

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS, AND DECISION

Applicant(s): Tusco Property Management
c/o Gary Tuss
1822 100th Avenue NE
Bellevue, WA 98004

File No.: PCUP00-15-0019

Request: Conditional Use Permit (CUP)

Parcel No: 271462005

Location: 46 Hope Lane, Eastsound, Orcas Island

Summary of Proposal: An application for a conditional use permit to allow
an indoor agricultural operation

Land Use Designation: Service and Light Industrial

Public Hearing: October 15, 2015

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

Decision: Approved subject to conditions

S.J.C. DEPARTMENT OF
NOV 03 2015
COMMUNITY DEVELOPMENT

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

In the Matter of the Application of

**Gary and Aarikka Tuss, of
Tusco Property Management**

NO. PCUP-15-0019

S.J.C. DEPARTMENT OF
NOV 03 2015
COMMUNITY DEVELOPMENT

for approval of a conditional use permit
to allow an indoor agricultural operation
at 46 Hope Lane, Eastsound, Orcas Island

Tusco Property Management CUP

SUMMARY OF DECISION

The request for conditional use permit to authorize an indoor agricultural operation at 46 Hope Lane, Eastsound, Orcas Island is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request:

Tusco Property Management (Applicant) requested a conditional use permit to authorize an indoor agricultural operation at 46 Hope Lane, Eastsound, Orcas Island.

Hearing Date:

The San Juan County Hearing Examiner held an open record public hearing on the request on October 15, 2015. At the conclusion of the proceedings, the record was held open to for specific items including: a reworded recommended condition of approval; written comments from a neighboring land owners, and written response to those comments from the Applicant.¹ Items were timely submitted and the record closed on October 19, 2015.

Testimony:

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

Julie Thompson, Planner, San Juan County Department of Community Development
Aarikka Tuss, Applicant/Owner
Charles Hubschmidt
Kelly Toombs
Kimberly Toombs
Hillary Rancourt
Adam Parkerson
The Applicants were represented at hearing by Derek Mann, Attorney.

¹ The record was specifically held open to receive the written comments of Kelly Toombs, which he requested to read into the record but for the sake of efficiency was asked to submit in written form. The record was also held open to allow the Applicant an opportunity to respond to Mr. Toombs comments in writing. Mr. Toombs provided verbal testimony but did not submit his written comments in the period specified (or after). Thus the Applicant submitted no response in writing.

Exhibits:

The following exhibits were admitted in the record:

1. Department of Community Development Staff Report to the Examiner, dated October 5, 2015
2. San Juan County Community Development & Planning Request for Agency Comments Routing form, issued August 26, 2015
3. Application form, submitted July 31, 2015
4. Applicant narrative, with the following attachments:
 - a. Four color photographs of the site
 - b. Affected property owners map and list of owners
 - c. Map of surrounding land uses with aerial and site photos of the uses
 - d. Eastsound Water Users Association Membership Documentation
 - e. Rain Catchment Diagram
 - f. Certificate of Sewer Availability
 - g. Large project stormwater management plan
 - h. Sample planting plans – rain garden
 - i. Framing Plan
 - j. Exterior building plan
 - k. Exterior Light – example
 - l. Site plan
 - m. Utilities detail
 - n. Parking area plan and parking detail
 - o. Landscaping detail
 - p. Specifications for Magnum XXXL8-inch Air Cooled Reflector
 - q. Exhausting Method
 - r. Electrical Consumption on wattage
 - s. Phresh Filter manufacturer information
 - t. Atmosphere vortex Inline Powerfans manufacturer information
 - u. Signage sample
 - v. Critical areas map
5. Public Comments including:
 - a. Bill and Celeste Westlake, September 10, 2015
 - b. Bill and Celeste Westlake, September 6, 2015
 - c. Corey and Sandra Cookston, September 10, 2015
 - d. Greg Ayers, September 13, 2015
 - e. Corey and Sandra Cookston, June 21, 2015, with attached article, photographs, and commentary
 - f. Jennifer Welch, Lotioncrafter LLC, September 15, 2015
 - g. Jennifer Welch emails (four), September 16, 2015
 - h. Amanda Sparks email, September 16, 2015, with attached petition
 - i. Jennifer Welch email, September 20, 2015

- j. Greg Ayers/EPRC email, September 19, 2015
6. Applicant Response to public comment, October 5, 2015, with attachments:
 - a. Phresh Filter size selector manufacturer information
 - b. Vortex Powerfans manufacturer information
 - c. Blog post “What does the decibel rating of a dishwasher mean?”, Allen & Petersen Appliance blog
 7. San Juan County Public Works Department comments, dated September 28, 2015 and October 6, 2015
 8. Notice of application and public hearing, dated August 26, 2015, with attachments:
 - a. Map of parcels within 300 feet
 - b. Mailing list
 - c. Affidavit of mailing and posting
 9. Additional public comment:
 - a. Stefanie, Uzek Susol, October 8, 2015
 - b. Robert Waunch, October 8, 2015
 10. Article: The Science of Smell Part 3: Odor Detection and Measurement, Iowa State University Extension, October 2004 (submitted by Applicant)
 11. Olympic Region Clean Air Agency Marijuana Facility memorandum, March 7, 2014, with attached City of Denver memo entitled: "Best Management Practices: Commercial Medical Marijuana Cultivation"
 12. Revised condition regarding noise and odor impacts to replace recommended condition 4, submitted October 16, 2015
 13. Staff response to proposed revised condition, submitted October 17, 2015

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 a conditional use permit to authorize an indoor agricultural operation at 46 Hope Lane, Eastsound, Orcas Island.² *Exhibits 1, 2, and 3.*
2. The 1.5-acre subject property is situated in the New Hope subdivision. It has a Service and Light Industrial land use designation. Presently, the site is developed with a 20-space parking lot and one-way drive loop and a total of 22,170 square feet of impervious surface. It is surrounded by commercial or industrial uses in all directions, including a

² The subject property is known as Tax Parcel number 271462005. *Exhibit 1.*

brewery, two automotive repair businesses, a skin care product manufacturer, a San Juan County Public Works building, self-storage units, a fuel depot, a septic design and installation business, an event-servicing business, and an animal shelter and off-leash dog area. The site abuts Mt. Baker Road to the north, and there are residential uses across the road with the nearest parcel being an estimated 60 feet distant (as the crow flies). The site has gentle slopes and has been cleared, but several trees remain. The property is not near the Eastsound airport. It is located approximately 500 feet west of the San Juan County Sheriff's Office and 1,200 feet west of the Eastsound fire station. *Exhibits 1, 4, and 5; Kelly Toombs Testimony.*

3. The proposal would construct a building to house indoor commercial marijuana production and processing of under state-licensed Initiative 502. As of the date of the application, San Juan County has not adopted regulations relating to marijuana. The proposed indoor commercial agricultural use is neither prohibited nor allowed in the land use designation, meaning approval is subject to conditional use permit review pursuant to San Juan County Code (SJCC) 16.55.230.B. *Exhibits 1, 3, and 4; Thompson Testimony.*
4. The condition use permit application and supporting materials were submitted July 31, 2015. *Exhibit 4.*
5. The application seeks approval of a conditional use permit to build and operate a 5,200 square foot commercial agricultural production and processing facility with a maximum of 8,400 square feet of useable floor space for growing and processing marijuana. Offices and processing areas would occupy up to approximately, 2,000 square feet. Proposed production area would be restricted to a maximum indoor canopy of 7,000 square feet per state licensing restrictions. Coconut fiber would be used as a growing medium rather than soil; no manure would be applied. Two types of processing are proposed in which plant materials are either dried and trimmed by hand or are dry-frozen and pressed to obtain oils. No solvents are proposed for processing. The facility would utilize a combination light/air circulation system which would provide temperature and humidity management, air circulation, and odor control. Each series of grow lights would have its own carbon filter, and air taken up into the filters would be released back into the building as heat source/air circulation. The air would be dehumidified and water vapor gathered through condensation for reuse. The building would vent to the outside through two roof vents, each of which would also be fitted with carbon filters. The building would have no windows through which indoor activities could be seen or smelled. No odor is anticipated to be detectable at the property boundaries. All air circulation/odor control fans would be installed inside the building and not on the exterior structure. The proposed model of HVAC system fans was selected for efficiency and low noise. Four additional fans would be used in the grow area for air circulation; these are normal household fans. No fans or machinery would be attached to the walls. It is not anticipated that the HVAC system would be audible at the property boundaries. No outdoor growing or processing or retail activity are proposed. *Exhibits 4, 4.i, 4.j, 4.k, 4.l, 4.p, 4.q, 4.r, 4.s, and 4.t; Tuss Testimony.*

6. The Service and Light Industrial (SLI) district allows a maximum building height of 32 feet and requires structures to be setback 40 feet from centerline of public right-of-way and at least 10 feet from side and rear property lines. All outdoor storage is required to be screened from view from adjoining properties, from the shoreline, and from public roadways by fencing, evergreen vegetation or other means at least five feet high before any occupancy permit is issued. Utilities for new development must be installed underground. Maximum allowed lot coverage by building is 60%, and a minimum of five percent of the site must be maintained in open space, either landscaped or in its natural condition. *San Juan County Code (SJCC) 16.55.230.E.*
7. The proposal meets the bulk dimensional requirements of the SLI district. The building would be 22 feet two inches tall. Proposed setbacks would be 215 feet from Hope Lane, 10 feet from the south lot line, and greater than ten feet from both the west and north lot lines. The building's long dimension is oriented east-west and the structure is set as far back from Mt. Baker Road as is possible. Outdoor storage is proposed within a fenced area on the south side of the building, behind a sight obscuring fence. The building would cover approximately 10% of the site, and open space would be retained on about 60% of the site. All utilities would be underground. *Exhibit 4.1.*
8. The facility would employ up to five full time employees, the majority of whom would be on-site between 8:00 am and 8:00 pm. Occasional shifts would be required for a reduced staff between 8:00 pm and 8:00 am. Approximately five round trip employee trips per day and one or two delivery round trips per week are projected. Approximately five to 10 visitors per month are anticipated, including contractors, consultants, and government officials. Finished product would be taken off-site approximately once per week, most likely in a passenger vehicle. No other traffic is proposed or anticipated. *Exhibit 4; Tuss Testimony.*
9. Off-street parking requirements for uses not specified in Table 300-1 (agricultural production/ processing) are determined by the Code Administrator. Five formal parking spaces are proposed, four of which are shown to be 10.5 feet wide and 18 feet deep and one of which is barrier-free, with a 24 foot wide two-way aisle. The proposed parking area is not screened by buildings from views from the street or adjacent property to the north; however, a landscaped buffer strip greater than five feet deep would be retained, and additional landscaping would be provided. No off-site parking is proposed, and no lighting is proposed in the parking area. According to Planning Staff, the parking layout plan does not conform to the requirements in Figure 300-2; a new plan meeting code standards and approved by Public Works would be required prior to building permit issuance. Of note, there is substantial room for overflow parking on-site outside of the proposed parking area. *Exhibits 1, 4.c, 4.l, and 4.n.*
10. Traffic entering the site would travel a short distance on Hope Lane, a private road, before entering the existing looped driveway access into the site (the second nearest driveway entrance to Mt. Baker Road). San Juan County Public Works indicated that a concurrency evaluation was completed for the proposal showing that the projected traffic

can be accommodated on affected roads. The use would not generate greater volumes of traffic than surrounding commercial/industrial uses. As owners, the Applicants would be required to participate in maintenance of the private road together with all other owners along Hope Lane. *Exhibits 1, 4.c, and 7.*

11. The Service and Light Industrial district requires new development to be designed to conserve natural site features to the extent possible and to provide landscaped buffers along public street frontage and adjacent to existing residential uses. A landscaping strip including evergreen trees at least 20 feet wide must be provided along the entire primary road frontage of the site and along any property line abutting Eastsound residential zoning. *SJCC 16.55.230.E.6.* An existing landscaped buffer along Mount Baker Road, the only public street frontage, would be retained. The proposal calls for a rain garden to the north of the proposed building, which would act as a dispersion area for roof runoff. Currently the east side of the parking area is screened by two large existing trees, a substantial slope, and by pre-existing landscaping installed by a previous use. Two curbed planters are proposed in the parking area, a three- by 40-foot planter along the north side and a four- by 12-foot planter within the parking area. Planning Staff indicated that the proposed and existing landscaping satisfies applicable screening and landscaping requirements. Prior to building permit approval, the Applicant would be required to submit a final landscaping plan demonstrating compliance with all landscaping requirements. *Exhibits 1, 4.e, 4.h, 4.l, and 4.o.*
12. The subject property was created in 1998 with an engineered stormwater management system fully installed. However, stormwater engineering standards have changed since 1998. More than 5,000 square feet of new impervious surface would be developed in the building footprint and parking area improvements. Approximately 1,080 square feet of existing gravel parking area would be reclaimed and revegetated. Also proposed is a rain garden to capture and disperse roof runoff. The Applicant submitted a professionally prepared stormwater management plan dated July 2015, which noted that the existing stormwater system and the proposed bioinfiltration swale (rain garden) would adequately treat and infiltrate all runoff from impervious surfaces on-site. *Exhibits 4 and 4.g.* The County Public Works Department accepted and approved the stormwater management plan. *Exhibit 1.*
13. Washington State Liquor and Cannabis Board imposes strict security requirements on cannabis producing operations that would apply to the proposal. These include background checks for owners, a securely locked facility, identification badges for employees, strict tracking of visitor access, alarm systems, video surveillance of all controlled access areas and retention of video footage for a 45 day period to support WSLCB oversight of on-site activities, securely controlled plant waste disposal, and measures to ensure traceability from seed to sale for all parts of cannabis plants including refuse and finished products. *Exhibit 1; WAC 314-55-083.*

14. The proposal calls for four exterior lights, none of which would be flashing lights, to be located by the two entry/exit doors and on either side of the bay door. The fixtures would be down shielded to prevent glare onto neighboring properties. *Exhibits 1 and 4.*
15. The proposal is not expected to cause ground vibration. However, Planning Staff recommended a condition of approval preventing vibration, noise, and odor impacts to off-site properties. Direct glare would be contained within subject property boundaries; no critical areas would be affected by the proposed lighting. *Exhibits 1 and 4.*
16. The facility would not advertise its name or the nature of the indoor activities on or off site. No directional signs are proposed. Included in proposed signage are the following: one handicapped parking sign in the parking area (18 by 12 inches) and Washington State Liquor and Cannabis Board-required signage as follows:

Identification badge requirement	(14 x 10, 140 square inches);
Firearms/weapons prohibition	(10 x 7, 70 square inches);
Notice of security cameras	(11 x 7, 77 square inches);
Underage persons prohibition	(10 x 7, 70 square inches).

The WSLCB signs would be installed on the security fence or the building itself, and the structure would be marked with its street address. Total area of all proposed signs would be slightly under four square feet. *Exhibits 1 and 4; WAC 314-55-086.*

17. The Applicant has applied for and received certificates of availability for sewer and water service from Eastsound Sewer District and Eastsound Water Users Association. The Water Association approved the application for one connection/1.75 ERU's. In addition, the following water conservation measures are proposed:

- The rain catchment system would collect rainwater via gutters on the north side of the building and convey it through a filter and first-flush diverter into a single 1,000 gallon storage tank, to be used for on-site watering. Rain gutter volumes exceeding the tank's capacity would overflow into the rain garden on-site.
- The HVAC system includes a dehumidifier that condenses the moisture flowing through the system, which would be collected and sent into the collection tank described above.

Aside from sanitary facilities (restrooms), no waste water would be produced on-site; the agricultural operation would not generate process waste water. *Exhibits 1, 4, 4.d, 4.e, and 4.f.*

18. Presently, there is a fire hydrant near the southeast property line that was installed for the subdivision. Upon review of the application, the Fire Marshal approved the location and confirmed that the project requires only one hydrant. *Exhibit 1.*

19. The Applicant submitted a list of the quantities and types of chemicals to be used, consistent with WAC 314-55-084. Not more than five gallons of liquid fertilizers and one gallon of liquid pesticide would be kept on-site at a time, to be stored in a locked cabinet. The building is designed to include an interior dead end sump drain in the floor, despite the fact that no watering runoff or overflow are anticipated. The sump would be emptied on an as needed basis and its contents disposed of through San Juan Sanitation. The application materials also included a Spill Response Procedures plan and a Plan for Disposal of Waste Materials, which the Community Development Department reviewed and approved. *Exhibits 4 and 6.*
20. The facility would generate two kinds of waste: plant waste and general empty container waste. Plant wastes would be comprised of unusable portions of the plants and the coconut fiber growing medium. State regulations require all plant and growing medium waste to be collected daily and stored for 72 hours in a quarantine area. *WAC 314-55-097.* Following quarantine, plant waste and growing medium would be ground and composted inside an enclosed, fenced outdoor area under 24-hour camera surveillance. State regulations require the waste to be composted with sufficient other material such that marijuana plants make up 50% or less of the compost by volume. The Applicant indicated that the non-marijuana material would be comprised primarily of the coconut fiber growth medium. The facility anticipates generating two cubic yards of composted material and general container waste every two weeks, which would be disposed of via San Juan Sanitation. The Applicant proposed to grind the plant and coconut fiber material directly into contractor grade plastic bags, tied at the top, and stored in a dumpster inside the wood fence enclosure. *Exhibits 4 and 6; Tuss Testimony.*
21. The proposed building construction and indoor agricultural use is exempt from review for compliance with the State Environmental Policy Act pursuant to Washington Administrative Code (WAC) 197-11-800(1)(b)(iii) because the structure is smaller than 10,000 square feet. *Exhibit 1; Thompson Testimony.*
22. Notice of application and public hearing was published on August 26, 2015, and was posted on-site and mailed to surrounding property owners within 300 feet on September 5, 2015. *Exhibits 1 and 8.*
23. The County received a number of public comments prior to the public hearing opposing the proposed conditional use. Property owners in the vicinity submitted comments expressing concerns related to anticipated adverse impacts from noise, odor, lighting, conflicts arising from proximity to residential uses, increased traffic, issues concerning the proposal's waste disposal impacts, and outdoor storage among others. Public comment included a petition signed by area residents and business owners opposing approval. *Exhibits 5.a through 5.i and 9.* The owners of the property in Deer Harbor which the Applicants currently lease submitted comments about their unsuccessful relationship with the Applicants and numerous photos allegedly depicting the current grow operation in progress, asserting that the operation has negatively impacted their property value. Their comments are interspersed with those of an article they took from

an unknown source by an industrial hygienist discussing other grow operations in unknown locations. *Exhibit 5.c and 5.e.* In addition, the Eastsound Planning Review Committee (EPRC), an advisory committee to the County Council, submitted comments opposing approval by a five to one vote. EPRC stated in their comments (in part), “[s]pecific to the Subarea Plan update, agricultural uses are specifically not allowed uses in SLI...” and “it is unclear that this will not negatively impact the character of Eastsound the area around the facility.” *Exhibit 5.j.*

24. In public comment offered at the hearing, neighboring residence owners who stated their property is only 60 feet away from the site expressed concern about introducing drug-related businesses to the area, which does contain residential uses including homes and facilities accessed by children. They noted that no matter how good the filtration technology is, it can only work if it is properly maintained. They are concerned that the County won’t oversee or enforce requirements relating to proper, regular maintenance of the filter system, and that the result would be marijuana odor in their neighborhood. They expressed the opinion that the current zoning setback requirement of only 10 feet is inappropriate for the proposed use. They echoed sentiments in the written public comments that the instant proposal should have to wait for the County to adopt marijuana regulations and then comply with those future regulations. They reiterated the concerns of others that the HVAC system would result in the noise of industrial fans being audible 24 hours per day throughout the neighborhood. They stated concerns that the use would generate more traffic than reported in the application, that the traffic would involve people seeking to purchase marijuana products, and that there could be an increase in crime. *Kelly Toombs Testimony; Kimberly Toombs Testimony.*
25. There was also testimony at hearing from people in favor of the proposal. One former employee of an I-502 operation in Seattle much larger than the instant proposal testified that he helped install the air filter systems there. He testified that outside the building, there was no smell or noise because the technology has become sufficiently advanced. He speculated that the proposal would be the cleanest facility in the neighborhood. Another marijuana industry worker also submitted the opinion that noise, odor, and crime are not big problems with modern grow operations and further noted that approval would create jobs on the island that would allow people to support their families. She agreed with the Applicant that there would be no traffic except for employees and deliveries. Another industry employee submitted the opinion that the Applicants would maintain a clean, well run facility out of self-interest as much or more than out of drive to avoid complaints from neighbors. He testified to the fact of the 24 hour video surveillance and emphasized there would be no retail traffic to the site, unlike the brewery across the street, and said the building would look just like that of the skin care manufacturer nearby. *Hubschmidt, Rancourt, and Parkerson Testimony.*
26. The Applicant submitted responses to public comment. Regarding odor, they submitted that carbon filtration is the industry standard best practice for odor control and they propose what they characterize as the number of carbon filters recommended by manufacturer specifications all served by low RPM fans. The facility would vent through

the roof only, aiming its double-filtered emissions into the sky rather than directionally towards any property. They would reduce possible noise outside the building by refraining from attaching any fans or equipment to the building exterior. The Applicant provided manufacturer information regarding sizing and numbers of filters and industry recommended air flow/air exchange goals to best eliminate odor concerns. In order to address concerns about unsightliness of other marijuana operations, the Applicant offered to enclose the outdoor storage area with a solid wood fence, rather than the chain link fence with privacy slatting originally proposed. In response to concerns about visibility from the nearest residences, the Applicant proposed to create a three-foot earth berm along a portion of Mt. Baker Road on top of which landscaping would be placed. The Applicant stated that the site complies with State requirements as to setbacks from schools, playgrounds, and parks. Regarding the letter, article, and photos submitted by the owner of the Applicant's current location in Deer Harbor, the Applicant indicated the business relationship had become unsuccessful to the point of personal animosity. She noted that the conditions currently proposed would protect neighbors of the subject property from the concerns depicted in the photos at 5.e, which she asserted did not accurately depict the existing operation. *Exhibit 6; Tuss Testimony.*

27. In review of the application and supporting materials, Community Development Department Staff concluded that the proposal as conditioned would comply with the standards of the Unified Development Code and to be consistent with the Eastsound Subarea Plan. The Comprehensive Plan calls for new urban-level residential, general commercial, and general industrial uses to be located in UGAs. The facility would be served by public water and sewage treatment systems, as required. The SLI in Eastsound was created to accommodate commercial services and light industrial or construction related activities, with supporting accessory office and retail uses per SJCC 16.55.230.A.1. The Applicant supplied a written Spill Response Procedures and Plan for Waste Disposal. Staff submitted the position that the proposal would not be expected to result in any adverse impacts on the human or natural environment. Staff opined that it is unlikely there would be many requests for similar projects, but any future proposals would be restricted by the limited amount of land available in districts that allow similar uses. Considering public and agency comment and the record as a whole, Planning Staff recommended approval subject to conditions as clarified during hearing procedures. *Exhibits 1 and 13; Thompson Testimony.*
28. At hearing, the Applicant requested to change recommended condition 4 which proposed requiring compliance with the following: "No approved use shall generate or cause any visible smoke, gasses, dust, steam, heat or odor to be emitted into the atmosphere, except as necessary for the heating or cooling of buildings, and the operation of motor vehicles on the site." The grounds for the objection to this language was that it resulted a subjective requirement for which it would be difficult to measure compliance. The Applicant recommended language from best management practices (BMPs) developed in the City of Denver, Colorado, a jurisdiction also dealing with the unique issues pertinent to siting marijuana production facilities. The Denver BMPs have been promoted in Washington State by the Olympic Region Clean Air Agency as acceptable, standardized

management practices that can be implemented and enforced fairly for the protection of air quality and surrounding land uses. The Applicant proposed substitute language for a condition of approval addressing especially noise and odor impact mitigation. *Exhibits 11 and 12; Tuss Testimony; Mann Argument.*

29. County Planning Staff concurred with proposed amended language for the condition. *Exhibit 13.*

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

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.

Applicable Provisions of the San Juan County Code

SJCC 16.55.230(E) Performance and Site Development Standards for the Service and Light Industrial District.

1. Building Height. No building shall exceed 32 feet measured from average grade to the highest point of the highest roof structure.
2. Building Setbacks.
 - a. No structure shall be built within 40 feet of the centerline of a public right-of-way.
 - b. Structures shall be set back from side and rear property lines by at least 10 feet. Architectural appendages (*i.e.*, roof overhangs, chimneys, bay windows, and decks not over 30 inches above grade) may extend two feet into required yards.
3. Outdoor Storage. All outdoor storage and the storage of recreational vehicles associated with a dwelling unit shall be screened from view from adjoining properties and from the shoreline, and public roadways by fencing, evergreen vegetation or other means. Any such screening shall be at least five feet high. Any outdoor storage associated with any nonresidential use allowed in this district shall also be so screened before any occupancy permit is issued.
4. Utilities. Utilities installed to serve new development shall be underground.
5. Open Space and Lot Coverage. The following maximum lot coverage (area covered by structures) and minimum open space (area not occupied by buildings, parking or driveways) standards shall be met in all new development:
 - a. Open space shall be maintained in its natural condition or landscaped; applications for permits required by this plan shall specify open space and identify existing or proposed landscape features. Minimum required open space shall be five percent.
 - b. Maximum lot coverage by buildings shall be 60 percent.
6. Landscaping. New development shall be designed to conserve natural site features to the extent possible. Landscaped buffers shall be required along public street frontage in all new development, and screening shall be required between existing residential uses and new nonresidential developments. In addition to the landscaping requirements listed in SJCC 16.55.300(F), a landscaping strip with a minimum width of 20 feet shall be provided along the entire primary road frontage of the site and along any property line abutting a village residential or Eastsound residential district. The landscaping strip shall include evergreen trees.
7. Ground Vibration. No approved use shall generate ground vibration perceptible without instruments at any point along or outside of the property line of the site of the use, except for motor vehicle operations.
8. FAA Recommended Restrictions. All development in this district must comply with the Federal Aviation Regulations (FAR) Part 77, relating to heights of land uses proximate to airports and protection of airspaces critical to airport operations.
9. Noise, Glare, and Flashing Lights. Any use, which is allowable under a conditional use permit, on a lot adjacent to or across the street from a residential dwelling (except nonconforming residences), a lot in a platted subdivision, or a residential designation in the subarea plan shall not emit continuous and/or uninterrupted noise, glare, flashing lights, or similar disturbances perceptible without instruments more than 200 feet in the direction of the affected residential use or lot.

10. Air Emissions. No approved use shall generate or cause any visible smoke, gasses, dust, steam, heat or odor to be emitted into the atmosphere, except as necessary for the heating or cooling of buildings, and the operation of motor vehicles on the site.

SJCC 18.40.110 Commercial uses—Standards for site development.

- A. All Commercial Uses. The following standards apply to all commercial uses as listed in Tables 3.1 and 3.2 in SJCC 18.30.030 and 18.30.040 and to any use determined by the administrator to be commercial use.
 1. Water supplies and sewage disposal facilities adequate to serve the proposed use shall be provided. Occupancy shall not be permitted before water supplies and sewage disposal facilities are approved and installed.
 2. Use of a County access road or private road for access to new commercial 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.
 3. No use shall be made of equipment or material which produces unreasonable vibration, noise, dust, smoke, odor, electrical interference to the detriment of adjoining property.
 4. (not applicable).

Conclusions Based on Findings

1. With conditions, the proposed agriculture production and processing facility would be consistent with the applicable policies of the Comprehensive Plan or of the Service and Light Industrial land use designation. Agriculture is not prohibited in the SLI zone, and as such may be approved through the conditional use process. All activities would occur indoors except for storage of bagged, ground plant and growing medium waste, which would be stored in bags in a dumpster behind a sight obscuring enclosure. The use would generate low levels of traffic and would be conditioned to prevent nuisance impacts to adjacent properties. *Findings 2, 5, 6, 7, 8, 9, 10, and 27.*
2. As conditioned, the proposed facility would be appropriate in design, character, and appearance with the standards applicable to the SLI zone. The building would occupy only 10% of the site and be setback the maximum possible distance from adjacent non-SLI-zoned parcels. Approximately 60% of the site would remain in open space; existing mature vegetation would be retained and, with conditions, be supplemented with a berm and new landscaping. Levels of traffic would be similar to if not less than that generated by surrounding uses in the SLI zone. *Findings 3, 4, 5, 6, 7, 11, and 12.*
3. Conditions of approval would ensure the proposed use would not cause significant adverse impacts to the human or natural environments. The proposed use would generate low amounts of traffic, and the use has passed concurrency analysis by the Public Works Department. The impacts of most concern to surrounding property owners were noise and odor emissions from the production of marijuana and aesthetic impacts. Conditions would ensure compliance with best management practices addressing potential noise and

odor from the use and are expected to result in no noise or odor from the facility being detectable at the site boundaries. State-required measures would ensure building security and prevent the use from resulting in any greater potential for drawing crime to the area than other commercial uses. The use does not use solvents or generate process waste water containing hazardous materials; nevertheless, the operator would maintain and implement a spill plan for runoff from the growing operation (if any) and the minor amounts of pesticides and fertilizers kept on-site. The record contains no evidence of hazards to people or the environment. *Findings 2, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 23, 24, 26, 27, 28, and 29.*

4. As the use is not expected to generate any significant adverse impacts to the environment, additional requests similarly managed and mitigated would also not generate adverse impacts. The number of potential similar uses is restricted by the limited amount of similarly sited and zoned property capable of supporting similar uses. *Findings 2, 5, 7, 8, 10, 13, and 27.*
5. The Applicant has obtained certificates of water and sewer service availability, and the record demonstrates that area roads can accommodate the traffic projected. The use was reviewed for compliance with fire code and was reported not to require specific mitigation or result in excess demand for fire services. The Public Works Department approved the stormwater plan. The site is within 500 feet of the sheriff's office and 1,200 feet of the fire station. The locked facility would be under 24-hour camera surveillance. There is no evidence in the record of excess demand for public services generated by the use. *Findings 5, 8, 9, 10, 12, 17, 18, 19, and 27.*
6. The location, size, and height of the proposed building, parking, and stormwater facilities all comply with, or as conditioned would comply, with required setbacks from adjacent properties. The use would occur inside a modestly sized building that would not be out of character with surrounding commercial and service/industrial uses. The use would not be identifiable by signage or outdoor activity to the general passerby; no retail use or casual traffic to the facility would occur. Conditioned to manage noise and odor, and to comply with State requirements for security, the use would not have noticeable impact on the development of surrounding properties. *Findings 2, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, and 20.*
7. As conditioned, the proposal complies with the applicable performance standards in SJCC Chapter 18.40. The Eastsound Water Users Association and the Eastsound Sewer District have provided certificates of utility availability. The road would be maintained by the association of property owners using it, including the Applicants. Conditions would prevent concerns arising from noise, odor, vibration, or other nuisance conditions to surrounding properties. *Findings 5, 8, 9, 10, 17, 19, 20, and 27.*
8. The proposal would not interfere with an airport or airfield. *Finding 2.*

9. Regarding development standards in SJCC Chapter 18.60, as noted above, certificates of water and sewer service availability are in the record. No process wastewater would be generated. The stormwater management plan has been approved by County Public Works. While the proposed use is too small to trigger off-street loading requirements, it is clear the site contains adequate room for off-loading of all delivery vehicles. *Findings 2, 5, 7, 8, 9, 10, 12, 15, 17, 18, 19, 20, and 27.*
10. The record contains no evidence of impacts that cannot be mitigated by the conditions imposed herein. Proposed best management practices and conditions imposed would address aesthetic/visual impacts, noise, odor, and all other issues anticipated to arise from the proposed operation. There would be no retail activity, and therefore no direct customer traffic to the site by persons seeking to purchase or use marijuana. The facility would grow and process the plants and ship them out, most likely in a passenger vehicle. As conditioned, the nature of the product produced on-site would not be obvious to passersby. Concerns from the neighbors relate either to other marijuana production operations in different locations that were not conditioned as the instant proposal would be, and thus are not predictive of the current proposal, or those that can best be characterized as speculative in nature, such as concerns regarding potential impacts to property values. Land use permits cannot be denied based on the basis of popularity. Washington courts have held that, “[w]hile the opposition of the community may be given substantial weight, it cannot alone justify a local land use decision.” *Sunderland Servs. v. Pasco*, 127 Wn.2d 782, 797 (1995); *Maranatha Mining, Inc. v. Pierce County*, 59 Wn. App. 795, 805 (1990); *Kenart & Assocs. v. Skagit County*, 37 Wn.App. 295, 303, review denied, 101 Wn.2d 1021 (1984). *Findings 5, 7, 8, 10, 13, 20, 23, 24, 25, 26, 27, and 28.*

DECISION

Based on the preceding findings and conclusions, the request for conditional use permit requested a conditional use permit to authorize an indoor agricultural operation at 46 Hope Lane, Eastsound, Orcas Island is **APPROVED** subject to the following conditions:

1. Approval is limited to the operations as described in the application materials at Exhibits 4 and 6 and restricted to the proposed 7,000 square foot canopy. The instant approval does not authorize retail activities on-site or the use of chemical solvents in processing marijuana. Any expansion in the range of processing activities, signage, or the size of the operation would require additional review. Approval of the conditional use permit does not excuse the Applicants from the requirement to obtain any other mandatory local or state permit. County conditional use permit approval is expressly subject to Washington State Liquor and Cannabis Board licensing and compliance with all state requirements.
2. No outside storage of raw or spent materials or equipment shall be allowed to be visible outside the fenced storage enclosure depicted on the site plan. The enclosure shall be enclosed with a solid wood, sight-obscuring fence. No storage of materials or equipment shall occur inside any area enclosed by chain link fencing.

3. The landscape plan shall be amended to include an earthen berm along the portion of the Mt. Baker Road site boundary that fronts residential uses and to provide landscaping along the berm for the purpose of providing visual screening and physical separation from the residential uses across that road. Construction of the berm and all other site improvements shall retain mature trees to the greatest extent possible.
4. A parking plan that meets the requirements of SJCC 16.55.300, Figure 300-2 Parking Area Dimension Standards, shall be submitted by the Applicant and receive County Public Works approval prior to building permit issuance. Individual parking spaces shall be delineated by striping or by wheel stops.
5. On-site activities shall not generate ground vibration perceptible without instruments at any point along or outside of the property line of the site of the use, except for motor vehicle operations.
6. The owner/operator shall:
 - (a) Utilize and properly maintain a quantity of high-quality and high-quantity carbon air filters sufficient to serve the building housing the agricultural activity, per the manufacturer's specifications;
 - (b) Circulate air within the building through the carbon filters using an adequate quantity of properly maintained, high-quality, low-RPM, low-noise fans sufficient to serve the carbon filters, per the manufacturer's specifications;
 - (c) Attach no fans to the building's exterior; and
 - (d) Only vent the HVAC system through two vents in the roof, each of which shall employ a carbon filter and fan as described above.
7. In addition to the best management practices above, the Applicants shall maintain an accurate and perpetual log of maintenance activities related to the facility's air circulation/filtration system for the life of the facility and shall make the log available to the County Community Development Department on request by Department Staff.
8. Construction and ongoing operation of the site shall conform to the stormwater management plan dated July 2015.
9. Development authorized by this permit shall be completed within five years from the date of approval or such permit shall be null and void. An extension of up to one year may be granted by the administrator if the permittee demonstrates good cause for an extension and requests extension prior to expiration.

Decided November 3, 2015.

By: 

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.