SAN JUAN COUNTY
HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant:	Marlys Merna (owner) c/o Morgan Foley 2080 Roche Harbor Road San Juan Island Bob Querry, agent PO Box 2573 Friday Harbor, WA 98250
File No.:	PCUP00-~~10~~ 11 LG-0017
Request:	Conditional Use Permit
Parcel No:	350342006
Location:	2080 Roche Harbor Road San Juan Island
Summary of Proposal:	Conditional Use Permit
Land Use Designation:	RFF
Hearing Date:	December 14, 2011
Application Policies and Regulations:	SJCC 18.80.100(D)
Decision:	Denied.

BEFORE THE HEARING EXAMINER FOR THE COUNTY OF SAN JUAN

Phil Olbrechts, Hearing Examiner

RE: Morgan Foley Conditional Use Permit (PCUP00-11-0017)	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION**

INTRODUCTION

The Applicant has applied for a conditional use permit for what it terms an authorized recycling center and what project opponents and staff call a prohibited auto salvage yard. The application is denied. Although the applicant has demonstrated a willingness to alter its proposal to meet the requirements of the San Juan County Code, the proposal would have to be fundamentally redesigned in order to do so and the details of the remaining operations would be too uncertain for appropriate analysis and mitigation. In order to comply with County standards, the operation could not involve any automobiles, could not involve any outdoor storage and could not involve any activities such as the cutting of boat trailers that would generate unreasonably loud noise to the detriment of surrounding properties.

TESTIMONY

Staff Testimony

Lee McEnery, planner for San Juan County, stated that this hearing is in regard to an application to operate a business that disassembles metal objects and then sends the items to be recycled. She testified that staff recommended denial of the application.

Applicant Testimony

Bob Querry stated that the staff report recommends denial of the application due to the question of what Mr. Foley actually plans on doing on the site. Mr. Querry noted he did not believe fire report records, and he noted that the building official letters should have been included because they seem to be personal attacks, irrelevant, and too emotional. He added that this is not a personality contest, and the operation of Mr. Foley's business in the past should not be in question.
He testified that another business named "Consignment Treasures" (HE49-08) received a conditional use permit for what was defined as a "recycling center" in

2008 (Exhibit 3). He submitted the application material from that same hearing (Exhibit 4). Additionally, there was a request for a review by the health department from planning staff in regards to the 2008 case (Exhibit 5), he noted. Mr. Querry stated that the applicant would like the same approval that "Consignment Treasures" was granted in 2008. He commented that nothing in the code has changed to his knowledge (relevant to this case) since that decision was made in 2008. Mr. Querry also asked the hearing examiner to review that land use table for industrial uses from SJCC 18.30 and 18.20. Mr. Querry stated that the business appears to be a recycling center if you review it closely enough based on the definitions given for a salvage yard and recycling center. He stated that the current problem for defining the business is due to the handling of automobiles at the site (specifically the processing and dismantling of vehicles), which Mr. Foley will be stopping. Mr. Querry noted that much of the concern by the public is in regard to noise levels, which will be lowered because vehicles will no longer be dismantled.

He stated that Mr. Foley began this business in his home and was unaware of county code and parameters. He added that Mr. Foley's business has grown because it has been successful. Mr. Querry commented that, recently, a complaint was filed with the county against Mr. Foley in regards to noise at the site. A code investigation was completed which led to a stop-work order and Mr. Foley ceasing the operation from his home, according to Mr. Querry. He testified that Mr. Foley cleaned the site after the complaint and submitted current photos from November (Exhibit 6). Mr. Querry testified that Mr. Foley is attempting to start with a clean slate, as if he had not operated the business previously. In the photos, there is currently a building on the site which will be an equipment storage shed as well as camper shell which was previously used to store fluids and motors.

Mr. Foley plans to cease the dismantling of automobiles, according to Mr. Querry. The biggest argument in the applicant's favor is the 2008 approved recycling center for Mr. Penwell, he stated. He testified that the applicant does not plan on doing anything differently than what was included in the 2008 proposal, except that Mr. Foley does not plan on allowing items to be abandoned at the site. The site will be used to collect items, disassemble the items, and sort the items. Mr. Querry commented that this business does not clearly fit into one category in the county code, but it can be considered part of industrial development. The code is inconsistent and contradictory, Mr. Querry stated; the business has some recycling, but is not a drop-off point, junkyard or salvage facility.

Mr. Querry noted that there was a comment letter from the department of ecology which questioned the solid waste disposal. He noted that solid waste transportation includes recycling center, but it remains unclear where Mr. Foley's business fits into this part of the code. Mr. Querry stated he believes that based on precedent this should be considered a recycling center.

Mr. Querry noted that Mr. Foley had previously represented he had a permit for the removal of automobile hulks to the mainland. He was mistaken and actually only had a business license for the operation.

Mr. Querry submitted some color photos (exhibit 6) to demonstrate the progress towards cleaning his property. He added there is a civil suit in progress, but his understanding is that the criminal aspect has been stopped until the land-use application has been settled.

Mr. Foley has two vehicles for hulk hauling (shown in Exhibit 6) and intends to continue transferring vehicles to his flatbed truck on the property, according to Mr. Querry. He stated that no automobile dismantling would be associated with this activity; instead, Mr. Foley would only be removing abandoned vehicles from the island. The WAC states (on the Washington state website, Exhibit 8) that hulk haulers may remove the parts from automobiles necessary for removal at an approved location with the correct permit, but Mr. Foley does not plan on removing any automobile parts on the site.

Mr. Querry stated that the applicant plans on doing no more than what was approved previously by the hearing examiner in 2008 for Mr. Penwell's facility in Roche Harbor. He noted that automobiles would no longer be disassembled on the property. Mr. Foley uses his flat-bed truck to store vehicles and other objects (such as washing machines, computers, lawn mowers) for recycling. Mr. Foley's facility will be used to disassemble these other metal objects, not vehicles. He commented that Mr. Foley is a metals recycler and a hulk hauler. He stated that Mr. Foley's intention is to narrow his business down to what is considered within the range of a recycling center, and the business is not a junkyard.

Morgan Foley, applicant, testified that he had no idea that his business activities needed permits when he began. He stated all he wants is to continue his business that he has worked hard to build. He added that he plans on following all of the county's regulations and is working to meeting all of them, currently.

Public Testimony

Don Jarrell stated he lives three doors down from the Foley property. He noted that he has lived on the island for six years, has a validated wetland on his property, and values the protection of the island's ecosystems. In order to protect the island, he has been a trail steward and beach walker. He testified that he takes responsibility for his influence on the island. He stated that Mr. Foley's current land use is unacceptable and is a "junk-yard." He stated that oil, antifreeze, gasoline, and other unacceptable materials are damaging the property and surrounding ones. On inspection, it was noted that petroleum was imbedded in the soil and very prevalent. He testified that these substances could affect his well, which is located (by his estimate, using Google GPS) approximately 400 feet from the main building on the property and is downhill

from the site. He stated the liquid permeation will likely flow towards his well. Additionally, Mr. Jarrell noted that the noise levels are a concern because of the consistent sawing, hammering, and cutting done on the recycled metal. He commented that the noise is continuous throughout all hours of the day and night. Rubber and other pollutants can be smelled in smoke from the property. Despite stop work-orders, Mr. Foley has continued to dismantle vehicles, and Mr. Jarrell stated he fears it will continue. He stated that he believes the value of property in the Ridgedale development is in sharp decline and will only worsen if the conditional-use permit is granted to Mr. Foley. Mr. Jarrell noted that the property next door to Mr. Foley's is virtually unable to be sold according to the county assessor's office. He asked that the property be cleaned, the junk cleaned up, and a complete decontamination done.

Susan Alps testified that she believes in individualism and recycling; however, she is concerned with health and safety in regards to this case. She noted that the land downhill (aerial map in staff report, land to the east is downhill) from Mr. Foley's property includes several wells (Ms. Alps parcel number is 35035101100). Ms. Alps noted that one of the wells (just to the south of the Foley parcel) in the area is very old so she is concerned as to whether or not the sealant is strong enough to protect against the dangerous leaking substances. Additionally, Ms. Alps stated her concern over safety in regards to the fire danger. She noted there are regular fires on the Foley property and she believes there may have even been a fire the previous week. The fires have the odor of oil and petroleum. She added that the past is important in this judgment because it is a basis for what Mr. Foley will do in the future. The condition of the property has not improved, despite the county's code enforcement. She stated she supports people turning over a new leaf, but she cannot support the conditional use permit based on Mr. Foley's past actions.

Marilyn O'Connor stated her property is directly adjacent to the Foley property, and she has owned it since 1982. She noted that the Foley property is on the top of a hill in a rural-farm area in what was a quiet neighborhood. However, the area has become noisy because of Mr. Foley's business, she commented. She asked to be allowed to follow up on the *Penwell* business operation in order to understand that previous decision better, and the results it has had on the people living in the vicinity of the *Penwell* business center. She commented that she is concerned that the applicant wishes to continue disassembling objects because of the large amounts of noise. She stated that Mr. Foley's business is industrial and should be located in an area that can handle the pollutants and noise impacts. Ms. O'Connor commented that she has concerns over property values in the area. She stated that she spoke with the county assessor's office and the assessor noted that a number of nearby property owners on Sutton Road had requested devaluation because of the noise concerns. Ms. O'Connor also testified that she is concerned with the granting of industrial use to properties throughout the island because it degrades the rural character of the island.
David Dehlendorf testified that he does not live in the vicinity of the property, but he is speaking on behalf of individuals who do live near the site. He stated that he does

not believe Mr. Penwell's recycling center is used as a business. He noted that, to his knowledge, Mr. Penwell does not get paid for his services. He further commented that cutting up fiber-glass boats is not a business. Mr. Dehlendorf stated that Mr. Foley's business has always been recycling automobiles. He testified that he believes Mr. Foley will be tempted take items out of the vehicles (including the motor oil) in order to haul them to the mainland. He stated that the Beavertown Valley marsh is downhill from this property (largest wetland in the county). The wetland is currently going through a restoration project and could be negatively impacted by the dangerous substances coming from Mr. Foley's property, according to Mr. Dehlendorf.

Glenn Ishihara stated that he has owned property in the area for eighteen years and is far enough away to not be impacted by the noise or spilled substances. He stated the primary concern of citizens is property values and contamination to the water-wells.

Linda Fogg testified that she owns property at 275 Ridgedale Rd. She stated that her concerns over the application are the contamination of the community well, the environmental impacts of storing of products such as automobiles (which contain heavy metals) on the property, and the devaluation of properties. In regards to the Penwell application, she noted that the area around the Penwell property was sparsely populated, which, she noted, is the opposite of Mr. Foley's property. Ms. Fogg also asked if any retail business would take place on the property.

Mr. Querry noted that no retail activity will occur on the property.

Ann Jarrell stated that she lives close to the Foley property. She testified that there is a scenic by-way designation on San Juan Island. If the county wanted to establish revenue by creating a scenic by-way in the area, the Foley property would be a detriment to the attempt. Ms. Jarrell stated that the increase in the activity on the Foley property has been very obvious over the past six years. She noted that there are other places on the island which are zoned for industrial business, but Ridgedale is not one of them. Mr. Foley's business does not have a rural nature and does not fit in with its location. She stated she wants to ensure that the code is enforced because neighbors are not allowed on the property and there is only one code enforcement officer. She questioned whether the business would be monitored closely and the code properly enforced. Neighbors cannot be held responsible for monitoring Mr. Foley. She testified that giving a permit to a business which seems to be auto-wrecking is irresponsible.

Trish Harris, 1954 Roche Harbor Road, stated that her property borders Mr. Foley's. She stated that her concern is over the groundwater to the well which is on her property and the noise level in the area. She stated that, despite Mr. Querry's assurance that Mr. Foley has stopped work, she still hears pounding from Mr. Foley's property at night.

Laura Tuttle stated she is friends of homeowners in the Ridgedale area. In regards to the Penwell application, she noted that the Penwell property has no wetlands in its surrounding areas nor aquifer recharge areas (as of the 2008 application). Mr. Penwell had an existing use permit already from 2005 when he applied for a recycling center in 2008. Ms. Tuttle noted that Mr. Penwell did not plan to develop his site anymore in order to develop his recycling center and had no intention of creating new buildings or ground disturbing. Ms. Tuttle testified that Mr. Penwell had business applications from 1997, an extension in 2005, and further extension in 2008. Additionally, the staff report for Mr. Penwell's application noted that the recycling center will not create any odor, dust, or vibration noise on the site, according to Ms. Tuttle. She submitted the Penwell staff report (Exhibit 9).

According to Ms. Tuttle, the biggest problem is that neighbors are worried about what types of environmental hazards have occurred already because of Mr. Foley's previous activity, including having up to 13 vehicles on the property at one time. Pictures have been submitted (by Ann Jarrell) from May and September demonstrating that there are often automobiles and other drums of materials lying around Mr. Foley's property, she noted.

Ms. Tuttle added that Mr. Penwell's site was flat with huge impervious cement pads, while Mr. Foley's property is on a hill creating run-off.

Gary Alspaugh stated he lives next door to Mr. Foley. He testified that currently cars are driven onto the property and cutup and filled with other material from different, smaller objects. The metal is cut-up and slammed into the automobiles to be driven off the property. Mr. Alspaugh testified that there is endless hammering and banging from Mr. Foley's property which is unbearable. The noise does not end at any reasonable hour, and Mr. Alspaugh stated that he is uncomfortable on his own property because of the high noise levels.

Ann Jarrell stated that the application by Mr. Foley currently lists automobiles as some of the objects that would be recycled on the property.

Kyle Loring, staff attorney for Friends of San Juan, testified that the designation of recycling center is what Mr. Foley is attempting to obtain because it is the only permit that would be acceptable on the property. The story presented by Mr. Querry does not seem to match the material presented in the application. He commented that members of the public should have an opportunity to review an amended application if that is the case. He noted that the issue is not as to whether this is a valuable activity, but an issue of where this business should be located. The activities done by Mr. Foley fall under the conditions of a salvage yard, thus they should not be completed in a rural-farm area. He noted that a salvage facility is where storage, recycling, dismantling is done upon used material versus a recycling center where used materials are separated or processed by shipment. Dismantling should not occur at a recycling center; however, it is unclear how the vehicles become hulks without

being dismantled by Mr. Foley based on the material presented. Furthermore, it is unclear if the automobiles come in parts to Mr. Foley's property or come as whole vehicles. Mr. Loring noted that for zoning reasons a salvage facility location has the potential for noise and substance impact, but a recycling center does not necessarily. The applicant does not meet the criteria for a recycling center because the business creates excessive noise and pollution. There are no real accoutrements of a proper recycling center such as a cement pad or proper structures for facilities. Furthermore, there has been no analysis of how Mr. Foley would meet state law SEPA requirements such as controlling dust. It is unclear how the county's ten points of criteria required for a recycling center permit would be met. Mr. Loring added that this business is not the same as Mr. Penwell's because it is not handling the same materials, and Mr. Penwell had a very different location.

Mr. Loring stated that there it has not been clear if the applicant has truly cleaned up the property, especially in regards to odor. The letters submitted by the applicant in support of his business praise Mr. Foley's collection of old automobiles; however, the applicant has said he will cease dismantling collected vehicles. Mr. Loring concluded that the activities done by Mr. Foley fall under the category of salvage yard, thus they are inappropriate for the current rural forest site.

A neighbor stated he lives next to Mr. Foley, but has never met him before. He testified that he is concerned his well will be contaminated and the high noise levels will continue. He stated that often the noise sounds like gun fire. Additionally, he commented that the applicant has created a ditch that makes water flow to his property.

Staff Rebuttal

Ms. McEnery stated that the applicant has not demonstrated he can meet the criteria for a recycling center. She testified that staff must make their decision based on the application that was previously submitted, not an amended one. She noted that the service is needed, but the service does not fit on the current site. Upon questioning by the hearing examiner, she testified that the county does have a noise ordinance that is enforced by the sheriff, but she is unaware of the time and level. She added that the department of ecology has asked for an NPDS permit (noted in one of the comment letters).

Applicant Rebuttal

Mr. Querry stated everything proposed by the application is recycling in one way or another. The air pollution from burning will be stopped, and the presence of oil causing groundwater pollution has come from Mr. Foley using a fork-lift recently, according to Mr. Querry. He stated that Mr. Foley does not remove the fluids from the vehicles and it is not required for him to do so at the receiving end. Mr. Querry further stated that he does not recycle oil or other fluids at the site, except for smaller

objects like lawnmowers. In this case, he does have small amounts of fluids which he collects in proper containers on the site.

Mr. Querry stated that the removal of automobiles from the proposal is not a significant change in the impact of the permit approval. Mr. Querry noted that Mr. Foley does not gain most of his money from the automobile portion of the business. In regards to Mr. Loring's comments about Foley's hulk hauling, Mr. Querry stated hulk haulers are prohibited from dismantling automobiles by law, thus Mr. Foley will not be doing so. The only work on the vehicles will be the removal of the batter, according to Mr. Querry. The automobiles will be transferred onto Mr. Foley's flat-bed at the site and will be still be assembled upon reaching Mr. Foley's property, Mr. Querry stated. The automobile portion of Mr. Foley's business will purely be to remove old vehicles from the island, he noted.

Mr. Querry once again noted that a salvage facility includes recycling according to the county code, which makes it difficult to classify Mr. Foley's business. According to the precedent of the Penwell decision, Mr. Foley should also be granted approval, he stated. Mr. Penwell began as a thrift store which morphed to include a recycling center, and, when he asked to be allowed to recycle additional materials, he was granted permission.

Mr. Querry testified that the issue of noise is significant and is part of the conditional use criteria. He also noted that Mr. Foley admits to error in the burning of materials on the site. Additionally, there isn't a large amount of dust being made, according to Mr. Querry. The noise remains an issue, but Mr. Foley is willing to work within specific time limits, according to Mr. Querry. He added that different methods of cutting and sawing could be implemented to cut down on the noise levels.

Ms. McEnery stated that when the code was adopted in 1998, recycling generally did not include car metal. The semantics of "auto-salvage" versus "recycling" remain uncertain, she noted. It is unclear if the business is a salvage yard; however, it is also unclear how the business can meet the criteria to be considered a recycling center, according to Ms. McEnery

EXHIBITS

The following exhibits were admitted into the record:

Exhibit 1: Application materials (attached to 11/21/01 staff report)
Exhibit 2: Comment letters (attached to 11/21/01 staff report and identified individually at pages 4-5 of the staff report in addition to a December 13, 2011 comment letter from Friends of the San Juan and comment letters from Kelly Black and Scott Johansen)
Exhibit 3: San Juan Hearing Examiner decision HE49-08 (*Penwell),*

Exhibit 4: 1st page of application for *Penwell.*
Exhibit 5: 9/17/08 Memo from Mark Thompkins to Shannon Fitzgerald
Exhibit 6: 7 current color photos from the site dated 11/25/2011
Exhibit 7: Foley business license
Exhibit 8: WSDOL Hulk Hauler/Scrap Processors Manual
Exhibit 9: Staff report from 2008 *Penwell* application
Exhibit 10: 12/15/11 letter from Bob Querry
Exhibit 11: 12/19/11 email from Linda Fogg
Exhibit 12: 12/20/11 email from Ann Jarrell
Exhibit 13: 12/20/11 letter from Don Jarrell
Exhibit 14: 12/20/11 Staff response
Exhibit 15: 12/21/11 letter from Susan Alps
Exhibit 15: 12/21/11 letter from Steve and Linda Fogg
Exhibit 16: 12/21/11 letter from Don Jarrell
Exhibit 17: 12/22/11 letter from Friends of the San Juans
Exhibit 18: 12/22/11 Email from Marilyn O'Connor
Exhibit 19: 12/20/11 letter from Gary Alspaugh

FINDINGS OF FACT

Procedural:

1. Applicant. The Applicant is Morgan Foley and Marlys Merna is the property owner.

2. Hearing. The Hearing Examiner conducted a hearing on the subject application on December 14, 2011. The record was left open through December 22, 2012 for comment on the *Penwell* application (discussed *infra*) and amendments made to the application by the application at the hearing.

Substantive:

3. Site and Proposal Description. The Applicant requests an after-the-fact conditional use permit for a business that disassembles used metal objects and then transports the metal to a recycler on the mainland. Items are proposed to be retrieved from various places, brought to the subject site, taken apart, sorted by content and put on a truck for transport to the mainland. Automobiles are hauled in and when one or two accumulate on the site, are also taken to the mainland. At the hearing the Applicant modified its application by noting that the operations would not involve any dissembling of automobiles. In addition to automobiles, the Applicant would process other metal objects such as used appliances and boat trailers.

An oxy-propane torch will be occasionally used to cut metal such as boat trailers into smaller pieces, which may result in the burning of finishes such as paint or galvanizing. A gas powered cutoff saw would also be used to apparently cut metal

objects. A forklift would be used to load scrap bins onto a transport truck. As best as can be discerned from the record all of this equipment would be used outdoors.

The site is developed with a single family residence and outbuildings located at 2080 Roche Harbor Road, San Juan Island.

4. Characteristics of the Area. The property is adjoined to the north, south and east with residential use and agricultural use to the west. According to a comment letter from Marilyn O'Connor, Ex. 2, there are three homes within 500 feet of the site and an additional six homes within about 1000 feet.

5. Adverse Impacts. As proposed, the project will create some significant unavoidable impacts as follows:

A. *Noise*. Noise is the primary impact of concern and constitutes a significant adverse impact that cannot be eliminated through mitigation. It is clear from the many comments of adjoining property owners that the operations to this point have regularly generated a significant amount of unreasonable noise late into evening hours to the detriment of several surrounding properties. The Applicant acknowledges that use of a cutoff saw and forklift will cause some noise and offers to limit the production of noise between 10:00 am and 2:00 pm. The Applicant's elimination of automobile dissembling from current business operations might reduce the noise that has been generated in the past, but it is clear that noises associated with cutting boat trailers into sections and similar activities will continue to generate noise that is incompatible with surrounding residential use. Recycling centers are a permitted use in the area proposed by the Applicant, but in order to maintain compatibility with the numerous adjoining homes the noise generating activities proposed by the Applicant should be conducted within a building or eliminated altogether. The Applicant's representative testified that conducting the noise generating activities within a building was not feasible.

B. *Aesthetic*. Photographs attached to the 11/10/11 Jarrell comment letter, Ex. 2, show several hulk automobiles, automobile parts and a significant number of other metal objects that are not aesthetically compatible with the residential character of the surrounding neighborhood. Given their subjective nature, aesthetic impacts are difficult to regulate. However, SJCC 18.30.040, Table 3.2, prohibits outdoor storage yards in the RFF zoning district. SJCC 18.20.150 defines an outdoor storage yard as "the storage of goods and materials out-of-doors for periods exceeding 48 hours." This definition sets an objective standard for acceptable storage of materials out of doors, i.e. less than 48 hours at a time. Through this standard the San Juan County Code contemplates that businesses dependent upon outdoor storage, such as that proposed by the Applicant, are not compatible with the uses authorized in the RFF zone.

C. *Water Quality*. A major concern of neighbors is water quality. They state that the automobiles and other metal objects stored on site leak chemicals that could contaminate the aquifer that supplies their wells. The concerns of the neighbors are certainly valid. However, there is no evidence in the record to suggest that the project could not be conditioned to prevent contamination of the aquifer. The County's aquifer protection regulations, SJCC 18.30.140, do not contemplate the prohibition of land uses that could potentially contaminate aquifers. Rather they require best management practices of the type proposed by the Applicant to ensure that no contamination occurs. There is no evidence in the record to rebut the reasonable inference that the proposal could be conditioned to prevent contamination in this manner. Potential impacts to water quality do not serve as grounds for denial of the project since the potential for contamination can be reasonably reduced by conditions of approval.

D. *Traffic*. The Applicant asserts in Ex. 10 that the project will generate 1-5 additional round trips per week, which does not constitute a significant adverse impact.

E. *Smoke/Odor*. Neighbor concerns were raised about burning activities conducted on-site. This certainly could qualify as a significant adverse impact, but this activity likely could be prohibited through conditions of approval without significantly altering the proposal.

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.

Substantive:

2. Zoning Designations. The subject property is designated as Rural Farm Forest ("RFF").

3. Applicability of Penwell decision. The Applicant argues that the approval of the *Penwell* conditional use application, San Juan County Hearing Examiner HE49-08, compels approval of its application. Like the subject application, *Penwell* involved collecting recyclables from off-site locations and taking them to the project site where they are dissembled and/or packaged for transportation for final processing

off-island. Unlike the subject application, *Penwell* did not involve the delivery of any hulk automobiles. Also, unlike the subject application, the *Penwell* Examiner determined that there would be no noise impacts detrimental to surrounding properties. There was no indication in any of the documents submitted for *Penwell* that there would be any significant noise generated by the project. Indeed the *Penwell* operations included 1,000 square feet of building space for "recycling activities", leaving open the distinct possibility that any noise generating activities would be conducted in-doors. The *Penwell* site also appears to be more isolated from residential uses than the subject site. As discussed in the conclusions of law below, the inclusion of automobiles in the recycling operation and the generation of significant noise are each enough by themselves significant enough problems to justify denial of the application. The *Penwell* decision is not controlling in this application.

4. Permit Review Criteria. SJCC 18.30.040, Table 3.2 authorizes recycling centers as a conditional use in the RFF zone. SJCC 18.80.100(D) governs the permitting criteria applicable to conditional use permits. Those criteria are quoted in italics below and applied with corresponding conclusions of law.

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;*

5. The recycling of automobiles and the outdoor storage proposed by the Applicant are not allowed in the RFF zone. The noise and aesthetic impacts associated with the project are not consistent with the Comprehensive Plan.

A major issue of this application is whether the proposal qualifies as an authorized "recycling center" or a prohibited "wrecking and salvage" yard in Table 3.2 of SJCC 18.30.040. An "Automobile wrecking and junk (or salvage) yards" is defined by SJCC 18.20.010 as "an outdoor area used for the wrecking, storage, and recycling/salvage of wrecked or abandoned vehicles for scrap metal and/or parts." A "recycling center" is defined by SJCC 18.20.180 as "an area, with or without buildings, upon which used materials are separated and processed for shipment." There is somewhat of an overlap in function for both uses, in that both the recycling centers and the wrecking and salvage yards involve recycling. One could arguably distinguish the two functions in that a recycling center is used for intermediate handling as proposed by the Applicant (i.e. items processed for shipment somewhere else for recycling) and recycling on-site (which would be consistent with the wrecking/salvage yard definition). This may be one distinguishing feature between the two types of uses, but an equally important distinguishing feature that could be interpreted from the two is that an auto wrecking/salvage yard involves automobiles and a recycling center does not. Automobiles are significantly larger than other types of materials typically subject to recycling. Consequently, the noise and aesthetic impacts associated with their processing is generally greater than that associated with cans and bottles and even household appliances. The processing of automobiles for

further recycling elsewhere is certainly consistent with the definition of auto wrecking/salvage yards. For all these reasons, the processing of automobiles as proposed by the Applicant is not construed as a use authorized as a recycling center and is prohibited in the RFF zone as an auto wrecking and salvage yard.

For the reasons discussed in Finding of Fact No. 5(B) the proposal involves outdoor storage, which is prohibited in the RFF zone.

Comprehensive Plan Policy 2(3)(C)(a)(4) requires that uses in rural lands should be compatible with existing rural character. The noise and aesthetic impacts associated with the proposal as discussed in Finding of Fact No. 5 are not compatible with existing rural character, especially given the close proximity of several residences in this case.

The criterion is not met.

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;*

6. As noted previously, the noise and aesthetics of the project are not consistent with the Comprehensive Plan goals and policies for rural lands. The criterion is not met.

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;*

7. As discussed in the findings of fact, the noise and aesthetics of the project will create significant adverse impacts. The proposal would have to be fundamentally altered to mitigate these impacts and it is not apparent from the record what impacts would result or that the project would even be feasible with the removal of outdoor storage, automobile processing and all significant noise producing activities. The criterion is not met.

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;*

8. Authorizing outdoor storage and automobile salvage/wrecking as proposed in the RFF zone could set a precedent for similar uses throughout the RFF district that are similarly incompatible with surrounding residential uses. The criterion is not met.

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;*

9. It appears that the project could be conditioned to provide for adequate stormwater control and also that adequate services could serve the project. With proper conditioning this criterion could be met.

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;*

10. The proposal does not involve any structures that would unreasonably interfere with neighboring uses. It is the activities proposed on the site that create problems as discussed in the Findings of Fact.

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;*

11. As determined in the findings of fact, the proposal will only produce a nominal amount of traffic. There is nothing in the record to suggest that the nominal vehicular and pedestrian traffic will create any type of hazard.

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

12. The proposal would not be consistent with SJCC 18.40.280(A)(4), which prohibits the generation of unreasonable noise by equipment or material to the detriment of adjoining property. The criterion is not met.

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*

13. The proposal is near, but not adjacent to an airport.

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

14. There are no standards in Chapter 18.60 SJCC that directly address this proposal.

DECISION

The proposal does not comply with the conditional use criteria above because it includes uses prohibited in its zoning district and it generates significant noise and aesthetic impacts that are incompatible with surrounding residential use.

Dated this 12th day of January, 2012.

Phil 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. Before becoming effective, shoreline permits may be subject to review and approval by the Washington Department of Ecology pursuant to RCW 90.58.140, WAC 173-27-130 and SJCC 18.80.110.

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

Depending on the subject matter, this decision may be appealable to the San Juan County Superior Court or to the Washington State shorelines hearings board. State law provides short deadlines and strict procedures for appeals and failure to timely comply with filing and service 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 promptly review appeal deadlines and procedural requirements and consult with a private attorney.

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