

FINDINGS, CONCLUSIONS AND DECISION]

SUMMARY

Applicant: Homes for Islanders
c/o John Campbell
328 Caines Street
Friday Harbor, WA 98250

Appellants: Wendy Russell and David Lumsden
235 Rocky Bay Road
Friday Harbor, WA 98250

John Kulseth
P.O. Box 2242
Friday Harbor, WA 98250

File Nos: HE 48-05 (05CU019, 05BSP001, 05APL023)

Requests: Conditional Use Permit
Binding Site Plan

Appeal: Determination of Non-Significance (DNS)

Location: On a 4.85 acre site on the north side of Roche Harbor Road, west of Rocky Bay Road. The site is Tax Parcel 362922003, about six miles northwest of the Town of Friday Harbor, on San Juan Island.

Land Use Designation: Rural Farm Forest

Summary of Proposal: To build a rural residential cluster of eight homes as affordable housing, with associated parking, water supply, sewage disposal, and drainage facilities. The development will include commonly-owned open space. The project is called the Rocky Bay Self-Help Affordable Housing Development.

Public Hearing: After reviewing the report of Community Development and Planning, the Hearing Examiner convened the public hearing on December 9, 2005. An additional session was held on January 19, 2006, in order to complete the hearing. The Examiner visited the site and environs in the company of representatives of all parties on December 9, 2005.

Applicable Law: County Comprehensive Plan
SJCC 18.30.040 (Table 3.2) – Allowable uses in Rural Districts
SJCC 18.60.230 – Rural Residential Cluster Development
SJCC 18.70.090 – Binding Site Plans
SJCC 18.80.100(D) – Conditional Use Permit Criteria

Decision: The application is approved, subject to conditions.

PROCEDURE

The application was deemed complete on October 19, 2005. A Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) was issued on October 26, 2005. A timely appeal of the DNS was received on November 9, 2005.

The subject property is in a Rural Farm Forest (RFF) district. The application seeks permission to build a Rural Residential Cluster. Under the use table of SJCC 18.30.040 (Table 3.2), rural residential cluster development in an RFF district is permitted as discretionary use, subject to administrative review, unless the administrator requires a Conditional Use Permit. Such a permit has been required here. The Conditional Use Permit and Binding Site Plan applications and the DNS appeal have been consolidated for hearing under SJCC 18.80.020(B)(2) and 18.80.140(H).

On November 29, 2005, the appellants and other residents of the Rocky Bay neighborhood requested a continuance of the hearing scheduled for December 9, 2005, in order to have more time to consult experts and legal counsel. This continuance was resisted by the Applicant. The Staff Report was issued on December 2, 2005.

On December 9, 2005, the Examiner conducted a site tour, convened the hearing, and heard the motion for continuance. The Examiner determined to hear the applicant's presentation then and there and to continue the proceedings for the appellant's questions and presentation to January 19, 2006. The second session was held on that date and public testimony was also then taken.

At the request of the applicant, the appellants were required to submit their questions two weeks in advance of the continued hearing date. The appellants complied by submitting 305 questions. The applicants and the County then moved to exclude certain of these questions primarily on the grounds that they were irrelevant or had been answered in previous testimony. The Examiner's ruling on these motions as to the

various questions is reflected on Exhibits 11 through 16 (checked questions may be asked).

The appellants presented no expert witnesses. They relied on their own testimony and argument and on their cross examination of the applicant's witnesses.

FINDINGS OF FACT

1. The factual matters set forth in the foregoing **SUMMARY** and **PROCEDURE** sections are adopted by the Examiner as findings.

2. Homes for Islanders (applicant), a non-profit affordable housing organization, requests permission to build eight affordable housing single-family residences on an approximately 4.85 acre site. The applicant has applied for both a Conditional Use Permit and for Binding Site Plan approval.

3. The proposal seeks to take advantage of the Code provisions for Rural Residential Cluster Development. See SJCC 18.60.230.

4. The site is located on the north side of Roche Harbor Road about six miles northwest of the Town of Friday Harbor on San Juan Island. The Tax Parcel number is 362922003. The property is within Sec. 29, T36N, R3W, W.M. The land use designation is Rural Farm Forest.

5. At present the site is undeveloped. It is, in the main, densely forested. Clearing has occurred near the road around the existing driveway and along the OPALCO power easement that parallels the road.

6. To the east of the site, Rocky Bay Road leads off of Roche Harbor Road, proceeding to the north, traversing relatively level ground and then descending to properties that border Rocky Bay. A watercourse roughly parallels the road.

7. The project site is entirely on the uplands, some distance from the bay. The project has, nonetheless, been named the Rocky Bay Self-Help Affordable Housing Development.

8. Neighboring properties are owned by Dolsen to the west, Lumsden (Russell) to the north, Kulseth to the east, and McNulty to the south across the road.

9. The homes on the site will be built, under supervision, by the people who become their owners – very low and low income homebuilders. This is the self-help concept. Each owner will provide at least 65% of the labor on his/her home. All units will be built concurrently. No unit will be occupied until all units are complete. Long term affordability will be achieved by a resale restriction and easement to the County as described under SJCC 18.60.260.

10. The homes to be developed for the project will be sold as condominiums including a leased side yard for the private use of the residents of each home. Each owner shall have an undivided interest in all common areas. The residences will be one story in height (not exceeding 20 feet) and about 1,248 gross square feet in area. Six of the units will share a wall with another unit. They will all consist of 2 x 6 wood frame construction with composition shingle roofs.

11. The homes will be accessed by a driveway using the existing driveway entrance off Roche Harbor Road. Sixteen parking spaces will be provided in a community parking lot located close to the road. Landscaping will shield the parking from the road. The homes will be clustered just behind the parking area near the middle of the site. A small landscaped community yard will be centrally located within the housing cluster.

12. The plan is to convert no more than 10% of the property to impervious surface and to retain more than 70% of the area as undeveloped. A little less than 20% will be maintained in lawn and landscaping. Most of the site will be in common ownership, largely preserved in a permanent native growth protection area.

13. Water service will be a Group B Community system provided with water by a single well in the southeast portion of the site. There will be a transmission main from the well of approximately 90 feet in length and a 23,000 gallon concrete storage tank. The average day demand design is 200 gallons per day per connection with a maximum day demand of 350 gallons per day per connection. These values fit with accepted norms in the County for sizing residential water systems. The minimum well capacity required for the eight homes is 5.6 gallons per minute. The maximum day demand would be 2,800 gallons. The well is readily capable of yielding water at rates and in amounts sufficient to meet these demands. The well has been approved as to quantity and quality by the County Health Department.

14. A 100-foot sanitary control area around the well will be maintained free of development, except for the pump house and storage tank. The well is approximately 100 feet from the east property line. The design should eliminate any surface contamination of the well.

15. A 72-hour pump test of the project's well was performed and observations were made of the impacts of pumping on neighboring wells. Analysis by a hydrogeologist found the cone of influence of the project's well to be less than 700 feet. He concluded that use of the project's well will have no likely effect on the Lumsden/Russell well, the Kulseth well, or any other neighbor's well, save one. The only well where interference was experienced was the McNulty well.

16. McNulty has agreed to a mitigation program suggested by the hydrogeologist. McNulty will permit the pumping rate in his well to be adjusted from 10 gallons per minute to 1.5 gallons per minute with the ability to increase to 3.0 gallons per minute. If there is a need to adjust the McNulty well to 3.0 gallons per minute, the project

homeowners will employ other mitigation measures, such as installing timers on their pump so that the storage facility will only be replenished between midnight and 6:00 a.m. The homeowners will contract with a licensed satellite management service to monitor the operations of their well. In addition, each home owner will be limited to an average use of 150 gallons per day through a restriction in the CC&R's developed for the homeowner's association. The net result of the mutual accommodation between the applicant and McNulty is expected to provide a satisfactory water supply regime for both.

17. Based on available data, the water system designer is confident that the affordable-housing households will in fact use significantly less than the 150 gallon per day ceiling imposed upon them.

18. Water quality in the well is very good. Chloride levels are low. Some treatment may be needed to deal with slightly elevated levels of some metals, but there is nothing to suggest any health risk in using the well's water. Moreover, analysis of the well in light of aquifer characteristics indicates that the well's operation will not induce seawater migration into the aquifer. The pumping level of the well will be above sea level.

19. A conceptual drainage plan was prepared for the project by a professional engineer. The plan was designed to conform to the Department of Ecology's Stormwater Management Manual for Western Washington (2001). This was the edition of the manual mandated at the time the plan was developed.

20. The engineer noted that a low ridge on the site divides the surface flow in a northerly and northeasterly direction. This runoff then rejoins in the seasonal creek flowing north along Rocky Bay Road. The management concept is to use the so-called 65-10 rule through which the amount of impermeable surface is limited 10% of the property and 65% or more of the property is set aside as a native growth area. Using this rule, the basic idea is to handle stormwater with dispersion systems located within the native growth in each direction of flow.

21. A pipe or ditch system will be constructed to convey the site runoff to two 50-foot long dispersion trenches, sized to handle runoff for the entire site. From the trenches, the flow will fan out through the native growth area. There is at least a 100 foot down slope flow path at a slope of less than 15% before the water leaves the property. Full dispersion of the runoff is expected to provide effective treatment of the stormwater from the development. In addition, the dispersion technique will, in effect, provide flow control accommodating the minor increase in runoff from the developed portion of the site and preventing adverse effects to adjacent properties.

22. A recommendation was made for at least annual inspections of the dispersion trenches to insure that water distribution is occurring as designed and that no events have damaged the system and caused it to operate incorrectly.

23. A soils/wetland scientist evaluated the property for the presence of wetlands and identified two. The first is southeast of the driveway adjacent to Roche Harbor Road. It is extremely small, too small to be regulated under the UDC. The second is in the southeast corner of the property, beginning along the roadside ditch and then widen to include a thicket that extends off site. The total area appears to be about a quarter acre of which perhaps 0.17 lies on site. This wetland was rated as a Category III, requiring a 50-foot undisturbed vegetative buffer.

24. No impacts or disturbances to either wetland are proposed by the development. The proposed housing cluster is approximately 280 feet upgradient from the Category III wetland. Its buffer will remain free of disturbances.

25. The proposal for sewage treatment is for on-site disposal utilizing a pre-treatment system that discharges to a drainfield. The drainfield will be located near the center of the easterly portion of the site. Space for two reserve drainfield areas will also be provided. Numerous test holes were dug and the characteristics of the soils found exceeded the standards for on-site systems after pre-treatment.

26. The sewage system was designed by a licensed designer with extensive experience in San Juan County. His pre-treatment proposal involves use of an AdvanTex facility which has proven effective elsewhere. The AdvanTex installation will treat effluent to a level that exceeds Standard #1 (10 ppm BOD, 10 ppm suspended solids and 200 ppm fecal coliform) before discharging it to the drainfield. The AdvanTex facility will be continuously monitored electronically and is designed so that untreated effluent cannot be released into the soil. The users would enter into a perpetual maintenance contract for the facility. The Health Department has approved the site for sewage disposal.

27. The soils/wetland scientist evaluated both the drainage plan and the sewage disposal plan for possible adverse off-site environmental impacts, especially impacts to the seasonal stream located downhill to the east of the site. He observed that the dispersion trenches and septic infiltration area are both designed to have 100 horizontal feet of downgradient treatment and absorption area onsite before potential subsoil water would percolate offsite. Given the layout of the drainage and septic systems with forested land between them and the boundary, he concluded that all water should be effectively treated and dissipated onsite. He noted that the stream is approximately 235 feet east of the eastern property boundary and that the intervening area is also presently forested.

28. The installation of the dispersion and sewage treatment facilities will cause little disturbance to the natural forest on site and such disturbance as they do cause will be rapidly restored by replanting and normal growth. The AdvanTex facility will occupy a very small area and will not interfere with the objective of limiting impervious surface to 10% of the site.

29. In May of 2001 a driveway permit was issued to a preceding owner of the subject property. The entrance will continue to be used. The permit implies that the

Department of Public Works found the sight distances affecting entry onto Roche Harbor Road to be adequate. The applicant produced evidence that the sight distance exceeds 450 feet in both the east and west directions. A tree that partially obscures views when approaching from the west will be removed.

30. The development will provide a fire hydrant and the storage tank will be available for fire fighting. Adequate driveway space will be provided for fire truck access.

31. Landscaping and the extensive undisturbed forest will adequately shield neighboring landowners from residential lighting or automobile lights of homeowners. No activities suggested would exceed applicable noise standards.

32. The appellants alleged that the information provided in the Environmental Checklist was inaccurate or incomplete. Environmental review of a project includes all information provided by the applicants and is not limited to what is stated in the checklist. Overall the Examiner found no significant inaccuracies in the environmental information provided. In addition, the Examiner concludes that the information submitted was reasonably sufficient to evaluate the environmental impact of the proposal.

33. After considering the record as a whole, the Examiner is persuaded of the following:

- a) No unidentified wetlands exist on the site. Any riparian wetlands that might be associated with the creek to the east will not be affected by this development.
- b) The vast majority of the mature forest on site will be left intact. Installation of neither the drainage nor the septic facilities will significantly alter the amount of forested land on the property. The conditions for application of the 65-10 rules will be maintained.
- c) Substantial evidence is lacking that the wildlife habitat in the area will be significantly compromised by the development.
- d) Withdrawals from the community well will not exceed 5,000 gallons per day. The use of the well is not likely to impair the use of other wells in the neighborhood, with the exception of the McNulty well. Modification of the operation of the applicant's well and of the McNulty well can insure that the two wells obtain the water needed by both.
- e) The sight distance related to the project's driveway and Roche Harbor Road is adequate. The traffic increase on the roadway caused by the development is well within the capacity of the road and will not result in significant traffic delays.
- f) The preponderance of evidence is that the drainage and septic facilities are unlikely to cause adverse impacts to adjacent properties, to the creek that runs east of the property, or to any buffer

associated therewith. The failure to identify a seasonal tributary to the west and north of the subject property does not affect this finding.

- g) The development will improve the fire protection available in the area.
- h) Information on topography and on soils that was used by the project's designers was adequate to support the proposals they made.
- i) There is no evidence that the occupation of the site by low-income homeowners will result in noise or light impacts that exceed normal residential levels.

34. There is only one other rural residential cluster on San Juan Island and it is located several miles distant from the Rocky Bay Self-Help proposal. The Staff Report analyzes the latter proposal in light of the standards for a Rural Residential Cluster Development (SJCC 18.60.230) and concludes that, with appropriate conditions, the proposal will conform to the standards. The Hearing Examiner concurs with this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

35. The eight units proposed are consistent with applicable density requirements. A rural residential cluster shall have a maximum density of two units per acre or a maximum of eight dwelling units. SJCC 18.60.230(C)(5)(b).

36. Binding Site Plans provide an alternative to subdivision procedures for condominiums, or residential cluster developments. The site is one legal lot. Phasing of the development is not proposed. The project can be conditioned to meet the relevant requirements for binding site plan approval. SJCC 18.70.090, 18.80.170.

37. An additional "attractive nuisance" type argument is made in opposition to this proposal. On Kulseth's property there are several old abandoned rock quarries which now have water in them, but are surrounded by steep banks. There is a fear that a child living in the new development will wander by one of the quarries, fall in and be severely injured or killed.

38. Currently the subject property possesses an easement that gives access from it to the beach. The applicant has announced an intention to give up this easement if the project is approved.

39. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSION S OF LAW

1. The Hearing Examiner has jurisdiction over the persons and the subject matter of this proceeding. SJCC 18.80.100(C), 18.80.020(B)(2), 18.80.140.

2. A DNS under SEPA is a threshold determination concluding that the proposal will have no probable significant adverse environmental impacts. WAC197-11-340. Significant for purposes SEPA means “a reasonable likelihood of more than a moderate adverse impact on environmental quality.” WAC 197-11-794.

3. A DNS is the determination of the responsible official for the County. Such a determination “shall carry substantial weight in any appeal proceeding.” SJCC 18.80.140(J)(1)(g). In an appeal, the appellant has the burden of proof.

4. The determination of the responsible official in this case was made on sufficient information for evaluation of the environmental impacts. Based on the entire record and giving the official’s determination appropriate weight, the Examiner determines that the appellants here failed to show a reasonable likelihood of significant adverse environmental impact resulting for the subject project.

5. The criteria for Conditional Use Permit approval are set forth at SJCC 18.80.100(D), as follows:

1. The proposed use will not be contrary to the intent or purposes and regulations of this code or the Comprehensive Plan.
2. The proposal is appropriate in design, character and appearance with the goals and policies for the land use designation in which the proposed use is located.
3. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.
4. The cumulative impact of additional requests for like actions (the total of conditional uses over time or space) will not produce significant adverse effects to the environment that cannot be mitigated by conditions of approval.
5. The proposal will be served by adequate facilities including access, fire protection, water, stormwater control, and sewage disposal facilities.
6. The location, size and height of buildings, structures, walls and fences, and screening vegetation associated with the proposed use shall not unreasonably interfere allowable development or use of neighboring properties.
7. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood.

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

9. The proposal does not include any use or activity that would result in the siting of an incompatible use adjacent to any airport or airfield (RCW 36.70.547).

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

6. The regulations of the UDC by law implement and are presumptively consistent with the provisions of the Comprehensive Plan. Rural Residential Cluster Development is expressly made allowable in the Rural Farm Forest designation by virtue of SJCC 18.30.040 (Table 3.2). Accordingly, it cannot be said that putting such a development in a Rural Farm Forest area violates the Comprehensive Plan *per se*. The implementing regulations allow such developments in such areas.

7. The Comprehensive Plan's goal for Rural Farm Forest lands is simply to allow rural living opportunities that are compatible with small-scale farming and forestry activities. Policy 5.2.B(10) merely underscores that affordable housing clusters are among those residential developments that can meet the requirement of compatibility. .

8. Many of the neighbors of this proposal think the development is being put in the wrong place – that it will adversely affect the rural, natural and agricultural character of the rural lands around it. On the record, this is a subjective evaluation based on the sentiments of the residents. There was no objective showing that agriculture or forestry in the area will be interfered with in any way.

9. By self-description a rural residential cluster occurs in a rural area. If such development by its mere existence interferes with rural character, the land use planning concept becomes completely circular.

10. The idea of a Conditional Use Permit is that conditions can make a particular kind of use fit into a location where it might not otherwise fit. As conditioned, this proposal will comply with the applicable UDC regulations for Rural Residential Cluster Development (SJCC 18.60.230) and Binding Site Plans (SJCC 18.70.090, 18.80.170).

11. This particular cluster will be largely tucked into the forest and is designed and conditioned to be relatively unobtrusive. In the context of the Comprehensive Plan and UDC, the development was not shown to be inappropriate in design, character, or appearance with the goals and policies of the Rural Farm Forest designation.

12. The presentation of the applicant and its several consultants effectively demonstrated that the proposed use will not cause significant adverse physical impacts that cannot be mitigated by conditions.

13. The cumulative impacts of rural residential clusters are directly addressed in the Code which limits the number, proximity and rate of development. SJCC 18.60.230(D),(F).

14. The development will provide fire protection facilities and other items of rural infrastructure. It will not interfere with development on neighboring lots. It will not generate traffic that is hazardous to existing or anticipated traffic. It is not adjacent to an airport. It is otherwise compliant with the performance and development standards of the Code.

15. In sum, the Hearing Examiner concludes that the proposal, as conditioned, will meet the criteria for Conditional Use Permit approval.

16. The Code provides for allowable uses in various districts and does not explicitly account for the possibility of “attractive nuisances.” The existence of the old quarries in the neighborhood does indeed constitute a potential hazard. There are, of course, hazards at all locations where a residence might be built. Roadways are dangerous, high places are dangerous, streams are dangerous, the ocean is dangerous. The Examiner does not think there is a sound basis for denying a development that complies with applicable Code provisions, simply on the basis of the possibility of harm from trespass on adjacent property.

17. Any finding herein which may be deemed a conclusion is hereby adopted as such.

CONDITIONS

1. The applicant shall construct and operate the project as described in the application materials and at the hearing herein except as the same may be modified by these conditions.

2. This preliminary binding site plan and conditional use approval allows eight residential units to be built on the site as a rural residential cluster and sold as condominiums to very low or low income persons who shall participate in the construction process.

3. All residential units within the rural residential cluster must be affordable housing meeting the requirements of SJCC 18.60.260.

4. All units shall be built concurrently. No unit shall be occupied until all units are complete.

5. Each owner of a residential unit shall acquire an undivided interest in all common areas. There shall be no residual property.

6. Final design and engineering of the drainage, sewage disposal and water systems shall be submitted and approved by the appropriate County authorities prior to the commencement of construction.

7. All other required permits shall be obtained prior to the commencement of construction.

8. The development shall be designed, constructed and maintained in a manner that ensures as much undisturbed land, trees and natural vegetation and open space value as practicable. In the development of the site, the amount of impervious surface created shall not exceed 10% of the site area. At least 65% of the site shall be permanently preserved from development as a native growth area.

9. The final binding site plan shall be prepared in accordance with SCC 18.70.090.

10. The final binding site plan shall show the location and footprint-dimensions of structures, facilities, and landscaping on the site, as well as the common areas and native growth protection areas. Utility easements and the 100-foot sanitary setback for the community well shall also be illustrated on the face of the final binding site plan.

11. The final binding site plan shall illustrate required setbacks as provided in SJCC 18.60.050, Table 6.2, with respect to adjacent properties.

12. The final binding site plan shall illustrate open space conservation design and contain the applicable restrictions of SJCC 18.70.060(B)(10).

13. All applicable survey and drawing standards shall be complied with pursuant to SJCC 18.80.070((F)(2).

14. The common areas and utilities shall be maintained and managed by a homeowners association, a non-profit corporation consisting of all unit owners. The association shall be brought into existence prior to the occupancy of any unit.

15. Conditions of use, maintenance, and restrictions on redevelopment of common areas, shared open space, parking access, water distribution systems, drainage facilities, sewage treatment and disposal facilities shall be identified on the final binding site plan.

16. All units shall be served by the proposed Class B water system, which shall be installed, tested and approved by the appropriate authority prior to final binding site plan approval.

17. Prior to final binding site plan approval, concurrency for County solid waste facilities and collector road intersections shall be demonstrated.

18. Prior to binding site plan approval, the applicant shall grant a restrictive use easement for the site to San Juan County for the purpose of assuring affordable housing for fifty years from the date of final binding site plan approval, subject to such limitations and conditions as the county may require.

19. Prior to final binding site plan approval, the applicant shall extinguish the easement connected to the property that provides access to the waterfront.

20. Prior to final binding site plan approval, a copy of a current certificate of title shall be furnished to the Community Development and Planning Department.

21. The project shall meet the fire protection standards contained in Chapter 13.08 SJCC. A fire protection plan shall be submitted for review and approval to the County fire marshal and the district fire chief prior to final binding site plan approval.

22. The preliminary binding site plan and conditional use approval shall expire if the final binding site plan is not recorded within 60 months (five years) of the written date of approval. The final binding site plan application shall be submitted to the Community Development and Planning Department at least 90 days in advance of the expiration date.

23. Prior to issuance of any building permit, fire protection facilities must be in place and have been inspected by the County fire marshal and the district fire chief.

24. Landscaping shall be implemented in accordance with the landscaping plan. Parking shall be screened from view from the public road. All screening landscaping shall be installed prior to occupancy of any residential unit.

25. Any disturbance within the native growth protection areas necessary for the installation of utilities shall be restored as soon as practicable after the utilities are in place. All vegetation planted shall be maintained until it is firmly established.

26. The removal of trees shall be only as necessary for the driveway, parking, utility installation and construction in developed areas. Trees may be removed as necessary to assure appropriate sight distance associated with the driveway entrance.

27. The native growth protection areas shall be maintained as such; provided that, a system of trails may be developed. Tree removal, trimming and limbing shall be limited to that necessary for safety.

28. Utility service lines and secondary connections shall be placed underground, unless otherwise approved by the permitting agency.

29. Exterior lighting shall be energy efficient and shielded or recessed so that direct glare and reflection are contained within the boundaries of the parcel. Exterior lighting shall be directed downward and away from adjoining properties and rights-of-

way. No lighting shall blink, flash or be of unusually high intensity or brightness. All lighting fixtures shall be appropriate in scale, intensity and height to the use they are serving. Any lighting installed in parking areas shall be of direct cutoff design so that the source is not visible from adjacent properties. Decorative lighting shall be limited to incandescent lamps with a maximum of 25 watts per bulb and 500 watts overall.

30. The driveway and parking areas shall meet County requirements as approved by the Department of Public Works and fire protection authorities. Any driveway permit required shall be obtained. Clear unobstructed sight distance in both directions from the driveway shall be a minimum of 10 times the posted speed limit. Verification of this sight distance shall be obtained from Public Works.

31. Accessory residential units are prohibited. Accessory uses shall be limited to those appropriate and necessary to residential use.

32. Approval of the binding site plan and conditional use permit may be withdrawn if the applicant does not meet any one of the following milestones for development:

- a. Building permits issued for at least 50% of the units no later than six months from approval of the final binding site plan.
- b. The project must be 50% complete no later than 12 months from approval of the final binding site plan.
- c. The project must be constructed and all units available for occupancy no later than 18 months from approval of final binding site plan.

33. The purchasers of the affordable housing condominium units shall provide a signed and notarized affidavit to the Community Development and Planning Department demonstrating that the condominium will be their primary residence and that they own no other home.

34. Protective covenants shall be developed by the applicant and reviewed by the Community Development and Planning Department. The covenants shall include restrictions limiting accessory structures, rental of the homes and additions to the homes. A restriction on the use of water to 150 gallons per day for each homeowner shall be included, if approved by the County Health Department. The restrictions shall apply for so long as the residential units are maintained as affordable housing. The covenants shall be recorded with the County auditor after approval.

35. The homeowners association shall enter into a signed mitigation agreement with the owner of the McNulty well providing for mutual measures to assure the adequacy of water for both the project units and the McNulty property. The agreement shall be approved by the County Health Department.

36. The homeowners association shall contract with a licensed satellite management service to monitor the operations of the community well to insure that the provisions of the mitigation agreement are followed.

37. The homeowners association shall contract with competent professionals for inspection of the drainage system and its components at least annually.

38. The homeowners association shall enter into a perpetual maintenance contract for the AdvanTex pre-treatment facility. Periodic inspections of the drainfield shall be made.

39. The homeowners association shall maintain records respecting the maintenance of the water, drainage and sewage treatment systems and hold them open for inspection by the County on request. If problems are encountered with the operation of any of these utility systems, immediate corrective steps shall be taken.

The following shall be shown as restrictions on the face of the final binding site plan:

40. All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of San Juan County, and in accordance with such other governmental permits, approvals, regulations, requirements and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the water, sewer and drainage systems shall be owned by an association or other legal entity in which the owners of units therein have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein.

41. All driveways, parking areas and all easements, except those dedicated to the public, are privately owned. The County is not responsible for the construction or maintenance of any driveways, parking areas, or easements within the final binding site plan. All persons acquiring condominium units in the binding site plan agree to hold the County harmless for all costs of construction or maintenance of all driveways, parking areas or easements within the binding site plan.

42. This binding site plan has been approved by the responsible county officials on the premise that each condominium unit will be occupied by no more than a single family. No unit shall be otherwise occupied.

43. Any private conditions, covenants or restrictions in addition to those shown on the face of the binding site plan are supplemental to the requirements of the Unified Development code. The County is not a party to private restrictions.

DECISION

The appeal is denied. The Determination of Non-Significance is sustained.

The requested Conditional Use Permit and Preliminary Biding Site Plan are approved, subject to the conditions set forth above.

DONE this _____, day of March, 2006

Wick Dufford, Hearing Examiner

APPEAL

Any appeal of this decision shall be to the Superior Court pursuant to the Land Use Petition Act, Chapter 36.70 RCW, within 21 days of the issuance of the decision. See Home Rule Charter, Section 3.70.

Wick Dufford