

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

In the Matter of the Appeals filed by )  
)  
**BOX BAY SHELLFISH FARMS, LLC, AND** )  
**THOMAS E. EVANS,** )  
)  
Appellants, )  
)  
of Provisional Use Permits allowing )  
for vacation rental of two existing )  
single-family houses for periods of )  
less than thirty days, under DCD File )  
Nos. PPROVO-17-0065 and -0066, )  
issued by the )  
)  
**SAN JUAN COUNTY DEPARTMENT OF** )  
**COMMUNITY DEVELOPMENT,** )  
)  
Respondent, )  
)  
**DAN AND CHERYL STABBERT,** )  
)  
Applicants/Respondents )

**Appeal Nos: PAPL00-18-0001 &  
PAPL00-18-0002**

**DECISION DENYING APPEALS**

**SJC DEPARTMENT OF  
FEB 20 2019  
COMMUNITY DEVELOPMENT**

**I. SUMMARY OF DECISION.**

The appellants failed to meet their burden of proof to demonstrate that either of the challenged permits were issued in error, and none of their bases for appeal were supported by even a preponderance of evidence in the record. Therefore, the above-referenced appeals must be denied, and the challenged permits are each affirmed.

II. RECORD.

1  
2 The complete record on review includes all testimony received and exhibits entered  
3 into evidence as part of the record during the hearing process, as well as pre-hearing  
4 briefing submitted by the parties. Copies of all materials in the record and digital audio  
5 recordings of the open-record hearing conducted for this appeal are maintained by the  
6 County, and may be requested or reviewed by contacting the Community Development  
7 Department during regular business hours. The Record includes, but is not limited to,  
8 materials reviewed by Department staff to issue the challenged permits, with written  
9 comments from surrounding residents; various pre-hearing pleadings filed by the parties;  
10 post-hearing correspondence from the appellant, Mr. Evans, transmitting a letter dated Dec.  
11 4, 2018, from the Department of Natural Resources revising a substantive position taken by  
12 DNR staff that was raised in this appeal; and a post-hearing order from the Examiner  
13 explaining the delay in issuing this decision, among other items.

9 *Hearing Process and Testimony:*

10 Below is a list of individuals who presented testimony under oath at the duly noticed  
11 open-record hearing for this appeal, held on August 15, 2018.

- 12 1. Thomas Evans, the appellant, appeared on his own behalf as an individual,  
13 and as the General Manager and attorney for his Box Bay Shellfish, LLC, the other  
14 named appellant in this matter;
- 15 2. Julie Thompson, Planner III, for the San Juan County Department of  
16 Community Development, served as the primary staff member charged with  
17 reviewing application materials and preparing the challenged permit decisions and  
18 Staff Reports included in the record; and
- 19 3. Dan Stabbert, the applicant and owner of the two properties addressed in the  
20 two permits challenged in this appeal.

19 *Exhibits.*

20  
21 Two Staff Reports, dated August 1, 2018, and exhibits thereto generated in  
22 connection with these appeals are included as part of the Record, and are sometimes  
23 repeated as attachments or exhibits elsewhere in the Record. The two challenged permits  
24 and associated attachments are also part of the Record, both dated March 12, 2018. As  
25 requested by the Examiner, the parties agreed to a complete index of exhibits that comprise  
26 the full hearing record. A copy of the Index and copies of all exhibits are maintained by the  
Department as part of the hearing record.

1 Upon consideration of all the evidence, testimony, codes, policies, regulations, and  
2 other information contained in the file, the undersigned Examiner issues the following  
3 findings, conclusions and Decision.

### 4 III. FINDINGS OF FACT.

5 1. Any statements of fact or findings set forth in previous or subsequent portions of  
6 this Decision that are deemed to be findings of fact are hereby adopted and incorporated  
7 herein as such.

8 2. In this matter, the appellants, Box Bay Shellfish Farms, LLC, and Thomas Evans  
9 (owner of the Box Bay LLC), appeal two Provisional Use Permits issued by San Juan  
10 County to Dan and Cheryl Stabbert, allowing the Stabberts to use two existing single family  
11 structures on their two abutting properties on Orcas Island as vacation rental venues for  
12 periods of less than thirty days.

13 3. The designated appeal numbers, permit numbers, addresses, and parcel numbers for  
14 each are as follows:

15 Appeal No. PAPL00-18-0001 of Provisional Use Permit No. PPROVO-17-0065, at  
16 2318 Obstruction Pass Road, Orcas Island, Tax Parcel No. 161643003; and

17 Appeal No. PAPL00-18-0002 of Provisional Use Permit No. PPROVO-17-0066, at  
18 2318 Obstruction Pass Road, Orcas Island, Tax Parcel No. 161650403.

#### 19 *Jurisdiction.*

20 4. Under SJCC 18.80.140(B)(3), the hearing examiner has authority to conduct open-  
21 record appeal hearings regarding challenges to provisional use permits and to affirm,  
22 reverse, modify, or remand the decision that is on appeal. The Examiner's authority is  
23 further established by SJCC 18.10.030(D)(1), which explains that appeals of Administrative  
24 Determinations<sup>1</sup> shall be decided by the Hearing Examiner. SJCC 18.10.030(D)(1)  
25 provides that appeals from any code interpretation, administrative determination or decision  
26 of the administrator shall be decided by the hearing examiner in accordance with the

---

<sup>1</sup> SJCC 18.10.030(B) provides that "administrative determinations" and decisions by the administrator include determinations regarding the administration of the county's Unified Development Code (Chapter 18SJCC), and decisions approving or denying development or project permit applications, or imposing conditions on such permit applications. SJCC 18.20.010(A) explains that the term "Administrator," "planning director," and "director" each mean the San Juan County community development and planning department director or a designated representative.

1 provisions set forth in SJCC 18.80.140.

2 ***Burden of Proof.***

3 5. The party appealing a permit decision shall have the burden of presenting the  
4 evidence necessary to prove to the hearing examiner that the administrator's decision was  
5 clearly erroneous. SJCC 18.10.030(D)(4). And, SJCC 2.22.210(H) provides in relevant  
6 part: "For an administrative decision to be reversed or modified, the appellant has the  
7 burden by a preponderance of the evidence to show that the legal decision criteria are  
8 erroneously applied by the decision maker."

9 6. Throughout this appeal, the appellant, Mr. Evans, devoted considerable time and  
10 argument questioning whether he would be held to a higher standard of proof, i.e. "clearly  
11 erroneous", or the lower standard, a preponderance of evidence. To eliminate uncertainty,  
12 for this matter, the Examiner applied the lower standard, under which the appellants can  
13 prevail if their appeal is supported by a preponderance of evidence. As explained below,  
14 they failed, so the appeal must be denied.

15 ***Procedural background.***

16 7. Neither of the respondents, the County or the Stabberts, dispute that the appellants  
17 have standing to bring this appeal.

18 8. The two appeals were heard together in a consolidated appeal hearing process, as  
19 required by the county code, which reads as follows: "All appeals of development permit  
20 or project permit decisions shall be considered together in a consolidated appeal hearing."  
21 See SJCC 18.80.140(G)(1), captioned "Consolidated Appeal Hearings".

22 9. There is no dispute that the public hearing for this matter was noticed in accord with  
23 applicable law.

24 10. As noted above, there were only 3 witnesses called at the appeal hearing. All  
25 witness testimony was received under oath, and all witnesses were subject to cross-  
26 examination and appropriate follow-up questioning. The parties were given the opportunity  
to make closing arguments.

11. Though Mr. Evans listed a number of people as potential witnesses that he might  
call at the hearing, he relied almost exclusively on his own testimony instead of that from  
neighbors or other local residents, who might have less bias or personal interest than that  
demonstrated by Mr. Evans throughout the process.

12. Mr. Evans called Ms. Thompson and the applicant, Mr. Stabbert, and sought to

1 obtain testimony or evidence from them to support his appeal. He failed, as they rebutted  
2 most all of his relevant allegations, leaving him well below the preponderance of evidence  
3 in the record to support his appeal.

3 ***Issues raised in this appeal.***

4 13. As clarified in writing, the pending appeal raises 9 alleged errors discussed as items  
5 “a through i”, and some general legal arguments – that the challenged permits are not  
6 categorically exempt from Shoreline Management permit requirements or SEPA, and that  
7 the Department of Natural Resources prohibits, or should prohibit, the proposed vacation  
8 rental use because/if it includes possible guest access to a dock shared by the Stabberts and  
9 the Evans. During his hearing testimony, Mr. Evans also argued that the County failed to  
10 study or adequately consider cumulative impacts associated with the two challenged  
11 permits. His procedural objections were addressed during the hearing, primarily his  
12 arguments about what burden of proof should apply. None of the specific issues raised in  
13 Mr. Evans’ appeal materials, clarification documents, list of objections, or during his  
14 hearing testimony were supported by sufficient factual or legal support to rescind either  
15 challenged permit.

14 14. Appellants specific “Grounds for Appeal” challenging the two permits were  
15 clarified in pre-hearing pleadings, and are discussed in the Staff Reports for both appeals.  
16 Each of the specific issues are rephrased below, with short answers as findings:

14 a. Whether the County failed to include enough private property warning signs  
15 or direction signs to make sure vacation rental guests do not trespass, especially on  
16 Box Bay oyster growing areas?

16 *Short Answer:* No. Condition of Approval No. 9 requires rules of conduct and a  
17 map indicating if there are easements providing access to the shoreline, and if so,  
18 the boundaries shall be clearly defined, and if no access is permitted, then it shall be  
19 indicated with a warning not to trespass. Warning signs or direction signs such as  
20 those requested by the appellants are not required by applicable code provisions.  
21 Mr. Evans’ conclusory and speculative testimony failed to establish that the  
22 challenged permits are inadequately conditioned because they do not require “no  
23 trespass” or similar directional signage as requested by the appellants.

21 As with any Provisional Use Permit, if conditions of approval are not respected,  
22 resulting in incidents of trespass, noise and other problems addressed by such  
23 conditions and rules of conduct for vacation rental guests, such failure to comply  
24 with conditions of approval is grounds for revocation of such permit. (*See*  
25 *Condition of Approval No. 18 for both Permits*). Further, upon issuing a Notice of  
26 Violation to the permit holder and complying with other applicable procedures,  
SJCC 18.100.210(A) empowers the Director to temporarily suspend or permanently

1 revoke any permit approved by the director for failure to comply with any condition  
2 of approval or applicable provisions of the County code related to the permit.

3 Finally, SJCC 18.40.275(C), included in the County's updated performance  
4 standards for vacation rentals, applies to both of the challenged permits, even  
5 though they were approved before the updated standards took effect,<sup>2</sup> and provides  
6 as follows:

7 "The vacation rental shall be operated according to rules of conduct  
8 approved by the County that prevent the following disturbances to area  
9 residents:

- 10 1. Trespassing;
- 11 2. Noise that violates Chapter 9.06 SJCC (Noise Ordinance);
- 12 3. Off-site parking issues;
- 13 4. Vehicle speeds of higher than the posted speed limit, or 20 miles per hour  
14 (mph) on private paved roads and 15 mph on private nonpaved roads; and
- 15 5. Outdoor burning that violates the requirements adopted pursuant to  
16 SJCC 15.04.070(F)(4)(c), including violations of a burn ban."

17 b. Whether the joint use dock can be used by vacation rental guests?

18 *Short Answer:* The County is not a party to private agreements, like that raised by  
19 appellants. Nothing in the permit authorizes either party to ignore or violate terms  
20 of any private agreement between the parties. Enforcement of private agreements is  
21 a private, civil matter. Again, if trespass onto Mr. Evans' private property should  
22 occur, he should make a complaint to the County and/or the designated property  
23 manager about such activity. The property owners should be fully aware that  
24 trespass and noise problems caused by vacation rental guests can be grounds for  
25 revocation of any provisional use permit. See SJCC 18.100.210(A) and SJCC  
26 18.40.275(C).

c. Whether the vacation rental guests will be allowed to "push Evans/Box Bay  
off the dock?"

*Short Answer:* Again, the County is not a party to private agreements, like that  
raised by appellants. Nothing in the permit authorizes either party to ignore or  
violate terms of any private agreement between the parties. Enforcement of private  
agreements is a private, civil matter. Mr. Evans personal interest and obvious bias

<sup>2</sup> See 18.40.275(L), which reads: "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.

1 demonstrated during the hearing undercut his speculative allegations that vacation  
2 rental guests would not respect his property or private access rights. Again, if  
3 trespass onto Mr. Evans' private property should occur, he should make a complaint  
4 to the County and/or the designated property manager about such activity. The  
property owners should be fully aware that trespass and noise problems caused by  
vacation rental guests can be grounds for revocation of any provisional use permit.  
See SJCC 18.100.210(A) and SJCC 18.40.275(C).

5 d. Whether comments attributed to the applicants about "high-end" rentals  
6 improperly played a part in the County's decision making for the challenged  
permits?

7 *Short Answer:* No. The two Staff Reports responding to each appeal note that the  
8 alleged comment "had no bearing" on the permit decisions, and that such remarks  
9 are not a performance standard to be considered for vacation rentals nor a permit  
10 procedure for provisional uses, citing SJCC 18.40.270 and 18.80.080. None of the  
11 testimony at the hearing established that the alleged remark played any role  
whatsoever in the County's decision to issue the two challenged permits.

12 e. Whether vacation rentals like the two challenged permits are categorically  
exempt from obtaining a Shoreline Management Permit?

13 *Short Answer:* Yes. As explained in the permit documents and Staff Reports  
14 addressing each appeal, the two permits authorize vacation rentals of existing  
15 single-family homes, and neither permit application proposed any sort of shoreline  
16 development activity (like construction or alteration of structures in a designated  
17 shoreline area) that would trigger the requirement to obtain a Shoreline Substantial  
18 Development Permit ("SSDP"). See SJCC 18.20.190, RCW 90.58.030, and WAC  
19 173-27-030. (NOTE: This appeal issue only applies to Permit No. "-0066",  
20 because a majority of the parcel addressed in such permit is located in the Rural  
21 Farm Forest shoreline designation, and none of the parcel addressed in Permit No.  
"-0065" is within the County's designated shoreline jurisdiction). Evidence in the  
22 record establishes that Mr. Evans was not successful in his attempts to have the  
23 Department of Ecology adopt a position different than County staff, which properly  
24 concluded that neither permit required a SSDP, because the applicants did not  
25 propose and the permits do not authorize activity that would trigger such  
26 requirement.

f. Whether the permit should be denied or modified because noise, glare from  
light at night, and late night partying by vacation rental guests will negatively  
impact the Evans' living area?

*Short Answer:* No, Mr. Evans' testimony and evidence was biased, self-serving,

1 conclusory, and speculative. His personal, negative feelings about seemingly all  
2 vacation rental guests overlooks the fact that the burden will remain on the permit  
3 holder, i.e. the Stabberts, to ensure that their guests fully comply with all permit  
4 conditions of approval, rules of conduct, and applicable county codes. If vacation  
5 rental guests trespass, cause noise, glare, or similar nuisances for neighboring  
6 property owners, the County can issue a Notice of Violation against the permit  
7 holder, which could result in revocation of the challenged provisional use permit(s).  
8 *(See SJCC 18.100.210(A), which empowers the Director to temporarily suspend or*  
9 *permanently revoke any permit approved by the director for failure to comply with*  
10 *any condition of approval or applicable provisions of the County code related to the*  
11 *permit; SJCC 18.40.275(C), which mandates that all vacation rentals shall be*  
12 *operated according to rules of conduct approved by the County that prevent*  
13 *disturbances to area residents, including trespassing, noise, parking problems,*  
14 *speeding, and outdoor burning; and Conditions of Approval Nos. 7, prohibiting*  
15 *unreasonable disturbances to area residents, 8(a) requiring Rules of Conduct for*  
16 *guests, 8(c), requiring a designated property representative who lives on the island*  
17 *and can respond to complaints and emergencies, with a valid phone number where*  
18 *they can be reached 24-hours a day, 10, mandating compliance with county noise*  
19 *regulations, 15, prohibiting unreasonable noise, dust, smoke, odor to the detriment*  
20 *of adjoining property, 16, notes that permit does not license owner to violate private*  
21 *covenants and restrictions, and 18, explaining that failure to comply with conditions*  
22 *of approval, including trespass and noise, is grounds for revocation of the permit.*

23 g. Whether the permits improperly ignore the Evans' alleged ownership or  
24 other rights to control portions of a platform or the shared dock?

25 *Short Answer:* No. Neither permit sanctions or licenses the Stabberts or any of  
26 their vacation rental guests to violate private covenants or agreements such as that  
referenced by Mr. Evans throughout the hearing process. The County is not a party  
to the private joint use dock agreement frequently referenced by Mr. Evans, and has  
no authority to regulate its use. Any disputes involving the joint use agreement are  
between the parties subject to such agreement, and are not at issue or relevant to this  
appeal. Appropriate Conditions have been imposed on both permits to prevent  
unreasonable disturbances to area residents and prevent trespassing, among other  
things. See Conditions of Approval Nos. 7, 9, 16, and 18.

h. Whether the challenged permits improperly treat the Evans' dock interests as  
public interests and somehow obligate the Evans to allow members of the public to  
use the joint use dock?

*Short Answer:* No. Condition of Approval No. 16 expressly provides that neither  
permit licenses any owner to violate private covenants and restrictions. The County  
is not a party to the private joint use dock agreement frequently referenced by Mr.

1 Evans, and has no authority to regulate its use. Any disputes involving the joint use  
2 agreement are between the parties subject to such agreement, and are not at issue or  
3 relevant to this appeal. The applicant/permit holder, Mr. Stabbert, testified under  
4 oath that he intends to comply with any decisions issued by any private arbitrator or  
5 mediator regarding the joint use agreement discussed during the hearing. Finally,  
6 appropriate Conditions have been imposed on both permits to prevent unreasonable  
7 disturbances to area residents and prevent trespassing, among other things. See  
8 Condition of Approval Nos. 7, 9, 16, and 18.

9 i. This issue was horribly convoluted and difficult to follow. In the end, it  
10 appears that Mr. Evans believes that vacation rentals should not be deemed  
11 "residential uses," and/or at the very least, vacation rentals should be deemed  
12 "commercial" in nature, subject to "standards similar to those for hospitality  
13 commercial establishments", citing the County's Comprehensive Plan, Section B,  
14 Element 2.2.A, and that the challenged permits were issued in error, because they  
15 did not apply the same standards as those used for "hospitality commercial  
16 establishments."

17 *Short Answer:* The Staff Reports responding to each appeal correctly observe that  
18 SJCC Table 18.30.040 expressly lists "vacation rentals" as a residential use. Only  
19 the County Council can approve or amend provisions of the County's Code. The  
20 appellants failed to demonstrate how this issue can or should serve as a basis to  
21 deny, modify or revoke either permit. Appellant's arguments omitted relevant  
22 language in the County's Comprehensive Plan, which mandates that vacation rentals  
23 such as those addressed in this appeal should be classified as a residential use for  
24 purposes of land use regulation. *See* Comprehensive Plan, Section B, Element  
25 2.2.A.12, which reads: "Vacation rental (short term, i.e. of less than thirty days)  
26 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 appellants failed to  
show how the performance standards applied to the two challenged vacation rental  
permits are not similar to those for hospitality commercial establishments. Instead,  
the plain language used in the County's code provisions detailing performance  
standards for vacation rentals shows substantial similarities to the standards for  
"hospitality commercial establishments," as both sets of standards impose limits on  
the numbers of guests, the length of time one can stay, parking requirements,  
sanitation/waste disposal requirements, provisions that mandate such uses shall be  
operated in a way that will prevent unreasonable disturbance to area residents, and  
requirements that state taxes must be paid, among other things. Compare SJCC  
18.40.270 (old code language detailing performance standards for vacation rentals,  
to which the Stabbert applications vested), SJCC 18.40.275 (new code language  
detailing performance standards for vacation rentals), SJCC 18.40.250 (performance  
standards for "Hospitality Commercial Establishments – Bed and Breakfast Inns",

1 and SJCC 18.40.260 (performance standards for “Hospitality Commercial  
2 Establishments – Bed and Breakfast Residences). In fact, it appears to the Examiner  
3 that the provisions now applicable to vacation rental permits are more detailed and  
4 protective of neighboring property owner’s concerns than those for “hospitality  
5 commercial establishments.”

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
15. In pre-hearing briefing materials, and arguments made at the appeal hearing, Mr. Evans adamantly asserted that the Washington Department of Natural Resources (DNR) regulations for private docks over “State Owned Aquatic Land” (SOAL) would prohibit vacation rental guests from using the Stabbert/Evans joint-use dock unless the Stabbert’s first obtained an authorization from DNR, which would be in the form of a lease, and that for joint-use docks, like the one discussed in this appeal, all owners of the dock must apply for the authorization from DNR. (See May 7, 2018 letter from DNR Land Manager, Gabe Harder, to the applicant’s herein, Dan and Cheryl Stabbert, included in the Record at pages marked 287-288). This issue was never one that would serve to deny or revoke the challenged permits, though it could have been the basis for a condition recognizing DNR regulations that might limit the use of private recreational docks.

16. In the end, the DNR-lease issue was fully eliminated as a basis to grant any relief in this appeal after Mr. Evans distributed a post-hearing letter issued on December 4, 2018, by the Department of Natural Resources, to County staff, the Examiner, and Mr. Eckert, as counsel for the Stabberts, in which DNR formally clarified their official position as follows: “current law does not prohibit short-term renters from using no-fee private recreational docks (emphasis added) where: 1) the upland property and its use are still considered residential, (2) the use of the dock by the renters is in conjunction with their renting of the upland residence, and (3) the renters are using the dock for a private recreational purpose. If any of these circumstances were not met, the use of the dock would likely exceed current statutory authorization.” DNR’s December 4<sup>th</sup> letter expressly supersedes their May 7<sup>th</sup> letter and June 15<sup>th</sup> email to the Stabberts.

17. Mr. Evans’ testimony expressing serious concern with his ability to make use of the shared dock, and protect his oyster operations in and around the dock, appear to be private issues, and repeating a previous finding, Condition of Approval No. 16 expressly provides that neither permit licenses any owner to violate private covenants and restrictions. The County is not a party to the private joint use dock agreement frequently referenced by Mr. Evans, and has no authority to regulate its use. Any disputes involving the joint use agreement are between the parties subject to such agreement, and are not at issue or relevant to this appeal. The applicant/permit holder, Mr. Stabbert, testified under oath that he intends to comply with any decisions issued by any private arbitrator or mediator regarding the joint use agreement discussed during the hearing. Finally, appropriate Conditions have been imposed on both permits to prevent unreasonable disturbances to area residents and prevent trespassing, among other things. See Condition of Approval Nos. 7, 9,

16, and 18.

18. Based on the Record, the Examiner finds that the appellants failed to present a preponderance of evidence to demonstrate that either challenged permit was issued in error.

19. To the contrary, Ms. Thompson's testimony and the written analyses and discussion provided in the text of each of the Provisional Use Permits establish that each permit was appropriately reviewed for compliance with applicable county requirements for each application, and that appropriate conditions of approval were included with each permit, to ensure compliance with county codes. Ms. Thompson testified the provisional use permits are SEPA exempt, citing WAC 197-11-800 as authority, and Mr. Evans failed to present facts or legal authority to rebut such determination. Ms. Thompson also confirmed that she considered comments received when she reviewed the two permit applications, which included local resident concerns that cumulative impacts of multiple vacation rentals in their area would cause serious problems. The Record includes the Callison letter referenced by Mr. Evans during his testimony and the Tiscornia letter, among others, that generally allege that vacation rental guests will have adverse impacts on their part of the island. As explained in the permits themselves, all permit holders are subject to seeing their permits revoked if conditions of approval are not followed and respected by guests. Speculative testimony from Mr. Evans about a parade of horrors that he foresees does not provide a sufficient basis to revoke either permit.

20. The permit holder, Mr. Stabbert, testified that he and his wife purchased their properties so that they could enjoy it with family and friends. He explained that he has a large family, 16 people including children and grandchildren, and that the conditions of the property being used as a vacation rental should not be any greater than his personal events held on his property, where he regularly has 12 to 15 people with family and friends, noting that he believes his guests have gotten along really well with all the neighbors. *Testimony of Mr. Stabbert.*

21. Mr. Stabbert's testimony and aerial photos in the record established that the Bea property is separated from the Stabbert's residential structures by physical features (rocks) on the land, making it difficult, and far less likely, that guests at the Stabbert property would easily find their way onto the Evans or Bea beach areas, as such scenario was speculated in several written comments and Mr. Evans' testimony. Violations by previous guests using the Bea property rental may serve as a basis for county staff to issue code violation orders to the permit holder involved in such situation, which could lead to revocation of such permit if violations merit such action. The record in this matter does not show how the Bea property rental experiences will be the same as the Stabberts. To the contrary, Mr. Stabbert testified that he expects all of his guests to comply with applicable rules.

22. Moving forward, Mr. Stabbert is fully advised and aware that any failure to ensure

1 that his guests do not comply with rules of conduct and county codes may result in  
2 enforcement action by the County, and possible revocation of either permit.

3 23. To the disappointment of some neighbors and residents living near the Stabbert's  
4 property, in the State of Washington, generally speaking, land use permits cannot be denied  
5 based solely on the opposition of adjacent landowners. The opposition expressed by Mr.  
6 Evans and in written comments appears more focused on the policy choices made by  
7 elected officials who adopt county codes. The Examiner and staff are legally bound to  
8 follow provisions of the San Juan County Code. As explained above, the appellants failed  
9 to show how either permit was issued in a manner contrary to applicable codes.

#### 10 IV. CONCLUSIONS OF LAW.

11 1. Based on testimony and evidence in the Record, including without limitation all  
12 findings set forth above, the Examiner concludes that the challenged Provisional Use  
13 Permits are both fully supported by substantial and credible evidence in the record,  
14 including without limitation exhibits, analyses, and discussion provided in the text of each  
15 permit decision. Neither decision was a mistake.

16 2. The appellants failed to satisfy their burden of proof to present a preponderance of  
17 evidence establishing that either permit was issued in error.

18 3. It is well established by Washington caselaw that the Hearing Examiner can only  
19 hear and decide appeals on matters and issues where ordinances or other appropriate  
20 authority grants the Hearing Examiner the authority to do so. RCW 35A.63.170; *Chausee*  
21 *v. Snohomish County Council*, 38 Wn. App. 630, 636, 689 P.2d 1084 (1984). And, a  
22 collateral attack on previous land use decisions, like including "vacation rentals" as a  
23 residential use, or approval of previous vacation rental permits, masked as a provisional use  
24 permit appeal, or otherwise, cannot stand. See lengthy discussion and summary of relevant  
25 caselaw in *Twin Bridge Marine Park, LLC v. Dep't of Ecology*, 162 Wn.2d 825, 175 P.3d  
26 1050 (2008)(summarizes the well established principle of Washington law that prohibits  
collateral attacks of prior government decisions to give closure and clarity to interested  
citizens where agencies and public had sufficient notice to resolve any dispute in court but  
did not do so); See, e.g., *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 4  
P.3d 123 (2000) (a challenge to a Chelan County decision concerning residential  
development permits under the Growth Management Act, chapter 36.70A RCW, must be  
brought under LUPA); *Skamania County v. Columbia River Gorge Comm'n*, 144 Wn.2d 30,  
26 P.3d 241 (2001) (construing a federal act, 16 U.S.C. § 544m(a), no collateral attack on a  
local final land use decision can be made when no timely appeal is filed); and *Chelan*  
*County v. Nykriem*, 146 Wn.2d 904, 931-33, 52 P.3<sup>rd</sup> 1 (2002)(holding that land use

1 decisions are final after 21 days and cannot be collaterally attacked).

2 4. In this matter, Appellant's arguments ignore long public processes, including ample  
3 public comment and notices inviting same, that led to adoption of Comprehensive Plan and  
4 development code regulations that Mr. Evans obviously disagrees with. As noted above,  
5 part of the written appeal omitted relevant language in the County's Comprehensive Plan,  
6 which mandates that vacation rentals such as those addressed in this appeal should be  
7 classified as a residential use for purposes of land use regulation. *See* Comprehensive Plan,  
8 Section B, Element 2.2.A.12, which reads: "Vacation rental (short term, i.e. of less than  
9 thirty days) of a principal, single-family residential unit or an ADU should be subject to  
10 standards similar to those for hospitality commercial establishments but should be classified  
11 as a residential use for purposes of land use regulation."

12 5. Among other deficiencies, the appellants failed to show how the performance  
13 standards applied to the two challenged vacation rental permits are not similar to those for  
14 hospitality commercial establishments. Instead, the plain language used in the County's  
15 code provisions detailing performance standards for vacation rentals shows substantial  
16 similarities to the standards for "hospitality commercial establishments," as both sets of  
17 standards impose limits on the numbers of guests, the length of time one can stay, parking  
18 requirements, sanitation/waste disposal requirements, provisions that mandate such uses  
19 shall be operated in a way that will prevent unreasonable disturbance to area residents, and  
20 requirements that state taxes must be paid, among other things. Compare SJCC 18.40.270  
21 (old code language detailing performance standards for vacation rentals, to which the  
22 Stabbert applications vested), SJCC 18.40.275 (new code language detailing performance  
23 standards for vacation rentals), SJCC 18.40.250 (performance standards for "Hospitality  
24 Commercial Establishments – Bed and Breakfast Inns", and SJCC 18.40.260 (performance  
25 standards for "Hospitality Commercial Establishments – Bed and Breakfast Residences). In  
26 fact, it appears to the Examiner that the provisions now applicable to vacation rental  
permits are more detailed and protective of neighboring property owner's concerns than  
those for "hospitality commercial establishments."

6. Land use decisions may not be based solely upon community  
displeasure. *Maranatha Mining v. Pierce County*, 59 Wn. App. 795, at 804 (Div. II,  
1990). In *Maranatha*, the court overturned denial of a permit, because the local agency  
disregarded the record before it, basing its decision instead "on community displeasure and  
not on reasons backed by policies and standards as the law requires." *Maranatha*, 59 Wn.  
App. at 805. The only opposing evidence to the two challenged permits was generalized  
complaints from Mr. Evans and some written comments that speculated how vacation rental  
guests would cause too much traffic on narrow access roads, would ignore property  
boundaries, would generate noise and other nuisances for neighbors, and other problems.  
The record shows that rules of conduct for all vacation rental guests, and conditions of  
approval applicable to guests and permit holders, are sufficient to ensure compliance with  
applicable county codes. If not, county staff will be well within their authority to issue

1 violation notices, and possibly revoke either challenged permit.

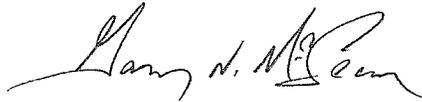
2 7. For the specific reasons articulated in the challenged Provisional Use Permits and all  
3 exhibits thereto, and for the additional reasons set forth herein, all as thoroughly supported  
4 by the record established in this appeal, the San Juan County Department of Community  
Development Provisional Use Permits PPROV0-17-0065 and PPROV0-17-0066 should be  
and are each hereby affirmed in their entirety.

5 8. Any legal conclusions or other statements made in previous or following sections of  
6 this document that are deemed conclusions of law are hereby adopted as such, and are  
7 incorporated herein by this reference

8  
9 **V. DECISION.**

10 Based on evidence included in the record for this appeal, the appellants failed to  
11 meet their burden of proof. Accordingly, the pending appeals are respectfully denied and  
the challenged Provisional Use Permits are affirmed.

12 ISSUED this 19<sup>th</sup> Day of February, 2019

13  
14 

15  
16 \_\_\_\_\_  
Gary N. McLean  
Hearing Examiner

17  
18 **Effective Date, Appeals, Valuation Notices**

19 Hearing Examiner decisions become effective when mailed or such later date in accordance with the laws and  
20 ordinance requirements governing the matter under consideration. SJCC 2.22.170. Before becoming effective,  
21 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.

22 Decisions of the Hearing Examiner are final and not subject to administrative appeal to the San Juan County  
23 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.

24 Depending on the subject matter, this decision may be appealable to the San Juan County Superior Court or to  
25 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

26 **DECISION DENYING AND AFFIRMING  
PROVISIONAL USE PERMITS**

1 appeal. See RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to promptly  
2 review appeal deadlines and procedural requirements and confer with advisors of their choosing, possibly  
3 including a private attorney.

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26 Affected property owners may request a change in valuation for property tax purposes, notwithstanding any  
program of revaluation.