

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant(s):	Jerry and Mary Noesen PO Box 334 Deer Harbor, WA 98243	
File No.:	PCUP00-13-0013	
Request:	Conditional Use Permit (CUP)	S.J.C. COMMUNITY
Parcel No:	260751006	DEC 02 2013
Location:	320 Channel Road, Orcas Island	DEVELOPMENT & PLANNING
Summary of Proposal:	An application for a conditional use permit to allow vacation rental of a single-family home	
Land Use Designation:	Rural Residential	
Public Hearing:	November 13, 2013	
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.	

1 **BEFORE THE HEARING EXAMINER FOR THE COUNTY**
2 **OF SAN JUAN**

3 Phil Olbrechts, Hearing Examiner

4 RE: Jerry and Mary Noesen 5 Conditional Use Permit 6 (PCUP00-13-0013)	7 FINDINGS OF FACT, CONCLUSIONS 8 OF LAW AND FINAL DECISION
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9 **INTRODUCTION**

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

12 **TESTIMONY**

13 Lee McEnery stated that the application is for a three bedroom vacation rental and that
14 the staff report covered all relevant details.

15 **EXHIBITS**

- 16 Ex. 1: 10/24/13 Staff report.
17 Ex. 2: Application materials.

S.J.C. COMMUNITY

DEC 02 2013

DEVELOPMENT & PLANNING

18 **FINDINGS OF FACT**

19 **Procedural:**

- 20 1. Applicant. The applicants are Jerry and Mary Noesen.
21 2. Hearing. The Hearing Examiner conducted a hearing on the subject
22 application on November 13, 2013 at 10:00 am at the San Juan County Council
23 meeting chambers in Friday Harbor.

24 **Substantive:**

- 25 3. Site and Proposal Description. The Applicant proposes the vacation rental
of a three bedroom single family home located at 320 Channel Road, Orcas Island.
The site accommodates at least three parking spaces. The site does not contain any
accessory dwelling unit.

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

2 5. Adverse Impacts of Proposed Use. There are no adverse impacts caused
3 as a result of the proposed use. As conditioned, the proposed use should not interfere
4 with the residential use of neighboring properties. Noise must be kept to a minimum
and a 24-hour phone number must be provided in case problems arise.

5 CONCLUSIONS OF LAW

6 **Procedural:**

7 1. Authority of Hearing Examiner. The hearing examiner is authorized to
8 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).

9 **Substantive:**

10 2. Zoning Designations. Deer Harbor Hamlet Residential.

11 3. Permit Review Criteria. Under Table 3.8 of SJCC 18.30.310 and
12 comment 7 thereof, vacation rental is an allowed use, subject to a conditional use
13 permit, in the Deer Harbor Hamlet Residential district. SJCC 18.40.270 and
14 18.80.110 establish the criteria for approval for vacation rental and conditional use
15 permit, respectively. Applicable criteria are quoted in italics and applied through
corresponding conclusions of law.

16 Vacation Rentals of Residences Criteria

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

19 4. The project is conditioned to limit the total number of guests for the 3
20 rooms to 9.

21 **SJCC 18.40.270(B):** *The vacation rental of a principal residence or accessory*
22 *dwelling unit shall be operated in a way that will prevent unreasonable disturbances*
to area residents.

23 5. The conditions of approval of the permit have been imposed to prevent
24 any unreasonable disturbances. These conditions include limitation of occupants to
25 nine guests, required posting of rules of conduct which specifically mention
prohibition of trespassing and identify property lines, provision of a 24-hour contact
phone number to neighbors in case problems may arise, and required maintenance of a
written log of complaints. The rules of conduct shall advise guests that the Orcas
Highlands subdivision has only one access road and that this road that should be used

1 to evacuate the subdivision in case of fire or other disaster. The rules shall further
2 provide that renters should not park on the street in order to facilitate access for
emergency vehicles.

3 **SJCC 18.40.270(C):** *At least one additional off-street parking space shall be*
4 *provided for the vacation rental use in addition to the parking required for the*
residence or accessory dwelling unit.

5 6. SJCC 18.55.300, Table 300-1 only requires three spaces for the property.
6 There are three parking spaces on the property.

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

9 7. No food service is proposed in the application.

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

11 8. No outdoor advertising is proposed.

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

14 9. There is no accessory dwelling unit.

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

18 10. There is no accessory dwelling unit.

19 **SJCC 18.40.270(H):** *In all activity center land use districts, rural residential, and*
20 *conservancy land use districts, the vacation rental of a residence or accessory*
21 *dwelling unit may be allowed by provisional ("Prov") permit only if the owner or*
22 *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.

23 11. The Applicant is applying for a conditional use permit as authorized by
24 Table 3.1 of SJCC 18.30.040 instead of a provisional use permit because the proposal
25 is the first vacation rental of the property.

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

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

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

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

5 **SJCC 18.40.270(K):** *The owner or lessee of the vacation rental shall provide notice*
6 *to the tenants regarding rules of conduct and their responsibility not to trespass on*
7 *private property or to create disturbances. If there is an easement that provides*
8 *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.

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

10 **SJCC 18.40.270(L):** *Detached accessory dwelling units established under SJCC*
11 *18.40.240 cannot be separately leased or rented for less than 30 days.*

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

13 **Conditional Use Permits – Criteria for Approval**

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

16 16. This proposal is consistent with the SJCC for the reasons stated above.
17 The vacation rental is consistent with the San Juan County Comprehensive Plan,
18 which allows for tourism-related businesses and activities within the context of
19 maintaining a diverse and balanced economy while minimizing the related negative
20 impacts.

21 **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;

22 17. The proposed use does not alter the general use of the structure as there
23 will be no change in the exterior appearance of the dwelling. Adverse impacts are
24 minimized and compatibility is maximized through the conditions of approval. The
25 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;

1 18. Mitigation measures for vacation rental impacts, such as noise and
2 trespassing, have been added as conditions of approval. Therefore, the use, as
3 conditioned, should not cause significant or unreasonable adverse impacts on
4 neighbors or surrounding environment.

5 **SJCC 18.80.100(D)(4):** *The cumulative impact of additional requests for like actions*
6 *(the total of the conditional uses over time or space) will not produce significant*
7 *adverse effects to the environment that cannot be mitigated by conditions of approval;*

8 19. The property will continue to appear and function in a manner similar to
9 the existing use, and further similar requests will not produce significant adverse
10 impacts to the environment.

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

13 20. The proposal is in an existing development and according to staff has been
14 shown to meet these requirements.

15 **SJCC 18.80.100(D)(6):** *The location, size, and height of buildings, structures, walls*
16 *and fences, and screening vegetation associated with the proposed use shall not*
17 *unreasonably interfere with allowable development or use of neighboring properties;*

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

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

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

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

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

30 **SJCC 18.80.100(D)(9):** *The proposal does not include any use or activity that would*
31 *result in the siting of an incompatible use adjacent to an airport or airfield (RCW*
32 *36.70.547); and*

33 24. The proposal is not incompatible with any adjacent airport or airfield. The
34 proposal involves no alteration to a structure and no significant change or

1 intensification of use. Due to these factors and the absence of any other pertinent
2 information, there is nothing in the record to reasonably suggest that the proposal will
3 interfere with airport operations or that the proximity of any airport would endanger
4 vacation rental patrons.

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

7 25. As an existing development site, the proposal is consistent with Chapter
8 18.60 SJCC.

9 **DECISION**

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

- 12 1. The 3-bedroom vacation rental shall be operated as described in the application
13 materials except as modified by these conditions.
- 14 2. A maximum of nine guests shall occupy the vacation rental at any one time.
- 15 3. No food service is to be provided. No outdoor advertising signs are allowed.
16 Adequate parking is required.
- 17 4. The rentals must meet all local and state regulations, including those pertaining to
18 business licenses and taxes. Approval of this permit does not authorize the owner to
19 violate private covenants and restrictions.
- 20 5. No use of the property shall be made that produces unreasonable vibration, noise,
21 dust, smoke, odor or electrical interference to the detriment of adjoining properties.
- 22 6. A 24-hour non-message, non-recording contact number shall be provided to
23 Community Development and Planning Department (CDPD) and to all neighbors
24 within 300 feet of the property. A log of complaints shall be kept and a copy
25 provided to CDPD upon request.
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 advise guests that the Orcas
Highlands subdivision has only one access road and that this road should be used to
evacuate the subdivision in case of fire or other disaster. If adjoining roads do not
have "no parking" signs and staff finds them too narrow to accommodate both on
street parking and emergency access, the rules shall provide that renters "should" not
park on the street in order to facilitate access of emergency vehicles. Upon approval

1 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.

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

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

6 Dated this 27th day of November, 2013.

7 
8 Phil A. Olbrechts

9 County of San Juan Hearing Examiner

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11 **Effective Date, Appeal Right, and Valuation Notices**

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

17 This land use decision is final and in accordance with Section 3.70 of the San Juan
18 County Charter. Such decisions are not subject to administrative appeal to the San
Juan County Council. See also, SJCC 2.22.100.

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

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

RIGHT OF RECONSIDERATION

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Parties to this hearing have a right to request reconsideration as outlined in SJCC 2.22.210(O).