

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

Applicant(s): John and Mary Jo Shimer  
142 30<sup>th</sup> Ave  
Seattle, WA 98122

Agent: Alan Roberson  
PO Box 681  
Lopez, WA 98261

File No.: PCUP00-13-0004

Request: Conditional Use Permit (CUP)

Parcel No: 173051052

Location: 1135 Discovery Way

Summary of Proposal: An application for a conditional use permit to allow vacation rental of a single-family home

Land Use Designation: Rural Residential

Public Hearing: April 19, 2013

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

Decision: The application is approved subject to conditions.

S.J.C. COMMUNITY

MAY 08 2013

DEVELOPMENT & PLANNING



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

S.J.G. COMMUNITY

MAY 08 2013

3 Phil Olbrechts, Hearing Examiner

DEVELOPMENT & PLANNING

4 RE: John and Mari Jo Shimer 5 Conditional Use Permit 6 (PCUP00-13-0004)	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</b>
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8 **INTRODUCTION**

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

11 **TESTIMONY**

12 **Staff Testimony**

13 Lee McEnery, San Juan planner, stated the application is for a 3-bedroom vacation  
14 rental in the Rosario area of Orcas Island. The county received one comment letter  
15 from the associated Homeowners Association. Staff is recommending approval of the  
application.

16 **Public Testimony**

17 Judith Cook, President of the Orcas Highlands Association, testified that the  
18 Homeowners Association is concerned with wildfire safety in the Orcas Highlands.  
19 Ms. Cook served as a consultant to the National Fire Protection Association from  
20 1995-2009 and is well-versed in the topic. She was a National Fire Prevention Officer  
21 for the USDA forest service from 1991-1994 and, during this period, worked on many  
22 wildfire mitigation projects. She was the executive director of Keep Washington  
23 Green, which works to prevent wildfires in Washington state, from 1989-1991. Ms.  
24 Cook retired in 2009. The western Washington ecosystem is replaced approximately  
25 every 100 years through wildfire occurrence. About 100 years have passed since  
Washington's last major wildfire activity west of the Cascades. She referenced a NY  
Times article from 1895 which notes a large wildfire occurrence in western  
Washington. In regard to Orcas Island, the trees on the island were harvested  
approximately 40 years ago. Initially, when these trees grew back, they did not have  
high density or other wildfire predictors. Orcas Highlands is adjacent to a state park,  
however, and this park has not been harvested. Therefore, these trees have not been  
sawed for over 100 years and the area is developing into a canopy which could sustain  
a high-intensity fire. The Highlands is situated on steep slopes which would

1 significantly enhance the spread of wildfire, and much of the slope areas include down  
2 and dead fuel matter which increases crown fire potential. There is a high density of  
3 homes in the highlands which could be destroyed if fire breaks out. The Washington  
4 State Department of Natural Resources listed the San Juan Islands as an area of high  
5 wildfire list. Additionally, the Orcas Highlands was noted specifically in the recently  
6 published community wildfire protection plan (exhibit 5).

7 Ms. Cook continued her testimony, noting that the street that accesses the Orcas  
8 Highlands is the single mean of ingress and egress into the community. The roads are  
9 not paved, except for a small amount that the city maintains. There are no shoulders,  
10 and roads are one lane. If wildfire breaks out, 105 homes will need to evacuate down  
11 this single route. Smoke and panic will cause car accidents. Fire trucks cannot enter  
12 on a one way road if people are coming out. In July 2012, the Orcas Island Fire Chief  
13 sent a letter to resident stating that emergency vehicle access is a challenge due to the  
14 topography of Orcas Island, and the road system creates a greater challenge because it  
15 is narrow, restrictive, and serves approximately 100 homes. The Washington Water  
16 Service supplies the water to the Highlands, and the community points transport water  
17 from Rosario up the hill. During a major fire, the pumps would stop operating and fire  
18 trucks would have difficulty refilling fire tanks. Allowing rental homes will increase  
19 the population in the community during wildfire season. An average home has three  
20 residents while an average vacation rental has 6-7, based on observation. Vacationers  
21 will not understand the threat of wildfire and, furthermore, will not know what to do if  
22 fire breaks out. The Homeowners Association recommends the application be denied  
23 to protect current residents.

24 Jim Hennessey, Orcas Highland resident, stated that this is an issue of safety. Over 30  
25 percent of the residents in the Highlands are renters or people who do not live on the  
island year-round. This creates communication problems, especially when discussing  
emergency protocols. It is unclear if renters are informed of the threat of wildfire and  
evacuation routes. In addition, the Homeowners Association would like to add a day  
limit in which a rental can exist on the island and a limit on the number of rentals that  
can exist based on a percentage of the total homes. The Shimers have hired an agency  
to handle the renting of their residence. The Homeowners Association is not familiar  
with the specific agency and is worried the agency will not be responsive if there is an  
issue with renters.

#### 21 Staff Rebuttal

22 Lee McEnery noted that the county does not intervene in covenants unless the county  
23 is a party member.

#### 24 Applicant Rebuttal

25 Mr. Robertson noted he is the San Juan Regional Manager for the agency overseeing  
the rental of the Shimers' home. There is an emergency contact person on Orcas

1 Island to respond to any problems with the rental. The agency does not rent to minors  
2 without a legal guardian being on site as well.

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4 **EXHIBITS**

- 5 Ex. 1: Staff report.  
6 Ex. 2: Application materials.  
7 Ex. 3: 4/1/13 letter from Judith Leraas Cook  
8 Ex. 4: Undated letter from Alan Roberson  
9 Ex. 5: Fire study  
10 Ex. 6: Written comment from Judith Leraas Cook

11  
12 **FINDINGS OF FACT**

13 **Procedural:**

- 14 1. Applicant. The applicants are John and Mari Jo Shimer.  
15 2. Hearing. The Hearing Examiner conducted a hearing on the subject  
16 application on April 19, 2013 at 10:00 am at the Islander's Bank annex in Friday  
17 Harbor.

18 **Substantive:**

- 19 3. Site and Proposal Description. The Applicant proposes the vacation rental  
20 of a three bedroom single family home located at 1135 Discovery Way, Orcas Island.  
21 4. Characteristics of the Area. The surrounding neighborhood is rural and  
22 residential in nature.  
23 5. Adverse Impacts of Proposed Use. There are no adverse impacts caused  
24 as a result of the proposed use. As conditioned, the proposed use should not interfere  
25 with the residential use of neighboring properties. Noise must be kept to a minimum  
and a 24-hour phone number must be provided in case problems arise.

Concerns were raised by adjoining property owners about fire safety. Ms. Judith Leraas Cook testified that the proposed vacation rental is located in a 100 lot subdivision with one access road. The interior roads of the subdivision are narrow and emergency vehicles could have trouble access homes if people park on the road. Trees in the vicinity have matured and developed into a canopy that could support a major wildfire. The narrow streets and limited access of the subdivision would make it difficult for home owners to evacuate. The fire chief of Orcas Fire and Rescue has sent a letter to Ms. Leraas Cook, part of Ex. 6, confirming that emergency access is a problem in the development.

1 As noted by the examiner during the hearing, the proposal can only be denied or  
2 conditioned for impacts that it creates beyond that already allowed at the site, i.e.  
3 single family residential use. Mr. Judith Leraas Cook asserted that vacation rentals  
4 are usually associated with higher occupancies than single-family use when rented  
5 out. That may very well be the case, but as noted by the applicant in Ex. 4, vacation  
6 rentals are generally only occupied 100 nights per year. Use of homes for vacation  
7 rentals may actually serve to reduce fire evacuation and access problems by overall  
8 reducing the number of people occupying the development. It is recognized that  
9 vacation rentals would probably have their highest occupancy during summer  
10 months when the risk of wildfire is at its peak, but there is still no concrete evidence  
11 that an increase in occupancy would in summer months would actually exacerbate  
12 existing evacuation or emergency access problems. Despite this, it is reasonable to  
13 conclude that the temporary occupants of vacation rentals will not have the same  
14 knowledge of these fire issues as more permanent residents. For this reason, the  
15 Rules of Conduct required to be provided to vacation rental occupants shall be  
16 required to include information on the evacuation route and to discourage on street  
17 parking.

11 Neighborhood concerns also included adequacy of infrastructure and public services,  
12 but as determined in the preceding paragraph there is no evidence that the proposal  
13 will increase demand upon public services and infrastructure.

## 14 CONCLUSIONS OF LAW

### 15 **Procedural:**

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

### 18 **Substantive:**

19 2. Zoning Designations. Rural Residential.

20 3. Permit Review Criteria. Table 3.2, SJCC 18.30.040 authorizes vacation  
21 rentals in the rural residential district as a conditional use. SJCC 18.80.100(D)  
22 governs conditional use criteria. SJCC 18.80.100(D)(8) requires compliance with the  
23 performance standards of Chapter 18.40 SJCC. SJCC 18.40.270 contains detailed  
24 standards for vacation rentals. The criteria for conditional use permits (SJCC  
25 18.80.100(D)) and vacation rentals (SJCC 18.40.270) are quoted below and applied  
through corresponding conclusions of law.

### Vacation Rentals of Residences Criteria

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

1 4. The project is conditioned to limit the total number of guests for the 3  
2 rooms to 9.

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

5 5. The conditions of approval of the permit have been imposed to prevent  
6 any unreasonable disturbances. These conditions include limitation of occupants to  
7 nine guests, required posting of rules of conduct which specifically mention  
8 prohibition of trespassing and identify property lines, provision of a 24-hour contact  
9 phone number to neighbors in case problems may arise, and required maintenance of a  
10 written log of complaints. The rules of conduct shall advise guests that the Orcas  
11 Highlands subdivision has only one access road and that this road that should be used  
12 to evacuate the subdivision in case of fire or other disaster. The rules shall further  
13 provide that renters should not park on the street in order to facilitate access for  
14 emergency vehicles.

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

14 6. There are at least four parking spaces on the property Table 6.4 of SJCC  
15 18.60.120 only requires two off-street parking spaces for single-family dwellings.

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

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

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

20 8. No outdoor advertising is proposed.

21 **SJCC 18.40.270(F):** *The owner or a long-term lessee may rent either the principal*  
22 *residence or the accessory dwelling unit on a short-term basis (vacation rental), but*  
*not both.*

23 9. There is no accessory dwelling unit.

24 **SJCC 18.40.270(G):** *Where there are both a principal residence and an accessory*  
25 *dwelling unit, the owner or long-term lessee must reside on the premises, or one of the*  
*living units must remain unrented.*

10. There is no accessory dwelling unit.

1 **SJCC 18.40.270(H):** *In all activity center land use districts, rural residential, and*  
2 *conservancy land use districts, the vacation rental of a residence or accessory*  
3 *dwelling unit may be allowed by provisional ("Prov") permit only if the owner or*  
4 *lessee demonstrates that the residence or accessory dwelling unit in question was*  
5 *used for vacation rental on or before June 1, 1997. When internal land use district*  
6 *boundaries are adopted for an activity center, this provision will apply to VR and HR*  
7 *districts but not to the activity center in general.*

8 11. The Applicant is applying for a conditional use permit as authorized by  
9 Table 3.1 of SJCC 18.30.040 instead of a provisional use permit because the proposal  
10 is the first vacation rental of the property.

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

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

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

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

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

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

24 **SJCC 18.40.270(L):** *Detached accessory dwelling units established under SJCC*  
25 *18.40.240 cannot be separately leased or rented for less than 30 days.*

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

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

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

25 16. This proposal is consistent with the SJCC for the reasons stated above.  
The vacation rental is consistent with the San Juan County Comprehensive Plan,  
which allows for tourism-related businesses and activities within the context of

1 maintaining a diverse and balanced economy while minimizing the related negative  
2 impacts.

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

6 17. The proposed use does not alter the general use of the structure as there  
7 will be no change in the exterior appearance of the dwelling. Adverse impacts are  
8 minimized and compatibility is maximized through the conditions of approval. The  
9 criterion is satisfied.

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

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

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

20 19. The property will continue to appear and function in a manner similar to  
21 the existing use, and further similar requests will not produce significant adverse  
22 impacts to the environment.

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

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

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

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

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

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

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

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

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

11 24. There is no airport or airfield adjacent to this property.

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

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

### 16 DECISION

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

19 1. The 3-bedroom vacation rental shall be operated as described in the application  
20 materials except as modified by these conditions.

21 2. A maximum of nine guests shall occupy the vacation rental at any one time.

22 3. No food service is to be provided. No outdoor advertising signs are allowed.  
23 Adequate parking is required.

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

5. No use of the property shall be made that produces unreasonable vibration, noise,  
dust, smoke, odor or electrical interference to the detriment of adjoining properties.

6. A 24-hour non-message, non-recording contact number shall be provided to  
Community Development and Planning Department (CDPD) and to all neighbors  
within 300 feet of the property. A log of complaints shall be kept and a copy  
provided to CDPD upon request.

1 7. Prior to any rental, a proposed written Rules of Conduct will be submitted to and  
2 approved by CDPD. The Rules of Conduct shall specifically deal with trespass,  
3 property boundaries, noise disturbances and any special items specific to the rental  
4 unit or adjoining properties. The rules of conduct shall advise guests that the Orcas  
5 Highlands subdivision has only one access road and that this road should be used to  
6 evacuate the subdivision in case of fire or other disaster. If adjoining roads do not  
7 have "no parking" signs and staff finds them too narrow to accommodate both on  
street parking and emergency access, the rules shall provide that renters "should" not  
park on the street in order to facilitate access of emergency vehicles. Upon approval  
by CDPD a copy of the Rules of Conduct shall be posted in the residence, given to all  
adult tenants and given to all property owners within 300 feet of the residence.

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

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

12 Dated this 3rd day of May, 2013.

13   
14 Phil A. Olbrechts

15 County of San Juan Hearing Examiner

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17 **Effective Date, Appeal Right, and Valuation Notices**

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19 Hearing examiner decisions become effective when mailed or such later date in  
20 accordance with the laws and ordinance requirements governing the matter under  
21 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.

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

25 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

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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.