

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant(s): Dana Mower
167 Smuggler's Cove Road
Friday Harbor, WA 98250

File No.: PCUP00-11-0001

Request: Conditional Use Permit (CUP)

Parcel No: 450250013

Location: 167 Smugglers Cover Road
Friday Harbor, WA

Summary of Proposal: An application for a conditional use permit to allow
vacation rental of a four-bedroom residential dwelling unit

Land Use Designation: Rural Residential 5

Public Hearing: Held April 7, 2011

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

Decision: The application is approved subject to conditions.

1 2. Zoning Designations. The subject property is designated as Rural Residential 5.

2 3. Permit Review Criteria. Table 3.2 of SJCC 18.30.040 provides that
3 vacation rentals established after June 1, 1997 are allowed as conditional uses in
4 Rural Residential zones. SJCC 18.80.100(D) governs conditional use criteria. SJCC
5 18.80.100(D)(8) requires compliance with the performance standards of Chapter
6 18.40 SJCC. SJCC18.40.270 contains detailed standards for vacation rentals. The
7 criteria for conditional use permits (SJCC 18.80.100(D)) and vacation rentals (SJCC
8 18.40.270) are quoted below and applied through corresponding conclusions of law.

7 **Vacation Rentals of Residences Criteria**

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

10 4. The project is conditioned as limited to a total of nine guests at three
11 guests per bedroom, or a total of 12 guests if conditions are met to rent the home as a
12 four bedroom home.

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

14 5. Conditions of approval of the permit have been imposed to prevent any
15 unreasonable disturbance. These conditions include limitation of occupants to nine
16 guests (or 12 as referenced in Conclusion of Law No. 4), required posting of rules of
17 conduct which specifically mention prohibition of trespassing and identify property
18 lines, provision of a 24-hour contact phone number to neighbors in case problems may
19 arise, and required maintenance of a written log of complaints.

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

21 6. There is parking available for at least four automobiles on the property.

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

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

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

8. No outdoor advertising signs are proposed in the application.

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

4 9. There is no accessory dwelling unit.

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

8 10. There is no accessory dwelling unit.

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

16 11. The Applicant is applying for a conditional use permit as authorized by
17 Table 3.2 of SJCC 18.30.040 instead of a provisional use permit because the proposal
18 is the first vacation rental of the property.

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

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

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

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

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

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

SJCC 18.40.270(L): *Detached accessory dwelling units established under SJCC*
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

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

16. 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 maintaining a diverse and balanced economy while minimizing the related negative impacts. The project is condition for compliance with County septic and building requirements if the Applicant wishes to rent out the basement as a fourth bedroom.

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

17. The proposed use does not alter the general use of the structure as a residence, and the character of the site will be maintained consistent with the conditions of approval imposed hereunder. Adverse impacts are minimized and compatibility is maximized through the conditions of approval. The criterion is satisfied.

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;*

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

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

19. The property will continue to appear and function in a manner similar to the existing single-family residential use, and further similar requests will not produce significant adverse impacts to the environment.

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

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

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

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

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

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

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

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

16 **SJCC 18.80.100(D)(9):** *The proposal does not include any use or activity that would*
17 *result in the siting of an incompatible use adjacent to an airport or airfield (RCW*
18 *36.70.547); and*

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

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

22 25. As an existing development site, the proposal is consistent with Chapter
23 18.60 SJCC.

24 DECISION

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

1. This permit allows a 3-bedroom vacation rental in the main residential
dwelling unit as noted on the attached approved site plan and as conditioned herein.
The permit may be expanded to allow a fourth bedroom (located in the basement of
the home) upon submittal of documentation from the San Juan County Department of
Health that use of the home for four bedrooms meets applicable septic regulations and

1 documentation from the San Juan County Building Department that the fourth
2 bedroom meets applicable building code requirements.

3 2. The rental shall be operated as described in the application materials
4 except as modified by these conditions.

5 3. The residence may be rented as a single unit on a short term basis for
6 periods less than 30 days. A maximum of 9 guests shall occupy the residence at any
7 one time, Provided, that upon approval for four bedrooms as identified in Condition
8 No. 1 a maximum of 12 guests may occupy the residence.

9 4. No food service is to be provided. No outdoor advertising signs are
10 allowed. Adequate parking is required.

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

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

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

21 8. Prior to any rental, a proposed written Rules of Conduct will be submitted
22 to and approved by CDPD. The Rules of Conduct shall specifically deal with
23 trespass, property boundaries, noise disturbances and any special items specific to the
24 rental unit or adjoining properties. Upon approval by CDPD a copy of the Rules of
25 Conduct shall be posted in the residence, given to all adult tenants and given to all
property owners within 300 feet of the residence.

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

1 10. Failure to comply with the conditions of this permit may result in
2 revocation.

3 Dated this 21st day of April, 2011.

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5 Phil Olbrechts
6 County of San Juan Hearing Examiner

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

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10 Hearing examiner decisions become effective when mailed or such later date in
11 accordance with the laws and ordinance requirements governing the matter under
12 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.

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

15 Depending on the subject matter, this decision may be appealable to the San Juan
16 County Superior Court or to the Washington State Shorelines Hearings Board. State
17 law provides short deadlines and strict procedures for appeals, and failure to timely
18 comply with filing and service requirement may result in dismissal of the appeal. See
19 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.

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