

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS, AND DECISION**

Applicant(s): Travis and Sybil Mager  
PO Box 2763  
Friday Harbor, WA 98250

File No.: PCUP000-16-0021

Request: Conditional Use Permit (CUP)

Parcel No.: 462651024

Location: 222 Heron Lane, San Juan Island

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: July 21, 2016

Application Policies and Regulations: SJCC 18.40.270 Vacation Rentals  
SJCC 18.80.100(D) CUP Criteria

Decision: Approved subject to conditions

S.J.C. DEPARTMENT OF  
AUG 04 2016  
COMMUNITY DEVELOPMENT

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

In the Matter of the Application of )  
 )  
**Travis and Sybil Mager** ) NO. PCUP000-16-0021  
 )  
 )  
 )  
For approval of a conditional use permit )  
to allow vacation rental of the two )  
bedroom residence at 222 Heron Lane, )  
San Juan Island )

S.J.C. DEPARTMENT OF  
AUG 04 2016  
COMMUNITY DEVELOPMENT

**SUMMARY OF DECISION**

The request for conditional use permit to authorize the use of the two bedroom residence at 222 Heron Lane, San Juan Island as a vacation rental is **APPROVED** subject to conditions.

**SUMMARY OF RECORD**

**Request:**

Travis and Sybil Mager (Applicants) requested a conditional use permit to authorize vacation rental use of the two bedroom residence located at 222 Heron Lane, San Juan Island.

**Hearing Date:**

The San Juan County Hearing Examiner held an open record public hearing on the request on July 21, 2016.

**Testimony:**

At the open record public hearing, the following individuals presented testimony under oath:

Julie Thompson, Planner, San Juan County Department of Community Development  
Travis and Sybil Mager, Applicants

**Exhibits:**

The following exhibits were admitted in the record:

1. Department of Community Development Staff Report, dated July 1, 2016
2. Application Materials, dated May 24, 2016
3. Letter from Joyce Kirsch and Janice Forshee, joint owners of neighboring property, dated June 27, 2016, and Applicants' response, dated June 27, 2016
4. Legal Advertisement, published June 8, 2016

5. Posting and Notification Materials, posted June 7, 2016 and mailed June 9, 2016
6. Email comments from Bob Machinski, dated June 28, 2016
7. Letter from Laurine Syverson, owner of neighboring property, received June 30, 2016

Upon consideration of the testimony and exhibits submitted at the open record public hearing, the Hearing Examiner enters the following findings and conclusions:

### FINDINGS

1. The Applicants requested approval of a conditional use permit to authorize vacation rental use of the two bedroom residence located at 222 Heron Lane, San Juan Island.<sup>1</sup> The 1.62-acre parcel is heavily vegetated and developed with a single-family residence which faces and has shoreline access on Garrison Bay. *Exhibits 1 and 2; Mager Testimony.*
2. The subject property has a Rural Residential land use designation. The surrounding neighborhood is rural and residential in nature. To the south and west, it abuts undeveloped residential land. There is residential development adjacent to the north. Garrison Bay is to the east. The subject property is not located near an airfield or airport. *Exhibits 1 and 2.*
3. The subject property has existing access from Heron Lane, which connects with Yacht Haven Road approximately 0.2 miles south of the site. No changes to the existing site access are proposed or required. *Exhibits 1 and 2.*
4. The existing residence is served by an on-site septic system and an individual well. *Exhibit 1.*
5. Planning Staff submitted that because the subject property is an existing developed site, the proposal is consistent with San Juan County Code (SJCC) Chapter 18.60. *Thompson Testimony; Exhibit 1.*
6. The proposal would allow up to three persons per bedroom at a time to rent the two bedroom residence, for a maximum of six overnight guests at once. The parcel shows off-street parking for at least three vehicles on the site plan. No outdoor advertising signs or food service are proposed. *Exhibits 1 and 2; Mager Testimony.*
7. Planning Staff noted that noise and trespass impacts could be expected to mimic those associated with traditional residential use of the site, and that the potential for disturbance to surrounding properties from temporary occupants could be mitigated by the following measures: restricting the number of vacation rental occupants to three per bedroom;

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<sup>1</sup> The subject property is known as Assessor Parcel number 462651024. *Exhibit 1.*

requiring rules of conduct to be posted that specifically prohibit trespass; identification of property lines; providing neighbors with a 24-hour contact phone number; and requiring the contact to keep a written log of complaints. Staff recommended conditions implementing the above measures. *Exhibit 1; Thompson Testimony.*

8. The Applicants would be required to obtain a business license or work through a property management company. *Exhibit 1.*
9. The application was submitted May 24, 2016 and determined to be complete on the same date. Notice of the application was posted on-site on June 7, 2016, published on June 8, 2016, and mailed to surrounding property owners on June 9, 2016. *Exhibits 1, 2, 4, and 5; Thompson Testimony.*
10. The County received letters from two parties on the proposal prior to hearing. The first was from Joyce Kirsch and Janice Forshee, joint owners of a neighboring property, who submitted a letter opposing the use of the subject property as a vacation rental because their house is in close proximity. They described a recent party at the subject location that involved loud music until 10:15 p.m., guests on the subject property roof, and an outdoor campfire. They expressed concern about the fire, suggesting that dry vegetation may result in a fire that threatens their property. The Applicants' response to this letter stated that the party in question was a family event including only immediate family. The Applicants described the fire pit as a small one (such as for roasting marshmallows) and indicated that all the trees and nearby shrubbery has been trimmed back for safety. *Exhibit 3; Mager Testimony.*
11. Another adjacent property owner submitted comments requesting that the Applicants should: install a fence clearly marking the property line in order to help dissuade renters from using the neighboring shoreline access features, remove the fire pit, place "No Trespassing" signs along the property line, include in the instructions to renters that camping on the property is not allowed, and ask renters to adhere to specific departure times. This letter noted that the subject area has always been a calm, peaceful place, offering solitude and the opportunity to experience local wildlife, and requested that steps be taken to keep the area in its present pristine state. *Exhibit 6.*
12. A third letter was submitted expressing concerns regarding impacts to wildlife, impacts to the neighborhood character resulting from commercial rather than residential activities, outdoor fires, fireworks, outdoor noise, pets, and enforcement of the occupancy limit. *Exhibit 7.*
13. At the public hearing, the Applicants addressed the concerns of the neighboring property owners, testifying that they have previously owned a vacation rental business and are familiar with the types of concerns voiced in the comment letters. They stated that the requested fence along the property line would be problematic due to the placement of trees and other vegetation, and that construction of the fence would require tree removal, reducing existing vegetative screening. They stated that the fire pit had been removed

and noted that their proposed rules of conduct prohibit campfires or outdoor burning. Additionally, the proposed rules prohibit smoking on the property and encourage recycling and water conservation. The Applicants would be managing the rental themselves. *Exhibit 2; Mager Testimony.*

14. Planning Staff noted that the County Code considers vacation rental to be a residential use and that the use is allowed in the Rural Residential land use designation. *Thompson Testimony.*
15. Upon review of the complete application materials, Planning Staff determined that the proposal can comply with all applicable criteria and recommended approval with conditions. *Thompson Testimony; Exhibit 1.* The Applicants waived objection to the recommended conditions. *Mager Testimony.*

## CONCLUSIONS

### **Jurisdiction:**

The Hearing Examiner is granted jurisdiction to hear and decide applications for conditional use permit pursuant to Chapter 36.70.970 of the Revised Code of Washington and Chapters 2.22 and 18.80 of the San Juan County Code.

### **Criteria for Review:**

#### *Conditional Use Permit*

Pursuant to SJCC 18.80.100.D, a conditional use permit shall be granted by the County only if the following criteria are met:

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

7. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood;
8. The proposal complies with the performance standards set forth in Chapter 18.40 SJCC;
9. The proposal does not include any use or activity that would result in the siting of an incompatible use adjacent to an airport or airfield (RCW 36.70.547); and
10. The proposal conforms to the development standards in Chapter 18.60 SJCC.

*Vacation Rental Standards*

Pursuant to SJCC 18.40.270, the following standards apply to all vacation rentals of single-family residential units and accessory dwelling units or portions thereof:

- A. No more than three overnight guests per bedroom shall be accommodated at any one time.
- 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.
- 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.
- D. If any food service is to be provided the requirements for a bed and breakfast residence must be met.
- E. No outdoor advertising signs are allowed.
- 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.
- 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.
- 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.
- I. Vacation rental accommodations must meet all local and state regulations, including those pertaining to business licenses and taxes.

- J. Owners of vacation rentals must file with the administrator a 24-hour contact phone number.
- 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.
- L. Detached accessory dwelling units established under SJCC 18.40.240 cannot be separately leased or rented for less than 30 days.

**Conclusions Based on Findings:**

1. As conditioned, the proposed vacation rental would be consistent with applicable provisions of the SJCC and the Comprehensive Plan. Pursuant to SJCC Table 18.30.040. Allowable and Prohibited Uses in Rural, Resource, and Special Land Use Designations, vacation rental of a residence or an accessory dwelling unit is classified as a residential use and is allowed in the Rural Residential land use designation upon conditional use permit approval. The proposed vacation rental would occupy an existing residence without altering the appearance of the structure. Conditions would ensure that when rented it continues to function like a residence; the residential character of the neighborhood would be unaffected. No adverse cumulative environmental impacts are suggested by the record in the event of additional vacation rental request approvals. As conditioned, the proposal would comply with the applicable standards of sections 18.40 and 18.60 of the SJCC, ensuring there are adequate public services and facilities to serve the proposal. Potential adverse impacts of the vacation rental on neighboring properties would be mitigated by conditions requiring rules of conduct prohibiting trespass, clear presentation of property boundaries to renters, and a 24-hour contact for neighbor complaints (among other requirements). Pedestrian and vehicular traffic would be consistent with that expected of a typical residence. There is no airfield adjacent to this property. *Findings 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, and 15.*
2. Regarding the use-specific requirements of SJCC 18.40.270, conditions of approval would limit rental occupancy to six people. The site is currently served by an individual well and an on-site sewage system. The site would provide at least three off-street parking spaces. Potential noise, trespass, and parking impacts to surrounding parcels would be mitigated through conditions requiring posted rules of conduct, identification of property boundaries, provision of a 24-hour contact phone number, and the requirement for the contact to maintain a log of complaints. The proposed rules of conduct prohibit trespass and campfires or other outside burning. No outdoor advertising, food service, or accessory dwelling unit are proposed. Conditions would ensure that the Applicants obtain a business license or work through a property management company. *Findings 1, 4, 6, 7, 8, 10, 11, 13, and 15.*

## DECISION

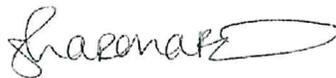
Based on the preceding findings and conclusions, the request for conditional use permit to authorize the use of the two bedroom residence at 222 Heron Lane, San Juan Island as a vacation rental is **APPROVED** subject to the following conditions:

1. The two bedroom vacation rental shall be operated as described in the application materials except as modified by these conditions.
2. The residence may be rented as a single unit on a short term basis for periods of less than 30 days. A maximum of six overnight guests shall occupy the vacation rental at any one time.
3. Prior to operation, evidence shall be presented to the Department of Community Development that the driveway has been approved for emergency vehicle access.
4. The vacation rental shall be operated in a way that prevents unreasonable disturbances to area residents. To this end, the Applicants shall:
  - A. Provide copies of this decision to owners of property within 300 feet of the subject property, along with a 24-hour local contact phone number, so that complaints can be dealt with in a timely manner. A log of complaints shall be kept by the contact.
  - B. Prominently mark the boundaries of the subject property so that it is clearly evident to guests where those boundaries are.
  - C. Provide notice to the tenants regarding rules of conduct and their responsibility not to trespass on private property or 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 the warning not to trespass.
  - D. Provide copies to the Department of Community Development of the rules of conduct and the 24-hour local contact phone number.
5. No food service is to be provided. No outdoor advertising signs are allowed. At least two off-street parking spaces must be maintained on-site for the life of the vacation rental use.
6. The rental must meet all local and state regulations, including those pertaining to business licenses and taxes.
7. 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.

8. Final written rules of conduct shall be submitted to the Department of Community Development before rentals commence. These rules shall be distributed to all renters and also sent to all owners of property within 300 feet of the site boundaries.
9. Since the County is not a party to private covenants, it is not in a position to enforce private covenants between property owners that may prohibit use of a residence as a vacation rental. However, issuance of a permit for a vacation rental does not license the owner to violate private restrictions.
10. If the conditions of approval are not complied with, the resulting impacts may change a typical residential area to one with frequent incidents of trespass, noise, and traffic from strangers who have no investment in maintaining civil relations with neighbors. For this reason, it is emphasized that failure to comply with conditions of approval is grounds for revocation of this permit.
11. Upon determination by the Director of the Department of Community Development that any condition listed above has 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.

**Decided August 4, 2016.**

By:



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Sharon A. Rice  
San Juan County 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

requirements 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.