

Ordinance No. _____ - 2012

AN ORDINANCE REGARDING GENERAL REGULATIONS FOR CRITICAL AREAS; AMENDING SAN JUAN COUNTY CODE SECTIONS 18.20.020, 18.20.030, 18.20.040, 18.20.140, 18.20.170, 18.30.110, 18.80.010, 18.80.020 and 18.80.070, 18.80.090, AND ADDING A NEW SECTION TO SJCC 18.80

January 9, 2012 Draft

BACKGROUND

- A. The County was scheduled to review, and where necessary, update its development regulations regarding critical areas by December 1, 2006, to ensure consistency with RCW 36.70A (the Growth Management Act, or GMA). A review of the County's critical areas regulations, including General regulations, was adopted in Resolution 98-2005. Although some updates to critical areas regulations were adopted in Ordinance 15-2005, further action was reserved for a later time.
- B. San Juan County adopted a public participation plan for the revision of its development regulations regarding critical areas in Resolution 56-2006; the plan was most recently updated in Resolution 32-2011.
- C. The applicable science related to critical areas was reviewed and is summarized in the *Best Available Science Synthesis for San Juan County, May 2011*, which was adopted in Resolution 22-2011.
- D. Additional review of the County's General regulations for critical areas was undertaken and is described in the document "Review and Recommendations on SJCC 18.30.110 – General Regulations Applicable to all Critical Area Types", dated June 2, 2011.
- E. Discussion and an analysis of the risk associated with the amendments proposed by the Planning Commission were included in the September 12, 2011 staff report to the San Juan County Council. Additional modifications were made to reduce the risk to critical area functions and values.
- F. The County now desires to complete the review and update of its development regulations regarding General provisions for critical areas previously due in 2006 as required by RCW 36.70A.130.
- G. An environmental checklist was prepared evaluating potential effects of the proposed amendments and a notice of Determination of Non-significance was issued on July 26, 2011 and published on July 27, 2011. The notice was provided to federal, state and local agencies in accordance with San Juan County Code 18.80.050 and WAC 197-11-340.
- H. The 60-day notice on the proposed amendments to the General critical area regulations, as required by RCW 36.70A.106, was provided to the Washington State Department of Commerce on August 24, 2011, and was assigned Material ID No. 17298.
- I. Efforts to involve and inform the public included:
 - I. Request for Best Available Science (BAS) submittals from the public in June-July 2010.
 - II. Public workshops on San Juan Island, Orcas Island, and Lopez Island in September 2010, to address "hot button" issues.
 - III. Joint Planning Commission/County Council public workshops in February 2011, to review and discuss the first draft Best Available Science Synthesis and County Council workshops in May 2011

to discuss the second draft. Public comment was accepted at all meetings.

- IV. Public workshops in June 2011 to discuss the review of existing regulations and determine policy direction for the revision of regulations.
 - V. Town hall meetings to discuss the regulations were held on San Juan, Orcas and Lopez Islands in August 2011.
 - VI. A County Council workshop on November 28, 2011.
 - VII. Advertisements of Planning Commission and County Council meetings in local papers, including online media.
 - VIII. Notice of the availability of draft ordinances and staff reports were e-mailed to residents, property owners, and interested parties who requested to be kept informed prior to the Planning Commission and County Council meetings and hearings.
- J.** The Planning Commission conducted a duly advertised public hearing on August 10 and August 19, 2011.
- K.** The County Council held a facilitated public conversation regarding the general regulations for critical areas on November 28, 2011.
- L.** The County Council conducted a duly advertised public hearing on December 5, 2011 which was continued to December 12, 2011 and January 24, 2012.
- M.** The County Council makes the following findings:
- I. The Best Available Science was included in developing the proposed amendments, which will protect critical areas in conformance with the requirements of the Growth Management Act.
 - II. The proposed regulations are consistent with the goals and policies of the San Juan County Comprehensive Plan.
 - III. Clarifying that the purpose of the regulations includes conformance with the Growth Management Act will enhance consistency with those requirements.
 - IV. Revising the applicability provisions to establish five separate critical area overlay districts will help prevent over regulation and help ensure consistency with GMA goals 6 (property rights), and Comprehensive Plan Land Use Element Section B.2.5.B goals 2 and 3 and policy 6. Expanding the applicability to include activities that are not subject to a permit will help prevent adverse impacts to critical area functions and values.
 - V. Removing the unnecessary cross-reference to Tables 3.1 and 3.2 will reduce confusion, particularly with regard to areas of the County that are governed by a subarea or activity center plan that takes the place of Tables 3.1. and 3.2.
 - VI. Exemptions to critical area regulations are necessary to ensure reasonable and cost effective administration of the regulations. Some activities are exempt because they are not expected to have adverse impacts on critical area functions and values; other activities are exempt contingent upon mitigation actions. Although the Best Available Science generally recognizes avoidance of critical areas as the preferred option for protecting critical area functions and values, mitigation is also an option described in the Best Available Science and is appropriate in certain circumstances. For certain exempt activities, mitigation is required to limit the risks to critical area functions and values; these risks are further limited by the requirement for monitoring. The rationale for changes to exemptions is as follows:
 - a. Emergencies. Emergencies are inevitable, and it is necessary to allow for expedient action to deal with them. Though there is some potential risk to critical area functions and values, the proposed changes will help reduce that risk by ensuring that the effects of emergency actions are mitigated;

- b. Operation, maintenance, repair, remodel, or replacement of existing structures, facilities, and infrastructure systems and development areas. An exemption is necessary to ensure that existing development can be maintained. To help reduce risk to critical area functions and values, new requirements are added that preclude further intrusion into critical areas or their buffers and require that: soil erosion is controlled, disturbed areas are stabilized, and that actions do not have an additional adverse effect on critical area functions and values;
 - c. Utilities. In San Juan County utilities are small in scale. With a year-round growing season, associated disturbed areas can be easily and quickly revegetated with no long term adverse impacts to critical area functions and values. To reduce risk, the exemption of electrical facilities (which could include things like substations) has been removed. Also removed is an unnecessary plan review procedure for the installation of utility lines;
 - d. Establishment of new lawns, gardens and orchards. To reduce risk to critical area functions and values, an overly broad exemption allowing the establishment of new lawns, gardens and orchards is removed;
 - e. Hazard trees. To prevent harm to people and property, an exemption is needed to allow the removal of hazard trees. According to the Best Available Science (BAS), some tree removal is possible without adversely affecting critical area functions and values, which includes the removal of a single tree to prevent a hazard. Risk is minimized by narrowing the scope of the existing exemption for removal of hazardous trees to better protect critical area functions and values;
 - f. Exempt Land Divisions. To reduce risk to critical area functions and values, an existing exemption for land divisions occurring through exempt processes is clarified to state that parcels created through exempt processes are subject to compliance with critical area protection requirements and are not eligible for reasonable use exceptions;
 - g. State regulated forest practices. A new exemption is added to eliminate unnecessary duplicate regulation of forest practice activities that are governed by State regulations. This should not increase risk to critical area functions and values because any potential risks are addressed through application of the State regulations;
 - h. Navigation aids and survey markers. An exemption is added to allow for the installation of navigation aids and survey markers which are small in scale and should have no adverse effect on critical area functions and values; and
 - i. Site investigative work. An exemption is added to allow for site investigative work associated with land use applications. As with underground utility installation, this work in the San Juans is small in scale, and disturbed areas can be promptly revegetated so there will be no lasting adverse impacts on critical area functions and values.
- VII. A workable reasonable use exception is essential to retain a good faith relationship with property owners and prevent regulatory takings. Consistent with the Best Available Science and the County's desire to minimize risk to critical area functions and values, the approval criteria for reasonable use exceptions first requires avoidance of adverse impacts to critical area functions and values. If adverse impacts cannot be avoided, then for larger developments (those over 2,500 s.f.), mitigation of those impacts is required. For smaller developments (those less than 2,500 s.f., with no more than 1,500 s.f. of development located in a critical area) low impact development practices are required to help minimize adverse impacts. In addition, the County will track the types of critical areas which are being adversely affected by these small development projects. Allowing reasonable use exceptions does increase the risk to critical area functions and values, but this risk will be limited through the administration of new mitigation, monitoring, adaptive management and financial guarantee requirements. Revising the reasonable use provisions will:
- a. Prevent regulatory taking of property;
 - b. Clarify the review and approval process;
 - c. Provide an easier permitting process for development of less than 2,500 square feet, which will help minimize costs to property owners, and will help support other GMA goals;

- d. Add consideration of the BAS in the review and approval criteria for reasonable use exceptions as required by WAC 365-195-915(2).
 - e. For larger development projects, require mitigation of adverse impacts to the functions and values of critical areas. The proposed provisions will help ensure consistency with GMA goals 1, 2, 4, 5 and 6, Comprehensive Plan Land Use Element Section B.2.5.B goals 2 and 3 and policy 11.
- VIII. Adding optional procedures for public agencies and utilities will help ensure that those organizations can provide the services necessary to support existing and new development. This will help ensure consistency with GMA goals 1, 2, 3, 4, 5 and 12.
- IX. Transferring the procedures for mitigation of adverse impacts from the wetlands section of the regulations into the General section establishes a single procedure for mitigating those impacts to critical area functions and values. Updating the provisions should improve protection of critical area functions and values.
- X. Adding provisions for nonconforming structures and uses will help ensure consistency with GMA goals 4, 5, and 6 as well as Comprehensive Plan Land Use Element Section B.2.5.B goals 2 and 3 and policy 11.
- XI. This ordinance improves consistency by updating the term “discretionary use” to “provisional/conditional use”, the term “environmentally sensitive area” to “critical area”, and the term “administrator” to “director”; removing “critical aquifer recharge areas” and associated high and medium classes to be consistent with the CARA portion of the code that was updated in 2008; and, in Table 8.,2 updating the reference to “High” level of impact activities to include any adverse impacts to wetlands or fish and wildlife habitat conservation areas that cannot be mitigated.
- XII. Adding provisions for financial guarantees will help ensure adequate and timely completion of improvements that are necessary to offset adverse impacts to the functions and values of critical areas. The proposal does not apply to any state agency or unit of local government and is consistent with RCW 36.32.590.
- XIII. This ordinance completes the update to the County’s development regulations regarding General provisions for critical areas as required by RCW 36.70A.130, based upon the review and evaluation described in Resolution No. 98-2005 and the additional review in the “Review and Recommendations on SJCC 18.30.110 – General Regulations Applicable to all Critical Area Types”. The County Council generally agrees with the findings and recommendations of the Planning Commission, but finds that modifications are needed for clarity and consistency and to better comply with the GMA based on local circumstances. These changes are included in this ordinance.
- XIV. After considering the evidence in the record, the County Council approved the ordinance.

NOW, THEREFORE BE IT ORDAINED by the County Council of San Juan County, State of Washington, as follows:

SECTION 1. SJCC Section 18.20.020 (“B” definitions) and Ord. 52-2008 § 2 are each amended to read as follows:

“Backshore” means a berm, together with associated marshes or meadows on marine shores landward of the ordinary high water mark that has been gradually built up by accretion.

“Barge landing site” means any location established for the purpose of landing a barge (including powered landing craft) for more than a single, temporary use. (See also “log transfer site.”)

“Base flood” means the flood having a one percent chance of being equaled or exceeded in any given year; also known as the “100-year flood,” as shown on the FIRM maps.

“Base flood elevation” means the elevation for which there is a one percent chance in any given year that flood levels will equal or exceed it.

“Beach enhancement/restoration” means a process of restoring a beach to a state more closely resembling a natural beach using beach feeding, vegetation, drift sills, and other nonintrusive means.

“Beach feeding” means a process of replenishing a beach by delivery of materials dredged or excavated elsewhere.

“Bed and breakfast inn” means a hospitality commercial use containing three to five lodging units without cooking facilities, which provides overnight accommodation and breakfast meals in a proprietor- or owner-occupied existing single-family residence and additional legal structures or up to 10 lodging units in an existing historic structure.

“Bed and breakfast residence” means a hospitality commercial use containing one to two lodging units without cooking facilities, which provides overnight accommodation and breakfast meals in an owner-occupied existing single-family residence.

“Beneficial owner” means an individual who is a member of a family corporation, trust, or a partnership, and who is related by blood, adoption, marriage, or domestic partnership, to all other members of the corporation, trust or partnership.

“Best available science” means current scientific information used in the process of designating, protecting, or restoring critical area functions and values, that is derived from a valid scientific process as described in WAC 365-195-900 through 925.

“Best management practices (BMPs)” means systems of practices, schedules of activities, prohibitions, maintenance procedures, and management measures that prevent or minimize adverse impacts to the environment.

“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.

“Biodiesel” means biodiesel as defined by RCW 19.112.010.

“Biofiltration system” means a water filtration system using biological processes.

“Board (BOCC)” means the San Juan County Council ~~board of commissioners~~.

“Boat launch, ramp or retrieval system” means an area, structure, or equipment used to launch or retrieve boats.

“Boathouse” means an enclosed structure designed and used for the storage of boats and boat equipment.

“Boating facilities” means marinas, covered moorages, boathouses, boat launches, marine railways, mooring buoys, docks, and floats.

“Bonus-density residential district” means a district in which a density bonus is permitted for affordable housing. The official maps indicate both the base density permitted without a density bonus and the maximum density permitted with a density bonus for affordable housing.

“Boundary line adjustment” means a change in the location of the boundary or boundaries between parcels of land to correct errors.

“Boundary line modification” means a change in the location of the boundary or boundaries between parcels of land; provided, that no additional parcels are created, except that a change in a land description to correct errors shall not be considered a boundary line modification.

“Breakwater” means protective structures that are normally built offshore to protect beaches, bluffs, dunes, or harbor areas from wave action.

“Buffer zone, strip, or area” means an area designed to separate incompatible uses or activities.

“Building envelope” means:

1. A three-dimensional space in which a building or structure may be built;
2. A plat restriction for the purpose of defining lot coverage areas for individual lots, or for describing shoreline building setbacks.

“Bulk fuel storage plant or terminal” means an area where flammable or combustible liquids are received by tank vessel, pipelines, tank car, or tank vehicle and are stored or blended in bulk for the purpose of distributing such liquids by tank vessel, pipeline, tank car, tank vehicle, portable tank, or container (~~cf. Uniform Building Code~~ see International Fire Code).

“Bulk fuel storage (retail)” means the storage of fuel in structures or tanks for subsequent retail sale.

“Bulk fuel storage (wholesale)” means the storage of fuel in structures or tanks for subsequent wholesale distribution.

“Bulkheads or seawalls” means structures erected parallel to and near the high water mark for the purpose of protecting the adjacent bank or uplands from the action of waves or currents.

SECTION 2. SJCC Section 18.20.030 (“C” definitions) and Ord. 2-2010 § 1 are each amended to read as follows:

“Calendar decade” means a 10-year period beginning January 1st of any year evenly divisible by 10.

“Campground and camping facilities” means a facility in which sites are offered for less than 30 days for persons using tents or other personal, portable overnight shelters.

“Capital facilities” means physical structures or facilities owned or operated by a government entity which provides or supports a public service.

“Capital improvements” means improvements to land, structures, initial furnishings, and selected equipment.

“Channel” means an open conduit for water either naturally or artificially created, but does not include artificially created irrigation, return flow, or stock watering channels. (See WAC 173-14-030 (8)(b); see also “stream.”)

“Class I beach” means a beach or shore having dependable, geologically fully developed, and normally dry backshore.

“Class II beach” means a beach or shore having only marginally, geologically partially developed and not dependably dry backshore.

“Class III beach” means a beach or shore having no dry backshore.

“Clearing” means the destruction or removal, by hand or with mechanical means, of vegetative ground cover or trees including, but not limited to, root material or topsoil material.

“Cluster development” means the massing of development on one or more parts of a property.

“Coastal high hazard areas” means the areas within any areas of special flood hazard that are subject to high velocity waters, including but not limited to storm surge or tsunamis.

“Commercial recreational facility” means a place designed and equipped for the conduct of sports and leisure-time activities which is operated as a business and open to the public for a fee (see “indoor recreational facilities and outdoor recreational facilities”).

“Commercial sign” means any object, device, display or structure that is used for attracting attention to any commercial use, product, service, or activity.

“Commercial use” means activity involving the sale of goods or services.

“Common area” means any area contained within the boundaries of a proposed land division or within a multifamily residential development and owned by the lot owners as tenants-in-common, joint tenancy, or through an association or nonprofit association, and provided specifically for the common use of the residents.

“Communication towers” means towers, dishes, or antennas established for the sending or receiving of signals.

“Community club or facility” means a not-for-profit use that provides social, health, recreational, cultural, or educational facilities to a community.

“Community development and planning department” means the San Juan County community development and planning department, the former San Juan County permit center and the former San Juan County planning department.

“Community dock,” for purposes of SJCC 18.50.190(C)(8) and 18.50.340(G), means a dock serving three or more residential waterfront properties.

“Community structure” means a structure which is intended for the common use of the residents of a particular subdivision or community.

“Comprehensive Plan” means the San Juan County Comprehensive Plan and all of its goals, objectives, policies, documents, and maps.

“Concurrency” means a condition in which an adequate capacity of capital and transportation facilities and services is available to support development at the time that the impacts of development occur. (See also “adequate capacity,” “available capacity,” and “levels of service.”)

“Concurrency facilities” means the public facilities and services for which concurrency is required in accordance with the policies of the Comprehensive Plan. They include transportation facilities (ferry service and parking areas, Types 1 and 2 public docks, intersections in activity centers or urban growth areas, and collector public roads), and “Category A” capital facilities (County solid waste and recycling facilities; community water systems that serve urban growth areas, AMIRDs (village, hamlet, and residential activity centers and island centers), or master planned resort activity centers; and community sewage treatment facilities that serve village and master planned resort activity centers.

“Concurrency test” means the comparison of a project’s impact on concurrency facilities to the available capacity, including existing and planned capacity, of the concurrency facilities.

“Conditional use” means a use that is identified in Tables 3.1 and 3.2 in SJCC 18.30.030 and 18.30.040 by the symbol “C” and which requires a conditional use permit.

“Conditional use permit” means a permit issued by San Juan County 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.

“Conditional use, shoreline” means a use, development, or substantial development which is classified as a conditional use in the Shoreline Master Program (SMP; see Element 3 of the Plan and Chapter 18.50 SJCC), or which is not classified within the SMP.

“Condominium” means the division of a building or land pursuant to the Horizontal Property Regimes Act, Chapter 64.32 RCW, or to the Condominium Act, Chapter 64.34 RCW.

“Conical surface” means the FAA imaginary surface that is the lower boundary of an airspace which extends outward and upward from the periphery of the horizontal surface.

“Conservancy designation” means the land use designation of the Comprehensive Plan designed to protect valuable natural resources, wildlife, historical, and scenic areas.

“Conservancy environment, shoreline” means an environment designation that is applied to areas which are largely free of intensive development.

“Consolidated formation” means any geologic formation in which the earth materials have become firm and coherent through natural rock-forming processes.

“Construction contractor yards and offices” means service establishments primarily engaged in general contracting or subcontracting in the building construction trades. These include administrative offices, workshops and the indoor or outdoor storage of tools, equipment, materials, and vehicles.

“Contiguous” means adjoining as defined herein, but will often have the added component of sharing the common boundary for a considerable distance, along the whole or most of one side or border.

Contract Purchaser. See “Applicant.”

“Correctional facility” means any facility operated by or under contract to a public agency for the confinement of individuals accused or convicted of criminal or delinquent activity.

“Cottage enterprise” means a commercial or manufacturing activity conducted in whole or in part in either the resident’s single-family dwelling unit or in an accessory building, but is of a scale larger than a home occupation.

“County” means San Juan County, Washington, its board, commissions, and departments.

“Covered moorage” means a pier and/or float or system of floats covered by a roof.

“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 functions and values” means the beneficial roles served by critical areas and the values people derive from these roles including, but not limited to, water quality protection and enhancement; fish and wildlife habitat; food chain support; flood storage, conveyance, and attenuation; ground water recharge and discharge; erosion control; wave attenuation; and protection from hazards.

“Critical habitat” means an area or type of environment that may be of crucial importance to the perpetuation of an organism or biological population which normally lives or occurs there.

“Critical water resource areas” means selected watersheds and critical aquifers where resources are potentially threatened by salt water intrusion or primary contaminants or limited due to poor recharge.

“Cul-de-sac” means a road closed at one end by an area of sufficient size for turning vehicles around.

“Current use” means the use of land or improvements at the time of permit application.

SECTION 3. SJCC Section 18.20.040 (“D” definitions) and Ord. 52-2008 § 3 are each amended to read as follows:

Day Care – Type 1. The following definitions apply to day care facilities for six or fewer children:

“Child care facility” means a family day care home (RCW 35.63.170).

“Family day care home” means a person regularly providing care during part of the 24-hour day to six or fewer children in the family abode of the person or persons under whose direct care the children are placed (RCW 35.63.170).

Day Care – Type 2. The following definitions apply to day care facilities for seven or more children:

“Day care center” means a person or agency that provides care for 13 or more children during part of the 24-hour day (RCW 74.15.020).

“Family day care provider” means a licensed day care provider who regularly provides day care for not more than 12 children in the provider’s home in the family living quarters (RCW 74.15.020).

“Mini day care center” means a person or agency providing care during part of the 24-hour day to 12 or fewer children in a facility other than the family abode of the person or persons under whose direct care the children are placed, or for the care of seven through 12 children in the family abode of such person or persons (RCW 35.63.170).

“dBA” means the sound pressure level in decibels measured using the “A” weighting network on a sound level meter.

“Dedicate” means to set aside a piece of real property, a structure, or a facility for public or private use or ownership.

“Dedication” means the appropriation of land by an owner for any public or private use, reserving no other rights than those compatible with the full exercise and enjoyment of the public or private uses to which the property is to be dedicated. The intention to dedicate shall be evidenced by the owner filing an application for final subdivision approval showing the intended dedication, and the acceptance shall be evidenced by the approval of said application for recording.

“Degrade” means to scale down in desirability or salability, to impair in respect to some physical property or to reduce in structure or function, in terms of San Juan County standards and environment.

“Density” means the quantity per unit area, such as the number of dwelling units per acre or acres per dwelling unit.

“Department” means the San Juan County community development and planning department.

“Design capacity” means the theoretical or calculated maximum ability of a system or device to handle the duty for which it is to be used.

“Detached ADU” means an accessory dwelling unit that is physically distinct from the principal residence. To be detached, the ADU and principal residence may not be connected or must be structurally independent per the International Residential Code.

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

“Development” means 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, dredging, drilling, filling, grading, paving, excavation, mining, landfill; or any extension of the use of land. (See also “Shoreline development.”)

“Development area” means the area that is directly altered as a result of development. This includes, but is not limited to, the area containing structures, driveways, gardens and landscaped areas; and any grading, excavation, fill, or clearing.

“Development permit” means a County permit or approval required for a project, including but not limited to building and other construction permits, mechanical permits, demolition permits, plumbing permits, clearing and grading permits, driveway permits, and on-site sewage disposal permits. (See “Project permit.”) SEPA threshold determinations are not development permits.

“Development right” means the right to develop property subject to federal, state, and local restrictions and regulations.

Development, Shoreline. See “Shoreline development.”

“Director” means the director of the San Juan County community development and planning department or a designated representative.

“District” means a part, zone, or geographic area within San Juan County within which certain development regulations apply.

“Division of land” means the creation of two or more parcels of land within the boundaries of a single parcel. All contiguous property held in the same or substantially the same ownership, or under the control of the owner, whether or not the property is described in separate legal descriptions, shall be considered as part of the original tract of record for the purposes of Chapter 18.70 SJCC.

“Dock” means a structure that abuts the shoreline and is used as a landing or moorage place for commercial and pleasure craft. A dock typically consists of a pier, ramp, and float.

“Drainage” means surface water runoff; the removal of surface water or groundwater from land by drains, grading, or other means, which include runoff controls to minimize erosion and sedimentation during and after construction or development.

“Drainageway” means any natural or artificial watercourse, trench, ditch, swale, or similar depression into which surface water flows.

“Dredge spoils” means the material removed by dredging.

“Dredging” means the removal of earth from the bottom of a stream, river, lake, bay, or other water body.

“Driftway” means the critical link between the feeder bluff and the accretion shoreform, through which sand and gravel are transported by the littoral drift process.

“Drinking establishment” means a business primarily engaged in the retail sale of alcoholic beverages for consumption on the premises. A lounge operated as part of a restaurant is considered to be accessory to the restaurant.

“Drive-thru window service” means businesses where patrons may carry on business on the premises while in a motor vehicle.

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

“Dry boat storage” means a space on dry land or within a building which is rented to the public for the purpose of storing boats.

“Dune” means a hill or ridge of sand piled up by the wind and/or wave action.

Duplex. See “Dwelling unit, two-family.”

“Dwelling unit” means a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. A principal residence and an ADU that meets the requirements of SJCC 18.40.240 constitute a single dwelling unit. Recreational vehicles are not dwelling units.

“Dwelling unit, multiple-family” means one or more structures containing three or more dwelling units.

“Dwelling unit, two-family (duplex)” means a structure containing two dwelling units.

SECTION 4. SJCC Section 18.020.140 and Ord. 2-1998 Exh. B § 2.3 are each amended to read as follows:

18.20.140 “N” definitions.

“National Pollutant Discharge Elimination System (NPDES)” means a joint federal and state permitting system for the control, monitoring, and reduction of point-sources of pollution, established under the Federal Water Pollution Control Act (Clean Water Act) (Public Law 92-500).

“National Register of Historic Places” means the official federal list, established by the National Historic Preservation Act, of sites, districts, buildings, structures and objects significant in the nation’s history and prehistory, or whose artistic or architectural value is unique.

“Native vegetation” means plant species which are indigenous to San Juan County.

“Natural designation” means the land use designation of the Comprehensive Plan that is designed to preserve unusual or valuable natural resource systems by the regulation of all activities or uses which might degrade or alter the natural characteristics which make these areas unusual or valuable.

“Natural environment (shoreline)” means the Shoreline Master Program designation designed to preserve unusual or valuable natural resource systems by regulating all potential uses which might degrade or alter the natural characteristics that make the area unusual or valuable.

“Natural or existing topography” means the topography of the lot, parcel, or tract of real property immediately prior to any site preparation or grading, including excavation or filling.

“Natural system (shoreline)” means a group of related objects or forces existing in nature, for example, a shore process corridor.

“No net loss” means the requirement that development not result in net harm in the aggregate to the existing functions and values of the ecosystem that includes the adversely impacted or lost critical areas. The no net loss standard in WAC 365-196-830 requires that where development regulations allow harm to critical area functions and values, they must require compensatory mitigation of the harm unless alternative means of protecting critical areas exist such as best management practices or a combination of regulatory and non-regulatory programs.

“Noise” means any sound not occurring in the natural environment which causes or tends to cause an adverse psychological or physiological effect on humans.

“Noise exposure forecast level” means the level of predicted noise exposure or areas within the vicinity of an airport due to aircraft operations at some future date based on noise levels and duration at the time of prediction.

“Noncapital alternative strategies” means programs, strategies, or methods that contribute to achieving and maintaining adequate levels of service (as set forth in the Comprehensive Plan) for concurrency facilities by means other than by constructing structural improvements. These strategies include but are not limited to reduction of need or demand for a facility or service (as by education efforts or increased efficiency of use), provision of a noncapital substitute, and use of alternative methods to provide capacity. (See also “adequate capacity,” “available capacity,” “concurrency,” and “level of service.”)

“Nonconforming” means an existing use, structure, site, or lot which conformed to the applicable codes in effect on the date of its creation but which no longer complies because of changes in code requirements. Nonconformity is different than and not to be confused with illegality (see “illegal use.”) Legal nonconforming lots, structures, and uses are commonly referred to as “grandfathered.”

“Nonconforming lot” means an existing lot which does not conform to the area, width, depth, or street frontage regulations of the land use district in which it is located.

“Nonconforming structure” means an existing structure which does not conform to the dimensional regulations, including but not limited to, setback, height, lot coverage, density, and building configuration regulations of the land use district in which it is located due to changes in code requirements. (See also “alteration, nonconforming structures.”)

“Nonconforming use” means an existing use of a structure or of land which does not conform to the regulations of the land use district in which the use exists due to changes in code requirements. (See also “Alteration, nonconforming use.”)

“Nonconsumptive use” means a use which does not permanently deplete, degrade, or destroy the resource involved.

“Nonpoint source” means the release of waste or other flows which occurs over a broad or undefined area. Releases which can be described as confined to a small area, such as discharges from a pipe or conduit, are referred to as “point-source discharges.” (See also “point-source discharge.”)

“Normal appurtenance, shoreline” means a structure or development that is necessarily connected to the use and enjoyment of a single-family residence and which is expressly defined in WAC 173-27-040 and in Chapter 18.50 SJCC, for purposes of exemption from shoreline substantial development permit requirements in accordance with WAC 173-27-040(g). (See also “shoreline exemption.”)

“Nursery” means lands or greenhouses used to raise flowers, shrubs, and plants for commercial purposes.

“Nursing home (long-term health care facility)” means a facility or residence that provides health or long-term care services to residents, including nursing or other supportive or restorative health services on a 24-hour basis (RCW 43.190.020).

SECTION 5. SJCC Section 18.20.170 (“Q” definitions) and Ord. 2-1998 Exh. B § 2.3 are each amended to read as follows:

“Qualified professional” means a person with training and experience in the pertinent scientific discipline. With regard to critical areas, a qualified professional is a 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. Wetlands. A qualified wetlands professional is a person who has an understanding of hydrology and advanced skills in plant identification and soils classification, has been trained in the procedures of the 1987 Federal Wetland Delineation Manual and its updated Regional Supplement, has used those procedures to delineate a wetland in a report subsequently considered complete by the Washington Department of Ecology, and has the qualifications to conduct wetland studies and make recommendations for wetland mitigation. These qualifications include specialization in wetland soils, botany, or hydrology, with appropriate education and experience.
2. Fish and Wildlife Habitat Conservation Areas. A qualified professional for habitat must have a degree in biology or a related degree and professional experience related to the subject species.
3. Geologically Hazardous Areas. A qualified professional for a geological hazard is: a geotechnical engineer, qualified civil engineer, or licensed engineering geologist with experience analyzing geologic, hydrologic, and ground water flow systems; slope stability, seismicity, faulting, and liquefaction; and be licensed to practice in the state of Washington. When the proposed development is located in an area subject to coastal geomorphological processes, the professional shall have demonstrated experience in evaluating and providing technical recommendations related to sediment and sediment transport, and effects on property and shoreline stability.
4. Critical Aquifer Recharge Areas. A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

“Qualified wetlands consultant” means a person who has the qualifications to conduct wetland studies and make recommendations for wetland mitigation. These qualifications include specialization in wetland biology, botany, and hydrology, with appropriate education and experience.

SECTION 6. SJCC Section 18.30.110 and Ord. 15-2005, Exh. B § 2a are each amended to read as follows:

18.30.110 Critical Areas.

A. Purpose. ~~The Critical areas overlay districts are is adopted to protect the functions and values of critical areas in conformance with the requirements of the Washington Growth Management Act and the implement the policies of the San Juan County Comprehensive Plan for the protection of critical areas. The purpose is to protect the functions and values of critical areas and to protect people, public and private property, and natural ecosystems.~~ There are five types of critical areas as defined in SJCC 18.30.120 through 18.30.160:

1. Geologically hazardous areas.
2. Frequently flooded areas.
3. Critical aquifer recharge areas.

4. Wetlands.
5. Fish and wildlife habitat conservation areas.

B. Applicability. ~~These~~ This overlay districts provides regulations for land use and development in critical areas and areas adjacent to critical areas ~~and as established in this code within 300 feet of critical areas.~~

~~Any land use or development activity which is subject to a development permit or approval under this code may be undertaken on land located within or containing a critical area or its buffer only if the provisions of this section are met. The appendices are incorporated herein by reference. A copy is on file at the auditor's office and planning department.~~

~~C. Allowable Uses.~~ All uses shall be subject to requirements specified in Tables 3.1 and 3.2 in SJCC 18.30.030 and 18.30.040 for the underlying district, unless otherwise specified in this code.

~~D.C.~~ General Exemptions. When conducted in accordance with the provisions of this subsection and other applicable requirements, the following uses and activities are exempt from critical area regulations ~~the provisions of this section; provided that they are otherwise consistent with other sections in this code:~~

~~1. Emergencies that threaten the public health, safety, and welfare. An emergency is an unanticipated and imminent threat to the public health or safety or to the environment which requires immediate action within a period of time too short to allow full compliance with this code.~~

1. Emergency Response. 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 critical area requirements.

2. 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 adverse impacts to critical area functions and values caused by the action. Any mitigation and/or restoration necessary to bring the action into compliance with these critical area requirements, shall be undertaken pursuant to a mitigation plan or other plan that is consistent with the critical area requirements of this chapter. The director shall be the decision maker for these plans.

~~2. Routine maintenance and repair of existing structures, utilities, sewage disposal systems, water systems, drainage facilities, ponds, public and private roads, and driveways.~~

3. Operation, maintenance, repair, remodel, or replacement of existing structures, facilities, infrastructure systems and development areas, provided there is no further intrusion into geologically hazardous areas, frequently flooded areas, wetlands, or fish and wildlife habitat conservation areas or their buffers; soil erosion is controlled; disturbed areas are promptly stabilized; and actions do not have an additional adverse effect on the functions and values of critical areas.

~~4. Installation, construction, replacement, or modification of (a) electrical lines or electrical facilities; (b) telecommunication lines; or (c) water and sewer distribution lines within private or public rights of way, provided that soil erosion is controlled and disturbed areas are promptly stabilized or revegetated as appropriate; provided, that a prior written statement of exemption is obtained from the administrator.~~

~~4. Establishment and routine maintenance and repair of lawns, landscaping, gardens, orchards, and fences accessory to a single-family residential use; provided, that where a regulated wetland or its buffer is present the provisions of SJCC 18.30.150, Wetlands, shall apply.~~

5. Removal of trees that are a hazard to people, domestic or commercial livestock, and structures that house them. hazardous, diseased, or dead trees and vegetation and, when necessary, measures to control a fire or halt the spread of disease or damaging insects. In addition, to allow for defensible

space, 30 feet of vegetation may be cleared around buildings existing on the effective date of these regulations.

- ~~6.6. Land divisions exempt from the land division requirements as specified in SJCC 18.70.010(C). The divisions of land specified in 18.70.010(C) are exempt from critical area compliance review. Parcels created via 18.70.010(C) are subject to compliance with critical area protection requirements, and they are not eligible for development under the provisions for reasonable use exceptions.~~
7. Forest practices regulated under the provisions of RCW Chapter 76.09 and WAC Title 222.
8. Installation of navigation aids and survey markers.
9. Site investigative work associated with land use applications, such as surveys, soil borings, and test holes, provided that critical area functions and values are protected and disturbed areas are immediately restored. (Note: For sites with archaeological or historical significance, additional State or local regulations may apply).

ED. Reasonable Use Exception.

The County desires to avoid the taking of property without just compensation by providing for reasonable use exceptions from standard critical area protection regulations. If the application of this section would deprive the land owner of all economic or beneficial use of a property, an application for a reasonable use exception may be made.

~~1. If the application of this section would result in denial of all reasonable use of a property (i.e., denial of all economically beneficial or productive use of the land), development may be allowed which is consistent with the general purposes of this code, this section, and the public interest. "Reasonable use," for the purposes of this section, shall include improved area(s) totaling not more than 21,780 square feet or 80 percent of the parcel, whichever is less, on any parcel which constituted a legal building site prior to the adoption of these regulations. Within the improved area(s) the critical area may be cleared, filled, drained, excavated or otherwise altered by development. All improvements, including parking and driving areas, with the exception of a driveway for a single family residence, shall be included in the improved area(s) unless the improvements are otherwise exempt under this section. Reasonable Use Exceptions from the provisions of this section shall be subject to all of the following criteria:~~

- ~~1. The application of this section would deny all reasonable use of the property so that there is no reasonable use, other than that proposed, with a lesser impact on the critical area;~~
- ~~2. The proposed development does not pose an unreasonable threat to the public health, safety or welfare; and~~
- ~~3. Any proposed improved area shall be located in such a way as to minimize the impact to the critical area.~~

1. Reasonable use exceptions only apply to compliance with critical area requirements. They do not relieve the applicant of the duty to comply with other local, State, or Federal requirements.
2. The burden of proof is on the applicant to provide adequate information for the director to make a finding of compliance with the requirements of this subsection.
3. Reasonable use exceptions may only be granted for parcels created before the effective date of this ordinance. Reasonable use exceptions cannot be used to justify building on parcels not intended to be used as a building site (e.g., recreational lots including those platted as common area).
4. Two sets of options are available under the reasonable use exception.

Option One – No Mitigation:

- a. A development area of up to 2,500 s.f. of development constructed using Low Impact Development practices may be located in a critical area buffer.
- b. A development area of up to 1,500 s.f. of development constructed using Low Impact Development practices may be located in a critical area.
- c. A combined development area of 2,500 s.f. of Low Impact Development, of which no more than 1,500 s.f. is located in the critical area and the balance is located in the critical area buffer.

And;

Option Two – With Mitigation

- a. Up to 10% of the parcel, or up to one half (1/2) acre (whichever is more) may be developed with mitigation of adverse impacts to critical area functions and values.
 - b. Low impact development practices are encouraged in all development under the reasonable use exception and are required for all reasonable use exception development over 10,890 s.f.
5. Applications for reasonable use exceptions are project permits, which are reviewed and approved by the director as a provisional use permit.
6. Application for a reasonable use exception shall include:
- a. The applicable items listed in SJCC Section 18.80.020.C (Project Permit Applications-Forms) along with photos of the site and a detailed site plan showing the location of wetlands, fish and wildlife habitat conservation areas, frequently flooded areas within 300 feet of the proposed development area, and geologically hazardous areas within 200 feet of the development area;
 - b. Any related project documents such as applications to other agencies or environmental documents prepared pursuant to the State Environmental Policy Act;
 - c. Required critical area reports, critical area delineations, and, for the “with mitigation” option, Best Available Science documents supporting the proposal.
 - d. A copy of proposed or approved storm water and erosion control plans as required by SJCC 18.60.
 - e. A narrative describing anticipated adverse impacts to the functions and values of critical areas, based on Best Available Science, and explaining how the proposal meets the reasonable use exception approval criteria.
 - f. Mitigation, Monitoring and Adaptive Management Plans. Plans meeting the requirements of this chapter for mitigating any adverse impacts or harm that would result in a net loss of the functions and values of critical areas, for monitoring the effectiveness of mitigation actions, and when necessary for adaptively managing the mitigation project to ensure its success.
 - g. A cost estimate, prepared by a qualified professional, for implementing mitigation and monitoring plans.
 - h. Financial Guarantee. If mitigation of adverse impacts to critical area functions and values is necessary, a financial guarantee covering 115% of the cost of implementing mitigation and monitoring plans is required. This guarantee and the associated agreement must meet the requirements of SJCC 18.80.
7. Reasonable Use Exception Approval Criteria. Approval of reasonable use exceptions shall be based on conformance with the following criteria:
- a. The application is complete and includes all applicable items listed in SJCC 18.30.110.D.6.
 - b. The applicant is unable to meet standard critical area protection regulations for the proposal and the application of this section would deprive the land owner of all economic or beneficial use of a property.
 - c. The need for the exception is not the result of action by current or previous property owners after the effective date of this ordinance (e.g., creating new parcels without a feasible building site or means of access).
 - d. Where possible, proposed development areas are located in such a way as to avoid adverse impacts to the functions and values of critical areas, considering the Best Available Science.

- e. For the “with mitigation” option, adverse impacts shall be mitigated in accordance with an approved mitigation plan so that there will be no net loss of critical area functions and values, considering the Best Available Science. When feasible, adverse impacts shall be mitigated on site. If this is not possible and offsite mitigation is proposed, the mitigation site shall be located on the same island and as close as possible to the development site.
 - f. The proposal is consistent with the requirements of this subsection.
8. Recording of Approved Exception, Site Plan, and Notice to Title.
The County shall record a copy of the approved exception and site plan, along with a Notice to Title referencing the plan, with the cost of recordation included in the application fee.

E. Optional Public Agency and Utility Procedures.

The following provisions are available to public agencies and utilities that have difficulty meeting standard critical area protection requirements:

1. If the application of critical area regulations would preclude 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 development may be allowed provided it is consistent with this section and other applicable regulations, and will benefit public health, safety, or welfare.
2. Public Agency and Utility Exceptions only apply to compliance with critical area requirements. They do not relieve the applicant of the duty to comply with other local, State, or Federal requirements.
3. In determining eligibility for Public Agency and Utility Exceptions, the burden of proof is on the applicant to provide adequate information supporting the request.
4. Applications for Public Agency and Utility Exceptions are project permits that may be reviewed as either a provisional use or a conditional use, whichever the director determines to be the correct permit level after review of SJCC Chapter 18.80, Table 8.2.
5. Application for a Public Agency and Utility Exception shall include:
 - a. The applicable items listed in SJCC Section 18.80.020.C (Project Permit Applications-Forms) along with photos of the site and a detailed site plan showing the location of all critical areas within 300 feet of the proposed development area.
 - b. Any related project documents such as applications to other agencies or environmental documents prepared pursuant to the State Environmental Policy Act.
 - c. Required critical area reports, critical area delineations, and Best Available Science documents supporting the proposal.
 - d. A copy of proposed or approved storm water and erosion control plans as required by SJCC 18.60.
 - e. A narrative describing anticipated adverse impacts to critical area functions and values, based on Best Available Science, and explaining how the proposal meets the Public Agency and Utility Exception approval criteria.
 - f. Mitigation, Monitoring and Adaptive Management Plans. Plans, meeting the requirements of this chapter, for mitigating any adverse impacts to the functions and values of critical areas, for monitoring the effectiveness of mitigation actions, and when necessary for adaptively managing the mitigation project to ensure its success.
 - g. A cost estimate, prepared by a qualified professional, for implementing mitigation and monitoring plans.
 - h. Financial Guarantee. Unless exempt under RCW 36.32.590, if mitigation of adverse impacts is necessary, a financial guarantee covering 115% of the cost of implementing the mitigation and monitoring plan. This guarantee and the associated agreement must meet the requirements SJCC 18.80.
6. Public Agency and Utility Exception Approval Criteria. Approval of public agency and utility exceptions

shall be based on conformance with the following criteria:

- a. The application is complete and includes all applicable items listed in SJCC 18.30.110.E.5.
- b. The applicant is a public agency, public utility, or private utility regulated by the Washington Utilities and Transportation Commission or serving an Urban Growth Area.
- c. The proposed project will benefit the public health, safety or welfare.
- d. Adverse impacts shall be mitigated in accordance with an approved mitigation plan so that there will be no net loss of critical area functions and values, considering the Best Available Science. When feasible, adverse impacts shall be mitigated on site. If this is not possible and offsite mitigation is proposed, the mitigation site shall be located on the same island and as close as possible to the development site.
- e. The proposal is consistent with the requirements of this subsection.

F. Critical Area Mitigation Requirements.

1. This section outlines the provisions for mitigating adverse impacts to critical area functions and values when mitigation is authorized or required by this code. Possible mitigation actions may include minimizing impacts as well as re-establishment, rehabilitation, restoration, creation, and enhancement.
2. Mitigation, monitoring, and adaptive management plans must be developed by a qualified professional(s).
3. Mitigation, monitoring, and adaptive management plans are reviewed and approved by the decision maker for the underlying permit or approval (director or hearing examiner, depending on type of permit/approval).
4. Preparation of mitigation, monitoring, and adaptive management plans, and their review by the County, which may include referral to independent qualified professional, shall be at the applicant's expense. If review by a third party is necessary because of the complexity of the plans or apparent errors, the Department may require advance payment of fees for this review based on the estimated review time. As an alternative to third party review, the applicant and the director may jointly select the qualified professional who will complete the plans.
5. Mitigation options include the use of certified mitigation banks and approved in-lieu fee mitigation sites.
6. Removal of illegal modifications cannot be used to mitigate new adverse impacts to critical areas when those modifications were made by the owner of the property that is the subject of the application.
7. Mitigation plans must be appropriate for the scale and scope of the project, and include adequate information for the decision maker to determine that the project and application are in conformance with approval criteria. Potential components of an application include the following:
 - a. For both the proposed development area and the proposed mitigation site, the applicable items listed in SJCC Section 18.80.020.C (Project Permit Applications-Forms) as well as photos of both the development and mitigation sites, and a detailed site plan showing the location of all critical areas within 300 feet of these areas;
 - b. Any related project documents such as applications to other agencies or environmental documents prepared pursuant to the State Environmental Policy Act;
 - c. For both the proposed development area, and the proposed mitigation site, applicable critical area reports, critical area delineations and Best Available Science documents supporting the proposal.
 - d. For both the development area and the mitigation site, copies of any proposed or approved storm water and erosion control plan required by SJCC 18.60.
 - e. A narrative describing anticipated adverse impacts to critical area functions and values, the mitigation proposal (including the goals of the proposal, performance standards that will be used to gauge the effectiveness of the proposal, construction methods, and the sequence and timing of

- actions), and explaining how the proposal meets the plan approval criteria. Assessment of adverse impacts to critical area functions and values and of the effectiveness of proposed mitigation shall be based on the Best Available Science.
- f. For offsite mitigation actions, an explanation of why on-site mitigation was not feasible, along with the site selection criteria employed.
 - g. Grading and excavation details. If grading or excavation is proposed, pre- and post-construction contour plans are required at a scale that is suitable for the site.
 - h. A planting plan (if planting is proposed) identifying plant species, quantities, sizes, locations, spacing, and density, along with proposed measures to protect and maintain the plants until they are established.
 - i. Any other drawings necessary to illustrate the proposal.
 - j. Monitoring and adaptive management plans appropriate for the scale and scope of the project. These plans must describe measurable data that will be collected to assess the effectiveness of the project, must include a monitoring schedule (monitoring is required at least once each year, with a report submitted to the Department by November 1), and must explain corrective actions that will be taken to deal with any problems. The project shall be monitored for three (3) years or until the director determines that it is successful, functioning as designed, and that established performance standards have been met.
 - k. For mitigation of adverse impacts to wetlands, the plan, including associated wetland replacement ratios, must 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*. As an alternative, mitigation actions may follow the procedures described in Ecology Publication No. 10-06-011, *Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington* or another mitigation approach or publication approved by Ecology.
 - l. A description of the report author's education and experience relevant to implementing the proposed actions.
 - m. A cost estimate, prepared by a qualified professional, for implementing the mitigation plan and monitoring the site for a period of three (3) years or until the project is anticipated to be fully completed and functional as determined by the qualified professional and approved by the decision maker (director or hearing examiner, depending on type of underlying permit).
 - n. Financial Guarantee. Unless exempt under RCW 36.32.590, a financial guarantee and associated agreement covering 115% of the cost of implementing the mitigation and monitoring plans. This guarantee and the associated agreement must meet the requirements of SJCC 18.80, and for mitigation of adverse impacts to Wetlands and Fish and Wildlife Habitat Conservation Areas, it must initially be established to cover a time period of three (3) years or until the project is anticipated to be fully completed and functional as determined by the qualified professional and approved by the decision maker (director or hearing examiner, depending on type of underlying permit). Note: The maximum cost to the property owner is the original cost for implementing and monitoring the project, plus 115% of that cost.
 - o. A statement, signed by the property owner, agreeing to periodic inspections as established in the monitoring plan. The purpose of inspections is to determine compliance with approved plans, and inspections can be performed by either a qualified professional hired by the property owner, or a County representative provided that inspections are by appointment or following advance written notice.
8. Mitigation Plan Approval Criteria. Approval of mitigation plans shall be based on conformance with the following criteria:
- a. The application includes the applicable items listed in SJCC 18.30.110.F.5.
 - b. Mitigation is authorized or required by this code.

- c. For wetlands, this plan, including 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*. These and other wetland mitigation and monitoring guidance documents are available from the Department of Ecology. As an alternative, mitigation requirements may be determined through application, by a qualified professional, of procedures described in Ecology Publication No. 10-06-011, *Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington* or another mitigation approach or publication approved by Ecology.
 - d. Proposed development is designed and located in such a way as to avoid adversely impacting the functions and values of critical areas, considering the Best Available Science. If adverse impacts cannot be avoided, then they must be mitigated so that there will be no net loss of critical area functions and values, considering the Best Available Science. When necessary, mitigation actions shall occur in the following preferred sequence:
 - i. Reduce or minimize adverse impacts by limiting the degree and magnitude of the action, or by applying appropriate technology and engineering;
 - ii. Rectify adverse impacts by repairing, rehabilitating, or restoring the affected environment;
 - iii. Compensate for adverse impacts by replacing, enhancing, or providing similar resources or environments that will substitute for those functions and values that were adversely affected.
 - e. When feasible, adverse impacts shall be mitigated on site. If this is not possible, and offsite mitigation is proposed, the mitigation site shall be located on the same island, as close as possible to the development site.
 - f. The proposal is consistent with the requirements of this section.
9. Recording of Approved Plan and Notice to Title. The County shall record a copy of the approved mitigation plan, along with a Notice to Title referencing the plan, with the cost of recordation included in the application fee.
10. If the goals, objectives and performance standards of the mitigation plan are not met, the decision maker (director or hearing examiner, depending on type of underlying permit or approval) may require additional actions or additional monitoring. To allow for successful completion of the mitigation project, the monitoring period, financial guarantee and associated agreement may be extended.

G. Nonconforming structures, uses, and activities. A nonconforming structure, use or activity is one that did conform to the applicable codes which were in effect on the date of its creation, but which no longer complies because of subsequent changes in the code. Legal, nonconforming structures, uses, and activities are commonly referred to as "grandfathered." It is the policy of San Juan County that non-conforming structures, uses, and activities may continue in perpetuity, provided they are in conformance with the following:

The following standards apply to structures, uses, and activities that existed on the effective date of these regulations and are nonconforming as a result of critical area protection standards established in this Chapter. For nonconformance with critical area requirements, these provisions take the place of those found in other sections of this code. For structures, uses, and activities subject to the requirements of the County Shoreline Master Program, the provisions of this subsection apply until the effective date of a comprehensive update of the Shoreline Master Program.

1. Nonconforming structures may be modified, replaced, relocated, or expanded within the development area existing on the effective date of these regulations, provided: a) the degree of nonconformity is not increased; b) any required building, project, or development permits are obtained; c) there are no additional adverse impacts to water quality or the functions and values of critical areas; and d) complete application(s) for any required project, or development permits for

replacement structures are submitted within 48 months of removal, or destruction of the original structure, unless the director extends this time period for good cause, or the property owner provides a letter declaring their intent to rebuild the structure in the future. To retain the right to rebuild, a letter of intent must be submitted every 48 months.

2. Nonconforming structures may be maintained and repaired within the footprint existing on the effective date of these regulations, provided any required building, project, or development permits are obtained.
3. Nonconforming uses and activities, including use of buffer areas, may be continued, replaced with other uses or activities, or relocated, provided the degree of nonconformity is not increased, any required building, project, or development permits are obtained, and there are no additional adverse impacts to water quality or the functions and values of critical areas. Relocation or replacement of a nonconforming use or activity shall be reviewed as a provisional use.
4. A structure for which a variance to critical area requirements has been issued shall be considered a legal nonconforming structure.
5. Abandonment of Nonconforming Uses and Activities. Nonconforming uses and activities shall be considered abandoned if the use or activity ceases to operate or is discontinued for 48 consecutive months unless the director extends this time period for good cause, or the property owner provides a letter declaring their intent to continue the use or activity in the future. To retain the right to continue a nonconforming use or activity, a letter of intent must be submitted every 48 months.

Section 7. SJCC 18.80.010 (Project permit applications – General) and Ord. 11-2011 § 6 are each amended to read as follows:

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 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 are 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, except as provided in Chapters 36.70B and 43.21C RCW.

B. Director’s Responsibilities.

1. Responsibilities. The 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 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 director shall conduct a review as specified in this section.
 - b. All applications for project permits shall be reviewed by the 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 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 director may require additional information from the applicant sufficient to make a determination.

Section 8. SJCC 18.80.020 (Project permit applications—Procedures) and Ord. 11-2011 § 7 are each amended to read as follows:

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 director~~.

1. A ~~P~~pre-application conferences and site inspections ~~are~~ 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 unique site characteristics; 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. The 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 rightmost applicable column in Table 8.1) 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 SJCC 18.80.140.)

C. Project Permit Application – Forms. Applications for project permits shall be submitted to the permit center on forms approved by the director. 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 (a) the application has been submitted with the consent of all owners of the subject property, and (b) 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 8 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 8;
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, 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/critical 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 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. Photographs of the site depicting existing and proposed development areas.

110. Critical Areas (CAs)

- a. All project permit applications ~~for proposals on lands designated as critical areas (CAs)~~ shall include sufficient information about the site and the proposed project location and extent of any affected CAs to demonstrate consistency with SJCC 18.30.110 through 18.30.160.

~~Once a project permit application is submitted, the determinations described in subsections (C)(10)(a)(i) through (iv) of this section will generally be made to establish how CA rules and regulations will affect the proposal before a project permit application is considered complete:~~

- i. ~~The actual presence or absence of a CA based on maps, photographs, or other information, either supplied by the applicant or available at the permit center; and if a CA is indicated, what options may be available;~~

- ii. The absence, presence or extent of a CA based on a site inspection by the director (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 a CA; and
- iv. Whether a special report would likely be required to determine if the regulations applicable to a known CA can be met;

b. Special Reports. In accordance with the specific CA 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 director to evaluate a proposal and all probable significant adverse impacts on a CA 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;

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 or be affected by a wetland, fish and wildlife habitat conservation area, frequently flooded area, or geologically hazardous area. If the proposed development area is not in a frequently flooded area, is more than 200 feet from identified geologically hazardous areas, and is more than 300 feet from wetlands or fish and wildlife habitat conservation areas, the Department shall rule that the Critical Area review is complete with regard to those types of critical areas. Otherwise, the Department will notify the applicant and provide them with a list of any report(s) or application materials required by SJCC 18.30.110-160. If required, these reports must be received before an application will be deemed complete.

c. Critical Area Reports.

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, is inadequate to determine compliance with this code, or does not meet the requirements of this code, the director shall contact the qualified professional who prepared the report to discuss the issues and, if necessary, shall have the report reviewed by a third party qualified professional. The report shall not be accepted as complete until it meets the requirements of this code.

124. 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. 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;

132. 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;

143. 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;

154. 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;

165. Additional Application Information for Rural Residential Cluster Development. The application for a rural residential cluster development 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);
- ~~176.~~ Additional Information. The director may require additional information necessary for review and evaluation or demonstration of project consistency with this code;
- ~~187.~~ Director's Waiver. The director may waive specific submittal requirements determined to be unnecessary for review of a project permit application required by this code;
- ~~198.~~ Temporary Use Permit Applications. All project permit applications for a temporary use shall be submitted to the director in writing and contain sufficient information for the director to make a decision (see SJCC 18.80.060). The director 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 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 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 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 from requesting additional information or studies at any time if new information is determined to be necessary due to the complexity of the plans, apparent errors, 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, the application shall lapse and the applicant shall forfeit the application fee.
4. Incomplete Applications.
 - a. If the director notifies the applicant that an application is incomplete, the applicant shall have 90 days to submit the necessary information to the director. Within 14 days after an applicant has submitted the additional information, the director 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 within the 90-day period and the director 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. **Director's Failure to Provide Determination of Completeness.** A project permit application shall be deemed complete under this section if the director 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 director shall transmit a copy of the application, or 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 director shall grant an extension of time where unusual circumstances are present.

Table 8.1. Summary of Project Permit Notice, Hearing, Decision and Appeals Processes. ⁽¹⁾

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
	Administrative		Quasi-Judicial		
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 and SLD and SEPA required)	yes	yes	yes	yes
Open-Record Pre-decision Hearing	no	no	yes	yes	yes
Decisionmaker	Director	Director	Hearing Examiner	Hearing Examiner	Hearing Examiner

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
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
Judicial Appeal	yes (of Hearing Examiner decision)	yes (of Hearing Examiner decision)	yes	yes (of SHB decision)	yes
Other Appeal	no	no	no	yes (to SHB)	no

1. Abbreviations: SHB: Shorelines Hearings Board BSP: Binding Site Plan

Section 9. SJCC 18.80.070 [Procedures for “yes” uses (uses allowed outright)] and Ord. 15–2002 § 7 are each amended to read as follows:

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. 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. 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 (Critical Area regulations). Unless exempt under SJCC 18.30.110, prior to removal of vegetation or site disturbance, all development activities must undergo this review. Prior to approval, sufficient information must be provided to demonstrate compliance with SJCC 18.30.110-160. 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. Critical Area Review process. The Department shall review plans, application materials, 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 or be affected by a wetland, fish and wildlife habitat conservation area, frequently flooded area, or geologically hazardous area.

If the proposed development area is not in a frequently flooded area, is more than 200 feet from identified geologically hazardous areas, and is more than 300 feet from wetlands or fish and wildlife habitat conservation areas, the Department shall rule that the Critical Area review is complete. Otherwise, the Department will notify the applicant and provide them with a list of any report(s) or application materials required by SJCC 18.30.110-160. If required, these reports must be received before an application will be deemed complete.

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, is inadequate to determine compliance with this code, or does not meet the requirements of this code, the director shall contact the qualified professional who prepared the report to discuss the issues, and if necessary shall have the report reviewed by a third party qualified professional. The report shall not be accepted as complete until it meets the requirements of 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.

DB. 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-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.)

FD. 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).

Section 10. SJCC 18.80.090 and ordinance 26-2002 § 6 are each amended to read as follows:

18.80.090 Permit procedures for provisional/conditional discretionary uses (formerly referred to as discretionary uses).

A. Purpose and Applicability. ~~Provisional/conditional Discretionary~~ uses are indicated by "D P/C" in Tables 3.1 and 3.2 in SJCC 18.30.030 and 18.30.040. Provisional/conditional Discretionary uses must conform to the purpose and intent of the land use district in which the use is to be located.

B. Notice and Comment. Notice and public comment for provisional/conditional discretionary uses must comply with the procedures set forth for provisional use permits or conditional use permits, whichever applicable. (See SJCC 18.80.030.)

C. Decision making Authority. Based upon the criteria set forth in this code, the ~~administrator~~ director has authority to determine if an application for a provisional/conditional ~~discretionary~~ use should be processed as a provisional use permit or a conditional use permit. If processed as a provisional use permit application, the director ~~administrator~~ is the decision maker. (See SJCC 18.80.080.) If processed as a conditional use permit application, the hearing examiner is the decision maker. (See SJCC 18.80.100.)

D. Determination Whether the Conditional Use Permit Process Will Be Required. The ~~administrator~~ director shall use Table 8.2, below, as a guide to evaluate the impacts of the proposal. If any impact is “high” and is not mitigated to medium or low impacts, then the application must be processed as a conditional use as per SJCC 18.80.100. If “medium” impacts cannot be mitigated, then the ~~administrator~~ director may require the application to be processed as a conditional use as per SJCC 18.80.100. In making this determination the ~~administrator~~ director will consider the number of impact areas above the middle range of the medium impact category and the relative magnitude of those impacts. If a conditional use permit is not required, or if the impacts as determined from Table 8.2 are “low,” the application shall be processed as a provisional use under the procedures set forth in SJCC 18.80.080.

Intensity, severity, and cumulative impact of the proposed uses will enter into the determination of which procedures will be used. Determination of the suitability of mitigation measures will include, among other things, the risk of “upset conditions” (the risk that the mitigation measures will fail, be overwhelmed, or exceed allowed discharges), and the potential severity of the impact should mitigation be ineffective or fail.

How to Use this Table

This table is intended as guidance for the ~~administrator~~ director when making decisions per SJCC 18.80.090(E) for provisional/conditional ~~discretionary~~ uses which were formerly referred to as discretionary uses (noted with a “P/C D” in Tables 3.1 and 3.2 in SJCC 18.30.030 and 18.30.040).

An application that has:

- all **low-impact** uses is processed under the provisional use procedures of SJCC 18.80.080.
- one or more **high-impact** uses—If the high-level impacts are not mitigated to low or medium level, the application is processed under the conditional use procedures of SJCC 18.80.100.
- one or more **medium-impact** uses—An application with medium-impact uses may be processed using either the provisional use or conditional use procedures of this code, as determined by the ~~administrator~~ director.

Note: Intensity, severity, and cumulative impact of the proposed uses will enter into the determination of which procedures will be used.

For air, water, or soil pollution, the Washington Department of Ecology (WDOE) may require any person proposing a new, changed, or existing discharge, disposal or emission to evaluate the potential for the discharge to cause a violation of applicable standards and regulations; certain state and federal permits and approvals also require additional information development. Depending on the proposed uses, the County may require an applicant to confer with the WDOE, and may use the results of any analysis, testing, or other information developed by or for WDOE or other agencies in determining the appropriate impact level and permit procedures.

Determination of the suitability of mitigation measures will include, among other things, the risk of “upset conditions” (the risk that the mitigation measures will fail, be overwhelmed, or exceed allowed discharges), and the potential severity of the impact should mitigation be ineffective or fail.

Table 8.2. Guidance for Administrative Review of Impacts for the Assignment of Applications to Provisional ~~Discretionary~~ Use or Conditional Use.

Impact Parameter	Level of Impact ¹⁾		
	Low	Medium	High
Environmentally Sensitive Critical Areas (see SJCC 18.30.110 through 18.30.160)			
Geologically hazardous areas	No effect on Category I or II	Effect on Category II	Effect on Category I
Frequently flooded areas	None affected	No reduction in flood abatement volume	Reduces flood volume of 100-year floodplain
Critical aquifer recharge areas	No effect on High or Medium classes	Effect on Medium class Mitigable impact	Effect on High class Any impact that cannot be mitigated. to a Category I area; or
Regulated wetlands or fish and wildlife habitat conservation areas	No impact		Not completely mitigable adverse impact to other categories
Air Pollution			
Air pollutants and emission rates (as defined in WAC 173-400-030, emission rates and performance standards -040 through 115)	Normal for SFR/EQ ²⁾ (including meeting requirements of WAC 173-433)	> 1 SFR/EQ; <i>or</i> Pollutant types or emission levels require registration with WDOE and a new source review per WAC 173-400-110	> 3 SFR/EQ; <i>or</i> A new source review reveals: - Major source (potential for emission of 100 tons of any regulated pollutant); <i>or</i> - Potential to emit 25% of a significant emission as defined in WAC 173-400-030; <i>or</i> - Pollutants will be emitted for which will affect an area that is in nonattainment of National Ambient Air Quality Standards (WAC 173-400-030 and -113); <i>or</i> - Hazardous pollutants (per WAC 173-400-075, and 40 CFR, Part 61) will be emitted
Air pollutants and emission rates (cont.)			
(Note: Emissions standards in WAC 173-400 may not be exceeded)			
Class-I areas (national	No visibility	No visibility	Emissions contribute to any

Table 8.2. Guidance for Administrative Review of Impacts for the Assignment of Applications to Provisional ~~Discretionary~~ Use or Conditional Use.

Impact Parameter	Level of Impact ¹⁾		
	Low	Medium	High
parcs, or national wilderness areas)	impairment	impairment	visibility impairment
Airport visibility	No visibility reduction	No visibility reduction	Emissions Increase or promote haze or fog
Scenic open space, and scenic viewpoints or view corridors identified on Open Space maps	No discernible change	Minor effect on visibility (sight distance, contrast, or color) or scenic qualities	Materially reduces visibility (sight distance, contrast, or color) or scenic qualities
Groundwater Pollution			
Groundwater pollutants (as defined in WAC 173–200–030 through –050, 40 CFR Part 141, and WAC 246–290–310)	No measurable discharge of pollutants to groundwater	< 25% of criteria in WAC 173–200–040 and –050, 40 CFR Part 141, and WAC 246–290–310	The cumulative pollutant load will exceed early warning values (if established per WAC 173–200–070); <i>or</i> ≥ 25% of criteria in WAC 173–200–040 and –050, 40 CFR Part 141, & WAC 246–290–310
(Note: The most stringent of the following criteria may not be exceeded: <ul style="list-style-type: none"> • WAC 173–200–040 and –050 • 40 CFR Part 141. • WAC 246–290–310) 			
Groundwater Pollution			
Adopted watershed or other plan with groundwater prescriptions	In conformance with requirements and guidelines of adopted plan	Not conforming with guidelines (<i>i.e.</i> , measures recommended but that exceed requirements)	Not conforming with requirements set forth in the adopted plan
Groundwater in national and state parks and national wildlife refuges	No degradation	No degradation	Any degradation of groundwater quality (WAC 173–200–030)
Surface Water Pollution			
Surface water pollutants (as defined in WAC 173–201A–030 through –050)	Not measurable	< 25% of criteria in WAC 173–201A–040 through –110	≥ 25% of criteria in WAC 173–201A–040 through –110
Nonpoint and	Not measurable	< 25% of criteria in	≥ 25% of criteria in WAC 173–

Table 8.2. Guidance for Administrative Review of Impacts for the Assignment of Applications to Provisional Discretionary Use or Conditional Use.

Impact Parameter	Level of Impact ¹⁾		
	Low	Medium	High
stormwater pollution (all applicable best management practices must be in place; WAC 173-201A-160)		WAC 173-201A-040 through -110	201A-040 through -110
	(Note: The maximum criteria in WAC 173-201A-040 for acute and chronic toxicity for freshwater and marine waters may not be exceeded.) (Note: The maximum criteria in WAC 173-201A-050 through -110 may not be exceeded.)		
Surface water classifications (defined in WAC 173-201A-030 and -120 through -140)	Maintains standards in WAC 173-201A-030	The cumulative deterioration from present condition to the next lower classification < 25%	The cumulative deterioration from present condition to next lower classification ≥ 25%
	(Note: Minimum standards in WAC 173-201A-030 for turbidity, dissolved oxygen, temperature, pH, coliforms, etc. may not be exceeded)		
Pollutant accumulation in sediment	No accumulation of pollutants	The cumulative pollutant load < 25% of criteria in WAC 173-204-320 through -340	The cumulative pollutant load ≥ 25% of criteria in WAC 173-204-320 through -340
	(Note: The maximum criteria in WAC 173-204-320 through -340 for pollution of freshwater and marine sediments may not be exceeded.)		
Adopted watershed or other plan	In conformance with requirements and guidelines of adopted plan	Not conforming with guidelines (<i>i.e.</i> , measures recommended but that exceed requirements)	Not conforming with requirements set forth in the adopted plan
Total Phosphorus entering a lake or reservoir	Concentration < 0.01 mg/Liter	Concentration < 0.05 mg/Liter	Concentration ≥ 0.05 mg/Liter ³⁾
Soil Pollution			
Soil Contamination (by the placement or disposal of contaminated fill, soil, spoils, solid waste, contaminated water or other liquids, or other	No detectable wastes governed by WAC 173-303-070 through -100 and -120 (including	One or more of these substances are detectable, <i>and</i> < 25% of criteria in WAC 173-303-090 through -120	One or more of these substances are detectable, <i>and</i> ≥ 25% of criteria in WAC 173-303-090 through -120

Table 8.2. Guidance for Administrative Review of Impacts for the Assignment of Applications to Provisional ~~Discretionary~~ Use or Conditional Use.

Impact Parameter	Level of Impact ¹⁾		
	Low	Medium	High
materials or substances ⁴⁾	dangerous, extremely hazardous, toxic, infectious, radioactive, ignitable, corrosive, reactive, persistent, or putrescible substances		
	(Note: Criteria of WAC 173–303 may not be exceeded, and all requirements of WAC 173–303 must be met.)		
Change in soil pH	Change < 0.2 units	Change ≤ 0.5 units	Change > 0.5 units
Storm Drainage and Erosion			
Runoff increase (equivalent to that produced by indicated amounts of impervious surface)	≤ 4,000 square feet of total impervious surface area	between 4,000 and 12,000 square feet of total impervious surface area; <i>or</i> between 1,000 and 5,000 square feet of total impervious parking surface area	> 12,000 square feet of total impervious surface area; <i>or</i> > 5,000 square feet of total impervious parking surface area
Erosion	No measurable changes	More than one acre will be cleared or graded, but potential offsite effects are mitigable	More than 3 acres exposed at one time; <i>or</i> Area has high erosion potential; <i>or</i> Offsite effects are not completely mitigable
Utilities Usage and Demand			
Solid waste quantity generated (not including waste legally disposed of outside the County)	≤ average generated by 1 SFR/EQ ²⁾	≤ 2 times the average generated by 1 SFR/EQ without mitigation	> 2 times the average generated by 1 SFR/EQ without mitigation
Sanitary sewerage (demand on community system capacity)	≤ 1 SFR/EQ demand on system capacity	> 1 SFR/EQ demand on system capacity	Service demand exceeds 3,400 gallons/day

Table 8.2. Guidance for Administrative Review of Impacts for the Assignment of Applications to Provisional Discretionary Use or Conditional Use.

Impact Parameter	Level of Impact ¹⁾		
	Low	Medium	High
Water quantity	≤ the amount required for 1 SFR/EQ	≤ the amount required for 3 SFR/EQ	> the amount required for 3 SFR/EQ
Electricity quantity	≤ the amount required for 1 SFR/EQ	≤ the amount required for 3 SFR/EQ	> the amount required for 3 SFR/EQ
Noise and Odor			
Sound level (increase in 1-hour average background sound level in local areas outside the boundary of the project area)	≤ 2 dBA	≤ 5 dBA	> 5 dBA; modifiers: extended duration; very low or high frequency; or sharp, penetrating pitch
Change in odors beyond property boundary	None discernible	Any discernible obnoxious odor	Any discernible obnoxious odor lasting 15 minutes or longer per day
Traffic⁵⁾			
Passenger vehicle trips generated/day ⁶⁾	5 round trips	6 to 19 round trips	20 or more round trips
Vehicle type (gross vehicle weight =GVW) using road	< 10,000 pounds GVW	< 20,000 pounds GVW	≥ 20,000 pounds GVW
Visual Quality			
Lighting⁷⁾	Pathway lighting 36 inches or lower at average 1 foot-candle or less and no direct illumination beyond property boundary	Fixture height > 3 feet; <i>or</i> Average >1 foot-candles; <i>or</i> Any direct illumination beyond property boundary	Fixture height ≥ 20 feet; <i>or</i> Average >10 foot-candles; <i>or</i> Any direct illumination beyond property boundary
Parking	≤ 2 new spaces	3 to 9 new spaces	≥ 10 new spaces
Visible outdoor storage⁸⁾	≤ 500 square feet	≤ 1,000 square feet	≥ 1,000 square feet

Table 8.2. Guidance for Administrative Review of Impacts for the Assignment of Applications to Provisional ~~Discretionary~~ Use or Conditional Use.

Impact Parameter	Level of Impact ¹⁾		
	Low	Medium	High
Lot coverage ⁹⁾	≤ 5,000 square feet	≤ 10,000 square feet	> 10,000 square feet
Miscellaneous and Unforeseen Impacts			
[Appropriate parameter]	≤ 1 SFR/EQ	≤ 3 SFR/EQ	> 3 SFR/EQ

Notes:

1. As used in this table, the term impact refers to adverse impacts. These impact levels are for the individual project, except as indicated. In making an assignment to low, medium, or high, and in assigning the application to processing under provisional/conditional discretionary or to conditional use procedures, the ~~administrator~~ director may consider the cumulative impact of other, like impacts at the site, cumulative impact to the receiving sites or resources from this project and other sources, the intensity and severity of the impact to the receiving site or resources, and the suitability of mitigation measures. Such suitability will include, among other things, the risk of “upset conditions” (the risk that the mitigation measures will fail, be overwhelmed, or exceed allowed discharges), and the potential severity of the impact should mitigation be ineffective or fail.
2. “SFR/EQ” = a single-family residence or equivalent. This is based on allowable uses in the affected district (e.g., in a residential area a single-family residence would be used for comparison while in a commercial district the typical commercial use would be used).
3. U.S. Environmental Protection Agency, 1986. Quality criteria for water, EPA 440/5-86-001.
4. Dangerous and extremely hazardous wastes are defined at 173-303-040, and designated in 173-303-070 through 173-303-100 and 173-303-120, as amended, and the SJC Solid Waste Ordinance, 17-96, as amended. Excluded and exempted wastes are defined at WAC 173-303-071 through 173-303-073.
5. Trips, type of vehicle, and nature of access combine to create level of impact.
6. Round trips per day guidelines are based on access to the activity being provided by paved major or minor collector roads. If access is by major collector roads only, the trips per day should be moved one impact category lower. If access is by road classified as a minor collector road or lower, the trips per day should be moved one impact category higher, e.g., if an activity generates 15 round trips per day and has access from a major collector road, the impact is low; if it has access from a minor collector road or lower, the impact is high.
7. Vehicle lights included.
8. Visible from adjoining properties.
9. “Lot coverage” is measured by the total surface area of a lot or lots within a single development occupied by all structures, excluding roof overhangs and covered porches not used for sales, storage, or service.

NEW SECTION. Section 11. A new section shall be added to SJCC Chapter 18.80 to read as follows:

Financial Guarantees

- A.** For some types of development, this code requires a financial guarantee to ensure completion of required improvements. This section outlines the requirements associated with these financial guarantees. In

accordance with RCW 36.32.590 this section does not apply to any state agency or unit of local government.

B. San Juan County accepts the following types of financial guarantees:

1. Irrevocable letter of credit from a bank or credit union.
2. Cash deposit with the County.
3. Cash deposit, for the benefit of the County, into an escrow account managed by an independent financial institution.
4. Surety bond.

C. Financial guarantees shall cover 115% of the expected cost of the work.

D. The expiration date of the guarantee shall be at least thirty (30) days after the expected final approval date for the project.

E. Project cost estimates shall be prepared by the qualified professional who prepares the associated plans.

F. Failure to complete work or correct deficiencies in accordance with a financial guarantee agreement and approved plans shall be cause for the County to draw on the financial guarantee to stabilize the site and/or complete the work. In addition to direct costs for the work, the County may withdraw funds to cover administrative costs. Prior to taking action, the County shall give the property owner written notice by both first class mail and certified mail.

G. Release of financial guarantee. Financial guarantees shall not be released until the actions guaranteed by the agreement have been completed and demonstrated to function. When completed, the qualified professional and property owner shall provide the Department with written approval of the project, and the Department will conduct an inspection to verify that it has been completed according to approved plans. The time period for completion may be extended by written agreement of the applicant and director. If it is anticipated that improvements will be completed over a period of time, separate financial guarantees should be provided so they may be released as components of the project are approved. Partial releases from a single financial guarantee are not permitted.

H. Signatures of property owners and contractors shall be notarized.

I. Financial Guarantee Agreements. A financial guarantee agreement, signed by the property owner and approved by the County, shall accompany each financial guarantee. Required elements of financial guarantee agreements include:

1. Name, mailing address, and phone number of the property owner and County Administrator. If someone other than the property owner provides the financial guarantee (e.g., developer, contractor), their name, mailing address and phone number (in addition to that of the property owner).
2. Description of the project location including section, township, range and address (if available).
3. Tax Parcel number(s).
4. Size of parcel/project in acres.
5. Reference to improvements being completed in accordance with the San Juan County Code and approved plans on file with the Department.
6. Permit number.

7. Exhibit A – Description of required improvements and cost estimate for completion of the improvements provided by a qualified professional.
8. A statement that the applicant has established a financial guarantee to ensure completion of required improvements in the amount of 115% of the estimated cost, with the amount listed.
9. Type of the guarantee.
10. Exhibit B – original financial guarantee (for cash deposit, a copy of the check and receipt).
11. Exhibit C - A completion schedule for the required improvements. Anticipated completion date for the project must be at least thirty (30) days before expiration of the financial guarantee.
12. A statement that this agreement is considered a contract between the parties.
13. A statement that if the County is forced to take action under this agreement, that does not discharge the obligation of the property owner to complete required work.
14. A statement that, after the improvements are completed and demonstrated to function, the qualified professional and property owner will provide written notice of completion to the Department. After final inspection by the Department and confirmation that work was completed and the improvements are functioning in accordance with approved plans, the County shall release the financial guarantee.
15. A statement acknowledging that partial releases are not permitted. (Note: If improvements will be completed in phases, the applicant should provide separate financial guarantees with separate agreements.)
16. A statement that if the required improvements are not completed and approved by the qualified professional and property owner prior to the established completion date, or within the time allowed by a written extension granted by the director, the County may, after providing written notice by first class mail, withdraw the necessary funds from the financial guarantee and complete the improvements or an equivalent project. In addition to contracting or other costs to complete the work, the County may also withdraw funds to cover administrative costs. Any remaining funds after completion of improvements shall be returned to the party that provided the financial guarantee.
17. Process for renegotiating the agreement, including an option for the property owner to extend the agreement and the time frame for the project to allow for additional monitoring and/or for additional work to ensure the proper function of the improvement.
18. Process by which the agreement may be transferred, with County approval, to a property owner or contractor's successor.
19. Governing laws shall be the laws of the State of Washington. The venue for any dispute shall be San Juan County.
20. Notarized signature block for the property owner(s).
21. If the financial guarantee is provided by someone other than the property owner (e.g., contractor), notarized signature block for that party, in addition to that for the property owner.
22. Signature block for approval by the County Administrator.

Section 12. Savings Clause:

This ordinance shall not affect any pending suit or proceeding; or any rights acquired; or liability or obligation incurred under the sections amended or repealed; nor shall it affect any proceeding instituted under those sections. All rights and obligations existing prior to adoption of this ordinance shall continue in full force and effect.

Section 13. Severability:

If any provision of this ordinance or its application to any person is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected. Remaining sections of

the ordinance shall be interpreted to give effect to the spirit of the ordinance prior to removal of the portions declared invalid.

Section 14. Effective Date:

This ordinance is effective the 30th working day after adoption.

Section 15. Codification:

Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 of this ordinance will be codified.

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