SAN JUAN COUNTY
HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant(s):	James and Mary Jacobs 30326 36th Ave NW Stanwood, WA 98292
File No.:	PCUP00-14-0010
Request:	Conditional Use Permit (CUP)
Parcel No:	461452054
Location:	217 Brooks Lane San Juan Island
Summary of Proposal:	An application for a conditional use permit to allow vacation rental of a single-family residence.
Land Use Designation:	Rural Residential
Public Hearing:	August 13, 2014
Application Policies and Regulations:	SJCC 18.40.270 Vacation Rentals SJCC 18.80.100(D) CUP Criteria
Decision:	The application is approved subject to conditions.

S.J.C. COMMUNITY

SEP 29 2014

DEVELOPMENT & PLANNING

BEFORE THE HEARING EXAMINER FOR THE COUNTY OF SAN JUAN

Phil Olbrechts, Hearing Examiner

RE: James and Mary Jacobs Conditional Use Permit (PCUP000-14-0010)	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION**

S.J.C. COMMUNITY
SEP 29 2014
DEVELOPMENT & PLANNING

INTRODUCTION

The applicant has applied for approval of a conditional use permit for the vacation rental of a three-bedroom residence. The application is approved with conditions.

The vacation rental is strictly conditioned to avoid any adverse impacts to neighbors. The permit is subject to code enforcement and revocation if the applicants fail to comply with those conditions. If the applicants continue to manage their property in the manner alleged by their neighbors, this permit is unlikely to remain in effect for very long.

The record of this proceeding has been unnecessarily complicated by an extensive series of multiple submissions concerning alleged bad acts of the applicants. As outlined in Finding of Fact No. 5 and Conclusion of Law No. 26, that evidence was of very limited relevance. The applicants' prior conduct under ignorance (intentional or not) of the law does not have any significant probative value on how the applicants will conduct themselves with the imposition of detailed conditions of operation that cannot be overlooked. Further, as in civil proceedings, the probative value of prior bad acts should be considered outweighed by the prejudicial impact of that type of inquiry. A local land use proceeding is not the proper forum to assess the character of a property owner.

TESTIMONY

Note: This summary is provided as a convenience to the reader. It does not contain any findings of fact or conclusions of law. No inferences are to be made as to significance of information. No assurances or warranties are made as to accuracy or completeness.

Staff Report

Ms. Thompson stated that the applicant's request is to have a vacation rental of their home. The building is permitted to have three bedrooms, although it has four. The staff recommends the conditions that the vacation rental should be for three bedrooms instead of the four requested.

Applicant,

Ms. Jacobs stated that she and her husband Jim are in their 70s and they are in the process of trying to sell the home; in the meantime, they need to be able to earn money to upkeep the property. They did not know until June that there was a permit necessary to rent the house as a vacation rental. Once they learned of the permit requirement, they filed an application. They have never had a complaint before until they made this application. They have had very nice people stay at their home. They do not make a lot of money, and they often give use of the property to charitable organizations. They only use the home three months out of the year. Their property manager, Diana Mancel, takes care of their website and screens those people who will be their guests. It is made very clear to those staying at the home what is acceptable and what is not. They have not had problems with their guests in the way that they have been hearing about in the letters they have recently received from their neighbors. They had never heard any complaints from anyone. The woman who lives to the west of them, who is currently in the hospital has never complained, and Mrs. Jacobs has spoken to her a number of times. This neighbor told Mrs. Jacobs that there had never been any disruption from the people staying in their home. She has never been in this position before but would like to have her realtor comment as to how this all got started.

John Lackey testified that he is a managing broker of Windermere. He received the listing of the subject property, and he insisted that the Jacobs comply with County Code for vacation rentals. In reviewing the property background, he noted that prior to the submission to the County for the permit there had never been any complaints to the County or to the Sheriff's Department regarding this residence. The occupancy of this property is in the 25 to 30% range. In one of the comment letters, there is a statement that there was a potential $60,000 annualized return on their rental. He said he wished that was the case but it is not. He provided and aerial map of other transient rentals which are in the neighborhood. (Exhibit 9)

Ms. Jacobs noted that there was another rental property that was not indicated on the map (Number 256 on Exhibit 9) and noted that there were probably others that are not permitted.

Public comments.

Wendy Tillman, who lives at the neighboring property to the applicant's with her husband Mr. Finkle, stated that the notice of the hearing is defective due to inadequate time. There were other neighbors who would have liked to attend but were unable to and Ms. Tillman is notifying the hearing examiner on their behalf that the hearing

notice is defective. Notice was not given until July 18th. It was her understanding that notice need to be given within 14 days of the file being complete.

Addressing the process of the CUP, Ms. Tillman stated that is not a right to have a conditional use permit, it is a privilege. This should be judged on its merits. Davison Head is a rural residential neighborhood. She noted her concern with fires on the applicant's property and the threat to the neighborhood. She also stated that the applicants clear-cut their parcel even though the owners new about code preventing that. There were years of litigation between the County and these particular applicants. The ultimate resolution was that a fine was paid. These applicants left a scar in the neighborhood. The Finkle/Tillmans moved into their home in 2010. They experience loud noises including cars slamming doors, music, and loud voices. They tried to be accepting of the fact that everyone enjoys their vacation differently. She found out this summer that a large number of properties were trying to gain CUPs for vacation rentals and noted that there are currently 36 CUP properties looking for permission. These particular owners (the applicants) have been using this property as a vacation rental since 2008. She stated that the behavior reminds her of the previous issue with the trees: they are doing what they want and then saying that they did not know what the law was. However, this time, they have been operating the rental illegally and gaining money. She says her family is sick and tired of going over to the subject property and telling people to keep down the noise during parties. She is concerned with where they are in the fire risk. There is an ISO rating of nine on her own property since there is no professional fire department, there are no fire hydrants except a mile and a half away, there are no fire trucks, no pumper trucks, and there is only one tanker truck. These people should not have the right to put people into their home who are not stakeholders. Those opposing the CUP are fighting to protect their own property rights. She should be able to safely enjoy her own property. The burden is on the applicant to show that they have earned the privilege of this deviation from governing permits. Because the CPUs run in perpetuity , people need to meet a higher bar. They have a history of willful violation of land use code. The application should not be granted and should be denied in its entirety. No house rules or mitigation rules will work when somebody has been willfully disregarding code.

Mr. Finkle testified that he lives at 231 Brooks Ln. next door to the Jacobs' vacation rental house. He has briefly reviewed the Jacobs materials and believes there are false statements in the application. He stated that the evidence shows that they have made many tens of thousands off this property, $30,000 this year alone. With regard to the evidence, the examiner is looking at a he said/she said conflict and he must deal with it as a credibility issue. The past and present behavior of the Jacobs speaks adequately about their character. As far as the credibility of Mr. Finkle and Ms. Tillman, he stated that they are both retired attorneys and his wife is a retired judge. He made note of his past work with the government and his level of expertise in his field. He stated that their past experiences speak to their character and credibility. He noted that they have gone over to speak to vacation renters when things got way out of hand on the applicants' property and related an incident where they received a hostile response from the renters. With regard to the risk of fire that they witnessed on the property, the

small portable fire pit appeared to have been lit with accelerant. He stated that he felt threatened by the hostile and belligerent behavior of Mr. Jacobs in the letter he sent. He does not believe this type of behavior is what you should see from someone operating this type of business in your neighborhood. The application should be denied as the vacation property does not belong there and the applicant is not a good property manager. This type of behavior should not be allowed. It might' have been a different reception if the applicants were different people, but that is just speculation.

Tom Thompson stated that he is the president of the neighborhood association. Because of the clear-cutting that the applicants performed, which he personally witnessed, to the complaints he has heard from all of his neighbors, he requests that the application be denied.

Ron Weise testified that he lives approximately six lots away from the applicant's property. He has lived there since 1996. His concern is that the neighborhood is primarily residential. The history of this property shows a history of disregard for the legal process of permitting. Fire is a serious concern. Any type of the fire would create disaster there. There is demonstrated pattern of operating outside the parameters of the County. On that basis, the permit should be denied. He requested that the hearing examiner refer to his letter.

Kyle Loring, Friends of the San Juan, stated that the challenge of the conditional use permit has to do with issuing the permit to people who will not be present to make sure that conditions are complied. He also noted concern with the septic and water systems, given that in the summer these systems are often strained, and he does not think that they were dealt with adequately in the application and report. With regard to the concerns about fire, there should be some kind of condition that limits outdoor fires in this area.

When asked by the examiner to clarify where the 14 day requirement came from, Ms. Tillman stated that it came from 18.80.030, subpart A, subpart 2, which provides for notice to be issued within 14 days after the application has been determined to be complete. From her determination, the notice should have been posted and mailed on or before June 25 or 26th.

On questioning by the examiner, Ms. Thompson replied that it was her fault as she forgot to send a copy of the ad which had been posted in the paper to the applicants for mailing and posting. She noted that there had been plenty of notification of the hearing time, since it was posted over a month before the actual hearing. She stated that the Notice of Application was 10th of June, and completed the 11th of June. It was published in paper the 25th of June. The applicant should have sent out notice, but didn't receive it from her until 6-7th of July. She noted that the posting at the property and in the neighborhood was taken down a couple of times and had to be reposted.

Ms. Tillman and Mr. Finkle stated that it was the applicant's responsibility to have known to post notice and they should have been knowledgeable of the provisions of codes and regulations.

Ms. Thompson noted that it is the County's job to let applicant's know what is expected of them and they do this for all applicants

Staff Rebuttal,

Ms. Thompson stated that the septic system is adequately sized for the building as it stands. It is approved as a single family home.

Applicant Rebuttal

Mrs. Jacob's addressed issues that had been brought up by the Finkle/Tillman's in their testimony and letters. She noted that they removed the fire pit from the yard as soon as Finkle/Tillman complained about it and that was no problem at all for them to remove that from the equation. It had not been close to trees and there was plenty of space for it. She was not there to see if it was shooting 5 feet high in the air as Finkle/Tillman claimed. She brought photographs of the portable fire structure.

Mr. Finkle stated that they also have photographs of the portable fire structure that show it sitting close to the tree canopy. They did not stage the location of the fire pit for the pictures that they took. He requested that the hearing examiner look at their letters relating the conversation that they had with the Jacobs.

Mrs. Jacobs stated that Finkle/Tillman had to trespass on their property to take the photograph. She claims that they moved the fire pit and that has had never been at that position in their house. With regard to the Finkle/Tillman complaints regarding loud renters, Mrs. Jacobs stated the "quiet time" had been established from 10 PM to 7 AM for their renters, not 9:00 PM. She is upset with the way that Finkle/Tillman have spoken about her and her family. They do follow rules and laws. Finkle/Tillman have never made any effort to introduce themselves or speak with them. Many of the things Finkle/Tillman have written and said were untrue and she questions their character.

EXHIBITS

Exhibit 1, July 30, 2014 staff report
Exhibit 2, application checklist
Exhibit 3, application materials, composed of 6/9/14 "land use permit application", 6/9/14 letter entitled "Conditional Use Permit Application for the Jacobs Vacation Rental", Vacation Rental Rules (two separate pages), site plan, aerial photograph, floor plans (5 pages), certificate of water availability.
Exhibit 4, July 28, 2014 comment letter from Finkle/Tillman
Exhibit 5, August 7, 2014 comment letter from Finkle/Tillman
Exhibit 6, Jacobs Response Packet, composed of the following;

A. Response to letter of complaint from Finkle/Tillman
B. Response to complaint letter of [sic] 8/7/14 Zylstra letter [8/4/14 Zylstra letter was attached]
C. Aerial photograph, 228 Brooks Lane
D. "FYI", filed 8/12/14
E. 8/8/14 email from Mancel
F. Undated letter filed 8/12/14 with attached 8/7/14 email from Scott Ryan
G. Response to Finkle/Tillman letter dated 8/7/14
H. Three annotated photographs of Jacobs backyard

Exhibit 7, August 4, 2014 letter from Wiese
Exhibit 8, Second Supplemental Opposition from Finkle/Tillman dated 8/10/14
Exhibit 9, Aerial map of transient vacation rentals
Exhibit 10, Combined Notice of Application and Public Hearings seeking publication for 6/25/14.
Exhibit 11, Five 8x11 photographs of Jacobs backyard
Exhibit 12, August 18, 2014 Jacobs email (responding to Ex. 7 and 8 prior to receiving those exhibits). The portion of the email requesting a modification to quiet hours was stricken pursuant to the objection of Ex. 14.
Exhibit 13, Third Supplemental Opposition from Finkle/Tillman dated 8/18/14
Exhibit 14, 8/22/14 Finkle/Tillman email objection.
Exhibit 15, 8/22/14 response to Ex. 8 from Jacobs
Exhibit 16, 8/22/14 response to Ex. 7 from Jacobs
Exhibit 17, August 4, 2014 email from Russ and Julie Zylstra
Exhibit 18, September 5, 2014 email from Julie Thompson sending draft exhibit list to parties
Exhibit 19, September 8, 2014 Finkle/Tillman response to draft exhibit list
Exhibit 20, September 11, 2014 applicant reply to Ex. 13 from Jacobs.
Exhibit 21, September 16, 2014 email objection from Finkle/Tillman to Mancel letter.

FINDINGS OF FACT

Procedural:

1. Applicant. The applicants are James and Mary Jacobs.

2. Hearing. The Hearing Examiner conducted a hearing on the subject application on August 13, 2014 on or about 10:00 am at the Islander Bank Annex, 225 Blair Ave, Friday Harbor.

3. Exhibits. This decision takes the unusual step of devoting an extensive finding to the handling of exhibits due to the multiple objections and complaints raised by Finkle/Tillman. As outlined in this finding, the only procedural irregularity in the handling of exhibits was that the applicants on two separate occasions were not forwarded documents in time for them to make authorized responses and replies by deadlines set at the hearing. This necessitated response and reply extensions for the

applicants, which created a significant amount of confusion to both Finkle/Tillman and the applicants. Beyond the problems caused by the document delays, Finkle/Tillman were given the opportunity to rebut all documents submitted into the record (except where the applicants had the right of final comment) and all of the documents that Finkle/Tillman presented for admission were submitted into the record, with the exception of some portions of Ex. 13 that were stricken as beyond the scope of authorized response.

The initial post-hearing schedule for document response and reply was simple. The hearing on this matter was left open only to provide an opportunity for comment on two sets of documents presented to the parties for the first time during the hearing. The applicants were given until August 18, 2014 to respond to Ex. 7 and 8. Finkle/Tillman were given until August 19, 2014 to respond to Ex. 6 and the Jacobs until August 21, 2014 to provide a reply to the Finkle/Tillman response. The record was not left open for any other purpose.

The deadlines for response and reply set for the applicants had to be extended because the applicants didn't receive necessary documents from the County until after the deadlines had expired. Staff were unable to provide the applicants with Ex. 7 or 8 until August 18, 2014, the day the applicant's response was due for these documents. Consequently, the applicants' response deadline for Ex. 7 and 8 was extended to August 27, 2014. The Finkle/Tillman response (Ex. 13, Third Supplemental Opposition from Finkle/Tillman dated 8/18/14) wasn't provided to the applicants for reply until September 8, 2014, well after expiration of the August 21, 2014 reply deadline. Consequently, the reply deadline was extended from August 21, 2014 to September 11, 2014. The applicants provided their response and reply within the extended deadlines.

Due to multiple objections filed by the Finkle/Tillmans, a draft exhibit list was mailed to County staff, the applicants and the Finkle/Tillmans to ensure that all pertinent exhibits were considered. The Finkle/Tillmans submitted numerous objections/concerns in Exhibit 19. None had any merit except for an erroneous date that was identified for one of the Finkle/Tillman exhibits. They stated that the exhibit list did not contain the vacation rental application. This was included in Exhibit 3 as part of the "Application Materials". The "Application Materials", including the vacation rental application, were marked as Exhibit 3 as an attachment to the staff report, which was made available to all hearing parties. The staff report exhibit list, which listed Exhibit 3 as "Application Materials", was admitted into the record during the hearing. The audience, including Finkle/Tillman, was asked if anyone needed to see the exhibits (including Ex. 3) listed in the exhibit list or had any objections to their entry. No objections were made and no one requested to see any of the exhibits in the staff exhibit list. The precise contents of Exhibit 3 have now been identified in this final decision.

In Exhibit 19, Finkle/Tillman also asserted that the exhibit list did not identify an 8/18/14 email and an 8/19/14 email from Rod Wiese. These emails were not admitted into the record. As previously noted, the record was left open at the request of Finkle/Tillman and the applicants to give each of those parties an opportunity to respond to specifically identified documents submitted during the hearing. Mr. Wiese did not request a like opportunity to provide additional comment and no such

opportunity to was given to him. The hearing recording is very clear that only Finkle/Tillman and the applicants were given additional time beyond the hearing date to provide additional written comment. No one at the hearing objected to these terms.

In Exhibit 19, Finkle/Tillman identified that their 8/22/14 email objection to an August 8, 2014 email from the applicants was missing. This was misidentified as an 8/25/14 email objection, Ex. 14, in the draft exhibit list and has been corrected. Finkle/Tillman also noted that Ex. 7 misidentified the date of the Rod Wiese letter as August 5, 2014 instead of August 4, 2014. The August 5 date was used because that was the filing date of the letter, as identified by the San Juan County date stamp. Mr. Wiese did not submit any other letters on August 4 or 5 so there is no potential for confusion.

The Finkle/Tillman 8/22/14 email objection, Ex. 14, objected to an email submitted by the applicants on August 18, 2014 (inaccurately listing the date as August 8, 2014) requesting a change in operating hours. The August 18, 2014 email was submitted by the applicants to meet the response deadline set for response to Ex. 7 and 8. The applicants submitted these comments because they hadn't yet received Ex. 7 and 8 and were confused as to what they had to submit. The portion of the August 18, 2014 email requesting a change in operating hours is stricken as beyond the scope of response to Ex. 7 and 8. As previously noted, the response deadline to Ex. 7 and 8 was extended to August 27, 2014. The applicants submitted their response to Ex. 7 and 8 as Exhibit 15 and 16 on August 22, 2014, which was admitted into the record.

On September 7, 2014 the applicants submitted an 8 page fax that included an August 16, 2014 letter from their property manager, Diana Mancel. The examiner sent two emails to the applicant inquiring as to why this document was submitted, explaining that only documents that are authorized responses to documents could be considered. No response from the applicants was received. Finkle/Tillman objected to the Mancel letter by email dated September 21, 2014. The September 7, 2014 fax from the Jacobs was not admitted into the record because it was an unauthorized submission submitted after the close of the hearing in chief.

On September 11, 2014 the applicants submitted their reply to Exhibit 13. The reply was composed of a point by point response to Ex. 13, a photograph of a notice board posted by the applicants and again the August 16, 2014 letter from Diana Marcel. The August 16 letter was written before Ex. 13 and was not responsive to any of the issues raised in Ex. 13. The August 16 Mancel letter is again not admitted because it was not responsive to Ex. 13. The September 11, 2014 point by point response and the attached photograph of the notice board was admitted as Ex. 20.

There were a number of emails between the examiner and the parties dealing with non-substantive issues that have not been included in the exhibit list. Certainly if any party finds any email involving the examiner and a hearing party relevant to their appeal that document should be added to the administrative record for the appeal if it hasn't been expressly stricken or denied admission by this decision. The omitted emails primarily dealt with inquiries from parties as to deadlines and the status of various documents. The examiner was cc'd on an email exchange between Julie Thompson and Finkle/Tillman regarding portions of Ex. 2. Apparently Finkle/Tillman were not given the fax cover sheet and an aerial

photograph that was included in one version of the application. These missing documents were not used for assessment of the conditional use criteria and their inclusion or exclusion in the record would have no impact on the outcome of this decision. The deadline extensions granted to the applicants were done without any request from the applicants. They were granted automatically by the examiner upon learning that the applicants had not received the documents they were to respond/reply to before expiration of the response/reply deadlines.

Finkle/Tillman have repeatedly asserted that their due process rights have been compromised due to what they assert is mishandling of exhibits. Finkle/Tillman have not identified any instance where they were denied the opportunity to respond to any document pertinent to this proceeding. Finkle/Tillman have not identified any record they submitted that has not been admitted into the record. At the commencement of the hearing the Examiner identified all letters that had been submitted to him. When it became apparent that letters that Finkle/Tillman had recently submitted had not yet made it into the record, those letters were placed in the record forthwith. Staff could not find their own copies of those letters in the succeeding days to forward to the applicant, but the records were never lost and the Finkle/Tillman were not prejudiced by the delays caused to the applicant in their ability to respond. Ultimately the record was only left open for Finkle/Tillman to respond to specified applicant exhibits and the applicant to respond and reply to specified Finkle/Tillman exhibits. No other documents were subsequently admitted or considered. The only party that succeeded in going beyond the scope of response/reply were Finkle/Tillman, who raised several notice and other procedural issues in their third supplemental response, Ex. 13. Those comments were allowed because the examiner needed additional information from Finkle/Tillman and the applicants to address the notice issue timely raised by Finkle/Tillman during the hearing.

Substantive:

3. Site and Proposal Description. The applicant proposes the vacation rental of what they call a four-bedroom single family home located at 217 Brooks Lane, San Juan Island. The staff report notes that a foundation permit approved for the home in 2004 identifies one of the rooms as a bonus room that was not approved for sleeping quarters. The applicants have not contested this staff finding so it is taken as a verity and the home will be considered a three bedroom house. There are three parking spaces available on-site. There is no accessory dwelling unit on-site. No outdoor advertising or food service is proposed.

4. Characteristics of the Area. The surrounding neighborhood is rural residential in nature.

5. Adverse Impacts of Proposed Use. There are no significant adverse impacts resulting from the proposed use as conditioned. Specific issues are addressed below, and in each instance it is determined that the conditions of approval are sufficient to completely mitigate against any significant adverse impacts:

A. Character of Applicants. A significant amount of testimony in this applicant has been devoted to allegations that the applicants have a history of code compliance problems and they cannot be trusted to manage their vacation rental responsibly or respond to neighbor complaints. The applicants in point of fact have already been operating the home as a vacation rental for six years without a required conditional use permit. Finkle/Tillman, Rod and Ann Wiese and Russ and Julie Zylstra have identified a few instances of mismanagement and/or code violations, including unauthorized tree clearing, noisy vacation rental guests, dogs from rental guests running loose and an instance of a fire pit fire in the back yard involving flames allegedly four to five feet high in close proximity to surrounding trees. Finkle/Tillman alleges that the applicants have been rude and unresponsive to their complaints about these types of incidents and the applicants deny this characterization.

Although a mixed question of law and fact, the relevance of prior bad acts will be addressed in this finding. A land use hearing is not the proper forum to have a protracted investigation into the character and past behavior of a property owner. It is clear from the evidence presented that the applicants are lacking in some diligence in determining what they're responsibilities are in developing and managing their property. That lack of diligence, however, does not go very far in supporting any finding on the applicants' propensity or ability to comply with conditions directly imposed upon them and to which they cannot conveniently ignore or claim ignorance.

The fact that the applicants might have deliberately chosen to remain ignorant of clearing and grading laws as well as vacation rental laws does not reasonably lead to the conclusion that they will ignore the conditions imposed by this permit decision. Further, even if that could be established, violation of the conditions of approval will subject the applicants to code enforcement and permit revocation. Once this decision is issued, neighbors will have a phone number to use for complaints and the applicant will have to act on those complaints. Noise, fire hazards and pets are all addressed in the conditions of approval. If the applicants fail to comply with those conditions of approval, the neighbors can complain to the County, which has authority to institute a code enforcement action and revoke the permit for noncompliance. Of course, the County had the authority to go after the applicants for operating a vacation rental without a permit before the issuance of this decision. There is no evidence in the record that the County was ever asked by the neighbors to address the vacation rental operation. The findings of "no significant adverse impacts" in this decision are premised on the understanding that the neighbors will seek County assistance if the applicants fail to comply with the conditions of approval.

Finkle/Tillman argue that a conditional use permit is a privilege and that the applicants must prove that they merit this privilege. In short, they are arguing that the applicants have the burden of proof to establish that they will responsibly manage their vacation rental. As outlined in the conclusions of law, a proposal that meets the criteria for approval must be approved and that approval is by any common

understanding a right and not a privilege. More importantly, to expect any land use applicant to bring forth a bevy of character witnesses and then to have project opponents bring forth opposing witnesses pushes the extreme boundaries of relevancy and ultimately is more prejudicial than probative.

Evidence of prior code compliance issues is relevant to consider the types of problems that may occur with a proposed land use. Evidence in land use hearings should also be fairly liberally admitted since hearing participants are for the most part not lawyers and imposing strict evidentiary rules will chill participation and generally confuse the public. For these reasons, the "bad acts" evidence was admitted with little restriction, but ultimately most of this evidence was irrelevant.

B. Noise. Noise is probably the most significant issue for the vacation rental. Finkle/Tillman note that their bedroom window faces the applicants' property and that noise from vacation rental tenants has kept them awake at night. The conditions of approval require quiet hours between the hours of 9:00 pm and 9:00 am. No radios or any other media players capable of producing sound audible beyond the property lines is allowed out of doors between these hours. The applicants will have to provide a 24 hour complaint phone number to all property owners within 300 feet of the vacation rental. Failure to act on any complaints regarding violations of the conditions of approval will itself be considered a violation of the conditions of approval.

C. Fire Hazard. In Ex. 5, p. 4 Finkle/Tillman present uncontested evidence that their neighborhood has been rated an exceptional fire hazard by the insurance industry because the neighborhood is not served by a professional fire department, there are no fire hydrants less than 1.5 miles away, there are no pumper trucks to pull water from water reservoirs and there is only one tanker truck with limited fire response capability to serve the neighborhood. Finkle/Tillman expressed concern over the use of a fire pit in the back yard in proximity to surrounding trees. The conditions of approval will prohibit all outdoor fires.

D. Pets. Finkle/Tillman complained of an incident involving dogs running loose. The conditions of approval will require dogs to be leased at all times when off the property.

E. Adequacy of Utilities and Public Services. Other than the septic system, it is determined that the proposal is served by adequate utilities and public services. There is nothing in the record to reasonably suggest that the proposal will result in any increase in demand of utilities and services. In prior permitting decisions, it has been determined that the existing home as a typical single-family use is served by adequate utilities and public services and nothing in the record suggests from a historical perspective that any of these determinations have been in error. Although the maximum number of guests authorized for the vacation rental is nine, there is nothing to reasonably suggest that the actual average number of occupants will exceed that of typical single-family use. In point of fact, the applicant's use of the

property is probably less intense than typical single-family use, since the applicant's primary residence is in Stanwood, Washington and their San Juan home remains unoccupied 8.5 months out of the year. See Ex. 6, Mancel email.

Pertinent to the adequacy of fire service is whether the proposal will increase fire hazard. Fire service may be currently adequate for single-family use, but not for any increases in hazard caused by vacation rental tenants. One could conceivably argue that tenants who are only using the property for vacation purposes may be more likely to engage in parties and other outdoor activities that may involve careless fire control practices. However, the conditions of approval prohibit all outdoor fires. There is nothing else in the record to reasonably suggest that the proposed use would increase fire hazard.

Friends of the San Juans questioned whether septic systems designed for residential use are adequate for vacation rental use. The County's septic design standards serve as an objective and determinative guideline on adequacy of sanitary waste facilities. It is unclear from the record whether the proposed change in use to vacation rental would trigger any changes to septic design under the County's septic regulations. The conditions of approval will require staff to verify with the County health department that the proposed change in use does not trigger any requirements for septic system improvements.

F. Cumulative Impacts. The conditions of approval, in limiting outdoor and unreasonable noises and providing for a complaint line, lower impacts to those typically associated with single-family homes. Consequently, cumulative impacts of numerous vacation rentals similarly conditioned should not alter the character of the surrounding neighborhood to any material degree. In point of fact the Wieses spoke favorably of numerous other vacation rentals located in the subject neighborhood in Ex. 7. Consequently, the only direct evidence on cumulative impacts in the record suggests that at cumulative levels the vacation rentals in the subject neighborhood are not creating any significant adverse impacts.

G. Environmental Impacts. No environmental impacts to environmentally sensitive areas or other environmental resources are reasonably anticipated since the proposal involves no exterior alteration of the property and no land use activities beyond those typically associated with residential use.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. The hearing examiner is authorized to conduct hearings and issue final decisions on conditional use permit applications. San Juan County Code ("SJCC") 18.80.020 Table 8.1; 18.80.100(C).

Substantive:

2. Zoning Designation. Rural Residential

3. Permit Review Criteria. Table 3.2, SJCC 18.30.040 authorizes vacation rentals in the rural residential district as a conditional use. SJCC 18.80.100(D) governs conditional use criteria. SJCC 18.80.100(D)(8) requires compliance with the performance standards of Chapter 18.40 SJCC. SJCC 18.40.270 contains detailed standards for vacation rentals. The criteria for conditional use permits (SJCC 18.80.100(D)) and vacation rentals (SJCC 18.40.270) are quoted below and applied through corresponding conclusions of law.

Vacation Rentals of Residences Criteria

SJCC 18.40.270(A): *No more than three guests per bedroom shall be accommodated at any one time.*

4. The project is conditioned to limit the total number of guests to three per bedroom.

SJCC 18.40.270(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.*

5. The conditions of approval of the permit have been imposed to prevent any unreasonable disturbances. These conditions limit the number of guests; require provision of a 24-hour contact phone number to neighbors in case problems may arise; impose quiet hours; require pets to be on a leash; and require maintenance of a written log of complaints.

SJCC 18.40.270(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.*

6. The San Juan County Code does not impose any specific parking requirements for single-family homes in the Rural Residential district. The most analogous parking requirement is that which applies to single family homes in activity centers. In activity centers, Table 6.4 of SJCC 18.60.120 requires one parking space for single-family homes under 550 square feet and two spaces for homes 550 square feet and greater. The size of the home is apparently over 550 square feet, so two parking spaces would be required by SJCC 18.60.120. The additional parking space required by SJCC 18.40.270(C) increases this number to three, which is provided by the applicant.

SJCC 18.40.270(D): *If any food service is to be provided the requirements for a bed and breakfast residence must be met.*

7. No food service is proposed in the application.

SJCC 18.40.270(E): *No outdoor advertising signs are allowed.*

8. No outdoor advertising is proposed.

SJCC 18.40.270(F): *The owner or a long-term lessee may rent either the principal residence or the accessory dwelling unit on a short-term basis (vacation rental), but not both.*

9. There is no accessory dwelling unit.

SJCC 18.40.270(G): *Where there are both a principal residence and an accessory dwelling unit, the owner or long-term lessee must reside on the premises, or one of the living units must remain unrented.*

10. There is no accessory dwelling unit.

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

11. Not applicable because the proposal is the first legally proposed vacation rental of the premises.

SJCC 18.40.270(I): *Vacation rental accommodations must meet all local and state regulations, including those pertaining to business licenses and taxes.*

12. This will be required as a condition of approval.

SJCC 18.40.270(J): *Owners of vacation rentals must file with the administrator a 24-hour contact phone number.*

13. This will be required as a condition of approval.

SJCC 18.40.270(K): *The owner or lessee of the vacation rental shall provide notice to the tenants regarding rules of conduct and their responsibility not to trespass on private property or to create disturbances. If there is an easement that provides access to the shoreline, this shall be indicated on a map or the easement shall be marked; if there is no access, this shall be indicated together with a warning not to trespass.*

14. This will be required as a condition of approval.

SJCC 18.40.270(L): *Detached accessory dwelling units established under SJCC 18.40.240 cannot be separately leased or rented for less than 30 days.*

15. There is no accessory dwelling unit on the property.

Conditional Use Permits – Criteria for Approval

SJCC 18.80.100(D)(1): *The proposed use will not be contrary to the intent or purposes and regulations of this code or the Comprehensive Plan;*

16. The proposal is consistent with the SJCC for the reasons stated above. The proposal is consistent with the San Juan County Comprehensive Plan, which provides that vacation rentals should be classified as residential uses and subject to standards similar to those that apply to hospitality commercial establishments. See Land Use Element, Section 2.2A(10). The detailed standards adopted into the SJCC for vacation rentals provide protections to residential uses that are more detailed than those typically associated with hospitality establishments located in residential areas.

SJCC 18.80.100(D)(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;*

17. The proposal will not alter the exterior appearance of the home, which is a single family home and is thus compatible and appropriate in design, character and appearance with the surrounding single family homes and applicable goals and policies thereto. The criterion is satisfied.

SJCC 18.80.100(D)(3): *The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval;*

18. As determined in Finding of Fact No. 5, the proposal will not create any significant adverse impacts.

SJCC 18.80.100(D)(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;*

19. The property will continue to appear and function in a manner similar to the existing use with no significant adverse impacts, and further similar requests will not produce significant adverse impacts to the environment.

SJCC 18.80.100(D)(5): *The proposal will be served by adequate facilities including access, fire protection, water, stormwater control, and sewage disposal facilities;*

20. The proposal is in an existing development and according to staff has been shown to meet these requirements. With the exception of fire and septic, there is no evidence to the contrary and there is no reason to infer that existing services are inadequate to serve the proposal.

During the hearing Mr. Loring raised the reasonable question of whether the septic system was designed to accommodate the proposed change in use. Applicable septic standards are in part dependent upon occupancy. The conditions of approval will require that staff verify with the health department that the septic system will still comply with applicable septic regulations under the proposed change in use.

The adequacy of fire protection is the most challenging issue of this application. Fire service is found to be adequate for purposes of the conditional use criterion, primarily on the basis that the proposal does not increase demand on existing fire services or increase fire hazard as determined in Finding of Fact No. 5.

Whether a public service is "adequate" for purposes of permit criteria involves a complicated set of factors that extends well beyond what a professional service provider may opine is adequate based on the standards of his profession. Considerations of factors such as limitations on public funding and private property rights also play a major role in the assessment of the adequacy of public services. The consideration of these factors is most apparent in the application of RCW 36.70B.030(2)(c), which provides that comprehensive plan policies dictating level of service standards for public facilities shall be determinative during permit review of the review of the adequacy of those facilities, if the plan provides for funding of the facilities as required by Chapter 36.70A RCW. In the case of transportation facilities, cities and counties typically adopt level of service standards using an A-F system, with LOS A involving minimal traffic congestion and LOS F involving the poorest level of congestion. For transportation LOS, Chapter 36.70A requires cities and counties to adopt a funding plan that enables the local jurisdiction to meet its adopted LOS standard within 20 years. Due to these funding restrictions, and the strict constitutional limitations on limiting developer mitigation to nexus and proportionate share of impacts, some cities and counties are forced to adopt LOS standards that allow for failing congestion levels for some portions of their transportation systems. See, e.g., *West Seattle Defense Fund v. Seattle*, Final Decision and Order, Central Puget Sound Growth Management Hearings Board, Case No. 94-3-0016 (4/4/95). Under RCW 36.70B.030(2)(c), these LOS standards, which allow for what traffic professionals would consider failing systems, would be determinative in the review of any permit criteria that require a finding of adequacy for public services and infrastructure.

Fire protection is not included in the statutory definition of "public facilities" covered by RCW 36.70B.030(2)(c). See RCW 36.70A.030(12). Nonetheless, RCW 36.70B.030(2)(c) shows that permit criteria involving assessment of infrastructure adequacy can (and sometimes must) include practical considerations of funding and availability. "Adequate" is a subjective term and for SJCC 18.80.100(D)(5) that same

term applies to both streets and fire protection. If funding limitations can be a factor in assessing adequacy of streets, similar considerations are fairly considered for adequacy of fire protection as well.

Another important factor to consider in the assessment and interpretation of "adequate" are the constitutional restrictions in the application of that term. Case law suggests that the applicants' proposal cannot be denied on the basis that there are existing deficiencies in the fire protection system for the Davison Head neighborhood, if the proposal doesn't serve to exacerbate that deficiency. Washington courts are very strict about limiting developer exactions to impacts created by the development under a "nexus" and "proportionality" doctrine developed under constitutional takings law. *See, e.g. Burton v. Clark County*, 91 Wn. App. 505, 516-17 (1998). Under these cases, the government has the burden of proof in establishing the proper nexus and proportionality between project impacts and a exaction imposed upon development. *Id.* The US Supreme Court recently expanded the nexus and proportionality doctrine to apply to mitigation fees in lieu of exactions and also ruled that a development project could not be denied on the basis that an applicant refused to agree to an unconstitutional exaction. Koontz v. St. Johns River Water Mangement Dist., 570 US _____ (2013).

Washington courts have not yet considered principles of nexus and proportionality for permit requirements outside of exactions, which are generally considered to be requirements for some type donation of land or fee in lieu of land donation. Any such analysis may have to be done under substantive due process as opposed to takings since the taking of land may not be involved. However, the nexus and proportionality requirements of the takings clause involve similar considerations under the third prong of substantive due process where the relationship of the project to the public harm addressed by the regulation and the burden on the property owner are central features of the analysis. *See Presbytery of Seattle v. King County*, 114 Wn.2d 320, 331, 787 P.2d 907 (1990). In short, general principals of fairness and reasonableness, which are the central underpinnings of substantive due process, dictate that projects should not be conditioned or denied for existing problems they did not create.

Another consideration in the interpretation of the "adequate" term is its past interpretation. Deference is due past land use interpretations that are based upon preexisting policy. *Ellensburg Cement Products, Inc. v. Kittitas County*, 179 Wn.2d 737, 753 (2014). A local entity's policy need not "be memorialized as a formal rule" but the entity must "prove an established practice of enforcement." construction if that construction has been consistently applied as a matter of policy. *Id.* For at least the last three years, and probably ever since the vacation rental regulations have been adopted, staff have always found existing facilities to be adequate based solely on the fact that the vacation rental is in a pre-existing residence that has been adequately served in the past. The examiner has likewise always found compliance on that basis as well. Indeed numerous other vacation rentals have been approved in the Davison Head neighborhood, all subject to the same fire protection

deficiencies as the subject proposal (although the record has no information on how many vacation rentals were subject to the same adequacy criterion).

Based upon all the considerations above it must be concluded that the proposal is served by adequate fire protection. Finkle/Tillman acknowledge that they are within the service area of a volunteer fire department. Appendix 7, p. 36 to the San Juan Comprehensive Plan[1] identifies that San Juan County Fire District 3 serves San Juan Island. Finkle/Tillman and other Davison Head residents may be completely justified in their dissatisfaction with the level of service they receive, but that is all the fire district can afford to provide. Since the proposal does not exacerbate the current hazards associated with the level of service, there is no public benefit and no reason grounded in equity or law to penalize the applicants for this existing deficiency by denying their permit. A finding of adequate fire protection is consistent with all prior interpretations and applications of the adequacy criterion and there is no reason to change that interpretation now.

SJCC 18.80.100(D)(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;*

21. There will be no alteration to location, size, or any other "outside" feature of the existing property, so no new interference should occur as a result.

SJCC 18.80.100(D)(7): *The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood;*

22. According to the staff report, the pedestrian and vehicular traffic associated with the use will not be hazardous to the neighborhood and there is nothing in the record to suggest anything to the contrary. The criterion is satisfied.

SJCC 18.80.100(D)(8): *The proposal complies with the performance standards set forth in Chapter 18.40 SJCC;*

23. As conditioned, and discussed above, the proposal will be in compliance with SJCC 18.40.270.

SJCC 18.80.100(D)(9): *The proposal does not include any use or activity that would result in the siting of an incompatible use adjacent to an airport or airfield (RCW 36.70.547); and*

[1] The comprehensive plan is a policy document adopted by ordinance. The examiner can take judicial notice of adopted ordinances. Indeed, consistency with the comprehensive plan is one of the criteria for approval.

24. Since no exterior alterations or changes in use are proposed, the proposal does not create any compatibility problems with any airport or airfield.

SJCC 18.80.100(D)(10): *The proposal conforms to the development standards in Chapter 18.60 SJCC.*

25. As an existing development site, the proposal is consistent with Chapter 18.60 SJCC.

Finkle/Tillman Argument

26. Conditional Use Permit Not a "Privilege". Throughout their written materials Finkle/Tillman characterize the conditional use permit as a "privilege" and that a permit applicant does not qualify for this "privilege" if they have engaged in a history of code violation. Finkle/Tillman reference no code authority for such a position, which is not surprising considering no court has ever made such a ruling in the State of Washington and no Washington law or regulation has been adopted to that effect.

As discussed at length in Finding of Fact No. 5, the applicant's bad acts, including prior code violations, are not relevant to this proceeding. This is consistent with the basis of ER 403 and 404, which generally prohibit prior bad acts in judicial civil proceedings and also prohibit the consideration of evidence whose probative value is substantially outweighed by the danger of unfair prejudice.

Finkle/Tillman have not defined what they mean by privilege, but the way in which they use it suggests that there is more discretion in decision making than actually exists. A conditional use permit is a privilege in the sense that it is only approved if permit criteria are met and also in the sense that it can be revoked if permit conditions are not met. Beyond this, the applicants have a strictly enforceable right to issuance of the conditional use permit if they meet the permit criteria. Failure to issue a permit that meets permit criteria is considered arbitrary and capricious, subject to significant damages claim under RCW 64.40.020 and 42 USC Section 1983 claims. Further, basing permitting decisions and actions on public sentiment instead of permit criteria can subject a local jurisdiction to significant liability under tortious interference with a business expectancy. *See Westmark Development Corp. v. City of Burien*, 140 Wn. App. 540 (2007); *Pleas v. City of Seattle*, 112 Wn.2d 794 (1989). For these reasons, this permitting decision is based only and exclusively upon the permitting criteria and applicable regulations. The applicants expectancy in issuance of that permit is clearly a right if they meet all applicable requirements. Similarly, if those permit criteria are not met project opponents have the right to expect denial.

27. Notice of Application. During the August 13, 2014 hearing, Finkle/Tillman argued that the notice of application was not distributed within statutory time limits and also that a second notice of application was required to be distributed in conjunction with the public hearing. It is concluded that the notice of application was untimely, but this procedural error qualifies as "harmless error" that does not justify dismissal of the application. It is also concluded that no second notice of application was required.

Finkle/Tillman base their argument upon SJCC 18.80.030(A)(2), which provides in pertinent part as follows:

> *Notice of application shall be prepared in accordance with this section and provided within 14 days after the application is determined to be complete; and, if an open-record pre-decision hearing is required, at least 15 days prior to the open-record hearing,....*

It is uncontested that application was determined complete on June 11, 2014 and that the notice of application wasn't mailed to Finkle/Tillman until July 7or 8, 2014, well past the 14 day deadline for mailing out the notice under SJCC 18.80.030(A)(2). At the hearing, staff acknowledged that the applicant had missed the deadline because they had not been given the mailing list immediately after publication of the notice. It is essentially uncontested that the 14 day deadline of SJCC 18.80.030(A)(2) was not met.

Finkle/Tillman also assert that SJCC 18.80.030(A)(2) requires a second distribution of the notice of application if the application involves a public hearing. SJCC 18.80.030(A)(2) does not require two distributions of the notice of application. All it requires is that if a hearing is involved, the notice of application must be distributed more than 15 days prior to the hearing; in other words, the hearing must be scheduled more than 15 days after the notice of application is mailed. The intent of this requirement is clearly to give the public time to prepare for the hearing. Indeed, there is no conceivable reason why a second notice of application would need to be distributed as asserted by the applicants. SJCC 18.80.030(C) already requires a separate notice for the hearing if the hearing date is not identified in the notice of application. Under the Finkle/Tillman interpretation, if a notice of application does not contain a hearing date, a second notice of application would have to be mailed out in addition to another separate notice of hearing. There is no conceivable reason why so many notices would need to be mailed out and there is nothing in the plain language of SJCC 18.80.030(A)(2) that could be reasonably construed as requiring two issuances of a notice of application.

The Finkle/Tillman interpretation is further undermined by RCW 36.70B.110, which serves as the statutory basis for the notice requirements of SJCC 18.80.030(A)(2). RCW 36.70B.110(2) requires that the notice of application must be issued within 14 days of the determination of completeness. RCW 36.70B.110(3) provides that "*if an open record pre-decision hearing is required for the requested permit project permits, **the** notice of application shall be provided at least fifteen days prior to the open record hearing.*" (emphasis added). RCW 36.70B.110(3) requires that "the" notice of application be provided more than 15 days prior to the hearing, not "another" notice application.

Finkle/Tillman assert that since denial of the permit is required because the notice of application was not timely issued. As previously noted, two notices are not required, but the notice was not issued within 14 days of the date of completeness as required by

SJCC 18.80.030(A)(2). Failure to comply with notice requirements can be cause for requiring a new hearing with corrected notice. *See Prosser Hill Coalition v. County of Spokane*, 176 Wn. App. 280 (2013). However, cases such as *Prosser* deal with circumstances where a notice provides inaccurate information or is posted in the wrong place. Under those circumstances there is a genuine risk that members of the public lost an opportunity to testify because the notice misled them about the project or was not posted in a place as required by ordinance where they could see it. No one was misled or failed to be apprised of the project because the notice of application was mailed out two weeks late. The opportunity to become involved in the process at an early stage of review was cut short, but there was still a span of more than a month between issuance of the notice and the public hearing, twice the amount of time required by SJCC 18.80.030(A)(2).

Given the absence of any prejudice to the public, the failure to issue the notice of application within the 14 days required by SJCC 18.80.030(A)(2) does not merit denial of the application or a rehearing. RCW 36.70C.130(1)(a) allows for judicial relief (which includes remand or reversal) from a land use decision if the decision maker engaged in unlawful procedure or failed to follow a prescribed procedure, "unless the error was harmless". The absence of any prejudice makes the error harmless.

28. Other Issues Untimely Raised. In their Third Supplemental Opposition, Ex. 13, Finkle/Tillman for the first time argue that the notice boards were not posted more than 30 days[2] prior to the public hearing, that required affidavits weren't filed and that the site plan was incomplete. These issues exceed the scope of the response authorized for Ex. 13. Finkle/Tillman was only authorized to submit Ex. 13 in response to Ex. 6. Ex. 6 did not address notice so notice was not an issue that could be raised in Ex. 13. Exceeding the scope of response was not a minor technicality in this instance. Staff did not have an opportunity to reply to Ex. 13. Staff usually have a much better understanding of the notice issues involved in this case than the permit applicants and usually have fairly complete records (as testified by Ms. Thompson) evidencing when notice was provided. Had Finkle/Tillman raised the 30 day requirement during the hearing, for example, Ms. Thompson would have had the opportunity to provide documentation showing when the notice was posted.

In their Third Supplemental Response Finkle/Tillman also asserted that the Zystras did not have a notice of application mailed to them. It is unclear whether Finkle/Tillman raised this issue during the hearing. In any event, Finkle/Tillman do not have standing to raise notice issues for third parties. *See Moss v. Bellingham*, 109 Wn. App. 6 (2001)(citizens did not have standing to raise procedural error in alleged failure of city to mail DNS to WA Department of Ecology). Even if Finkle/Tillman did have

[2] At hearing Ms. Tillman argued that the posting wasn't done within 14 days that the application was deemed complete as required by SJCC 18.80.030(A)(2) and that there was no posting prior to June 25, 2014. In Ex. 13, she argued that the posting didn't occur more than 30 days in advance of the hearing, prior to July 12, 2014 as required by SJCC 18.80.030(A)(2)(c)(vi).

standing, their unsubstantiated comments about what happened to a third person are outweighed by the applicants' assertion that they in fact did mail notice to the Zystras, as noted in Ex. 20.

The Third Supplemental Response also raises arguments pertaining to the SEPA exemption for the first time. These comments are also stricken as beyond the scope of the authorized response. Further, as required by state law, SEPA exemption decisions cannot be administratively appealed and are therefore outside the scope of any administrative hearing. WAC 197-11-680(3)(a)(ii) only authorizes administrative appeals of threshold determinations (whether or not an environmental impact statement is required) and appeals of the adequacy of an environmental impact statement. Any arguments pertaining to the SEPA exemption decision must be deferred to judicial appeal.

DECISION

The application is approved as conditioned below. As conditioned below, the proposal is consistent with all the criteria for a conditional use permit:

1. The vacation rental shall be operated as described in the application materials except as modified by these conditions.

2. A maximum of nine guests shall occupy the unit at any one time for rentals of 30 days or less.

3. No food service is to be provided. No outdoor advertising signs are allowed.

4. The rentals must meet all local and state regulations, including those pertaining to business licenses and taxes. Approval of this permit does not authorize the owner to violate private covenants and restrictions.

5. 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.

6. A 24-hour contact number shall be provided to Community Development and Planning Department (CDPD) and to all neighbors within 300 feet of the property along with a copy of this decision. A log of complaints shall be kept and a copy provided to CDPD upon request. The applicants or their designated representatives must be available at all times to respond to complaints phoned into the 24-hour number and must promptly address and resolve all complaints concerning violations of County Code or these conditions in a reasonably expeditious manner.

7. Prior to any rental, a proposed written Rules of Conduct will be submitted to and approved by CDPD. The Rules of Conduct shall specifically deal with trespass, property boundaries, noise disturbances and any special items specific to the rental unit or adjoining properties. The Rules of Conduct shall prohibit any amplified noise

generation outdoors between the hours of 9:00 pm and 9:00 am, including but not limited to radios, televisions and audio speakers of any kind. The Rules shall also provide that any noise audible outside between these hours with the potential to disturb neighbors is prohibited. The Rules shall require that no dogs are allowed outdoors outside of fenced areas without a leash. The Rules shall prohibit any outdoor burning, including barbecues. Upon approval by CDPD a copy of the Rules of Conduct shall be posted in the residence, given to all adult tenants and given to all property owners within 300 feet of the residence.

8. Authorization under this permit shall be void if the use is discontinued for 24 consecutive months.

9. Upon determination by the Director of CDPD that any condition listed above has been violated, following issuance of a Notice of Violation, the Director may, in addition to other code enforcement remedies, revoke the conditional use permit as authorized by SJCC 18.100.210.

10. County staff shall verify that the use of the septic system for a vacation rental is consistent with County septic standards. The septic system shall be brought up to code prior to any further vacation rentals if the change in use to vacation rental triggers any required septic improvements.

Dated this 26th day of September, 2014.

Phil A. Olbrechts

County of San Juan Hearing Examiner

Effective Date, Appeal Right, and Valuation Notices

Hearing examiner decisions become effective when mailed or such later date in accordance with the laws and ordinance requirements governing the matter under consideration. SJCC 2.22.170.

This land use decision is final and in accordance with Section 3.70 of the San Juan County Charter. Such decisions are not subject to administrative appeal to the San Juan County Council. See also, SJCC 2.22.100. This decision is appealable to superior court as governed by the Land Use Petition Act, Chapter 36.70C RCW.

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