



SAN JUAN COUNTY  
DEPARTMENT OF COMMUNITY DEVELOPMENT

135 Rhone Street, PO Box 947, Friday Harbor, WA 98250  
(360) 378-2354 | (360) 378-2116 | FAX (360) 378-3922  
cdp@sanjuanco.com | www.sanjuanco.com

---

---

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

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

<b>FILE NUMBER:</b>	PCUP000-18-0005	<b>S.J.C. DEPARTMENT OF</b>
<b>OWNER/APPLICANT:</b>	NICOLE COCHERL BY AGENT: SHANE WESTERGARD P.O. Box 66 DEER HARBOR, WASHINGTON 98243	<b>AUG 22 2018</b> <b>COMMUNITY DEVELOPMENT</b>
<b>APPLICATION:</b>	CONDITIONAL USE PERMIT – TO AUTHORIZE VACATION RENTAL OF A 1-BEDROOM ACCESSORY DWELLING UNIT CONSTRUCTED BEFORE NEWER CODES PROHIBITED USE AS VACATION RENTAL	
<b>SITE ADDRESS:</b>	430 ORCAS HILL ROAD, ORCAS ISLAND	
<b>TAX PARCEL NUMBER:</b>	<del>2622002</del> 262222002	
<b>STAFF RECOMMENDATION:</b>	APPROVAL WITH CONDITIONS	
<b>SUMMARY OF DECISION:</b>	<i>APPROVED – SUBJECT TO CONDITIONS</i>	
<b>DATE OF DECISION:</b>	AUGUST 21, 2018	

## **I. INTRODUCTION**

Nicole Cocherl is the owner of a property located on Orcas Island, about ½ mile northeast of the Orcas Ferry Terminal. The Cocherl property is designated “Orcas Village Residential” and has a 3-bedroom and a one-bedroom accessory dwelling unit (“ADU”) on the site. Through her agent, Shane Westergard, Ms. Cocherl applied for a Conditional Use Permit to authorize use of the ADU as a vacation rental. The ADU was built before newer county codes were adopted that would prohibit the proposed use. The pending application was filed before the newer county codes addressing vacation rentals took effect, so this file has been reviewed and conditioned using language found in the “old” SJCC 18.40.270, instead of SJCC 18.40.275. The property is served with an on-site septic system, with water service from Orcas Landing Inc. (*Staff Report, Project Data; Testimony of Ms. Thompson*).

## **II. CONTENTS OF RECORD**

### **TESTIMONY AT PUBLIC HEARING:**

Julie Thompson, the County’s planner assigned to review the pending application, provided testimony under oath, summarizing her review, proposed conditions, and recommendation of approval.

No one submitted written comments or spoke at the hearing in opposition to the application.

### **EXHIBITS:**

- A. Staff Report, prepared by Project Planner, Julie Thompson, dated July 11, 2018;
  - 1. Application materials;
  - 2. Septic permit;
  - 3. Legal ad;
  - 4. Posting and notification materials; and
  - 5. Permit application receipt, dated Sept. 22, 2017.

## **III. APPLICABLE LAW**

### ***Jurisdiction.***

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

***Conditional Use Permit required for vacation rentals.***

Properties identified under the Orcas Village Residential land use designation are required to obtain a Conditional Use Permit for a vacation rental. See “Allowable and Prohibited Uses” Table for Orcas Village Residential designation, at SJCC 18.30.430-1.

***Standards for vacation rentals; Criteria for CUP approval.***

San Juan County’s Unified Development Code includes specific standards that apply to all vacation (short-term, less than 30 days) rentals of single family residential units and accessory dwelling units or portions thereof. Because this application vested before newer code provisions took effect, the standards used to review and condition this application are found in the “old” SJCC 18.40.270. The Criteria for approval of a Conditional Use Permit are found at SJCC 18.80.100(D), and include ten items that must be considered by the Examiner.

***Burden and Nature of Proof.***

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

**IV. ISSUE PRESENTED**

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

**Short Answer:** Yes, subject to conditions.

**V. FINDINGS OF FACT**

1. Upon consideration of all the evidence, exhibits, testimony, codes, policies, regulations, and other information contained in the file, the undersigned Examiner issues the following findings, conclusions and Decision approving the Conditional Use Permit as set forth below.
2. Any statements in previous or following sections of this document that are deemed findings are hereby adopted as such, including without limitation the Introduction provided above.
3. The applicant submitted a Vacation Rental Permit application to the San Juan County Community Development & Planning Department on or about March 21, 2018. (*Staff Report at page 5; and Exhibit 1*).

4. As noted above, this application and the permit issued herein is applicable to a one-bedroom ADU on the site, which is located on Orcas Island, about ½ mile northeast of the Orcas Ferry Terminal. *Staff Report; Ex. 1, application materials; Testimony of Ms. Thompson; online maps.*

5. In the Staff Report, Ms. Thompson represented that notices and publication required for the application were provided in accord with applicable county requirements. County staff determined that the application is exempt from SEPA review. *Staff Report, at page 5; Exhibits 3 and 4, Legal ad and posting/notice verification materials.*

6. There were no written comments from neighbors or other members of the public, and no one appeared at the public hearing to offer comments regarding the pending application. *Testimony of Ms. Thompson; Staff Report.*

7. The Staff Report explains that the property is served with an on-site septic system, with water service from Orcas Landing Inc. (*Staff Report, Project Data*).

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

***Facts establishing compliance with Vacation Rental Standards.***

9. SJCC 18.40.270 lists a number of standards that apply to all Vacation Rentals (short-term/less than 30 days) of single-family residential homes and accessory dwelling units, or portions thereof. The standards and their application and relevance to the pending CUP is discussed below. The following findings are written in *italics*, immediately after re-statement of the applicable standard. Each of the *italicized findings* are supported by previous Findings, and the Staff Report, on pages 2 - 4:

A. No more than three guests per bedroom shall be accommodated at any one time.

*This permit applies to the one-bedroom ADU on the property. Accordingly, no more than three people may be accommodated at any one time as overnight guests in the one-bedroom ADU covered by this permit. Conditions of Approval are included to require compliance with this standard.*

B. The vacation rental of a principal residence or accessory dwelling unit shall be operated in a way that will prevent unreasonable disturbances to area residents.

*Noise and trespassing impacts could be as much as that associated with normal residential use of the site. Possible disturbances should be adequately mitigated by conditions limiting the number of occupants to 3, requiring the posting of rules of conduct specifically mentioning that trespassing is not allowed, the identification of property lines, and providing neighbors with a 24-hour contact phone number as well as requiring the contact to keep a written log of complaints.*

- C. At least one additional off-street parking space shall be provided for the vacation-rental use in addition to the parking required for the residence or accessory dwelling unit.  
*Sufficient parking is available on the site for both the main residence and the ADU. (Staff Report, page 2).*
- D. If any food service is to be provided the requirements for a bed and breakfast residence must be met.  
*No food service is proposed.*
- E. No outdoor advertising signs are allowed.  
*No outdoor advertising signs are proposed.*
- F. The owner or a long-term lessee may either rent the principal residence or the accessory dwelling unit on a short-term basis (vacation rental), but not both;  
*The CUP approved in this Decision shall only allow for rental of the 1-bedroom ADU on the site.*
- G. Where there are 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.  
*The CUP approved in this Decision shall only allow for rental of the 1-bedroom ADU. A condition of approval is included to require compliance with this standard.*
- H. In all activity center land use districts, rural residential, and conservancy land use districts, the transient rental of a residence or guest house may be allowed by provisional (“Prov”) permit only if the owner or lessee demonstrates that the residence or guest house 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.  
*According to the Staff Report, this property is in the Orcas Village Residential land use designation. It has not been used as a vacation rental on or before June 1, 1997, so a conditional use permit is the appropriate authorization.*
- I. Vacation rental accommodations must meet all local and state regulations, including those pertaining to business licenses and taxes.  
*The applicant will be required to obtain a business license and pay all taxes applicable to the vacation rental operation. NOTE: The County is not a party to private covenants, and is not able to enforce private covenants or agreements between private parties. The CUP granted in this Decision does not and should not be construed to authorize the owner to violate any applicable utility service provider’s requirements, or private restrictions or covenants between property owners.*
- J. Owners of vacation rentals must file with the Administrator a 24-hour contact phone number.  
*A 24-hour contact phone number will be included in the rules of conduct when the unit is rented.*
- 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.

*This standard is specifically addressed in the conditions of approval. The proposed rules of conduct for the property must be submitted to the Department of Community Development for review and approval prior to rental of the residence covered by this permit.*

- L. Detached accessory dwelling units established under SJCC 18.40.240 cannot be separately leased or rented for less than 30 days.

*Assessor's records confirm that the ADU at issue in this application was built in 1968, before this code took effect. (Testimony of Ms. Thompson; Staff Report, at page 4).*

- M. SJCC 18.80.030(A)(2)(a) requires publication of a notice of application.

*A notice of application for Conditional use permit for vacation rental was published on April 25, 2018. See Ex. 3.*

- N. 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 applicant's agent represented that he contacted neighbors and posted the property to comply with this provision. See Exhibit 4.*

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

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

*As conditioned, the requested CUP will be consistent with the SJCC and 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;

*According to the Staff Report, the proposed use would be in an existing dwelling unit on the site, so it would not change the appearance of the structure. Staff indicates that with conditions, the property would continue to function in a manner similar to the existing use of the 1-bedroom ADU structure on the site. Therefore, the residential character of the site would be maintained. Additionally, the proposal meets or can be conditioned to meet the applicable standards of SJCC Chapters 18.40 and 18.60.*

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

*Vacation rental applications often generate complaints regarding trespassing, noise and parking, but staff has determined that such concerns can be dealt with through conditions of approval. The CUP is conditioned to enable neighbors to report problems and possible violations of any conditions of approval to the owner, or their required contact.*

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;

*The use would continue to appear and function in a manner similar to the existing single family residential use.*

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

*The proposed use is in an existing development site that currently appears to be served by adequate facilities, and/or to receive adequate services; provided, the permit issued by this decision does not and should not be construed to authorize the owner to violate any applicable utility service provider's requirements.*

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;

*The existing single-family residence and ADU on the site and is the subject of this application has not interfered with allowable development or use of neighboring properties. As long as occupants comply with applicable codes, no new interference with allowable development or use of neighboring properties should occur.*

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

*Staff has determined that vehicular traffic associated with a vacation rental is not often described as hazardous.*

8. The proposal complies with the performance standards set forth in Chapter 18.40 SJCC; *As conditioned, the proposal will be in compliance with SJCC 18.40.270.*

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);

*There is no airport or airfield adjacent to this property.*

10. The proposal conforms to the development standards in Chapter 18.60 SJCC.  
*As an existing developed site, the proposal is consistent with SJCC 18.60.*

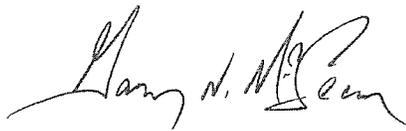
## **VI. CONCLUSIONS of LAW**

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

## **VII. DECISION**

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

ISSUED this 21<sup>st</sup> Day of August, 2018



Gary N. McLean  
Hearing Examiner

**CONDITIONS OF APPROVAL**

***Cocherl Vacation Rental CUP  
430 Orcas Hill Road, Orcas Island  
File No. PCUP000-18-0005***

1. The 1-bedroom accessory dwelling unit described in the application materials may be operated as a vacation rental, except as modified by these conditions.
2. The 1-bedroom residence on the site may be rented as a single unit on a short-term basis for periods less than 30 days. A maximum of three people per bedroom (three guests total) shall occupy the residence at any one time.
3. Prior to operation, the owner or agent shall request a driveway inspection from the San Juan County Fire Marshal or his designee and submit proof that the inspection was approved to the DCD Director, which proof shall reference the permit number.
4. The vacation residence shall be operated in a way that will prevent unreasonable disturbances to area residents. To this end, the applicant shall:
  - A. Provide copies of this decision to property owners within 300 feet of the subject property, along with a 24-hour local contact phone number, so that complaints can be dealt with in a timely manner. A log of complaints shall be kept by the contact.
  - B. Prominently mark the boundaries of the subject property so that it is clearly evident to guests where those boundaries are.
  - C. Provide notice to the tenants regarding rules of conduct and their responsibility not to trespass on private property or create disturbances. If there is an easement that provides access to the shoreline, this shall be indicated on a map or the easement shall be marked; if there is no access, this shall be indicated together with the warning not to trespass.
  - D. Provide copies to the Department of Community Development of the rules of conduct and the 24-hour local contact phone number.
5. No food service is to be provided. No outdoor advertising signs are allowed. Adequate parking is required which is one space per bedroom, for three spaces.
6. The rental must meet all local and state regulations, including without limitation those pertaining to business licenses, taxes, and utility service provider requirements.
7. No use of the property shall be made that produces unreasonable vibration, noise, dust, smoke, odor or electrical interference to the detriment of adjoining properties.

8. Written rules of conduct shall be submitted to the Department of Community Development for its review and approval before rentals commence. A copy of rules approved by DCD shall be sent to all property owners within 300 feet of the property boundaries.
9. Since the County is not a party to private covenants or utility service provider requirements, it is not in a position to enforce private covenants or similar limitations that may prohibit use of a residence as a vacation rental. However, the CUP granted in this Decision does not and should not be construed to authorize the owner to violate any applicable utility service provider's requirements, or private restrictions or covenants between property owners.
10. If the conditions of approval are not satisfied, the resulting impacts may change a typical residential area to one with frequent incidents of trespass, noise, and traffic from strangers who have no investment in maintaining civil relations with neighbors. For this reason, it is emphasized that failure to comply with conditions of approval is grounds for revocation of this permit.
11. Upon determination by the Director of the Department of Community Development that any condition listed above has been violated, following issuance of a Notice of Violation, the Director may, in addition to his other code enforcement remedies, revoke the conditional use permit.
12. Consistent with SJCC 18.40.275, Exhibit 11, the following performance standards are required:
  - Outside of urban growth areas, one vacation rental is allowed on a property, either in the principal residence or an accessory dwelling. Detached accessory dwelling units permitted on or after June 29, 2007 are not allowed to be vacation rentals.
  - The vacation rental shall be operated according to rules of conduct approved by the County that prevent the following disturbances to area residents:
    - Trespassing;
    - Noise that violates Chapter 9.06 (Noise Ordinance);
    - Off-site parking issues;
    - Vehicle speeds of higher than the posted speed limit, or twenty (20) miles per hour (mph) on private paved roads and fifteen (15) mph on private non-paved roads; and
  - Outdoor burning that violates the requirements adopted pursuant to SJCC 15.04.070(F)(4)(c), including violations of a burn ban.
  - Solid waste must be removed from the vacation rental to an approved solid waste facility every two weeks. Solid waste shall be stored in completely enclosed and secured solid waste receptacles or stored completely indoors.
  - Guests shall be made aware of the importance of water conservation. Best practices to conserve water shall be included in the rules of conduct.
  - Meal service provided by the permit hold or their agents in not allowed.
  - All vacation rental permit holders are required to display the address of the residence so that it is clearly visible from the street or access road.
  - Vacation rental accommodations must meet all applicable local and state regulations, including those pertaining to business licenses and taxes such as Washington State sales, lodging and business and occupation taxes.

- All owners of property used for vacation rental shall comply with the following operational requirements:
- Maintain an up-to-date property management plan on file with the administrator and property owners within 300 feet of the building within which the vacation rental is located. The property management plan must include the following:
  - Rules of conduct approved by the County;
  - Unified business identifier number, and the names and addresses of the property owner and agents authorized to act on the property owner's behalf;
  - A designated local property representative who lives on the island where the vacation rental is located and will respond to complaints and emergencies; and
  - A valid telephone number where the local property representative can be reached 24 hours per day;
- Prominently display in the rental the rules of conduct and a map clearly depicting the property boundaries of the vacation 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;
- Include the San Juan County permit number for the vacation rental in all advertisements and marketing materials such as brochures and websites;
- Annually certify compliance with the conditions of permit approval and with the fire and life safety requirements of the International Fire Code (IFC) as identified by the department on forms specified by the administrator. The annual certification shall be prominently posted on site; and
- Certify compliance with the conditions of permit approval within 90 days after the closing date of the sale of the property. Written certification must be submitted to the department on forms specified by the administrator. *(A copy of this certification is attached as Exhibit 12. It is also available as a fillable form on the Department of Community Development website under Land Use Permit Applications; Land Use and Shoreline Applications; Vacation Rental Certification of Compliance.)*
- The owners of vacation rental permits vested or approved prior to the effective date of the ordinance codified in this section are required to comply with all subsections of this section except subsections (B), (F) and (J) of this section by December 31, 2018, in addition to the conditions of their permit.
- A vacation rental shall not operate or be advertised without a vacation rental permit. Evidence of operation includes advertising, online calendars showing availability, guest testimony, online reviews, rental agreements or receipts.

**EFFECTIVE DATE, APPEALS, VALUATION NOTICES**

Hearing Examiner decisions become effective when mailed or such later date in accordance with the laws and ordinance requirements governing the matter under consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be subject to review and approval by the Washington Department of Ecology, pursuant to RCW 90.58.140, WAC 173-27-130 and/or SJCC 18.80.110.

Decisions of the Hearing Examiner are final and not subject to administrative appeal to the San Juan County Council, unless the County council has adopted, by ordinance, written procedures for the discretionary review of such decisions. See Section 4.50 of the San Juan County Home Rule Charter and SJCC 2.22.100.

Depending on the subject matter, this decision may be appealable to the San Juan County Superior Court or to the Washington State Shorelines Hearings Board. State law provides short deadlines and strict procedures for appeals and failure to timely comply with filing and service requirements may result in dismissal of any appeal. See RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to promptly review appeal deadlines and procedural requirements and confer with advisors of their choosing, possibly including a private attorney.

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