018
Eckert response to clarification	June 13, 2018
Dispositive motion from Eckert	June 15, 2018
Evans response to dispositive motions	June 29, 2018
Evans and Eckert Briefings/Final Reply	July 11, 2018
Staff report to the Hearing Examiner due	August 1, 2018
Appeal hearings	August 15, 2018 at 10:00

7) The clarification of issues by the appellant was confusing as he used the vacation rental performance standards adopted by the County Council on March 13, 2018 which became effective March 27, 2018 and are codified at SJCC 18.40.275. The applicable code for the Stabbert's permit is SJCC 18.40.270. Additional analysis of the clarification was not provided by staff.

8) The director gave notice of the appeal hearing as provided in SJCC 18.80.030(C) on July 18, 2018.

STATEMENT OF GROUNDS FOR APPEAL:

Attached to this appeal is the complete record in this proceeding, including Evans/Box Bay's objections to this permit. These documents, which are Bates Stamped for ease of access, identify objections, issues and legal support. During the hearing on this matter the Bates pages will be referenced along with the specific issue. In very summary non-total form these include:

- a) SJC did not include nearly enough private property warning signs or direction signs to make sure VRBO's did not trespass especially on Box Bay grow areas.

Staff response: *The attachment to this appeal is for PPROVO-17-0066, which is the staff report for the property next door. The actual documents pertinent to PPROVO-17-0065 are attached as an exhibit to this staff report. In that report, on page 3, number 22 lists one of the performance*

standard for vacation rentals SJCC 18.40.270(K):

“The owner or lessee of the vacation rental shall provide notice to the tenants regarding rules of conduct and their responsibility not to trespass on private property or to create disturbances. If there is an easement that provides access to the shoreline, this shall be indicated on a map or the easement shall be marked; if there is no access, this shall be indicated together with a warning not to trespass.”

The Decision and Permit Conditions begin on page 15 of the staff report. Condition number 9 requires:

“The rules of conduct and a map clearly depicting the property boundaries of the vacation rental shall be prominently displayed in the rental. The map shall indicate if there is an easement that provides access to the shoreline. If so, the boundaries of the easement shall be clearly defined; if there is no access, this shall be indicated together with a warning not to trespass.”

Thus, San Juan County has included sufficient information to the permit holder to inform clients where the property boundaries are and to warn clients not to trespass. Nothing in the code requires warning signs or direction signs as part of a vacation rental permit.

- b) The joint use dock was clearly intended to benefit Stabbert/Evans only, and does not allow or even suggest that renters paying money to Stabbert are allowed to use this dock at Evans/Box Bay expense. This is completely self-serving and makes Evans have to pay expenses including significant tax levy, repair cost, initial investment of \$90,000 all so Stabbert can profit at Evans' direct expense. Evans pays significant real estate taxes attributed to the dock. Evans has to pay (and has paid) ½ of repair costs due to storms.

Staff response: *The joint use dock shared by the Stabbert's and the Evans' is a private dock with a private agreement between them. The County is not a party to that agreement and has no control over how it is used. That is a civil matter between the joint use parties.*

- c) Allowing Stabbert's renters will push Evans/Box Bay off the dock—Evans/Box Bay is guaranteed sole and exclusive use of the South ½ of the dock and float. If Stabbert is allowed to put his renters on the dock his renters will undoubtedly (*sic*) take up and use Evans/Box Bay's skiff tie up area and Evans will have no way of controlling without confronting the up to 18 renters who come expecting to be able to use the dock.

Staff response: *The County has no authority over the use of the dock. That is a civil matter between the joint users.*

- d) Stabbert's reasoning, incorporated by SJC into its decision making, for allowing so many renters is flawed, and a direct violation of the Fourteenth Amendment requiring equal protection of the law. Stabbert/SJC actually opine that the users of the Stabbert properties will only be “high end” (rich) persons who can afford to pay for “high end” rentals. (For this, see p 9, top of page). To make matters worse Stabbert also claims “highenders” don't “party” as much and are naturally quieter. The fact that an applicant would urge a government agency to actually base a land use decision on a presumption about the wealthy vs. other individuals is outrageous and

would be a civil rights violation were SJC to accept it. This sort of thinking has no place in government decision making yet that's exactly the way the applicant sees it.

Staff response: *The paragraph that the appellants refer to as being incorporated into San Juan County's decision making was merely a quote from a comment submitted by the applicants. What it actually said was:*

"iii. The high end rental agencies do background checks on the guests who may also have been rated by other venues that they have rented in the past."

That sentence had no bearing on the decision made as that is not a performance standard for vacation rentals in SJCC 18.40.270 nor a permit procedure for provisional uses in SJCC 18.80.080.

- e) These VRBO's are not categorically or otherwise exempt from obtaining a Shoreline Management Permit (SMP). While SJC admits if someone presented at the permit counter with plans to build a single family residence (SFR) and use it as a VRBO at the same time, this would require a SMP permit, it denies that an SMP permit is necessary when the structure is turned into a completely different use. **Use matters**, under the law, it's the land **use** that determines permitting and nowhere in the Shoreline Management Act (SMA) is a VRBO categorically exemption.

Staff response: *This parcel is outside shoreline jurisdiction.*

- f) Noise, glare from lights at night, and late night partying will all emanate directly up and into Evans living area. Although the Evans living area appears to be non-existent as to the Stabbert property it is hidden behind a slender row of trees and is in fact directly above the Stabbert property. The Stabbert property is literally under the nose of the Evans property.

Staff response: *SJCC 18.40.270(B), one of the performance standards for vacation rentals, states that the use shall be operated in a way that will prevent unreasonable disturbances to area residents. Staff analysis of that standard states that noise and trespassing impacts could be as much as that associated with normal residential use of the site. Possible disturbances should be mitigated by conditions limiting the number of occupants to 9. The conditions should also require posting the rules of conduct specifically mentioning that trespassing is not allowed, property lines will be identified, and that the neighbors will be provided with a 24-hour local contact phone number. The contact is also required to keep a written log of complaints. See number 13 on page 2 of PPROVO-17-0065.*

The final condition of approval, number 18 on page 16, states that if the conditions of approval are not complied with, the resulting impacts may change a typical residential area to one with frequent incidents of trespass, noise, and traffic from strangers who have no investment in maintaining civil relations with neighbors. For this reason, it is emphasized that failure to comply with conditions of approval is grounds for revocation of this permit.

- g) The decision ignores that Evans owns outright and Box Bay uses for its private purposes the 300 sq. ft. platform at the entrance to the dock. This area was given to Evans by Jacobsen (previous owner) as part of the agreement for a joint use dock. Having 18 renters puts Evans zodiac skiff maintained on the property, its nets and other water related items at direct risk for damage, theft or illegal use, and the SJC decision does nothing to prevent this.

Staff response: *San Juan County is not a party to the joint use dock agreement and has no authority to regulate its use. It is a civil matter between the joint users.*

- h) The staff report and decision treats Evans as if his dock interests are really public interests and that Evans has an obligation to allow members of the public to use this joint use dock, even though Evans paid in excess of \$90,000 (*sic*) for the construction, several thousand dollars for the occasional repairs made necessary by wind damage, and the very significant amount of real estate tax attributable to the dock (some estimate that a dock adds as much as \$500,000 of value to the assessors valuation).

Staff response: *Dock use issues are not County issues.*

- i) On page 10, last paragraph, SJC claims that “The Washington Supreme Court has ruled that VRBO is not commercial” and therefore since the word “commercial” is used once in the joint use agreement, along with multiple other words describing limitations, VRBO use is allowed because (so goes the argument) if the word “commercial” is used then anything and everything that is non-commercial including VRBO must be allowed. Very oddly, a “Washington State Supreme court Case” is then cited, *Wilkinson v. Chiwawa Communities Association*. Since this case is not properly cited a little digging into the Washington Supreme Court Report is necessary.

The correct cite is: *Wilkinson v Chiwawa Cmty Ass’n*, 180 Wn.d 241 (2014). The issue in *Wilkinson* are completely irrelevant to the case at hand. *Wilkinson* concerned whether a community association (Chiwawa) could amend its plat declaratory covenants so as to exclude vacation rentals. No Joint Use Agreement, no private rights documents were involved. Nothing in *Wilkinson* addressed or even came close to addressing exclusive private rights in a Joint Use Agreement including a guarantee between landowners of quiet use and enjoyment, a guarantee that the Southerly ½ of the dock was for the *exclusive* use of Evans, that the landing 300’ Square platform was for the exclusive use of Evans.

Wilkinson is also distinguishable in San Juan County, as SJC, in its Comp Plan **does** consider vacation rentals to be a commercial in nature and specifically so states:

Comp. Plan, Section B, Element 2.2.A: “Vacation rentals...of a principal, single family residential unit...should be subject to **standards similar to those for hospitality commercial establishments...**”

So it is not correct to say, in San Juan County, vacation rentals are not subject to and defined as a Commercial use—they are and are legally required to follow the same standards as “hospitality commercial establishments...”

The sentence quoted above is not a San Juan County statement but rather a quote from a letter the applicants submitted in response to the appellants’ emails. There was no mention in the County’s analysis of the application that either allowed or denied the use of the dock by vacation renters. That issue is between the dock owners. It is, however, correct to say that the County lists vacation rentals as a residential use in SJCC Table 18.30.040.

The full text of the above quoted section of the Comprehensive Plan is actually:

Comp. Plan, Section B, Element 2.2.A.12: Vacation rental (short term, i.e., of less than thirty days) of a principal, single-family residential unit or an ADU should be subject to standards similar to those for hospitality commercial establishments but should be classified as a residential use for purposes of land use regulation.

The vacation rental performance standards are similar to those for hospitality commercial establishments in that the number of guests is limited, the amount of time one can stay in a vacation rental is limited, rules of conduct are required, and state taxes need to be paid.

RELIEF SOUGHT, NATURE AND EXTENT:

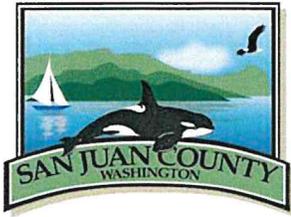
1. Deny both applications without prejudice to re-application through the Shoreline Management Conditional Use application process. Include in this decision a finding that nothing, anywhere, even arguably suggests vacation rentals are categorically exempt from SMA permit requirements and follow the guidelines of the SMA which disfavor categorical exemptions and doesn't allow for any unless specifically listed as such. (There is no exemption anywhere in the SMA, State Guidelines, or Master Program that lists vacation rental as categorically exempt).
2. Prohibit any renter use of the joint use dock, the privately owned platform, and the Evans owned access trail. Find the conditions proposed by Evans—a locked coded entry gate to the dock, all advertising clearly disclose the dock is not part of the rental and no trespassing signs are appropriate. Require advertising of any sort disclose the dock, landing and private pathway as privately owned, to use it is trespassing, and VRBO renters are to stay off.
3. Allow the posting of prominent no trespassing signs on the dock, platform and trail.
4. Require Stabbert at their expense to hire a well qualified outside contractor to install an all weather saltwater proof gate at the entry to the dock that allows access only to persons properly on the dock, with construction to be approved by Evans.

FINDINGS AND CONCLUSIONS:

1. The appeal is timely.
2. The appellants have standing pursuant to SJCC 18.80.140 via comments submitted to the department for the provisional use file PPROVO-17-0066.
3. The appellants have failed to present evidence necessary to prove to the Hearing Examiner that the Department's decision in PPROVO-17-0066 was clearly erroneous.

RECOMMENDATION:

The appeal should be denied. The Department of Community Development found that the applicants were in compliance with the applicable sections of the Unified Development Code, SJCC 18.40.270, Vacation (short-term) rentals of residences or accessory dwelling units performance standards; SJCC 18.80.020, Project permit applications—Procedures; SJCC 18.80.030, Notice of project permit applications, public comment, and notice of hearing; and SJCC 18.80.080, Permit procedures for provisional uses. The project is outside the shoreline jurisdiction so there are no shoreline permit issues.



SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

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PROVISIONAL USE PERMIT

DATE: March 12, 2018
FILE: PPROVO-17-0065
TYPE: Request for vacation rental
APPLICANT: Dan and Cheryl Stabbert
AGENT: Karla Lopez
2629 NW 54th Street #201
Seattle, WA 98107
TAX PARCEL: 161643003000
LOCATION: 2318 Obstruction Pass Road, Orcas Island
STAFF: Julie Thompson, Planner III
DECISION: Approved with conditions

FINDINGS OF FACT

1. The agent submitted a provisional use permit application and the required fees to DCD for a vacation rental on December 11, 2017.
2. The application was deemed complete on December 11, 2017.
3. There are no known permit or code enforcement actions on this parcel.
4. The proposal is to rent a 3-bedroom single-family home on a 6.82 acre parcel for periods less than thirty days. The applicants' have a second application in to rent the house on the neighboring property, which is a shoreline property with a four-bedroom house. Both houses share the driveway and have the same address.

Both houses were originally on this parcel, but a boundary line modification was recorded in 2017 which changed the boundary lines such that the other house is now on a separate parcel.

5. The property is located in the Rural Farm Forest land use designation. The area is developed with residential uses. The driveway access is on a private road. See the site plan in Exhibit 4.
6. The site plan depicts at least 3 parking spaces.
7. The sewage design application on file #98-114-06 shown in Exhibit 7 was approved on January 20, 1998 for 6 bedrooms.
8. The applicable Unified Development Code Sections are:

SJCC 18.30.040	Table 18.30.040 Allowable and Prohibited Uses in Rural, Resource, and Special Land Use Designations
SJCC 18.40.270	Vacation (short-term) rentals of residences or accessory dwelling units
SJCC 18.80.020	Project permit applications - Procedures
SJCC 18.80.030	Notice of project permit applications, public comment, and notice of hearing
SJCC 18.80.080	Permit procedures for provisional uses

9. SJCC Table 18.30.040 allows vacation rental by Provisional Use permit in the Rural Farm Forest land use designation.
10. SJCC 18.80.030(A)(2)(a) requires publication of a notice of application.

Notice of application was published in the Island's Sounder and the Journal of the San Juan Islands on December 27, 2017 (Exhibit 9).

11. SJCC 18.80.030(A)(2)(b) & (c) require notification of the application to all property owners within 300 feet of the subject property and posting of the notice of application on the subject property.

The agent signed and submitted a form to DCD verifying that the site was posted and the property owners within 300 feet of the property were notified of the application. She also submitted a list of those individuals to whom the notice of application was mailed (Exhibit 9). Notice was mailed and the site was posted on December 27, 2017, which meets the criteria for timeliness.

12. SJCC 18.40.270(A) states that no more than 3 guests per bedroom shall be allowed at any one time.

No more than 9 guests would be allowed in the home at any time, based on 3 bedrooms in the house.

13. SJCC 18.40.270(B) states that the use shall be operated in a way that will prevent unreasonable disturbances to area residents.

Noise and trespassing impacts could be as much as that associated with normal residential use of the site. Possible disturbances should be mitigated by conditions limiting the number of occupants to 9. The conditions should also require posting the rules of conduct specifically mentioning that trespassing is not allowed, property lines will be identified, and that the neighbors will be provided with a 24-hour local contact phone number. The contact is also required to keep a written log of complaints.

14. SJCC 18.40.270(C) states that at least one additional parking space shall be provided for the vacation rental use in addition to any other applicable parking requirements. The minimum parking required shall be one space per bedroom.

SJCC 18.60.120, Table 6.4, lists "Minimum Number of Required Parking Spaces for Different Land Uses". Minimum parking for residential use is only required in Activity Centers. This is not in an activity center. Based on SJCC 18.40.270(C), a total of 3 parking spaces are required and at least 3 spaces are shown on the application site plan, Exhibit 4. And explained in an email from the agent dated February 23, 2018, Exhibit 6. This meets the parking criteria.

15. SJCC 18.40.270(D) states that if food service is to be provided, the UDC requirements for a bed and breakfast residence shall be met.

No food service is proposed.

16. SJCC 18.40.270(E) states that no outdoor advertising signs are allowed.

No outdoor signs are proposed.

17. SJCC 18.40.270(F) states that the principal residence or accessory dwelling unit may be rented out on a short-term basis (vacation rental), but not both.

There is no accessory dwelling unit on this property.

18. SJCC 18.40.270(G) states that where there is both a principal residence and an accessory dwelling unit, the owner or a long-term lessee must reside on the premises, or one of the living units must remain un-rented.

There is no ADU on the property and this requirement is not applicable.

19. SJCC 18.40.270(H) states that in all activity center land use districts, rural residential, and conservancy land use districts, the vacation rental of a residence or accessory dwelling unit may be allowed by provisional ("Prov") permit only if the owner or lessee demonstrates that the residence or accessory dwelling unit in question was used for vacation rental on or before June 1, 1997. When internal land use district boundaries are adopted for an activity center, this provision will apply to VR and HR districts but not to the activity center in general.

The subject property is located in the Rural Farm Forest designation and this requirement is not applicable.

20. SJCC 18.40.270(I) states that vacation rental accommodations must meet all local and state regulations.

Sales tax: State law requires retail sales tax to be collected on a vacation rental.

Covenants: The County is not a party to private covenants. It is not able to enforce private covenants between property owners that may prohibit the use of a residence as a vacation rental. Issuance of a County land use permit for a vacation rental does not license the owner to violate private restrictions and covenants between property owners.

21. SJCC 18.40.270(J) states that owners of vacation rentals must file with the administrator a 24-hour contact phone number.

This requirement must be a condition of approval.

22. SJCC 18.40.270(K) states that the owner or lessee of the vacation rental shall provide notice to the tenants regarding rules of conduct and their responsibility not to trespass on private property or to create disturbances. If there is an easement that provides access to the shoreline, this shall be

indicated on a map or the easement shall be marked; if there is no access, this shall be indicated together with a warning not to trespass.

Rules of conduct shall be submitted to the Department of Community Development after approval of the application and prior to rental of the house. This is a condition of approval.

23. SJCC 18.40.270(L) states that detached accessory dwelling units established under SJCC 18.40.240 cannot be separately leased or rented for less than 30 days.

This requirement is not applicable because there is no accessory dwelling unit.

24. We received comments from several neighbors on this application. These comments are for both applications. PPROVO-17-0066 is in the Rural Farm Forest land use and shoreline designation, so the shoreline comments only apply to that application.

- On January 7, 2018, John and Paula Tiscornia submitted a letter stating that they own seven lots that meet the applicant's property on three sides. (Exhibit 10) They have owned for about thirty years. They bought the property knowing it was not in a commercial zone, and would not have purchased it if it had been commercial.

They are not opposed to vacation rentals if they are in commercially zoned land. There are already numerous vacation rental properties in the vicinity. One at the end of the road advertises for twelve to fourteen people. That property is next to the property this application is for, which means if both properties were rented at the same time, there would be a resort without supervision.

They are concerned about traffic from guests and their friends, cleaning crews and garbage collection. Cars have parked on the side of the road making it difficult to drive by. What would happen if an emergency vehicle needed to get by. There have been several weddings and other large events with as many as fifty guests. Dogs run through their property after deer and other wild life, unleashed. There seems to be no monitoring of behavior or number of guests. Vacation guests have trespassed onto their property—the yard, dock, and beach.

They object to the rental of the Stabbert's property.

- John Tiscornia submitted additional comments on January 16, 2018, Exhibit 11, stating that had actual and recent experience with short term vacation rentals at a nearby property. It has resulted in a significant increase in traffic including vacation renters, their guests, cleaning crews, and garbage collection on our one lane, deteriorating, and dead end road. He has also experienced people and unleashed dogs going through our property and on our beach without permission. It appears to him that no one seems to be monitoring the behavior of their guests.

The Stabberts' have two applications in; one is for a five bedroom house and the other is for a three bedroom house. That could add up to twenty-four people at one time. When adding to that the other vacation rental with the potential for fourteen people, you could have thirty-eight people at one time. He thinks the implications for increased fire danger,

septic overuse, car traffic, disrespect of property, and potential violations of the Shorelines Act.

- On January 9, 2018, Julia Evans submitted comments noting that this use of their neighbors' properties will directly and adversely affect the enjoyment and safety of her and her home, Exhibit 12. She claims that their bedroom is directly visible from the joint use dock they share with the Stabberts', and states that the joint use agreement specifically restricts the dock's use to owners and their friends, and then only with the other owners permission. Additionally, access to the rental property is on a dirt road, partly shared only by her, and past the end of the county road.

She points out that this part of Obstruction Pass Road is not intended for the amount of traffic that several vacation rentals will bring. There has been a considerable increase in the number and speed of cars because of a different vacation rental. Also, the Stabberts' have added outdoor lighting which has had a negative impact on the enjoyment of their property. With vacation renters at the house, she suspects it will be on much more of the time.

- On January 16, 2018, Roy and Susan Beaton submitted comments, Exhibit 13. They are opposed to the use of this property as a vacation rental. Their end of Obstruction Pass Road is extremely narrow, and there are limited areas for cars to pass. Since there are no sidewalks in that area, the road is shared by vehicles, bicycles, and walkers (some with strollers and/or dogs).

In addition, short term renters have felt free to trespass along the water's edge on privately owned beaches. Each new rental increases the number of people they don't know on their beach. There is also the problem of beach fires in the evening, with some much larger than they think is allowed. They have even found some unattended fires late at night.

There doesn't seem to be any monitoring of these short term rentals. One time they found eight people staying in a one-bedroom rental designed for two people. Late night, boisterous parties are also occurring, which is not conducive to the quiet enjoyment of their property.

- On January 17, 2018 we received comments from Kirk and Jill Callison, Exhibit 14. There is a vacation rental next door to them. They had no idea the impact from a vacation rental would cause until the neighbor started renting her house. It's a lot like having a family reunion next door every weekend. Because of the issues they and others in the area are already experiencing from vacation renters, they are quite distraught at the prospect of having another large home(s) being rented directly behind them.

Their objections are not meant to reflect any hard feelings toward their neighbors, rather to the negative impacts of having these large rentals in their neighborhood. When a large residence such as the Stabberts home becomes a vacation rental property it is transformed from a family home to an even venue much like a commercial hotel capable of accommodating large groups of non-resident visitors who, for the most part, do not care about anything other than coming for the vacation that they have paid dearly for and deserve. Renters have used their beach and dock, parked in their driveway, asked to use their phone, and had large unauthorized bonfires.

They feel that by issuing these vacation rental permit, the County is basically allowing the commercial/hospitality use of these homes in a single family residence zone. They don't think the County has the resources to monitor the use and activity of these rentals nor to enforce the rules. Their use and enjoyment of our single family residence is severely and negatively impacted by vacation rentals and they oppose the issuance of any further permits.

- Tom Evans submitted his first comments on January 9, 2018, Exhibit 15, and continued the conversation until February 4, 2018. He and his wife reside adjacent to the two proposed vacation rentals. He is opposed to the application. His concerns include noise, traffic, and light pollution. He also is opposed to allowing renters any use of the joint use dock he shares with the Stabberts'. He claims it is a violation of the Joint Use Agreement.

He indicated that Obstruction Pass Road is a one-lane road with very few pull outs on the roadway leading to the Stabbert properties. Renters will be confronted with a three way, largely unidentified triple-crossroads where Obstruction Pass Road, Point of View Lane, and the Stabbert driveway come together. There is no visual clue at this intersection as to what goes where.

The geographic location of these properties means that all light, glare and sound resonates and blasts out from the vortex into the wider open spaces of Box Bay, where there are a number of residences on the shore of the Bay. Sounds can be amplified by this such that it is not uncommon for normal conversation to be heard at a considerable distance out. Light and glare is also boosted out and at all the shoreline properties along the rock walls forming the bay.

There are very individual, unique, and special impacts the rentals would have on the Evans' specifically, which raises significant legal issues which follow.

The Stabbert-Evans properties are jointly bound by a shoreline substantial development permit issued in 2007, which incorporates into it the terms, limitations and conditions of a Joint Use Agreement. Both place strict limitations not only on the dock, access way, and land landing built as allowed by that permit, but also the strict, guaranteed quiet use and enjoyment provisions of the shoreline management act affecting upland use touching in whole or in part the 300 foot jurisdiction of the SMA. And it is quite clear from reading these two official documents that "vacation rental" is in direct violation of the limitations of the joint use agreement and the SMA.

Mr. Evans refers to several sections of the Joint Use Agreement that he says prohibit rental use of the property. He quotes a portion of Section 12:

"The owners of each parcel may allow their invitees to use the dock..."

This is followed by language referring to "invitees" as "guests" only, and even if a guest, they may only have access for seven days at the longest. That same section states the entire purpose of the Joint Use Agreement is to insure the "privacy and quiet enjoyment" of the owners. Section 18 denies any "commercial" use.

Perhaps his biggest argument is that vacation rentals are not exempt from the requirements of a shoreline substantial development permit. There are three sources for determining exemption, the Shoreline Management Act of 1971 at Chapter 90.58 RCW; Shoreline management permit and enforcement procedures in Chapter 173-27 WAC; and Chapter 18.50 SJCC. According to Mr. Evans, all of these legal sources lead to the conclusion that vacation rentals are not exempt from shoreline substantial development permit requirements.

He also argues that allowing the simultaneously rental of two side by side houses as vacation rentals is not allowed per SJCC 18.40.270(G):

“Where there are both a principal residence and an accessory dwelling unit, the owner or long-term lessee must reside on the premises, or one of the living units must remain unrented.”

(The rest of Mr. Evans’ comments are in the attached emails. They contain further discussion of why a shoreline substantial development permit should be required; why only one house should be allowed to get a vacation rental permit; numerous exhibits supporting his conclusion; photographs of the area; and applicable laws and regulations.)

- On January 22, 2018, the County received a response from Dan and Cheryl Stabbert, owners of the property subject to this application, Exhibit 16. They explain that the joint use agreement for the dock was developed for the ownership and use of the small dock on the SE corner of their property and to allow the Evans a pathway easement to a small parcel of land to store their marine gear including crab pots. Its primary focus is on the use, maintenance, and expense with a special focus on limiting noxious smells and unsightly storage. Also, the only prohibited use of the dock is commercial use which the Washington State Supreme Court has ruled does not apply to temporary rentals. “In Wilkinson v. Chiwawa Communities Association, the Washington Supreme Court held in 2014 that an owner’s receipt of money from a vacationing guest for the use of the owner’s home does not change the use from residential to commercial.”

They also state that the joint use agreement says that their property (referred to as Jacobsen in the joint use agreement) retains all rights of use and development. The agreement in no way gives the Evans’ a say over how the Stabberts utilize their property in any way other than the joint use of the dock and its associated care.

The rules for vacation rentals in SJCC 18.40.270 clearly define the standards which they are prepared to enforce including local and nearby administration. The property, nearly nine miles from Eastsound, does not lend itself to a party crowd but to individuals who appreciate the isolation and beauty of this unique property.

Other objections that have been raised include:

- a. One-lane deteriorating road:
 - i. There are two separate entrances to this property with the Obstruction Pass entrance through an electronic gate and the second placed almost 700 feet away on the north end along the pond.

- ii. There have been no complaints about Obstruction Pass Road being inadequate for its given use.
 - iii. This road has sufficient size for the large service trucks from both propane and waste services taking care of all of our homes along this road without ever a complaint.
 - iv. With both homes occupied the total occupancy is eight bedrooms with an average of two persons per room. Although it is implied that you can have three persons per room, these homes are not the quality to be occupied by three persons per room (unless one of them happens to be an infant). Their average guest complement has never been more than two cars as guests often bypass the ferry and come by the small water taxi. There is also a county dock a three to four minute walk away which is ideal for either the water taxi or a renter's personal boat. And the property dock and offshore buoys are adequate for small commuter boats up to 30 feet.
 - b. Guests infringing on other property owners beach areas:
 - i. It is not only difficult but almost impossible to access other property's beach areas.
 - ii. The homes experiencing the trespass are on the east side of Obstruction Pass Road and they share a common beach. This property is uniquely isolated.
 - c. Guest disrespecting people's property and a cultural change:
 - i. The referenced property, 33 Meany Way, is generally not occupied. Its entrance lies about 50 feet from the Stabbert Obstruction Pass Road entrance. They have never noticed a problem, but that house is located on a nearly continuous beach that runs east along Obstruction Pass connecting property to property.
 - ii. The Stabberts houses are designed to be lived in full time. If they choose to rent it out for short periods of time rather than use it themselves, the net increase is zero.
 - iii. The high end rental agencies do background checks on the guests who may also have been rated by other venues that they have rented in the past.
 - d. Exterior lighting is bothersome:
 - i. There is a very low level and tasteful landscape lighting set on the west rock wall that includes three low wattage bulbs shining onto three large madronas on the hillside, spaced about 75 feet apart from one another. A fourth light of low wattage highlights a 17 foot hand-carved totem pole that looks over the bay. The lights automatically turn on at dusk and automatically turn off between eleven and twelve PM. No matter how many people stay at the house, the lights will never be any brighter or be on any longer.
 - e. Unattended beach fires:
 - i. Their property is not set up geographically to be conducive to that. They have a concrete fire pit in front of their house that is unobservable from the Obstruction Pass houses. There is even an outdoor fire pit on their patio. When the "no burn" rule is in effect, the fire pits are not used.
- Beginning on January 25, 2018, there was a series of emails between Tom Evans, the author of the above series of messages, and Chad Yunge, with the Department of Ecology's Shorelands Assessment and Management Program, Exhibit 17. The County was copied on most of the communications, but I believe we might not have received the email that

started their string. However, it seems likely Mr. Evans was asking for Mr. Yunge's opinion on how the County was handling the vacation rental in the shoreline issue.

On January 30, 2018, Mr. Yunge responded to Mr. Evans that he had an opportunity that morning to review the San Juan County SMP related to the use of existing single-family residences as vacation rentals. He said that Ecology agrees with the County's determination that no shoreline substantial development permit is required. He concluded this based on the fact that no new development is being undertaken. The SMA defines "development" as a use consisting of the construction or exterior alteration of structures, dredging, drilling, dumping, filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level (RCW 90.58.030(3)(a)). While any use of the shoreline must be consistent with a local SMP, a permit or exemption is not required unless it involves development as defined above.

- On February 4, 2018, Mr. Evans send a request to the County to include two proposed conditions of approval to the Stabbert vacation rental permits, Exhibit 18. One of the conditions has to do with roadway access to the rentals (1) and the other has to do with preventing renters from accessing and using the privately owned dock, trail access to the Evans property, and that portion of the Evans owned platform and landing (2).

"1. Access to the Stabbert rentals from Obstruction Pass Road shall be limited to the Stabbert asphalt improved roadway running from the intersection of Obstruction Pass Road and Point of View Lane directly to the Stabbert properties and proposed vacation rentals. Stabbert shall take measures to insure renters looking to find the vacation rentals do not travel along Obstruction Pass Road beyond the intersection identified above. There shall be in a required rental packet directions to the renters clearly showing that the roadway past the intersection is private property. Stabbert shall also post, on Stabbert Property abutting the intersection a large, 2.5 foot long 1 foot wide, weatherproof sign, professionally constructed, easy to read, from a vehicle and showing renters the proper access roadway into the rentals. Evans may post, on private roadway in which Evans has an ownership right, appropriate signs including 'Private Property No Trespassing'."

"2. Stabbert and/or Stabbert's agent shall expressly advise any potential and actual renter that these properties are private and to access them is trespassing. Any photo depicting the property or any writing of any sort whatsoever issued for purposes of obtaining renters shall contain a written disclosure in not less than 18 point type stating: "Dock, landing, and trail way are private property and renters may not use them. Using these properties is trespassing and may be prosecuted as such." This language shall be used anytime the rentals are represented as available, advertised, or listed including any and all internet postings, rental/real estate listing and photograph, listing through any VRBO agency, rental agency, real estate firm or other rental agency. It shall be Stabberts obligation to insure compliance with the conditions in this section. Any violation, intentional or otherwise, shall be considered a code and/or trespass violation with appropriate fines, law enforcement assistance

and further protective measures, if necessary, as determined by any enforcement officer or other SJC agent or entity. Further, Stabbert shall, at his expense, install a professionally constructed and installed, weatherproof gated entry to the dock, which shall provide access only to Stabbert/Evans or their authorized invitees as identified in the joint use agreement. This gated entry shall be installed and approved by Evans before any rental is made. Entry shall be by shared key or coded lock. The gate, locking device, and installation shall be by third party professional, not be Stabbert personally or Stabbert employee or agent. The gated entry shall be locked anytime a renter is on the property and Stabbert shall be responsible for making sure the gate is locked when renters are anticipated or are on the property. Finally, Evans may install, professionally constructed and placed, 'PRIVATE PROPERTY—NO TRESPASSING' signs on the dock, platform, and trail, as reasonably necessary to insure compliance."

- On February 6, 2018, the Stabberts responded to Mr. Evans proposed conditions. They are opposed to posting any signs on their own property about use of their own road. They will in writing recommend that this road off Point of View Lane be the primary access road in any correspondence and instructions to potential users of the property. They are not willing to relinquish their right to use their own road and formal access, but agree that the Point of View Lane access is much more convenient and is the road of choice at almost all times other than formal events.

Regarding the dock, The Stabberts believe the joint use agreement clearly spell out what is and what is not prohibited. They believe the use by tenants, invitees, and others using the property are clearly allowed under the agreement. What is not allowed is commercial use, which is the argument Mr. Evans applies and which is wrong. The Washington Supreme Court ruled that vacation rental use is not commercial use. They think that Mr. Evans attempt to limit use of the dock is an attempt to dampen the demand for this property as it would not have quite the appeal otherwise.

The Stabberts would like to utilize the dispute provision for arbitration under the joint use agreement to clearly define both the Evans and Stabberts rights over the dock use, platform location, and any other items that might need some housekeeping between the parties. The Stabberts would abide by the outcome of the arbitration and if that prohibited the dock use in any way, they would abide by it.

The Stabberts propose the following language be added to the vacation rental permit approval:

- i. Stabbert shall abide by and communicate the rules outlined in the Joint Use Agreement as regards the use of the dock.
- ii. Stabbert shall place a sign at the foot of the Evans 4 foot easement path of "no trespassing" and shall clearly define this prohibition in any correspondence to property users.

The Stabberts feel their proposed additions to the permit offer the Evans and adjoining property owners adequate protection for the issues they have raised while protecting their property rights as owners.

25. SJCC 18.80.020 Project permit applications - Procedures.

- A. Nonbinding Preapplication Conferences. Preapplication conferences are optional, but strongly encouraged, and will be granted on a time-available basis by the director.
- B. Determination of Proper Type of Project Permit.
- C. Project Permit Application—Forms. Applications for project permits shall be submitted to the permit center on forms approved by the director. An application must (1) consist of all materials required by the applicable development regulations; (2) be accompanied by plans and appropriate narrative and descriptive information sufficiently detailed to define clearly the proposed project and demonstrate compliance with applicable provisions of this code; and, except for project permit applications for temporary uses, (3) shall include the following:
 - 1. A completed project permit application form;

A complete application was submitted to DCD on December 11, 2017.

- 2. If the applicant is not the owner of the subject property, a notarized statement by the owner(s) that (a) the application has been submitted with the consent of all owners of the subject property, and (b) identification of the owner's authorized agent or representative;

The owners of the property signed the application.

- 3. A legal description of the site and any other property description required by the applicable development regulations;

The legal description was included in the application in Exhibit 8.

- 4. The applicable fee;

The application fees were paid on December 11, 2017.

- 5. Evidence of available and adequate water supply as required by SJCC Title 8 and the Comprehensive Plan; see also SJCC 18.60.020;

Existing residences that were legally established are presumed by Health and Community Services to have an adequate water supply. This also applies to applications for vacation rentals in such residences.

- 6. Evidence of sewer availability or septic approval or suitability as required by SJCC Title 8;

The home is served by on-site sewage disposal system permit number 98-114-06. The approved capacity is for 6 bedrooms. The vacation rental permit is for a three bedroom house.

- 7. A plot plan to scale no smaller than one inch equals 40 feet for a plot larger than one acre, and no smaller than one inch equals 20 feet for a plot one acre or smaller;

The submitted site plan is adequate for the proposal because the development is existing.

- 8. Graphic depiction of the following:

- a. Compass direction and graphic scale; *Included*
 - b. Corner grades and, if required by the director, existing contours of topography at five-foot contour intervals; *This was not shown and has been waived.*
 - c. Proposed developments or use areas; *This was included on the site plan.*
 - d. Existing structures and significant features on the subject property and on adjacent properties; *This was included on the site plan.*
 - e. Property lines, adjoining streets, and immediately adjoining properties and their ownerships; *Property lines, adjoining street, and immediately adjoining properties are shown on the site plan.*
 - f. Location and dimensions of existing and proposed improvements on public rights-of-way, such as roads, sidewalks, and curbs; *Few roads in this county are equipped with sidewalks or curbs and none are shown on the site plan.*
 - g. Existing and proposed grades and volume and deposition of excavated material; *NA, because no earthwork is required.*
 - h. Natural drainage direction and storm drainage facilities and improvements; *No new development is proposed so this information is not necessary.*
 - i. Locations of all existing and proposed utility connections; *No new development is proposed so this information is not necessary.*
 - j. Parking spaces and driveways; *These are depicted on the site plan.*
 - k. Proposed landscaping; *Landscaping is not required for single family residential use.*
 - l. Wetlands and other environmentally sensitive areas; and
There is no new development to trigger critical area review. Although the whole county is a critical aquifer recharge area, there are no performance standards for single family development.
 - m. All easements (recorded or unrecorded) must be shown. If recorded, the recording number must be shown. *Easements are not shown on the site plan as there is no new development proposed.*
9. The applicant shall provide a list showing the names and addresses of the owners of property within 300 feet of the boundaries of the property subject to the project permit application. For purposes of this chapter, the owners of property within 300 feet of the boundaries of the subject property are those whose names are shown on the tax assessment rolls on the date the project permit application is submitted to the permit center.
- This list is provided in Exhibit 9.*
10. Critical Areas (CAs). Because this is existing development, no critical area review is triggered. *The entire County is an aquifer recharge area but those regulations do not apply to residential uses.*
11. Frequently Flooded Areas. *No frequently flooded areas are located on this parcel.*
12. Additional Application Information for Divisions of Land and Boundary Line Modifications.
13. Additional Application Information for Binding Site Plans.
14. Additional Application Information for Planned Unit Development.
15. Additional Application Information for Rural Residential Cluster Development.
Items 12 through 15 do not apply to this proposal.

16. Additional Information. The director may require additional information necessary for review and evaluation for demonstration of project consistency with this code;

No additional information was requested.

17. Director's Waiver. The director may waive specific submittal requirements determined to be unnecessary for review of a project permit application required by this code;

No request was made for waiver of specific requirements; however site plan requirements were waived as noted above because there is no new development proposed.

18. Temporary Use Permit Applications. All project permit applications for a temporary use shall be submitted to the director in writing and contain sufficient information for the director to make a decision (see SJCC 18.80.060). The director shall determine what information is necessary for review of such applications.

This is not a temporary use permit application.

26. SJCC 18.80.020(c)(5)&(6) require evidence of adequate water and septic service for the proposed use.

The proposal is in an existing residence built in 1955. Water is from the Doe Bay community system. A certificate of water availability was obtained, 98-172-C. The on-site septic permit #98-114-06 is for a six-bedroom house.

27. SJCC 18.80.080(A). Purpose and Applicability. Provisional uses must comply with the development standards in Chapter 18.60 SJCC and the performance standards of Chapter 18.40 SJCC. Provisional uses must obtain a project permit.

This application conforms to the referenced standards.

28. SJCC 18.80.080(B). Notice. Notice for provisional uses must comply with the procedures set forth in SJCC 18.80.030(A). Public comment on the notice of application for a provisional use project permit must comply with SJCC 18.80.030(B).

The notification requirements were complied with as shown on the attached Instructions for Mailing the Legal Notice and Posting the Sign (Exhibit 9).

23. SJCC 18.80.080(C). Decision-making Authority. The administrator has authority to approve or deny provisional use permit applications according to the applicable provisions of this code. The administrator also has authority to impose conditions of approval on a provisional use permit.

29. SJCC 18.80.080(D). Criteria for Approval.

1. The provisional use permit application shall only be approved by the administrator if the use has been reviewed for consistency with the applicable sections of this code (e.g., Chapter 18.40 SJCC, Performance Standards, Chapter 18.50 SJCC, Shoreline Master Program, and Chapter 18.60 SJCC, Development Standards) and found to meet the requirements set forth by this code; and

The use has been shown above to be consistent with the performance standards for vacation rentals in SJCC 18.40.270.

2. Any provisional use application (not including short subdivisions) involving property located within the jurisdiction of the state Shoreline Management Act but not requiring a shoreline permit must conform to the policies in Element 3 of the Comprehensive Plan and the applicable regulations in Chapter 18.50 SJCC (the Shoreline Master Program).

The home is not located within shoreline jurisdiction.

25. SJCC 18.80.080(E). Term. Unless a shorter time period is specified in the provisional use permit conditions, development authorized through a provisional use permit shall be completed within five years from the date of provisional use permit approval or such permit shall become null and void.

This standard is not applicable because the property is already developed.

EXHIBITS

1. Application cover sheet
2. Application materials
3. Directions to the property
4. Site plan
5. Floor plan
6. Email explaining parking from agent dated February 23, 2018
7. Sewage design application
8. Legal description
9. Posting and notification verification, including legal ad
10. Comments from John and Paula Tiscornia dated January 7, 2018
11. Comments from John Tiscornia dated January 16, 2018
12. Comments from Julia Evans dated January 9, 2018
13. Comments from Roy and Susan Beaton dated January 16, 2018
14. Comments from Kirk and Jill Callison dated January 17, 2018
15. Comments from Tom Evans beginning January 9, 2018
16. Response from Dan and Cheryl Stabbert dated January 22, 2018
17. Email communication between Tom Evans and Chad Yunge beginning January 25, 2018
18. Proposed conditions of approval from Tom Evans dated February 4, 2018
19. Response from Dan and Cheryl Stabbert dated February 6, 2018
20. Permit receipt

CONCLUSIONS

This application meets SJCC 18.80.080(D), criteria for approval of a Provisional Use permit:

1. The provisional use permit application shall only be approved by the administrator if the use has been reviewed for consistency with the applicable sections of this code (e.g. Chapter 18.40 SJCC, Performance Standards, Chapter 18.50 SJCC, Shoreline Master Program, and Chapter 18.60 SJCC, Development Standards) and found to meet the requirements set forth by this code; and

2. Any provisional use application (not including short subdivisions) involving property located within the jurisdiction of the state Shoreline Management Act but not requiring a shoreline permit must conform to the policies in Element 3 of the Comprehensive Plan and the applicable regulations in Chapter 18.50 SJCC (the Shoreline Master Program).

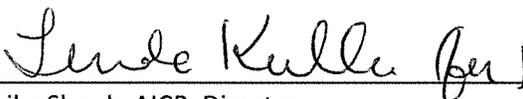
DECISION AND PERMIT CONDITIONS

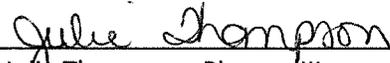
The application is approved subject to the following conditions:

- 1) This permit allows a 3-bedroom vacation rental on TPN 161643003, 2318 Obstruction Pass Road, Orcas Island. The approval is for the site plan including 3 parking spaces as depicted on Exhibit 4, the attached approved site plan and as conditioned herein.
- 2) No more than 9 guests shall be accommodated at any one time when the home is rented.
- 3) Renters access to the property shall be via Point of View Lane.
- 4) There shall be no parking on adjacent roads.
- 5) Where there is both a principal residence and an accessory dwelling unit, the owner or a long-term lessee must reside on the premises, or one of the living units must remain un-rented.
- 6) Prior to operation, the applicant shall call the SJC Fire Marshall to have the driveway inspected for emergency vehicle access and shall submit evidence to the Department of Community Development that the driveway was approved by the Fire Marshall.
- 7) The vacation residence shall be operated in a way that will prevent unreasonable disturbances to area residents.
- 8) An up-to-date property management plan shall be kept on file with the administrator. The property management plan shall include the following:
 - a. Rules of conduct approved by the County;
 - b. State of Washington Unified Business Identifier number, and the names and addresses of the property owner and agents authorized to act on the property owner's behalf;
 - c. A designated property representative who lives on the island where the vacation rental is located who can respond to complaints and emergencies, along with a valid telephone number where the representative can be reached twenty-four (24) hours per day.
- 9) The rules of conduct and a map clearly depicting the property boundaries of the vacation rental shall be prominently displayed in the rental. The map shall indicate if there is an easement that provides access to the shoreline. If so, the boundaries of the easement shall be clearly defined; if there is no access, this shall be indicated together with a warning not to trespass.
- 10) Adherence to all San Juan County and local fire and noise regulations shall be required.

- 11) All advertisements and marketing materials shall include the San Juan County permit number for the vacation rental. The rental shall not be advertised or marketed in conjunction with the vacation rental on the adjacent property.
- 12) No food service is to be provided.
- 13) No outdoor advertising signs are allowed.
- 14) Vacation accommodations must meet all local and state regulations, including those pertaining to business licenses and taxes.
- 15) No use shall be made of equipment or material that produces unreasonable vibration, noise, dust, smoke, odor, or electrical interference to the detriment of adjoining property.
- 16) Issuance of a permit for a vacation rental does not license the owner to violate private covenants and restrictions.
- 17) All correspondence related to this permit must reference the permit number, PPROVO-17-0065.
- 18) If the conditions of approval are not complied with, the resulting impacts may change a typical residential area to one with frequent incidents of trespass, noise, and traffic from strangers who have no investment in maintaining civil relations with neighbors. For this reason, it is emphasized that failure to comply with conditions of approval is grounds for revocation of this permit.

DATED this 12 day of March, 2018.


Erika Shook, AICP, Director

Permit prepared by: 
Julie Thompson, Planner III

APPEALS

Any party of record to this decision may submit an appeal to the Department of Community Development located at 935 Rhone Street, Friday Harbor within twenty-one (21) days of the date of the decision. Appeals must be in writing, be accompanied by the appeal fee, and contain the following:

- The appellant's name, address, and phone number;
- The appellant's statement describing standing to appeal;
- Identification of the application which is the subject of the appeal, including date of the decision being appealed; appellant's statement of grounds for appeal and the facts upon which the appeal is based;
- The relief sought, including the specific nature and extent; and
- A statement that the appellant has read the appeal and believes the contents to be true, signed by the appellant.



SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

135 Rhone Street, PO Box 947, Friday Harbor, WA 98250
(360) 378-2354 | (360) 378-2116
dcd@sanjuanco.com | www.sanjuanco.com

EXHIBIT 1

Land Use Vacation Rental Permit Application

PROPERTY INFORMATION		Land Use/Shoreline	
Tax Parcel Number:	161643003000	Designation:	11
Island:	Orcas Island	Water Body:	Neighborhood 22012
Subdivision:	N/A	Lot Number:	3643
Property Size:	6.8205	Application Type:	Vacation Rental
Existing and Proposed Use:	3 Bedroom 2 bath guest house		
Directions to Property:	4.3 Miles Moran State Park - See Attached		

S.J.C. DEPARTMENT OF

DEC 11 2017

OWNER AND AGENT INFORMATION:			
Name of Owners:		Name of Agent:	
Dan & Cheryl Stabbert		Karla Lopez	
Address		Address	
13019 NE 61st Place		2629 NW 54th ST # 201	
City, State, Zip		City, State, Zip	
Kirkland, WA 98107		Seattle, WA 98107	
Phone Number		Phone Number	
206-383-1325		206-383-1253	
Email		E-mail	
dan@stabbertmaritime.com		karlal@Stabbertmaritime.com	

COMMUNITY DEVELOPMENT

NOTE: A timely appeal of Shoreline Exemptions will stay the effective date of the granting of the exemption until the appeal has been resolved at the County level. (SJCC 18.80.140A(7))

PERMIT CERTIFICATION (Must be signed by all property owners of record or a notarized agent signature provided.)		
I have examined this application and attachments and know the same to be true and correct, and certify that this application is being made with the full knowledge and consent of all owners of the affected property. (Signed by property owner or agent. For agent signature, notarized authorization must be attached.)		
	Dan Stabbert	12-7-17
Signature	Printed Name	Date
	Cheryl Stabbert	12-7-17
Signature	Printed Name	Date
Signature	Printed Name	Date
For DCD Use Only		
Amt. Paid: \$1,000	Complete Application: <input type="checkbox"/> YES <input type="checkbox"/> NO	Date Received: 12/11/17
		Receipt Number: 0000 15029

FOR STAFF USE ONLY			
Date Received:	Amount Paid:	Receipt #:	
SEPA Exempt Code Citation:	Inspection Required:	<input type="checkbox"/> YES <input type="checkbox"/> NO	
<input type="checkbox"/> Approved <input type="checkbox"/> Denied	By:	Date:	

NOTE: The Application Submittal Checklist for Land Use Review is a separate form that must be completed and attached to all applications. This checklist, along with other forms that might be needed, and current fees, may be found at: <http://sanjuanco.com/permitcenter/applicationforms.aspx>

PPROVO-17-0065
STABBERT, DAN & CHERYL