

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

2 Phil Olbrechts, Hearing Examiner

<p>3 4 RE: San Juan County Public Works Dept. 5 6 Conditional Use Request 09CU017</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION.</p> <p>S.J.C. COMMUNITY</p>
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9 **INTRODUCTION**

10 **DEVELOPMENT & PLANNING**

11 The applicant requests a conditional use permit for storage of aggregate materials for
12 use in maintaining county roads. The application is approved subject to conditions.
13 The most difficult part of this application involves compliance with County noise
14 standards. The applicant and staff have asserted compliance by reference to a noise
15 study. The noise study assesses compliance with state noise regulations, not the San
16 Juan County noise standard applicable to industrial projects. SJCC 18.40.280(D)(2)
17 requires that any increases in noise generated by an industrial project shall not be
18 audible beyond ambient noise conditions at the property lines. This standard can be
19 far more strict than state noise standards and probably is in this case. There is
20 insufficient information in the record to assess whether the truck noise and other
21 noise generated by the project will not be audible beyond ambient levels at the
22 property lines. For this reason the Examiner has conditioned the project as not
23 exceeding the ambient levels identified in the noise study by more than 4 dBA. Since
24 this condition was not discussed during the hearing, the applicant is encouraged to file
25 for reconsideration if it has a more practical or reasonable interpretation and/or
standard that would apply to the project.

19 **ORAL TESTIMONY**

20 Julie Thompson entered and summarized the staff report. She noted that eventually a
21 public works building will be constructed at the site but this will involve another
22 conditional use permit. In response to questions from the Examiner she noted that a
23 vegetative berm that would qualify as Type A screening is currently under review as
24 part of a clearing and grading permit application for the side of the property that does
not have screening. Rachel Dietman added that public works will also be
constructing a fence along the property line and that this does not necessitate any
administrative review.

25 In response to Examiner questions about business hours, Ms. Dietman and Mr.
Harvey both noted that they needed some flexibility in hours to address unusual

1 circumstances, such as shipment of aggregate materials at odd hours. They did not
2 foresee that any need for unusual hours would extend beyond two or three weeks per
3 year. He noted that from March to September the schedule for public works is ten
4 hour days and the rest of the year eight hours. Mr. Dietman stated that the normal
5 work schedule is 6:30 am to 5:30 pm. Chip seal work may extend a couple hours
6 beyond 5:30 on some days because hours are tied to the ferry system and weather
7 conditions. Ms. Dietman noted that the emulsion for chip seal cannot stay in the
8 trucks overnight and must be used on the day made, which can further necessitate
9 delays beyond any set hours. Mr. Harvey noted that the trucks would probably not be
10 operating prior to 6:30 am and that a 7:30 pm ending time would be most appropriate.

11 Mr. Harvey stated that the aggregate materials would not include sand for snow
12 removal and that there is a separate storage facility for sand. He said that the
13 aggregate was composed of gravel for gravel roads and materials for building roads
14 and maintaining roads, such as chip seal. He said that stormwater controls will be in
15 place to prevent runoff from polluting wetlands.

16 Ms. Dietman noted that some adjoining parcels are undeveloped with aggregate
17 storage. She noted that the lots are part of business park and that business
18 development is anticipated. She noted that other lots in the vicinity also have
19 commercial uses including a gym. She noted that the closest home is on the southeast
20 side of the property that there is commercial development on the other side of the
21 residences, some more residential property and then the town.

22 EXHIBITS

23 Exhibit 1	12/21/09 Staff Report
24 Exhibit 2	10/14/09 Application
25 Exhibit 3	SEPA Checklist received 10/15/09
Exhibit 4	10/22/09 Email Response to Julie Thompson
Exhibit 5	10/28/09 Project Site Plan
Exhibit 6	10/28/09 Overall Site Plan
Exhibit 7	10/28/09 Outdoor Stockpile Plan
Exhibit 8	11/20/09 Email from Paul Anderson
Exhibit 9	11/17/09 Letter from DOE
Exhibit 10	11/21/09 Email from Rachel Dietzman
Exhibit 11	12/18/09 Email from Rachel Dietzman
Exhibit 12	12/21/09 Email from Russ Harvey
Exhibit 13	11/4/09 SEPA Determination of Nonsignificance
Exhibit 14	7/26/08 DEIS Noise Study for Transfer Station

26 FINDINGS OF FACT

27 Procedural:

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Conditional Use

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Findings, Conclusions and Decision

1 1. Applicant. The applicant is the San Juan County Public Works
2 Department.

3 2. Hearing. The Hearing Examiner conducted a hearing on the application at
4 12:00 p.m. at Key Bank. *Hearing date: 1/6/10, LG.*

5 **Substantive:**

6 3. Site/Proposal Description. The applicant has requested a conditional use
7 permit for the storage of aggregate for maintenance of county roads. Up to 20 tons of
8 aggregate will be stored at a site that currently houses a San Juan County Public
9 Works building. Category II wetlands are located at the southwest corner of the site
10 and on adjacent property to the north across Beaverton Valley Road. Smaller
11 wetlands are located at the south end of the property and along the eastern boundary
12 near the center of the property. A man-made pond is located in the center of the
13 property near the north end. The aggregate will be stored 500 feet from the nearest
14 commercial facility and 700 feet from the nearest residence. Access to the property is
15 from Beaverton Valley Road, a county road. The subject property is screened on
16 three sides with what qualifies as Type A screening under County landscaping
17 regulations (a mix of evergreens and shrubs with evergreens composing more than
18 70% of the screening to form a continuous screen). The south property line does not
19 have screening but is located more than 700 feet from the loading and unloading
20 activities.

21 No chemicals, solvents, or hazardous substances will be used as part of the project.

22 No indoor activities will be associated with the project.

23 4. Characteristics of the Area. The parcel to the west is the Beaverton Valley
24 Business Park, a mixture of commercial and residential development. To the north is
25 Beaverton Valley Road, and on the other side of the road is a large wetland. The
26 eastern and southern parcels are residential, but are not all developed. The closest
27 residence is located more than 500 feet from the project and the closest commercial
28 facility more than 700 feet.

29 5. Adverse Impacts. The record identifies three potential adverse impacts:

30 A. Traffic. The environmental checklist states that the project will generate a
31 maximum 2,000 truck trips per year, with the majority of traffic between January 1
32 and July 31. See, Ex. 3, p. 6. The project will be served by Beaverton Valley Road,
33 an arterial. Staff have concluded that the arterial is sufficient to accommodate the
34 proposed truck traffic and that there is safe site distance at the access point to the
35 subject property. As designed, the roads and access are adequate to accommodate the
36 project.

1 B. Dust. The materials stored outdoors can be a source of dust. A pond will
2 be used to water down the materials to prevent dust generation, which staff have
3 found adequate to control dusk impacts.

4 C. Noise. Noise is the most significant adverse impact associated with the
5 project. There are a few homes adjoining the project or within a few hundred feet.
6 2,000 trucks per year is not the type of noise typically associated with residential use,
7 especially when it's concentrated over several days or weeks. Staff rely upon a noise
8 study, Ex. 14, used to assess impacts of a solid waste transfer station that was at one
9 time proposed for the site. The noise study generally concludes that a transfer station
10 at the site would not generate excessive noise. The staff assumption is that these
11 conclusions equally hold true for the subject proposal, because the proposal will
12 generate significantly less noise than a transfer station. The Examiner agrees with
13 this assumption. The trucks delivering aggregate will likely have similar noise
14 impacts to trucks collecting solid waste at the transfer station. As noted in the noise
15 study, the truck sound would not even be the loudest activity at a transfer station, as
16 that distinction was given to the solid waste loader.

17 Although the noise study serves as a useful source of information on noise
18 impacts, it does not address the noise standards relevant to this application. The noise
19 study addresses compliance with state noise regulations, Chapter 173-60 WAC. As
20 identified in the Conclusions of Law below, the County has adopted its own noise
21 standards for industrial use (SJCC 18.40.280) and these standards are in some
22 respects more stringent than their WAC counterparts. Consequently, as further
23 discussed in the Conclusions of Law, the Examiner cannot rely upon the noise report
24 alone to determine compliance with County industrial noise standards. Although not
25 all relevant, the Examiner does find all of the analysis and data in the noise study to
be accurate and reliable and specifically adopts the data as to ambient and discernable
noise (Section 3.2.1 and Table 3-16 of the noise report) as findings for purposes of
this decision.

In addition to the impacts addressed above, the staff report states that trucks and
equipment will produce exhaust odor. There is nothing to suggest that this odor will
be excessive or unreasonable. There will be no smoke or electrical interference
associated with the project and dust will be controlled with pond water.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. SJCC 18.80.100(C) provides that the
hearing examiner has the authority to approve, deny or condition conditional use
permit applications.

1 **Substantive:**

2 2. Zoning Designation. The zoning designation is Rural General Use (RGU).

3 3. Review Criteria and Application. Table 3.2 of Chapter 18.30 SJCC
4 provides that outdoor storage is allowed as a conditional use in the RGU zone. SJC
5 18.20.150 defines outdoor storage as the storage of goods and materials out-of-doors
6 for periods exceeding 48 hours. The County's proposed storage of road materials
7 qualifies as outdoor storage. The criteria for a conditional use permit are specified in
8 SJCC 18.80.100(D). Those criteria are quoted below with applicable Conclusions of
9 Law for the subject application.

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

12 4. Section 2.3.C.a of the San Juan County Comprehensive Plan provides that
13 the goal of the RGU designation is to provide flexibility for a variety of small-sale,
14 low impact uses on rural lands. In the context of commercial/industrial uses the use
15 proposed by the County is small scale -- two thousand yearly truck trips averages to
16 less than six per day -- and the entire parcel is less than 30 acres in size. Noise
17 impacts will be mitigated in order to assure that the project qualifies as "low impact."
18 The proposed use is allowed in the RGU district as a conditional use, and the
19 conditional use criteria, in turn, require compliance with the performance standards of
20 Chapter 18.40 SJCC. As shall be discussed below, as conditioned the project will be
21 consistent with Zoning Code performance standards. Consequently, as proposed and
22 conditioned, the proposal will not be contrary to the purposes and regulations of the
23 Zoning Code or Comprehensive Plan.

24 **SJCC 18.80.100(D)(2):** *The proposal is appropriate in design, character and
25 appearance with the goals and policies for the land use designation in which
the proposed use is located;*

5. As noted previously in Conclusion of Law No. 4, the RGU zone is
designed to provide flexibility for a variety of small-scale, low impact uses. Since as
previously discussed the proposal is small scale and as conditioned will be low
impact, its design, character and appearance certainly fall within the range of
flexibility and variety contemplated for the RGU designation.

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;*

6. As discussed in Finding of Fact No. 5, all adverse impacts of the project
are fully mitigated. Noise impacts will be subject to further mitigation as outlined in
Conclusion of Law No. 11 below.

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

4 7. The use proposed by the County is highly unique. Staff testified that they
5 have at least one other facility used to store materials for road maintenance, but there
is no indication that there will be a need for any large number of similar facilities.

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

9 8. Staff noted in the staff report that the project is served by adequate
facilities, including those identified above and there is no evidence to the contrary.

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

13 9. No structures are proposed. Vegetative screening is located along the
14 perimeter of the property to serve as a visual buffer to adjoining properties, and there
15 is no indication or reason to believe that this screening will interfere with adjoining
properties.

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

18 10. As determined in Finding of Fact No. 5, there is adequate site distance at
19 the access point for the property. There are no other vehicular or pedestrian safety
20 problems associated with the proposal.

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

23 11. As identified in Tables 3.1 and 3.2 in SJCC 18.30.030 and 18.30.040,
24 outdoor storage is an industrial use. The applicable criteria for industrial uses in
25 Chapter 18.40 SJCC are quoted and addressed below. As determined in the
Conclusions of Law below, the proposal complies with all applicable performance
standards as conditioned.

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

4 12. The Friday Harbor Airport is near the proposal, but staff have determined
5 that there is nothing incompatible about the project and nothing in the records
6 suggests anything to the contrary.

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

9 13. Staff have determined that the project is consistent with the standards of
10 Chapter 18.60 SJCC and nothing in the records suggests anything to the contrary. No
11 roads or impervious surfaces are proposed. The project will be conditioned to comply
12 with the County's stormwater and landscaping requirements.

13 **SJCC 18.40.280(A)(1):** *The use of chemicals, industrial solvents, or other*
14 *noxious or hazardous substances shall comply with all federal, state, and*
15 *County safety, fire, structural, storage, and disposal standards.*

16 14. No chemicals, solvents, or hazardous substances will be used as part of the
17 project.

18 **SJCC 18.40.280(A)(2):** *Water supplies, wastewater, and sewage disposal*
19 *facilities adequate to serve the proposed use shall be provided.*

20 15. No water or sewer facilities are required or necessary for the proposal
21 except for a pond to supply dust control.

22 **SJCC 18.40.280(A)(4):** *No use shall be made of equipment or material which*
23 *produces unreasonable vibration, noise, dust, smoke, odor, electrical*
24 *interference to the detriment of adjoining property.*

25 16. The staff have determined that the project will not generate use of
equipment or material that produces the unreasonable adverse impacts identified
above and the record is consistent with this determination. Noise is one exception
and it will be conditioned to a reasonable level as required by SJCC 18.40.280(D),
which is applied under a separate Conclusion of Law below.

SJCC 18.40.280(A)(5): *Use of a County access road or private road for*
access to new industrial development shall be permitted only if the applicant
demonstrates that public health, safety and welfare will be protected, and if
traffic and maintenance impacts to the private road are minimized by
conditions on the permit.

17. Access is by County road (Beaverton Valley Road) and as previously determined, the road is adequate and there is safe site distance. If the County road is considered an "access road" for purposes of the criterion above, since it is adequate and safe the public health, safety and welfare is protected.

SJCC 18.40.280(B): *Industrial Uses in Rural Designations. For all allowable and conditionally permitted industrial uses located in rural land use districts, as listed in Table 3.2 in SJCC 18.30.040, if estimated traffic volume generated would exceed the volume that would be generated by rural residential use of the site (five trips per day per unit of maximum density), any easements or road improvements required by the County engineer to accommodate the increase must be provided prior to occupancy.*

18. The County engineer has not required any easement or road improvements for the project, since existing roads are adequate.

SJCC 18.40.280(D)(2): *Production of noise at the property lines of the premises shall not exceed normal ambient noise levels in the vicinity, as discernible without instruments.*

19. In order to assure compliance with the standard quoted above, the project will be conditioned upon not exceeding 4 dBA above ambient noise conditions as identified in Table 3-16 of the noise study (Ex. 14), as measured from the property lines of the project site.

This is the most troublesome standard for the proposal. It is a very restrictive standard, in that it requires industrial uses to not be audible beyond ambient noise at the property line. Industrial uses by their nature are loud and often obnoxious, which is why they are usually tucked away in areas that are nowhere near residences or benign commercial uses. As discussed in Finding of Fact No. 5(C), the staff appropriately uses a noise study (Ex. 14) prepared for a transfer station previously proposed for the site. However, the noise study assesses compliance with state noise standards, not the criterion above. The staff report also notes that the proposed use does not comply with state noise standards at all locations; along the driveway there is a point where truck traffic will exceed state standards. Staff justify this deviation on the basis that the closest residence is 400 feet from the driveway and that by the time the noise reaches the residence it will be within state standards. The criterion above and arguably the state standards as well, however, are based upon measurements from the property line. For these reasons, only portions of the noise study are relevant to the criterion above.

The relevant portions of the study are the data provided on ambient and audible noise. Combining this information can serve as the basis for a condition that assures that noise levels at the property line do not exceed ambient noise levels. Section 3.2.1 of the noise study concludes that 5 dBA represents the bottom threshold of an audible

1 increase in noise outside the laboratory under “normal” conditions while an increase
2 in 2-3 dBA can only be discernable under ideal laboratory conditions. Given these
3 parameters the Examiner finds that 4 dBA serves as the maximum increase in noise
4 that is not audible under “normal” conditions. In order to assure compliance with
5 SJCC 18.40.280(D)(2), the project will be conditioned as limiting noise to 4 dBA
6 above the ambient noise levels referenced at Table 3-16 in the noise study.

7 The Examiner cannot be any more specific on the noise requirement because the
8 record contains insufficient information to do so. It certainly would be preferable to
9 conclude up front that the truck traffic projected for the project will be less than 4
10 dBA above the levels identified in Table 3-16. This cannot be done because the
11 record does not contain information on the duration of noise created by each truck trip
12 or how many trips are anticipated to occur per hour during peak operation. The
13 public works department will have to correlate the duration of truck (and equipment if
14 also a significant source of noise) noise with the most comparable noise frequency
15 levels used in Table 3-16 to determine compliance.

16 The Examiner appreciates that the ambient noise condition will be difficult to apply.
17 It is difficult to see how any significant amount of truck traffic could not exceed
18 ambient noise at the property line. However, the standard leaves no room for a more
19 creative or (arguably) reasonable interpretation. Since the RGU allows industrial uses
20 to be mixed with residential uses, it is understandable that the County Council only
21 contemplated allowing industrial uses if they could meet strict performance standards,
22 most notably those involving noise. The Examiner invites the public works
23 department to offer a more flexible interpretation in a request for reconsideration. No
24 reasonable alternative interpretation is immediately apparent.

25 Given that the noise condition will prevent any audible increase in noise, there is no
need to place any restriction on hours of operation as discussed during the hearing.
Of course, the public works department will have to comply with the “night” ambient
noise levels of Table 3-16 if it chooses to operate during night hours.

SJCC 18.40.280(D)(3): *No emissions of dust, dirt, odors, smoke, toxic gases
or fumes will occur.*

20. A watering pond will be used to control dust emissions. No emissions of
odors or fumes will occur beyond those associated with vehicular traffic.

SJCC 18.40.320: *All outdoor storage yards for vehicles and equipment, in
association with commercial or industrial use, shall be screened from public
roadways and paths using either a Type A Screen or a Type C Screen used
in conjunction with a fence built with natural materials standing a minimum of
six feet high*

1 21. There is already Type A screening along all the property lines except the
2 south property line. Staff testified that a Type A screening for the south property line
3 is under review. Installation of the Type A screening for the south property line will
4 be a condition of approval.

5 **DECISION**

6 The conditional request is approved subject to the conditions recommended in the
7 staff report in addition to the following:

8 1. All noise generated by the project shall not exceed the ambient noise levels
9 identified in Table 3-16 of the noise study (Ex. 14) by more than 4 dBA at the
10 property lines.

11 2. To the extent applicable, the project shall comply with the stormwater control
12 requirements of SJCC 18.60.070 and the landscaping requirements of SJCC
13 18.60.160. Within six months of commencing operations authorized by this
14 conditional use permit decision, the applicant shall install Type A screening or a Type
15 C Screen used in conjunction with a fence built with natural materials standing a
16 minimum of six feet high.

17 Dated this 21st day of January, 2010.

18 Mailed when received
19 Jan. 25, 2010.

20 SH



21 Phil Olbrechts
22 San Juan Hearing Examiner

23 **APPEAL RIGHTS**

24 SJCC 18.80.100(G) provides as follows for appeal rights:

25 *G. Appeals. Decisions approving or denying conditional use permits
and/or variances may be appealed to the board of County commissioners
in accordance with procedures specified in SJCC 18.80.140.*

Section 3.70(4) of the San Juan County Home Rule Charter also allows appellants to
bypass an appeal to the San Juan County Council and file an appeal directly with San
Juan Superior Court. Superior Court appeal procedures are governed by Chapter
36.70C RCW.

Appeal deadlines to both the County Council and the Superior Court are short and
procedural standards strict. Failure to comply with procedures will usually result in
dismissal of the appeal. Appellants are encouraged to carefully review all procedural
requirements and to consult with a private attorney to ensure that all procedures are
followed correctly.