

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant: F. and P. Penwell Trust
6739-B Roche Harbor Road
Friday Harbor, WA 98250

Agent: Francine Shaw
PO Box 2112
Friday Harbor, WA 98250

File No.: PCUP00-13-0008

Request: Conditional Use Permit

Parcel No: 361943002

Location: 6739-B Roche Harbor Road
Friday Harbor, WA 98250

Summary of Proposal: Conditional Use Permit for expansion of nonconforming
consignment and recycling business

Land Use Designation: Rural Farm Forest

Hearing Date: August 14, 2013

Application Policies and Regulations: SJCC 18.80.100(D) et. seq.

Decision: Partially approved with conditions.

S.J.C. COMMUNITY

SEP 05 2013

DEVELOPMENT & PLANNING

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

3 Phil Olbrechts, Hearing Examiner

4 RE: Consignment Treasures 5 Conditional Use Permit 6 (PCUP00-13-0008)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION
---	--

7
8 **INTRODUCTION**

9 The applicant has applied for approval of a conditional use permit to expand the uses
10 and add improvements to Consignment Treasures, an existing nonconforming
11 recycling and consignment business on Roche Harbor Road. The applicant proposes
12 to expand the use of its property to encompass recycling collection (specifically
13 adding a public drop off for recyclables); change the use of two buildings from
14 storage to retail; expand the size of a couple buildings; expand outdoor storage; and
15 construct a new building and other structures for recycling operations. Most (but not
16 all) of the requested improvements and changes in use are authorized as outlined in
17 the "Decision" section of this decision, below. The request to expand outdoor storage
18 from a maximum of 30 days per item to one year is denied.

19 **TESTIMONY**

20 Lee McEnery stated that the application is for Consignment Treasures, an existing
21 business on Roche Harbor Road, to add drop-off recycling, change some uses from
22 storage to retail, add on to some existing buildings, allow outdoor storage, and
23 construct a new building for recycling drop-off. Ms. McEnery originally denied the
24 application, but many of the issues have been addressed by the applicant since the
25 denial such as Health Department approvals. The remaining issues include noise,
26 consistency with the Comprehensive Plan, accuracy of the traffic study, and the
27 building coverage of rural zone.

28 Applicant Testimony

29 Francine Shaw, representing the applicant, testified that the property has been used
30 for commercial purposes for many years. The property was commercial before the
31 Comprehensive Plan was enacted. When the Comprehensive Plan was adopted, the
32 County designated the property rural, thus the building on the property was
33 considered non-conforming. In 1997, Mr. Frank Penwell, the property owner,
34 requested a conditional use permit to add a 1,500sqft building for retail purposes
35 (building #2 on the site plan). The permit was approved. In 2005, Mr. Penwell was

36 Conditional Use Permit

1 approved for another two buildings (buildings #4 and 5). The buildings are used for
2 storage and retail. However, the County only recognizes building #3 as being used
3 for storage and will not allow the public to access this building. Therefore, Mr.
4 Penwell was directed to apply for a change of use permit from storage to retail. In
5 2008, Mr. Penwell applied for a conditional use permit to add recycling processing at
6 the property; however, at that time, the San Juan County Code (SJCC) prohibited
7 drop-offs. This permit was approved with the condition that employees of
8 Consignment Treasure would pick up recycling from individual homes and bring it
9 to the site. This system is problematic because customers come to purchase items
10 from the store and wish to drop off old items at the same time. The County Council
11 has since amended SJCC (Ordinance 25-2012) to allow drop-offs at recycling
12 processing businesses that receive a conditional use permit.

13 In regard to consistency with the Comprehensive Plan, Ms. Shaw noted that SJCC
14 18.10.050 states that “the provision of this code (UDC) shall prevail over any
15 conflicting provisions in the San Juan County Comprehensive Plan except as
16 provided in subsection C (the Shoreline Master Program).” Thus, it is acceptable
17 that the proposal is inconsistent with the Comprehensive Plan as it meets UDC
18 standards. In regard to outdoor storage, this form of storage is not allowed in a light-
19 industrial land-use zone; however, Consignment Treasures does more than just
20 recycle. The products brought to the site by just islanders is not enough to carry the
21 business, thus they bring in items from off-island that must be stored. The business
22 must be viable so that it can pay its employees and contribute to charitable
23 organizations. Consignment Treasures donates to the MLS Senior Center, Dollars
24 for Scholars, the Umbrella Group, the Red Cross, and several other charities. When
25 Consignment Treasures receives large items such as hot tubs or boats, these items are
stored outdoors. These items are required by the 2005 CUP to be moved in 30 days,
but they do not always sell in that time. In the commercial standards, there is no
prohibition of outdoor storage. Since the site is industrial and commercial, the
storage is acceptable and should be allowed for up to a year. Consignment Treasures
has no plans to store industrial items, such as recyclables, outdoors. The applicant
asks that the 2005 CUP condition of 30-day outdoor storage be removed as part of
this decision. In regard to noise, the site has been subject to a zoning enforcement
action. The SJCC (chapter 9.06) does not define any quantifiable noise levels as
unreasonable. SJCC references Washington state laws (WAC 173.60) which sets
decibel levels. Consignment Treasures used the neighboring properties to determine
the maximum decibel level allowed. Ms. Shaw incorrectly analyzed the state decibel
tables when creating the original application. She cited 55 decibels as the maximum
noise level at the property line of the receiving property; however, the table actually
shows 60 decibels as the loudest for an industrial-use. The loudest noise coming
from Consignment Treasures is 57 decibels, thus the site meets all noise
requirements. Additionally, the noise is not constant because the trucks do not
unload all of the time.

Copper Calhoun, Consignment Treasures Manager, added that the frequency of
trucks coming to and from the site is greater in the summer because more garage

1 sales occur in this time. The employees do not play loud music and turn off trucks
2 so they are not idling while on the property. He has taken decibel reads of the
3 loudest equipment on the site and found the decibels to be between 45-50 at the
4 property line. The store would be willing to park the trucks in one place on the
5 property and use dollies to move items to the buildings rather than driving the trucks
6 all around the site.

7 Francine Shaw noted that there are substantial vegetation buffers between the site
8 and surrounding properties. Limiting the days or hours of operation is not an option
9 because the noise is already limited. The code enforcement action was initiated by
10 complaints, mainly about noise. In regard to building coverage, the site plan shows
11 the current uses and the proposed uses on site. In regard to 18.40.110, this code
12 refers to commercial uses, not industrial use. The limits of building coverage
13 outlined in table 8.2 (exhibit 5 attachment) are for commercial use and do not apply
14 to this project. The total building coverage of the subject site will be 13,076sqft
15 (residential, commercial, and industrial). Total commercial building coverage will
16 be 8,360sqft. Total industrial building coverage will be 3,092sqft. This coverage
17 meets all code standards. In regard to landscape, the applicant submitted a landscape
18 plan. A zoning enforcement officer submitted a letter in March which noted that the
19 landscape screening on site was adequate. Mr. Penwell plans on adding vegetation
20 along the frontage of the site. In regard to traffic, a traffic study was completed by a
21 civil engineer. The study found that the recycling dropoff will add 11 peak hour
22 trips to the site per day. Roche Harbor Road has enough capacity to handle these
23 additional trips. In regard to environmental protection, the applicant submitted a
24 spill management plan to protect the critical aquifer recharge area. Water and sewer
25 have enough capacity for the improvements, according to county officials. The
sewer can handle up to nine employees, and the project will not create any additional
wastewater.

17 Public Testimony

18 Frank Penwell, Chairman of the Board for Consignment Treasures, stated this is the
19 fourth conditional use permit for the property. He is frustrated with the county's
20 land application process and believes it infringes on property rights. For all of his
21 previous land use applications, he has appeared before the hearing examiner rather
22 than sue because he does not want to place that financial burden on San Juan County.
23 He follows four tenants in his life: (1) tolerance towards others, (2) not all truths are
24 known, (3) patience is necessary to move ahead in life, and (4) responsibility of each
25 individual to give back to his/her community. He started Consignment Treasures
eight years ago to fulfill the fourth tenant. The facility is essential to the public
because: (1) it ships out recycling (220lbs in 2012), (2) many in the community need
thrift shop services to supply their families, and (3) the thrift shop assets are needed
if a catastrophe occurs. Catastrophes occur everywhere and could occur on San Juan
Island. The facility has given back over \$160,000 in cash to local charities and
organizations such as Dollars for Scholars (Consignment Treasures is the largest and
most dependable donor to this program). These outputs meet WAC standards for

1 an essential public facility. San Juan County has failed to meet RCW 36.7.70a
2 because it did not share a list of its public facilities prior to September 1, 2002. The
3 County has not properly planned for essential public facilities as required by law. In
4 an email, the County Manager noted that creating an essential public facilities master
5 list was on the to-do list, but had not been completed, according to Mr. Penwell. On
6 January 21, 2011, the San Juan Planning Commissioner noted that there was an
7 insufficient amount of land designated for essential public facilities. He asked that
8 the hearing examiner's decision not impose unnecessary restrictions on the recycling
activities at Consignment Treasures. The 80ft buffer and 30-day outdoor storage
conditions on the permit obtained in 2005 were offered by Mr. Penwell, and the
County Hearing Board never asked for these conditions. There is no need for these
restrictions, and they should be removed. WAC365.196.350 dictates that any
conditions placed on essential public facilities must be necessary to mitigate an
identified impact.

9 According to Mr. Penwell, in 2012, a county councilmember motioned the Council
10 to support Consignment Treasures activities, and the whole Council agreed. This
11 was just one of many showings of support from the public. Consignment Treasures
12 offers islanders an inexpensive place to shop, a place to bring recyclables, and
13 monetary support for the community. The business must remain open on weekends
14 because that is the busiest time. The applicant is willing to end weekend truck
15 deliveries. In regard to noise, the loudest noise heard on the property has been from
16 guns going off on neighboring properties. In regard to the recycling drop-off, the
17 code did not prohibit drop-off at the time first conditional use permit was issued;
however, county staff prohibited it as a condition of the permit to stop Consignment
Treasures from competing with the County's recycling program. The County
mistakenly marked the site as only a storage area instead of storage/retail space. In
regard to outdoor storage, the existing situation is very bad because the County
removed two of the buildings resulting in lots of items being store outside.

18 Copper Calhoun noted that he has never had a neighbor complain about the noise to
19 him.

20 Mark Larson stated that he lives across the street from the property and agrees the
21 sound from the trucks is not a concern. However, on site, there is an excavator
22 which picks items up and crushes them. This process creates large amounts of
23 jarring noise. The sound is worst in the mornings, on weekends, around 8am. Mr.
24 Larson is not the closest neighbor and has a vegetation buffer, but he can still hear
the loud noises. The noise continues for at least an hour, depending on what is being
crushed. The noise can also be heard in the evenings. The sound of glass crushing is
not pleasant. Consignment Treasures has a history of conditional use permits and
non-compliance. This history should be considered in the final decision.

25 Stephanie O'Day testified that Mr. Penwell does not make money from the facility;
instead, he uses the site to benefit the community. Additionally, Consignment
Treasures is one of the few places to recycle large items on the island.

1 Staff Rebuttal

2 Lee McEnery noted that philosophy nor profitability factor into land use decisions.
3 She did not know the store purchased things to resell and does not know how this
4 factors into previous CUPs and the code. Yes, the business is partially commercial,
5 but it also participates in industrial activities. In regard to noise complaints, she is
6 unaware how many have been made by neighbors in the past.

6 Applicant Rebuttal

7 Francine Shaw stated that the property is currently in compliance with SJCC.
8 Exhibit 5 has a letter from Chris Laws, San Juan Code Enforcement Officer, which
9 states the site is in compliance. Consignment Treasures is not limited to donated
10 items and has the ability to purchase items for sale. The applicant is willing to limit
11 disassembly and compact to weekdays between business hours. The noise levels
12 comply with state law. There is the potential to build fences within the development
13 to provide additional noise protection. The site is mixed use, and the UDC prevails
14 over the Comprehensive Plan; therefore, the permit should be approved.

12 Frank Penwell commented that he does not believe Mark Larson is a credible
13 witness. No employees are on site until after 9am so the excavator is not used in the
14 early morning. Mr. Penwell tested the noise decibels with the excavator shaking
15 metal, and he found that the decibel readings from the roadway were still higher than
16 those put out by the excavator. Work is rarely done on the property after store
17 closing hours.

16 **EXHIBITS**

- 17 Exhibit 1 Application Materials
18 Exhibit 2 Public Comment Letters
19 Exhibit 3 Staff Correspondence w/ applicant
20 Exhibit 4 Mounted Photos
21 Exhibit 5 Francine Shaw Email w/ attachments dated August 13
22 Exhibit 6 April 23, 2013 Shaw letter to Fire Marshal Marler
23 Exhibit 7 8/16/13 email from Lee McEnery to Examiner re traffic study

23 **FINDINGS OF FACT**

24 **Procedural:**

- 25 1. Applicant. F. and P. Penwell Trust

2. Hearing. The Hearing Examiner conducted a hearing on the subject application on August 14, 2013 at 10:00 am at the Islander Bank Annex, 225 Blair Ave, Friday Harbor. The record was left open for public works comment on the traffic report, due August 21, 2013.

Substantive:

3. Site and Proposal Description. The applicant has applied for approval of a conditional use permit to expand the uses and add improvements to Consignment Treasures, an existing recycling and consignment¹ business on Roche Harbor Road. The applicant proposes to change some uses from storage to retail, add on to some existing buildings, allow outdoor storage, and construct a new building for recycling drop-off. The recycling drop-off and expansion of buildings for recycling use are approved.

Consignment Treasures currently consists of four buildings and associated outdoor storage and parking areas. The business takes in and resells used clothing, household items, appliances, furniture, and construction materials from and to the public. Recyclables are collected at off-site locations and then brought back to the project site where they are disassembled and/or packaged for transportation for final processing off-island. The project site is solely accessed by and fronts Roche Harbor Road.

The proposed changes and additions to Consignment Treasures are as follows:

- a. Allow public drop-off of all kinds of recyclables, process items and store processed items until shipped/sold.
- b. Modify the existing use and construct new buildings:
 - i. Change the permitted storage use of buildings 2 and 3 to retail sales and display area.
 - ii. Enclose existing outdoor storage and retail space. Note that outdoor storage exceeding 30 days for any single item was prohibited by the previous land use permits so much of the outdoor storage does not currently qualify as lawful nonconforming use.
 - iii. Building 2: build new 10' x 45' and 14' x 38' roof extensions on west side of structure to cover proposed retail and storage.
 - iv. Building 4: build new 10' x 110' roof extension on west side to cover proposed recycling storage. Build new 14' x 40' roof extension on east to cover proposed recycle drop-off area.

¹ The staff report does not recognize the consignment business of the property and recommends that all sales be limited to recycled items. However, consignment sales was expressly addressed and approved in 05CU016, COL No. 5, where the examiner concluded that the change from the sale of building products to consignment items was consistent with nonconforming use standards.

- v. Build new 24' x 60' building for sorting recyclables.
- vi. Place new 4' x 8' recycling bin at north entrance for proposed public drop-off of aluminum cans.
- vii. Add landscaping along road to screen the site as viewed from the road. (Note that landscaping in itself is not subject to approval of a land use permit but is usually a condition of approval.)

c. In addition, changing a previous condition is proposed. The wish is to store unusual outdoor items for up to a year, instead of the existing 1 month limit. See page 8 of application narrative. Previous permits prohibited outdoor storage and said that if items must be stored, they were to remain for a maximum of 1 month.

Buildings 1, 2, 3 and 4 will be used for display of retail sales items and thus are considered commercial. In addition, the proposed shed roof addition to Building 2, which is being built to enclose retail items, will also be used to display items for resale. However, the proposed shed roof addition to the south side of Building 4 will be used to enclose and store recyclables (industrial items) currently kept outside. The proposed shed roof addition to the north side of Building 4 will be used strictly for recycling drop off, and cover for two off-street parking stalls. The shed roof additions to Building 4 will not be used for commercial purposes. The total building area devoted to commercial use is 8,360 square feet as outlined at p. 5 of the applicant's response to the staff report, Ex. 5.

The project site has been used for commercial purposes since 1978. At that time San Juan County had no zoning code. In 1979 San Juan County adopted its first zoning code and the project site was designated Rural-10. The Rural-10 designation rendered the project site nonconforming, because it prohibited the on-site commercial activities. Consignment Treasures has a long history of expansion and development, summarized in its chronology of conditional use permit approvals as follows:

97CU026: The proposal was to expand a non-conforming use (Island Wholesale Products, retail sales of building supplies) by constructing 1,500 square foot workshop and storage building (shown on the current site plan as "building #2). Outdoor storage was to be at least 80' from the county road and stored no longer than a month. Additional tree screening was required between the county road and the building. (permit dated 12/19/1997) That building currently is used for retail sales as well as storage. Items are stored outside the building.

05CU016: The proposal was to build 2 new storage buildings (shown on the current site plan as "building #3 (small) and "building #4) to cover items that had been stored outside, and attempt compliance with the "no outdoor storage" restriction on previous permit. The use of the original retail building (shown on the current site plan as building #1) had already evolved from Island Wholesale (open 7 days a week) to Consignment Treasures (open 4 days a week) so it was thought that the traffic levels

1 and intensity of the use would be reduced by fewer days of activity. Additional trees
2 were required to screen the two new buildings. Items that had been stored outdoors
3 (despite permit conditions prohibiting outdoor storage) would soon be in closed
4 buildings and a condition was established that the prohibition of outdoor storage was
5 to be strictly adhered to. (permit dated 5/31/2006) Those two buildings are currently
6 used for storage and for retail sales. Items are stored outside the buildings.

7 08CU014 : The approval allowed employee-pick up of recycling so items could be
8 processed on the site. The conditions of approval mention that the regulations
9 prohibit public drop off of recycling in the Rural Farm Forest designation. One of the
10 existing buildings (Building No. 4) was to be used for recycling processing. The site
11 plan shows the words "Recycling area" on the north end of the parking area. It was
12 estimated that the recycling business would generate no more than 5 round trips per
13 day. Landscape screening was required to be planted in 3 places: along the road,
14 adjacent to residential uses and to screen the 50 parking spaces. (permit dated
15 10/31/2008)

16 4. Characteristics of the Area. The neighborhood is residential in nature,
17 wooded and bisected by the county road. Roche Harbor Road is a minor collector
18 road carrying traffic between Friday Harbor and Roche Harbor. There is no adjoining
19 airport or airfield.

20 5. Adverse Impacts of Proposed Use. As conditioned and limited by this
21 decision, there are no significant adverse impacts associated with the proposal.
22 Impacts are addressed more specifically below. The impacts are only those impacts
23 associated with the portions of the proposal that area authorized by this decision.

24 A. Noise. One of the two greatest concerns associated with the proposal is noise.
25 The applicant will be required to put together a noise mitigation plan, subject
to the approval of staff, which mitigates the additional noise created by the
proposed improvements and changes in use.

Noise comes from many sources at the project site. The applicant operates a
crusher as part of its recycling business. Mark Larson, who is not the closest
residential neighbor to the project, testified that the recycling crushing
activities on site are very loud and can last for an hour or more at a time.
Other sounds associated with the project site as noted at the hearing are the
sounds of trucks backing and the music from vehicles of business patrons.
The staff report notes that noise may be generated by a baler and forklift; by
dismantling recyclable items; and by dumping recyclables into bins, out of
bins and into trucks; and by processing recyclables.

The noises identified in the preceding paragraph are unreasonably detrimental
to adjoining residential uses and are above ambient noise levels at the property
lines. However, the only noise impacts that can be mitigated through this
application are the new noises created by the proposed improvements and

1 changes in use. Presumably, the crusher will be used more often due to the
2 addition of the recycling collection facility and the proposed changes will
3 increase other noises as well. Unfortunately, it is not clear from the record
4 how much these noises will increase, or how reasonably noise mitigation
5 measure can be integrated into the applicant's business operations.
6 Consequently, the applicant will have to prepare a noise mitigation plan
7 subject to the approval of staff. The noise mitigation plan should meet the
8 following objectives and guidelines:

- 9 a. Noise mitigation is limited to off-setting the noise created by the
10 proposed improvements and associated intensification and changes in
11 use proposed in this application.
- 12 b. Mitigation of existing noises can be used to off-set the creation of new
13 noises resulting from the development and activities authorized by this
14 decision.
- 15 c. The noise generated by the crusher/excavator appears to be the loudest
16 part of the applicant's operations. At a minimum, the mitigation plan
17 should prohibit crushing activities on weekends and limit them to
18 business hours on weekdays.
- 19 d. Prohibiting retail sales on one or both weekend days would be an
20 unreasonable encroachment into the business operations of the
21 applicant, given that only new (as opposed to existing) noise is subject
22 to mitigation. Restricting hours of operation to normal business hours
23 or the like may be required by staff if found necessary.
- 24 e. Other options to consider in a noise mitigation plan are those
25 suggested by the applicant during the hearing, e.g. using dollies in lieu
of trucks and other loud equipment to move materials around the
project site; not taking truck deliveries on weekends; and installing
fencing.

18 B. Aesthetics. The second impact of greatest concern for the proposal is
19 aesthetic impacts. As mitigated by the Type 1 landscaping proposed by the
20 applicant, the proposal will not create significant aesthetic impacts.

20 The proposal is located within a pastoral residential community along a scenic
21 road used by the island's tourists and residents who drive from Friday Harbor
22 to Roche Harbor. Any significant additional development at this already well
23 developed site would be out of character with the surrounding rural level of
24 development and would create significant adverse aesthetic impacts. The
25 specific development authorized by this decision would qualify as such
significant aesthetic impacts.

The Type 1 landscaping proposed by the applicants should suffice to
adequately mitigate these impacts. In assessing the aesthetic impacts, it is
important to recognize that the impacts subject to mitigation are only those
caused by the new development proposed by the applicants, not the existing

1 storage or buildings. The Type 1 landscaping is a reasonable mitigation
2 measure in response to the added mass and scale proposed by the applicant. It
3 is acknowledged that the landscaping was proposed by the applicant for
4 outdoor storage, but the expanded buildings also create their own significant
5 adverse aesthetic impacts. It is also recognized that there is already a row of
6 trees that buffers the development from Roche Harbor Road, but these trees
7 are do not create an visually impenetrable wall along the western half of the
8 road frontage where the landscaping is proposed. If the existing trees did
9 provide for complete screening the applicant would have seen no need to
10 propose the landscaping.

11 C. Vibration, dust, smoke, odor, electrical interference. The staff report notes
12 that no homes are located close enough to the proposal to be adversely
13 affected by vibration, dust, smoke, odor or electrical interference. This staff
14 observation is consistent with the location of surrounding homes (as shown in
15 the aerial photographs in Ex. 1) and the staff finding is taken as a verity.

16 D. Critical Areas. No critical areas are located at the site except for an aquifer
17 recharge area. To fully mitigate impacts to the aquifer recharge area, the
18 conditions of approval will require the applicant to submit to staff for approval
19 a plan that lists quantities and types of chemicals to be used by the activities
20 and development authorized by this decision; a spill containment plan if
21 necessary and a plan for disposal of waste materials.

22 E. Parking. The applicant's project narrative, Ex. 1, at p. 13-14 identifies that
23 the proposal exceeds applicable parking standards and the staff report concurs
24 in this opinion. As modified by this decision of approval the amount of
25 parking required for the proposal would be less than anticipated by the
applicant, so more than sufficient parking is provided for the proposal.

6. Impacts of Change of Use in Buildings 2 and 3. There is no information in the
record on the impacts of changing the use in Buildings 2 and 3 from storage to retail
sales. It would be reasonable to conclude that an increase in retail sales space would
result in more customers, which in turn would result in more traffic and noise than
that would be generated by the legal (i.e. excluding unlawful outdoor storage) uses of
the site. However, the staff do not raise any concerns over this issue and the two
buildings only have a total area of a little more than 2,200 square feet. Given that
some flexibility should be afforded for the expansion of existing businesses, it is
determined that more likely than not the proposed change in use to buildings 2 and 3
will not result in any significant increase in adverse impacts or demands on public
services, including no significant increase in traffic or noise.

7. Adequacy of Public Infrastructure/Services. The on-site septic system has
been reviewed by the San Juan County Environmental Health Manager and found to
be adequate to serve up to ten employees. Consignment Treasures will have a

1 maximum of five employees on site. The septic system has also been inspected by the
2 County and found to be in working order. The business is also served by a Group B
3 water that is in compliance with local regulations. Presumably this operating system
4 is sufficient to accommodate the demand created by the proposal as approved, but this
5 will ultimately be addressed during building permit review. The applicant asserts that
6 no stormwater improvements are necessary because no new impervious surface is
7 proposed. Any additional stormwater improvements would be minor and easily
8 accommodated on site given the minor amount of new improvements authorized by
9 this decision, so stormwater review will be deferred to building permit review. The
10 conditions of approval will require fire marshal review of access and other fire code
11 requirements.

12 The proposal is served by adequate traffic facilities. The applicant submitted a traffic
13 study as an attachment to Ex. 5. The study concludes that Roche Harbor Road has
14 sufficient capacity to accommodate the traffic generated by the proposal. The traffic
15 study was reviewed by San Juan County Public Works and they had no comment on
16 the study.

17 CONCLUSIONS OF LAW

18 **Procedural:**

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

22 **Substantive:**

23 2. Zoning Designation. Rural Farm Forest.

24 NONCONFORMING USE ISSUES

25 3. Expansion of Outdoor Storage. The request to extend authorized
commercial outdoor storage to one year from the current 30 day restriction is denied
because it constitutes an increase in the degree of nonconformity of the
nonconforming commercial use of the property.

Retail sales and services² are clearly prohibited in the Rural Farm Forest zone by
Table 3.2 in SJCC 18.30.040. Modification to nonconforming uses is governed in

² The outdoor storage for consignment sales is considered part of the "retail sales" consignment operations. The storage buildings are not considered part of the retail sales use because they qualify as "warehouse" uses in Table 3.2. Further, the storage buildings are treated as separate because they could be independently located on separate parcels and also because the applicants themselves have treated each of the buildings as separate uses in order to segregate them into industrial and commercial uses to avoid impervious surface limitations and other performance standards that would otherwise apply. To the extent that any of the stored materials are part of the authorized recycling and collection

1 relevant part by SJCC 18.40.310(F)(1), which provides that nonresidential
2 nonconforming uses may be expanded, modified or intensified provided that the
3 “*nonconformance with the standards of this code shall not be created or increased*”.
4 Increasing the amount of outdoor storage by increasing its duration will increase the
5 nonconformity of the commercial use in the RFF zone. As noted in the applicant’s
6 summary of prior conditional use permitting decisions, those decisions stated that
7 outdoor storage should “*be eliminated to the extent possible*”. This was a recognition
8 of the fact that commercial outdoor storage is not compatible with the residential and
9 agricultural uses of the RFF zone, especially considering the significance of
10 maintaining the natural beauty of the islands, which is critical to the San Juan Islands’
11 distinctive recreation/aesthetic based economy and quality of life.

12 4. Structural Expansion of Building No. 2. The proposed 972 square foot addition
13 to Building No. 2 is prohibited unless the applicant withdraws its request for a change
14 in use for Building No. 2. This is due to the requirements of SJCC 18.40.310(F),
15 which provide that a change in use is only authorized on condition that “*no exterior
16 structural alterations or additions are made*” to the building in which it is located.

17 If no change in use is proposed for Building No. 2, the requested expansion would be
18 authorized by the precedent set by a prior conditional use permit decision for the
19 project area, 05CU016. That permit decision involved the construction of one of the
20 storage buildings in 2006. The examiner in that decision concluded that the additional
21 building satisfied the County nonconforming use regulations (which have not
22 changed since) because the building did not create any dimensional or structural
23 nonconformity, i.e. it complied with the bulk and dimensional requirements of the
24 applicable zoning district. See 05CU016, COL No. 4 and 5.

25 Although not made express in the 05CU016 examiner’s analysis of nonconforming
use issues, presumably the fact that the buildings were proposed to house items that
were already stored outside was an important factor. If the building were used to
house items not already on site, it could be argued that the “larger” use increased its
noncompliance with applicable use regulations, in violation of SJCC 18.40.310(E).
The 05CU016 decision should not be read as authorizing a blank check for unlimited
structural expansion of nonconforming uses so long as the new structures comply
with bulk and dimensional standards. However, when a structure is used as here to
merely store portions of a use that are already lawfully in existence the structure
should be allowed so long as all other applicable code criteria (including the
conditional use criteria) are met.

The emphasis on replacing items stored lawfully outdoors in the preceding paragraph
leads to one caveat on the authorization to expand the commercial building. The
building can only be expanded if necessary to store items that are lawfully stored

operations, the 30 day limit on outdoor storage imposed by prior examiner decisions is still appropriate
and necessary for the same reasons that commercial outdoor storage is not compatible and creates
significant adverse aesthetic impacts to adjoining uses and travelers on Roche Harbor Road.

1 outdoors, i.e. items that are stored for less than 30 days as required by prior
2 conditional use permits. If the building is needed to store unlawfully stored outdoor
3 items, this would expand the amount of lawful storage allowed for the property,
4 which in turn qualifies as an intensification and/or expansion of the nonconforming
5 commercial business operated on site in violation of SJCC 18.40.310(E). If the
6 applicant elects to expand the size of Building 2 as opposed to change its use, it may
7 only do so if it establishes to the satisfaction of staff that the expansion is necessary to
8 store items that would otherwise be lawfully stored outdoors.

9 5. Expansion of Industrial Buildings. The proposed expansion of Building No. 4,
10 the proposed new recycling shed and recycling bin are all authorized as part of the
11 applicant's "recycling collection" proposal. Table 3.2 in SJCC 18.30.040, Footnote
12 No. 12, authorizes "recycling collection and/or processing"³ in the RFF zone as a
13 conditional use for recycling centers that have already been approved as a conditional
14 use. "Recycling collection and/or processing" is defined by SJCC 18.20.180 as
15 "*public drop off of recyclables with sorting and/or processing on the site.*" To the
16 extent that the proposed buildings and expansions will be used for recycling
17 processing and collection, they are authorized as conditional uses and are not subject
18 to the restrictions of the nonconforming use regulations, SJCC 18.40.310.

19 6. Change in Use of Buildings 2 and 3: The proposed change in use⁴ from
20 storage to retail for Buildings 2 and 3 is consistent with the County's nonconforming
21 use regulations. As noted in COL No. 4, a change of use for Building No. 2 is only
22 authorized if the applicant elects to not expand it as proposed.

23 The most pertinent nonconforming use provision is SJCC 18.40.310(F), which
24 provides in relevant part as follows:

25 *...If no exterior structural alterations or additions are made, a nonconforming
use may be changed to another nonconforming use; provided, that the
proposed use is equally or more appropriate to the district than the existing
nonconforming use. Such a change of use shall be subject to conditional use
permit approval. In no case shall a nonconforming use be changed to another*

26 ³ The applicant's project narrative asserts that FN. 12 only authorizes a "recycling collection" point as
27 opposed to "recycling collection and/or processing". If correct, the applicant's own interpretation
28 would prohibit the expansion of any on-site recycling processing activities. This decision is based
29 upon the on-line version of the San Juan County Code, where Footnote No. 12 authorizes "recycling
30 collection and/or processing".

31 ⁴ As noted in COL No. 6 of CUP 05CU016, changes in use from one retail sales operation to another
32 do not qualify as a change in use for nonconforming use purposes. However, in this case there are two
33 distinct types of commercial uses recognized in Table 3.2 – the current use qualifies as a type of
34 warehouse or commercial storage and the proposed use falls under the more generic retail sales
35 category. The issue of whether there is in fact a change in use involved in this application is
36 significant because no exterior alterations (i.e. the proposed expansion to Building No. 2) are
37 authorized for buildings undergoing a change in nonconforming use.

1 *d. All products offered for retail sales on the site are manufactured, warehoused, or*
2 *assembled on the premises.*

3 10. The criterion quoted above only applies to retail sales that are “incidental”
4 to an industrial use. The criterion does not apply to the retail sales of the proposal
5 because those sales are not incidental to the industrial recycling operation. The retail
6 and industrial uses are largely independent separate principal uses where one is not
7 incidental to the other.

8 The history and function of the site helps establish their independent functions. The
9 retail sales conducted on site appear to be primarily composed of consignment sales
10 that are unrelated to the recycling operation, although the application materials note
11 that some of the items are recycled if they do not sell. The application narrative
12 further notes that recycled materials are shipped off island for final processing,
13 suggesting that most or all recycled products are not sold on site. Historically, most
14 of the buildings on site were devoted to consignment sales until 2008, when recycling
15 was first mentioned and expressly authorized in conditional use permit 08CU014 for
16 1,000 square feet of building number 4 and the northern part of the parking lot. The
17 proposed modifications to the project site will limit the recycling businesses to two
18 sheds built along the south and north walls of building number 4, with the recycling
19 that is currently conducted within building number 4 to be removed.

20 **SJCC 18.40.280(A)(4):** *No use shall be made of equipment or material which*
21 *produces unreasonable vibration, noise, dust, smoke, odor, electrical interference to*
22 *the detriment of adjoining property.*

23 11. Noise Standards. The criterion above serves as a noise standard separate from the
24 County’s noise ordinance that must be addressed and satisfied by the proposed use.

25 The applicant asserts that it meets the criterion above as to noise because the project
site is subject to and complies with the County’s noise ordinance, Chapter 9.06 SJCC.
Compliance with Chapter 9.06 SJCC does not substitute for compliance with the
criterion above. If the applicant’s interpretation is applied, the reference to “noise” in
the criterion above would be completely superfluous. Ordinances should be
interpreted in a manner that all language is given effect and no portion is rendered
meaningless or superfluous. See *Manna Funding, LLC v. Kittitas County* ___ Wn.
App. ____ (2013). It is reasonable to conclude that the County Council would not
adopt a specific noise standard for industrial uses if it had intended Chapter 9.06
SJCC to already fully regulate that impact.

The applicant also argues that the standard is too vague to be applied. Reasonable
minds could not sincerely differ on the position that loud sounds associated with the
crunching of a crusher, the crashing of materials into recycling bins and the repeated
backing alerts of trucks and other equipment are incompatible with residential use and
are unreasonable and interfere with adjoining uses as testified during the hearing.

12. The above criterion is met. All of the impacts identified in the criterion are addressed in FOF No. 5, where it is determined that as conditioned none of those impacts are significantly adverse.

SJCC 18.40.280(A)(5): *Use of a County access road or private road for access to new industrial development shall be permitted only if the applicant demonstrates that public health, safety and welfare will be protected, and if traffic and maintenance impacts to the private road are minimized by conditions on the permit.*

13. As determined in FOF No. 5 and COL No. 12 the proposal is served by adequate traffic infrastructure and vehicular and pedestrian circulation does not present any hazardous situations. Given these factors it is concluded that the criterion quoted above is met.

SJCC 18.40.280(B): *Industrial Uses in Rural Designations. For all allowable and conditionally permitted industrial uses located in rural land use districts, as listed in Table 3.2 in SJCC 18.30.040, if estimated traffic volume generated would exceed the volume that would be generated by rural residential use of the site (five trips per day per unit of maximum density), any easements or road improvements required by the County engineer to accommodate the increase must be provided prior to occupancy.*

14. The project has been reviewed by public works and no need for easements or road improvements have been identified.

SJCC 18.40.280(D): Light Industrial Uses – Additional Standards....

15. As asserted in the applicant's project narrative, Ex. 1, the standard quoted above is not applicable. The project does not qualify as "light industrial". The proposal does arguably meet the "light industrial" definition adopted as SJCC 18.20.110. However, Table 3.2 in SJCC 18.30.040 identifies both a "light industrial" category and a "recycling collection/processing" category. Table 3.2 establishes that a recycling operation is considered as a use category that is separate from "light industrial".

COMMERCIAL PERFORMANCE STANDARDS

SJCC 18.40.110: *Commercial uses – General standards for site development.*

A. All Commercial Uses. The following standards apply to all commercial uses as listed in Tables 3.1 and 3.2 in SJCC 18.30.030 and 18.30.040 and to any use determined by the director to be commercial use.

1. Water supplies and sewage disposal facilities adequate to serve the proposed use shall be provided. Occupancy shall not be permitted before water supplies and sewage disposal facilities are approved and installed.

16. As determined in FOF No. 7, the proposal is served by adequate sewer and water.

1 **SJCC 18.40.110(A)(2):** *Use of a County access road or private road for access to*
2 *new commercial development shall be permitted only if the applicant demonstrates*
3 *that public health, safety, and welfare will be protected, and if traffic and*
maintenance impacts to the road are minimized by conditions on the permit.

4 17. As determined in FOF No. 7 and COL No. 28 the proposal is served by
5 adequate traffic infrastructure and vehicular and pedestrian circulation does not
6 present any hazardous situations. Given these factors it is concluded that the criterion
quoted above is met.

7 **SJCC 18.40.110(A)(3):** *No use shall be made of equipment or material which*
8 *produces unreasonable vibration, noise, dust, smoke, odor, or electrical interference*
to the detriment of adjoining property.

9 18. As determined in FOF No. 5, the criterion above is met.

10 **SJCC 18.40.110(A)(B):** *Commercial Development in Rural Designations. The*
11 *following standards apply to all commercial uses located in the rural land use*
12 *designations listed in Table 3.2 in SJCC 18.30.040, as determined by the director.*

13 *1. The proposed use will result in minimal additional demands on services and*
14 *utilities available in rural areas and will not result in more than a minimal and*
manageable increase in demand on community water supplies, sewage disposal
systems, or roads.

15 19. As noted previously, the proposal is served by adequate public services
16 and infrastructure as determined in FOF No. 7. As noted by the project narrative in
17 Ex. 1 the proposal will not result in any increase in employees and overall it does not
appear that the improvements will result in a significant increase in demand for public
infrastructure and services.

18 **SJCC 18.40.110(A)(B)(2):** *Building coverage impacts identified in Table 8.2 in*
19 *SJCC 18.80.090 as medium or low may be allowed. Traffic and parking impacts need*
20 *not necessarily meet the levels criteria of Table 8.2.*

21 20. As determined in FOF No. 3, the total building area devoted to
22 commercial space in the project is 8,360 square feet, which is within the 10,000
square feet lot coverage authorized by Table 8.2 under “visual quality”.

23 **CONDITIONAL USE CRITERIA**

24 21. Permit Review Criteria. A conditional use permit is required for the
25 proposal because Table 3.2 in SJCC 18.30.040 requires a conditional use permit for
recycling drop-off centers in the RFF zone and SJCC 18.40.310(F) requires a
conditional use permit for expansions, intensification and modifications to
nonresidential nonconforming uses. The criteria for conditional use permits are

Conditional Use Permit

1 governed by SJCC 18.80.100(D), which are quoted below in italics and applied via
2 corresponding conclusions of law.

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

5 22. The criterion is met. The portions of the proposal authorized by this
6 decision are consistent with the County's zoning (specifically commercial and
7 industrial performance standards) and nonconforming use regulations as addressed in
8 the preceding conclusions of law. Although some of the commercial and industrial
9 uses approved by this decision are not allowed outright in the RFF zone, they are
10 allowed as changes to nonconforming uses under the County's nonconforming use
11 regulations. The proposal is also consistent with the comprehensive plan goal for the
12 RFF zone, which is to "provide for rural living opportunities which are compatible
13 with small-scale farming and forestry activities." The impacts of the proposal are
14 mitigated to ensure that the proposal will not unreasonably interfere with the rural
15 living opportunities of surrounding properties.

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

19 23. The criterion is met. As determined in FOF No. 5, as conditioned and approved
20 the proposal will not create any significant adverse impacts, notably aesthetic impacts
21 and noise. For these reasons, the proposal is consistent in design, character and
22 appearance to the goals and policies of the RFF zone, which as noted in COL No. 22
23 are based upon providing for rural living opportunities compatible with small-scale
24 farming and forestry activities.

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

26 24. As determined in Finding of Fact No. 5, the proposal will not create any
27 significant adverse impacts.

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

31 25. The criterion is met. As noted in FOF No. 5, the proposal will not create
32 any significant adverse impacts. Given the unique history of nonconforming
33 development at the project site, it is very unlikely that this decision would set the
34 stage for a plethora of similar commercial and industrial expansion in the residential
35 areas of the County. Further, the addition of building space and more screening along
36 Roche Harbor Road may serve to further obscure the outdoor storage from adjoining

1 properties and Roche Harbor Home, which may qualify as a net aesthetic
improvement over current conditions.

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

4 26. As determined in Finding of Fact No. 7, the proposal is served by
5 adequate infrastructure and public services.

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

8 27. The proposed and conditioned new structures for the site will not interfere
9 with the uses of neighboring properties.

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

12 28. Public Works has reviewed the proposal and traffic report and has not
13 identified any hazardous conditions pertaining to vehicular or pedestrian traffic. In
14 the absence of anything to indicate that the established use and circulation pattern of
the site is hazardous it is determined that the criterion is satisfied.

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

17 29. As conditioned, all Chapter 18.40 SJCC standards are met. The Chapter
18 18.40 SJCC commercial and industrial performance standards are satisfied as
19 addressed in the preceding conclusions of law. Staff noted in the staff report that the
signs of the project site are not consistent with SJCC 18.40.370. The conditions of
approval will require that any new signage comply with SJCC 18.40.370.

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

22 30. There is no airport or airfield adjacent to this property.

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

25 31. Parking standards are met as determined in Finding of Fact No. 5. The
staff report notes deficiencies and/or lack of information on compliance with
landscaping and lighting standards. The conditions of approval will require the

1 applicant to provide a landscaping and lighting plan to staff that establishes
2 compliance with Chapter 18.60 SJCC standards.

3 DECISION

4 The proposed recycling collection (public drop off) use is approved. The proposed
5 roof shed additions to Building 4 are approved. The proposed sorting shed (24 x 60 ft.
6 building) and recycle bin are approved. The proposed change in use from storage to
7 retail sales for Building 3 is approved. The proposed extension of outdoor storage
8 from 30 days to a year is denied. The applicant may elect one and only one of the two
9 following options: (1) change the use of Building 2 from storage to retail sales; or (2)
10 add the proposed roof addition to Building 2. If the applicant elects to expand the size
11 of Building 2 as opposed to change its use, it may only do so if it establishes to the
12 satisfaction of staff that the expansion is necessary to store items that would otherwise
13 be lawfully stored outdoors.

14 The preceding approvals are subject to the following conditions:

15 1. Prior to or concurrently with the filing of the first building permit
16 application the applicant shall submit a landscaping and lighting plan that
17 demonstrates compliance with applicable County standards to the satisfaction of staff.
18 The landscaping plan shall contain Type 1 landscaping along the Roche Harbor Road
19 street frontage as proposed by the applicant to mitigate the aesthetic impacts of
20 proposed building improvements.

21 2. Prior to or concurrently with the filing of the first building permit
22 application the applicant shall submit a noise mitigation plan as detailed in FOF No.
23 5(A).

24 3. Requirements of the Fire Marshal shall be implemented prior to final
25 building permit issuance.

Any new signage proposed for the facility will apply with all applicable
development standards, including SJCC 18.40.340.

5. A written plan for protecting the critical aquifer recharge area should be
submitted prior or concurrent with the filing of the first building permit application.
The plan shall list the quantities and types of chemicals to be used by the activities
and development authorized by this decision; a spill containment plan if necessary
and a plan for disposal of waste materials.

6. Failure to comply with the conditions of this permit may result in
revocation.

