

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

Applicant(s):	John and March Aschoff PO Box 1068 Friday Harbor, WA 98250	
File No.:	PCUP00-14-0001	
Request:	Conditional Use Permit (CUP)	S.J.C. COMMUNITY
Parcel No:	361350041	MAR 28 2014
Location:	2183 Spring Hill Road Orcas Island	DEVELOPMENT & PLANNING
Summary of Proposal:	An application for a conditional use permit to allow vacation rental of a single-family residence.	
Land Use Designation:	Rural Residential	
Public Hearing:	March 12, 2014	
Application Policies and Regulations:	SJCC 18.40.270 Vacation Rentals SJCC 18.80.100(D) CUP Criteria	
Decision:	The application is approved subject to conditions.	

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

3                                   Phil Olbrechts, Hearing Examiner

4                   RE: John and Marcy Aschoff	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</b>
5                   Conditional Use Permit 6                   (PCUP00-14-0001)	

S.J.C. COMMUNITY

MAR 28 2014

8                                   **INTRODUCTION**

DEVELOPMENT & PLANNING

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

11                                   **TESTIMONY**

12                   Lee McEnery, Community Development and Planning, submitted several comment  
13                   letters (exhibits 4-6). Exhibit 6 is an email from Marcy Aschoff including a letter she  
14                   sent to her surrounding neighbors and a response letter from one of the neighbors.  
15                   Staff recommends approval of the application.

16                   Marcy Aschoff, applicant, noted that the letter from the Spring Point Homeowner's  
17                   Association addresses concerns that the rental follows all CCNRs. The Aschoffs are  
18                   aware of the CCNRs and plan on complying with these rules.

19                                   **EXHIBITS**

- 20                   Ex. 1:       Staff report  
21                   Ex. 2:       Request for review  
22                   Ex. 3:       Application materials  
23                   Ex. 4:       3/7/14 email from Scott Williams to Lee McEnery  
24                   Ex. 5:       2/27/14 letter from William Gossett to Lee McEnery  
25                   Ex. 6:       2/24/14 email from Marcy Aschoff to Lee McEnery

**FINDINGS OF FACT**

**Procedural:**

1.                   Applicant. The applicants are John and Marcy Aschoff.
2.                   Hearing. The Hearing Examiner conducted a hearing on the subject  
                  application on March 12, 2014 at 10:00 am at the Islander Bank Annex, 225 Blair  
                  Ave, Friday Harbor.

Conditional Use Permit –  
Vacation Rental

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**Substantive:**

3. Site and Proposal Description. The applicant proposes the vacation rental of a three bedroom single family home located at 2183 Sprint Point Road, Orcas Island. On-site parking is available for at least five automobiles. There is no guest house or accessory dwelling unit on site. No outdoor advertising or food service is proposed.

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

5. Adverse Impacts of Proposed Use. There are no adverse impacts resulting from the proposed use. As conditioned, the proposed use should not interfere with the residential use of neighboring properties. Noise must be kept to a minimum and a 24-hour phone number must be provided in case problems arise. Since no exterior alterations are proposed and no change in use, the proposal is not incompatible with any airport activity. Comments were submitted regarding compliance with the private covenants of the subdivision in which the proposal is located. San Juan County does not have the jurisdiction to enforce private covenants and their applicability is beyond the scope of this permit review.

**CONCLUSIONS OF LAW**

**Procedural:**

1. Authority of Hearing Examiner. The hearing examiner is authorized to conduct hearings and issue final decisions on conditional use permit applications. San Juan County Code (“SJCC”) 18.80.020 Table 8.1; 18.80.100(C).

**Substantive:**

2. Zoning Designations. Rural Residential

3. Permit Review Criteria. Table 3.2, SJCC 18.30.040 authorizes vacation rentals in the rural residential district as a conditional use. SJCC 18.80.100(D) governs conditional use criteria. SJCC 18.80.100(D)(8) requires compliance with the performance standards of Chapter 18.40 SJCC. SJCC 18.40.270 contains detailed standards for vacation rentals. The criteria for conditional use permits (SJCC 18.80.100(D)) and vacation rentals (SJCC 18.40.270) are quoted below and applied through corresponding conclusions of law.

**Vacation Rentals of Residences Criteria**

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

1 4. The project is conditioned to limit the total number of guests to three per  
2 bedroom.

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

6 5. The conditions of approval of the permit have been imposed to prevent  
7 any unreasonable disturbances. These conditions limit the number of guests; require  
8 posting of rules of conduct which specifically mention prohibition of trespassing and  
9 identifying property lines; require provision of a 24-hour contact phone number to  
10 neighbors in case problems may arise; and require maintenance of a written log of  
11 complaints.

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

15 6. Table 6.4 of SJCC 18.60.120 requires one parking space for single-  
16 family homes under 550 square feet and two spaces for homes 550 square feet and  
17 greater, which translates into 2 and 3 parking spaces respectively under the criterion  
18 quoted above. The number of parking spaces provided by the applicant meets this  
19 standard.

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

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

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

24 8. No outdoor advertising is proposed.

25 **SJCC 18.40.270(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.*

9. There is no accessory dwelling unit.

**SJCC 18.40.270(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.*

10. There is no accessory dwelling unit.

**SJCC 18.40.270(H):** *In all activity center land use districts, rural residential, and*

1 *conservancy land use districts, the vacation rental of a residence or accessory*  
2 *dwelling unit may be allowed by provisional ("Prov") permit only if the owner or*  
3 *lessee demonstrates that the residence or accessory dwelling unit in question was*  
4 *used for vacation rental on or before June 1, 1997. When internal land use district*  
5 *boundaries are adopted for an activity center, this provision will apply to VR and HR*  
6 *districts but not to the activity center in general.*

7 11. Not applicable because the proposal is the first vacation rental of the  
8 premises.

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

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

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

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

15 **SJCC 18.40.270(K):** *The owner or lessee of the vacation rental shall provide notice*  
16 *to the tenants regarding rules of conduct and their responsibility not to trespass on*  
17 *private property or to create disturbances. If there is an easement that provides*  
18 *access to the shoreline, this shall be indicated on a map or the easement shall be*  
19 *marked; if there is no access, this shall be indicated together with a warning not to*  
20 *trespass.*

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

22 **SJCC 18.40.270(L):** *Detached accessory dwelling units established under SJCC*  
23 *18.40.240 cannot be separately leased or rented for less than 30 days.*

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

#### 25 **Conditional Use Permits – Criteria for Approval**

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

16. The proposal is consistent with the SJCC for the reasons stated above. The proposal is consistent with the San Juan County Comprehensive Plan, which provides that vacation rentals should be classified as residential uses and subject to standards similar to those that apply to hospitality commercial establishments. See Land Use Element, Section 2.2A(10). The detailed standards adopted into the SJCC for vacation rentals provide protections to residential uses that are more detailed than those typically associated with hospitality establishments located in residential areas.

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

4 17. The proposal will not alter the exterior appearance of the home, which is a  
5 single family home and is thus compatible and appropriate in design, character and  
6 appearance with the surrounding single family homes and applicable goals and  
7 policies thereto. The criterion is satisfied.

8 **SJCC 18.80.100(D)(3):** *The proposed use will not cause significant adverse impacts*  
9 *on the human or natural environments that cannot be mitigated by conditions of*  
10 *approval;*

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

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

18 19. The property will continue to appear and function in a manner similar to  
19 the existing use with no significant adverse impacts, and further similar requests will  
20 not produce significant adverse impacts to the environment.

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

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

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

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

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

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

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

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

8 **SJCC 18.80.100(D)(9):** *The proposal does not include any use or activity that would  
9 result in the siting of an incompatible use adjacent to an airport or airfield (RCW  
10 36.70.547); and*

11 24. Since no exterior alterations or changes in use are proposed, the proposal  
12 is not incompatible with any airport or airfield.

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

15 25. As an existing development site, the proposal is consistent with Chapter  
16 18.60 SJCC.

#### 17 DECISION

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

20 1. The vacation rental shall be operated as described in the application materials  
21 except as modified by these conditions.

22 2. A maximum of nine guests shall occupy the unit at any one time for rentals of 30  
23 days or less.

24 3. No food service is to be provided. No outdoor advertising signs are allowed.

25 4. The rentals must meet all local and state regulations, including those pertaining to  
business licenses and taxes. Approval of this permit does not authorize the owner to  
violate private covenants and restrictions.

5. 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.

6. A 24-hour non-message, non-recording contact number shall be provided to  
Community Development and Planning Department (CDPD) and to all neighbors

1 within 300 feet of the property along with a copy of this decision. A log of  
2 complaints shall be kept and a copy provided to CDPD upon request.

3 7. Prior to any rental, a proposed written Rules of Conduct will be submitted to and  
4 approved by CDPD. The Rules of Conduct shall specifically deal with trespass,  
5 property boundaries, noise disturbances and any special items specific to the rental  
6 unit or adjoining properties. If there is an easement that provides access to the  
7 shoreline, this shall be indicated on a map or the easement shall be marked; if there is  
8 no access this shall indicated together with the warning not to trespass. Upon  
9 approval by CDPD a copy of the Rules of Conduct shall be posted in the residence,  
10 given to all adult tenants and given to all property owners within 300 feet of the  
11 residence.

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

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

17 10. The proposal shall meet all standards of SJCC 16.55.240 and 16.55.300.

18 11. Authorization under this permit shall be void if the use is discontinued for 24  
19 consecutive months.

20 12. Property boundaries shall be prominently marked for the information of the  
21 tenants.

22 Dated this 26th day of March, 2014.

23   
24 Phil A. Olbrechts

25 County of San Juan Hearing Examiner

### 26 **Effective Date, Appeal Right, and Valuation Notices**

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

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

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

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