

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant(s): Sweet Water Farm Akhalteke II, LLC

Applicant Agent: Jay Ibold
2097 West Valley Road
Friday Harbor, WA 98250

Appellants: Catherine and Sean Scott; Deborah and Tom Nolan

Appellant Agents: Stephanie Johnson O'Day (Nolan)
540 Guard St., Suite 160
Friday Harbor, WA 98250 S.J.C. COMMUNITY

Derek Mann (Scott) DEC 11 2014
PO Box 399
Eastsound, WA 98245 DEVELOPMENT & PLANNING

File No.: PAPL00-14-0001 (Nolan); PAPL-14-0002 (Scott).

Request: SEPA Appeal of DNS

Parcel No: 450241006¹

Location: Fieldstone Road, San Juan Island

Summary of Proposal: SEPA Appeal

Land Use Designation: Agricultural Resource

Hearing Date: September 13, 2014, October 9, 2014, October 13, 2014.

Application Policies and Regulations: County SEPA regulations.

Decision: DNS remanded; building permit revoked.

¹ Based on San Juan County aerial assessor map, Ex. 3.

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

Phil Olbrechts, Hearing Examiner

RE: Nolan and Scott SEPA
Appeals of Sweetwater DNS

(PAPL00-14-0001; PAPL00-
14-0002).

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND FINAL DECISION.**

S.J.C. COMMUNITY

DEC 11 2014

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INTRODUCTION

DEVELOPMENT & PLANNING

The appellants have filed two consolidated appeals of a Determination of Nonsignificance ("DNS") issued under the State Environmental Policy Act ("SEPA") for a building permit for a marijuana production facility on San Juan Island. The appeals are sustained; the DNS is remanded for a new SEPA threshold determination; and the building permit is revoked pending completion of SEPA review.

The DNS is remanded because the SEPA responsible official did not have reasonably sufficient information to evaluate the noise and odor impacts of the proposal. As to odor, the applicant acknowledged in his testimony that marijuana production facilities produce odor and that the extent of that odor is dependent upon the strain of marijuana used and where it is in its growing operation. The applicant also acknowledged that there are a variety of options available to control and reduce odor. Odor has been a recognized area of concern by both the Washington State Department of Ecology ("DOE") and other local jurisdictions. The applicant's proposal is not limited to any particular strain of marijuana. No best management practices or any other measures are proposed to control odor. The applicant testified he would be willing to install carbon filters, but there is no information in the record on the effectiveness of filters, how long they last and how they compare to other measures that could be taken to control odor. Especially since marijuana is a newly developing legitimate industry that has not yet been subject to local regulation in San Juan County, the SEPA responsible official should have been fully briefed on the odor impacts of marijuana and what can be done to control those impacts. Instead, the SEPA responsible official was only able to testify that she believed the applicant's assurances that the facility would not generate any adverse odor impacts. That is not a sufficient evaluation of odor impacts.

The second primary area of concern is noise. The marijuana facility will produce a significant amount of noise through its use of 54 fans installed in nine green houses. DOE noise standards prohibit agriculturally zoned properties from causing noise levels in other agriculturally zoned properties to exceed 70 decibels ("dBA"). Noise studies prepared by the applicant strongly suggest that once all 54 fans are in operation that this 70 dBA level will be exceeded. The applicant has purchased quieter fans that may not violate this

1 standard, but there is no information in the record as to the noise levels generated by the
2 fans and whether or not 54 of those fans, in conjunction with all other noise produced by
3 the facility, would remain within the limits set by DOE standards. The SEPA responsible
official did not have reasonably sufficient information to determine that the proposal
would generate noise at levels below adopted DOE standards.

4 The findings in this decision also find gaps in information on power supply and pesticide
5 use. In the absence of the odor and noise deficiencies, these gaps could probably be
6 addressed by imposing SEPA mitigation measures as part of an MDNS. Similarly,
7 potential light and water usage impacts can probably be easily avoided by formulating
8 MDNS mitigation measures as well. Specifically, a deadline could be set for the
9 installation of the proposed rain catchment system along with a meter to monitor
groundwater withdrawal. MDNS conditions could also require that the blackout fabric
proposed by the applicant, Ex. 33, must be installed prior to the use of any interior
greenhouse lighting.

10 As noted by the examiner during the hearing, unaddressed impacts of the scale and type
11 produced by the proposal can usually be adequately addressed through additional MDNS
12 mitigation measures. However, the gaps in information are too great on the odor and noise
13 issues. Addressing those issues by additional mitigation measures would leave too much
discretionary decision making in the hands of staff. This would constitute an improper
delegation of appeal issues that must be resolved by the examiner.

14 During the hearing County staff took the position that adopted "right to farm" provisions
15 preclude the imposition of any SEPA mitigation measures for the proposal. It does not
16 appear that staff was asserting that agricultural uses could never be conditioned under
17 SEPA, but at least for the type of impacts generated by this proposal staff believed that
18 mitigation would be inappropriate because of the "right to farm" provisions. The "right to
19 farm" provisions do not preclude SEPA mitigation for this proposal. "Right to farm"
20 provisions cannot be legally construed as creating an exemption to SEPA review. Further,
21 the "right to farm" provisions are clearly directed at preventing the County from
22 prosecuting agricultural activities as nuisances, which does not encompass the imposition
23 of MDNS conditions. "Right to farm" provisions are relevant in assessing whether
impacts should be considered significant for purposes of SEPA review. In this regard they
play a role in assessing impacts. Because of the "right to farm" provisions, impacts that
have been reasonably mitigated and that are unique to agricultural activities are unlikely to
be found significant for purposes of SEPA review, unless those impacts violate other
clearly articulated standards. In this case it is not yet known whether all reasonable
measures have been taken to control odor. It is also unclear whether the noise generated
by the facility will exceed the DOE noise standards.

24 The findings and conclusions of this decision commence on Page 49. The testimony
25 summarized over the next 47 pages is provided as a convenience and reference to those
who would like an overview of the evidence presented at the three days of hearings on this
application. The testimony section should not be construed as any formal findings of fact
and also do not represent what was determined to be important to the final decision.

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TESTIMONY

Ms. O'Day requested the entrance of Exhibit 1, a memorandum dated September 9, 2014, and of Exhibit 2, a series of five aerial photographs of the applicant's property. The appellant, Mr. Nolan, was asked to lay the foundation for Exhibit 2. He referred to a large County map to indicate the properties involved, including the appellants' and the applicants' and then explained how the photographs related to the County map. He indicated the location of the cleared and graded areas of the applicants' property and where the greenhouses and agriculture buildings are located. He also indicated where the wetlands are located on the applicants' property. The photos were taken the past Sunday at 700ft and show the current state of the property. The large oversized aerial was obtained from the County Assessor and entered as Exhibit 3.

Ms. O'Day stated that the Nolans are the appellants that she represents them. After the state passed laws allowing marijuana growing operations and stated that the Liquor Control Board would control licensing, there was a question of regulatory land-use regarding marijuana grow-ops. Land use is under control of cities and counties according to state law. Cities and counties are allowed to put permanent moratoriums on these marijuana operations and not allow the activity in their jurisdictions. She stated that San Juan County is in a state of flux currently, and the Council is asking for regulation. The County has indicated it does not want marijuana growing to be considered agricultural. Her clients are upset because grow-ops are going into their neighborhood. This is not because they dislike marijuana, but it is because the grow-ops are not being controlled or regulated as they should by San Juan County. They admit that there are no regulations yet in San Juan County; however, Sweetwater, who have started their operations, have bulldozed through the system. The appellants believe that the County has shirked their responsibility in regulating the grow-ops. This appeal is centered around the fact that San Juan County has substantive SEPA authority, and that the County did not correctly use it on this application. She stated that in April Mr. Ibold, who represents Sweetwater Farm, submitted an environmental checklist to San Juan County for the project which was defined as an agricultural facility and a road to access it. The documents show that the original location for the facility and road was not on the parcel where it has been constructed, which is the 20 acre parcel. It was originally to be located on the 55 acre parcel, which is not completely shown on the Exhibit 3 aerial photograph. There was a wetland report done on this 55 acre property and the initial location for the agricultural facility was denied because ecology did not like that location. The whole facility was moved in response. When the location was changed, the environmental checklist was not redone. The land use application was reused with the last number of the tax parcel changed, but it had the original date stamp from the first submission. In addition, she stated that the checklist is deficient. Number 11 of the checklist asks for a brief and complete description of the proposal. This is described as an agricultural facility and a 2000sqft access road is mentioned. This application was resubmitted with the changed tax parcel number, which she noted is incorrect - and is incorrectly identified as 55 acres. They make no mention of what the agricultural facility will be composed of. She stated that the

1 County is overloaded because the new Critical Areas Ordinance has gone into effect. The
2 County had the responsibility under SEPA and implementing rules for the state to ask
3 more questions and get more information to make an informed decision. She stated that
4 for the past fifteen years the County has issued nothing but DNSs. She stated she couldn't
5 remember a project in the last 15 to 18 years that has gotten anything beyond a DNS.
6 There are details in the SEPA code that the County should be using. The environmental
7 checklist asks if there are future plans for the property. The applicants applied for two Tier-
8 3 grow-ops. They have now received permission to develop one Tier-3 grow-op and build
9 nine 3,000sqft green houses. 318 x 250 are the dimensions of the space surrounding the
10 green houses and the agricultural building. This was not revealed in the checklist, and she
11 does not believe that the planner was aware of this. She believed that this key information
12 was intentionally omitted from the application to avoid SEPA mitigation. The Nolans are
13 not asking for a determination of significance. They are requesting that this be returned to
14 San Juan County so the County can get the information that they should have had in the
15 first place and regulated under SEPA, and to add conditions to make this a MDNS which
16 has its own set of regulations in San Juan County code. SJCC 18.80.050 shows mitigation
17 issues for MDNS. The County had the ability and responsibility to do this and they did not
18 perform as they should. The checklist asked if any other government approvals were
19 necessary for the operation, and they responded that there were none when clearly the
20 Liquor Control Board had to license them to give them authority for the project. There is
21 nowhere in the checklist that it indicates that this is a marijuana grow-op. The application
22 failed to include the fact that there was clearing and grading on the property. There was
23 80,000sqft of clearing for the buildings, and Mr. Nolan saw 40 trucks of gravel coming
24 onto the property. This exceeds what is allowed under the permit. They believe there was
25 additional logging done without the necessary permits to clear the large area, as seen in
Exhibit 3. There are maps in the record that show some of the cleared space is near a
wetland, which they believe is a violation of ordinance. Nothing that was sent to the
County mentions clearing grading or tree cutting.

17 Ms. O'Day stated that she realizes that SEPA allows the County to accept mitigation
18 measures that come from other agencies and the County can adopt outside measures. They
19 feel that there are a number of issues that are not regulated by the Liquor Control Board.
20 The applicant did not mention whether or not there would be an odor. There will be
21 756,000 W of electricity used for the grow lights in the green houses, which is not
22 mentioned in the application. The County did not question how much energy the applicants
23 were going to use. There are at least three fans in each of the nine greenhouses, but the
24 County did not determine whether or not the noise level was in violation of code, WAC
25 73.60.040, which states the maximum permissible environmental noise level on any
properties that will affect residential properties. With regard to aesthetics, it appears that
the facility it is still behind trees but there are no conditions in place to prevent them from
taking down the trees surrounding the property. There is no plan as to where the other
30,000sqft of crop is going to be. There is a claim that the green houses are exempt from
building permits. There are residents who are concerned that the lights from the
greenhouse will light up the valley. If the applicants are not intending on covering the
greenhouses to prevent the light, then this should be a condition. The appellants are
concerned that the applicants will not do what they say they will without conditions in

1 place. With regard to traffic, there is no legal easement to this property as the deed in lieu
2 of foreclosure, which conveyed easements and title, contains no written easement. There
3 have has been a history of easements with regard to this property. There is an easement
4 that runs right down along her client's property. The County did not question whether or
5 not the applicants had legal access to the property and this was identified as a civil issue.
6 Ms. O'Day stated that she believes that the County should have required proof that the
7 issue was resolved before they allowed a building permit to go forward. The environmental
8 checklist states that were there would be 3-4 trips per day on the easement road. According
9 to the trip generation manual, trips per day are defined as one way. She believes that 3-4
10 one way trips is hard to believe when people are working on this site to grow and process
11 the product. There is a catchment system and no well, thus water will be brought in as well
12 as propane. In addition, workers as residents will need to access the property. This makes
13 it impossible that there will only be 3-4 one-way trips per day. If there are going to be
14 more there needs to be a condition.

9 Tom Nolan, Appellant

10 Mr. Nolan stated that he has owned and operated a construction company on the island
11 since 1989. He has eight full time employees who all live on the island. He has been
12 building custom residential homes for 25 years. He is very familiar with the permitting and
13 planning department and the County from his personal experience. He knows what people
14 have to go through to get a permit for any structure, particularly shoreline properties. His
15 company has a good reputation for honesty and quality. He purchased the property that his
16 family lives on in 1996. They purchased directly from the woman who owned all of the
17 land, and his sole and biggest concern is the development of the surrounding area,
18 including the applicant's two parcels that total 75 acres. They have always been told that
19 there will only be residential buildings allowed on this property. He has walked the
20 property that Sweetwater Farm now owns and is very familiar with the area. The SEPA
21 checklist is what concerns him most. It has the wrong tax parcel number on it. Question
22 number 11 asked if they had any plans for future construction and the applicants stated no.
23 Number 9 asked if they had pending applications and they said yes, but did not include the
24 application that they had with the Liquor Control Board. Under environmental elements,
25 there have been people occupying the property in temporary structures.

20 Under questioning by Ms. O'Day, Mr. Nolan stated that he has filled out an environmental
21 checklist himself before. He has filled out the exact same application for another project.
22 He is familiar with the property itself. He knows that there are no drain fields or septic
23 system on the property. With regard to environmental concerns, he knows about erosion
24 controls and best manage practices for wetlands and shoreline properties. He presented a
25 set of four photos of the applicants' property taken on June 2nd after a meeting with Mr.
Ibold and Mr. Rice. He met with them to discuss the traffic coming onto the property and
the smoke from the burning of vegetation that had continued for 2 to 3 weeks of clearing
and grading. He noted that a fire truck had gone down to investigate during this burning.
Prior to the current owners, he was on the property often with the permission of the prior
owners. The set of photographs had been mailed to Council members and they had them
for the June 2nd Council meeting. In describing the photos, he noted that they show

1 clearing and grading near the wetlands and excavators tending to the burning pile. He
2 noted that it is unknown whether or not they had a permit for the burning. The photos show
3 three pieces of excavating equipment on the property as well as the burn pile.

4 Ms. O'Day stated that the aerial photo referred to is located in the county packet between
5 the checklist and the marijuana regulations. The document is in the record attached to Ms.
6 O'Day's brief.

7 Mr. Nolan stated that, referencing the aerial photo, the clearing and burning took place
8 right next to the wetland area. His purpose for taking the photographs is to note that there
9 were no best management practices in place in the area of the wetlands, as no orange
10 barricade or straw barricade were used. Under air quality, the photos indicate that there
11 were three pieces of diesel equipment on site as well as constant burning. In the
12 application, the air-quality stated that there would only be automotive exhaust. With regard
13 to groundwater, the applicants stated that they would not be withdrawing groundwater, and
14 they were using a catchment system; however, he noted that this is not currently in place.
15 The appellants believe that the greenhouses are operational because they can hear the fans,
16 but he does not know where they could be getting their water at this point in time. Mr.
17 Nolan stated that he cannot see any place where they could be holding the water per the
18 photograph. He knows that the well that exists on the property is a low producing well
19 because he spoke to the previous owner who told him that it was a gallon a minute well.

20 Ms. O'Day stated that the Scotts will be offering more specific information on the water
21 situation.

22 Mr. Nolan noted that he spoke to John Wilson, the electrical contractor for the project, by
23 phone on Wednesday and he stated to Mr. Nolan that they presently have 200 amp service
24 on-site while each greenhouse is 150 amp service. Each greenhouse was originally
25 designed for 28 1000 W lights. A change order was made to increase each greenhouse to
three rows of lights and this will create a massive power use for each greenhouse. He also
described three fans being used for circulation in each greenhouse. Mr. Nolan stated that he
can currently hear the fans running. He noted that there is a plan to use propane in the
drying area. Mr. Nolan stated that this information came from the project electrician, Mr.
Wilson. They contacted the OPALCO grid system. According to Mr. Nolan, Ed Lego,
OPALCO, stated that the project needed a larger grid system, and they would need to grant
OPALCO an easement to take it down the road.

Mr. Nolan questioned whether pesticides or fertilizers should be under condition for safety.
The Sheriff noted to the County Council that the grow-op was at least an "attractive
nuisance." Regarding noise, they will have at least 27 fans running when it is operational
based on Mr. Wilson's comments to him. He noted that nothing has been classified as
environmentally sensitive, but maps show that there are several wetlands adjacent to the
subject property. When he flew to take the photos on Sunday as soon as they got in the air
at 700ft elevation, they could see the glare off of the greenhouses from the air, which he
sees as an aesthetics issue. The applicant did not state whether the 24/7 surveillance
cameras need light to work and these cameras are required by the Liquor Control Board.

1 Akhal-teke at Sweetwater raises horses and has horseback riding on the land. Mr. Nolan
2 has introduced himself to the owners, and they use the Nolan's road to access their
3 property so he sees children under 21 all the time using this area. There is no recorded
4 easement on the Nolan's parcel. With regard to public services, Ed Lego from OPALCO
5 told Mr. Nolan that there would be power outages in their area and the only way to
6 continue the proposed operation is to install three grid power lines down an easement road.
7 With regard to utilities, they will have to empty the Sani-Can regularly, they will have to
8 bring in propane regularly. Additionally, the applicants will need to truck in water. He
9 noted that when they questioned the County about these issues he did not receive an
10 adequate response. He has not seen any evidence that the County has reviewed these
11 issues nor made a site visit.

12 Under cross examination by Ms. Higginson, Mr. Nolan stated that he tried to buy the
13 property from the owner at the same time the applicants were purchasing it. In the end, he
14 was happy that he did not receive the property because it would have been a huge burden.
15 Since 1996 he had permission to access the property from both the prior owners. He had a
16 disagreement with the current owner, Jenney Rice, about a horse shed that she wanted to
17 build in the pasture. He was upset because he believed that there was a no-build area in the
18 field. He talked to Jenny Rice last winter and explained the history of the property. He
19 explained that there was an agreement that there was to be nothing built in the field. With
20 regard to the Exhibit 4 photos taken on June 2, 2014, he stated that the burning started in
21 the month of May. He has accessed the applicant's property to speak to Jenny Rice, he
22 accessed the property when he went down to talk to Mr. Ibold and Mr. Rice when they
23 were grading, and the third last time he accessed the property was on June 2nd. He stated
24 that he followed a trespasser down his driveway and onto the property. He is not been on
25 the property any other time since David Rice began his construction. He is not a wetlands
expert. He is not an electrician and has not seen the actual electrical plans. Mr. Wilson
described the general plan, the alternative change plan, and the services in place in the
greenhouses. Mr. Wilson said that the green houses were operational, according to Mr.
Nolan. He is not aware of the specific lights that are currently installed because he has not
been down there. Mr. Nolan does not have information regarding the energy efficiency of
the plan for the buildings. The fans are Dayton model fans on the gable ends of the
greenhouses. He does not know the specifics for the energy consumption of the fans but is
waiting for Mr. Wilson to forward the spec sheets on the fans. To measure the 30,000sqft
of brush and trees, Mr. Nolan made an estimate based on the aerial photographs of the site
plan (Exhibit 3). This estimate is based on his own professional experience. He typically
uses aerial photographs to create his site plans for building permits in his personal work.
The County aerial photo was supplied by the County, but he is not certain when it is taken.
He estimates it was taken within the last two years by looking at the image of his property.
He was on site prior to the clearing and grading and he was on site during clearing and
grading. Therefore, he believes he knows that the photo represents the property before
they started clearing and grading. He states that Google Maps identifies his property as
David Rice's business. He informed Mr. Rice and told him that he needed to have that
changed because of issues with trespassers on his property looking for the marijuana grow-
operation. Ms. Nolan tried to contact Google to have this changed. He stated that Mr. Rice
did make an effort to get this changed. The Sheriff noted that it was an "attractive

1 nuisance” but that they would be able to respond to any calls necessary and also indicated
2 that at some point they would like some revenue going towards their department.

3 Mr. Nolan testified that Jenny Rice owns the property that is being leased to San Juan Sun
4 Grown, the applicant’s grow-operation. Mr. Nolan contacted one of the planners to find
5 out if the no-build plan for the location of the horse sheds was still in place. His original
6 intention was to have nothing built in the pastures and fields of the adjacent property which
7 is stated in his conservation statement. There is no conservation easement on Jenny Rice’s
8 property, however. Mr. Nolan and his wife have come to the conclusion that they are fine
9 with the horse barns being built out in the pasture, but they are not fine with the grow-
10 operation. It would bother him no matter what they were growing. He does not like this
11 because this is a commercial enterprise next to his residential property. He is aware that
12 there is a commercial horse breeding operation nearby. He is also aware that it is zoned
13 Agricultural R-10. He does not agree that marijuana is an agricultural product. The State of
14 Washington states that marijuana is not an agricultural product. He objects to the scale of
15 this agricultural operation no matter what the product is. He stated that he has never seen
16 such an egregious development without consideration to the environmental impact. He
17 would object to the scale of the greenhouses for any purposes. He would not be objecting if
18 it was a single greenhouse and he would not be objecting if Mr. Rice had followed through
19 on his initial statement to reach out to the neighbors. He wants to see conditions placed on
20 the greenhouse with regard to use and size. With regard to the glare over the green houses
21 that he saw from the plane, he stated that this is also apparent from his property. His house
22 is approximately 1,500ft from the grow-op. It is seated in the middle of Evergreen trees,
23 but he can see the grow facility from certain points of his property. 450213005 is the parcel
24 number for his entire property.

25 When questioned about a photo taken near his property line, Mr. Nolan was not able to
identify the location of this photograph. He stated that the photograph shows trees that are
mid-mature and 25 to 40-years-old for the most part. The 20 acre parcel has a wooded area
but it is a thin screen of woods that he can see through, and he can see the greenhouses
from his property. Mr. Rice deliberately sited his property in the center of the wooded
areas; Mr. Nolan believes that this is due to requirements from the Department of Ecology
and because it was the only logical level spot for ease-of-use and near the road. SEPA asks
if there is any glare and light impact and the applicants said no. From Kelly and Brent
Snow’s property, who live higher up on the hill by about 100ft, there is visible glare. He
noted that his homes is about 50ft lower. Emission and noise from the vehicles on the road
impact the environment. He is concerned about environmental impacts from Mitchell Bay
Road as well, but does not think there should be limits to traffic there. He stated that he has
not paid for any traffic studies to determine impact on the road. He has not had sound
studies done regarding the fans but he notes that one neighbor has a decibel meter that they
have used to measure the noise level of the fans. He tried to sleep outside and the noise and
light have changed dramatically. This has completely changed the ecosystem of the entire
Valley, not just his property. There is a gravel pit in the Valley and he can hear noise from
it; however, it does not operate 24/7 and it is further away. He has not done studies that
compare the noise from the gravel pit to the noise from the grow-operation fans.

1 Under redirect from Ms. O'Day, Mr. Nolan stated that there are no conditions in place by
2 the County to prevent the applicants from taking down trees. He is not aware of any traffic
3 studies that have been done by the County. He stated that there have been many days
4 where there have been at least 10 and sometimes more than 40 trips per day on the road
5 into the property. There has been no consistency to the amount of traffic going in and out
6 of the property. The traffic is not contained to two round trips per day. He knows that
7 seven of the greenhouses have not been fully built with fans installed. He is not aware of
8 any requirement by San Juan County that the applicants must conduct a noise study. There
9 have been no studies done on potential noise levels to his knowledge.

6 Under re-cross from Ms. Higginson, Mr. Nolan testified that he does some of the work of a
7 land-use planner but he does not have a degree in that area; he believes that he would be
8 qualified to work as a land-use planner. He has done the type of work in the capacity of a
9 contractor. He does not know the codes or regulations as well as a planner. With regard to
10 the second Tier-3 application that has been applied for by the applicant, he believes that
11 they plan to use it in that location. With regard to traffic, he works from home, and he can
12 clearly hear the traffic moving up and down the road. He does not keep a log but if he is
13 where he can see the road he looks up to see who it is. He knows a number of people who
14 are going up and down the road, but he is not out observing the roads every minute. He
15 does spend most of his time on his property. The SEPA checklist disclosed that there
16 would be employee vehicles and agricultural vehicles on the property, but it is not
17 bulldozers and excavators. He noted that they keep them on-site.

14 Ms. Deborah Nolan stated that when they moved to the property and bought it they took
15 measures to ensure that the area was going to be residential use as this was one of their
16 primary concerns. They raised their children in their current home. When they moved in,
17 there was haying and cattle in the pasture on the subject property. Her interest in this
18 project has been following the licensing process that applicants go through. First it goes
19 through the state, and, once they have done the check, they send a notice of marijuana
20 application to the County. She had been monitoring them and waiting for them to come
21 into the County. They have been waiting for the Rice's application to come to the County,
22 and they were waiting for the Council to make comments on the application. She stated
23 that they were caught off guard when they found out that it the license had been given to
24 San Juan Sun Grown without the application being sent to the County for review. They
25 were told that the license would not be approved without the completion of the SEPA.
They felt that SEPA was going to be their only tool because the County has lagged behind
other counties in dealing with this issue, and they thought that this would be the way that
they could address their concerns because they think that will have a huge commercial
impact to the residential neighborhood that they had not anticipated. Per the town of Friday
Harbor, the application was sent to them, although the area of operation was not Friday
Harbor. Since it was addressed to them, it was returned to the state and San Juan County
never received notice of the marijuana license application.

25 Ms. Nolan testified that the Washington State Liquor Control Board Application which
was sent to Friday Harbor has a notation on the first page which says "not our jurisdiction"
and was sent back with this note. Copies of these pages were obtained from the clerk of

1 Friday Harbor. The approval of the license was dated August 13th and came as a surprise.
2 She stated that not even the County Council knew this had been approved. She testified
3 about to the County Council. This was the fourth or fifth time that she testified and she was
4 not the only one who had testified on County grow-ops. She sent a letter requesting that the
5 Council look into why the license had not been sent to the County and to request that the
6 State rescind the license. The State will not get involved in County land use policy.
7 Washington is issuing licenses and then asking that counties enforce their own policies.
8 She does not believe that the local governments have the tools to deal with this. She is
9 upset that the SEPA hearing had not taken place before they were in production. To
10 clarify, it was noted that the applicant is identified as Sweetwater Farm. Sweetwater Farm
11 is the business of Jenny Rice, who is the sister and landlord of David Rice, one of the
12 operators of San Juan Sun Grown. The property owner is required to be on the application.
13 The documents noted above are included in a packet provided by Ms. Nolan. This packet
14 also includes a letter from the Attorney General saying they will not rescind the permit.
15 The packet of state licensing documents was entered as Exhibit 5.

16 Ms. Nolan noted that the DNS was issued May 7, and the building permit was issued
17 before the SEPA determination was made. She says that Mike Thomas told her that before
18 the SEPA process was complete the license would not be approved. She is not aware of
19 any easement of record on the property for the applicants' use. They have not granted
20 easements to the applicants nor to the electric company on Fieldstone road.

21 Under cross-examination by Ms. Higginson, regarding Exhibit 5, the state licensing packet,
22 Ms. Nolan has asked the County if they have received the state licensing paperwork and
23 she has been assured by all of the employees that she has spoken to that it has not been
24 received. She spoke to the councilmen and was told that the Sheriff does not have the
25 authority to act on the licensing. She does not know whether or not the Sheriff received the
first two pages of included in this licensing packet. Under questioning she stated that there
are no power lines coming down Fieldstone Road. They have not yet searched to see if
there are power lines going to the subject property. She is not aware of any letter that the
applicants' prior attorney, Mr. Powers, sent to the Council. She has not spoken to more
than one councilmember at the same time unless they were in Council. She has been
encouraging the Council to put some restrictions in place regarding marijuana grow-
operations. She is aware that there are two more tier three licensees on San Juan Island
right now. She has not challenged them but has spoken to others who are challenging them.

Under redirect by Ms. O'Day, Ms. Nolan stated that through this process she has noted the
fact that the applicants have no legal easement. She has had a chance to look at the deeds
that conveyed title to Sweetwater Farm in particular a deed in lieu of foreclosure.

Rone Brewer

Rone Brewer stated he works with Sound Ecological Endeavors, in Stanwood, Washington
and was employed by Mr. Rice as a wetlands specialist. He began working on the project
in March, 2014. He has been out to the site and has conducted a wetland study of the site.
The first study was done in early spring of this year and his assigned task was to delineate

1 wetlands and environmental critical areas on the property. He was looking at wetlands on
2 both parcels and he found a series of wetlands on both properties. He initially did not do
3 the east side of the current construction area. Jenny Rice's LLC owns two parcels of land.
4 He initially studied the large 55 acre parcel to the West and a portion of the smaller parcel.
5 The initial site being contemplated was in the North West corner of a larger parcel. He
6 surveyed the wetlands around this larger site and found that the proposed construction area
7 had delineated wetlands away from it at a downslope. He understood that a road needed to
8 be constructed to this site which would need to be over 700ft. This road necessarily went
9 over a drainage structure at the bottom of the valley. His findings were that this did not
10 create any ecological concerns. They chose this location for the road crossing because it
11 was not wetlands. The Department of Ecology briefly reviewed the report, and Paul
12 Anderson from the Department, suggested that there may be a wetlands along the stream
13 that was inappropriately delineated and he also suggested that the drainage ditch should be
14 classified as a fish bearing stream. They located a site that had less potential impact on the
15 ecosystem and they found this on the smaller parcel. Paul Anderson concurred with the
16 findings.

17 Mr. Brewer noted that he typically studies 5 to 20 acres and these are residential,
18 commercial, and high density residential. In his experience he does not believe that this
19 project has a high impact on the environment. To his knowledge, no construction has
20 occurred on a wetland or a buffer. He delineated the wetland that is closest to the
21 construction site. This was relatively well delineated and the boundaries are quite clear, as
22 well as the soil and vegetation changes. Both wetlands on the sides of the construction sites
23 are category three. This is one step up from the lowest quality wetland based on the
24 rankings provided by cities, counties and the state. He was aware that the County was
25 undergoing changes in the critical areas regulations and that Mr. Rice was interested in
having his study completed before the new regulations came into play. The goal was to
finish prior to the change in Critical Areas Ordinance.

17 Under cross-examination by Mr. Mann, Mr. Brewer said he made two site visits to the
18 property. The first one was to delineate for the initial construction area and the second was
19 to look at the site of the property that had not been on the report because it had not been on
20 the construction. The first visit focused on the larger parcel and a section of the smaller
21 parcel. The second visit they looked at the wetlands around the secondary construction site.
22 They did not study the entire second parcel on the first visit because it was not near the
23 construction. The portion that he did not delineate was not near any proposed rule
24 construction or site development. He noted that the hatched areas on the County's GIS
25 mapping are suspected wetland areas. His delineated wetland areas did not overlay exactly
with those from the GIS map. He knew that this was potentially a marijuana grow-
operation. He did not take into account pesticide use, water use, or wastewater discharge.

24 Under cross-examination by Ms. O'Day, Mr. Brewer testified that he did one wetland
25 delineation and provided an addendum to that, which included additional wetlands. He is
familiar with the new critical area ordinances and knows generally when it went into
effect. The current greenhouses, agriculture building and fence were not shown on the
initial wetland delineations. These were shown on the second one, which was submitted as

1 an addendum to the first one. For the addendum to his report submitted after the new
2 critical area ordinance went into effect, the wetlands classifications remained the same.
3 The wetland rating form that he used for both the first one and the second one is the same
4 one that is required by the Department of Ecology, and the wetland ratings are the same.
5 Ms. O'Day suggested that they were actually entirely different in the new Critical Areas
6 Ordinance. The addendum was on the 20 acre parcel and the initial report was on the 55
7 acre parcel except for the area of the proposed road. The tier 3 8,000sqft facility was going
8 to be greater than the 50 foot buffer from the wetlands located on the parcel. Under the
9 new regulations this would be a different buffer. The new standards vary and they did not
10 run the numbers under the new buffer. He has not visited the site since the facility was
11 built. The clearing had been done when he did his wetlands delineation. He did not
12 measure the clearing from the wetlands, but it appeared from the map that it was outside
13 the 50 foot buffer. They were surveyed by either GPS or bearing from a known landmark.
14 The only review of his report that he knows of was the review done by Paul Anderson. Mr.
15 Brewer stated that he has a Master of Science degree in environmental studies and a minor
16 in chemistry. He has worked in environmental consulting firms in Seattle and surrounding
17 regions for a number of years and now he has been out on his own doing wetland
18 delineations and ecological risk assessments. He is getting paid for his testimony today.

11 Under cross-examination by Mr. Powers, Mr. Brewer stated that the County GIS map was
12 not created based on a site visit. The National Wetlands Inventory from which the GIS
13 map is developed is an aerial interpretation of vegetation. It does not meet the tri-parameter
14 methodology of the Corps of Engineers, and does not match soils or hydrology. He does
15 not feel that the project will cause a significant adverse impact on the environment. He
16 believes that it will be a minimal impact on the environment.

15 Under cross-examination by Mr. Mann, Mr. Brewer identified in general where the
16 drainage ditch was located and the direction of flow. In Exhibit 3, the water flows to the
17 West on the West side of the fields and it also flows to the East on the other side where
18 there is a ridge. The area surrounding the area construction has wetlands in it as shown in
19 his report. The wetland figure number six of his report shows the ditch. With regard to
20 putting on the record the water flow of the project site, the wetland report does not show
21 water flow only topography. Mr. Brewer used Exhibit 3 and a pen to mark water flow and
22 stated that this was a general idea as to the flow. He stated that horses have direct impact
23 on wetlands if they are walking through and also due to manure and other things which run
24 off into wetlands. This is a common occurrence when horses are adjacent to wetland.
25 Greenhouses that are well designed and have stormwater collection and dispersal have very
little impact on wetlands. He has seen the site plan for the project but has not seen the
stormwater plan.

23 Under redirect by Ms. Higginson, Mr. Brewer stated that his first wetlands analysis from
24 the northwest corner did not specifically take into consideration additional greenhouses;
25 however, the property was fully delineated for wetlands in both parcels.

Merle Ash

1 Mr. Ash stated that he is a land use consultant on land technologies planning and civil
2 engineering. He has seven years of college, but no degrees. He has been in land use expert
3 for 40 years. The studies that he performs include land-use feasibility from raw land to
4 fully develop sites, with some residential and commercial and agricultural facilities. They
5 also do quarries and gravel pits, and prepare stormwater management reports. He is
6 consultant on 500 or 600 projects. He was tasked for this project to create a stormwater
7 management plan. He prepared two stormwater management plans which were done last
8 spring. He was aware that that this plan was to be permitted for San Juan County. He had
9 contact with Mr. Rice and Mr. Ibold regarding this plan and he has gone to the site for a
10 site visit after he created the plans. The plans were used with mapping GIS wetland
11 information. This is typical for this type of facility. The stormwater features that he
12 recommended for the site that was built were bios swales and bio detention facilities with
13 dispersion towards the wetlands to try to maintain the hydrology of the wetlands. A bio
14 swale provides treatment using certain shapes that will have a certain amount of organic
15 matter and some organic cover for continuation of the flow. The facility that was built had
16 a bio swale for dispersion on one side and then a collection pond on the other side, which
17 is a bio detention pen toward the northwest. This is not a difficult site to plan stormwater
18 for because 90% of the runoff is coming from a non-pollutant generated surface so it does
19 not require a lot of treatment. The applicants also asked him to go out to the site during
20 construction to reevaluate. There were surrounding areas that did not have a lot of
21 disturbed soils so it was relatively easy. He is not concerned about the water quality that is
22 migrating off-site. He would be more concerned with a confined animal facility as they are
23 definitely more polluting. His understanding that there is a garage and all materials are
24 going to be unexposed. On this site there were 30,000sqft of impervious surfaces that
25 water would have been collected from. He does not the size of the entire basin is but in
one of the studies on the first sites are there was a 400+ acre basin on that site. It would be
his conjecture that the total basin that feeds those wetlands is probably larger than that.

17 Mr. Ash stated that if they collected water from the entire area of the facility it would not
18 be a geological significant event for the local water table or wetlands. There is a natural
19 hydraulic cycle and the water is not permanently lost. Looking at the area that feeds the
20 wetlands, which is in the hundreds of acres, and looking at the acres that are being captured
21 from, which is less than 30,000sqft and just including the upstream area that was on the
22 first site, this is looking at 1/10 of 1% of the water that might be diverted from the
23 groundwater supply. It is conjecture, but he is certain that the basin is a lot larger than that.

21 Under cross-examination by Mr. Mann, Mr. Ash noted that when he referred to the site in
22 his analysis he was speaking of the entire upstream basin, which is 400 and something
23 acres. When he refers to the facility, he is speaking of the areas cleared and the areas
24 impacted, which are divided into pollutant generating surface and non-pollutant generating
25 surfaces. They did not evaluate for any kind of waste production associated with marijuana
production. They did not study the well logs in the basins. They did not study the well logs
for the site or neighboring properties. He has not done a study in San Juan Island for the
past five years. He was not asked to consider another water collection system beyond a
catchment system for this proposal. Stormwater management is the rain in the runoff
which is dispersed or discharged. The second is rainwater catchment which can be used for

1 stormwater management strategy or can be used for the water source strategy. Rainwater
2 catchment was analyzed by them as a water source. Their disbursement system did not
account for catchment as well.

3 Under cross-examination by Ms. O'Day, Mr. Ash stated that the date of the original
4 stormwater plan was April 14th. He acknowledged that he is not a Civil Engineer. He first
5 visited the site two or three months ago. He has had no meetings with Julie Thompson,
6 and she has never written him a letter requesting more information, nor has he dealt with
7 anyone else from the planning office. The stormwater plan was for the twenty acre site,
8 after they had completed one for the 55 acre site. With regard to BMPs, they created a
9 stormwater pollution prevention plan. This included best management practices that can be
10 installed if there are signs of erosion. One of the best BMPs in these temporal sites is
11 vegetative cover. He has no knowledge if there were problems on the site and he has no
12 knowledge that other BMPs beyond vegetative cover were used. They try to create and
13 design bio detention systems that are used with compost amended soils and use detention
14 rock galleries underneath the soils. These become more like wetlands system as opposed to
15 fenced traditional detention ponds. There were no detention ponds on the site when he was
16 there two months ago. He was asked to review the site to check the conditions, and he saw
natural elements on the site. They pointed out bioswales and diversion trenches that they
needed to create, and he has no knowledge of whether or not they have created this. He is
not aware of the canopy of plants inside the green houses. They had gone to look to the
website to see what kind of general irrigation requirements there would be. They evaluated
for one 3000sqft facility and they came up with 41,833 gallons per greenhouse, and a net
volume of rainfall of 45,564, enough for about one greenhouse. They would need a
catchment facility for each greenhouse. He does not know how many catchment facilities
are installed now. He does not know if they are using a well on the property. He is not
aware of whether there are or are not catchment facilities on the site currently.

17 Under questioning by Mr. Powers, in regard to an email exchange with Tony Smith at the
18 Department of Ecology regarding the project (applicants Exhibit 5 page 4 of 10), Mr. Ash
19 said this conversation started out as a water rights issue as Tony suggested they needed
20 water rights permission if they were using a well. If they are using water catchment they do
21 not need water right permits according to the Department of Ecology. Wells are not
relevant to stormwater study per se. Mr. Rice was presented with more than one option for
remediation. Either of these plans with remedy potential runoff problems, either the pond
or the swale.

22 Under examination by Mr. Mann, Mr. Ash stated that there is a difference between
23 stormwater management and wastewater studies. Wastewater studies are not his area of
expertise. Polluted stormwater is different than wastewater.

24 Under examination by Ms. O'Day, Mr. Ash said he did not analyze the use of pesticides.
25 He did not analyze whether wastewater would be polluted as this was not the purpose and
focus of his study.

1 Jack Cory

2 Mr. Cory stated that he previously owned two pieces of property in this area of the subject
3 property next to the Nolan's. When he owned it, Fieldstone road did not exist. Gwen
4 Wilson owned property that is currently owned by Sweetwater. Mrs. Wilson subdivided a
5 large amount of property in this area. With regard to an easement granted by Mr. Cory, a
6 logging company had trespassed on his property and had begun to put in a new road to the
7 East of his property. This was constructed without his permission. In 1996 he signed a
8 grant of easement to Gwen Wilson. (Grant of Easement, 6/11/1996, AFM 96061134)
9 There were certain conditions contained in the document that indicated the road was only
10 to be used for a single residences on each property. There was also a second easement
11 where Ms. Wilson granted Mr. Cory an easement. Mr. Cory had several conversations
12 with a number of people interested in purchasing properties who requested that the
13 easement be expanded and he said no. John Lindy was a local attorney, and he had
14 conversations with him. The easement was written up by Mr. Eaton. He did have a
15 conversation with a neighbor, David McCauley, about the easement. He wanted to make
16 sure that there were a no sound systems or lighting for the McCauley horse arena that was
17 on the property.

18 Under cross-examination by Ms. Higginson, Mr. Cory said the use of the Wilson property
19 in 1996 was residential and agricultural. The McCauley's built a large arena and he was
20 concerned there would be lighting and noise. Later, Mr. McCauley started to let a number
21 of people use the arena and the traffic became a problem. They made a gentleman's
22 agreement that there would be no lighting in the arena.

23 October 9, 2014

24 In response to questions from the Examiner, Ms. O'Day stated that they filed the SEPA
25 appeal and then added on a claim saying that the building permit should not have been
issued. No one is making arguments appealing the building permit.

Mr. Mann stated that there has been no real environmental review by the County of the
impacts from the use of the structures. The land-use application by the applicant spoke of
building a road and agricultural buildings. The County's evaluation in their Staff Report
indicates that they did not review it for any aspects of marijuana production. This is the
only process by which those impacts could be reviewed. The appellants are asking for the
declaration of nonsignificance to be declared invalid and are asking the County to redo
their work. The hearing process today cannot take the place of the environmental review.
Expert reports by the applicant and the County would be just a part of the process. While
some of these are relevant, they cannot take the place of a County review. The appellants
requested that the Hearing Examiner deem that the initial review was inadequate. The
environmental impacts are relevant because the state and local authorities have declared
that there are environmental impacts from marijuana production, and they should in fact be
reviewed. The County did not review the marijuana growing aspect of this application. The
land-use permit application itself, which was admitted as part of the application packet and
has already been admitted to evidence, is dated April 10, 2014. The application states on

1 its first page that it will build a road and agricultural facility. It does not disclose intent of
2 marijuana production. The Scott staff report indicates that the County reviewed the
3 application for environmental policy. The Nolan staff report indicates that the County
4 requires environmental review for buildings over 10,000sqft. This indicates that the
5 County deems an environmental review necessary. However, the permit application does
6 not disclose this and no environmental impacts are discussed.

7 According to Mr. Mann, there are likely impacts from marijuana production. On their
8 website, the Liquor Control Board includes regulatory advice for marijuana producers
9 (Exhibit 14). Ms. Scott noted that this article was retrieved from the LCB website site but
10 cannot remember when it was promulgated. Mr. Mann stated that the state claims that there
11 are certain environmental impacts. A SEPA review is required to take into account and
12 analyze likely or probable effects, and the LCB list is of likely or probable effects as
13 viewed by the State of Washington. Mr. Mann stated that he wants to focus on the fact that
14 the state recognizes these environmental issues with marijuana production. This indicates
15 that there should be County and local review and these factors should be addressed. There
16 should be disclosure that there is possible impact. The applicant did not disclose potential
17 impacts in their proposal. The County did not review for potential impact. He requested
18 admission of a document from the Department of Ecology, which is a list of potential
19 impacts from marijuana production entitled, "Marijuana Licensing and the Environment"
20 (Exhibit 15).

21 Mr. Mann stated that a state law requires that the applicant notify local legislative
22 authorities (statutes RCW 69.53.3317 sub A and B.) before the LCB issues a license,
23 stating it will give notice to the officer of the County legislative authority. This did not
24 happen in this case. The letter from Exhibit 5 demonstrates that there was improper notice
25 as notification was sent to the City of Friday Harbor. There is acknowledgment that
notification did not happen which is part of this Exhibit. This shows that the County's
behavior in this case fell short of what is required as it never received notification or
engaged in this process. The Nolan staff report states that the County has not prepared
rules for production or processing retail sales of marijuana. The SEPA review is for
construction of this facility, not the production of marijuana. The applicants did not fully
disclose the nature of their project and the County acted on insufficient information. Mr.
Mann noted that the legal argument is that land-use laws require a complete and accurate
description of the project. SEPA regulations require that adequate and timely information
must be gathered to provide time for public involvement. They (WAC 197-11-060) require
that the subject of review must be properly defined in a proposal. Long term and short term
impacts should have been considered by the County and they were not. If the application
had been submitted to the County with proper information, there would have been an
environmental review. If the County had received the application from the state properly,
they probably would have had an environmental review. There is not yet a County
ordinance that deals with these environmental impacts but other counties do. SEPA is their
only chance for the County or anyone to review environmental impacts from this type of
project. The appellants want the court to order that the County do their job. The
regulations require complete disclosure of the project before the County can its their work,
and the appellants believe that the County violated this procedure.

1 Catherine Scott

2 Ms. Scott stated that she spoke to the applicant, David Rice, regarding his use of pesticides
3 and fertilizers around May 26th. This took place on the marijuana facility property. She
4 asked him what the name of the insecticide that they plan to use was and she was told it
5 was Azatrol. She obtained the manufacturers package information and a safety data sheet,
6 Ex. 16. Ms. Scott indicated on an aerial photograph from Exhibit 2, identifying her home
7 and the facility and the location of her well, delineated wetlands, and fishponds. The home
8 is approximately 618 feet from the proposed facility. They have two children and use their
9 well for water consumption. She would like the water analyzed. She is concerned with
10 pesticides permeating groundwater based on the manufacturer's information found in
11 exhibit 16, which indicates that the chemical can have toxic effects and is a contaminant.
12 She noted that her family does not use any pesticides or fertilizers because they are
13 conscientious about the groundwater. Mr. Mann noted that there will be work within 200
14 feet of the surface water on the property per the applicant. The applicant also indicates that
15 there would be no chemicals pesticides or herbicides used in the growing activity. There is
16 no indication in the application that there will be discharge or use of chemicals or
17 fertilizers. The applicant indicates that they will be growing marijuana in bags on the
18 ground.

19 Mr. Mann noted that state documents discuss the potential impact of odors. The
20 application indicates that the only potential odors would be automotive emissions. The
21 County has no information on odor; however, it is identified as a likely impact. In the Scott
22 Staff Report it states that there is nothing in the application materials that leads County to
23 believe that there will be an odor impact. Ms. Scott testified that she smells an odor that
24 she associates with the production facility, which she can smell consistently from outside
25 of her house. She stated that it smells like marijuana. She cannot smell it inside of her
house. On October 7th she walked outside to go to work and she could not believe how
strong the smell was; her daughter was going to the bus and also noticed the smell. She
called Bruce from the Sheriff's Department that morning to talk to him about the
environmental hazard of the smell because she is concerned.

Mr. Mann noted that the Liquor Control Board also talks of solid waste handling as a result
of marijuana production. The application mentioned nothing about solid waste production
or disposal. This is a likely impact, but it is not divulged. State regulatory permitting
guidelines talks about generating waste pesticides and also the generation of wastewater as
a byproduct of marijuana production. The applicants' witness, Mr. Ash, stated that their
plan dealt only with stormwater. There is a possible wastewater impact and the only action
of the applicant deals with stormwater. The Scott Staff Report also acknowledges and
states that the Department of Ecology pointed out that it might be necessary to deal with
wastewater impacts. It is brought up in the report as a potential impact, but it is never
addressed in the report or a SEPA review. With regard to the issue of water use, the
application materials indicate that they are going to use catchment instead of a well. They
say that no groundwater will be withdrawn or discharged to the ground. If they intend to
use catchment, there is no indication of the materials or of the amount of water that may be

1 needed, or analysis as to whether they could produce sufficient water. They have not
2 demonstrated that they are able to catch sufficient run off to meet their purposes.

3 Sean Scott

4 Mr. Scott stated that the well next to their house is their primary source of water. They are
5 concerned with the production next door having an effect on their water supply. When they
6 went for the site visit after the hearing on September 10, he did not personally see a water
7 catchment system. He asked David Rice if there was a catchment system as stated in the
8 application and Mr. Rice responded that there was not. He did some research as to the level
9 of water use for marijuana production and discovered articles from online sources, the
10 Press Democrat and the Omak Chronicle (Exhibit 17). Mr. Mann stated that, for an
11 operation of this size, the water requirements are not small. They need to show the legal
12 impact of the analysis or lack of analysis of levels of water use. The application did not
13 demonstrate the true source of water. It was not disclosed that there would be a significant
14 amount water needed. This is an incomplete application. The County's decision was based
15 on insufficient information. The document (Exhibit 17) is not intended to establish exact
16 numbers; instead, they are trying to demonstrate that the County did not do its job. With
17 regard to light emissions, the applicants said there would be no light production and no
18 proposed measures were needed to deal with this. Mr. Mann stated that the Nolan Staff
19 Report indicates light inside will be trapped by a roof covering and this the extent of the
20 County analysis. Sean Scott stated that they can see light emissions from inside their house
21 and outside their house. This is a noticeable change since the facility was established. They
22 are not as bright as they had been at the beginning of the project. There is a glow coming
23 from the production of the facility. This diminishes the view of the night sky. He observed
24 that three of the greenhouses were operating when they did the site visit. Through the fence
25 he saw into the greenhouses and saw fans running and plants inside. Mr. Scott is an
electrician and an employee of Wilson Electric, who is the contractor on the grow-op job.
Mr. Scott testified that the design for the greenhouses would require 84,000 W per
greenhouse. He did not personally work on the site, but saw the design at his place of
employment, did some early calculations on the project, and saw some of the equipment
that came through the shop. He wrote an email to his County Councilman, Bob Jarman
(Exhibit 18), which included proposed wattage for the buildings based on his review of
their orders of electrical components and the design.

21 Mr. Scott stated that he is a licensed commercial and industrial electrician in Washington
22 and Oregon State, and has been working in the industry for 23 years with over 10 years on
23 the San Juan Islands. He has observed construction equipment for large and small projects.
24 He stated that he believed this is one of the largest projects that he is ever worked on with
25 regard to service in the past 10 years. The panels used are commercial industrial grade
panels. He knows from talking to employees of OPALCO that they have issues with
providing service of this magnitude to the site and that that much pull on the current
system could exceed single day service. With regard to light impact, he first noticed light
from the project early in September in the evening. Some light is visible from his house
while he was standing in his kitchen. The impact has grown lesser over time. He is not sure

1 the reason for this. He has not noticed light to any degree recently, starting approximately
2 4-5 weeks ago.

3 With regard to the removal of vegetation Mr. Mann noted that the application materials
4 state that some pasture grass will be removed for the road building in the site. Ms. Scott
5 testified that on May 23rd she observed her whole backyard enveloped in smoke. She
6 called the fire department. Based on the fire report, the responders found Mr. Ibold
7 working an excavator and burning materials in an 18ft pile. It was discovered that there
8 was a permit on file for 10 x 10 pile and the owner agreed to go down and apply for a
9 commercial permit the next day. Ms. Scott obtained the fire report through the fire
10 department directly (Exhibit 19). Mr. Mann stated that this was relevant as another
11 example where an environmental impact is misstated and misinformation is provided. The
12 application sections that address noise emissions states that there would be an eight hour
13 day construction limit. It lists employee vehicles and agricultural machinery as existing
14 noise. The Staff Report fails to address the noise at all, there is no discussion of noise.

15 Mr. Scott testified that he has discerned noise from his property that is associated with the
16 property next door. This includes vehicle noise, construction noise and fan noise. He first
17 observed the fan noise around the same time they observed light in September. They can
18 hear it both outside and inside their home. From early September through the next three
19 weeks they took decibels samples with a decibel meter from their property. The recordings
20 read from 50 to 54 dBA. There is also a humming noise inside their house that is
21 disruptive. The fans run 24 hours a day, 7 days a week. With regard to traffic and
22 equipment noise, they have observed from both inside and out of their house, that there is
23 an increase in vehicle traffic. Mr. Scott stated that it used to be possibly a car once a month
24 or every other week. Now it is sometimes 10 trips a day. Some of the vehicles are clearly
25 construction vehicles so they know that they are going to the project site. He identified on
26 Exhibit 3 the location of his house and the road that sees access the grow facility. The
27 traffic they observe is going down the road to and from the site. The road serves the two
28 parcels that belong to the applicants and no one else.

29 With regard to the issue of security, the WA State Liquor Control Board has promulgated
30 their own SEPA environmental checklist citing security concerns. Ms. Scott noted that she
31 found this document online at the WA State LCB website (Exhibit 20). Mr. Mann stated
32 that when the applicants did not disclose the purpose of the application, the County was
33 unable to act on any potential environmental impact. Ms. Scott noted that she is concerned
34 with her family safety due to the proximity of the grow operation.

35 Mr. Mann presented the Walla Walla Municipal Code regarding SEPA review (Exhibit 22)
36 which demonstrates a county review process. There is no municipal or county code for
37 San Juan that addresses this issue. He noted that the Scott staff report states that the County
38 does not have rules for this application. The report claims that in the absence of an
39 ordinance, they cannot do a review. In this case the County has chosen not to adopt codes
40 and so the only review available is the SEPA analysis. The Walla Walla code is an
41 example of an ordinance which has been adopted elsewhere.

1 With regard to traffic, Mr. Mann noted the application states there would be 3-4 trips
2 between 8 AM and 4 PM on the road to the property. The Scott staff report notes that
3 traffic was not analyzed by the County because there are no rules which limited traffic in
4 this circumstance. Mr. Mann states that this is an abdication of responsibility. They believe
5 that the estimation of 3 -4 trips is a deliberate understatement and would not likely stand
6 up under County scrutiny. The County says that since there is no ordinance they will make
7 no inquiry. The tax parcel information on the application is incorrect. The original
8 application was for one parcel and was then was manipulated to be changed to work for
9 another parcel. Mr. Mann states that they should go back in the process to make sure that
10 accurate and valid information is being used. With regard to the stormwater plan, Mr.
11 Brewer testified that a good drainage plan was necessary for a good environmental plan.
12 However, Mr. Ash noted that his plan had to do with stormwater only, and not wastewater.
13 Mr. Mann stated that this indicates that there is a stormwater and wastewater issue and it
14 has not been fully considered by the County. The stormwater report is inadequate and the
15 report provided by Mr. Brewer is inadequate as well. The stormwater plan did not include
16 marijuana production and did not include wastewater management to deal with pesticides,
17 fertilizer, etc. The County should have brought this up. The Staff Report does not address
18 access and it should have. Mr. Mann stated that the applicants are segmenting their project
19 to escape regulatory scrutiny. With no full disclosure of the full project, it cannot be fully
20 scrutinized for possible impacts. This project was considered only as a building and road
21 project, and there is nothing the report that analyzes marijuana impacts. Anytime the issue
22 is brought up, the County deferred to the fact that there were no regulations in place to give
23 the guidance. There is an absence of SEPA review for the marijuana production aspect of
24 this matter. The SEPA WACs require that the project be fully defined and all of the
25 adverse impacts analyzed, and this is not been done in this instance. This error can be
fixed.

16 With regard to security concerns, Ms. Scott testified that she is concerned with the
17 proximity of the grow operation. She quoted from a memo from the DOJ that spoke of the
18 priority of preventing the distribution of marijuana to minors. It recommends strong local
19 and state regulatory acts to protect against the distribution of marijuana. San Juan County
is not in compliance with this Department of Justice recommendation. There is also a need
to create more protection in rural areas for single family residences.

20 Mr. Mann said there are an array of impacts that the applicants refuse to disclose or did not
21 disclose, and the County did not act in the way that they should. Impacts of noise and
22 lights, pesticides, security; none of these are disclosed and none of them were analyzed.
23 The County SEPA review was inadequate and relied on insufficient information and relied
24 on incorrect conclusions with respect to the County's ability to impose mitigation on these
25 issues. The County's work here has not been done yet and they should go back to stage I
and do it properly. They should be considering all of these matters, whether or not they
issue a DNS. Mr. Scott had testified that he had begun to see light omissions from the
facility in the beginning of September, but he had not noticed much the last couple of
weeks. Mr. Scott stated that he was incorrect in that testimony. It was in August,
specifically on the 12th that he first saw the light. It was on that date that he made a phone

1 call to the Sheriff's Department. Stating that the light disappeared a couple weeks ago was
inaccurate.

2 Under cross-examination by Ms. Higginson, Ms. Scott stated that Mr. Rice did not specify
3 that he would be applying the Azatrol to the plants inside the greenhouse. Regarding
4 Exhibit 16, she is aware that the product is certified organic to be used on organic crops.
5 She was not aware that it was produced from the Neem tree. She cannot recall whether or
6 not she looked at the Department of Ecology website for information on Azatrol. With
7 regard to the information sheet for Azatrol that she provided, she does not know if there
8 are any ponds inside the green houses. She testified that she sees from the information
9 sheet that Azatrol can be used in public areas and sees on the information sheet that it can
10 be used on agricultural products up to the day of harvest. Her concern is that the floor of
11 the green houses is gravel and permeable, and that a significant volume of insecticide will
12 possibly leach into the groundwater. With regard to the issue of odor, Ms. Scott noted that
13 she is aware that the property is zoned agricultural. She understands that agricultural uses
14 can involve plants. She is aware that the other part of the property is hayed and she can
smell the hay. She knows that horses are being bred and raised on the parent parcel, and
there were times in the past that she could smell horse manure. Her objection to marijuana
is that it may be a hazardous substance that her children may be inhaling, and that has
abuse potential. She believes that it is unknown whether breathing in marijuana may have a
cumulative effect. She believes that the grow operation is too close to a family residence
with children and that is her objection. With regard to security concerns, she is aware that
there are no retail sales conducted at the facility and that the public is not invited to this
facility.

15 Under cross-examination by Ms. O'Day, Ms. Scott stated that her profession is a
16 pharmacist.

17 Under redirect by Mr. Mann, with regard to Exhibit 16, Ms. Scott stated that it lists first aid
18 precautions and hazards for Azatrol, and that these precautions and hazards apply even
19 though it is available to the public and even though it is organic. She does not like the
smell of growing marijuana, and she does like the smell of growing hay.

20 Under cross-examination by Ms. Higginson, Mr. Scott stated that when he spoke to Mr.
21 Rice at the site visit Mr. Rice told him that there is not a water catchment system. He
22 testified that he had no personal knowledge of what it takes to grow marijuana beyond
23 what he has read. He is aware that the Department of Ecology is developing restrictions for
24 the use of water for marijuana production; he was not aware that they were developing
25 regulations for water use in marijuana facilities. With regard to his well, he has not yet
performed a well test. He is aware that there is a well on Mr. Rice's property that may be
used for residential purposes. He was not aware that Mr. Rice's father was living on the
property. He is not aware of how much water Mr. Rice's father would be using on a
residential basis. He does not have any information about Mr. Rice's current use of water
or whether or not it exceeds the 5,000 gallons limit. With regard to the issue of light, he is
aware that lights are installed at the warehouse, He knows that all of the equipment that he
described has not been installed. His testimony of the amount of electrical equipment is

1 based on the owner's design per Exhibit 18, but all of this equipment has not been
2 permanently installed. With regard to traffic, he had testified that there was little trip traffic
3 on the road prior to the facility going in. When the Scotts built their house that route was a
4 cow path, but it was passable by motor vehicles. When he saw large number of vehicles
5 moving down the road from his garden that he testified to, it was at approximately 5p.m.
6 He is not aware of where these vehicles had come from. He was not aware that there is no
7 limitation to the amount traffic of generated by an agricultural facility. He is aware that the
8 checklist said the traffic would be generated during construction. With regard to noise
9 levels, he did not take measurements from before the operations began. The equipment he
10 used was a handheld decibel meter. He is not a sound engineer. He does not know whether
11 or not the County Planner's Office obtained additional information beyond the checklist.

12 Under cross-examination by Ms. O'Day, Mr. Scott stated that he has reviewed the
13 County's file on this matter and he did not see anything in the County record that
14 demonstrated that they did analysis for the amount of water or electricity to be used for the
15 project. He saw nothing in the County's file that demonstrated analysis of noise, security,
16 and traffic issues. Ms. O'Day requested admission of a Memorandum dated September 30
17 to the County Council from Mike Thomas, County Manager (Exhibit 21). This proposed
18 legislation that would cause a moratorium to stop production until regulations have been
19 put into place. He noted that he is familiar with this document and the Council has moved
20 to address the issue of the moratorium further.

21 Under redirect by Mr. Mann, regarding the email to Mr. Jarman from August 19 that
22 presented an estimate of power consumption, this is based on a design that Mr. Scott
23 reviewed at his place of work, and it is based on conversations with individuals that
24 actually worked on the job.

25 Under re-cross by Ms. Higginson, Mr. Scott said he does not know who created the
drawings for the electrical design. He stated that his knowledge is based on some
equipment for the job that he handled and came through the shop. With regard to the
memorandum from Mike Thomas (Exhibit 21), there were people on both sides of the
issue present. There were discussions about changes to the proposed language and there
were strong objections; the outcome is unsure.

David Jenks

Under examination by Mr. Mann, Mr. Jenks testified that he lives year round on Mitchel
Bay Road, and his residence is located on the map, Exhibit 3, tax parcel number
450213004. He is aware that there is a marijuana production operation located on a nearby
property indicated on the map. He has experienced increase light impact on his property.
There is a tree line that separates the green houses from their view; however, they could
see them because they are white and they reflect light very brightly during the day. They
can see the lights at night but their bedroom is facing in an opposing direction so it is not
bad. They notice the lights at night from out on the property. They have experienced an
increase in noise impact on their property which is a constant humming like an idling
engine. They believe that it is coming from the fans in the green houses. They don't know

1 what possible source besides the fans it could be since they are not aware of any other
2 machinery or buildings in that direction. They can hear it inside when their windows are
open. The fan noise is ongoing at this time and is pretty much constant.

3 Under cross-examination by Ms. Higginson, Mr. Jenks stated that he does not know David
4 Rice, Jenny Rice or their father. He was not aware that they had moved to this property
5 recently. He believes that the evening lights are coming from inside the green houses
6 because during the day he cannot see any potential source. He cannot see any other lights
from neighbors from his house. They cannot see headlights because they are far off of the
road. He does not have any view easements from any of his neighbors in the Valley.

7 Sean Scott, rebuttal testimony

8 Mr. Scott testified earlier that he did not see the light equipment in the buildings. He stated
9 that this is information that he is obtained secondhand from people who worked on the
project.

10 Applicant Presentation

11 Jay Ibold

12 Under examination by Mr. Powers, Mr. Ibold stated that he is a builder and farmer. He has
13 farmed hay and horses. He was hired as the project manager for San Juan Sun Grown to
14 permit and build the facility. David Rice hired him. Mr. Ibold was responsible for
oversight of construction on the site, submitting building permits, submitting land use
15 permits, and hiring experts to conduct studies. He lives approximately .5 miles to the east
of the site. He lives on a 23 acre farm with his wife. His wife is a horse-breeder. She
16 previously worked with Jenny Rice. They used the subject property to conduct their horse-
breeding business. Prior to the grow-op site, Mr. Ibold had been to both parcels. He had a
17 former interest in the land because formerly his wife and Jenny Rice leased 87 acres
together, including the 55 acre parcel, the 20 acre parcel, and a separate equestrian facility.
18 He used Fieldstone Road during those horse-farm operations. He brought farm equipment
and horse trailers down the road often. The road was always accessible by motor vehicles
19 to his recollection. The road has only been improved recently. The portion that was
improved was the portion of the road on the 20 acre parcel. He became involved with San
20 Juan Sun Grown in December, 2013. Mr. Ibold was tasked with submitting the local land
use applications for building a marijuana grow facility. The original site for the facility
21 was in the far northwest corner of the 55 acre parcel. On behalf of Mr. Rice, Mr. Ibold
commissioned a wetland delineation by Rone Brewer. As far as road construction, the
22 intended location would have needed Fieldstone Road to be extended by close to a mile.
The planned road would have come close to wetlands, but it would not have been within
23 any buffers. The plan was reconsidered in April because of the Department of Ecology's
input. What the applicants believed to be a man-made ditch, the Department of Ecology
24 considered a fish-bearing stream. The Department of Ecology said the stream would be
25 considered a water of the United States and could not be crossed. Rather than attempt a

1 difficult construction or more permitting, the applicants decided to move the grow
2 operation. The grow-op was relocated onto the 20 acre parcel in a brush and wooded area.
3 According to Mr. Ibold, a subcontractor, Harvey Brown, removed trees on the site and cut
4 the trees into log sizes. Mr. Ibold has a milling and building business which means he
5 takes wild logs and mills them into usable product. In his business operations, he has
6 bought raw logs and milled them into usable lumber. He has been engaged in this business
7 since 2002. He has also run a timber framing company since 2002. To estimate the
8 number of board feet in a pile of logs, you measure the small end of a log and using its
9 diameter you feed it into an old-school chart or an online calculator. Mr. Ibold used a chart
10 to measure the logs at the subject site. He found 3,200 board feet. He submitted his
11 calculations as Exhibit 24. In his experience, the calculator is accurate in measuring
12 finished product. Mr. Ibold assisted with the tree clearing by using his excavator to help
13 clean up and move logs. He bucked the logs into branchless sections. After the branches
14 were removed, he burned them. Mr. Ibold was told by the Rice family that a burning
15 permit had been acquired. A fire vehicle visited the site to check out the burning. The fire
16 department did not issue a citation, and the fire vehicle did not have any trouble accessing
17 the site.

18 Mr. Ibold testified that he filled out the SEPA checklist. He did not fill out two SEPA
19 checklists because he was not asked to do so. He spoke with Julie Thompson for the most
20 part when discussing the checklist, but he also spoke with Sam Gibboney, Annie
21 Matsumoto, and John Geniuch. The first SEPA checklist was turned in when the project
22 was intended to be on the 55 acre parcel. No County official indicated how the site change
23 would affect the SEPA checklist. In the SEPA instructions, it says the checklist applies
24 even if the project is moved to a different parcel of land. When he filled out the checklist,
25 the form said evaluation for agency use only. He first met with the County about the
project in early January, 2014. This meeting included John Geniuch, Annie Matsumoto,
and Julie Thompson. He indicated that Mr. Rice was planning on applying for a tier-3
license from the Liquor Control Board. He believes the County understood that cannabis
would be grown on the site. The County asked about the Liquor Board's licensing process.
He does not recall if the County asked about security concerns the Board would have about
the site. A letter was written by Mr. Powers to the County Council informing the Council
about the grow-op plans. Mr. Ibold does not know if the County Council made any
recommendations to the County about how to handle marijuana production.

20 Mr. Ibold testified that, in regard to site preparation, there were 26 dump truck loads of
21 gravel used at the site. He believes there are 8-10 yards of dirt material per dump truck.
22 Lawson construction did most of the excavating on site, but Mr. Ibold did some of the
23 edgework and cleanup himself. Some fill was already on site because the previous owner
24 had saved fill from when he built an equestrian facility that required grading. The fill
25 already on site was used to level the ground for building. The fill was excavated from the
arena site when David McCauley owned the parcel. The cleared trees are still on site and
have not been sold. Prior to excavation, Mr. Ibold spoke with Julie Thompson and John
Geniuch about clearing. They told him the provisions for clearing were covered in the
SEPA environmental review. The County did not indicate any concern about his proposal
to clear the area. After the site change occurred, the County did not ask for new

1 information about the project. Mr. Ibold cooperated with the County throughout the
2 process and provided all documents they required.

3 Under cross-examination by Ms. O'Day, Mr. Ibold testified that he was hired as a project
4 manager. The owner of the property is Jenny Rice. He does not know if Jenny owns the
5 property personally or if it is owned by her business. He does not know if his wife is a
6 registered agent for Sweetwater Farm Akhal-Teke Two. His wife is not an owner of the
7 property. He is not involved with his wife's business. He stands to gain financially from
8 San Juan Sun Grown. He gets a percentage of the profits as part of his compensation
9 package. He was the primary contact with the County for the land use permits. He did not
10 submit a new checklist when the facility moved to a different parcel. The site plan, Exhibit
11 10, shows nine planned 3,000sqft greenhouses and a 400x100 pre-fab agricultural building.
12 There are slightly over 40,000ft in an acre. The project would cover over an acre, but he
13 does not know by how much. He did not apply for any construction stormwater permit
14 coverage because the contractor handled those aspects of the project. He does not know
15 what a NLI is and did not ask an engineer to submit one for the project. He believes Mr.
16 Ash discussed documents with the Department of Ecology. He believes the SEPA notice
17 was in the paper twice, but he does not remember any other ads in the paper. There was a
18 preliminary stormwater plan turned in prior to May 30, 2014. The preliminary plan was
19 turned in with the permit on March 28. The County agreed that a preliminary version could
20 be submitted until the final plan was completed. The cover page to the stormwater plan
dated May 30, 2014 was filled out by Julie Thompson. The May 20th plan still discusses
the project being on the 55 acre parcel and describes the project as having 15 buildings and
covering 2.125 acres. This is not the final stormwater plan. Mr. Ibold has emailed with
the Department of Ecology, but the only person whose name he recalls is Paul Anderson.
This project was not required to comply with the new Critical Areas Ordinance that went
into effect on March 31, 2014. He ensured the project was vested with the previous
ordinance. He submitted the building permit application prior to March 31, 2014. The
building permit was for the site change. The County did not put any restrictions on tree
removal. The County asked him where water would come from for the project. He
informed the County that water would come from rainwater catchment. The County did
not ask how much water the project would use once full build-out occurred. The County
never asked for data regarding the production of the well on the property. He believes the
limit on groundwater usage is 5,000 gallon/day. He does not know how much water the
project will use per day once full build-out occurs.

21 Under cross-examination by Ms. O'Day, Mr. Ibold stated that he no longer works at the
22 facility so he does not know if the facility currently uses water from the well. He does not
23 work at the facility because his role is done. The 400x100 building is built. Not all of the
24 greenhouses are built. Four or five of the nine greenhouses have been built. He does not
25 know when the rest of the greenhouses will be completed. He believes Mr. Rice applied
for a second tier-3 license. Mr. Ibold said he believes Mr. Rice does not plan on building
the second facility on the same site if he is granted a second license. David Rice is the sole
owner of San Juan Sun Grown. Mr. Ibold stands to gain financially from the operation, but
only for the calendar year of 2014. He does not know where David Rice would put a
second growing operation. He was told he would not need a water right for the project.

1 He does not remember who told him this. It was not someone at the County. The
2 stormwater engineer handled the water right issue. The water catchment systems have not
3 been in use because the project has not been completed. The greenhouses in operation use
4 water from the well and tank on site. He does not know if water has been brought to the
5 tank to the site, but he believes a local contractor, Black, has possibly delivered water. He
6 knows that a tank has been delivered to the site. Mr. Ibold has not visited the facility for
7 over three weeks. He estimated 3-4 full-time employees on the checklist. On the SEPA
8 checklist (Exhibit 10), he believed the question was how many round-trips/day. He
9 interpreted it as round-trips; otherwise, he would not have had an odd number (3). In a
10 note to Mr. Scott he said there would be 1-2 employees, but that was incorrect. Mr. Ibold
11 noted that the County never asked him what types of pesticides would be used in the
12 project. The County never asked if the owner of the parcels had a legal right to use
13 Fieldstone Road. He was not aware that a lawsuit has been filed against San Juan Sun
14 Grown and Jenny Rice with regard to the access easement (Exhibit 25). He has researched
15 whether the owner of the 20 acre parcel has legal access to Fieldstone Road. He found that
16 it was contested. He is not aware of any access easement down Fieldstone Road that runs
with the property. The County never asked him to prove legal access to the property. The
County never asked him to address possible light and glare issues for the project. He was
never asked by San Juan County about noise mitigation. The County never asked about
security issues for the project. In regard to signage, Fred Shaller, Building Inspector, told
Mr. Ibold he needed to post the street address outside of the building site. 26 loads of
gravel were brought to the site. He only bought gravel, dirt, and sand from Lawson
Quarry. In addition to the 26 loads, he used the top soil already on site from the previous
horse arena build-out. He does not know how many yards altogether were used for the
build-out of the grow-op. He does not know how much material there was from the horse
arena build-out. The excavator who worked on the horse arena may know the amount.
The County told him the clearing and grading permit was covered by the SEPA. There
was grading done on the site.

17 Under redirect by Mr. Powers, Mr. Ibold noted that his compensation is a bonus based
18 upon the company's performance. He does not have to claim on profits. He wrote the
19 handwritten note to Mr. Scott in Spring, 2014. The note was a neighborly discussion of
20 trying to explain what was occurring on site. The note was not submitted as part of the
21 SEPA application. The number of trips per day on the SEPA checklist was an estimate
22 based on post-buildout activity. The estimation was based on the roundtrips of an
23 employee. If he was not referring to roundtrips, an odd number would refer to an
24 employee arriving and not leaving which would be irregular. By moving the site to the 20
25 acre parcel, there are fewer environmental impacts. The revised project is a significantly
smaller project. The County realized the new site had less environmental impact.
Specifically, Julie Thompson and John Geniuch told Mr. Ibold this. Paul Anderson with
the Department of Ecology also acknowledged the smaller environmental impact via email
(Exhibit 26). The email from Paul Anderson said that moving the project to the new
location cleared up all of the Department of Ecology's concerns raised in its SEPA
comment letter. In January, 2014, Mr. Ibold showed Planning Staff schematics of the
building and greenhouses. This schematic was very close to what the actual build-out is
like except for the orientation of some of the buildings. The County made it clear that the

1 SEPA checklist was designed to be filled out by laymen applicants and did not require a
2 professional. The County informed him that they would ask for any additional information
that was necessary, and Mr. Ibold provided this information when the County asked.

3 Under re-cross by Ms. O'Day, Mr. Ibold said he did not indicate it was a marijuana grow-
4 op on the land use application because it was not required. It was also not required for the
5 SEPA checklist. The nine greenhouses were not part of the checklist. The 2,000ft long
6 road in the original application was an extension of Fieldstone Road, but it was not an
7 improvement for Fieldstone Road. The footprint for the project on the 50 acre location,
8 except for the road, is the same for the project on the 20 acre location. He is not aware that
San Juan just removed a portion of this property from the current use agriculture program.
He is not aware of Washington State law that does not allow marijuana grow facilities to
be part of the current use program.

9 Under redirect by Mr. Powers, Mr. Ibold stated that the SEPA checklist does not ask what
10 type of crop species will be grown on any particular farm.

11 Jenny Rice

12 Jenny Rice, 252A Fieldstone Road, stated that she lives next to the marijuana facility.
13 David Rice, the owner of San Juan Sun Grown, is her brother. She is the owner of the
14 parcel where the marijuana grow facility is located. She is her brother's landlord. Her
15 father also lives on the property. Her father's home is within 100ft of the facility. Her
16 father has lived on the property since November, 2012. She moved to the property around
17 July, 2014. She does not have electricity at her home, but she uses candles and battery-
18 powered head lamps. She is not in business with Jay Ibold's wife. She previously worked
19 in the horse-breeding business with his wife, but no longer does so. The horse breeding
20 business dissolved in the summer of 2014. She is the sole owner of her horse-breeding
21 business. Sweetwater Farm Akhal-Teke Two was the name of the business with Ms. Ibold.
22 Ms. Ibold is no longer a registered agent for Ms. Rice's horse-breeding farm. Ms. Rice is
23 the sole-owner of the LLC that owns the parcel where San Juan Sun Grown is located.
24 The Ibolds have no financial involvement with the parcel. The Nolans are Ms. Rice's
25 neighbors. Previous to buying the land, Ms. Rice leased it from the previous owners for
her horse-breeding business. When she was leasing all 86 acres including the arena and
the barn (which is now owned by someone else), the Nolans asked to borrow 14 bales of
Hay, and Ms. Rice refused. The Nolans did not like her response. The Nolans took the
bales without permission. Ms. Rice asked the Nolans to return the hay. The Nolans
returned some of the bay and did not pay for the hay they did not return. Ms. Rice
received permits to build two 400sqft horse sheds. Mr. Nolan protested Ms. Rice building
the sheds and claimed it was a conservation area. Mr. Nolan was very emotional and
appeared unstable in his interactions with Ms. Rice. Mr. Nolan asked Ms. Rice to move
the sheds, but she could not because of the delineation. Mr. Nolan claimed the sheds
devalued his property. The Nolans complained to the County about Ms. Rice building the
sheds. The Nolans wished to buy the property at the same time Ms. Rice bought it. There
have been other uncomfortable incidents with the Nolans. Recreational activities are not
part of Ms. Rice's horse-breeding business, and she does not charge for her friends or kids

1 to come ride on her property. No activities in regard to the horses have been harmed
because of the marijuana facility.

2 According to Ms. Rice, the property has regularly been hayed as part of the horse-breeding
3 operation. When the haying occurs, there is a strong odor. Areas of the property smell of
horse manure as well. There has been increased vehicular activity on Fieldstone Road as a
4 result of Ms. Rice and her father living on the subject property. She leaves the property
and returns at least once a day. Her father also leaves and returns at least once a day. She
5 also entertains visitors who drive in and out of the property. She does not report to her
6 neighbors when she, her father, or her friends are driving in and out of the road. She is not
affiliated with San Juan Sun Grown. She agrees that the fan noise is constant, but she
7 would not call it loud. Inside her father's RV, which is less than 100ft from the facility,
she cannot hear the fans. She believes the neighbors' description of how loud the fan noise
8 is an exaggeration. Her father lives on the property as a night watchperson. She lives
approximately 20-30ft from the facility. The fans do not interfere with her ability to sleep
9 or do any other indoor activities. Currently, there is no light coming from the greenhouses.
10 There is a motion light on the agricultural building which is directed downward. She has
not noticed any glare from the roofs and believes any testimony about glare is exaggerated.
11 She believes the negative testimony is from people who do not like marijuana. She
attended a Council meeting about putting a moratorium on grow facilities the previous
12 week. It appears the Council is unclear about what the moratorium would do. There was
significant public opposition to a moratorium. There were heated discussions between at
13 least one council-member and Mike Thomas about the proposed moratorium.

14 Under cross-examination by Ms. O'Day, Ms. Rice testified that the land is owned by her
15 business, Fieldstone Farms LLC. The business was previously known as Sweetwater Farm
LLC. The LLC is the same, just with a different name. Ms. Rice and her father both live
16 on the 20 acre parcel. Her father does not use hearing aids. Her home does not need a
17 permit because it is a non-permanent structure. To her knowledge, greenhouses do not
require building permits in San Juan County. She is the landlord of San Juan Sun Grown,
18 not an owner. She does not know if the lease was submitted to the liquor control board.
The lease is for the 1 acre where the marijuana facility is located. She receives 60,000
19 dollars/year for the lease. She removed the 1 acre from the current use Ag program in
order to remain in compliance with the San Juan Assessor. The Assessor told Ms. Rice the
20 marijuana facility could not be included in the current use program. She is aware that a
lawsuit is being brought in regard to the legal-access easement. She was aware prior to
21 today that there was a question about whether she had legal access to Fieldstone Road.
She does not know if the County was aware of this access issue. She is aware there is no
22 written easement on her deed to use Fieldstone Road. She is not aware of any other
written document that gives her the right to use Fieldstone Road. She unscrewed one of
23 the motion lights on the agricultural building. That light is not required by the state permit.
24 She does not know what the state permit requires in regard to lighting.

25 Under cross-examination by Ms. O'Day, Ms. Rice said she has been very vocal at Council
meetings about the moratorium. There is a lot of opposition to the moratorium. She does
not know what the public thinks the moratorium will do or how long the public thinks the

1 moratorium would last. She was not involved with the permitting for San Juan Sun Grown
2 except for some discussion as the landlord. She attended two meeting with Planning Staff
3 as the landowner. Julie Thompson, John Geniuch, Annie, and Lee were in attendance. She
4 does not remember if these meetings occurred before or after the facility was moved to the
5 20 acre parcel. She was asked to produce any documents regarding her well. She provided
6 the County with these documents. She does not know if her well is supplying water to the
7 greenhouses. The greenhouses use a water tank, but she does not know where from the
8 tank gets water. She does not recall if the County asked for additional information
9 regarding the lighting plan for in or outside of the greenhouses. She does not remember
10 the County ever asking her to prove she had legal access to the property via Fieldstone.
11 She does not remember the County asking for additional information about the fans, noise,
12 or wattage to be used. The County did not ask her how many employees would work at
13 the operation. When she was at meetings with the County, Jay Ibold or someone else
14 representing San Juan Sun Grown, was always present. She does not remember what
15 questions the County asked these agents.

16 October 13, 2014

17 Under questioning by Ms. Higginson, John Geniuch, 135 Rone Street, stated he is San
18 Juan County's Chief Building Inspector. Generally, he works closely with the Planning
19 and Community Development Staff, including Julie Thompson and Sam Gibboney, when
20 processing building permit applications. He handled the San Juan Sun Grown Agricultural
21 Facility permit application. He worked with various people on behalf of Sun Grown
22 including David, Jay Ibold, Jenny Rice and Nick Howard. He was aware the permit
23 application submitted was in connection with a marijuana growing facility. He became
24 aware that it was going to be a marijuana growing facility when he had a meeting with the
25 applicant. He also had been contacted by the applicants' attorney to inform him that the
applicants had received a marijuana growing license. He wrote a memo (Exhibit 27)
which indicated that he met with applicants to discuss questions regarding the construction
of the facilities and the applicants' marijuana license. The meeting discussed in the memo
occurred on January 6, 2014 and included Julie Thompson, Nick Howard, and Annie
Matsumoto-Grah. Subsequently, the applicants submitted a building permit application
(Exhibit 28, document 2). One proposed structure is permanent, while the greenhouses
fall under the exempt category. The greenhouses were still included on the application to
account for the total impervious surface and stormwater requirements. He had no issue
with the structure being labeled an agricultural facility. The building code has specific
exemptions for membrane-covered greenhouses, and these structures are what the
applicant proposed. The San Juan County Prosecuting Attorney instructed Mr. Geniuch
that marijuana growing facilities were to be processed as agricultural facilities. The
County Manager also confirmed this instruction. His inquiry email into the classification
to the Planning and Development Staff, County Manger and PA's office and the responses
were submitted as Exhibit 29. The PA's office clarified that for purposes of growing, not
retail, these facilities should be categorized as agricultural facilities. This direction was
disseminated to all of staff. He never received contrary instruction, and, to his knowledge,
the practice of classifying these facilities as agricultural remains in effect today.

1 According to Mr. Geniuch, the applicants building permit application was submitted right
2 before the new Critical Areas Ordinance went into effect so there was a large push of
3 applications by the real estate community to have something formal vesting their
4 applications before the change. Thus, the County began issuing forms noting the
5 determination of completeness for applications. The applicants were issued one of these
6 forms entitled "Determination of Completeness for Residential Building Permit
7 Application" (Exhibit 30). Mr. Geniuch is not sure why he put "Residential" on the
8 applicants' form. The form is generic and used for commercial and residential
9 applications. The document indicates that the applicants had completed the permit
10 application enough for Mr. Geniuch to consider it before the critical areas ordinance
11 change. In regard to the note at the bottom that reads "No H2O," the application did not
12 require a certificate of water availability at that time. San Juan drafted a policy in 2013 in
13 which a certificate of water availability is required before a permit is issued, but not before
14 an application vests. Not having a certificate of water does not make an application unable
15 to be reviewed. At the time the application was received, the applicants did not have a
16 certificate of water availability. Mr. Geniuch considered the building permit application to
17 be completed and vested on March 28, 2014. The box "Incomplete, Limited vested" is
18 also checked on Exhibit 30 because of the lack of water certificate. The rest of the
19 application was in substantial compliance necessary for complete submission. Exhibit 30
20 also says "CWA may not be needed," noting at the time of application completeness Mr.
21 Geniuch was unaware if the applicants required a certificate of water availability. Exhibit
22 30 is part of Mr. Geniuch's building permit file on the San Juan Sun Grown Agricultural
23 facility. The building permit file is open for public review.

24 According to Mr. Geniuch, Julie Thompson would have reviewed the document as part of
25 her SEPA review. He does not remember if a groundwater withdrawal certificate was
required later. He does not know how agricultural facilities are required to deal with
groundwater. He followed all policies in regard to determining when the permit
application was complete. In 2013, the critical area changes were forthcoming; therefore,
Mr. Geniuch developed a policy of nine points of analysis required on an application
submission. This policy was translated into a form which became the "Determination of
Completeness" form used by the County. This policy was adopted on February 1, 2013.
The policy was still in effect when Mr. Geniuch determined the applicants permit
application was complete on March 28, 2014.

Mr. Geniuch testified that, in regard to the building code and greenhouses, the building
code exempts greenhouse which are made of fabrics or membrane. The code goes as far as
to say these greenhouses are not even structures for the purposes of the building code. A
glass greenhouse would need a permit. San Juan Sun Grown proposed membrane
greenhouses which fit the exemption. Mr. Geniuch authored a document entitled
"Interpretation Temporary Growth Structures" which clarifies the exemption for
membrane-structures. The issue that drove him creating the document was the definition
of "temporary." In discussion with his fellow building inspectors, it was unclear if
temporary meant a finite period of time or temporary in the nature of the materials used.
Mr. Geniuch researched the law and found the documents that went into the formation of
the law make it clear "temporary" referred to the nature of the materials used. The

1 "Interpretation Temporary Growth Structures" document is dated July, 2014, but this
2 policy was in place in January, 2014. The document is a formal policy direction for staff,
3 but the interpretation had been in place prior. The Community Development and Planning
4 Staff was aware of this interpretation. The WAC law referenced was passed in 1996. Mr.
5 Geniuch has seen the greenhouses put in place at San Juan Sun Grown. He believes they
6 comply with the exemption under the interpretation policy of San Juan. According to the
7 International Energy Conservation Code, Temporary Building Structures are not required
8 to comply with the energy code (Exhibit 31). A greenhouse that grows commercial plants,
9 vegetables, or fruits does not have to comply. The energy code applies to San Juan
10 County. The code was in effect at the time of San Juan Sun Grown's building permit
11 application and it remains in effect today.

12 Mr. Geniuch visited the San Juan Sun Grown facility on October 1, 2014. On the way, he
13 stopped near the house across from the riding areas. He did not smell or hear anything.
14 He left his vehicle and had his engine off. He believes he was standing near the Scott's
15 residence based on the testimony he has heard. Once he got on site near the greenhouses,
16 he could hear the fans running. He could hear the fans from outside the perimeter fence,
17 but only when he was up close to the fence. When he was still near the Scott's residence,
18 he could not hear the fans. Mr. Geniuch was specifically listening for noises, if any,
19 associated with the facility. In regard to odor, he did not observe any odors when near the
20 Scott's residence. Once he was inside the perimeter fence, he could smell marijuana.
21 When he visited the site, he visited in his capacity as Building Inspector because the
22 applicants had requested he visit the site to answer some questions. He did not recall what
23 color the roof of the structure on site is, but he guessed green. The greenhouses are
24 covered with slightly opaque plastic material. He has dealt with other greenhouses of
25 varying material in his work as a building official. The greenhouses at San Juan Sun
Grown appear to be fairly standard. In regard to glare, metal roofs, like the one on the
structure at Sun grown, tend not to be very reflective. When he visited the site, he did not
experience any glare issues from the structure or the greenhouses. Glare will only occur
when there is some type of illumination such as sunshine. He did not notice lights in the
greenhouses when he was at the site. He saw one or two small directional lights just above
the entrances to the building. These lights were downward facing and meant to light up the
door and egress path. There may have been other security lights, but he was not looking
for them so he is unsure. San Juan has adopted noise ordinance, but he does not deal with
it as a building official. He reiterated that the Planning Supervisor and County Attorney
advised him to treat this as an agricultural facility for purposes of the building permit so
that is what he did.

22 Under questioning by the Hearing Examiner, in regard to the "Interpretation Temporary
23 Growing Structure," Mr. Geniuch stated that the WAC law has been in place since 1996,
24 and San Juan has used the interpretation laid out in the document since Mr. Geniuch has
25 worked at the County. Mr. Geniuch has worked at the County for seven years. He became
Deputy Building Official in 2010 and Chief Building Official in 2013.

Under cross-examination by Mr. Mann, Mr. Geniuch testified that he has visited the San
Juan Sun Grown site three times. His previous testimony about noise and odor was based

1 on his observations from October 1, 2014. He has never requested a job as a security
2 person at the Sun Grown facility. In regard to the water availability, he does not
3 personally do the review. The land use portion of the building department reviews water
4 availability. Besides agricultural, buildings can be reviewed as storage, factory, business,
5 among other designations. There are different requirements for permits depending on
6 occupancy. There is nothing specific about occupancy for marijuana growing facilities.
7 The San Juan Sun Grown facility fits into the agricultural facility designation. The
8 processing portion of the operation fits into the factory designation. It can be compared to
9 a lavender facility. Mr. Geniuch agreed that marijuana was previously illegal, unlike
10 lavender. His department reviews access as part of the permitting process. This review is
11 done during the application process. He did not personally review the access portion of the
12 application. He did not ensure a water catchment was installed. The project is still
ongoing, and he cannot compel people to build things in a certain order. He issued a
certificate of completeness for the application, not the project. In regard to the
completeness of the project, Mr. Geniuch has issued a temporary certificate of occupancy
for the building and provided a list of things that need to be done for a final permit. In his
opinion, the building was completed enough to be occupied but not enough for a final
permit. On October 1, he entered the perimeter fencing. He also entered the greenhouses.
He saw three or four greenhouses in operation. At that time, fans were running in the three
or four greenhouses that were in operation. He does not recall the temperature on October
1st.

13 Under cross-examination by Ms. O'Day, Mr. Geniuch stated that his job is confined to the
14 building department, and he looks at projects in regard to the building code. He reviews
15 many projects concurrently with the Community Development and Planning Department.
16 He does not remember if the San Juan Sun Grown project went to the land use division of
17 the Community Development and Planning Department first. It is not his job to look at
18 land use issues for a project. He does not do SEPA reviews. He has never conducted a
19 SEPA review, but he is aware of what one is. He believes a SEPA review was conducted
20 for the subject project. He attended one previous hearing for this appeal. In regard to the
21 building permit application (Exhibit 28, document 2), the document does not have a stamp
22 from the building permit application. It is common practice to stamp building permit
23 applications when they are received. The parcel listed on the building permit application
24 in Exhibit 28 is 450241006. He is aware that Sweet Water owns two parcels. He has seen
25 maps of the parcels but does not know their exact sizes. He is not aware which parcel the
project, as constructed, is on. He knows that the project is on the parcel closer to
Fieldstone Road. He has received several revisions to the original application so there are
various forms similar to the one in Exhibit 28 on file with the County. The application
form is filled out for revisions. When the original application was turned in, it revealed
that there would be greenhouses as well as a building. The building, greenhouses, and
road are part of a single stormwater plan, thus they were all included in the original permit
application. He is aware that the stormwater plan changed when the facility moved
parcels. Accordingly, the initial building permit application would have been for the 55-
acre parcel for which the original stormwater plan was made. He does not know why
Exhibit 28, document 2 is dated March 24, 2014 and references the 20-acre parcel.

1 Under cross-examination by Ms. O'Day, in regard to the "Interpretation Temporary
2 Growth Structure" document (Exhibit 28, document 8), Mr. Geniuch stated that it was not
3 issued until July, 2014. There was a draft circulating prior to the Sun Grown building
4 permit application. He does not know if the applicants had access to this draft. A wood
5 component to a greenhouse does not necessarily trigger the need for a building permit.
6 The applicants' greenhouses have plywood floors and wood at the very ends. The state
7 handles all electrical inspections. If someone wanted to put plumbing in an exempt
8 structure, he/she can apply for a stand-alone plumbing permit. For the greenhouses, the
9 applicants have applied for mechanical permits to install heaters, propane tanks, and gas
10 lines. These applications were submitted in the past two months and were submitted as
11 revisions to the building permit. He does not know if the applicants submitted a NOI to be
12 covered under the NPDS requirements. He did not discuss NPDS with the Department of
13 Ecology. He knows that the Department of Ecology is aware of the project because Paul
14 Anderson from the Department of Ecology made comments about stream and wetland
15 issues when the project was going to be on the larger parcel. He believes that the
16 applicants did not know they needed a SEPA review at the time they submitted their
17 building permit application. He does not know who told the applicants they needed a
18 SEPA review. In regard to Exhibit 28, document 2, he believes the application is not
19 stamped because someone forgot to stamp it. He believes that version of the permit
20 application is on file with his office. In regard to the 14,000sqft of road estimate in the
21 version of the application in Exhibit 28, the amount of road was reduced in subsequent
22 revisions because of the location change. Initially, the building permit application was
23 turned in to be located on the 55-acre parcel. He does not know the exact date the
24 applicants turned in the revision with the move to the 20-acre parcel, but it was likely
25 between April and June. He considered the application vested as of the March, 2014 date.
He believes there were conversations within his department about whether building
permits should be issued before the SEPA review periods ended. He is not aware about
time periods for comments and appeals of SEPA reviews. He does not issue building
permits until land use signs off on them. Land use would not sign off if a necessary SEPA
review was not conducted. Land use signed off before he issued a building permit. A
fence requires a building permit when it is over 8ft. The local 8ft requirement went into
effect in January, 2014. The fencing at San Juan Sun Grown is approximately 8ft. It was
installed in summer, 2014. Two years ago, he issued a policy that San Juan would not
require permits for fences 8ft or less. He is aware that each greenhouse is 3,000sqft. There
are nine greenhouses for a total of 27,000sqft. The agricultural building is 4,000sqft. The
application in Exhibit 28, document 2 lists the greenhouses square feet as 24,000. He does
not believe there is an on-site sewage disposal system. His department reviews if there is
on-site sewage disposal. He did not require the applicants to put in an on-site sewage
system; instead, his department allowed the applicants to use a portable restroom facility.
Under cross-examination, Mr. Geniuch testified that his department does not review the
number of employees working on-site. He did not ask about traffic because his department
does not deal with traffic. In regard to the number of fans, he has seen an application for
one large fan for each building. He is unaware of the exact number of fans proposed for
each greenhouse. When he visited the site, there was one large gas-connected device
heater and smaller discorded plug-in fans. Mr. Rice invited Mr. Geniuch to visit the site in
October, and Mr. Rice was aware that Mr. Geniuch was coming. He is not familiar with

1 the state noise ordinance. He does not know what an EDNA is. He does not know if there
2 was a review of possible noise from this project. He does not know if there was a review
3 of possible light being emitted from the project. He believes there was no review of how
4 much electricity would be needed for the project because it is exempted from the energy
5 code. In regard to Exhibit 30, he filled out the "Determination of Completeness" form.
6 The form was filled out based on the building permit application in Exhibit 28. The notes
7 on the form that "CWA may not be needed" refers to the fact that Mr. Geniuch was unsure
8 if a certificate of water availability would be necessary because the applicants might use
9 water catchment. He is unsure how much water the applicant proposed to use for the
10 facility. When he visited the site, he did not see a water catchment system. He does not
11 know if the applicants are using water from the well on the property. Water and septic is
12 checked by land use, not the building department. He did not conduct any critical area
13 review of the project, but the Community Development and Planning Department did.
14 There is no plumbing in the agricultural building. If there was plumbing in the building, it
15 would require a plumbing permit.

16 Under questioning by the Hearing Examiner, Mr. Geniuch testified that the permit
17 application is dated March 24, 2014, and the "Determination of Completeness" (Exhibit
18 30) is dated March 28, 2014. The 4-day period between the two is because the applicants
19 needed to provide several more documents for completeness.

20 Under re-direct by Ms. Higginson, Mr. Geniuch stated that the building permit application
21 (Exhibit 28, document 2) references both the agricultural building and the greenhouses.
22 The movement of the building from one parcel to another did not change the building code
23 requirements review. He was not concerned by the move from the 55 acre parcel to the 20
24 acre parcel because the move was addressing regulatory concerns, the parcels were owned
25 by the same people, and the project was remaining the same except for the shorter road.
The site plan remained the same. Parking requirements are dealt with by land use, but he
does ensure that there are the required number of handicap parking stalls. Occasionally,
applications are not stamped when they are submitted. When the applicants submitted
their application, it was a very busy time for his department. His department received nine
months' worth of application in 3 days.

David Rice

Under direct examination by Ms. Higginson, Mr. David Rice, 252A Fieldstone Road,
stated that he is the sole owner of San Juan Sun Grown LLC. He obtained a tier-3
marijuana producer and processor license from the Washington State LCB. Exhibit 28,
document 1 is a copy of his temporary license. The permanent license is like any other
business license except it has a marijuana endorsement. The license allows him to
cultivate and process 21,000sqft of marijuana for sale. He can sell to other processors
licensed from the state or he can package the marijuana and sell it to licensed retailers.
The license does not allow him to offer retail sales at his physical location. His facility is
only for growing. He is not allowed to have the public come to his facility. He is allowed
to have contractors, a limited number of retailers, and building officials visit the site. He is
required to implement certain safety measures for his facility. The Liquor Control Board

1 issued very detailed safety requirements. He is required to have complete camera coverage
2 with no blind areas in the entire facility that run 24 hours a day. He must maintain the
3 camera recordings for 45 days. The facility must be alarmed. He is required to install 8ft
4 perimeter fencing which must be site obscuring. He has installed this fencing and camera
5 coverage. Upon inspection, a state electrical officer did not like the way some of the low-
6 voltage wiring for the cameras was attached; therefore, he had to have the cameras re-
7 secured. He has had no security breaches since the security measures were taken. Fear
8 regarding marijuana production is based on its historical context of being illegal. In regard
9 to the facility, it is a 4,000sqft building and greenhouses. The building has green sides and
10 a brown roof. There is not a lot of glare created by the metal roof. He worked in
11 construction previously and has worked with metal roofs. There are no lights in the
greenhouses. There are skylights in the steel building. If a light was left on in the steel
building, a neighbor could possibly see light coming from the building out of the skylight.
He works hard to promote sustainability and never planned to use 765,000 W in the
facility. He is the Vice President of the Washington Sun Growers Industry Association.
The group lobbies for policies to promote sustainable practices and reduce energy
consumption. There are standard motion lights outside the doorways. They produce the
same amount of light as a porch light. The security cameras do not need light. The whole
project was designed to be as sustainable as possible.

12 In regard to the fans, the initial fans were louder than expected and used more energy than
13 Mr. Rice was told. He ordered replacement fans for one greenhouse that are more efficient
14 and quiet. The new fans are very expensive though, and he needs to generate more money
15 before he can replace the rest of the fans. He placed the order for the first replacement fan
16 with Snap Fan LLC in September, 2014 (Exhibit 32). His reasoning for replacing the fans
17 was to decrease power consumption and decrease noise for the neighbors. The new fans
18 should be much quieter because of the blade design. There are 4 covered greenhouses with
19 6 fans each. The new fan order (Exhibit 32) is for one greenhouse. The only other noises
20 from the property besides the fans would be people talking, cars running, and other normal
21 rural activity. He plans to install lights in the greenhouses in the future. He will use a light
22 retention curtain to keep the light from escaping the greenhouses. No light will pass
23 through it. A piece of the blackout fabric was submitted as Exhibit 33. If the future lights
24 were ever on at night, this blackout fabric would be used. The blackout curtain will be an
25 easy to use manual system. In regard to pesticides, he has never used pesticide produce
that was not certified for organic use. Washington State University maintains a database of
organic pesticides available for use. The products he use are part of this list. He does not
spray during flowering and accepts a certain amount of loss. When mites are present, he
uses pesticides or control measures. He applies pesticides when the plants are small so it
covers less square footage. He utilizes a machine which only needs a small amount of
pesticide to protect many plants. The plants are never outside the greenhouses. He never
plans to spray the pesticide outside the greenhouses. When he sprays, he turns the fans off.
The pesticide he uses, Azatrol, is not on Department of Ecology's chemical of concern list.
He does not believe Azatrol could reach the groundwater for a number of reasons. Azatrol
absorbs into the plant within 24 hours, and the greenhouses are covered in plastic and have
plastic covering the floors. He is not discharging any waste water through the
greenhouses. They try to keep the greenhouses as dry as possible. He is in the process of

1 installing a rainwater catchment system. He is not required to install the system, but he
2 wants to promote sustainable practices and the well-water is not suitable for cannabis
3 protection. He has been using well-water for production. Currently, he uses 500
4 gallons/day. The amount of water fluctuates depending on the plant size and the weather.
5 Washington Sun Grown Industry Association is working with the Department of Ecology
6 to develop water usage information for cannabis production. A smaller plant with high
7 relative humidity would not need very much water at all. Water usage depends on canopy,
8 size of plant, and health of plant. He designed his facility to be self-sufficient off
9 catchment. The Department of Ecology found that sub-5,000 gallon/a day withdrawals
10 were a non-issue. He was prepared to truck-in water if it was necessary, but they have
11 never even approached the 5,000 gallon limit. He has a water storage tank on his site and
12 is still prepared to truck in water if necessary. His use of the well has not changed the
13 well's capabilities. It is the same well used to supply his sister and father's households.

9 According to Mr. Rice, in regard to the SEPA checklist, the original site for the facility
10 was on the 55 acre parcel in a field with good light. He had a stormwater plan and
11 delineation done for that location. However, the Department of Ecology raised issues that
12 would have required mitigation. That location would also have needed a long road across
13 a large section of the property. For these reasons, he decided to move the project to the 20
14 acre parcel, even though the light is less ideal. The footprint of the project remained the
15 same. There is less road with the new location. The project move was in consultation with
16 the County so Julie Thompson was aware of the change. The new location is more
17 secluded. Several trees had to be cleared to build the facility. He trusts the log and board
18 feet numbers found by his agent Jay Ibold. The logs are still on the property. There were
19 two stormwater plans made for the project. The first was made when the facility was
20 going to be on the 55 acre parcel. A new stormwater plan was made when the location
21 changed. In order to implement the stormwater plan, the remaining greenhouses need to be
22 covered. Throughout the process, there was ongoing dialogue with the Community
23 Development and Planning Staff. In regard to odor, he does not anticipate odor beyond the
24 immediate vicinity of the facility. He has driven down the road leading to the facility and
25 has not been able to smell anything until reaching the greenhouses and steel building. He
believes it was proper for the SEPA checklist to say there would be no odor associated
with the project. In regard to noise, he anticipated that there would be less noise from the
project. He is remedying the noise issue by installing new fans. He believes the SEPA
checklist was filled out correctly. In regard to traffic, he interpreted the 3-4 as being 3-4
employees not trips. There are less cars because the employees carpool. His sister and
father use the road to drive in and out because of the location of their homes. There are no
markings on the vehicles to show what vehicles are associated with San Juan Sun Grown,
but he would be willing to mark vehicles. He did not withhold any information from the
County about the project.

24 Under cross-examination by Ms. O'Day, Mr. Rice testified he worked in the medical
25 marijuana industry in California previously. He owns property in California that he leases.
For the last year and a half he has focused on San Juan Sun Grown and is not involved in
any other marijuana growing operations. He originally applied for two licenses, but the
Liquor Control Board only allows one license per entity. If he received another license, he

1 would not plan on the new grow-op being located in San Juan County. The new grow-op
2 could be located anywhere. He is not planning on building a second facility on either
3 parcel, but there is nothing that prevents him from legally doing so if the Liquor Control
4 Board grants him another license. He has nine greenhouses planned, but only four are in
5 operation. A tier-3 license allows for 21,000sqft of canopy. Each greenhouse is 3,000sqft
6 and approximately 2,500sqft of the total square footage is used as canopy. Currently, he
7 has approximately 10,000sqft of canopy growing. There are 288 plants per house. When
8 considering water consumption, it should not be based on plant count. Currently, the
9 facility uses around 350 gallons of water a day. Water usage varies based on the weather.
10 The Department of Ecology says that sub-5,000 gallons/day are allowed for marijuana. In
11 regard to Exhibit 28, document 5, his facility is not domestic supply. The Liquor Control
12 Board has said that up to 5,000 gallons/day can be used for marijuana. When the County
13 asked where the water would come from, he said rainwater catchment. He is not opposed
14 to a condition requiring the water from the project be solely from rainwater catchment.
15 Currently, the plants get light from the sun. The blackout curtains are to block plants from
16 the sun. Cannabis plants do not need more than 13 hours of sunlight a day. The decision
17 to use blackout curtains did not come from the SEPA review. He never discussed the
18 curtains with the County. The County never asked about lights or the amount of electricity
19 the facility would need. He does not recall any discussions with the County about the
20 number of employees at the site. He has 4 full-time employees and 3 part-time. There are
21 not security lights on the perimeter of the operation. He does not recall any conversations
22 with the County about signage on the County road. He does not know the lifespan of the
23 greenhouses. He does not plan on having the grow-op in this location for the next 10
24 years. He does not know when he plans to move it. The County never asked for additional
25 information about the fans in use. The County never asked for information about the lights
inside the greenhouses. The County never asked for information about the total water
usage. He would not be opposed to a condition limiting the pesticides to organics. The
floor of the greenhouse is made of shaved earth, plastic, and gravel covered in fabric. The
plants are in pots on the gravel. The pots have drain holes. The water goes through the
gravel and hits the plastic. The water could drain out the sides if conditions were exactly
right. The plants would have to be over-watered for this to occur. The County never asked
about water drainage.

19 Under cross-examination by Ms. O'Day, Mr. Rice stated he is unaware if there was a
20 wetland or stormwater report submitted prior to May, 2014. There were two stormwater
21 and wetland delineations conducted for this project. He believes the Community and
22 Development Planning Department has the dates of submissions for all of the reports
23 associated with the project. The project was vested under the old Critical Areas Ordinance.
24 He does not have a timeline of when the critical area reports were submitted.

24 Under questioning by the Hearing Examiner, Mr. Rice stated that, during the site visit, he
25 said that whether the plant omits odor depends on the strain. In regard to the odor of his
plants, on a scale from one to ten, his strains have a level five odor. Genetics is just one
component of the potential aroma. The strain may be stinky, but the grower may have
done something to keep the smell under control. The odor changes depending on where in

1 the growing process the plant is. During the site visit on September 10th, the plants were in
2 the middle of the growing process which is mid-stinky.

3 Under cross-examination by Mr. Mann, Mr. Rice testified that he is not under requirement
4 to grow a certain type of plant. The odor emissions of nine greenhouses would be less than
5 four greenhouses because the plants were moved from house to house during the process.
6 Currently, all four greenhouses in use are at the same exact stage, but when there are nine
7 houses running there will be fewer at the same odor stage. Mr. Rice is not required to
8 stage his growing.

9 Under questioning by the Hearing Examiner, Mr. Rice noted that, in regard to technologies
10 to reduce odor, he would be willing to implement re-circulating carbon filters in the
11 greenhouses which would eliminate the odor. There are chemicals that can be sprayed in
12 the air to neutralize odor as well, but Mr. Rice would prefer not to use this method. He
13 believes the carbon filters are the cleanest method to eliminate odor. He has seen carbon
14 filters in use and knows they are effective. Previously, the filters were used to hide illegal
15 marijuana operations. Any amount of odor that escaped the buildings would be greatly
16 reduced by the filters.

17 Under cross-examination by Mr. Mann, Mr. Rice said he would be willing to submit to a
18 requirement to install filters or use other odor-eliminating technology.

19 Under cross-examination by Mr. Mann, Mr. Rice testified that the security regulations
20 make up a large portion of the Liquor Control Board's requirements. He did not discuss
21 security issues with the County. The greenhouses do not have metal roofs. The plastic
22 covering the roofs is opaque. He would not know how to measure if the greenhouse roofs
23 are reflective. In regard to if there were functional lights in any of the greenhouses, some
24 lights were mistakenly hung in the greenhouses when Mr. Rice was away; however, these
25 lights never worked and were taken down. The County never asked him about lighting.
He is not sure what kind of restrictions the County has for lighting in greenhouses. He is
willing to restrict lighting after dark. He has not finalized his lighting plan. He does not
know if he can transfer his tier-3 license to another person. He is allowed to move his
business, but he is not sure what the Liquor Control Board's guidelines are for moving.
Currently, there is no time limit to how long he can operate in San Juan County. The
Liquor Board does not require a specific list of pesticides to be used from each applicant.
Instead, the Board created a list of allowable products that each licensee is allowed to use.
He prepared his application for the Liquor Control Board license. He is restricted to the
type of chemicals he can use. There are multiple types of pesticides listed as allowable.
Pesticides are applied to the leaves of the plants, and water is applied to the soil. The
plastic barrier is not for water safety; instead, it is just part of basic greenhouse
construction. He does not overwater because it is bad for the plants. Water usage depends
on the size of the plants being grown. The water usage is limited based on the canopy and
square footage, not the number of plants. He intends to finish the catchment system. The
stormwater and catchment are integrated. He has never trucked in water. He knows they
use approximately 500 gallons/day because the water goes into the measured tank. The
purpose of cutting the trees was clearing for the building. The Liquor Control Board does

1 not restrict the type or number of fans he uses. The County does not restrict the type or
2 number of fans either. He is not aware of any restrictions on the number of trips per day of
3 vehicular traffic the facility is allowed. The Liquor Control Board does not require
4 blackout curtains on the greenhouses if he uses internal lights. He does not know the
5 County regulations on lighting. He does not cover the soil when he sprays the plants with
6 pesticide. The bugs are on the leaves so the spray is directed at the foliage.

7 Under redirect by Ms. Higginson, Mr. Rice stated that the Liquor Board does not allow
8 him to profit share. He is allowed to award bonuses for performance. Mr. Ibold would be
9 allowed a bonuses based on how the company profits in 2014. Two of the three part-time
10 employees live on site. These two employees are his sister, Jenny, and her boyfriend. His
11 sister only began working at San Juan Sun Grown the first week of October, after she had
12 testified as part of this hearing. He is an owner of the company, not an employee. He
13 spends a lot of time at the office which is off-site. The SEPA listing of 3-4 employees
14 traveling to the site remains accurate.

15 Benjamin Ross

16 Benjamin Ross stated he submitted a declaration to be reviewed by the Hearing Examiner
17 (Exhibit 36). He has run his audio engineering company for four years. He has performed
18 professional acoustic studies in the past. He was hired by San Juan Sun Grown to conduct
19 an acoustic study. He used several instruments to conduct the study including a condenser
20 microphone, a mixer, and software. All of the equipment was properly functioning. He
21 calibrated the equipment using the appropriate software. The locations marked on the map
22 attached to his declaration are the places he took recordings. He took two recordings at
23 each location: the first recording was with the fans off and the second recording was with
24 the fans on. He asked the people running the facility to turn the fans on to full power for
25 the second recordings. The first recordings were a baseline for the second. Baselines
allow for accuracy of the environment noises. The first recording at location A was 50
decibels. The second recording at location A with the fans on was 61 decibels. The first
reading for location B was 50 decibels, and the second reading was 54. The first reading
for location C was 40 decibels and the second recording was 50 decibels. The highest
decibel recording was 61 decibels. He took other sound measurements around San Juan
County for comparison. He measured a number of SUVs at the intersection near the
intersection. These recordings were approximately 91 decibels. He took a recording of a
Subaru driving by the Courthouse and that was 85 decibels. Every 10 decibels is a
doubling of perception. From 61 decibels to 91 decibels is 8x louder. More efficient fans
will almost certainly be quieter. The better the machine, the less vibration, thus less noise.
A-weighting is an internationally recognized way of measuring sound which takes into
account the sensitivity of the human ear to frequencies. He used A-weighting for his
measurements. He used a wind screen on the microphone as well. The screen ensures an
accurate reading. Sound degrades as it travels. For every doubling of distance, the sound
degrades six decibels. For every object the sound encounters, it either refracts, reflects, or
absorbs. This depends on the size and density of the object.

1 Under cross-examination by Mr. Mann, Mr. Ross stated that he lives in San Juan County.
2 He has lived in the County for 11 years. He had not met David or Jenny Rice before this
3 proceeding. In regard to his education, he graduated high school and is self-educated in
4 sound. He was told there were six fans operational the day he took his recordings. He did
5 not go inside the facility, however, so he cannot confirm this number. He does not know
6 how many greenhouses were operating the day he entered the facility.

7 Under cross-examination by Ms. O'Day, Mr. Ross said he is not familiar with Washington
8 State's maximum environmental noise levels; however, he has done some research on San
9 Juan County's regulations. San Juan County does not have a decibel rating in its
10 ordinance. He has never seen WAC 173.60.040 before. He does not know what the classes
11 noted in the WAC mean. The WAC says that a class C cannot project more than 60dBAs
12 onto a class A property. WAC also notes that at night the acceptable noise level would
13 need to be 10dBAs less. He was told all fans were running at the time he visited the site.
14 Not all the greenhouses are operational at this point though. When all nine greenhouses
15 are operational, there will be 54 fans. He has not measured noise level of 54 fans of the
16 old or new fan versions.

17 Under redirect, Mr. Ross testified that he was not present for Mr. Scott's testimony. Mr.
18 Ross said that without a baseline recording a sound measure level cannot have
19 significance. He does not know the neighboring property boundary lines on the map in
20 Exhibit 36. The highest level decibel reading he took was 61 decibels. The industry
21 standard for conversation level decibel reading is approximately 60 decibels.

22 Under questioning by the Hearing Examiner, Mr. Ross stated that when all of the
23 greenhouses are operational, the noise level will increase. For every doubling of the sound
24 sources, the sound level increases by 3 decibels. The fans are not right next to each other,
25 thus there would not be a perfect coupling of sound increase and the increase would not be
26 3 decibel. Doubling the number of fans would increase the noise by 3 decibels if all the
27 fans were next to each other. Wind and temperature affect sound levels. On the day he
28 took his recordings, the wind was very calm. Wind changes the velocity of the sound
29 waves, but the decay over time is constant. He does not know to what degree wind will
30 affect the noise level. The wind guard on his microphone has no effect on the sound level
31 as it is designed to be acoustically transparent.

32 Under re-cross by Ms. O'Day, Mr. Ross said, assuming all the fans were in close
33 proximity, with all fans running there would be a 9.25 decibel increase if all 54 fans were
34 running.

35 Under redirect, Mr. Ross noted that he believed there were six fans running total, but he is
36 not sure. He does not believe there was an exhaust fan running.

37 Under re-cross by Ms. Mann, Mr. Ross said he was listening to circulation fans. He
38 believes the buildings have exhaust fans, but the applicants wanted to measure the
39 circulations fans. The circulation fans run often and the exhaust fans are temporary.

1 Under redirect, Mr. Ross testified that he asked the applicants to turn on all the operational
2 fans for the second recording, but he was not in the facility so he does not know how many
3 or which were turned on.

3 Julie Thompson

4 Under direct examination by Ms. Higginson, Julie Thompson, 135 Rone Street, testified
5 that she is a planner with San Juan County and has held the position for 13 years. She was
6 in charge of reviewing the SEPA checklist for San Juan Sun Grown. She attended a
7 January 6, 2014 meeting with the applicants' representatives and John Geniuch. At the
8 meeting, they discussed the marijuana growth facility. The County was aware the
9 application was for a marijuana growth facility. Her department was given instruction by
10 the County Prosecutor to process the marijuana grow facilities as agricultural facilities.
11 She was operating under this instruction when processing San Juan Sun Grown's
12 application. Agricultural facilities are often exempt from SEPA if they are under a certain
13 size. The subject facility would have been exempt from SEPA review if it were not for the
14 cumulative size of the greenhouses. It is her understanding that greenhouses are
15 considered temporary structures for purposes of the building code. Her office and the
16 building inspectors are part of the same department. She reviews the Building
17 Department's files when processing SEPA reviews. Ms. Thompson looked at the Building
18 Department's file for San Juan Sun Grown during the SEPA review. The purpose of a
19 SEPA review is to look at and review adverse impacts to the environment from a proposal.
20 A SEPA checklist is mandated by the Department of Ecology. She does not have to go
21 beyond what is on the checklist to complete her SEPA review. Generally, however, there
22 are additional reports such as the wetland report the applicants submitted. The wetland on
23 the 50 acre site was not why SEPA review was required for this project. SEPA review was
24 required because there was more than 10,000sqft of agricultural buildings. Agricultural
25 activities are exempt until they have over 10,000sqft of ground coverage. As part of SEPA
review, she applies applicable Washington Code provisions and the policies given to her
by her Planning Director. For example, the Planning Director told Ms. Thompson that
commercial greenhouses are considered industrial uses for purposes of exempt well use. A
SEPA review can have a determination of non-significance or impose mitigation measures.
The mitigation measures must relate to a specific adverse impact clearly identified in an
environmental document in the proposal. The measures must also be reasonable. This
requirement is outlined in WAC 197-11-744 and 197-11-660. Ms. Thompson does not
consider what "neighbors don't like in their backyards," but what is required according to
state laws. She had a meeting with the applicant in January, 2014 to discuss what would
be required in a land use application. There was no issue with the application describing
the project as an "agricultural facility" because that is what the project was. The proposal
was sent to various other outside agencies which is normal practice for application review.
The other agencies the subject proposal was sent to were the Army Corps of Engineers, the
Department of Ecology, the Department of Fish and Wildlife, and the Department of
Natural Resources. Ms. Thompson received comments from the Department of Ecology,
specifically Paul Anderson, because he was unhappy with the original location because of
stream crossings and proximity to wetlands. Ecology also commented on the possible
need for an NPDES and water usage. In response to these comments, the applicant moved

1 the project to an entirely different parcel out of the way of the streams and wetlands. Ms.
2 Thompson considered this an appropriate solution from an environmental standpoint. No
3 amended SEPA checklist was necessary because there was enough information in the
4 checklist applicable for both locations. She noted the places where changes were made in

5 the section entitled "Evaluation for agency use only."
6 According to Ms. Thompson, the facility seemed like it would be less visible in the new
7 location because of the tree coverage. The trees on site range from small to medium size.
8 For the most part, trees surround the facility. In regard to clearing of trees, it was not
9 illegal to remove the trees. The Department of Natural Resources handles permitting for
10 tree removal, but no permit was required because less than 5,000ft board feet was
11 removed. There was no violation of law when the trees were taken down. She had no
12 reason to believe the 82 logs created by the cleared trees would create more than 3,200ft of
13 board. Ms. Thompson was a forester for a number of years, was a sorting log foreman, and
14 a log truck foreman. It was within her discretion to continue to review the SEPA checklist
15 as it had been submitted rather than requiring a new checklist. She received a new wetland
16 delineation after the project was removed. She received all the necessary information from
17 the applicant. The applicant was very responsive. The applicant was also forthright in
18 discussions.

19 In regard to the wetland delineation, Ms. Thompson was given an updated wetland report.
20 In regard to the stormwater plan, she was given an original plan when the facility was still
21 planned to be on the 55 acre parcel (Exhibit 8). When the site changed, the applicant
22 submitted an updated stormwater plan (Exhibit 34). San Juan's stormwater technician,
23 Jason Hensel, reviewed the stormwater plans. He approved the revised plan. Ms.
24 Thompson sent the revised wetland report to the Department of Ecology. Paul Anderson,
25 on behalf of the Department, reported back via email that he was happy with the revised
report (Exhibit 26). The Department of Fish and Wildlife also commented that they were
fine with the revised plan (Exhibit 28, document 5). She did not feel she needed to do
anything further for stormwater or wetland review based on both of these Departments
comments. At some point, she determined the project was complete. This means she
found that all aspects of the proposal required to be submitted had been submitted. Exhibit
28, document 6 is a determination of completeness for the original proposal. The
document meant that the proposal was ready to be sent out for review. After sending out
the initial proposal for review, she received various comments from the agencies. The
applicant changed the proposal to the new parcel. Ms. Thompson went through a new
process to determine if the permit application was complete. As part of her review, she
sent the application out again to the various agencies. The Department of Ecology and
Department of Fish and Wildlife expressed their support of the proposal. During the whole
process, Ms. Thompson asked questions and received answers from the applicant. For
example, she asked how the applicant would prevent glare, and the applicant told her there
would be a blackout curtain in use. She is not familiar with dark metal roofs on buildings
and did not ask about how they might create glare. She did not see a reason to ask about
the metal roof on the agricultural building. She asked about the glare in the greenhouses
because she was worried about grow lights causing glare on the opaque plastic. She was
satisfied with the use of blackout curtains as a solution. She saw no reason to impose the

1 use of the blackout curtain as a condition. It is not unusual to receive an adequate answer
2 about a concern and not need to impose a condition on an applicant. The applicant believed
3 there would be no odor created by the project, and Ms. Thompson had no reason to believe
4 this assumption was incorrect. She has not worked on an agricultural facility project to
5 know what type of odors vegetation in greenhouses cause. She has her own greenhouse
and knows that some plants like tomatoes do create an odor. She did not believe there
would be odor detectable outside of the property. Odor remaining within the bounds of the
property is the usual standard.

6 In regard to noise, the checklist noted there would be noise during construction. Ms.
7 Thompson was aware greenhouses used fans. She took the fans into consideration when
8 doing the SEPA review. She does not consider fans to be agricultural machines. She felt
9 she had enough information to evaluate any adverse environmental impacts. She believes
10 her noise review was appropriate. In regard to toxic chemicals and question 7 of the SEPA
11 checklist, Ms. Thompson had no reason to question the applicant's answer. She was aware
12 growing plants sometimes require pesticides and when she asked the applicant's agent
13 what type of chemicals would be used she was told none. She believed that answer
14 included organic chemicals. There was no clarification from either side what "chemicals"
15 meant. In regard to energy and question 6a, the question does not require analysis of the
wattage calculation. She does not typically ask how much energy will be used during
SEPA reviews. The checklist asks how many people will work at the facility, and the
applicant answered 3-4. Later, when asked how many vehicular trips would be made to
the site per day, the applicant also answered 3-4. She viewed the answer of 3-4 trips as
referring to round-trips. Neither the number of employees or vehicular trips caused her to
ask for further information. She probably would not have been concerned if the number
was 6-8 employees.

16 According to Ms. Thompson, in regard to groundwater, the applicant said they would not
17 be withdrawing groundwater on the checklist. There is case law that indicates wells should
18 be treated as industrial for commercial greenhouses in regard to permitting. Industrial
19 allows for up to 5,000 gallons/day to be withdrawn. If the applicant had indicated
20 groundwater would be withdrawn in the amount of 500 gallons/day, Ms. Thompson would
21 not have needed to conduct further review. Less than 5,000 gallons/day does not trigger a
22 withdrawal permit (Exhibit 16). She has conducted a site visit. She did not see anything at
23 the site to suggest the applicant made any misrepresentations on the SEPA checklist. She
24 issued a DNS and then sent the proposal out for agency comment. When agencies make
25 comments raising concerns, staff works with the agencies to determine if the DNS needs to
be withdrawn or what can change in the proposal to address concerns. Ms. Thompson also
received public comment about the application including concerns over odor, noise, light,
traffic, security, access, and pesticide use. Security is not reviewed as part of SEPA
checklists. Ms. Thompson was not concerned with security because she knew the Liquor
Control Board had strict regulations in place. She reviewed all of the public comments
received. The issues raised in the comments were brought to her attention while she still
could have withdrawn the DNS. She responded to the public comments via email to
inform the commentators that she received their input. She had sit-down conversations
with the Nolans and Scotts. During those conversations, the Nolans and Scotts expressed

1 their concerns about the application including odor, light, noise, and traffic. Exhibit 28,
2 document 7 is the determination of non-significance. It reads "an environmental impact
3 statement will not be required. This determination was made after review of the checklist
4 and other information on file at San Juan County Community Development and Planning.
5 She understands no significant adverse impact to the environment to mean there will not be
any harm to natural features of the land. No mitigation measures were necessary because
of the DNS determination. The possible harm to the wetlands and streams was ameliorated
because of the project move.

6 Under questioning by the Hearing Examiner, Ms. Thompson stated she is authorized to
speak on behalf of Sam Gibboney. Sam Gibboney is the listed SEPA responsible official.
7 Under cross-examination by Ms. O'Day, Ms. Thompson testified she has issued both DSs
and DNSs. The last DS she issued was in early 2013 for a dock project. She does not
8 remember any other DSs. She has also issued a MDNS which are mitigated
determinations of non-significance. She has never issued a MDNS. In 13 years, she has
9 for the most part issued DNSs. SJCC has a section on SEPA compliance. She cannot
10 define SEPA substantive authority. The proposal was processed as an agricultural facility.
11 When she re-sent out the request for review, she sent out the checklist and the wetland
delineation. Based on the environmental checklist, the agencies would not have known the
12 project was for a marijuana grow-op. Under the section of the checklist asking for a brief
(question 11), complete description of the proposal, the applicant said it was to build an
13 agricultural facility and road for access. The site plan was also sent to the agencies. There
is nothing in the SEPA rules that say there must be a SEPA review of a marijuana
14 processing operation. She believes the applicant's answer to question 11 was a complete
description. If someone was going to build a 2,000ft road, he/she would probably have to
15 submit a clearing and grading permit. No clearing and grading permits were required for
this project because the project moved before a permit would have been needed. The
16 threshold area for a clearing and grading permit is 100 cubic yards. She asked the
applicant how many cubic yards of dirt material would be brought to the site in the initial
17 meeting; however, there is nothing in the file on these numbers. The tax map parcel
number is incorrect on the land use application because it refers to the original location.
18 The land use application was submitted on April 14, 2014 which was after the deadline to
be vested for SEPA. For purposes of the SEPA review, the application was not considered
19 vested. Under the new Critical Areas Ordinance, she required the wetland delineation.
20 SJCC 18.80.050 allows the County to impose conditions on a proposal if there is a MDNS.
There were no mitigation measures placed on the subject proposal. There was no
21 condition requiring the blackout curtain nor was there a tree buffer requirement. There
22 was no noise control condition imposed in regard to the fans.

23 Under cross-examination by Ms. O'Day, Ms. Thompson said she asked how many fans
would be in each facility, but she did not ask about the amount of noise created by the fans.
24 Nothing about the fans was put in writing. It is fair to say the fans were not closely
reviewed. In regard to lighting, she asked about lighting the greenhouses and glare from
25 grow lamps. She understood there would be grow lights in the greenhouses, and the
blackout fabric would prevent the light from escaping. She does not know how much
electricity is required to run the grow-op and she does not believe the amount of electricity

1 is a SEPA question. A trip generation manual is the handbook transportation engineers use
2 to determine trips per day at different hours for different types of land uses. Guard
3 Sundstrom is an engineer with San Juan County's Public Works Department. If Mr.
4 Sundstrom said trips per day is one way according to the manual, Ms. Thompson would
5 not disagree; however, she believes different people may have interpreted the words
6 differently if unfamiliar with the manual. She asked the applicant if there was legal access
7 to the property. The applicants told her that they believed there was legal access. She did
8 not inquire further because she believed it was a civil matter and not a County issue. For
9 other matters such as subdivisions, the County requires demonstration of an access point to
10 properties. In the subject case, Ms. Thompson did not believe the access issue was a SEPA
11 matter. She is aware there is a lawsuit challenging the applicants' access over Fieldstone
12 Road.

13 Under cross-examination by Ms. O'Day, Ms. Thompson testified that she does not know
14 how much the current canopy cover is, but she knows the applicants are allowed to have up
15 to 21,000sqft. In regard to odor, the applicants said there would be no odor, and she took
16 that statement to be true. She asked if there would be fans in the greenhouse. She took the
17 checklist at face value and believed the applicant that there would be no noise. She does
18 not believe the trees cleared for the project were in the wetland buffer. If she remembers
19 correctly, there is a class 4 wetland which would require a 40ft buffer. She did not inquire
20 about signage on the County road because it is not part of the environmental checklist. If
21 there was a sign advertising a grow-op, that would possibly be a security issue. The
22 County has sign ordinances, and the applicants would have to apply to place a sign on a
23 County road. There is nothing in the SEPA file that conditions signage for the property.
24 She is familiar with the SEPA handbook and has reviewed it within the last couple of
25 months. The SEPA responsible official must decide if there are any likely adverse
environmental impact that have not been adequately addressed by the applicant. She is
unsure if all adverse environmental impacts have been adequately addressed. The
environmental checklist said the applicant would not be taking any water out of the
ground, but the applicant has been doing so. Ms. Thompson has not spoken with the
Department of Ecology about whether water removal from the ground for greenhouses
falls under an exemption for water rights. There was no analysis of water usage for the
project. There was no analysis of odor emissions. There was no analysis of noise issues.
She was not aware that the Liquor Control Board and Department of Ecology have tasked
local governments with creating policy for handling grow-ops. At the time of this
proposal, the County had not written any rules regarding marijuana grow facilities. The
County is currently discussing writing rules. She has not seen any proposed regulation for
marijuana grow-ops. In regard to traffic, she does not know how many trips per day occur.
The checklist was wrong in listing 3-4 employees; however, the applicant could have been
referring to the number of employees on the property at a time rather than the total number
of people employed. The County can only take recourse if the applicants are not living up
to the provisions of their permit. The environmental checklist is not accurate as to what is
occurring on the property currently. The County did not confer with the Liquor Control
Board in regard to the state regulations. Ms. Thompson did read the regulations set by the
Board, however. There could be some mitigation measures placed on the project, but she
does not know what those measures would be. The checklist was incorrect in saying there

1 were no critical areas on the property because there are wetlands on both the 55 acre and
20 acre parcels. Ms. Thompson believed all the answers provided on the checklist.

2 Under cross-examination by Mr. Mann. Ms. Thompson testified that she took into account
3 the neighbors' original comments and believed the issues presented were addressed by the
4 applicant. She believed the applicants' proposal handled all concerns. In regard to noise,
5 the applicant said there would be no noise except during construction. Given the recent
6 testimony about noise levels, this is no longer an adequate answer. Any condition she
7 imposed on the applicant would have to be based on some type of County regulation.
8 SJCC 18.80.050(h) appears to give the County authority to impose conditions not found in
9 County regulation elsewhere. In this case, she did not believe it was necessary to impose
10 such conditions. She did not review the project for marijuana production. 18.80.050(g)(2)
11 allows the County to require additional studies conducted by the applicant. She did not
12 consider asking for any additional studies such as a noise or light study. She is not sure
13 how something that was just in the Staff Report and not a condition could be enforced.
14 She believes she has read all the regulations set by the Liquor Control Board for marijuana
15 grow operations. She assumed state law handled the issues in these regulations including
16 odor, solid waste, waste water, and waste pesticides. She did not look at the County's
17 independent authority to assess these impacts. The checklist asks what type of energy will
18 be used, but not how much energy. She is not sure what would require a SEPA review in
19 regard to energy use. Natural features include light, odor, and noise. The purpose of the
20 SEPA review is to assess what the full impacts will be upon full build-out. She did not ask
21 what the maximum number of employees the facility could have was.

22 Under redirect by Ms. Higginson, Ms. Thompson noted that mitigation measures are often
23 included in applications which results in most applications having DNS determinations.
24 Applications filled out by private land use planners tend to require less requests for
25 additional information by the County. Ms. Thompson's decisions are reviewed by the
Planning Director. She has discussed the number of DNSs issued with her current and
former Planning Directors, but, as of now, she has not been directed to do anything
differently. In regard to access, there are specific requirements for subdivisions about
access. Subdivision requirements are not comparable to environmental checklists for
agricultural facilities. Even though the applicants may not have addressed all adverse
impacts, the information was still brought to Ms. Thompson's attention through public
comment. She is not required to rely solely on the environmental checklist in the review.
She reviews all available information, and that is what she did for this project. In regard to
water usage, she was aware the applicant planned to use a rain water catchment system,
and the applicant indicated this plan on the checklist. She was alerted to noise and odor
concerns by public comment. The checklist asks for the approximate number of
employees who will work at the facility at the completion of the project. "Approximately"
means about how many. If there were more employees than indicated, she would need to
review the number more if it would affect trip generation. If the trip generation is more
than 3-4, Ms. Thompson would need to determine if these additional trips were causing an
adverse environmental impact. If the Liquor Control Board sends a license application to
County Council, in the past, the Council sent the applications to the planning staff for
review. If the subject proposal license had been sent to the planning staff for review by the

1 Council, staff would have looked if the proposal was within 1,000ft of the uses that are
2 restricted such as schools and libraries. There is nothing that leads Ms. Thompson to
3 believe the location chosen by the applicants is unsuitable. She cannot impose conditions
4 on applicants contrary to law. She can create conditions based on county or state law. The
5 conditions should not be politically based. The SEPA review is not political. WAC
6 197.11.330 states "a threshold determination shall not balance whether the beneficial
7 aspects of a proposal outweighs adverse impacts, but, rather, shall consider whether a
8 proposal has any probable, significant adverse environmental impacts under the rules
9 stated in this section."

EXHIBITS

- 10 Exhibit 1 Memorandum from Stephanie Johnson O'Day dated September 9, 2014
11 Exhibit 2 Series of five aerial photos of subject property taken by Mr. Nolan
12 Exhibit 3 Large aerial map obtained from the County Assessor
13 Exhibit 4 Series of four 11x17 photographs of subject property taken June 2nd by
14 Mr. Nolan
15 Exhibit 5 State licensing notice packet (Friday Harbor document, 9/13/14 LCB
16 letter, Michael Thomas email requesting revoke, 9/15/14 email from
17 Deborah Nolan, 8/19/14 letter from Attorney General's Office)
18 Exhibit 6 Deed in lieu of foreclosure, SJ Recording No. 2012-1108020
19 Exhibit 7 Statutory Warranty Deed SJ Recording No. 2007-0523016
20 Exhibit 8 Stormwater Plan application dated 5/21/14 along with 5/21/14 stormwater
21 plan
22 Exhibit 9 June 11, 1996 Easement SJ Recording No. 96061334
23 Exhibit 10 Nolan Appeal Staff Report Packet, dated 9/3/14
24 Exhibit 11 Packet of 6 SEPA comment email/letters and a staff letter regarding SEPA
25 comment period
26 Exhibit 12 Memorandum to Hearing Examiner from Mr. Mann dated September 10,
27 2014
28 Exhibit 13 Scott Staff Report dated 9/3/14.
29 Exhibit 14 WA State LCB Advisory "Regulatory/Permitting Guidance for
30 Greenhouse Marijuana Producers".
31 Exhibit 15 "Marijuana Licensing and the Environment", Department of Ecology
32 Exhibit 16 Eight page Manufacturers package information and safety data sheet for
33 the insecticide, Azatrol
34 Exhibit 17 "Estimated Daily Water Demand of a Tier 3 Marijuana Producer License".
35 Exhibit 18 Email from Sean Scott to Bob Jarman dated August 19, 2014 regarding
36 estimated power consumption.
37 Exhibit 19 Report for Fire Department call at project site, May 23, 2014.
38 Exhibit 20 6/3/13 SEPA checklist created by LCB for marijuana licensing
39 regulations.
40 Exhibit 21 9/30/14 memorandum to SJ County Council from Mike Thomas, County
41 Manager
42 Exhibit 22 Walla Walla Municipal Code, marijuana impacts

- 1 Exhibit 23 Applicant pre-hearing brief
2 Exhibit 24 Mr. Ibold's board foot calculations
3 Exhibit 25 SJ Superior Court Complaint, Sternitzke v. Sun Grown, dated 10/9/14.
4 Exhibit 26 Email from Paul Anderson to Julie Thompson, May 16, 2014 (also
5 included in Ex. 28)
6 Exhibit 27 Memo from John Geniuch to Whom it May Concern regarding 1/6/14
7 meeting
8 Exhibit 28 Applicants exhibit packet (includes 16 documents)
9 Exhibit 29 Email chain from Shireene Hale to Community Development and
10 Planning dated March 13, 2014
11 Exhibit 30 Determination of Completeness for Residential Building Permit
12 Exhibit 31 Section C101 International Energy Conservation Code
13 Exhibit 32 Snap Fan Sales Order in amount of 3,053.33
14 Exhibit 33 Piece of blackout fabric
15 Exhibit 34 June 6, 2014 stormwater application and plan
16 Exhibit 35 March, 2014 Critical Areas Report
17 Exhibit 36 Ross Declaration dated 9/24/14
18 Exhibit 38 10/15/14 email from Carla Higginson re Nolan/Scott/San Juan Sun Grown
19 SEPA appeal conditions. Attached USA Today article not admitted.
20 Contained proposed conditions.
21 Exhibit 39 10/20/14 email from Derek Mann re Nolan/Scott/San Juan Sun Grown
22 SEPA appeal conditions. Stated Scotts couldn't agree to conditions.
23 Exhibit 40 10/20/14 email from Examiner re Nolan/Scott/San Juan Sun Grown SEPA
24 appeal conditions. Set dates for closing argument.
25 Exhibit 41 10/22/14 email from Examiner re Nolan/Scott/San Juan Sun Grown SEPA
26 appeal conditions. Addressing request from applicant to submit answer to
27 superior court complaint.
28 Exhibit 42 10/28/14 email from Stephanie Johnson re Nolan Closing Argument with
29 written closing attachment but excluding excerpt from "The Weed Blog".
30 Exhibit 43 10/29/14 email from Julie Thompson re amended reply, with attachment.
31 Staff response to proposed conditions.
32 Exhibit 44 10/31/14 series of emails from Derek Mann re Scott closing. Written
33 closing admitted but attached articles not admitted.
34 Exhibit 45 11/5/14 email from Carla Higginson re Motion to Strike, including
35 attached motion.
36 Exhibit 46 11/5/14 email from Examiner re Nolan/Scott SEPA appeal. Sets dates for
37 response to applicant's Motion to Strike.
38 Exhibit 47 11/7/14 email from Stephanie Johnson re Nolan Response to Motion to
39 Strike
40 Exhibit 48 11/7/14 email from Derek Mann re sungrown – evidentiary argument.
41 Exhibit 49 11/10/14 email from Carla Higginson re Nolan/Scott SEPA appeal along
42 with attached Reply on Motion to Strike.

- 1 Exhibit 50 11/11/14 email from Examiner re Nolan/Scott SEPA Appeal, stating that
2 additional time necessary to acquire copy of hearing recording to assess
3 Motion to Strike
4 Exhibit 51 11/17/14 email from Examiner re Nolan/Scott SEPA appeal, advising of
5 delays due to difficulties in acquiring recording of hearing.
6 Exhibit 52 11/19/14 email from Examiner ruling on Motion to Strike.
7 Exhibit 53 11/21/14 email from Derek Mann re Scott/Nolan SEPA Appeal –
8 Amendment to Scott’s Closing Argument
9 Exhibit 54 11/24/14 email from Examiner to Nolan re Nolan SEPA appeal.
10 Exhibit 55 11/24/14 email from Carla Higginson re Nolan/Scott SEPA Closing
11 Argument, with attached written SEPA closing argument.
12

13 FINDINGS OF FACT

14 Procedural:

- 15 1. Applicant/Appellants. The applicant is Sweet Water Farm Akhalteke II,
16 LLC. The appellants are Catherine and Sean Scott and Deborah and Tom Nolan.
17
18 2. Hearing. The Hearing Examiner conducted a hearing on the subject
19 application starting at 10:00 am on September 13, 2014. A site visit was conducted on
20 September 13. The hearing was continued to October 9, 2013 for additional testimony and
21 then to October 13, 2014 to complete the testimony. The hearing record was then left open
22 to see if the parties could agree to SEPA mitigation measures. The parties were unable to
23 agree and the parties were given an opportunity to provide closing arguments. A
24 procedural issue arose that required access to the hearing recording. Staff incurred some
25 technical problems that delayed access to the recording. The record was finally closed for
the last responses to closing argument on 11/24/14.

Substantive:

3. Proposal and Appeal Description. The proposal is a marijuana production facility to be
located at the terminus of Fieldstone Road, located off Mitchell Bay Road on San Juan
Island. The project includes installation of one 4,000 square foot agricultural processing
facility, a perimeter fence as required by law, nine 2,960 square foot greenhouses, three
shipping containers for storage and one office trailer.

The original building permit application for the facility was filed on March 28, 2014. The
building permit was only for the 4,000 square foot processing building, since County staff
determined that the greenhouses are exempt from building permit application requirements
because they constitute temporary structures. The entire processing facility was originally

1 proposed to be located on a 55-acre parcel assigned tax number 450242001¹. The County
2 issued a DNS for the proposal on April 23, 2014. DOE submitted comments on the DNS,
3 stating that what was identified as a drainage ditch was in fact a regulated stream. The
4 access road proposed by the applicant crossed this stream and what appeared to be
5 associated wetlands. Due to these regulatory difficulties, the applicant moved its proposal
6 from the 55-acre parcel to an adjoining 20.5 acre parcel, tax number 450241006. A new
7 DNS was then issued on May 7, 2014. DOE sent a comment on the revised proposal
8 stating they no longer had any concerns. The County issued the building permit for the
9 4,000 square foot processing building on June 6, 2014, building permit no. BUILDG14-
10 0147.

11 The Scotts filed an appeal of the DNS for the marijuana production facility on June 11,
12 2014. The appeal asserted concerns over security, traffic, odor/smoke and light impacts.
13 The June 11, 2014 appeal is one of two SEPA appeals addressed by this decision.

14 The Nolans filed an appeal of the DNS for the marijuana production facility on June 11,
15 2014 and supplemented it with an appeal of the underlying building permit application on
16 June 20, 2014. The appeal identified deficiencies of information and/or impacts regarding
17 water consumption, wetlands, waste materials, aesthetics, light and glare, access and public
18 services. The appeal also requested a stay of the building permit approval until all project
19 impacts were fully mitigated.

20 Construction of the production facility commenced upon issuance of the building permit,
21 apparently before the SEPA appeals were filed. As of the date of the site visit, three or
22 four of the greenhouses were built and housed numerous marijuana plants that had grown
23 several feet in height.

24 4. Characteristics of the Area. The subject parcel is surrounded by large lots zoned
25 Agricultural and Rural Farm Forest. The lots are occupied by single-family homes and/or
agricultural uses. A large horse staging area and barn is located to the north. The Scotts'
residence is located on a 10 acre parcel zoned Agricultural to the northeast. According to
Ms. Scott, her home is located 618 feet from the proposed facility. The Nolans reside
considerably further north of the proposal on a 2 acre parcel zoned Agricultural.

5. Adverse Impacts. The SEPA responsible official did not and does not have sufficient
information to adequately assess the environmental impacts of the proposal. It is likely that
most if not all adverse impacts can be reduced to levels below "probable" and "significant"
by reasonable mitigation, but the SEPA responsible official did and does not have
sufficient information to make that determination. Impacts are more specifically addressed
as follows:

¹ Parcel numbers are based upon the parcel numbers assigned by the aerial tax assessor map, Ex. 3. Mr. Nolan testified that the assessor's office has some incorrect information about tax parcel numbers in this area. It is unclear if the map numbers are accurate or not.

1 A. Noise. There is a strong likelihood that without proper conditioning or mitigation
2 the proposal will exceed acceptable noise limits. SJCC 9.06.020 recognizes
3 Chapter 173-60 WAC as setting acceptable noise levels, by stating that Chapter
4 9.06 SJCC is intended to compliment those regulations². Even if Chapter 173-60
5 is not directly enforceable by San Juan County, the regulations set an objective
6 and well established measure of what noise levels are acceptable for SEPA
7 purposes. Testimony by the applicant's own noise experts strongly suggests that
8 the noise levels of Chapter 173-060 will be exceeded by the proposal. WAC 173-
9 60-040 provides that noise levels from Class C properties may not cause noise
10 levels on receiving Class C properties to exceed 70 dBA. The maximum level
11 produced by Class C properties onto Class A properties is 60 dBA during daylight
12 hours and 50 dBA for night hours.

13 It's not entirely clear whether the Scott and Nolan properties would be considered
14 Class A or Class C properties. WAC 173-60-030(a) defines a Class A property as
15 "[l]ands where human beings reside and sleep." WAC 173-60-030(c) defines
16 Class C properties to include agricultural property used for the production of
17 crops. The project site is clearly a Class C property. Although the Nolan and
18 Scott properties are clearly used for residing and sleeping, the properties are
19 zoned for agricultural use.

20 WAC 173-60-030 suggests that it is the zoning of a property rather than its actual
21 use that dictates its classification for noise purposes. WAC 173-60-030(2)
22 provides that in areas covered by a local zoning ordinance, the local legislative
23 authority "may" designate noise classifications to conform with the zoning
24 ordinance. According to the regulation, residential zones would be classified as
25 Class A properties, commercial zones as Class B properties and industrial zones
as Class C properties. San Juan County has not adopted any such designation, but
the fact that WAC 173-60-030 authorizes property classes to be based upon
zoning designations suggests that the types of use authorized for property are
what are considered to dictate its noise classification. From a practical and
equitable standpoint this appears to be the most rational approach. Areas zoned
for agricultural use should not be subject to stricter noise standards simply
because someone has decided to erect a residence in the middle of farming
operations. Further, especially in areas where "Right to Farm" notices are
recorded, property owners who choose to reside in areas zoned for Agricultural
use cannot equitably claim to be entitled to residential noise levels. Since the
parties to this appeal have not had an opportunity to argue the noise classification
of the affected properties, this decision does not make any conclusion as to the
applicable noise classification. That will be left to staff to determine during the
SEPA remand.

² The applicant pointed out that SJCC 9.06.050(L) exempts agricultural noise from the provisions of Chapter 9.06 SJCC. Chapter 173-60 WAC is not a part of Chapter 9.06 SJCC so the exemption does not apply to Chapter 173-60 WAC sound levels.

1 The evidence in the record strongly suggests that the proposal will generate noise
2 that exceeds the noise levels set by WAC 173-60-040 whether surrounding
3 residential occupied properties are classified as Class A or Class C properties.
4 The applicant's own noise expert found that decibel levels on Fieldstone Road, in
5 close proximity to the Scott property, reaches levels of 61 dBA when only six of
6 the anticipated 54 fans are in use. See Ex. 36. The applicant's noise expert,
7 Benjamin Ross, made a rough estimate during the hearing that if all 54 fans were
8 in operation, this would increase the noise level by 9.25 dBA increase in noise
9 levels, which would cause the noise level at the Fieldstone Road site to reach
10 70.25 dBA. 70.25 dBA is in excess of the noise levels set by WAC 173-60-040
11 for both Class A and Class C receiving properties.

12 It is recognized that the applicant is in the process of purchasing new fans that
13 operate at lower sound levels. It is also recognized that the Fieldstone noise
14 receiver site is not located at the Scott property line and that the added separation
15 could bring the noise levels below 70 dBA. However, there are too many
16 unknowns to make any accurate prediction on what the actual noise level will be.
17 Mr. Ross only measured the noise of the circulation fans. There are also exhaust
18 fans used by the greenhouses that were not measured. The duration of use of the
19 exhaust fans may fall within the temporary noise increases authorized by WAC
20 173-60-040(c), but there is no information in the record as to how much time
21 those exhaust fans may be employed. There is also no assurance that the proposal
22 will be limited to 54 fans. The project description doesn't identify the number of
23 fans that will be used and there is no condition limiting the number of fans
24 imposed by staff. It is also important to recognize the 9.25 dBA increase was
25 only a rough estimate provided by the applicant's noise expert that he formulated
"off the cuff" during the hearing. It is unknown whether a more precise estimate
of noise levels can be reasonably formulated given more time and resources.

For all of the reasons above, it is determined that staff did not have sufficient
information to adequately evaluate the noise impacts of the proposal. Staff should
have a noise study that reasonably assesses the noise levels generated by the
proposal will all proposed fans in operation. Those noise levels should be within
the limits set by WAC 174-60-040. The noise generating features of the proposal
should be accurately described in the application or limited by mitigation
measures to ensure that the noise estimates are based upon the noise levels that
will be actually produced by the proposal. Specifically, the number of fans should
be identified in the application or the MDNS mitigation measures should limit
them to the number used for noise level estimates.

B. Odor. The SEPA responsible official did not have sufficient information to
adequately assess odor impacts. The SEPA checklist doesn't identify any crop
odors as a potential impact. Staff acknowledges in the staff report to the Scott
appeal there was nothing in the application that lead staff to believe there would
be an odor impact. The SEPA responsible official did not make any inquiries or
investigation into odor impacts as part of SEPA review.

1 Despite this lack of investigation, the record is clear that marijuana crops create
2 odor. Mr. Rice acknowledged that marijuana crops generate odor and that the
3 strength of the odor depends on the strain of the crop and the point of the crop in
4 its growing cycle. Mr. Rice testified that his strain is in the mid-point of
5 "stinkiness" and that the growing cycle of his crop is currently at its mid-point of
6 "stinkiness". The DOE publication "Marijuana Licensing and the Environment",
7 Ex. 15, notes that "odors may need to be controlled". Marijuana ordinances such
8 as one proposed in Walla Walla County, Ex. 22, require marijuana production
9 facility conditional use applications to include provisions for elimination of odors.

7 Although marijuana crops clearly generate odor, it is not known whether these
8 impacts would be significant. Mrs. Scott testified that the odors on her property
9 have been so strong that she contacted the Sheriff's Office. As a pharmacist, she
10 is concerned about the health impacts to her children. Mr. Geniuch, the County's
11 building official, testified that on a site visit on October 1, 2014 he could not
12 smell the marijuana crops until he got to the perimeter fence of the facility. On
13 his way to the facility Mr. Geniuch had stopped at the Scott property and exited
14 his vehicle. Mr. Rice testified that he smells nothing until he gets to the
15 greenhouse and production building. The site visit for the proposal did not reveal
16 any strong odors. Giving substantial weight to the determination of the SEPA
17 responsible official, one would have to conclude that the operation as it currently
18 stands does not create any significant adverse odor impacts. However, given the
19 numerous factors that influence odor, there is insufficient information to conclude
20 that odor will not be a problem once all nine greenhouses are operating; or be a
21 problem if the applicant uses a different strain of marijuana; or be a problem if the
22 plants are at a different point in the growth cycle. Without any measures
23 proposed or imposed to control odor, there is no reasonable basis to conclude that
24 the proposed marijuana production facility will not create probable significant
25 adverse impacts.

18 The inadequate information on marijuana odor impacts also extends to inadequate
19 information on what measures are available to control them. Mr. Rice
20 acknowledged in his testimony that measures are available to control odor. He
21 noted that he could install carbon filters to the greenhouses that would control
22 odor. He also acknowledged that chemicals are available to control odor but that
23 he was unwilling to apply them to his crop. Beyond the information provided by
24 Mr. Rice, there is no information in the record (and none considered by the SEPA
25 responsible official) as to what other measures can be taken to prevent odor. It
is completely unknown whether the filter proposed by Mr. Rice would be the most
effective in preventing odor, or how often these filters need to be replaced. It
is unknown whether there are chemicals available that could prevent odor without
causing any damage to the quality or safety of Mr. Rice's crops. It is unknown
whether the greenhouses and production facilities are sealed against odor to the
maximum extent reasonably possible. It is unknown whether Mr. Rice will be
implementing operational procedures that will reduce the generation of odors to

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the maximum extent reasonably possible, such as requiring that crop cycles be staggered to reduce odor, that plants be transported in enclosed containers, that no windows or doors remain open in facility buildings, etc.

A major problem in addressing marijuana odor is establishing a “significantly adverse” threshold. There does not appear to be any quantitative air quality standard for marijuana odor. The SEPA responsible official will have to determine whether the odors detectable on adjoining properties will reach levels that objectively reasonable persons would consider to be strong and persistent. If that is the case the SEPA responsible official should determine what reasonable measures are available to control odor. As discussed in the Conclusion of Law addressing the County’s “Right to Farm” provisions, marijuana odors that extend to properties zoned agricultural will not be considered significant for purposes SEPA review if they are reasonably mitigated. Consequently, if odors are found to be strong, the SEPA responsible official should be imposing reasonable mitigation measures to address those impacts.

It should also be noted that there is probably a significant amount information available on odor impacts available to the SEPA responsible official. As testified by Mrs. Nolan, San Juan County is behind in the regulation of marijuana impacts. No conclusions are made as to whether or not San Juan County is “behind”, but Mrs. Nolan’s comments are uncontested to the extent that she is asserting that numerous other jurisdictions are at least considering the regulation of marijuana, which likely includes its odor. Consultation with other municipalities should presumably provide the SEPA responsible official with a significant amount of information on odor impacts and the measures available to regulate them.

C. Power. The SEPA responsible official did not have sufficient information to adequately assess whether the proposal would be served by adequate power facilities and whether any needed power service improvements would create any probable significant adverse environmental impacts. The SEPA responsible official made no inquiries about power usage and the evidence from the hearing establishes that the power demand created by the proposal could potentially create significant adverse impacts.

Mr. Scott is a licensed electrical contractor with several years of experience in that field. His company, Wilson Electric, was contracted to do the electrical work for the proposal. Mr. Scott did not personally work on the proposal, but did see the design drawings for the proposal and did talk to Wilson Electric staff about the electrical needs of the proposal. Mr. Scott testified that the proposal is one of the largest projects he has ever seen from a power demand standpoint. He has talked to employees at the Orcas Power and Light Cooperative (OPALC) and they informed him they had concerns over whether the site could be served by existing power lines. Mr. Nolan testified that OPALC employees told him that power outages in the area could occur due to the added demand created by the facility. Mr. Nolan was informed that three additional power lines would likely be needed

1 to serve the proposal. Mr. Rice testified that his proposal would not need power
2 at any levels anywhere near those testified by Mr. Scott.

3 The SEPA responsible official should acquire information from OPALC on the
4 adequacy of power service and what infrastructure improvements, if any, are
5 necessary to serve the site. Environmental impacts should be assessed and
6 mitigated as necessary.

7 D. Pesticides³. The appellants have marginally established that the impacts of
8 Azatrol use have not been adequately assessed. The applicant will be applying
9 Azatrol, an organic pesticide, to the marijuana plants within the greenhouses.
10 Azatrol can adversely affect health. The SEPA checklist does not identify any
11 pesticide use and notes that there will be no wastewater discharge that could enter
12 surface waters. The SEPA responsible official did not consider impacts of
13 Azatrol use or know it was being considered by the applicant. On cross-
14 examination Mr. Rice acknowledged that it was within the realm of possibility
15 that water containing Azatrol could drain out of the buildings. On remand staff
16 should evaluate the impacts of Azatrol use and mitigate as necessary to ensure
17 that pesticide use does not adversely affect the environment. It is anticipated that
18 if Azatrol use and/or its discharge is regulated that compliance with applicable
19 regulations will serve to adequately mitigate against probable significant adverse
20 impacts.

21 E. Water Usage. The Appellants have marginally established that the impacts of
22 water usage have not been adequately assessed. There are inadequate safeguards
23 to assure that the applicant will address water usage issues as proposed.
24 Originally DOE had concerns about the applicants amount of water usage,
25 commenting that a water rights permit may be necessary since it was possible that
the proposed facility would exceed exempt water withdrawal levels. The project
site is currently served by a private well, which is subject to withdrawal limits of
5,000 gallons per day. DOE was satisfied when the applicant clarified that it was
proposing water catchment to meet its water needs. However, despite months of
operation the applicant still has not installed its proposed water catchment system.
The applicant asserts that he still plans on building the catchment system, but in
the meantime his water withdrawals are significantly less than the 5,000 gallon
exemption level. Some fairly debatable evidence presented by the SEPA
appellants suggests that water demand could significantly exceed the 5,000 gallon
limit. It is also reasonably subject to debate whether a catchment system, even

³ The Nolans made general assertions of probable significant impacts caused by wastewater disposal in their appeal, but beyond Azatrol there was no evidence presented on potential wastewater impacts. There is nothing in the record to suggest that existing stormwater and health department regulations would not adequately control wastewater impacts beyond Azatrol. Giving substantial weight to the determination of the SEPA responsible official, it is determined that (excluding Azatrol), the proposal will not create any probable significant adverse wastewater impacts and that the responsible official had reasonably sufficient information to evaluate these impacts.

1 with the 3,000 gallon storage tank proposed by the applicant, will be sufficient to
2 meet the water demand of the project during peak operation, especially in the dry
3 summer months when water demand will presumably be at a maximum. On
4 remand staff should consider requiring a meter for the exempt well so that
5 withdrawal levels can be monitored. A deadline for construction of the catchment
6 system should also be considered.

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F. Traffic. Giving substantial weight to the SEPA responsible official, it is
determined that the proposal will not create probable significant adverse traffic
impacts. There is also nothing in the record to suggest that the SEPA responsible
official had inadequate information to assess traffic impacts.

The SEPA checklist notes that the proposal will generate 3 to 4 trips per day.
There was significant debate during the hearing whether it was clear enough that
the applicant meant it would create 3 to 4 round trips per days as opposed to one
way trips, but in either event there is nothing in the record to suggest that either
figure would create any probable significant adverse impacts. Mr. Scott testified
that Fieldstone Road used to accommodate only one trip per month or one trip
every other week and now there are up to ten trips per day. Mr. Nolan, who
works from home, testified that some days there are now 10-40 trips per day on
the road. There is nothing in the record to suggest that trips even at the levels
asserted by the SEPA appellants would be considered significantly adverse.
There is nothing in the record to suggest that Fieldstone Road cannot
accommodate 10-40 trips per day and there is no reasonable basis to conclude that
this low level of traffic could not be accommodated by the existing road. In an
area zoned for agricultural use, subject to "Right to Farm" provisions, there is no
reasonable expectation for traffic levels to remain at or below 40 trips per day.

G. Wetlands. The proposal will not create any probable significant adverse impacts
to wetlands and the SEPA responsible official had adequate information to assess
the impacts to wetlands.

There are two Category III wetlands on the project site. A critical areas report
addressing project impacts to the wetlands was submitted to the County on May
13, 2014. See Ex. 28, att. 11. The proposed facility will not encroach into the
wetlands or their required 50-foot buffers. Rone Brewer, the author of the critical
areas report, testified that the proposal would have no adverse impacts on the
wetlands. He noted that greenhouses that are well designed and that comply with
stormwater design standards have very little impact on wetlands. Mr. Brewer has
a master's degree in environmental science in environmental studies and a minor
in chemistry with several years' experience delineating wetlands. There was no
expert testimony presented that the proposal would harm the wetlands. With or
without the substantial weight due the SEPA responsible official, there is nothing
in the record to reasonably suggest that the proposal will adversely affect
wetlands.

1 The Scott appellants have argued that the proposal is not vested to the current
2 critical areas ordinance. The current critical areas ordinance went into effect on
3 March 31, 2014. The wetlands report prepared by the applicant addressed
4 compliance with the critical areas ordinance in effect prior to March 31, 2014.
5 County staff consider the subject building permit application to have vested when
6 it was filed on March 28, 2014. However, as identified by the Nolan appellants,
7 the applicant moved the location of its proposal from Parcel 450242001 to Parcel
8 450241006 after March 28, 2014. The site plan for the built portions of the
9 proposal remained the same, however the proximity of the proposal to wetlands
10 changed significantly (albeit in a positive manner). There is no Washington case
11 law that directly addresses the impact of project amendments to vested rights. As
12 a matter of practice, jurisdictions typically don't extinguish vested rights due to
13 project modifications, since modifications occur frequently as a result of project
14 review. On remand, County staff should consult with the prosecuting attorney's
15 office on this issue. This decision will avoid addressing the issue in order to give
16 the County an opportunity to develop a policy regarding project modification
17 impacts on vested rights. The issue is too ubiquitous in permit review to be
18 addressed without giving the County an opportunity to formulate such a policy.

11 H. Criminal Activity. Giving substantial weight to the determination of the SEPA
12 responsible official, it is determined that the proposal will not create probable
13 significant adverse impacts in generating criminal activity or the demands that
14 may create on police services. Impacts on police services is considered an
15 element of the environment for purposes of SEPA review. See WAC 197-11-
16 444(2)(d)(ii). As noted by the SEPA appellants, the Washington State Liquor
17 Control Board ("LCB") SEPA checklist for its marijuana licensing regulations
18 recognizes that marijuana facilities can increase criminal activity. However, the
19 regulations adopted by the LCB impose a significant amount of security measures
20 on marijuana production facilities to prevent this increase in crime, including
21 complete camera coverage, retention of camera recordings up to 45 days, alarms,
22 and perimeter fencing. According to testimony from the SEPA appellants on
23 cross examination, the San Juan County Sheriff testified to the San Juan County
24 Council that his department has sufficient resources to respond to calls generated
25 by marijuana production facilities. Giving substantial weight to the determination
of the SEPA responsible official, it is determined that these measures are
sufficient to mitigate against any probable significant adverse criminal impacts or
its resulting demand on police services.

22 I. Light and Glare. Light impacts can likely be reduced to insignificant levels with
23 the addition of blackout fabric (Ex. 33) proposed by the applicants. The use of
24 the fabric should be made a condition of approval after verification by staff that it
will adequately block light impacts.

25 Sean Scott testified that he has seen light emitting from the project site, but that
this situation has improved. Mr. Nolan testified generally that light impacts have
increased dramatically and that he has seen glare reflected from the project

1 buildings during a plane ride. David Jenks testified that he witnessed glare from
2 his property as well as emissions from interior lights. Mr. Jenks resides two
3 parcels to the north of the project site. David Geniuch, the County's building
4 official, did not witness any glare on his site visits. He testified that glare from
5 metal roofs, such as that of the processing building of the proposal, tend not to be
6 very reflective. He did not witness any glare from the processing building or
7 greenhouses on his site visits.

8 The testimony about interior light impacts is somewhat curious because no lights
9 have yet been installed in the greenhouses. However, the applicant plans on
10 installing an unspecified number of lights into the greenhouses at some point in
11 the future. The applicant's proposed use of blackout fabric, Ex. 33, appears to
12 likely prevent any light from significantly adversely affecting other properties in
13 the vicinity. The applicant provided a link in its prehearing brief, Ex. 23, p. 8,
14 that purportedly demonstrates how well the black out fabric works. The link
15 connects to a message that the video is no longer available. On remand staff
16 should verify that the black out fabric proposed by the applicants will prevent any
17 significant amount of interior lights from spilling onto adjoining properties.
18 Mitigation measures should be imposed that will ensure that the black out fabric
19 will be used to effectively prevent any significant light spillage.

20 Giving substantial weight to the determinations of the SEPA responsible official,
21 the preponderance of evidence establishes that glare will not create any
22 significantly adverse glare impacts. None of the buildings are made of materials
23 that would be expected to create significant amounts of glare. As testified by the
24 County's building official, Mr. Geniuch, the greenhouses are covered with a
25 plastic opaque material and the metal roof of the processing building tends not to
be very reflective. The proposal is surrounded by trees, which will prevent glare
from being visible to any significant extent to surrounding properties at the same
elevation. Property owners such as Mr. Nolan and Mr. Jenks, residing at higher
elevations, may experience some glare but nothing in the record suggests that this
amount of glare is significant.

J. Stormwater Control. The proposal will not create any probable significant
stormwater impacts and the SEPA responsible official had reasonably sufficient
information to assess these impacts. Stormwater drainage is extensively regulated
by the County's stormwater regulations. Except for potential stormwater impacts
associated with runoff containing Azatrol, separately addressed in these findings,
the appellants have produced no evidence to overcome the SEPA responsible
officials determination that those regulations adequately address stormwater
runoff impacts and prevent significant adverse environmental impacts.

K. Aesthetics. There are no probable significant adverse aesthetic impacts associated
with the proposal. The project area is surrounded by trees and is barely visible to
surrounding properties. Even if it were not surrounded by trees, the scale and
character of the proposed buildings is consistent with the agricultural uses

1 permitted for the project site and surrounding properties. Indeed, horse staging
2 facilities and a barn of similar scale already exist to the north. The structures
3 proposed by the applicant are fully within the character of agricultural use both
4 existing and contemplated in agricultural zones.

5 L. Trees. The appellants apparently assert that some trees were removed within
6 wetland buffers for the proposal. If that has occurred, that is a code enforcement
7 issue that is beyond the scope of this SEPA appeal. San Juan County has no
8 standards other than forest practice permit requirements governing the removal or
9 retention of trees. The project as designed and proposed does not involve the
10 removal of any trees within any critical areas. As proposed and designed, the
11 removal of trees for the proposal will not create any probable significant adverse
12 environmental impacts.

13 CONCLUSIONS OF LAW

14 Procedural:

15 1. Authority of Hearing Examiner. SJCC 18.80.140, Table 8.3 provides that
16 the hearing examiner has final decision making authority over SEPA DNS appeals,
17 appealable to superior court.

18 Substantive:

19 2. Zoning Designation. The subject property is designated as Agricultural
20 Resource.

21 3. SEPA Review Criteria. There are two reasons to overturn a DNS: (1) there are
22 unmitigated probable significant adverse environmental impacts; or (2) the SEPA
23 responsible official has not undertaken an adequate review of environmental factors as
24 required by SEPA regulations. Each grounds for reversal is separately addressed below.

25 A. Probable Significant Adverse Environmental Impacts.

The primary relevant inquiry for purposes of assessing whether County staff correctly issued a DNS is whether the project as proposed has a probable significant environmental impact. *See* WAC 197-11-330(1)(b). If such impacts are created, conditions will have to be added to the DNS to reduce impacts so there are no probable significant adverse environmental impacts. In the alternative, the applicant would have to prepare an environmental impact statement ("EIS"). In assessing the validity of a threshold determination, the determination made by the City's SEPA responsible official is entitled to substantial weight. WAC 197-11-6 (3)(a)(viii).

B. Adequate Environmental Review

1 The second reason a DNS can be overturned is if the SEPA responsible official did not
2 adequately review environmental impacts in reaching her threshold determination. The
3 SEPA responsible official must make a prima facie showing that she has based her
4 determination upon information reasonably sufficient to evaluate the impacts of a proposal.

5 Although the SEPA responsible official's determination must be given substantial weight,
6 the County must make a showing that "*environmental factors were considered in a manner*
7 *sufficient to make a prima facie showing with the procedural requirements of SEPA.*"
8 *Chuckanut Conservancy v. Washington State Dept. of Natural Resources*, 156 Wn. App.
9 274, 286-287, quoting *Juanita Bay Valley Community Ass'n v. City of Kirkland*, 9 Wn.
10 App. 59, 73 (1973). The courts have recently overturned two land use permit decisions on
11 the basis of inadequate SEPA review. See *Town of Woodway v. Snohomish County*, 172
12 Wn. App. 643 (2013); *Spokane County v. Eastern Washington Growth Management*
13 *Hearings Board*, 176 Wn. App. 555 (2013), *review denied*, 179 Wn.2d 1015 (2014).

14 WAC 197-11-335 provides that a threshold determination shall be "*be based upon*
15 *information reasonably sufficient to evaluate the environmental impact of a proposal*".
16 See, also, *Spokane County v. Eastern Washington Growth Management Hearings Board*,
17 176 Wn. App. 555 (2013). The standard of review on adequacy of review, therefore, is
18 that the SEPA responsible official must make a prima facie showing that the determination
19 is based upon information reasonably sufficient to evaluate the impacts of a proposal.

20 4. Proposal Description. The SEPA appellants assert that the project description was
21 deficient and failed to comply with SEPA requirements. The project description was
22 indeed appalling in its failure to disclose the most basic features of the proposal, but it is
23 unlikely that these deficiencies ultimately prevented the City or other reviewing agencies
24 from adequately evaluating environmental impacts.

25 As noted by the appellants, WAC 197-11-060(3)(a) requires that agencies make certain
that proposals are properly defined. The description of the proposal, provided in the early
parts of the environmental checklist, provides the SEPA responsible official, reviewing
agencies and the public with important information on the scope and impacts of a proposal.
Question 11 on the first page of the checklist requires the applicant to "*give brief, complete*
description of your proposal, including the proposed uses and the size of the project
site..." The applicant's sole response was "Build agricultural facility and road to access".
This response is nowhere near the level of detail that should be included in a proposal
description. State reviewing agencies faced with huge stacks of checklists would likely
have no idea of the scope and type of use proposed by the applicant from this description.
Members of the public as well would be completely misguided by the scope of the project
if they relied upon the description provided by the applicant.

1 Despite the major deficiencies in the proposal description, it did not deprive the SEPA
2 responsible official of an opportunity to access information reasonably sufficient to
3 evaluate the impacts of the proposal. The applicant met with County staff at least once, on
4 1/6/14, to discuss the proposal and the fact it was a marijuana production facility, well
5 before the DNS was issued on May 7, 2014. A site plan was also appended to the SEPA
6 checklist that clearly defined the scope and scale of the production facility. The comments
7 from reviewing state agencies also showed that they had acquired sufficient information to
8 address impacts in their areas of their expertise. The findings of fact in this decision reveal
9 several areas where staff should have acquired additional environmental information, but
10 the level of that information is beyond what would be expected to be included in a SEPA
11 proposal description and there is nothing in the record to reasonably suggest that a more
12 detailed proposal description would have prevented the gaps of information identified in
13 the findings of fact. It is remotely possible that a better description may have triggered
14 more useful information from a reviewing agency or a comment letter from the public, but
15 giving substantial weight to the SEPA responsible officials determination that the
16 description was adequate it cannot be concluded that the proposal description lead to
17 inadequate review. Of course, on remand staff should required a significantly more
18 detailed proposal description.

13 5. Right to Farm Provisions⁴. County staff have taken the position that imposing any
14 SEPA mitigation measures on the proposal would violate the County's "Right to Farm"
15 provisions. This position violates the environmental review mandated by SEPA and also
16 misconstrues the intent and applicability of the "Right to Farm" provisions.

16 The County's "right to farm" provisions are governed by SJCC 18.30.050(B). SJCC
17 18.30.050(B)(2) provides that the purpose of the "right to farm" provisions is to provide
18 notice of the County's recognition and support of farming and forestry activities. To this
19 end, SJCC 18.30.050(B)(4)(a) requires that notice be recorded on the real property of
20 development projects located in proximity to or within agricultural and forestry zoned
21 parcels. The notice provides that agricultural and forestry practices involving best
22 management practices will not be considered nuisances by the County and that the
23 property owners should expect to be subjected to adverse impacts associated with

21 ⁴ In written closing argument the parties have had some disagreement over whether marijuana
22 production facilities qualify as an agricultural activity. Marijuana production clearly qualifies as an
23 agricultural activity for purposes of the "Right to Farm" provisions. SJCC 18.20.010 defines an
24 "agricultural activity" as agricultural uses and practices defined in RCW 90.58.065. RCW
25 90.58.065(2)(a) defines agricultural activities to include the production of agricultural products. RCW
90.58.065(2)(b) defines agricultural products to include but not limited to horticultural, viticultural,
hops and grains. The definition of agriculture in the SJCC is broadly defined to encompass the entire
range of plant production (excluding forestry) and it cannot be reasonably concluded that marijuana
products are not included. The Scott appellants identify that marijuana production is excluded from
the definition of agriculture from property tax statutes, Chapter 84.34 RCW. As noted by the
applicant, these property statute provisions are tailored to address the unique taxation situation of
marijuana and have no bearing on land use regulations pertaining to agricultural uses.

1 agricultural and forestry use, including as relevant to this appeal, noise, odor and the
2 application of pesticides. SJCC 18.30.050(B)(3) provides that agricultural activities on
lands zoned for agricultural use shall not be considered a nuisance.

3 The County "support" recognized in the "Right to Farm" notice does not exempt the
4 County from complying with any applicable land use requirements. This includes
5 permitting criteria that require mitigation of adverse impacts as well as environmental
6 analysis required by SEPA. Nothing in the "Right to Farm" criteria suggests anything to
7 the contrary. The most regulatory aspects of the "Right to Farm" provisions are that the
8 County will not consider agricultural activities maintaining best management practices to
be nuisances. This simply means that the County won't institute public nuisance actions
(authorized by SJCC 18.100(A)) against farmers operating farms under best management
practices. Given the plain meaning of these terms, it is unlikely that the County Council
intended the right to farm provisions to require anything more.

9 More specifically, nothing in the "Right to Farm" provisions precludes or absolves San
10 Juan County from its responsibility to assess environmental impacts under SEPA. SEPA
11 rules identify a limited number of exemptions to its requirements and provide local
12 government with a limited range of options to expand those exemptions. See WAC 197-
13 11-800. WAC 197-11-800 does not authorize counties to exempt proposals because they
14 involve "Right to Farm" activities. Consequently, if a proposed agricultural activity
15 protected by "Right to Farm" provisions will create probable significant adverse
environmental impacts, under SEPA the applicant has only two choices: (1) prepare an
environmental impact statement; or (2) mitigate the impact through an MDNS so that there
are no probable significant adverse environmental impacts⁵.

16 Although "Right to Farm" provisions do not serve as an exemption to the requirements of
17 SEPA, they are relevant in assessing whether a particular impact should be considered
18 "significant" to necessitate an MDNS condition. Residents in areas zoned for agricultural
19 use who have the "Right to Farm" notice recorded on their properties would be hard
20 pressed to argue that the odors and noises typically associated with agricultural use should
be considered "significant". Those impacts are entirely to be expected and have already
been factored into the legislative determination of the range of allowed uses in agricultural
zones.

21 Even with the "Right to Farm" provisions that may⁶ apply to the SEPA appellants, the
22 impacts targeted for further environmental analysis by this decision could still reach levels

23 ⁵ This decision only addresses SEPA mitigation measures imposed as part of an MDNS to avoid
24 preparing an EIS. Mitigation measures may also be imposed separately through SEPA substantive
25 authority. Since the exercise of that authority has not been ruled to be mandatory under SEPA, this
decision does not address whether "right to farm" provisions preclude the imposition of SEPA
conditions outside the issuance of an MDNS.

⁶ There is no evidence in the record that the SEPA appellants have in fact had a "right to farm" notice
recorded on their properties. The "right to farm" issue was first raised by San Juan County after the
close of the evidentiary portion of the hearing in response to the examiner's request for conditions of

1 considered significant. The "Right to Farm" provisions do not contemplate that
2 agricultural and forestry activities can be operated without any regard to impacts on
3 adjoining properties. The required notice specifically provides that agricultural activities
4 will not be considered nuisances "if such operations are consistent with commonly
5 accepted best management practices". The notice also contemplates that such uses "are in
6 conformance with existing laws and regulations".

7 It is important to note that the applicant has not expressly proposed to conform to "best
8 management practices" and there is no condition imposed to that effect. Just as significant,
9 it is unlikely that the new marijuana industry has yet had the opportunity to develop any
10 best management practices. Nowhere is this more of an issue than when dealing with
11 marijuana odor. Marijuana odor is unique to marijuana operations and does not smell the
12 same as manure or other odors typically associated with farming operations. Persons who
13 purchased property subject to "right to farm" provisions could not have reasonably
14 anticipated that odors associated with agricultural operations would include marijuana
15 odor, since until recently marijuana production was illegal. The applicant acknowledged
16 that there are different ways to reduce marijuana odor. Mrs. Nolan testified that numerous
17 jurisdictions are addressing marijuana processing impacts in their land use codes and the
18 LCB guidelines and ordinance provisions submitted by the appellants suggest that odor is
19 one of the impacts targeted in these regulations. It is likely that the regulations and
20 proposals being generated throughout the state are coalescing into a reasonable set of
21 procedures and mitigation measures that would qualify as "best management practices".
22 The SEPA responsible official should have had a clear understanding of what measures
23 could have reasonably been taken to mitigate odor impacts before concluding that the
24 odors generated by the proposal would not be significant.

25 On the issue of noise, certainly greenhouses and the associated noise of their fans is
something that can be reasonably associated with agricultural use. However, the "Right to
Farm" provisions only go so far in providing guidance on what should be considered a
significant impact. The DOE noise standards of Chapter 173-60 provide a well recognized
and established set of quantitative noise standards. If the proposal could potentially violate
these standards as determined in the Findings of Fact of this decision, then at the very least
the applicant should be made to take all reasonably available measures to reduce that noise.
As outlined in the Findings of Fact, on remand staff should more accurately ascertain how
much noise will be produced by the proposal and what measures, if any, need to be taken
to reduce it.

As to pesticide use, the "Right to Farm" provisions specifically identify pesticide use, so
that is a consideration in assessing the significance of impacts. Along those lines, a
primary inquiry of staff should be whether best management practices will be used to
control release of the pesticide outside the greenhouses and mitigation measures, as needed
should be imposed to ensure those best management practices are carried out. It is

approval. With or without the recordings, however, the right to farm provisions still provide that
agricultural activities will not be considered nuisances by the County.

1 appropriate, also, to ensure that the greenhouses are reasonably designed to prevent the
2 release of pesticides as well.

3 The other impacts remanded for further consideration and review by this decision are not
4 unique to farming operations and as a result the right to farm provisions do not have any
5 bearing on how they should be assessed under SEPA.

6 6. SEPA Exemption. The proposal is not exempt from SEPA review⁷. The applicant
7 argued in its pre-hearing brief that its activities are exempt from SEPA review. The
8 applicant asserted that the largest agricultural building proposed by it is 4,000 square feet
9 and that WAC 197-11-800(1)(b)(iii) exempts agricultural structures that are less than
10 10,000 square feet. However, 197-11-305(1)(b)(ii) provides that a proposal is not exempt
11 if it is composed of a series of exempt actions that are physically or functionally related to
12 each other and that together may have a probable significant adverse environmental
13 impact⁸. Adding the area of all nine greenhouses in addition to the 4,000 square foot
14 agricultural building results in combined area that exceeds 30,000 square feet, more than
15 three times the 10,000 square foot area. For this reason as well as for all of the
16 unaddressed impacts identified in the findings of fact and the fact that San Juan County has
17 not yet had the opportunity to regulate or fully investigate the impacts of the new
18 marijuana industry, it is determined that the proposal as a whole “may” have a probable
19 significant adverse impact on the environment, especially without further mitigation.

20 7. Stay During Appeal/Building Permit Revocation. The Nolan’s appeal contains a
21 provision requesting that the building permit be stayed during the pendency of the appeal,
22 pursuant to SJCC 18.80.140(A)(5). The Nolan appellants also did not argue this point at
23 any other point during the appeal. The Nolan appellants did not request an interlocutory
24 order from the Examiner to this effect and it is unlikely that the examiner in any event had
25 the authority to impose a stay or any other type of injunctive relief. It appears that the
26 stay request was more properly directed at County staff. If it applies, SJCC
27 18.80.140(A)(5) is probably self-executing and doesn’t require the issuance of any order or
28 other administrative action to stay the issuance of the building permit. If the action was in
29 fact stayed by operation of law, the applicant was essentially operating a marijuana

30 ⁷ At the outset it should be noted that the examiner likely has no jurisdiction to consider whether the
31 proposal is exempt. WAC 197-11-680 limits administrative SEPA appeals to the validity of a
32 threshold determination and the adequacy of a final environmental impact statement. A decision that a
33 proposal is categorically exempt is arguably not part of a threshold determination and therefore not
34 subject to administrative appeal.

35 ⁸ The applicant correctly notes that the agency must make a determination that the series of exempt
36 actions may have a probable significant adverse impact in order to avoid the exemption. The SEPA
37 responsible official did not expressly make any such finding, but no express finding is required by
38 WAC 197-11-305(1)(b)(ii). The SEPA responsible official noted at page 2 of the Scott staff report that
39 the exemption level for agricultural buildings is 10,000 square feet, but that the proposed agricultural
40 buildings “cumulatively total more than 10,000 square feet”. Presuming that the SEPA responsible
41 official has been applying SEPA rules correctly, it is fair to conclude that the responsible official did
42 determine that the exemptions did not apply because “cumulatively” the buildings totaled more than
43 10,000 square feet in area and as a result may generate probable significant adverse environmental
44 impacts.

1 processing operation without a building permit, which was a code enforcement issue
2 between staff and the applicant.

3 At this point (i.e. issuance of appeal decision) in the review process, the stay provision is
4 moot because the appeal process is completed (a superior court appeal would trigger the
5 stay provisions of Chapter 36.70C RCW). WAC 197-11-055(2)(c) requires that
6 environmental review be completed before an agency commits to a particular course of
7 action. Consequently, San Juan County cannot approve the applicant's building permit
8 until the remanded threshold determination is completed. There is no escaping this
9 conclusion, since the purpose of environmental review is to provide environmental
10 information to be considered in the issuance of the building permit. That function would
11 be entirely defeated if the building permit were considered issued before issuance of a new
12 threshold determination, even if it were just considered stayed. The building permit
13 approval must be revoked so that a new building permit decision can be made under
14 consideration of the environmental information produced from the new threshold decision
15 required by the remand of this decision. The building permit approval is reversed pending
16 completion of SEPA review on remand.

17 8. Disputed Rights to Fieldstone Road. The SEPA appellants asserted during the hearing
18 that the applicant does not have easement rights to Fieldstone Road, the sole private
19 vehicular access road to its facility. During the course of the appeal hearing the Nolan
20 appellants filed a quiet title action asserting that the applicant has no right to use Fieldstone
21 Road. This issue was not raised in the written appeals of either the Scotts or the Nolans
22 and is beyond the scope of the appeals. However, even if considered part of the appeal, the
23 examiner has no authority to consider the merits of the issue. As recognized in *Halverson*
24 *v. Bellevue*, 41 Wn. App. 457 (1985), cities (and also counties) have no authority to
25 adjudicate rights to real property. In the *Bellevue* case specifically the real property issue
was adverse possession, but the same reasoning would apply to issues concerning the
rights to a private easement.

An important remaining question on the Fieldstone issue is what to do with the SEPA
appeal if the easement rights cannot be addressed. It is fairly clear that access rights are
germane to a SEPA appeal, since vehicular traffic and transportation systems are
considered an element of the environment for purposes of SEPA review. See WAC 197-
11-440(2)(c). If a project doesn't have access, it clearly isn't served by adequate traffic
infrastructure. In the *Halverson* opinion, the City of Bellevue was faced with a subdivision
opponent who had filed a superior court claim asserting adverse possession rights against a
portion of the proposed subdivision. The court ruled that the City of Bellevue should have
suspended review of the subdivision until the adverse possession claim was resolved.
However, this ruling was based upon the fact that RCW 58.17.170 requires a final plat to
include the signatures of all owners of the plat. The ownership status of the subdivision
opponent couldn't be resolved until the superior court adverse possession claim was
resolved. *Halverson* is distinguishable because there is no similar signature requirement
required for the building permit or SEPA review. It is also noteworthy that only easement
rights as opposed to ownership rights are at stake in this case.

1 From an environmental perspective there is no reason to suspend SEPA or permit review
2 pending the outcome of the superior court easement claims. Should the applicant be
3 prevented from using Fieldstone Road, the applicant will have to either change its proposal
4 (most likely by a change in access) or abandon the business. If any resulting changes to the
5 proposal are likely to have significant adverse environmental impacts or involve significant
6 new information on environmental impacts, San Juan County is required to withdraw its
7 DNS. See WAC 197-11-330(3)(a). Changes to the proposal may also trigger another
8 building permit application, which also would trigger additional environmental review.
9 Through these mechanisms, any significant adverse environmental impacts caused by the
10 outcome of the superior court action will be subject to additional environmental review. In
11 order to further ensure that these changes will be adequately addressed, it is recommended
12 that staff add a mitigation measure to the MDNS that specifically provides that the County
13 will be notified of any changes to the proposal necessitated by the superior court action and
14 that these changes will be subject to additional environmental review and mitigation as
15 necessary to prevent probable significant adverse environmental impacts.

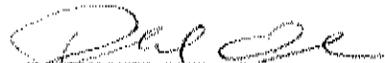
16 9. Remand Required. As detailed in the Findings of Fact, it is concluded that the SEPA
17 responsible official did not have reasonably sufficient information to evaluate the impacts
18 of noise and odor impacts as required by WAC 197-11-335. The DNS is remanded in
19 order to further evaluate these impacts and to impose mitigation (or require an
20 environmental impact statement) as found necessary to comply with SEPA. It is also
21 recommended that the remand be used as an opportunity to address the other impacts and
22 gaps identified in the Findings of Fact of this decision.

23 DECISION

24 The SEPA appeals of the Nolans and Scotts, PAPL00-14-0001 and PAPL00-14-0002, are
25 sustained. The DNS for building permit No. 14-0147 is reversed and remanded for a new
threshold determination. Approval of building permit No. 14-0147 is revoked for the
reasons discussed in Conclusion of Law No. 7.

The DNS for building permit No. 14-0147 is remanded because the SEPA responsible
official did not have information reasonably sufficient to evaluate the noise and odor
impacts of the proposal. As to odor impacts, the SEPA responsible official should
investigate the odor impacts associated with marijuana production facilities and the
measures that can be taken to control those impacts. As to noise impacts, the SEPA
responsible official should acquire enough information to be reasonably assured that the
noise impacts of the maximum noise levels produced by the proposal will not exceed the
noise levels set by Chapter 173-60 WAC. This decision contains numerous findings and
conclusions regarding other impacts and compliance with SEPA procedural requirements.
Those additional findings and conclusions serve as recommendations for further action and
investigation by County staff, but are not to be construed as mandates of his decision.

Dated this 10th day of December, 2014.


Phil A. Olbrechts

County of San Juan Hearing Examiner

Effective Date, Appeal Right, and Valuation Notices

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

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

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

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