

## San Juan County Upland Critical Area Amendments

(Including definitions; general requirements; requirements for geologically hazardous and frequently flooded areas, wetlands, and fish and wildlife habitat conservation areas; standards for nonconforming structures and uses; lighting standards; and application requirements)

June 3, 2009 Draft

**SECTION 1. San Juan County Code (SJCC) Chapter 18.20 (Definitions) shall be amended to read as follows:**

### **Section 18.20.010. "A" Definitions**

"Anadromous Fish" means fish that spend all or part of their adult life in salt water and return to freshwater streams and rivers to spawn. Migratory fish.

"Administrator", "Planning Director", and "Director" all mean the San Juan County Community Development and Planning Department director or a designated representative.

"Agricultural Activities" are defined in RCW 36.70A.560, and mean agricultural uses and practices on land with a rural designation, and on agricultural land designated under RCW 36.70A.170. These activities include, but are not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, when the replacement facility is no closer to a critical area than the original facility; and maintaining agricultural lands under production or cultivation.

~~"Agricultural activities" means land preparation for agricultural purposes, such as clearing, grading, contouring, ditching, fencing, plowing, tilling, planting, cultivating, fertilizing, weed pest and disease control, spraying, pruning, trimming, harvesting, processing, packing, sales, and construction of farm and stock ponds, irrigation ditches and systems; livestock management, such as breeding, birthing, feeding and care of animals, birds, honey bees, and fish; the repair and maintenance of equipment, structures, and machinery used to perform agricultural or husbandry operations; the storage of agricultural products and machinery.~~

### **Section 18.20.020. "B" Definitions.**

"Best Available Science" means current scientific information used in the process of designating, protecting, or restoring Critical Areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 925. Examples of best available science are included in "Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas" published by the Washington State Department of Community, Trade and Economic Development.

"Best management practices (BMPs)" means systems of practices, schedules of activities, prohibitions, maintenance procedures, and structural or management measures that prevent or minimize the release of pollutants or other adverse impacts to the environment. Examples include but are not limited to practices that:

1. Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, or sediment;
2. Minimize adverse impacts to the chemical, physical, and biological characteristics of groundwater, surface water and wetlands ;
3. Protect trees, vegetation and soils designated to be retained during and following site construction and use native plant species appropriate to the site for re-vegetation of disturbed areas; and
4. Provide standards for proper use of chemical herbicides within Critical Areas.

“**Binding site plan**” is a method of division of land intended primarily for projects such as condominiums, residential clusters or planned unit developments, industrial parks and shopping centers, which are developed as a whole rather than for sale of individual lots for development.

~~“**Bog**” means wetlands which have the following characteristics: Hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); and vegetation such as sphagnum moss, Labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce, western hemlock, lodgepole pine, western red cedar, western white pine, Oregon crabapple, or quaking aspen, and may be associated with open water. This includes nutrient-poor fens (see WAC 222-16).~~

“**Buffer zone, strip, or area**” means an area designed to separate incompatible uses or activities; an area that is contiguous to and protects a Critical Area, and which is necessary for the continued maintenance, functioning and/or structural stability of that area.

#### **Section 18.20.030, “C” Definitions.**

“**Code**” means the San Juan County Code.

~~“**Conditional use permit**” means a type of project permit, issued by the San Juan County hearing examiner, which has project specific conditions to ensure compliance with the County Comprehensive Plan and development codes. The requirements for conditional use permits and shoreline conditional use permits are found in SJCC chapter 18.80. stating that the land uses and activities meet all criteria set forth in local ordinances, and all conditions of approval in accordance with the procedural requirements of SJCC 18.80.100.~~

“**Compensatory Enhancement**” means required action that is taken to offset unavoidable impacts resulting from the use or development of land. This can take the form of on or off site restoration, or payment into an approved restoration fund. Non-compensatory enhancement refers to projects conducted solely to increase the functions and values of an existing wetland or fish and wildlife habitat conservation area, and which is not required to offset unavoidable impacts.

“**Critical Aquifer Recharge Area**” means areas that are determined to have a critical recharging effect on aquifers that may be used as a source for potable water, and are vulnerable to contamination from recharge.

“**Critical areas**” means geologically hazardous areas, frequently flooded areas, critical aquifer recharge areas, wetlands, and fish and wildlife conservation areas, ~~all as defined in this chapter and~~ regulated in SJCC 18.30.110 through 18.30.160.

“**Critical Area Report**” means a report which characterizes a Critical Area and presents a plan or recommendations for protecting the area. ~~Critical Area Reports include geotechnical reports and habitat management plans.~~

**Section 18.20.040. “D” Definitions.**

“**Department**” means the San Juan County Community Development and Planning Department.

“**Developable area**” means the area of land which is not constrained from development by land use restrictions.

“**Developed area**” means the area altered by development.

“**Development** means any man made change to improved or unimproved real estate, including but not limited to the division of a parcel into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any clearing, draining, filling, grading, paving, excavation, mining, landfill, dredging, drilling, or storage of equipment or materials; with the exception of agricultural activities and exempt forest practices, any other activity which results in the removal of substantial amounts of vegetation (e.g. pruning of more than 20% of the vegetation when compared with that existing on \_\_\_\_\_ (the adoption date of this requirement); or any extension of the use of land. Within areas of special flood hazard, the alteration of natural site characteristics is considered development. (See also “shoreline development.”).

“**Director**” means the director of the San Juan County Community Development and Planning Department or a designated representative.

“**Driveway**” means a strip of land which provides vehicular access to one or two lots.

**Section 18. 20.060. “F” Definitions.**

“**Farm Pond**” means a man made pond used for agricultural purposes.

“**Functions and Values**” means the beneficial roles served by a Critical Area or its buffer.

**Section 18.20.070. “G” Definitions.**

“**Growth Management Act**” means RCW 36.70A and 36.70B.

**Section 18.20.080. “H” Definitions.**

“**Hazard Tree**” means a) a tree with a high probability of falling due to a debilitating disease, a structural defect, or a root ball more than ten percent exposed, and where b) there is either a hazard to people, domestic or commercial livestock and structures that house them, or there is a steep bank or bluff that will be damaged if the tree is uprooted.

“**Hazardous Substance**” means any liquid, solid, gas or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical, or biological properties described in Chapter 173-303-090 or 173-303-100 WAC.

**Section 18.20.090. “I” Definitions.**

“**Impervious surface**” means a surface area that creates a barrier to the entry of water into the soil in comparison with natural conditions prior to development, or that causes water to run off the surface in greater quantities or at an increased rate of flow in comparison with the flow prior to development. Common impervious surfaces include roofs, driveways, patios, packed earth, and oiled surfaces; however, open, uncovered retention/detention facilities are not considered as impervious surfaces.

“In-Kind Compensation” means to replace something, such as a wetland or habitat area, with substitute areas whose functions and characteristics closely approximate those degraded or destroyed.

**Section 18.20.140. “N” Definitions.**

“Native Vegetation” means non-invasive plant species existing in this region prior to European settlement as identified by the Washington Native Plant Society plant species that are indigenous to San Juan County.

“No Net Loss” of Critical Area functions and values means avoidance or mitigation of adverse impacts to wetlands, wildlife habitat or other Critical Areas so that on balance, there is no loss of these areas or the associated functions or characteristics due to land use or development regulated by this code.

**Section 18.20.150. “O” Definitions.**

“Ordinary high water mark (OHWM)” means that mark on all lakes, streams, and tidal water that will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a line of vegetation distinct from that of the abutting upland, as that condition exists on the effective date of the Shoreline Management Act, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or WDOE; however, in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining saltwater shall be the line of mean higher high tide, and the ordinary high water mark adjoining fresh water shall be the line of mean high water (RCW 90.58.030 and WAC 222-16-010).

**Section 18.20.160 “P” Definitions.**

“Pond” means a body of water under 20 acres in size. Water bodies over 20 acres are regulated under the Shoreline Master Program. Natural ponds, ponds constructed in wetlands, and ponds that are part of a mitigation project are subject to the requirements for both wetlands and fish and wildlife habitat conservation areas.

“Primary Structure” means the one principle structure on a parcel.

“Project Area” means the area proposed to be disturbed, altered, divided or used by a proposed activity or the construction of a proposed structure.

“Project permit” refers to a land use permit or license required from San Juan County for a project, including but not limited to land divisions, boundary line modifications, binding site plans, planned unit developments, conditional use permits, variances, shoreline substantial development permits (shoreline conditional use permits, shoreline variances), provisional use permits and temporary use permits. Concurrency findings, determinations of completeness, and other such administrative approvals are reviewed as part of the underlying project permit and are not project permits. SEPA threshold determinations are not project permits. Building, driveway, and other construction-type development permits and approvals are not project permits for this UDC (RCW 36.70B.020(4) and 36.70B.140). (See “development permit.”).

“Provisional Use” means uses allowed subject to applicable development standards (SJCC Chapter 18.60), performance standards unique to the proposed use (SJCC Chapter 18.40), and requirements for critical areas (SJCC Chapter 18.30.110-160). SJCC Chapter 18.80.080 outlines permit procedures for provisional uses.

### Section 18.20.170. “Q” Definitions.

“Qualified Professional” means a person with training and experience in the pertinent scientific discipline. With regard to Critical Areas, a person who is a qualified scientific expert in accordance with WAC 365-195-905. A qualified professional must be licensed and/or certified where such licensing or certification are required, and must be working within their areas of expertise. When certification is not required the professional must a) have obtained a B.S., B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, or related field, and b) have at least five years of related work experience.

1. A qualified professional for wetlands must be a professional wetland scientist with at least two years of full-time work experience as a wetlands professional, including delineating wetlands using the state or federal manuals, preparing wetlands reports, conducting function assessments, and developing and implementing mitigation plans.
2. A qualified professional for habitat must have a degree in biology or a related degree and professional experience related to the subject species.
3. A qualified professional for a geological hazard must be a geotechnical engineer or geologist, knowledgeable in regional geologic conditions with professional experience in landslide, erosion and seismic hazard evaluation.
4. A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

### Section 18.20.180. “R” Definitions.

“Riparian Habitat” means areas in and adjacent to aquatic systems that contain elements of both aquatic and terrestrial ecosystems that mutually influence each other.

### Section 18.20.190. “S” Definitions.

“Shoreline development” means development within 200 feet of the ordinary high water mark of waters subject to the Washington Shoreline Management Act. In San Juan County these include lakes greater than 20 acres in size and all marine waters, a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to Chapter 90.58 RCW at any stage of water level (Ref. RCW 90.58.030; WAC 173-27-030).

“Stream” means a watercourse with a defined bed and banks, not including irrigation ditches, canals, stormwater runoff devices, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans. (see WAC 220-110-020). Streams are classified in WAC 222-16-030 and 031.

### Section 18.20.230. “W” Definitions.

“Waters of the State” as used in this code, is defined in RCW 90.48.020, and includes lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, wetlands and all other surface waters and watercourses within the jurisdiction of the State of Washington.

“Wetland” means an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands

intentionally created from non-wetland sites, including but not limited to, irrigation and drainage ditches; grass-lined swales; canals; detention facilities; wastewater treatment facilities; farm ponds including farm ponds; landscape amenities; or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street or highway. Wetlands may include artificial wetlands intentionally created from non-wetland areas to mitigate the loss of wetlands.Note: RCW 36.70A.030(22 requires the use of this definition).

~~“Wetland alteration” means any human-induced action which impacts the existing condition of a wetland or its buffer. Alterations include but are not limited to: grading; filling; dredging; draining; channelizing; installing drainage tiles; cutting, pruning, limbing or topping, clearing, relocating, planting or removing vegetation; applying herbicides or pesticides or any hazardous or toxic substance; discharging pollutants excepting stormwater; grazing domestic animals; paving, construction, application of gravel; modifying for surface water management purposes; or any other human activity that impacts the existing vegetation, hydrology, wildlife or wildlife habitat. Alteration does not include walking, passive recreation, fishing, or other similar activities.~~

~~“Wetland buffer” means the area immediately adjoining and contiguous with a wetland. See “buffer zone, strip or area”.~~

~~“Wetland compensation projects” means projects specifically designed to replace a loss of a wetland or its buffer induced by a development action. (See “wetlands compensatory mitigation.”)~~

~~“Wetland compensatory mitigation” means the action of replacing project-induced losses or impacts on a wetland and its buffer. (See “off-site compensation”, “on-site compensation”, “wetland, in-kind compensation” and “out-of-kind compensation, wetland.”)~~

~~“Wetland creation” means the action performed to intentionally establish a wetland or a portion of a wetland where one did not formerly exist.~~

~~“Wetland delineation” means the technical process of determining the edge of the wetland in the field, consistent with the definitions and methods prescribed in WA Dept. of Ecology Publication #96-94, the Washington State Wetland Identification and Delineation Manual. (Note: RCW 36.70A.175 requires the use of this manual).~~

~~“Wetland edge” means the boundary of a wetland as identified using the required wetland delineation procedure.~~

~~“Wetland, emergent” means a regulated wetland, or portion thereof, with at least 30 percent of the surface area covered by erect, rooted, herbaceous vegetation as the uppermost vegetative strata.~~

~~“Wetland enhancement” means alteration of an existing wetland or habitat to improve or increase its characteristics and processes without degrading other existing functions. Enhancements are to be distinguished from wetland or habitat creation or restoration projects.~~

~~“Wetland, forested” means a regulated wetland, or portion thereof, with at least 20 percent of the surface area covered by woody vegetation greater than 20 feet in height.~~

~~“Wetland functions and values” means the beneficial roles performed by wetlands include, but are not limited to, water quality protection and enhancement; fish and wildlife habitat; food chain support; flood storage, conveyance and attenuation; groundwater recharge and discharge; erosion control; wave attenuation; historical and archaeological and aesthetic value; and recreation.—See “functions and values”.~~

~~“Wetland, in-kind compensation” means the replacement of a wetland with a substitute wetland whose characteristics closely approximate those destroyed or degraded by a regulated activity. (See “off-site compensation,” “on-site compensation,” “wetland, compensatory mitigation” and “out-of-kind compensation, wetland.”) See “in-kind compensation”.~~

~~“Wetland, isolated” means those regulated wetlands which:~~

- ~~1. Are outside of and not contiguous to any 100-year floodplain of a lake, river, or stream;~~
- ~~2. Have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water; and~~
- ~~3. Have no surface water connection to a lake, river, or stream during any part of the year.~~

~~“Wetland, maintenance and repair” means activities that change the size or scope of a use or structure beyond its original nature; or which drain, dredge, fill, flood, or otherwise alter additional regulated environmentally sensitive areas.~~

~~“Wetland, regulated” means a wetland that meets the criteria of SJCC 18.30.150(B) and Table 3.3 in SJCC 18.30.150. However, a wetland that does not meet the criteria in Table 3.3 may still be regulated under the federal Clean Water Act.~~

~~“Wetland restoration” means the actions performed to reestablish a wetland in an area which was historically wetland but which does not now provide or contain the necessary functional characteristics.~~

**SECTION 2. SJCC Section 18.30.110 (Critical Areas) shall be repealed and replaced with the following:**

**18.30.110 Critical Areas.**

**A. Purpose.** The regulations in this Chapter are adopted to protect the “Functions and Values” of Critical Areas in accordance with the Best Available Science; to protect people, property and natural ecosystems; to ensure there is no net loss of protected habitats; to give special consideration to the conservation and protection measures necessary to preserve or enhance habitat for anadromous (migratory) fish; and to implement the goals, policies and requirements of the Comprehensive Plan, the Washington Growth Management Act and the Federal Endangered Species Act.

**B. Applicability.** There are five types of Critical Areas regulated by this chapter:

1. Geologically hazardous areas as defined in SJCC 18.30.120;
2. Frequently flooded areas as defined in SJCC 18.30.130;
3. Critical aquifer recharge areas as defined in SJCC 18.30.140;
4. Wetlands as defined in SJCC 18.30.150;
5. Fish and wildlife habitat conservation areas as defined in SJCC 18.30.160.

With the exception of the exemptions listed below, the regulations of SJCC 18.30.110-160 apply to all land use and development in Critical Areas and adjacent buffers as described in subsequent sections of this Chapter. These regulations are adopted as five separate overlays, with standards specific to each type of Critical Area. In addition, this General section applies to all five areas. If there is overlap between Critical Area regulations, or an unresolved conflict between the requirements of this chapter and other sections of this code, the most restrictive requirement applies.

**C. Maps.** Using available information, the County shall develop maps showing the approximate location of Critical Areas in relation to parcel boundaries. These maps shall be available on the

County web site, at public libraries, and at the CD&P office. These maps however, are only indicators and may not be complete. Therefore, conditions in the field take precedence - it is the actual presence of a defined Critical Area that triggers the requirements of this chapter, regardless of whether the area is identified on a map.

**D. General Exemptions and Exceptions.** The following uses and activities are exempt from some or all provisions of the Critical Area regulations in this chapter (SJCC sections 18.30.110-160).

1. Emergencies. Those activities necessary to prevent an imminent threat to public health, safety, or the environment, or to public or private property, and that require remedial or preventive action in a time frame too short to allow for review and approval in accordance with the requirements of this chapter. Prior to taking action the organization, agency, property owner or owner's representative shall notify the Director of the emergency and action being taken. Within seven days of the emergency, the person or agency undertaking the action shall report to the Director the extent of the action taken and any impacts to Critical Areas. Except in instances of a catastrophic natural event, mitigation and/ or restoration is required when necessary to bring the site into compliance with this Chapter, and the Director may require submission of a mitigation and/or restoration plan to guide this work . Final approval of the plan, and any required restoration or mitigation, shall be in accordance with provisions of this chapter.
2. Operation, maintenance, repair, remodel or replacement of existing structures, facilities, infrastructure, utilities, sewage disposal systems, water systems, public or private roads, driveways, developed areas, fences, vegetation, ponds, dikes, levees, or drainage systems, provided there is no increase in the developed area, structure footprint, or risk to life or property, and the activity does not further alter, impact, or encroach on wetlands, protected wildlife habitat, frequently flooded areas, geologically hazardous areas or their buffers.
3. Forest Practices. Forest practices regulated and conducted in accordance with the provisions of RCW Chapter 76.09 and WAC Title 222 (forest practices regulations).
4. Agricultural Activities as defined in SJCC 18.20.010.
5. Installation of navigation aids and survey markers.
6. Site investigative work associated with land use applications, such as surveys, soil borings and test holes, provided that Critical Areas are protected and disturbed areas are immediately restored.
7. Measures to control or remove damaging insects or noxious weeds identified by the San Juan County Weed Control Board, and ongoing activities such as lawn, landscaping, orchard, and garden maintenance, provided that chemicals are not used except for control of noxious weeds.
8. Removal of trees that are a hazard to people, domestic or commercial livestock and structures that house them, providing the stump of the tree is retained.
9. Minor pruning of up to 20% of buffer vegetation when compared to that which existed on \_\_\_\_\_ (the date these requirements were adopted). Pruning does not include the topping or removal of trees or ground cover except for hazard trees, and when hazard trees are removed the tree stump shall be retained.
- 10 Man made ponds constructed in conformance with this code that are not located in, and do not discharge to or negatively effect drainageways, streams, wetlands or required buffers.

**E. Reasonable Use Exception.** The “Reasonable Use Exception” applies to parcels legally created as a residential or commercial building site prior to \_\_\_\_\_(the effective date of this Ordinance).

If application of the Critical Area regulations (SJCC 18.30.110-160) would result in denial of any reasonable use of a property allowed outright in Tables 3.1 and 3.2, development may be allowed in conformance with this section.

“Reasonable Use” includes the following:

For lots less than two (2) acres in size:	5,490 sq. ft. of developed area including the driveway
For parcels two (2) acres to less than five (5) acres in size:	8,710 square feet of developed area including the driveway
For parcels five (5) acres to less than fifteen (15) acres in size:	10,890 square feet of developed area including the driveway
For parcels 15 or more acres in size:	10,890 square feet of developed area in addition to a driveway

Reasonable use exceptions shall be subject to the following requirements:

1. Exception Request and Review Process. An application for a reasonable use exception shall be made to the Department and shall include:
  - a. The applicable items listed in SJCC Section 18.80.020.C (Project Permit Applications-Forms);
  - b. Any related project documents, such as permit applications to other agencies, special studies, or environmental documents prepared pursuant to the State Environmental Policy Act;
  - c. For new development, additions to existing development and vegetation removal which together result in disturbance of more than 2,500 square feet of protected wetlands, fish and wildlife habitat conservation areas, or their buffers the following are also required. All development occurring after \_\_\_\_\_(the effective date of this ordinance) shall be counted toward this 2,500 s.f. limit:
    - i. Applicable Critical Area report(s) (requirements for these reports are identified in subsequent sections of this chapter); code);
    - ii. A plan for mitigating the impacts of the development or vegetation removal, in accordance with Best Available Science, so there will be no net loss in the Functions and Values of protected habitat. This mitigation can occur through on or off site restoration or enhancement of degraded habitat, or if State and County approved programs are developed, through payment to a mitigation bank or fund.
    - iii. A monitoring plan if on or off site restoration or mitigation will be implemented by the property owner; and
    - iv. A cost estimate, prepared by a qualified professional, for implementation of the mitigation plan, associated monitoring, and/or payment to a County approved mitigation program;

Reasonable Use applications shall be processed as a provisional permit in accordance with the procedures outlined in SJCC Chapter 18.80, with public notice of application and a public comment period as provided in that chapter.

2. Reasonable Use Review Criteria. The Planning Director shall approve, approve with conditions, or deny the request based on compliance with the following criteria:
  - a. The parcel was legally created prior to \_\_\_\_\_ (effective date of this ordinance);
  - b. The need for the exception is not the result of action by current or previous property owners after the parcel was created.
  - c. To the greatest extent possible, the proposed development will be located and designed to protect Critical Areas and conform to the regulations of this chapter.
  - d. For new development, additions to existing development and vegetation removal which together result in disturbance of more than 2,500 square feet of protected wetland, fish and wildlife habitat conservation area, or their buffers, the impacts must be fully mitigated in accordance with Best Available Science so there will be “No Net Loss” in the “Functions and Values” of the protected habitat. This mitigation can occur through on or off site restoration or enhancement of degraded habitat, or if State and County approved programs are developed, through payment to a mitigation bank or fund. All development occurring after \_\_\_\_\_ (the effective date of this ordinance) shall count toward this 2500 s.f. limit.
  - e. Approval of a Reasonable Use Exception does not relieve the applicant of the responsibility to comply with other building and development codes (i.e. the exception only applies to compliance with the requirements of SJCC 18.30.110-160).
  - f. Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the request and to provide sufficient information on which to base a decision.

#### **F. Public Agency and Utility Exceptions.**

1. If the application of Critical Area regulations in this chapter would prohibit a development proposal by a public agency, public utility, or private utility regulated by the Washington Utilities and Transportation Commission or serving an Urban Growth Area, the agency or utility may apply for an exception pursuant to this section.
2. Exception Request and Review Process. An application for a public agency or utility exception shall be made to the Department and shall include:
  - a. The applicable items listed in SJCC Section 18.80.020.C (Project Permit Applications-Forms);
  - b. Any related project documents, such as permit applications to other agencies, special studies, or environmental documents prepared pursuant to the State Environmental Policy Act;
  - c. For new development, additions to existing development and vegetation removal which results in disturbance of protected wetlands, fish and wildlife habitat conservation areas, or their buffers the following are also required:
    - i. Applicable Critical Area Report(s) (requirements for these reports are identified in subsequent sections of this code);
    - ii. A plan for mitigating the impacts of the development or vegetation removal, in accordance with Best Available Science, so there will be no net loss in the Functions and Values of protected habitat. This mitigation can occur through on or off site restoration or enhancement of degraded habitat, or if State and County approved programs are developed, through payment to a mitigation bank or fund.
    - iii. A monitoring plan if on or off site restoration or mitigation will be implemented; and

- iv. A cost estimate, prepared by a qualified professional, for implementation of any mitigation plans, associated monitoring, and/or payment to approved mitigation programs;

The application shall be processed as a provisional permit in accordance with the procedures outlined in SJCC Chapter 18.80, with public notice of application and a public comment period as provided in that chapter.

3. Public Agency and Utility Review Criteria. The Planning Director shall approve, approve with conditions, or deny the request based on compliance with the following criteria:
  - a. To the greatest extent possible, the proposed development will be located and designed to protect Critical Areas and conform to the regulations of this chapter.
  - b. There is no other reasonable alternative to the proposed project with less impact on Critical Areas and their buffers. On-site alternatives that shall be considered include:
    - i. Reduction in density, scope, scale or intensity;
    - ii. Phasing of the project;
    - iii. Change in timing of activities;
    - iv. Revision of layout or related site plans.
  - c. The application of this chapter would unreasonably restrict the agency's ability to provide needed services to the public;
  - d. Approval of a Public Utility/ Agency Exception does not relieve the applicant of the responsibility to comply with other building and development codes (i.e. the exception only applies to compliance with the requirements of SJCC 18.30.110-160).
  - e. Unavoidable impacts must be fully mitigated in accordance with Best Available Science so there will be "No Net Loss" in the "Functions and Values" of the protected habitat. This mitigation can occur through on or off site restoration or enhancement of degraded habitat, or if State and County approved programs are developed, through payment to a mitigation bank or fund.
4. The burden of proof shall be on the applicant to bring forth evidence in support of the request and to provide sufficient information on which to base a decision.

**G. Mitigation Applicability.** San Juan County encourages the prevention of negative impacts and the protection of well functioning Critical Areas, and in most cases mitigation to offset impacts is mandatory. Specific requirements related to mitigation are found in subsequent sections of this chapter and the following section. (Note: The requirements for Critical Aquifer Recharge Areas are designed to fully protect groundwater resources from contamination, so additional mitigation actions are not required for that type of Critical Area).

Mitigation of impacts is required in conjunction with:

1. Development approved as a Reasonable Use Exception which results in disturbance of more than 2,500 square feet of protected wetlands, fish and wildlife habitat conservation areas, frequently flooded areas or their buffers. All development occurring since \_\_\_\_\_ (the effective date of this requirement) shall count toward this 2,500 s.f. limit;
2. Any new development, additions to existing development, or vegetation removal authorized as a Public Agency/ Utility exception.
3. Illegal activities. The negative impacts of illegal activities shall be fully mitigated and offset with restoration actions so there is no net loss in the functions and values of the associated Critical

Area. If mitigation actions are not completed prior to issuance of permits required under this code and financial guarantee is required.

4. Emergency actions.
5. Other allowable activities where mitigation is required.

#### **H. Requirements Associated with Mitigation, Restoration and Enhancement Activities.**

When mitigation, restoration or enhancement is proposed or required, the applicant shall submit a mitigation/ restoration/ enhancement plan for approval by the Department. For wetlands, this plan, and associated wetland replacement ratios, shall be consistent with the guidance provided in *Wetland Mitigation in Washington State - Part 1: Agency Policies and Guidance*, Ecology publication 06-06-011a; and *Wetland Mitigation in Washington State - Part 2*, publication 06-06-011b (available at <http://www.ecy.wa.gov/programs/sea/wetlands/index.html>). For mitigation of impacts to streams and frequently flooded areas, guidance is provided in the September 22, 2008 *Biological Opinion on Implementation of the National Flood Insurance Program in the State of Washington, Puget Sound Region*, prepared by the National Marine Fisheries Service (NMFS document tracking No. 2006-00472). Preparation of this plan and its review by the County, which may include referral to independent qualified professionals, shall be at the applicant's expense. If review by a qualified professional is necessary, the Department may require advance payment of fees for this review based on the estimated review time.

1. Mitigation/ restoration/ enhancement plans shall include the following:
  - a. A description of the anticipated impacts to the Critical Area.
  - b. The actions proposed, including start and end dates.
  - c. Goals and objectives of the project in relation to the functions and values of the impacted Critical Area.
  - d. The site selection criteria.
  - e. A review of the best available science supporting the plan.
  - f. Proposed construction methods, sequence and timing;
  - g. Grading and excavation details. If grading or excavation are proposed, pre and post construction contour plans are required at a scale that is suitable for the site and the project, as determined by a design professional;
  - h. Runoff, erosion and sediment control plans;
  - i. A planting plan (if appropriate) specifying plant species, quantities, locations, size, spacing, and density, and proposed measures to protect and maintain plants until they are established.
  - j. Detailed site diagrams, scaled cross-sectional drawings and any other drawings necessary to show proposed construction techniques and anticipated outcomes.
  - k. A monitoring and adaptive management plan for the completed project. This plan must use measurable criteria to assess the project against its goals and objectives, and explain corrective actions that will be taken to deal with any problems. This plan shall include a summary of the proposed goals, objectives and performance standards for the project, a description of the data to be collected, a monitoring schedule (monitoring is required at least once each year, with a report submitted to the Department by July 1), and contingency actions to deal with any problems. The project shall be monitored for a period necessary to establish that performance standards have been met, but not for less than five (5) years.
  - l. A description of the report author's experience in implementing the proposed actions.
  - m. An analysis of the likelihood of success of the project.
  - n. A cost estimate, developed by a qualified professional, for implementing the plan and monitoring the site for a period of five years.
2. In accordance with an approved monitoring plan, property owners or a qualified professional must monitor the project site and adjacent Critical Areas annually for at least 5 years, and

annual monitoring reports must be submitted to the Director by July 1<sup>st</sup> of each year. The Director may require additional actions or additional monitoring if the goals, objectives and performance standards of the plan are not met. As a condition of approval, the land owner must agree to periodic County inspections to determine compliance with approved plans. Inspections shall be by appointment or following written notice.

3. A financial guarantee is required for all required mitigation/ restoration/ enhancement including those actions proposed as part of a CASP. A financial guarantee is also required for any monitoring that must be performed by a qualified professional. See SJCC 18.80. for specific requirements related to financial guarantees and associated completion agreements.

## **I. Conditions of Approval**

In granting approval for a project or application, the Director may apply conditions to ensure compliance with Critical Area requirements. These conditions of approval shall be based on either the applicable requirements of this code, or the recommendations of a qualified professional utilizing best available science, contained within a Critical Area report required under this code.

## **J. Alternative Protection Standards – Critical Area Stewardship Plans (CASPs)**

This regulation offers landowners the option of preparing a site specific, adaptive management plan for protecting wetlands, Fish and Wildlife Habitat Conservation Areas (FWHCAs), and frequently flooded areas in lieu of the buffers and prescriptive requirements found in SJCC 18.30.110, 130, 150 & 160. These are called Critical Area Stewardship Plans and the requirements and procedures associated with these plans are outlined below.

### **1. General Provisions**

At a minimum the CASP must provide equal protection of the water quality, habitats, functions, processes and values found on or associated with the site, when compared to the protection afforded by meeting the prescriptive requirements in SJCC 18.30.110, 130, 150 & 160. The property owner is responsible for developing this plan in consultation with a qualified professional, and proposed actions must be supported by the Best Available Science. When available, qualified San Juan County staff may assist landowners with these plans. The Director is responsible for reviewing and approving the plans and may seek technical assistance from the San Juan County Conservation District; the Washington Departments of Fish and Wildlife, Natural Resources, or Ecology; or other qualified professionals. This section does not apply to agricultural activities because they are exempt from County Critical Area requirements.

Preparation of the CASP and its review and administration by the County, which may include referral to independent qualified professionals, shall be at the applicant's expense. If referral to a professional is necessary, the Director may require advance payment of fees for this review based on the estimated review time.

### **2. Applicability and Limitations**

The following provisions define the applicability and limitations of the CASP:

- a. CASPs may be used in all land districts and for all types of development.
- b. They can only be applied to properties 1/4 acre or larger.
- c. CASPs are only applicable to Fish and Wildlife Habitat Conservation Areas, Wetlands and frequently flooded areas.

- d. CASPs must provide equal protection of plants, habitats, processes, functions and values relative to the prescriptive standards, and must be supported by Best Available Science.
- f. CASPs are administered as a provisional permit.
- g. A CASP may be prepared by any person, but it is strongly advised that a qualified professional be consulted.
- h. The applicant is responsible for all County costs incurred in the processing of CASP applications, including the cost associated with third party review of plans by a qualified professional, and for the long term costs associated with project oversight. After a CASP plan is submitted, the County shall provide the applicant with a cost estimate for the review. Before the CASP plan is reviewed, the applicant must provide advance payment of fees based on the estimate.

### 3. CASP Contents - Existing Conditions.

Critical area stewardship plans (CASPs) shall include the following:

- a. A site plan for the project area showing existing development including structures, roads, bridges, bulkheads, hydrologic modifications (e.g. septic drainfields, wells, ponds, dams, foundation or curtain drains, ditches); the wetland, FWHCA or frequently flooded area being protected by the CASP; wetlands or FWHCAs within ¼ mile of the area; any geologically hazardous areas present within 300 feet of the area; existing or proposed ponds or areas where ponding occurs; springs and seeps; proposed buffers; and the GPS location of monuments for photo documentation stations. At least two monumented photo documentation stations are required, however the Director may require additional stations if necessary to adequately characterize the site;
- b. When wetlands or their buffers are present in or adjacent to the project area, a wetland delineation report prepared by a qualified professional in accordance with WA Dept. of Ecology Publication #96-94, *Washington State Wetland Identification and Delineation Manual*. (Note: RCW 36.70A.175 requires the use of this manual).
- c. If streams are present, stream type determined by a qualified professional.
- d. A contour map for the project area, at an appropriate scale as determined by a qualified professional.
- e. Identification of any known threatened, sensitive or endangered species.
- f. A qualitative assessment of the ground water characteristics of the site including identification of areas with a high water table.
- g. A qualitative assessment of the surface water characteristics of the site including the presence of large woody debris, riffles or pools in streams; potential fish spawning areas; and observed fish and aquatic invertebrates.
- h. A qualitative assessment of the landscape, vegetation and habitat within and adjacent to the project area including:
  - i. A description of existing vegetation including any noxious, invasive and/or exotic plant species;
  - ii. The species composition and general age and condition of existing forests;
  - iii. Evidence of historic or existing agricultural activities;
  - iv. A description of the slopes, soil types and soil/slope stability adjacent to surface water, an assessment of the value of existing vegetation for stabilizing soils and slopes, and an assessment of how proposed septic drainfields and stormwater infiltration facilities will effect slope stability.
  - v. An assessment of existing wildlife habitat on site including areas that provide cover, protection from wind and weather, snags, logs, food sources and travel corridors.
- i. Photos taken from the photo documentation stations.

#### 4. CASP Contents - Habitat Protection Proposal

The overall goal of the Critical Area Stewardship Plan (CASP) is to maintain the water quality, habitats, functions, processes and values found on or associated with the site, in accordance with the Best Available Science, while addressing the needs and desires of the property owner. The proposed plan must include the following:

- a. A statement of the goals, objectives, and performance standards of the plan and how implementation of the plan will protect the Critical Area(s) and its water quality, habitats, functions, processes and values, in accordance with the Best Available Science. This section shall also describe the goals of the property owner, including proposed land uses within the area covered by the plan.
- b. A site map showing:
  - i. The location of proposed development including structures, driveways and parking areas, and the location of any potential sources of stormwater pollution (e.g. copper or zinc roofing materials, holding areas for livestock);
  - ii. Final contours within the project area, at an appropriate scale as determined by a qualified professional;
  - iii. The location of trees and vegetation that are to be removed, including any areas with noxious weeds.
  - iv. Existing vegetation and/or buffers that are to be preserved.
  - v. Areas where additional vegetation will be planted.
- c. Copies of scientific reports supporting the proposed actions.
- d. A plan describing how existing or proposed vegetation will protect water quality, habitat, functions, and processes on or associated with the site, and meet the goals of the management plan and the property owner. In additions, this plan must include:
  - i. A table with the numbers, types and density of trees and shrubs to be planted;
  - ii. A description of how the various vegetation layers will function to protect water quality pre-development hydrology, slope stability, habitat, and wildlife;
  - iii. A planting schedule along with any necessary watering methods and requirements;
  - iv. Short term protection measures such as protective tubes, socks, control of other vegetation that may out-compete the planted stock, mulching requirements, etc.
- e. A copy of the proposed or approved storm water and erosion control management plan as required by SJCC 18.60.060-070.
- f. The timing of proposed plan implementation, with an emphasis on how the anticipated timing will protect the Critical Area and associated species or habitats.
- g. A list of all local, state and federal permits that will be required for implementing the plan.
- h. A detailed maintenance schedule if periodic maintenance is a component of the plan. In general, plans that do not require long-term maintenance are preferred to plans that require maintenance.
- i. If on site restoration or mitigation is proposed to offset the impacts of proposed development, a mitigation/ restoration/ enhancement plan and financial guarantee are required in conformance with this chapter. Payment to a mitigation fund, in lieu of on site restoration or mitigation, is not allowed in conjunction with CASP projects.

- j. A description of how the proposed development might adversely affect the functions and values of the Critical Areas.
- k. A contingency plan describing how the CASP might be modified if the project fails to meet its goals or performance standards.

## **5. Monitoring.**

- a. Monitoring and Adaptive Management Plan. Critical Area Stewardship Plans shall identify measurable performance standards and monitoring protocols that will be used to gage the success of the plan at protecting and/or enhancing the functions and values of the Critical Area(s). In addition, they must include a plan for adaptively managing the site if the plan is not successful. Monitoring and adaptive management plans must be approved by the Department and at a minimum shall contain:
  - i. An explanation of what will be monitored;
  - ii. Sampling and analytical methods;
  - iii. A monitoring schedule. Monitoring is required at least once each year, with a report submitted to the Department by July 1. The project shall be monitored for a period necessary to establish that performance standards have been met, but not for less than five (5) years;
  - iv. Statistical procedures that will be used to identify significant departures from the performance standards;
  - v. The time frame during which each performance standard should be achieved. For example, “having x area inundated at the end of July each year” or “maintaining/ achieving x % coverage of trees and shrubs by year y.”
  - vi. Corrective actions that will be taken to deal with any problems.
- b. In accordance with an approved monitoring plan, property owners or a qualified professional must monitor the project site and adjacent Critical Areas annually for at least 5 years, and annual monitoring reports must be submitted to the Director by July 1<sup>st</sup> of each year. The Director may require additional actions or additional monitoring if the goals, objectives and performance standards of the plan are not met. As a condition of approval, the land owner must agree to periodic County inspections to determine compliance with approved plans. Inspections shall be by appointment, or following written notice. If it is necessary for a professional to perform the monitoring, a financial guarantee is required in conformance with SJCC 18.80.

At a minimum, annual monitoring reports shall include:

- i. Review of the goals, objectives and performance standards of the monitoring plan, and an evaluation of whether they are being achieved;
- ii. The collection of digital photos at photo documentation stations. Photos shall be labeled with the date and GPS location of the station, and both electronic and paper copies of photos must be provided with the report.
- iii. A comparison of the habitat with that which existed prior to development; and
- iv. A description of any adaptive management measures implemented on site. If the site does not meet the goals, objectives or performance standards of the plan, management of the site must be modified to rectify the deficiency.

## **6. As Built Certification**

Prior to final approval and/ or release of financial guarantees, the design professional(s) or property owner must provide an as built plan, drawn to scale, and written verification that the

approved plan has been completed. The as-built certification shall include photos of the site, taken from the photo documentation stations, and if the project involved earthwork, the as-built plan shall include a topographic plan at a scale suitable for the site and project, as determined by the design professional. The Department shall inspect the site prior to granting final approval and/or releasing financial guarantees. Requirements related to financial guarantees are found in SJCC Chapter 18.80.

## 7. Waiver

The Director may waive CASP requirements if in his/her opinion, protected plants, habitats, processes, functions and values will not be adversely affected.

## 8. Notice to Title.

Prior to project approval the applicant shall record a copy of the approved CASP and a Notice to Title referencing the recorded plan. If the plan is revised, the new County approved plan must be recorded. This notice shall state that a. the land is subject to ongoing requirements pursuant to an agreement between the property owner and San Juan County, b. that future land owners are obligated to comply with the terms of this agreement, and c. for actions that are temporary in nature (e.g. water quality monitoring or establishment of vegetation) when the required work is completed, the County shall promptly remove this Notice to Title. Suggested language follows:

“This land is subject to ongoing (mitigation, monitoring, restrictions) in accordance with a signed agreement between the County and the property owner recorded as AFN \_\_\_\_\_. Subsequent owners of this property are subject to these requirements”.

### **SECTION 3. SJCC Section 18.30.120 (Geologically Hazardous Areas) shall be amended to read as follows:**

#### **18.30.120 Geologically Hazardous Areas.**

**A. Classification.** Geologically hazardous areas are classified in three categories according to the probability of hazardous geologic activity occurring and the potential consequences to people and property. In all cases, a slope is determined ~~delineated~~ by establishing its toe and top and measured by averaging the inclination over at least 20 ft. of vertical relief. In the absence of a topographic field survey of the subject property, the Director shall use the United States Coast and Geodetic Survey 7.5 Minute Series Topographic Quadrangle Maps to determine slopes.

#### **1. Category I.**

- a. Areas designated in the Washington Department of Ecology Coastal Zone Atlas as U (Unstable), UB (Unstable Bluff), URS (Unstable Recent Slide), or UOS (Unstable Old Slide) ~~and other areas identified by site-specific geologic reports.~~
- b. ~~Areas with slopes of greater than 50 percent and with a vertical relief of 20 feet or more, except areas of exposed, unfractured bedrock. If any portion of a slope meets this definition, the slope or some larger portion may be designated a landslide hazard area.~~

Areas mapped by the USGS, Washington Dept. of Natural Resources or a qualified professional as quaternary slumps, earthflows, mudflows, or landslides.

- c. Areas identified by the WA. Dept. of Natural Resources as a tsunami hazard zone.

d. Areas identified by the WA. Dept. of Natural Resources as having a moderate risk of liquefaction during a seismic event.

d. Areas with visible evidence of slides that have occurred in the last 10,000 years.

## 2. **Category II.**

a. Areas mapped by the USDA Natural Resources Conservation Service as having a severe risk of soil erosion or significant limitations for building site development. Erosion hazard areas characterized by soils identified in the USDA San Juan County Soil Survey as having severe water erosion hazards.

i. The Pickett Soil portion within the Pickett Rock Outcrop Complex;

A. (PrD only where slope exceeds 15 percent);

B. (PrE);

ii. The Roche Soil portion within the Roche Rock Outcrop Complex, 30 to 70 percent slopes (RxE); or

iii. Roche gravelly loam, 8 to 15 percent slopes (RgC).

b. Any area with all three of the following characteristics:

i. Slopes in excess of 15 percent;

ii. Soil having layers of moderate or faster permeability (0.8 inches per hour or greater) overlying layers having very slow or slower permeability (0.20 inches per hour or less); and

iii. Evidence of groundwater seepage to the surface.

c. Areas with slopes of greater than 40 percent with a vertical relief of 10 feet or more, except areas of exposed, unfractured bedrock.

e. Areas directly underlain or affected by mine workings including steep and unstable slopes created by open mines. Mine hazard areas are based upon the identification of active or historic mining activity and site-specific information regarding topography and geology provided by the applicant as needed.

d. Slopes that are parallel to planes of weakness in subsurface materials such as bedding planes, joint systems, and fault planes.

e. Areas potentially unstable as a result of rapid stream incision, stream bank erosion or undercutting by wave action, including any stream channel migration zones that are identified and mapped by the County.

f. Areas on an active alluvial fan that might be subject to catastrophic flooding.

3. **Category III.** San Juan County in its entirety, which is located within Seismic Zone D-1. ~~3 in accordance with the Uniform Building Code.~~

## B. **Protection Standards.**

This section outlines the protection standards associated with Geologically Hazardous Areas. Additional standards apply to Geologically Hazardous Areas located within shoreline jurisdiction, and if there is a conflict the most restrictive standard applies. Shoreline regulations are found in SJCC Chapter 18.50.

### 1. **Category I.**

a. The following shall be prohibited:

i. Structures categorized by the International Building Code as occupancy category III (high occupancy structures) Structures where the primary occupancy is public assembly, including but not limited to schools, churches, day care centers, hospitals and other medical facilities; and

ii. Structures categorized by the International Building Code as occupancy category IV

(essential public facilities) facilities for emergency response and public safety unless there is no feasible alternative.

- b. Applications for other development in and within 300 feet of Category 1 hazard areas other than in subsection (B)(1)(a) of this section shall be accompanied by a geotechnical report, which is approved by the County and prepared by a qualified professional in accordance with subsection (C) of this section, below, is approved by the County, and which demonstrates that:
- i. The slope is less than 80 percent; and
  - ii. There is no hazard to people, property or natural resources, or the hazard can will be mitigated with appropriate conditions. The geotechnical report shall specify adequate development conditions to ensure this.

c. In areas designated in the Washington Department of Ecology Coastal Zone Atlas as U (Unstable), UB (Unstable Bluff), URS (Unstable Recent Slide), or UOS (Unstable Old Slide), new structures must be located far enough from the shoreline so that they will not be threatened by shoreline erosion for at least 75 years .

2. **Category II.** The requirements for Category II hazard areas follow. The Director may, however, with discretion or upon receipt of a geotechnical report from a qualified professional, waive or approve modifications to these requirements set forth in subsections (B)(2)(a – c) of this section.

- a. Development shall be located in accordance with the following:
  - i. Structures and improvements shall be sited, designed, and constructed to minimize cut and fill and to retain as much of the natural topographic character of the slope as possible; and
  - ii. Structures and improvements shall be located to avoid the most hazard-prone portion of the site and to preserve vegetation necessary to prevent soil erosion and maintain the stability of the site.
- b. Where previous human activity has significantly modified natural topography, the County may allow further modification of such slopes if a geotechnical report, prepared by a qualified professional in accordance with subsection (C) below, and approved by the County, of this section demonstrates that such activity will result in improved slope stability.
- c. Until vegetation is reestablished, cleared or graded areas must be restored and protected to prevent soil erosion and maintain the stability of the site. until replacement plantings are established and maintained unless occupied by structures or other impervious surfaces to avoid soil erosion and to stabilize slopes. Temporary erosion and drainage controls may be required unless permanent restoration and protection are timed to ensure slope stability in the wet season.

3. **Category III.** With the exception of construction occurring under San Juan County's owner-builder exemption, development activities are required to conform to the applicable provisions of the Uniform International Building and Residential Codes which contains structural safeguards to reduce the risks from seismic activity.

C. **Geotechnical Reports.** If a geotechnical report is required in accordance with this section, it shall include investigation, testing, analysis, and recommendations and shall be prepared and signed by an engineer with relevant geotechnical education and experience, licensed to practice in the state of Washington. The engineer shall certify that the project as conditioned or otherwise will pose no unreasonable threat to persons or property either on or off site and that the project will not decrease slope stability. (Ord. 2-1998 Ex. B § 3.6.5)

1. For the following small development applications, a letter as described below, prepared by a qualified professional, may adequately fulfill the requirement for a geotechnical report.

- a. Additions to single family residential structures resulting in less than a 30 percent (30%) increase to the building footprint and not exceeding 1,000 sq.ft..
- b. Additions to a building's height where the footprint of the existing structure is not changed.

The letter shall include an assessment of the hydrogeologic site conditions before and after the proposed project, conclusions on whether the proposed development will increase the risk of erosion or slope failure, and any necessary plan modifications or mitigation measures to minimize this risk.

- 2. For all other development a complete geotechnical report with the following components is required:
  - a. A site plan for the area within 300 feet of the proposed project. If it is not possible to access some areas (for example adjoining property under different ownership) then required data may be estimated. This plan shall including the following:
    - i. A contour plan, suitable for the site and project as determined by a design professional.
    - ii. Roads, driveways and access easements;
    - iii. Approximate location of all trees greater than 12 inches in diameter with any trees that will be removed identified. Tree diameter shall be measured at a point 4 ½ feet from the ground on the uphill side;
    - iv. Location of all existing and proposed drainage features or structures including curtain or foundation drains, ponds, infiltration trenches, pipes, and culverts;
    - v. Location of all wetlands, fish and wildlife habitat conservation, and geologically hazardous areas;
    - vi. Proposed site improvements with the amount of impervious surface calculated;
    - vii. Existing and proposed cuts and fills;
    - viii. Location of all above and below ground utilities including wells, septic tanks, drainfields, foundations and curtain drains;
    - ix. If applicable, a diagram of the soil profile; and
    - x. A vicinity map, showing the location of the property in relationship to surrounding lots and other critical areas.
  - b. Geotechnical Analysis. This analysis shall include the qualifications of the individual preparing the report, a description of the hydrogeologic characteristics of the site, and recommendations for minimizing geologic risks associated with the proposed development. In addition, the assessment shall include:
    - i. Information on underlying geology, slope gradients, soil types, the location of any springs within 1,000 feet of the project area, boring and/or test pit logs describing soil stratification, and the results of any soil analysis;
    - ii. Identification of any previous landslide activity in the vicinity of the project, and an assessment of the overall stability of slopes before and after construction of the proposed project;
    - iii. Recommendations for slope stabilization, grading procedures, fill placement and compaction, and design criteria for necessary mitigation measures;
    - iv. Evaluation of the seismic stability of the site, the potential for liquefaction, and proposed mitigation measures;
    - v. A description of the surface and ground water characteristics of the site, including locations of any wetlands, streams, springs, seeps, and groundwater along with recommendations for addressing any impacts;

- vi. Recommendations on building site locations and setbacks, foundation design, design of any temporary or permanent retaining structures, and if necessary the minimum no-disturbance setback from any unstable slopes;
  - vii. An estimate of the average bluff retreat rate, as well as potential retreat rates associated with catastrophic events such as earthquakes and one-hundred-year storm events;
  - viii. A listing of any additional geotechnical site inspections that are recommended before and during construction.
- c. Shoreline stabilization structures. Shoreline structures such as bulkheads have additional requirements that are outlined in SJCC Chapter 18.50 (the shoreline regulations).
  - d. A grading, erosion and stormwater management plan meeting the requirements of this code.
  - e. A landscape/revegetation plan, which shall include:
    - i. Measures to be taken to protect native vegetation particularly large trees;
    - ii. Measures to replant native vegetation which is disturbed.
    - iii. A schedule showing when each stage of the project will be revegetated, with estimated starting and completion dates and estimated costs for the work.

**SECTION 4. SJCC Section 18.30.130 (Frequently Flooded Areas) shall be amended to read as follows:**

**18.30.130 Frequently flooded areas.**

**A. Classification.** This section applies to all areas of special flood hazards within the jurisdiction of San Juan County as identified by the Federal Insurance Administration on its Flood Insurance Rate Maps (FIRMs), Numbers 530149 0001-0008, dated June 7, 1977, and any revisions thereto, which are hereby adopted by reference and declared to be part of this code. The FIRMs are on file at the Department permit center. These maps however, are only indicators and may not accurately reflect site conditions. In case of conflict, conditions in the field take precedence.

**B. Protection Standards.**

1. All developments in areas of special flood hazards must first meet the requirements of this code including any subarea plans, and the San Juan County health and building codes, the requirements for geologically hazardous areas, wetlands, Fish and Wildlife Habitat Conservation Areas (SJCC 18.30.110, 120, 150 & 160), and for areas within shoreline jurisdiction the requirements of SJCC Chapter 18.50 adopted in Chapters 13.04 and 15.04 SJCC, respectively. When allowed, such developments shall also meet the requirements for floodproofing or construction as detailed in SJCC 15.12, the Flood Hazard Control Regulations, on the Federal Emergency Management Agency (FEMA) National Flood Insurance Program Elevation Certificates. (Ord. 2-1998 Exh. B § 3.6.6)
2. To protect habitat for endangered salmon, property owners choosing to develop within a 100-year area of special flood hazard (the 100 year flood plain), shall provide a mitigation plan with supporting science, prepared by a qualified professional and approved by the Department, detailing how negative effects of the development will be mitigated so there will be no net loss of water quality, water quantity, riparian vegetation, bank stability, channel migration, hyporheic zones (areas of diminished flow), wetlands, large woody debris, flood volumes, flood velocities,

spawning substrate, or refugia for salmon. Requirements associated with mitigation plans are found in SJCC 18.30.110.

3. Development occurring within the 100-year area of special flood hazard for type F streams must also compensate for negative effects to floodwater storage and fish habitat function. For example, an equivalent area and volume of floodwater storage and fish habitat can be created through a balanced cut and fill program. This area must be provided on site and any habitat areas created must be graded and vegetated to allow fish refugia during flood events, and to allow fish to return to the main channel when floodwaters recede.
4. Expansion of existing structures located within areas of special flood hazard are limited to no more than 10% of the footprint existing on \_\_\_\_\_ (the date this requirement was adopted) unless all negative impacts associated with the expansion are mitigated. Expansion beyond this limit requires submission and approval of a plan with supporting science, prepared by a qualified professional, detailing how negative effects of the development will be mitigated so there will be no net loss of water quality, water quantity, riparian vegetation, bank stability, channel migration, hyporheic zones (areas of diminished flow), wetlands, large woody debris, flood volumes, flood velocities, spawning substrate, or refugia for salmon.
5. Before a permit for development within an area of special flood hazard is issued, the applicant shall record a notice to title stating that the property contains land within an area of special flood hazard and that development in this area can only occur in accordance with SJCC 18.30.110-160 and for areas within shoreline jurisdiction Chapter 18.50.
6. Guidance on developing a mitigation plan meeting the above requirements is provided in the September 22, 2008 *Biological Opinion on Implementation of the National Flood Insurance Program in the State of Washington, Puget Sound Region*, prepared by the National Marine Fisheries Service (NMFS document Tracking No. 2006-00472).
7. Structures categorized by the International Building Code as occupancy category IV (essential public facilities) shall not be constructed in frequently flooded areas unless there is no feasible alternative.

## **SECTION 5. SJCC Section 18.30.150 (Wetlands) shall be amended to read as follows:**

### **18.30.150 Wetlands.**

- A. Applicability and Purpose.** Unless exempted under the provisions of SJCC 18.30.110.C, the regulations in this section apply to areas meeting the definition of a wetland.

In addition to the exemptions provided in SJCC 18.30.110.C, the requirements of this section (18.30.150) shall not apply to Category 3 and 4 wetlands under 2,500 s.f. in size when the WA Dept. of Ecology determines that impacts on the wetland will be negligible.

In some cases, wetlands may overlap fish and wildlife habitat conservation areas, frequently flooded and geologically hazardous areas regulated under SJCC 18.30.110, 18.30.120, 18.30.130, and 18.30.160, and for areas within shoreline jurisdiction, Chapter 18.50. If there are unresolved conflicts between these sections, the most restrictive standard applies.

- B. Coordination with State and Federal programs.** These regulations are administered in conjunction with State and Federal wetland programs to ensure that development is managed in a way that protects and ensures “no net loss” of the “functions and values” of wetlands. County

wetland regulations do not apply to agricultural activities and approved exemptions and exceptions. State and Federal requirements may however still apply.

If the WA Dept. of Ecology is reviewing an activity for compliance with State wetlands requirements, the County will not conduct a duplicate review, and shall not issue permits or approvals prior to receiving written authorization from Ecology.

**C. Wetland Rating.** Wetlands shall be rated and classified in accordance with the *Washington State Wetland Rating System for Western Washington*, Ecology Publication 04-06-025, August 2004.

Wetland rating categories shall not change due to illegal modifications, or voluntary enhancement (i.e. enhancement that is not required). Department of Ecology documents, including this wetland rating handbook, can be found at <http://www.ecy.wa.gov/programs/sea/wetlands/index.html>.

**D. Maps.** San Juan County has maps showing the approximate location and rating of wetlands, however these maps are only indicators and may not be complete. In all cases conditions in the field take precedence. To aid property owners and the public in identifying and protecting wetlands, San Juan County will provide available maps on its web site.

**E. Wetland Protection Requirements.**

For most land disturbing activity and vegetation removal, the “no net loss” standard will be achieved through compliance with Federal, State and local regulations, including the buffer and stormwater requirements of this code. In most cases, additional mitigation of impacts will not be necessary. If, however, no net loss is to be achieved through mitigation, it must conform to the definition of “no net loss” in SJCC 18.20.140. Requirements associated with mitigation of impacts are found in SJCC 18.30.110.

**1. Options for preventing negative impacts to wetlands.**

a. Providing a buffer as shown in Table 3.4. Requirements for wetland buffers are listed below.

TABLE 3.4 MINIUMUM WETLAND BUFFERS	
WETLAND CATEGORY	REQUIRED BUFFER FROM WETLAND BOUNDARY
Category I	180 feet
Category II	180 feet
Category III	90 feet
Category IV	30 feet

b. Increasing the buffer in some areas, and decreasing it in others, in conformance with the buffer averaging procedures (see SJCC 18.30.150.E.7)

c. Developing a site specific, Conservation Area Stewardship Plan (CASP) in conformance with the requirements of SJCC 18.30.110.

d. For lots that meet the criteria, a reasonable use exception can be requested in conformance with the procedures of SJCC 18.30.110.

- e. For public agencies and utilities that must install facilities within a wetland or its buffer, a public agency/utility exception can be requested in conformance with the precedures of SJCC 18.30.110.
2. **Measuring Buffers.** Wetland buffers shall be measured landward perpendicularly from the edge of the wetland.
  3. **Determination of Regulatory Boundaries.** Property owners may choose either of the following methods to establish the location of a wetland and adjoining buffer:
    - a. A field investigation and wetland report can be prepared by a qualified professional in conformance with the *Washington State Wetland Identification and Delineation Manual*, WA Dept. of Ecology Publication #96-94 (Note: RCW 36.70A.175 requires the use of this manual). Buffers for wetlands delineated through this method are shown in Table 3.4.
    - b. Site inspection by County staff. If sufficient information exists for staff to estimate the wetland category and boundary, and proposed activities are well outside of the wetland and adjoining buffer, then a wetland report and delineation are not required. To qualify for this option, the land owner must agree to the buffers outlined in Table 3.5 below. Activities within the buffers must be consistent with the wetland protection requirements of this section (SJCC 18.30.150) and these buffers must be shown on all site plans including binding site plans and subdivision plats.

<b>TABLE 3.5 MINIUMUM ESTIMATED WETLAND BUFFERS</b>	
<b>WETLAND CATEGORY</b>	<b>REQUIRED BUFFER FROM ESTIMATED WETLAND BOUNDARY*</b>
Category I	230 feet
Category II	230 feet
Category III	140 feet
Category IV	80 feet

\* These are not standard wetland buffers; they are optional buffers that may be used in conjunction with an estimated wetland rating and boundary. If a structure, building envelope, clearing, grading or setback line in a subdivision is proposed to be closer to the wetland than the distance specified in this table, a wetland delineation prepared by a qualified professional is required.

4. **Wetland Reports.** A wetland report, prepared by a qualified professional, is required any time wetland or buffer mitigation is proposed or required, and as a part of an application for approval of a Conservation Area Stewardship Plan (CASP). When a wetland report is required, it must be consistent with the standards and methods in the *Washington State Wetland Identification and Delineation Manual*, Publication #96-94 (Note: RCW 36.70A.175 requires the use of this manual). For projects applying for federal wetland permits, the report must also be consistent with the requirements of the Regional Supplement to the Army Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (document number ???).

#### 5. Wetland Activities

- a. Wetlands shall consist of undisturbed areas of water, native vegetation, duff, logs, and snags except the following are **allowed**.
  - i. Trails, stairs or raised walkways for pedestrian use, not exceeding five feet in width, providing they are constructed of non-toxic materials , are designed to sheet flow runoff

- into adjacent vegetation, and are otherwise designed to minimize soil erosion and impacts on water quality.
- ii. Maintenance which does not damage the wetland.
  - iii. Replacement of non-native vegetation with native vegetation.
  - iv. Restoration or enhancement designed to protect soil, water, vegetation or wildlife which meets applicable State and Federal requirements.
  - v. Exceptions and exemptions allowed under 18.30.110.
  - vi. Fences constructed of non-toxic materials.
  - vii. Wildlife viewing structures less than 200 s.f. in size.
  - viii. Legal structures and uses existing on \_\_\_\_\_ (the date these requirements were adopted), that are located within a wetland may continue in accordance with SJCC 18.40.310 and 18.80.120.
  - ix. Orchards and gardens are allowed in category II, III and IV wetlands provided no chemicals are used.
- b. The following activities **are not** allowed in wetlands:
- i. New buildings, structures or impervious surfaces except those allowed in above section 5.a.
  - ii. Establishment of new residential landscaping.
  - iii. Clearing, grading, excavating, filling, paving, mining, dredging, or drilling or other land disturbing activity or other development except for restoration/enhancement meeting State and Federal requirements and the planting of gardens and fruit trees in Cat. II, III and IV wetlands.
  - iv. Storage of equipment, materials or chemicals.
  - v. Excessive vegetation removal that alters natural site characteristics. Pruning of more than 20% of the vegetation, when compared to that which existed on \_\_\_\_\_ (the effective date of this ordinance), shall be considered excessive.
  - vi. Hazardous or sanitary waste landfills
  - vii. Chemical application (e.g. pesticides, herbicides, rodenticides and non-organic fertilizers).
- c. Wetlands within 100-year flood plain are also subject to the requirements of SJCC 18.30.130 (Frequently Flooded Areas).

## 6. Wetland Buffer Activities

- a. Buffers shall consist of undisturbed areas of water, native vegetation, duff, logs, and snags except the following are **allowed** within the buffer.
  - i. Trails, stairs or raised walkways for pedestrian use, not exceeding five feet in width, providing they are constructed of non-treated wood, are designed to sheet flow runoff into adjacent vegetation, and are designed to minimize soil erosion and impacts on water quality.
  - ii. Non-structural improvements and maintenance which do not damage the wetland or buffer.
  - iii. Replacement of non-native vegetation with native vegetation.
  - iv. Restoration or enhancement designed to protect soil, water, vegetation or wildlife which meets applicable State and Federal requirements.
  - v. Exceptions and exemptions allowed under 18.30.110.C, D, & E.
  - vi. Fences.
  - vii. Wildlife viewing structures less than 200 s.f. in size.
  - viii. Legal structures and uses existing on \_\_\_\_\_ (the date these requirements were adopted), that are located within a wetland buffer, may continue in accordance with

SJCC 18.40.310 and 18.80.120, and in addition the developed area within a buffer may be expanded up to 25%, provided the expansion does not further encroach toward the wetland. All development occurring after the above effective date shall count toward this 25% maximum.

- ix. Orchards and gardens provided no chemicals are used.
- b. The following activities **are not** allowed in the buffer:
  - i. New buildings, structures or impervious surfaces except those allowed in above section 7.a.
  - ii. Establishment of new residential landscaping.
  - iii. Clearing, grading, excavating, filling, paving, mining, dredging, or drilling or other land disturbing activity or other development except for restoration/enhancement meeting State and Federal requirements, and the planting of gardens and fruit trees.
  - iv. Storage of equipment, materials or chemicals.
  - iv. Excessive vegetation removal that alters natural site characteristics. Pruning of more than 20% of the vegetation, when compared to that which existed on \_\_\_\_\_ (the effective date of this ordinance), shall be considered excessive.
  - v. Hazardous or sanitary waste landfills.
  - vi. Chemical application (e.g. fertilizers, pesticides, herbicides, rodenticides).
- c. Wetland buffers within 100-year flood plain are also subject to the requirements of SJCC 18.30.130 (Frequently Flooded Areas).

## 7. General Buffer Requirements.

- a. Buffer Averaging. The Director shall approve averaging of buffer widths on a case-by case basis, in accordance with the following:
  - i. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer, and all increases in buffer dimension are parallel to the wetland boundary.
  - ii. Buffer averaging does not reduce the functions or values of the wetland.
  - iii. The buffer width is not reduced to less than twenty-five percent (25%) of the standard widths identified in Table 3.4. Buffer widths should be narrowed in areas that will cause the least disturbance.
  - iv. Within the buffer, the slopes are stable and the gradient does not exceed thirty percent (30%).
  - v. Vegetation that is not in good condition will be enhanced so as to achieve a healthy, native vegetative community that is adequate to protect the function and values of the wetland.
- b. Buffer Marking. Prior to and during construction occurring adjacent to a buffer, the location of the outer edge of the buffer shall be marked with orange construction fencing and/or temporary signs placed every 100 feet. Signs shall contain the following statement: "Wetland Buffer – Do Not Remove or Alter Existing Snags, Logs or Vegetation."
- c. For recorded plats and binding site plans the applicant shall show the boundary of required buffers on the face of the plat or plan.
- d. Physical Separation, Functional Isolation, Static Buffer Widths. Buffers shall not be required in areas which are physically separated and functionally isolated from a wetland, and that will not protect the wetland from adverse impacts. Functional isolation can occur due to existing roads, structures, vertical separation, or any other relevant physical characteristic.

- e. For purposes of determining required buffer widths, wetlands that undergo non-compensatory enhancement (i.e. enhancement that is not required) will retain the prescriptive buffer requirements that applied prior to the enhancement activity. Additional restrictions will not be imposed based on increased functions and values resulting from voluntary enhancement.

## **8. Roads, utilities and trails that cross wetlands and their buffers.**

The Director shall approve road, utility and trail crossings in accordance with SJCC 18.60.80 - 100 (Road and Driveway Standards) and the following:

- a. Road and Trail Crossings. New or expanded roads, driveways, trails, and associated culverts and bridges may be constructed across wetlands or their buffers providing:
  - i. New roads may only be constructed across wetlands or their buffers if there is no reasonable or practical alternative.
  - ii. Bridges and crossings over type F streams shall be designed according to the Washington Dept. of Fish and Wildlife "Design of Road Culverts for Fish Passage, 2003" and the National Marine Fisheries Service "Guidelines for Salmonid Passage at Stream Crossings, 2000";
  - iii. To the extent feasible, new roads and driveways shall be located on existing road grades, utility corridors or previously disturbed areas.
  - iv. The road, driveway, trail, culvert or bridge shall be located and designed for the least impact possible. Crossings shall not occur in salmonid spawning areas unless no other feasible crossing site exists. In streams with salmonid breeding habitat, bridges, bottomless culverts or other alternatives that allow for fish passage are required, and bridge piers or abutments may not be placed within the stream or stream bank, unless there is no other feasible alternative. The length of conventional culverts shall be the minimum necessary;
  - v. When required, Hydraulic Project Approval shall be obtained from the Washington Dept. of Fish and Wildlife. Information on WDFW requirements can be found at <http://wdfw.wa.gov/hab/hpapage.htm>.
  - vi. Roads and shall cross wetlands and buffers at as close to a ninety degree angle as possible. Trails shall cross streams at as close to a ninety degree angle as possible;
  - vii. Crossings shall not interfere with fish passage, the flow and circulation of water, movement of large woody debris or gravel, or other stream processes.
  - viii. Construction shall occur during work windows and time limits approved by WDFW.
  - ix. All crossings shall be designed based on the 100-year projected flood flows.
  - x. Whenever possible, crossings shall serve multiple properties;
  - xi. When expanding existing crossings that do not meet these standards, the crossing shall be upgraded as necessary to reduce wetland impacts and meet the above requirements; and

xii. Negative impacts to wetlands and buffers shall be mitigated to ensure no net loss of functions and values using the procedures of SJCC Section 18.30.110 and the guidance in *Wetland Mitigation in Washington State - Part 1: Agency Policies and Guidance*, Ecology publication 06-06-011a; and *Wetland Mitigation in Washington State - Part 2*, publication 06-06-011b.

b. Utility Crossings. When no practical or reasonable alternative exists, new or expanded utilities may be constructed across wetlands and buffers providing:

i. Existing, substandard crossings shall be upgraded as necessary to reduce impacts and to meet the requirements of this section.

ii. To the maximum extent feasible, new utilities shall be located on existing road grades, in existing utility easements or in previously disturbed areas.

iii. Utilities shall be located and designed for the least impact possible. Crossings shall not occur in salmonid spawning areas unless no other feasible crossing site exists. On-site sewage drainfields must be designed to protect existing trees and vegetation. New utility corridors shall be aligned to avoid damaging the roots or cutting trees greater than 12 inches in diameter measured at 4 ½ ft. on the uphill side of the tree. Upon completion of construction or as soon thereafter as weather permits, utility corridors shall be revegetated with appropriate native vegetation at not less than preconstruction densities. Utility structures shall not be sand blasted and shall not be painted with lead-base or other toxic paint.

iv. When required, Hydraulic Project Approval shall be obtained from the Washington Dept. of Fish and Wildlife. Information on WDFW requirements can be found at <http://wdfw.wa.gov/hab/hpapage.htm>.

v. Utilities shall cross wetlands and buffers at as close to a ninety degree angle as possible;

vi. An easement will be provided for utilities serving other parcels in the vicinity. Easements for trails and viewing points are encouraged; and

vi. Negative impacts to wetlands and buffers shall be mitigated to ensure no net loss of functions and values following the procedures in SJCC Section 18.30.110, and the guidance in *Wetland Mitigation in Washington State - Part 1: Agency Policies and Guidance*, Ecology publication 06-06-011a; and *Wetland Mitigation in Washington State - Part 2*, Ecology publication 06-06-011b.

**9. Mitigation of Impacts from Illegal Activities.** In addition to other fines and penalties, wetland impacts resulting from illegal activities shall be fully mitigated to ensure no net loss of the functions and values of the wetland. Mitigation plans shall be developed and implemented in accordance with the procedures in SJCC Section 18.30.110, and the guidance in *Wetland Mitigation in Washington State - Part 1: Agency Policies and Guidance*, Ecology publication 06-06-011a; and *Wetland Mitigation in Washington State - Part 2*, Ecology publication 06-06-011b.

**10. Non-compensatory Enhancement Plans.** Applications for non-compensatory wetland enhancement projects (i.e. voluntary projects not associated with new development) shall be accompanied by an enhancement plan demonstrating that the proposed actions will increase the wetland functions and values. This plan shall be developed and implemented in accordance with the procedures in SJCC Section 18.30.110, and the guidance in *Wetland Mitigation in Washington State - Part 1: Agency Policies and Guidance*, Ecology publication

**SECTION 6. SJCC 18.30.160 (Fish & Wildlife Habitat Conservation Areas) shall be repealed and replaced with the following new section:**

**18.30.160 Fish and Wildlife Habitat Conservation Areas (FWHCAs)**

**A. Applicability and Purpose.** Unless exempted under the provisions of SJCC 18.30.110.C, the following regulations apply to all Fish and Wildlife Habitat Conservation Areas and adjacent buffers identified in this Chapter. The intent of these regulations is to ensure that development is managed in a way that maintains the habitat of listed threatened, endangered, sensitive and other priority species within their natural geographic distribution, preventing the creation of isolated subpopulations and minimizing the risk of extinction. To achieve this, land uses must be conducted in a way that ensures no net loss in the functions and values of Fish and Wildlife Habitat Conservation Areas. In this context, no net loss means avoidance or mitigation of adverse impacts. For most development, this will be achieved through compliance with Federal, State and local regulations, including the buffer and stormwater requirements of this code. If no net loss is to be achieved through mitigation, it should benefit those species or habitats being impacted and achieve no net loss of the affected habitat as defined in SJCC 18.20.140.

In some cases, Fish and Wildlife Habitat Conservation Areas may overlap wetlands, frequently flooded and geologically hazardous areas regulated under SJCC 18.30.120, 18.30.130, and 18.30.150, and for areas within shoreline jurisdiction, Chapter 18.50. If there are unresolved conflicts between these sections, the most restrictive requirement applies.

**B. Classification.** In accordance with WAC 365-190-080(5) the following are classified as Fish and Wildlife Habitat Conservation Areas:

1. Areas with which State and Federally listed endangered, threatened and sensitive animal species have a primary association. The listed species as of the adoption date of this ordinance are identified below. There are many other species that are candidates for listing, and when they are formally listed by either the State or Federal government, San Juan County shall protect their habitat in accordance with this chapter and the recommendations of the Washington Dept. of Fish and Wildlife and other sources of Best Available Science. In addition, species that are candidates for listing may be designated and protected as species of local concern. State listed species are found in WAC 232-12-011 and 014, and Federally listed species are found on the Priority Habitats and Species list at <http://wdfw.wa.gov/hab/phslist.htm>;

State and Federally listed species found in San Juan County as of the adoption of this ordinance include:

**Birds**

- Bald eagle
- Brown pelican
- Common loon
- Marbled murrelet
- Peregrine falcon

**Fish**

- Salmon
- Chinook
- Chum

**Insects**

- Taylor's Checker-spot butterfly

**Marine Mammals**

- Southern resident orca
- Stellar sea lion
- Humpback whale
- Gray whale
- Sea otter

Coho  
Pink  
Sockeye  
Steelhead

2. Habitats and plant and animal species of local concern when identified by the County Council pursuant to this Chapter. Habitats and species of local concern as of the adoption date of this ordinance are listed below.

*Staff note: The CAO Committee discussed and agreed to include the following three habitats as habitats of local concern. According to WA Dept. of Fish and Wildlife staff, these are our three most endangered habitats, supporting an array of threatened species. According to WDFW identifying and protecting these habitats is the easiest and most effective way to protect the plants and animals that are associated with them.*

- a. Native grassland/ Camas/ wildflower prairie. These are relatively undisturbed areas where native grasses, Camas and other wildflowers form the climax plant community.
- b. Herbaceous Balds and Bluffs. These occur as variable sized patches of grass and forbs (herbaceous flowering plants) located on shallow soils over bedrock commonly fringed by forest or woodland. They typically consist of low growing vegetation adapted for survival on shallow soils amid seasonally dry conditions, often on steep slopes. Dominant flora include herbaceous vegetation, dwarf shrubs, mosses and lichens. Rock outcrops, boulders and scattered trees are often present, especially Douglas fir, Pacific madrone, and Garry oak. Balds occur within mid-montane and lowland forest zones. On slopes near salt water shorelines in the northern Puget Trough, herbaceous balds and bluffs can sometimes be difficult to differentiate. Balds are typically smaller than 12 acres, although some can be up to 250 acres. Information on the plants associated with herbaceous balds and bluffs can be found at [http://www1.dnr.wa.gov/nhp/refdesk/communities/pdf/balds\\_veg.pdf](http://www1.dnr.wa.gov/nhp/refdesk/communities/pdf/balds_veg.pdf).
- c. Garry oak (*Quercus garryana*) woodlands, savannahs and associated ecosystems. Garry oak is a type of Oregon White Oak found in warmer, drier areas within the Puget Sound and southern British Columbia. They are associated with what is becoming an increasingly rare ecosystem that supports a variety of rare wildflowers, butterflies and other plants and animals. Garry oak ecosystems are highly varied and are found in areas with rock outcrops, coastal bluffs, maritime meadows, and treeless grasslands as well as seasonal wetlands. They are sometimes found in mixed stands with other trees including arbutus and Douglas fir.

*Staff Note: At a minimum, the Washington Dept. of Fish and Wildlife would like us to consider listing the following as local species of concern. Ideally they would like us to include all their priority habitats and species in conjunction with voluntary protection measures (this list can be viewed at <http://wdfw.wa.gov/hab/phslist.htm>):*

- *Black Oyster Catcher. (Only occurs on the west coast of the US, with a total population of 11,000. The San Juans have the largest concentrations of these birds. They nest on the ground above the rocky intertidal zone in areas without mammals ).*
- *Golden Eagle. (Currently declining throughout the Western US. Protection measures are similar to those for Bald Eagles and Peregrine Falcon)*
- *Great Blue Heron. (Numbers of breeding colonies in the San Juans are declining)*
- *Island Marble Butterfly. (though to be extinct – now only found in the San Juans)*
- *Pigeon Guillemot. (A shore bird that nests in colonies in burrows on sandy and rocky cliffs)*

- *Townsend's Big Eared bat and areas with roosting concentrations of all bat species.*

3. Shellfish beds;
4. Kelp and eelgrass beds;
5. Herring, Surf smelt and Sand lance spawning areas;
6. Waters of the State as defined in RCW 90.48.020, including lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington except for man made farm ponds used for agricultural purposes (Note that lakes over 20 acres in size, marine waters and adjacent lands are regulated under SJCC Chapter 18.50);
7. State natural area preserves and natural resource conservation areas.

**C. Rare Plants.** While rare and endangered plants are not regulated under this Code, State and Federal requirements may apply. Following are rare and endangered plants found in San Juan County. For more information on plants and associated protection recommendations contact the Washington Native Plant Society or the San Juan County Conservation District.

**Table 3.6  
Rare Plants in San Juan County**

(For more information see <http://www1.dnr.wa.gov/nhp/refdesk/index.html>.)

Plant	Habitat Description
Adder's-tongue ( <u><i>Ophioglossum pusillum</i></u> )	
Alaska Alkaligrass ( <u><i>Puccinellia nutkaensis</i></u> )	
Arctic Aster ( <u><i>Eurybia merita</i></u> )	
Blunt-leaved Pondweed ( <u><i>Potamogeton obtusifolius</i></u> )	
California Buttercup ( <u><i>Ranunculus californicus</i></u> )	
Coast Microseris ( <u><i>Microseris bigelovii</i></u> )	
Erect Pygmy-weed ( <u><i>Crassula connata</i></u> )	
Few-flowered Sedge ( <u><i>Carex pauciflora</i></u> )	
Golden Paintbrush ( <u><i>Castilleja levisecta</i></u> )	
Lesser Bladderwort ( <u><i>Utricularia minor</i></u> )	
Nuttall's Quillwort ( <u><i>Isoetes nuttallii</i></u> )	
Rosy Owl-clover ( <u><i>Orthocarpus bracteosus</i></u> )	
Rush Aster ( <u><i>Symphotrichum boreale</i></u> )	
Sharpp fruited Peppergrass ( <u><i>Lepidium oxycarpum</i></u> )	
Twayblade ( <u><i>Liparis loeselii</i></u> )	
Water Lobelia ( <u><i>Lobelia dortmanna</i></u> )	
White Meconella ( <u><i>Meconella oregana</i></u> )	
White-top Aster ( <u><i>Sericocarpus rigidus</i></u> )	

**D. Maps.** San Juan County has maps showing the type and location of streams and the approximate location of protected species and habitats. Maps of species and habitats are however only indicators and may be incomplete. Conditions in the field shall take precedence. Habitats and species that have been positively identified, including Type F streams, shall be presumed to be correct until proven otherwise by a qualified professional. To aid property owners and the public in identifying and protecting these areas, San Juan County shall use available information to create maps of wetlands and Fish and Wildlife Habitat Conservation Areas, and provide the maps on its web site, at public libraries, and at the CD&P office in Friday Harbor.

**E. Protection Requirements.**

1. **Protection requirements for Fish and Wildlife Habitat Conservation Areas associated with freshwater streams and natural ponds under 20 acres.** This section outlines requirements for protecting freshwater streams and natural ponds under 20 acres. Ponds, streams and adjacent areas that are within a 100-year area of special flood hazard as shown on the Flood Insurance Rate Map are also subject to the requirements of SJCC 18.30.130, and those meeting the definition of a wetland are also subject to the standards of SJCC 18.30.150. In case of unresolved conflict, the most restrictive standard applies.

Requirements and options for preventing impacts to freshwater habitat are listed below.

- a. Development within streams and ponds is not permitted except for those activities specifically allowed in this section (SJCC 18.30.160) and receiving Hydraulic Permit Approval through the WA Dept. of Fish and Wildlife.
- b. Freshwater habitat can be protected by providing the buffers shown below in Table 3.7 (requirements associated with buffers follow).

<b>TABLE 3.7 BUFFERS TO STREAMS AND NATURAL PONDS</b>	
<b>STREAM TYPE</b>	<b>RIPARIAN BUFFER REQUIREMENT</b>
Type "F" – Fish Bearing Streams	150 feet
Type "N"- Non-Fish Bearing Seasonal and Perennial Streams; Natural Ponds < 20 acres	100 feet
Channel Migration Zones	50 feet (if mapped by SJ County)*

\*While San Juan County currently has no identified channel migration zones, if these areas are identified using the procedures in Ecology publication #03-06-027, the riparian buffer requirement for those areas shall be 50 feet.

- c. For Type F streams, buffers may be increased in some areas, and decreased in others, in conformance with buffer averaging procedures.
  - d. Type F streams may be protected using a site specific Conservation Area Stewardship (CASP) Plan prepared in conformance with SJCC 18.30.110 and approved by the Director.
  - e. For lots that meet the criteria, a reasonable use exception can be requested in conformance with the procedures of SJCC 18.30.110.
  - f. For public agencies and utilities that must install facilities within a stream or its buffer, a public agency/utility exception can be requested in conformance with the procedures of SJCC 18.30.110.
2. **Measuring Stream and Pond Buffers.** Stream and pond buffers shall be measured landward perpendicularly from the ordinary high water mark (OHWM). The OHWM is the mark on lakes and streams where the presence and action of waters are so common and usual, and so long continued in ordinary years, as to mark upon the soil a character distinct from that of the abutting upland. In any area where the OHWM cannot be found, the OHWM shall be the line of mean high water.

### **3. General Buffer Requirements.**

- a. Buffer Averaging. The Director shall approve averaging of buffer widths on a case-by case basis, in accordance with the following:
  - i. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer, and all increases in buffer dimension are parallel to the stream or pond.
  - ii. Buffer averaging does not reduce the functions or values of the stream or pond.
  - iii. The buffer width is not reduced to less than twenty-five percent (25%) of the standard widths identified in Table 3.7. Buffer widths should be narrowed in areas that will cause the least disturbance.
  - iv. Within the buffer, the slopes are stable and the gradient does not exceed thirty percent (30%).
  - v. Vegetation that is not in good condition will be enhanced so as to achieve a healthy, native vegetative community that is adequate to protect the function and values of the wetland.
- b. Buffer Marking. Prior to and during construction occurring adjacent to a buffer, the location of the outer edge of the buffer shall be marked with orange construction fencing and/or temporary signs placed every 100 feet. Signs shall contain the following statement: "Wildlife Habitat Buffer – Do Not Remove or Alter Existing Snags, Logs or Vegetation."
- c. For recorded plats and binding site plans the applicant shall show the boundary of required buffers on the face of the plat or plan.
- d. Physical Separation, Functional Isolation, Static Buffer Widths. Buffers shall not be required in areas which are physically separated and functionally isolated from streams and ponds, and that will not protect them from adverse impacts. Functional isolation can occur due to existing roads, structures, vertical separation, or any other relevant physical characteristic.
- e. Buffers Adjacent to Streams in Ravines. For streams in ravines, the buffer width shall be the greater of i) the buffer required for the stream type, or ii) a buffer which extends at least 25 feet landward from the top of the ravine. Ravine is defined as a narrow gorge containing steep slopes which is deeper than fifteen vertical feet measured from the center of the stream to the top of the slope.

### **4. Stream and Pond Buffer Activities**

- a. Buffers shall consist of undisturbed native vegetation, duff, logs, and snags except the following are allowed within buffer.
  - i. Trails, stairs or raised walkways for pedestrian use, not exceeding five feet in width, providing they are constructed of non-toxic materials , are designed to sheet flow runoff into adjacent vegetation, and are designed to minimize soil erosion and impacts on water quality.
  - ii. Non structural improvements and maintenance which do not damage the buffer.
  - iii. Replacement of non-native vegetation with native vegetation
  - v. Restoration or enhancement of streams, flood plains, riparian areas, or habitat meeting State and Federal standards.
  - vi Exceptions and exemptions allowed under 18.30.110.C, D and E.
  - vii. Fences.
  - viii Legal structures and uses existing on \_\_\_\_\_ (the date these requirements were adopted), that are located within a buffer, may continue in accordance with the standards for non-conforming uses and structures (SJCC 18.40.310 and 18.80.120) and in addition the developed area may be expanded up to 25%, providing the expansion does not

further encroach toward the stream or pond.

- b. the following activities **are not** allowed in the buffer:
  - i. Establishment of new residential landscaping, gardens, and orchards.
  - ii. Mining, dredging, filling, grading, paving, excavation or drilling operations
  - iii. Storage of equipment or materials
  - iv. Any other activity which results in the removal of vegetation that alters natural site characteristics. Pruning of more than 20% of the vegetation, when compared to that which existed on \_\_\_\_\_ (the effective date of this ordinance), shall be considered excessive.
  - v. Dumping of any materials
  - vi. Hazardous or sanitary waste landfills
  - vii. Receiving areas for toxic or hazardous substances or other contaminants
  - viii. Chemical application (e.g. fertilizers, pesticides, herbicides, rodenticides) adjacent to regulated streams and buffers unless expressly approved as part of a farm plan, forest practices application, or for the control of noxious plant species as identified by the San Juan County Weed Control Board. Chemicals shall not be stored adjacent to a regulated stream or in a required buffer.
  
- c. the following are allowed within the buffer if it can be shown that there will be no net loss of water quality, water quantity, flood volumes, flood velocities, spawning substrate, and/or refugia for listed species of salmon.
  - i. New buildings including accessory buildings
  - ii. New impervious surfaces
  - iii. Removal of native vegetation
  - iv. Septic tanks and drainfields
  - v. Stream relocation unless the primary purpose of the action is to restore natural ecological function.
  - vi. New clearing, grading, filling, land disturbing activity, or other development except for restoration/enhancement meeting State and Federal Standards.
  - vii. Gardens and orchards.

*Staff note: The CAO Review Committee added gardens and orchards to the above section c. at their final meeting. It conflicts with the prohibition on gardens and orchards which the Committee agreed to at a previous meeting (in above section b. which lists activities that are not allowed).*

Approval of these activities is contingent upon the submission of a plan with supporting science, prepared by a qualified professional, and approved by the Department, detailing how any adverse impacts associated with the development will be mitigated to ensure there will be no net loss of the functions and values of stream habitat. In addition, before a permit is issued, the applicant must record a notice to title stating that the property contains land within a required buffer and that development in this area can only occur in conformance with SJCC 18.30.110-160.

Guidance on developing a mitigation plan meeting the above requirements is provided in the September 22, 2008 *Biological Opinion on Implementation of the National Flood Insurance Program in the State of Washington, Puget Sound Region*, prepared by the National Marine Fisheries Service (NMFS document tracking No. 2006-00472).

- d. Road and Trail Crossings. The Director shall approve the construction of new or expanded roads, driveways, trails and associated culverts and bridges across streams and their buffers in accordance with SJCC 18.60.80 - 100 and the following:

- i. New roads may only be constructed across streams or their buffers if there is no reasonable or practical alternative.
  - ii. Bridges and crossings shall be designed according to the Washington Dept. of Fish and Wildlife "Design of Road Culverts for Fish Passage, 2003" and the National Marine Fisheries Service "Guidelines for Salmonid Passage at Stream Crossings, 2000";
  - iii. To the extent feasible, new roads shall be located on existing road grades, utility corridors or previously disturbed areas.
  - iv. The road, culvert or bridge shall be located and designed for the least impact possible, and shall not interfere with fish passage, movement of large woody debris or gravel, or other stream processes. Crossings shall not occur in salmonid spawning areas unless no other feasible crossing site exists. In streams with salmonid breeding habitat, bridges, bottomless culverts or other alternative that will allow for fish passage are required, and bridge piers or abutments may not be placed within the stream or stream banks unless there is no other feasible alternative. The length of conventional culverts shall be the minimum necessary;
  - v. When required, Hydraulic Project Approval shall be obtained from the Washington Dept. of Fish and Wildlife. Information on WDFW requirements can be found at <http://wdfw.wa.gov/hab/hpapage.htm>.
  - vi. Roads shall cross streams and buffers at as close to a ninety degree angle as possible. Trails shall cross streams at as close to a ninety degree angle as possible;
  - vii. Crossings shall not interfere with fish passage, the flow and circulation of water, movement of large woody debris or gravel, or other stream processes.
  - viii. Construction shall occur during work windows and time limits approved by WDFW.
  - ix. All stream crossings shall be designed based on the 100-year projected flood flows.
  - x. Crossings shall serve multiple properties whenever possible; and
  - xi. When expanding existing crossings that do not meet these standards, the crossing shall be upgraded as necessary to reduce stream impacts and meet the above requirements.
- e. Utility Crossings. When no practical or reasonable alternative exists, new or expanded utilities may be constructed across streams and their buffers providing:
- i. Existing, substandard crossings shall be upgraded as necessary to reduce stream impacts and to meet the requirements of this section.
  - ii. To the maximum extent feasible, new utilities shall be located on existing road grades, in existing utility easements or in previously disturbed areas.
  - iii. Utilities shall be located and designed for the least impact possible. Crossings shall not occur in salmonid spawning areas unless no other feasible crossing site exists. On-site sewage drainfields must be designed to protect existing trees and vegetation. New utility corridors shall be aligned to avoid damaging the roots or cutting trees greater than 12 inches in diameter measured on the uphill side at four and one-half feet. Utility corridors shall be revegetated with appropriate native vegetation at not less than preconstruction densities immediately upon completion of construction or as soon thereafter as weather permits.

Utility structures shall not be sand blasted and shall not be painted with lead-base or other toxic paint.

- iv. When required, Hydraulic Project Approval shall be obtained from the Washington Dept. of Fish and Wildlife;
- v. Utilities shall cross streams and buffers at as close to a ninety degree angle as possible;
- vi. Construction shall occur during work windows and time limits approved by WDFW.
- vii. An easement will be provided for utilities serving other parcels in the vicinity. Easements for trails and viewing points are encouraged; and
- f. All negative impacts to stream habitat and function shall be fully mitigated in accordance with *Washington State Fish Passage and Habitat Enhancement Restoration Programmatic*, National Marine Fisheries Service Tracking No. 2008-03598.

**6. Additional protection requirements and recommendations for species and habitats identified in B.1 and B.2 above.**

This section outlines additional protection requirements for Fish and Wildlife Habitat Conservation Areas classified under SJCC 18.30.160.B.1 and 2. The requirements identified in this section supplement the more general requirements of this code, including those actions necessary to maintain the quantity and quality of ground and surface water. If the State or Federal government formally lists other species as endangered, threatened or sensitive, San Juan County shall also protect their habitat in conformance with this Chapter and the recommendations of the Washington Department of Fish and Wildlife, US Fish and Wildlife Service and National Marine Fisheries Service.

To aid property owners in meeting these requirements, the County will develop standardized habitat management agreements that will be signed by the property owner and attached to permits and approvals. Approval of building and land use permits, and activities requiring County review, will be contingent on compliance with these agreements.

**Table 3.8  
Additional Species Specific Protection Requirements**

Species	Habitat Description	Protection Requirements (required unless noted as a recommendation) (For additional information see <a href="http://wdfw.wa.gov/hab/phslist.htm">http://wdfw.wa.gov/hab/phslist.htm</a> )
<b>Birds</b> Bald eagle	Nests, roosts, perches and territories around these areas are the most sensitive habitats. These are primarily found along marine shorelines within SJ County. Food sources include dead or weakened prey, spawned salmon, road killed deer, and crippled waterfowl.	<ul style="list-style-type: none"> <li>● Maintain 50 % of all trees in representative size classes and all trees ≥24 in. dbh* within 250 ft. of the shoreline for ½ mile on either side of the nest.</li> <li>● Prevent pesticide and chemical contamination of prey and food sources including lead, mercury, organochlorides, organophosphates, carbofuran, and famphur (recommendation).               <ul style="list-style-type: none"> <li>▪ Do not use lead shot and avoid use of</li> </ul> </li> </ul>

		<p>rodenticides and lawn chemicals near nesting &amp; feeding areas.</p> <ul style="list-style-type: none"> <li>▪Do not use treated wood products.</li> <li>▪Follow County stormwater and buffer rqmts.</li> </ul> <p>●In accordance with WAC 232-12-292 and RCW 77.12.655, whenever activities that alter habitat are proposed near a nest or communal roost, prepare (or agree to) a State approved site management plan. Requirements apply to a) all subdivisions; b) projects within 800 feet of a nest; and c) to sites that are within 250 ft. of the shoreline and are within 1/2 mile of a nest. Custom plans are required for subdivisions, for lots within 400 ft. of a nest, and for projects that cannot meet the requirements of a generic plan.</p>
Marbled murrelet	<p>Nest in dense, mossy, wet, old growth conifer forests at least 7 acres in size and within 50 miles of marine waters. Nesting sites very difficult to identify. Nesting trees are at least 32 in. in diameter and the nest itself is typically located in a depression in the moss and lichen. The parents take turns incubating the egg, changing places every morning at dawn. For about four weeks, one incubates while the other one forages at sea. Once the chick hatches, both parents feed it for another four weeks. Feed year round on small, schooling fish and other small sea creatures found in calm, shallow (&lt; 100 ft.), nearshore waters in the San Juans. The number of birds increase dramatically each spring and summer, reflecting good feeding conditions. Murrelets nesting on Vancouver Island make regular round trips of 120 miles to feed in the San Juans. Concentrations of birds are found on Lopez Island and the area between Orcas and Blakely Islands. They are not currently known to nest here, but that could change as second growth forests mature.</p>	<ul style="list-style-type: none"> <li>●Maintain forage fish populations and protect kelp and seagrass beds in conformance with this code.</li> <li>●Protect old growth coniferous forests more than 7 acres in size, with trees at least 32 in. diameter (see available maps).</li> </ul>
Peregrine falcon	<p>Year-round resident in SJ County (≈ 21 nesting pairs). Nests on cliffs and ledges. Feed on birds, especially shorebirds and waterfowl.</p>	<ul style="list-style-type: none"> <li>●Maintain 50 % of all trees in representative size classes and all trees ≥24 in. dbh* within 250 ft. of the shoreline for 1/2 mile on either side of the nest.</li> <li>●Prevent pesticide and chemical contamination of prey and food sources including lead, mercury, organochlorides, organophosphates, carbofuran, and famphur (recommendation). <ul style="list-style-type: none"> <li>▪Do not use lead shot and avoid use of rodenticides and lawn chemicals near nesting &amp; feeding areas.</li> <li>▪Do not use treated wood products.</li> <li>▪Follow County stormwater and buffer</li> </ul> </li> </ul>

		<p>rqmts.</p> <ul style="list-style-type: none"> <li>● Avoid construction of power lines near nests or feeding areas (recommendation).</li> <li>● Do not use lead shot or pesticides around nesting or feeding areas (recommendation).</li> </ul>
<p><b>Fish</b>  Salmon  Chinook  Chum  Coho  Pink  Sockeye    Steelhead</p>	<p>Some spawning in SJ streams. All anadromous (migratory) populations feed in nearshore areas in the San Juans on their way to the ocean. Food sources include small fish and insects, including insects that flow into nearshore waters from upland streams and wetlands.</p>	<ul style="list-style-type: none"> <li>● Maintain forage fish populations and protect kelp and seagrass beds in conformance with this code.</li> <li>● Maintain supply of insect prey. <ul style="list-style-type: none"> <li>▪ Protect vegetation along streams, wetlands and marine shorelines in conformance with this code.</li> </ul> </li> <li>● Protect water quality in conformance with this code (fish need clean, cold water). <ul style="list-style-type: none"> <li>▪ Follow County stormwater and buffer rqmts.</li> <li>▪ Follow County requirements for siting and construction of ponds.</li> </ul> </li> <li>● Protect vegetation, large woody debris and structure along marine shoreline and streams capable of supporting fish in conformance with this code.</li> <li>● Avoid construction of over water structures in conformance with this code.</li> </ul>
<p><b>Insects</b>  Taylor's  Checker-spot  butterfly</p>	<p>Extremely rare and declining throughout range. Associated with maritime prairies and shorelines along the Strait of Juan De Fuca, the post-glacial gravelly outwash and mounded prairies of the Puget Trough, and open island prairies with a dominance of original vegetation. Host plants include the native seaside plantain (<i>Plantago maritima macrocarpa</i>) and the nonnative English plantain (<i>P. major lanceolata</i>). Concentrations found in SJ County on Long Island, and possibly Lopez Island. Current status unknown.</p>	<p>In areas with butterflies or species of plantain (the plants that are their food source):</p> <ul style="list-style-type: none"> <li>● Avoid the use of insecticides and herbicides.</li> <li>● Do not use fertilizers.</li> <li>● Limit grazing and agricultural land disturbance.</li> <li>● During land development protect areas with plantain.</li> </ul>

\*dbh = diameter at breast height, which is measured 4 ½ ft. from the ground surface on the uphill side of the tree.

**7. Guidance on protecting habitats and species of local concern.** Protection of species and habitats of local concern is recommended but not required. Habitat descriptions and associated protection recommendations are included in Table 3.9.

**Table 3.9**

**Habitats and Species of Local Concern**

Species or Habitat	Habitat Description	Protection Recommendations
Native grassland/ Camas/ wildflower prairie.	These are relatively undisturbed areas where native grasses, Camas and other wildflowers form the climax plant community.	Avoid disturbance of native grasslands and Camas prairies. If disturbance cannot be avoided mitigate by replanting suitable areas with native grasses and wildflowers.
Herbaceous Balds and Bluffs.	These occur as variable sized patches of grass and forbs (herbaceous flowering plants) located on shallow soils over bedrock commonly fringed by forest or woodland. They typically consist of low growing vegetation adapted for survival on shallow soils amid seasonally dry conditions, often on steep slopes. Dominant flora include herbaceous vegetation, dwarf shrubs, mosses and lichens. Rock outcrops, boulders and scattered trees are often present, especially Douglas fir, Pacific madrone, and Garry oak. Balds occur within mid-montane and lowland forest zones. On slopes near salt water shorelines in the northern Puget Trough, herbaceous balds and bluffs can sometimes be difficult to differentiate. Balds are typically smaller than 12 acres, although some can be up to 250 acres. Information on the plants associated with herbaceous balds and bluffs can be found at <a href="http://www1.dnr.wa.gov/nhp/refdesk/communities/pdf/balds_veg.pdf">http://www1.dnr.wa.gov/nhp/refdesk/communities/pdf/balds_veg.pdf</a> .	Avoid disturbance of herbaceous balds and bluffs.
Garry oak ( <i>Quercus garryana</i> ) woodlands, savannahs and associated ecosystems.	Garry oak is a type of Oregon White Oak found in warmer, drier areas within the Puget Sound and southern British Columbia. They are associated with what is becoming an increasingly rare ecosystem that supports a variety of rare wildflowers, butterflies and other plants and animals. Garry oak ecosystems are highly varied and are found in areas with rock outcrops, coastal bluffs, maritime meadows, and treeless grasslands as well as seasonal wetlands. They are sometimes found in mixed stands with other trees including arbutus and Douglas fir.	Avoid disturbance of areas with Garry oak, including surrounding native grasslands, wildflowers, and herbaceous balds and bluffs. Remove Douglas fir and other conifers as necessary to allow adequate sunlight to the oak, native grasses and wildflowers. If disturbance cannot be avoided mitigate by replanting suitable areas with Garry oak, native grasses and wildflowers.

**F. Nomination of Species or Habitats of Local Concern.**

San Juan County has the option of protecting species and habitats of local concern. If not included in the adoption of this Critical Areas Ordinance, these species or habitats may be added by nominating the species or habitat and amending the ordinance through the following process.

1. Nomination Process.

- a. A petition to nominate an area or a species to this category shall contain the following:
  - i. Documentation demonstrating that local populations of native species are sensitive to habitat manipulation, declining or in danger of extirpation based on existing trends;
  - ii. An explanation of whether specific habitat features are being nominated for protection (for example, nest sites, breeding areas, and nurseries), or whether a habitat or ecosystem is being nominated in its entirety;
  - iii. A map showing known locations of nominated species or habitats.
  - iv. Proposed management and protection strategies for the species or habitats, supported by the best available science.
- b. The Director shall determine whether the nomination proposal is complete, and if complete, shall request that State and Federal agencies and local conservation organizations review the proposal and provide comments and recommendations. These comments, and the recommendation of the Director, shall be forwarded the Planning Commission for a public hearing.
- c. After holding a public hearing, the Planning Commission shall make a recommendation to the County Council.
- d. Following the recommendation of the Planning Commission, the County Council shall hold a public hearing and make a decision on the request. If approved, the County will immediately begin protecting the habitat in conformance with this Chapter, and at the earliest opportunity will amend this Chapter to include the species and/or habitat.
- e. Removal of Species or Habitats of Local Concern. The County Council may remove species or habitats of local concern by amending this Chapter after holding a public hearing.

**Section 7. San Juan County Code Section 18.40.310 shall be amended to read as follows:**

**18.40.310 Nonconforming structures and uses outside of shoreline jurisdiction.**

A nonconforming use, structure, site, or lot is one that did conform to the applicable codes which were in effect on the date of its creation, but no longer complies because of subsequent changes in code requirements. Nonconformity is different than and is not to be confused with illegality (see the definitions of “nonconforming,” “nonconforming use,” and “illegal use” in Chapter 18.20 SJCC). Legal nonconforming structures and uses are commonly referred to as “grandfathered.”

The following standards apply to all nonconforming structures and uses:

- A.** When a nonconforming use or structure is proposed for alteration, modification, intensification, or expansion under this section, the total impact of the nonconforming use will be considered as well as the added impact of the incremental changes being proposed and the consistency of the changes with the applicable land use designation.
- B.** Ordinary maintenance and repair of a nonconforming structure and its equipment or fixtures is permitted up to and including total replacement; provided, that the existing three-dimensional building envelope remains unchanged.
- C.** If a nonconforming use or structure is destroyed by fire or other act of God, it may be rebuilt to the

configuration existing immediately prior to the time that the structure was destroyed; provided, that rebuilding is completed within 24 months of the date of destruction.

- D. Nonconforming structures may be modified or altered, provided the degree of nonconformity of the structure is not increased.
- E. Any nonconforming use or structure may be altered, modified, or remodeled beyond the external dimensions present on the effective date of the ordinance codified in this chapter for the purpose of providing access required under Chapter 51–20 WAC. The extent of the alteration or modifications shall be limited to the provisions of access necessary to comply with Chapter 51–20 WAC as determined by the director ~~administrator~~.
- F. Expansion, modification, or intensification of a nonresidential nonconforming use is allowable subject to a conditional use permit, provided:
  - 1. A nonconformance with the standards of this code shall not be created or increased;
  - 2. The proposal shall comply with the standards of this code to maximum extent feasible; and
  - 3. The proposal shall not result in a net loss of the functions and values of a Critical Area ~~have an adverse impact on an environmentally sensitive area~~.

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 nonconforming use which is more intensive or has greater impacts than the existing use.

~~G. Unless specifically provided otherwise, any nonconforming structure or use under the jurisdiction of the Shoreline Master Program shall be subject to the nonconforming use provisions in WAC 173–27–080.~~

H. Nonconforming uses may be relocated on the same parcel where they occur if the degree of nonconformity is not increased, and subject to a discretionary use permit.

I. Nonconforming uses and structures located in a frequently flooded area, fish and wildlife habitat conservation area, wetland or adjoining buffer may be expanded in accordance with SJCC 18.30.130, 150 and 160.

**J.** **No Replacement of Nonconforming Uses when Airport Hazard.** No structures or obstructions of any kind or nature whatsoever constituting a nonconforming use shall be rebuilt, repaired, or replaced where such repairing, rebuilding, or replacement constitutes an airport hazard.

**K.** **Abandonment.** Nonconforming uses shall be considered abandoned if the use ceases to operate or is discontinued for 24 consecutive months. See also SJCC 18.40.350(H)(3). (Ord. 2–1998 Exh. B § 4.23)

**Section 8. San Juan County Code Section 18.60.170 (Lighting) and Ord. 2–1998 Exh. B § 6.15 shall be amended to read as follows:**

**18.60.170 Lighting.**

- A. **Exterior Lighting.** Exterior lighting shall be energy-efficient, directed away from wetlands, fish and wildlife habitat conservation areas and their buffers, and shielded or recessed so that direct glare and reflections are contained within the boundaries of the parcel. Exterior lighting shall be directed downward and away from adjoining properties and public rights-of-way. No lighting shall blink, flash, or be of unusually high intensity or brightness. All lighting fixtures shall be appropriate in scale, intensity, and height to the use they are serving. Any lighting installed in parking areas shall be of direct cutoff design so that the source is not visible from adjacent property. Decorative lighting shall be limited to incandescent lamps with a maximum of 25 watts per bulb and 500 watts overall.
- B. **Street Lighting.** Street lighting shall not be provided by the County except, at its option, in activity centers. (Ord. 2–1998 Exh. B § 6.15)

**SECTION 9. SJCC Section 18.80 (Application, Notice, Review and Appeal Requirements) shall be amended to read as follows:**

**18.80.010 Project permit applications—General.**

**A. Purpose.** “Project permits” are defined in SJCC 18.20.160. Such permits include, but are not limited to, subdivisions, conditional use permits, variances, shoreline permits, provisional use permits, and temporary use permits. Concurrency findings, determinations of completeness, and other such administrative approvals are reviewed as part of the underlying project permit and are not project permits. SEPA threshold determinations are not project permits. Building, driveway, and other construction-type development permits and approvals are not project permits (RCW 36.70B.020(4) and 36.70B.140). (See “development permit” in SJCC 18.20.040.) Procedures for building and development permits that do not trigger a requirement for a project permit, are found in SJCC 18.80.070 (procedures for “Yes” uses).

The procedures in this code ~~SJCC Title 18~~ are enacted to provide consistent evaluation of project permit applications and to protect nearby properties from the possible negative impacts of such requests by:

1. Providing clear criteria on which to base a decision;
2. Recognizing the effects of unique circumstances upon the development potential of a property;
3. Avoiding the granting of special privileges;
4. Providing criteria which emphasize compatibility with legally existing land uses in the same district;
5. Requiring that the design, scope, and intensity of development is in keeping with the physical aspects of a site and adopted land use policies for the area;
6. Providing criteria which emphasize the rural and small-village character of the County;
7. Combining the environmental review process with the procedures for review of project permit applications; and
8. Providing no more than one open-record hearing and one closed-record appeal hearing, except as provided in Chapters 36.70B and 43.21C RCW. (See definitions of “Appeal, open-record” and “Appeal, closed-record” in SJCC 18.20.010.).

**B. ~~Director’s~~ Administrator’s Responsibilities.**

1. **Responsibilities.** ~~The administrator~~ Director shall provide for the review of all project permit applications, conducting such field inspections as necessary, to determine whether or not the proposal meets the requirements specified in this code.
  - a. If, upon application for a development permit, ~~the administrator~~ Director determines that a project permit is required, the applicant shall be so informed immediately. Upon receipt of an application for a project permit, ~~the administrator~~ Director shall conduct a review as specified in this section.
  - b. All applications for project permits shall be reviewed by ~~the administrator~~ Director for compliance with this code regardless of whether a development permit is required. No development permit which involves a change or alteration of existing uses shall be issued until any required project permit has been issued according to the provisions in this chapter.
2. Upon receipt of a project permit application, ~~the administrator~~ Director shall review the proposal, conduct or require such field inspections as necessary to determine whether or not the proposal complies with the purpose and intent of this section and this code. ~~The administrator~~ Director may require additional information from the applicant sufficient to make a determination. (Ord. 15–2002 § 1; Ord. 2–1998 Exh. B § 8.1)

**18.80.020 Project permit applications—Procedures.**

**A. ~~Nonbinding~~ Pre-application Conferences and Site Inspections.** ~~Pre-application conferences and site inspections are optional, but strongly encouraged, and will be conducted granted on a time-available basis. by the administrator.~~

1. ~~A preapplication conferences and site inspections are strongly~~ is recommended to provide a prospective applicant and the County the opportunity to discuss the property owner’s plans; review available Critical Area maps; examine the unique characteristics of the site; identify protected species and habitat; discuss stormwater management and low impact development options; determine if and how County regulations (i.e., environmentally sensitive areas) may apply, and to encourage the applicant to consider the effect of

County regulations in designing the project.

2. ~~Recognizing that project plans are typically incomplete at the pre-application stage, that more information is typically obtained prior to filing a project permit application, and that new regulations may be enacted prior to submission of a project permit application, preliminary discussions at a pre-application meeting shall not be binding on either the County or the potential applicant.~~

**B. Determination of Proper Type of Project Permit.**

1. **Determination by ~~Director-Administrator~~.** The ~~administrator~~ Director shall determine the proper type of project permit. Table 8.1 summarizes the steps in the review process for each type of project permit.
2. **Consolidated Permit Processing.** For a proposal that involves two or more shoreline permits and/or other project permits, such applications shall be consolidated under the “highest” procedure (i.e., the right-most applicable column in Table 8.1 at the end of this section) required for such permits or processed individually under each of the procedures identified by this code. The applicant may request the consolidation of hearings with other local, state, regional, federal, or other agencies in accordance with RCW 36.70B.090 and 36.70B.110. (See also SJCC 18.80.110(D)(1) Shoreline Permits—Consolidated Permit Processing, and 18.80.140(H) Consolidated Appeal Hearings.)

**C. Project Permit Application—Forms.** Applications for project permits shall be submitted to the Permit Center on forms approved by the Director ~~administrator~~. An application must (1) consist of all materials required by the applicable development regulations; (2) be accompanied by plans and appropriate narrative and descriptive information sufficiently detailed to define clearly the proposed project and demonstrate compliance with applicable provisions of this code; and, except for project permit applications for temporary uses, (3) shall include the following:

1. A completed project permit application form;
2. If the applicant is not the owner of the subject property, a notarized statement by the owner(s) that (1) the application has been submitted with the consent of all owners of the subject property, and (2) identification of the owner’s authorized agent or representative;
3. A legal description of the site and any other property description required by the applicable development regulations;
4. The applicable fee;
5. Evidence of available and adequate water supply as required by SJCC Title 13 and the Comprehensive Plan; see also SJCC 18.60.020;
6. Evidence of sewer availability or septic approval or suitability as required by SJCC Title 13;
7. A plot plan to scale no smaller than one inch equals 40 feet for a plot larger than one acre, and no smaller than one inch equals 20 feet for a plot one acre or smaller;
8. Graphic depiction of the following:
  - a. Compass direction and graphic scale;
  - b. Corner grades and, if required by the Director ~~administrator~~, existing contours of topography at five-foot contour intervals;
  - c. Proposed developments or use areas;
  - d. Existing structures and significant features on the subject property and on adjacent properties;
  - e. Property lines, adjoining streets, and immediately adjoining properties and their ownerships;
  - f. Location and dimensions of existing and proposed improvements on public rights-of-way, such as roads, sidewalks, and curbs;
  - g. Existing and proposed grades and volume and deposition of excavated material;
  - h. Natural drainage direction and storm drainage facilities and improvements;
  - i. Locations of all existing and proposed utility connections;
  - j. Parking spaces and driveways;
  - k. Proposed landscaping;
  - l. Wetlands and other environmentally sensitive areas; and
  - m. All easements (recorded or unrecorded) must be shown. If recorded, the recording number must be shown.
9. The applicant shall provide a list showing the name and addresses of the owners of the property within

300 feet of the boundaries of the property subject to the project permit application. For purposes of this chapter, the owners of property within 300 feet of the boundaries of the subject property are those whose names are shown on the tax assessment rolls on the date the project permit application is submitted to the Permit Center;

10. Applications for shoreline permits and approvals shall also include the following:

- a. Digital photos of the site, with a site plan showing where each photo was taken. Photos shall include all existing structures including existing bulkheads and retaining walls, existing erosion, and existing shoreline vegetation.
- b. Low, normal, and high water elevations (for projects occurring near or in the water).
- c. Direction of net longshore drift.

110. Critical Areas~~Environmentally Sensitive Areas (ESAs).~~

- a. All project permit applications for proposals on lands designated as environmentally sensitive areas (ESAs) shall include sufficient information about the site and the proposed project location and extent of any affected ESAs to demonstrate consistency with SJCC 18.30.110 through 18.30.160.
- b. Critical Area Review process. The Department shall review the application, available maps and information, and if requested by the property owner, shall conduct a site inspection prior to determining whether the proposed project may affect a wetland, fish and wildlife habitat conservation area, frequently flooded area or a geologically hazardous area.

If the Department finds that none of the above Critical Areas are present on or near the project area, or that the project will not harm or degrade the Critical Area, or that the project will otherwise comply with the requirements of SJCC 18.30.110-160, the Department shall rule that the Critical Area review is complete.

If the Department finds that one or more of the above Critical Areas may be affected by the proposed project, the Department shall notify the applicant and provide them with a list of any report(s) required by SJCC 18.30.110-160. If required, these reports must be received before an application will be deemed complete.

The above review process shall be completed within 10 business days of receipt of an application. If notice of this determination is not completed and mailed to the property owner within 10 business days, the property owner may, at their own risk, proceed with pre-permit or other approval activities. Any illegal degradation of protected Critical Areas must however be mitigated or, if allowed under this code, a financial guarantee must be provided prior to issuance of permits.

c. Critical Area Reports.

- i. Detailed requirements for Critical Area reports (e.g. wetlands or geotechnical reports) are identified in SJCC 18.30.120-160.
- ii. If the Director finds that a report does not accurately reflect site conditions, or does not meet the requirements of this code, the Director shall contact the author or design professional to discuss the issues, and if necessary shall have the report reviewed by a qualified professional. If the issues remain unresolved, the applicant may either revise the report or appeal the administrative determination pursuant to this code.
- iii. Necessary site inspections, preparation of Critical Area Reports and their review by the County, which may include referral to independent qualified professionals, shall be at the applicant's expense.

~~Once a project permit application is submitted, the determinations described in subsections (a)(i)~~

- through (iv) of this subsection will generally be made to establish how Critical Area ESA rules and regulations will affect the proposal before a project permit application is considered complete.:
- i. ~~The actual presence or absence of an ESA based on maps, photographs, or other information, either supplied by the applicant or available at the permit center; and if an ESA is indicated, what options may be available;~~
  - ii. ~~The absence, presence or extent of an ESA based on a site inspection by the administrator (for example, by measuring slopes, noting general land surface composition, or making cursory field examination for wetland characteristics), without requiring special reports;~~
  - iii. ~~Whether a special report is likely to be required to establish the absence, presence, or extent of an ESA; and~~
  - iv. ~~Whether a special report would likely be required to determine if the regulations applicable to a known ESA can be met;~~
- b. **Special Reports.** ~~In accordance with the specific ESA sections of this code (SJCC 18.30.110 through 18.30.160), the applicant may be required to submit special reports as required by the administrator to evaluate a proposal and all probable significant adverse impacts on an ESA regulated by this code. The requirements for special reports are found in SJCC 18.30.150. The applicant shall bear all costs incurred in the preparation of special reports, tests, or studies performed by technical consultants;~~
11. **Frequently Flooded Areas.** Project permit applications shall include the location of any frequently flooded areas or special flood hazard area on the subject property, and an elevation certificate if required by the ~~Director~~ administrator. No use or development shall be undertaken or approved within any area of special flood hazard except in compliance with the provisions of this code. Elevation certificates shall include certification by a land surveyor, licensed civil engineer or architect authorized by law to certify elevation information. Elevation certificate forms shall be provided by the ~~Director~~ administrator;
  12. **Additional Application Information for Divisions of Land and Boundary Line Modifications.** The application for a division of land shall meet the requirements of this subsection and the requirements in Chapter 18.70 SJCC;
  13. **Additional Application Information for Binding Site Plans.** The application for a binding site plan shall meet the requirements of this subsection, SJCC 18.70.090, and the requirements in SJCC 18.80.170;
  14. **Additional Application Information for Planned Unit Developments.** A planned unit development application is part of the application for a subdivision or a binding site plan; additional information requirements are summarized in SJCC 18.80.160. The application for a planned unit development shall meet the requirements of this subsection and the requirements in SJCC 18.80.160;
  15. **Additional Application Information for Rural Residential Cluster Development.** The application for a rural residential cluster development in accordance with SJCC 18.60.230 shall meet the requirements of this subsection, SJCC 18.60.230 and 18.80.180, and shall also include the following:
    - a. The floor plan and elevations for each proposed residential structure, at a scale of not less than 0.25 inch equals one foot;
    - b. A list, diagram and samples showing exterior materials and finishes for all structures, fences, and other constructed features of the project;
    - c. The plot plan prepared under this subsection shall also show the location and species of any existing trees greater than six inches in diameter at breast height on the property, except in areas proposed for open space preservation or forest resource management;
    - d. A list showing the floor area and use of each structure to be constructed on the site, and the total floor area of structures, and the area of the site devoted to residences, residential yards, circulation spaces, other uses, and open space; and
    - e. A narrative description indicating how the project responds to the requirements of SJCC 18.60.230, including the minimum standards of SJCC 18.60.230(C), the separation requirements of SJCC 18.60.230(F), and the design guidelines of SJCC 18.60.230(G);
  16. **Additional Information.** The ~~Director~~ administrator may require additional information necessary for review and evaluation or demonstration of project consistency with this code;
  17. **Administrator's Director's Waiver.** The ~~Director~~ administrator may waive specific submittal requirements determined to be unnecessary for review of a project permit application required by this code;
  18. **Temporary Use Permit Application.** All project permit applications for a temporary use shall be

submitted to the ~~Director~~ administrator in writing and contain sufficient information for the ~~Director~~ administrator to make a decision (see SJCC 18.80.060). The ~~Director~~ administrator shall determine what information is necessary for review of such applications.

**D. Project Permit Applications—Determination of Completeness, Modification, Referral and Review.**

1. **Determination of Completeness.** Within 28 days after receiving a project permit application, the ~~Director~~ administrator shall determine if a project permit application is complete and notify the applicant in writing that either:
  - a. The application is complete; or
  - b. The application is incomplete. If such application is incomplete, the ~~Director~~ administrator shall specify what information is necessary to make the application complete.
2. **Identification of Other Agencies with Jurisdiction.** To the extent known by the County, other agencies with jurisdiction over the project permit application shall be identified.
3. **Additional Information.**
  - a. A project permit application is complete for purposes of this chapter when it meets the submittal requirements in this section and any submittal requirements contained in applicable development regulations.
  - b. If the submittal requirements have not been met, the ~~Director~~ administrator may determine that the application is complete and, at the same time, require that additional information or studies be provided within a time specified.
  - c. Nothing in this section precludes the ~~Director~~ administrator from requesting additional information or studies at any time if new information is determined to be necessary or where there are substantial changes in the proposal.
  - d. If the applicant fails to submit the requested information or studies within the time specified, or within a longer period if agreed to by the ~~Director~~ administrator, the application shall lapse and the applicant shall forfeit the application fee.
4. **Incomplete Application.**
  - a. If the applicant notifies the applicant that an application is incomplete, the applicant shall have 90 days to submit the necessary information to the ~~Director~~ administrator. Within 14 days after an applicant has submitted the additional information, the ~~Director~~ administrator shall again make the determination described in subsection (D)(1) of this section, and notify the applicant. If the applicant submits the required information to the ~~Director~~ administrator within the 90-day period and the ~~Director~~ administrator determines that the application is now complete, the project permit application will be considered complete as of the date the project permit application was originally submitted; however, the 120-day processing period in SJCC 18.80.130 will be tolled during the 90-day resubmittal period.
  - b. If the applicant fails to submit additional information, or does not, within such 90-day period request additional time to submit the required information, the application shall lapse and the applicant shall forfeit the application fee.
5. **Administrator’s Failure to Provide Determination of Completeness.** If a determination of completeness is not made within 28 days, the application shall be vested under the regulations in effect on the day it was submitted (though additional submittals may be required to complete the application) ~~A project permit application shall be deemed complete under this section if the administrator does not timely notify the applicant that the application is incomplete.~~
6. **Modifications to Applications.** An applicant-initiated modification to an application which is not in response to technical review, a change requiring a new public notice, a change of land use(s), or a mitigation measure under SEPA may require a new application. A change requiring a new public notice establishes a new vesting date for that application.
7. **Referral and Review of Project Permit Applications.** Within 14 days of determining that a project permit application is complete, the ~~administrator~~ Director shall transmit a copy of the application, or

**Table 8.1. Summary of Project Permit Notice, Hearing, Decision and Appeals Processes.<sup>(1)</sup>**

Project Permit	
Administrative	Quasi-Judicial

Project Permit Application	Boundary Line Modification; Simple Land Division	Provisional Use; Short Subdivisions; BSP to 4 lots; Temporary Use Permits (Level II)	Conditional Use and/or Variance	Shoreline Permits; (Substantial Development, Conditional Use or Variance)	Subdivisions BSP for more than 4 lots
Public Notice of Application	No	yes	yes	yes	yes
Notice of Public Hearing	No	no	yes	yes	yes
Public Comment Period	no (yes if BLM & SLD and SEPA required)	yes	yes	yes	yes
Open-Record Predecision Hearing	No	no	yes	yes	yes
Decision Maker	<del>Director</del> Administrator	<del>Director</del> Administrator	Hearing Examiner	Hearing Examiner	Hearing Examiner
Open-Record Appeal Hearing (Hearing Examiner)	Yes	yes	no	no	no
Appeal Period (days) for appeal to the Hearing Examiner	21	21	N/A	N/A	N/A
<del>Closed-Record Appeal Hearing (before BOCC)</del>	Yes	yes	yes	yes	yes
Appeal Period (days) for appeal to BOCC	21	21	21	21	21
Judicial Appeal	Yes	yes	yes	yes	yes
Other Appeal	No	no	no	yes (to SHB)	no

1. Abbreviations:

BOCC: Board of County Commissioners      SHB: Shorelines Hearings Board      BSP: Binding Site Plan

appropriate parts of the application, to each affected agency and County department for review and comment, including those responsible for determining compliance with state and federal requirements. Applications for shoreline permits shall also be circulated to the director of the University of Washington Friday Harbor Laboratories for comment as a reviewing agency. The affected agencies and County departments shall have 20 days to comment. The referral agency or County department is presumed to have no comments if comments are not received within the specified time period. ~~The administrator~~ Director shall grant an extension of time where unusual circumstances are present. (Ord. 26–2002 § 6; Ord. 15–2002 § 2; Ord. 4–2001 §5; Ord. 14–2000 § 7(AAA); Ord. 11–2000 § 7; Ord. 2–1998 Ex. B § 8.2)

**18.80.070 Procedures for “yes” uses (uses allowed outright).**

**A. Purpose and Applicability.** “Yes” uses (uses allowed outright as indicated by the symbol “Yes” in Tables 3.1 and 3.2 in SJCC 18.30.030 and 18.30.040) must comply with the development standards in Chapter 18.60 SJCC and other applicable sections of this and other codes, but do not require a land use project permit. Construction or expansion of driveways requires a plan review, and All site development, construction and structures must conform to the development standards of this code.

**B. Pre-application Conferences and Site Inspections.** Pre-application conferences and site inspections are optional, but strongly encouraged to provide a prospective applicant and the County the opportunity to discuss the property owner’s plans; review available Critical Area maps; examine the unique characteristics of the site; identify protected species and habitat; discuss stormwater

management and low impact development options; determine if and how other County regulations may apply; and to encourage the applicant to consider the effect of County regulations in designing the project.

**C. Shoreline Applications.** Applications for shoreline permits and approvals shall include the following:

- a. Digital photos of the site, with a site plan showing where each photo was taken. Photos shall include all existing structures including existing bulkheads and retaining walls, existing erosion, and existing shoreline vegetation.
- b. Low, normal, and high water elevations (for projects occurring near or in the water).
- c. Direction of net longshore drift.

**D. Critical Areas**

This section outlines the process for reviewing projects to identify Critical Area requirements that apply under SJCC 18.30.110 through 18.30.160 (the County's Critical Area regulations). Prior to removal of vegetation or site disturbance, all non-exempt activities, including the construction of new or expanded roads and driveways, must undergo this review. Prior to approval, sufficient information must be provided to demonstrate compliance with applicable requirements. Any illegal degradation of protected Critical Areas must be mitigated and if mitigation is not completed prior to issuance of permits, a financial guarantee must be provided.

1. Review process. The Department shall review plans, applications, available maps and information, and if requested by the property owner, shall conduct a site inspection prior to determining whether the proposed project may affect a wetland, fish and wildlife habitat conservation area, frequently flooded area or a geologically hazardous area.

If the Department finds that none of the above Critical Areas are present on or near the project area, or that the project will not harm or degrade the Critical Area, or that the project will otherwise comply with the requirements of SJCC 18.30.110-160, the Department shall rule that the Critical Area review is complete.

If the Department finds that one or more of the above Critical Areas may be affected by the proposed project, the Department shall notify the applicant and provide them with a list of any Critical Area report(s) required under SJCC 18.30.120-160. If required, these reports must be received before an application will be deemed complete.

The above review process shall be completed within 10 working days of receipt of an application. If notice of this determination is not completed and mailed to the property owner within 10 working days, the property owner may, at their own risk proceed with pre-permit or other approval activities. Any illegal degradation of protected Critical Areas must however be mitigated, or if allowed under this code, a financial guarantee must be provided prior to issuance of permits.

**2. Critical Area Report.**

- i. Detailed requirements for Critical Area Reports are identified in SJCC 18.30.110-160.
- ii. If the Director finds that a report does not accurately reflect site conditions, or does not meet the requirements of this code, the Director shall contact the author or design professional to discuss the issues, and if necessary shall have the report reviewed by a qualified professional. If the issues remain unresolved, the applicant may either revise the report or appeal the administrative determination pursuant to this code.

iii. Necessary site inspections, preparation of Critical Area Reports and their review by the County, which may include referral to independent qualified professionals, shall be at the applicant's expense.

**EB. Notice.** Notice for “Yes” uses is given in accordance with SEPA review, if applicable (see requirements in SJCC 18.80.050).

**EC. Decisionmaking Authority.** The ~~Director's—administrator's~~ review of development permit applications for “Yes” uses includes review of the consistency of “Yes” uses with the applicable provisions of the Comprehensive Plan, this code (e.g., Chapter 18.60 SJCC, Development Standards, and Chapter 18.50 SJCC, Shoreline Master Program), review under SEPA (SJCC 18.80.050), if applicable, and the ~~administrator's~~ Director's finding that the proposal meets the requirements contained therein. (See definition of “development permit” in SJCC 18.20.040.)

**GD. Appeals.** Appeals of determinations made in conjunction with “Yes” uses, including findings of consistency and concurrency, must be raised in a timely appeal of the approval or denial of the development permit application for the project. If no development permit is required for the proposed use, compliance with applicable standards of this and other codes is an enforcement matter (see Chapter 18.100 SJCC). (Ord. 15–2002 § 7; Ord. 2–1998 Exh. B § 8.7)