

## Adam Zack

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**From:** Lynda Guernsey  
**Sent:** Wednesday, August 11, 2021 1:38 PM  
**To:** Vacation Rental Comments  
**Cc:** Ingrid Gabriel  
**Subject:** FW: Vacation Rental Caps  
**Attachments:** VR DT Aug 11 Final Letter.docx

Hi,

Please see the email below and attachment.

Regards,  
Lynda

Lynda Guernsey, Administrative Specialist II – Direct Line (360) 370-7579  
**SAN JUAN COUNTY**  
DEPARTMENT OF COMMUNITY DEVELOPMENT  
(360) 378-2354 | 135 Rhone Street | PO Box 947 | Friday Harbor, WA 98250

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**From:** David Turnoy <davidgeri@rockisland.com>  
**Sent:** Wednesday, August 11, 2021 1:23 PM  
**To:** Lynda Guernsey <LyndaG@sanjuanco.com>; San Juan County Council <councilvm@sanjuanco.com>  
**Subject:** Vacation Rental Caps

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello,

Please send the attached letter to members of the Planning Commission and the County Council.

Thank you,  
David Turnoy

August 11, 2021

Via Email Only

Members of the San Juan County Planning Commission and County Council  
PO Box 947  
Friday Harbor, WA 98250

Re: Proposed Use of “Caps” for Regulation of Vacation Rentals in San Juan County

Dear Members of the San Juan County Planning Commission and County Council,

We are writing to each of you regarding the ongoing issue of vacation rental (VR) proliferation in the County and the recently proposed use of numerical caps as part of a new regulatory framework.

Currently, it is our understanding that the Department of Community Development (DCD) is preparing a draft ordinance establishing numerical caps on VRs<sup>1</sup> for San Juan, Orcas, and Lopez Islands as well as an overall cap for the County. This draft ordinance will presumably be used as a starting point for the Planning Commission (PC) to begin deliberations on the ordinance, and once a public hearing is held, the PC will then make its recommendation to the County Council. The County Council will then take public testimony, have its comments incorporated into the draft, submit for a final legal review, then adopt a code amendment ordinance.

## I.

### **An Accurate Number of Current Vacation Rentals is Necessary if Caps Are Going to Be a Meaningful Regulatory Mechanism**

What is the foundational information or data upon which these Caps will be based? According to a report<sup>2</sup> prepared July 1, 2021, and presented to the Planning Commission on July 16, 2021, by Erika Shook (head of DCD), the numbers on which these caps will be based are the following:

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<sup>1</sup> We define caps as a fixed, permanent number of Vacation Rental Permits permissible in San Juan County. Caps are set by island, by county, and by other appropriate categories such as land use, distance from existing active and compliant VRPs, etc. Caps do not change based on changes in any other metric such as housing units.

<sup>2</sup> [https://www.sanjuanco.com/DocumentCenter/View/23420/2021-07-01\\_PC\\_DCD\\_Vacation\\_Rental\\_Update\\_Staff\\_Report](https://www.sanjuanco.com/DocumentCenter/View/23420/2021-07-01_PC_DCD_Vacation_Rental_Update_Staff_Report)

“San Juan Island’s Cap – Excluding the areas designated Master Planned Resort (MPR), the maximum permits allowed is 520. This Cap represents 9% of the projected future housing units of SJI.  $18,059 * 32\% = 5,779 * 9\% = 520$ .

Orcas Island’s Cap – Excluding the Master Planned Resort (MPR), the maximum permits allowed is 500. This Cap = Approximate total number of existing issued permits.

Lopez Island’s Cap – The maximum number of vacation rental permits allowed on Lopez Island is 174. This Cap represents 4% of the projected future housing units.  $18,059 * 24\% = 4,334 * 4\% = 174$ .

County-wide - a proposed limit of 1,200 VR permits.”

## II.

### **Using the Number 491 as a Basis for a Cap of 500 VRs on Orcas is Not a Fair and Meaningful Number. Rather the Number 203 Should be the Number Used as a Basis for Orcas.**

A Public Records Request sent to the DCD on June 3, 2021, requested that the County deliver all current data on VR permits<sup>3</sup>; a response was received on July 8, 2021. DCD supplied several spreadsheets; we chose the spreadsheet labeled “Compliance January 2021” as it appears to be the most current information on VRs; this database shows 1,178 permit records. This spreadsheet contains all VRP status categories, such as compliant VRs, active VRs, abandoned VRs, and many others. DCD has presented to the County Council and to the Planning Commission a current number of VRs totaling 1,002, including 491 for Orcas. The Orcas figure includes abandoned, noncompliant, and inactive VRs. If one instead parses the County’s database for Orcas, searching for compliant (335) and noncompliant (104) VRs but excluding VRPs whose status is identified as “2019” (19), “2020” (27), “abandoned” (54), “B&B” (24), “Code Enforcement” (1), or “Not VR” (2), one gets a total of 439. If one searches only for active, compliant VRs, the total is 203<sup>4</sup>.

The pain currently being felt by the residents of Orcas Island from the proliferation of VRs includes noise, overcrowding in public venues, garbage collection and disposal, parking shortages, unavailability of ferry reservations, trespassing on private property, loss of neighborhood cohesiveness, and general overuse of limited natural resources such as water, etc.

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<sup>3</sup> [http://doebay.net/Vacation\\_Rental\\_Compliance\\_2021\\_Master\\_List\\_-\\_Compliance\\_-\\_updated\\_03-25-2021\\_\(version\\_1\).xlsb.xlsx](http://doebay.net/Vacation_Rental_Compliance_2021_Master_List_-_Compliance_-_updated_03-25-2021_(version_1).xlsb.xlsx)

<sup>4</sup> All data summaries and the assumptions used to calculate them are available upon request. Note that the DCD VRP data has significant data anomalies, such as missing information, misspelled information, and undefined information. For example, for Orcas Island, the “island” field in the database has 230 records that have a blank in this field.

Only the active VRs are responsible for this pain. Counting abandoned, inactive, and other unknown VRP status categories as well as including noncompliant VRs in the total on which to base a cap, artificially inflates the cap number and rewards rule breakers for their bad behavior. Therefore, the only fair and meaningful number on which to base a cap for Orcas is 203, the number of active, compliant VRs.

The definitions of such terms as active, inactive, compliant, and noncompliant are not clearly defined by the County. In a Planning Commission hearing, the head of DCD said that because the VR enforcement system is self-certifying, whether a VR is active or not or compliant or not is whatever the owner says it is. As an addendum to this letter, we submit definitions that we encourage the County to adopt so that there is no question as to a VR's status.

### **III.**

#### **Using the Projected Future Housing Units for Setting Caps on San Juan and Lopez Islands Will Not Mitigate or Reduce the Pain Already Being Suffered from the Current Number of Active Vacation Rentals**

Apparently, the County is basing its VR cap for only Orcas Island on the number it claims is the current number of Orcas VRs. The presentation made by DCD to the Planning Commission on July 16, 2021, makes clear that DCD will be using a different methodology for the other two major islands, projecting future VRP caps based on a percentage of housing units on those islands. The percentages listed are 9% for San Juan and 4% for Lopez. It is incongruous from a land use and planning perspective to have completely disparate methodologies for regulating the same activity by the same governmental entity simultaneously in the same County.

If the different approaches actually reduced the harm, then perhaps it would be acceptable to use different approaches. But they do not, and they might not withstand a legal challenge. On August 7, 2020, Adam Zack, a Level III Planner at DCD, demonstrated on page 3 of his Memo to the Planning Commission that Orcas, Lopez, and San Juan Islands are already over-saturated with VRs in Eastsound, Rosario, Lopez Village, Roche Harbor, and Mitchell Bay. Because we are all living with this experience on a daily basis, we know that these five locations are experiencing the adverse community-wide impacts of the very over-saturation depicted in Adam Zack's presentation. Whether housing percentiles or compliant, active VRPs are used to cap current and future VR permits, this County and its residents will continue to battle over VRs if the net effect of the new regulation does not result in ameliorating the pain currently being experienced throughout the County.

According to most residents, there are already too many VRs on these islands. It would be unsound to allow for a future increase of VRPs as housing stock grows if we want to reduce the number of VRs. The fact that the number of housing units will grow in the future does not necessarily mean that a percentage of these should be permitted for VRs. Not only would doing

so allow for more VRs, using percentages of future housing stock is also in contradiction of the directive given to DCD by the County Council that the caps be fixed numbers, not floating.

#### IV.

### **Lower Cap-Numbers Are Necessary to Ameliorate the Current Level of County-Wide “Pain”**

Setting caps based on artificially high numbers will not mitigate the adverse impacts currently being experienced. If in fact the caps are set at a level that is higher than the current levels, they will only allow this situation to worsen. Unless the caps act as a true limitation, they will not solve the problem. Basing the initial cap numbers on the number of active and compliant VRs is a fair and meaningful way of arriving at cap numbers while at the same time preserving the ability of current active, compliant VR owners to continue operating their VRs. The correct number for Orcas is 203 (the number of current, active VRs on Orcas). Instead of using future housing units for the other two islands, looking at active, compliant VRs on those two islands, San Juan’s number should be 121 (instead of 520), and Lopez’s number should be 53 (instead of 174). These are the best numbers we have been able to determine from the database provided by the County, and they are much lower numbers than currently being proposed for use in determining caps.

Going forward, caps should be revisited every few years to calibrate whether they have adequately addressed community pain. Such re-evaluation should be done with the intention of lowering caps as needed to minimize if not eliminate the negative impact of over-tourism.

Given the complexity and variety of the categories, the incompleteness of the information in the database, and the lack of instruction on how to interpret the data, it is imperative that the PC directs DCD to create a succinct, easy-to-understand, user-friendly information resource where members of the PC can easily digest the information and use it in creating meaningful cap numbers. It is essential that this information resource is displayed on the County website for public transparency.

We would like to help you in any way we can to assist you in achieving a solution that preserves the quality of life in our county.

Sincerely,

David and Geri Turnoy – Orcas Island    Kai Sanburn – Lopez Island  
Ryan Palmateer – San Juan Island    Joe Symons – Orcas Island    Sorrel North – Lopez Island  
Eric Adelberger – San Juan Island    Natalie Menacho – Orcas    Nathan Donnelly – Lopez  
Susan Grout – San Juan Island    Linda Elder – Orcas Island    Val Veirs – San Juan Island

### **Addendum: Proposed Definitions**

“ACTIVE” - The operator/owner of the Vacation Rental has, at any time, during the current calendar year, either: (1) advertised and accepted reservations for vacation rental bookings; or (2) provided lodging to overnight guest(s) at the property for which they are currently permitted by the County to operate a vacation rental.

“INACTIVE” - any owner operator who cannot establish by independent documentary proof that they have met the above requirements of being an “Active” owner/operator of a County permitted Vacation Rental.

“COMPLIANT” - an owner operator who, as of the effective date of the New Ordinance, has: (1) paid all applicable State, County and local taxes, fees, and/or other related assessments associated with their activity as an owner/operator of a Vacation Rental permit for the current calendar year, and all prior calendar years since the date they first obtained their Vacation Rental permit; and (2) filed with the County all documents required as a condition of holding a valid Vacation Rental permit; and (3) had no more than three incident reports filed against their Vacation Rental permit during the prior 3 years.

"NON-COMPLIANT" - any owner/operator who does not qualify as a “Compliant” owner/operator of a vacation rental.