

Chapter 18.80

APPLICATION, NOTICE, REVIEW, AND APPEAL REQUIREMENTS

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18.80.010 Project permit applications—General.

A. Purpose. “Project permits” are defined in SJCC 18.20.160. Such permits include, but are not limited to, subdivisions, conditional use permits, variances, shoreline permits, provisional use permits, and temporary use permits. Concurrency findings, determinations of completeness, and other such administrative approvals are reviewed as part of the underlying project permit and are not project permits. SEPA threshold determinations are not project permits. Building, driveway, and other construction-type development permits and approvals are not project permits (RCW 36.70B.020(4) and 36.70B.140). (*See* “development permit” in SJCC 18.20.040.) 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 is in keeping with the physical aspects of a site and adopted land use policies for the area;
6. Providing criteria which emphasize the rural and small-village character of the County;
7. Combining the environmental review process with the procedures for review of project permit applications; and
8. Providing no more than one open-record hearing and one closed-record appeal hearing, except as provided in Chapters 36.70B and 43.21C RCW. (*See* definitions of “Appeal, open-record” and “Appeal, closed-record” in SJCC 18.20.010.).

B. Administrator's Responsibilities.

1. **Responsibilities.** The administrator shall provide for the review of all project permit applications, conducting such field inspections as necessary, to determine whether or not the proposal meets the requirements specified in this code.

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

18.80.020 Project permit applications—Procedures.

- A. Nonbinding Pre-application Conferences.** Pre-application conferences are optional, but strongly encouraged, and will be granted on a time-available basis by the administrator.
 1. A preapplication conference is recommended to provide a prospective applicant and the County the opportunity to 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 preapplication 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 preapplication meeting shall not be binding on either the County or the potential applicant.
- B. Determination of Proper Type of Project Permit.**
 1. **Determination by Administrator.** The administrator shall determine the proper type of project permit. Table 8.1 summarizes the steps in the review process for each type of project permit.

2. **Consolidated Permit Processing.** For a proposal that involves two or more shoreline permits and/or other project permits, such applications shall be consolidated under the “highest” procedure (i.e., the right-most applicable column in Table 8.1 at the end of this section) required for such permits or processed individually under each of the procedures identified by this code. The applicant may request the consolidation of hearings with other local, state, regional, federal, or other agencies in accordance with RCW 36.70B.090 and 36.70B.110. (*See also* SJCC 18.80.110(D)(1) Shoreline Permits—Consolidated Permit Processing, and 18.80.140(H) Consolidated Appeal Hearings.)
- C. Project Permit Application—Forms.** Applications for project permits shall be submitted to the Permit Center on forms approved by the administrator. An application must (1) consist of all materials required by the applicable development regulations; (2) be accompanied by plans and appropriate narrative and descriptive information sufficiently detailed to define clearly the proposed project and demonstrate compliance with applicable provisions of this code; and, except for project permit applications for temporary uses, (3) shall include the following:
 1. A completed project permit application form;
 2. If the applicant is not the owner of the subject property, a notarized statement by the owner(s) that (1) the application has been submitted with the consent of all owners of the subject property, and (2) identification of the owner’s authorized agent or representative;
 3. A legal description of the site and any other property description required by the applicable development regulations;
 4. The applicable fee;
 5. Evidence of available and adequate water supply as required by SJCC Title 13 and the Comprehensive Plan; *see also* SJCC 18.60.020;
 6. Evidence of sewer availability or septic approval or suitability as required by SJCC Title 13;
 7. A plot plan to scale no smaller than one inch equals 40 feet for a plot larger than one acre, and no smaller than one inch equals 20 feet for a plot one acre or smaller;
 8. Graphic depiction of the following:
 - a. Compass direction and graphic scale;
 - b. Corner grades and, if required by the administrator, existing contours of topography at five-foot contour intervals;
 - c. Proposed developments or use areas;

- d. Existing structures and significant features on the subject property and on adjacent properties;
 - e. Property lines, adjoining streets, and immediately adjoining properties and their ownerships;
 - f. Location and dimensions of existing and proposed improvements on public rights-of-way, such as roads, sidewalks, and curbs;
 - g. Existing and proposed grades and volume and deposition of excavated material;
 - h. Natural drainage direction and storm drainage facilities and improvements;
 - i. Locations of all existing and proposed utility connections;
 - j. Parking spaces and driveways;
 - k. Proposed landscaping;
 - l. Wetlands and other environmentally sensitive areas; and
 - m. All easements (recorded or unrecorded) must be shown. If recorded, the recording number must be shown.
9. The applicant shall provide a list showing the name and addresses of the owners of the property within 300 feet of the boundaries of the property subject to the project permit application. For purposes of this chapter, the owners of property within 300 feet of the boundaries of the subject property are those whose names are shown on the tax assessment rolls on the date the project permit application is submitted to the Permit Center;
10. **Environmentally Sensitive Areas (ESAs).**
- a. All project permit applications for proposals on lands designated as environmentally sensitive areas (ESAs) shall include sufficient information about the location and extent of any affected ESAs to demonstrate consistency with SJCC 18.30.110 through 18.30.160. Once a project permit application is submitted, the determinations described in subsections (a)(i) through (iv) of this subsection will generally be made to establish how ESA rules and regulations will affect the proposal before a project permit application is considered complete:
 - i. The actual presence or absence of an ESA based on maps, photographs, or other information, either supplied by the applicant or available at the permit center; and if an ESA is indicated, what options may be available;
 - ii. The absence, presence or extent of an ESA based on a site inspection by the administrator (for example, by measuring slopes, noting general land surface composition, or making cursory field examination for wetland characteristics), without requiring special reports;
 - iii. Whether a special report is likely to be required to establish the absence, presence, or extent of an ESA; and
 - iv. Whether a special report would likely be required to determine if the regulations applicable to a known ESA can be met;
 - b. **Special Reports.** In accordance with the specific ESA sections of this code (SJCC 18.30.110 through 18.30.160), the applicant may be required to submit special reports as required by the administrator to evaluate a proposal and all probable significant adverse impacts on an ESA regulated by this code. The requirements for special reports are found in SJCC 18.30.150. The applicant shall bear all costs incurred in the preparation of special reports, tests, or studies performed by technical consultants;
11. **Frequently Flooded Areas.** Project permit applications shall include the location of any frequently flooded areas or special flood hazard area on the subject property, and an elevation certificate if required by the administrator. No use or development shall be undertaken or approved within any area of special flood hazard except in compliance with the provisions of this code. Elevation certificates shall include certification by a licensed civil engineer. Elevation certificate forms shall be provided by the administrator;
12. **Additional Application Information for Divisions of Land and Boundary Line Modifications.** The application for a division of land shall meet the requirements of this subsection and the requirements in Chapter 18.70 SJCC;
13. **Additional Application Information for Binding Site Plans.** The application for a binding site plan shall meet the requirements of this subsection, SJCC 18.70.090, and the requirements in SJCC 18.80.170;
14. **Additional Application Information for Planned Unit Developments.** A planned unit development application is part of the application for a subdivision or a binding site plan; additional information requirements are

summarized in SJCC 18.80.160. The application for a planned unit development shall meet the requirements of this subsection and the requirements in SJCC 18.80.160;

15. **Additional Application Information for Rural Residential Cluster Development.** The application for a rural residential cluster development in accordance with SJCC 18.60.230 shall meet the requirements of this subsection, SJCC 18.60.230 and 18.80.180, and shall also include the following:
 - a. The floor plan and elevations for each proposed residential structure, at a scale of not less than 0.25 inch equals one foot;
 - b. A list, diagram and samples showing exterior materials and finishes for all structures, fences, and other constructed features of the project;
 - c. The plot plan prepared under this subsection shall also show the location and species of any existing trees greater than six inches in diameter at breast height on the property, except in areas proposed for open space preservation or forest resource management;
 - d. A list showing the floor area and use of each structure to be constructed on the site, and the total floor area of structures, and the area of the site devoted to residences, residential yards, circulation spaces, other uses, and open space; and
 - e. A narrative description indicating how the project responds to the requirements of SJCC 18.60.230, including the minimum standards of SJCC 18.60.230(C), the separation requirements of SJCC 18.60.230(F), and the design guidelines of SJCC 18.60.230(G);
16. **Additional Information.** The administrator may require additional information necessary for review and evaluation or demonstration of project consistency with this code;
17. **Administrator's Waiver.** The administrator may waive specific submittal requirements determined to be unnecessary for review of a project permit application required by this code;
18. **Temporary Use Permit Application.** All project permit applications for a temporary use shall be submitted to the administrator in writing and contain sufficient information for the administrator to make a decision (*see* SJCC 18.80.060). The administrator shall determine what information is necessary for review of such applications.

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

1. **Determination of Completeness.** Within 28 days after receiving a project permit application, the administrator shall determine if a project permit application is complete and notify the applicant in writing that either:
 - a. The application is complete; or
 - b. The application is incomplete. If such application is incomplete, the administrator shall specify what information is necessary to make the application complete.
2. **Identification of Other Agencies with Jurisdiction.** To the extent known by the County, other agencies with jurisdiction over the project permit application shall be identified.
3. **Additional Information.**
 - a. A project permit application is complete for purposes of this chapter when it meets the submittal requirements in this section and any submittal requirements contained in applicable development regulations.
 - b. If the submittal requirements have not been met, the administrator may determine that the application is complete and, at the same time, require that additional information or studies be provided within a time specified.
 - c. Nothing in this section precludes the administrator from requesting additional information or studies at any time if new information is determined to be necessary or where there are substantial changes in the proposal.
 - d. If the applicant fails to submit the requested information or studies within the time specified, or within a longer period if agreed to by the administrator, the application shall lapse and the applicant shall forfeit the application fee.
4. **Incomplete Application.**
 - a. If the applicant notifies the applicant that an application is incomplete, the applicant shall have 90 days to submit the necessary information to the administrator. Within 14 days after an applicant has submitted the additional information, the administrator shall again make the determination described in subsection (D)(1) of this section, and notify the applicant. If the applicant submits the required information to the administrator within the 90-day period and the administrator determines that the application is now complete, the project permit application will be considered

complete as of the date the project permit application was originally submitted; however, the 120-day processing period in SJCC 18.80.130 will be tolled during the 90-day resubmittal period.

- b. If the applicant fails to submit additional information, or does not, within such 90-day period request additional time to submit the required information, the application shall lapse and the applicant shall forfeit the application fee.

5. **Administrator’s Failure to Provide Determination of Completeness.** A project permit application shall be deemed complete

under this section if the administrator does not timely notify the applicant that the application is incomplete.

6. **Modifications to Applications.** An applicant-initiated modification to an application which is not in response to technical review, a change requiring a new public notice, a change of land use(s), or a mitigation measure under SEPA may require a new application. A change requiring a new public notice establishes a new vesting date for that application.

7. **Referral and Review of Project Permit Applications.** Within 14 days of determining that a project permit application is complete, the

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

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

1. Abbreviations:

BOCC: Board of County Commissioners

SHB: Shorelines Hearings Board

BSP: Binding Site Plan

administrator 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 administrator shall grant an extension of time where unusual circumstances are present. (Ord. 26–2002 § 6; Ord. 15–2002 § 2; Ord. 4–2001 §5; Ord. 14–2000 § 7(AAA); Ord. 11–2000 § 7; Ord. 2–1998 Exh. B § 8.2)

18.80.030 Notice of project permit applications, public comment, and notice of hearing.

A. Notice of Project Permit Applications.

1. Applicability.

- a. Notice of application is required for all project permit applications.
- b. Public notice of the issuance of a threshold determination for projects subject to SEPA review may be combined with the notice of application or given separately, as provided in SJCC 18.80.050(I).

2. Mailing, Publication, and Posting Requirements. Notice of application shall be prepared in accordance with this section and provided within 14 days after the application is determined to be complete; and, if an open-record predecision hearing is required, at least 15 days prior to the open-record hearing, as follows:

- a. The administrator shall publish notice of application in the official County newspaper at least one time;
- b. The applicant shall mail a notice of application, as provided by the administrator, to all owners of property within 300 feet of the boundaries of the subject property, using the names and addresses of those individuals as shown on the tax assessment rolls on the date the project permit application is submitted to the permit center. Notices of application shall be deemed to have been provided on the date the notices are deposited in the mail. The applicant shall provide the administrator with a declaration of mailing and list of

those individuals to whom the notice of application was mailed. (*See* SJCC 18.80.020(C)(9).) All notices which are returned to the applicant must be submitted to the administrator for inclusion in the file.

Failure to mail such notice as provided in this section shall not invalidate such proceedings as to a property owner who appears at a hearing or receives actual notice.

c. Posting. The applicant shall post a notice of application on the property on a board purchased from the permit center. Posted notice shall be:

- i. At the midpoint of the site road frontage or as otherwise directed by the administrator for maximum visibility;
- ii. Five feet inside the street property line, except when the board is structurally attached to an existing building; provided, that no notice board shall be placed more than five feet from the margin line of the road or right-of-way without approval of the administrator;
- iii. Between five and eight feet above grade at the top of the notice board;
- iv. Completely visible to pedestrians;
- v. Maintained in good condition by the applicant during the notice period;
- vi. In place at least 30 days prior to the date of hearing; and
- vii. Removed within 15 days after the notice of decision is received by the applicant.

If the property is served by a private road, an additional notice board shall be located at the nearest intersection of the private road with a public road. Where a notice board cannot be placed as indicated or would not provide effective notice, the administrator shall determine a suitable location for posting.

d. The applicant shall submit an affidavit of posting and a photograph showing the location(s) of posting to the administrator prior to the publication of the notice of application.

3. Contents. The notice of application shall include the following information:

- a. The date the project permit application was complete, and the date of the notice of application;

- b. The name of the applicant or the applicant's authorized agent or representative;
 - c. A description of the subject property reasonably sufficient to inform the public of its location, which may include a vicinity location (map) or written description (rural route box or subdivision lot and block alone are not sufficient);
 - d. The date, time, place, and type of public hearing, if applicable and scheduled as of the date of notice of application. If notice of public hearing is not so combined with the notice of application the requirements of subsection (C) of this section shall also be met;
 - e. A description of the proposal, a list of the project permits included in the application and, if applicable, a list of any studies requested;
 - f. The identification of state, federal, or other required permits not included in the application, to the extent known;
 - g. The identification of existing environmental documents that evaluate the proposal, and the location where the application and any studies can be reviewed;
 - h. The public comment period, together with statements of the right of any person to:
 - i. Comment on the application;
 - ii. Comment on the County's SEPA threshold determination;
 - iii. Receive notice of and provide testimony in any hearings;
 - iv. Request a copy of the decision once made; and
 - v. Appeal;
 - i. A statement of the preliminary determination (if one has been made at the time of notice of application) of those development regulations that will be used for project mitigation (SJCC 18.80.050(G)(1)) and consistency with the Comprehensive Plan and this code;
 - j. The threshold determination under SEPA, if applicable and if a determination has been made at the date of notice of the application;
 - k. When and how written comments may be submitted;
 - l. Where and when a copy of the application, and supporting documents submitted by the applicant are available for inspection;
 - m. A statement that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and that copies will be available; and
 - n. Any other information determined appropriate by the administrator.
- B. Public Comment on the Notice of Application.**
1. The comment period shall be 21 days following the date of notice of application. Comments may be mailed, personally delivered, or sent by facsimile to the permit center.
 2. The public comment period shall be 30 days for shoreline substantial development permit applications, except that the public comment period shall be 20 days for limited utility extensions or construction of a bulkhead or other measures to protect a single-family residence and its appurtenant structures from shoreline erosion. (RCW 90.58.140(4) and (11)(a).)
 3. Public comments will be received during regular business hours by the administrator at any time prior to the closing of the record of an open-record predecision hearing, or, if there is no open-record predecision hearing, prior to the decision on the project permit application.
- C. Notice of Public Hearing.** If the notice of application does not specify a hearing date, a separate notice of public hearing shall be prepared by the administrator.
1. The administrator shall publish such notice of public hearing in the official County newspaper at least one time, not less than 10 days prior to the hearing. This notice shall include the date of public hearing and the information described in this section.
 2. The applicant shall mail the notice of public hearing to all of the persons entitled to notice, as described in this section, and to any person who has submitted written comments on the application to the administrator. The applicant shall provide the administrator with a declaration of mailing and a list of the names and addresses of those individuals to whom the notice of public hearing was mailed. All notices which are returned to the applicant must be submitted to the administrator for inclusion in the file.
 3. Notice of public hearing shall be deemed to have been provided on the date the notice is deposited in the mail.
 4. All costs associated with meeting the requirements of this subsection shall be borne by the applicant. (Ord. 15-2002 § 3; Ord. 2-1998 Exh. B § 8.3)

18.80.040 Open-record pre-decision hearings.

A. Responsibility of Administrator for Hearings. The administrator shall:

1. Where applicable, schedule open-record predecision hearings on project permit applications;
2. Prepare the staff report on the project permit application, which shall be a single report stating intermediate steps taken in processing the project permit application as of the date of the report, and recommendations, if any. The staff report shall state any mitigation required or proposed under the development regulations or under the County's SEPA authority. If a threshold determination other than a determination of significance has not been issued previously by the County, the report shall include or append this determination; and
3. Prepare the notice of decision, if required, and mail a copy of the notice of decision to those required by this code (SJCC 18.80.130) to receive such decision.

B. Burden and Nature of Proof. The burden of proof is on the project permit applicant. The project permit application must be supported by evidence that it is consistent with the applicable state law, County development regulations, the Comprehensive Plan, and the applicant meets his burden of proving that any significant adverse environmental impacts have been adequately analyzed and addressed. (Ord. 15-2002 § 4; Ord. 2-1998 Exh. B § 8.4)

18.80.050 SEPA implementation rules.

A. Authority.

1. This section contains County SEPA procedures and policies implementing the State Environmental Policy Act (SEPA), Chapter 43.21C RCW. San Juan County adopts this section under RCW 43.21C.120 and WAC 197-11-904.
2. **SEPA Rules—Adoption by Reference.** The County hereby adopts by reference the SEPA Rules, Chapter 197-11 WAC. The SEPA Rules must be used in conjunction with this section.

B. Purpose. To adopt regulations to implement the State Environmental Policy Act, consistent with the SEPA Rules. This is accomplished by ensuring that:

1. Environmental values are considered in making land use and agency decisions, and reasonable alternatives and conditions are identified and implemented to mitigate (as provided in this section) the adverse impacts of proposed actions on the environment;

2. Adequate and timely environmental information is gathered and provided to decisionmakers, and procedural delay and duplication is avoided; and
3. Opportunity for public involvement is included in the decisionmaking process.

C. Responsible Official/Decisionmaking Authority.

1. The responsible official shall be as follows:
 - a. For those nonproject proposals for which the County is the lead agency, the responsible official shall be the planning director.
 - b. For all other proposals subject to SEPA review for which the County is the lead agency, the responsible official shall be the administrator.
2. For those proposals for which the County is the lead agency, the appropriate responsible official is vested with authority to and shall make the threshold determination, determine an exemption (if any), supervise scoping and preparation of any required EIS, administer the state guidelines and this section, and perform any other functions assigned to the "lead agency" or "responsible official" by the SEPA rules.
3. The appropriate responsible official shall be responsible for the written comments of the County in response to a consultation request:
 - a. Prior to issuance of a threshold determination;
 - b. For participation in scoping; or
 - c. For review of a DEIS.
4. The County planning department or permit center, as appropriate, shall maintain all documents required by SEPA rules and make them available in accordance with Chapter 42.17 RCW.

D. Lead Agency Determination and Responsibilities.

1. The County department receiving application for or initiating a proposal that includes a nonexempt action shall determine lead agency for the proposal under WAC 197-11-050 and WAC 197-11-922 through 197-11-940 unless lead agency has been previously established.
2. When the County is lead agency, the responsible official shall supervise compliance with threshold determination requirements. If an EIS is required, that official shall supervise preparation of the EIS.
3. When the County is not lead agency, the County shall use and consider the DNS, MDNS, or final EIS of the lead agency in making decisions on the proposal. Unless required under WAC 197-11-600 no DNS or EIS in addition to that issued

by the lead agency shall be prepared. The County may, however, conduct supplemental environmental review under WAC 197-11-600.

4. If the County receives a lead agency determination that appears inconsistent with criteria in WAC 197-11-922 through 197-11-940, it may object to the determination. Objection must be made to the agency that made the determination and must be resolved within 15 days of receipt of the determination, or the County must petition the Washington Department of Ecology for lead agency determination under WAC 197-11-946 within the 15-day period. The responsible official may initiate any such petition on behalf of the County.
5. Any County department making lead agency determination for a private proposal shall require sufficient information to identify all other agencies with jurisdiction over the proposal.

E. Initiation of SEPA Review—Certain Actions Prohibited During SEPA Review Process.

1. **Initiation of Review.** The County's SEPA process begins when a permit application is submitted to the County, or when the County proposes to take an official action as defined in WAC 197-11-704.
2. **Initiation by Applicant at Conceptual Stage.** If the only County action on a proposal is a decision on a building permit or other license that requires detailed project plans, the applicant may request in writing that the environmental review be conducted before detailed plans are submitted.
3. **Certain Actions Prohibited During SEPA Review.** See WAC 197-11-070, 197-11-340(2)(a) (DNS) and WAC 197-11-460(5) (FEIS).

F. Categorically Exempt Actions, and Use of Existing Documents and Analyses.

1. **Categorically Exempt Actions.** Actions categorically exempt under RCW 43.21C.110(1) (a) and WAC 197-11-800, as further modified by subsections (F)(2)(g) and (K) of this section, do not require environmental review or the preparation of an environmental impact statement, and may not be conditioned or denied under SEPA, except as provided in WAC 197-11-305 and subsection (F)(2) of this section.
2. **Use of Exemptions.**
 - a. Applicability of a categorical exemption will be determined by the responsible official. The determination by the responsible official that a proposal is exempt from

SEPA is final. None of the procedural requirements of this section (except as provided in WAC 197-11-305 and this subsection (F)(2)) apply to an exempt proposal.

- b. If a proposal includes exempt and nonexempt actions, the responsible official shall determine the lead agency pursuant to WAC 197-11-050.
- c. If a proposal includes exempt and nonexempt actions, the County may authorize exempt actions prior to compliance with procedural requirements of this section, except as provided in subsections (D) through (G) of this section.
- d. The County may not authorize the use of exemptions for:
 - i. Actions that are not exempt;
 - ii. Any action that would have an adverse environmental impact;
 - iii. A series of exempt actions that are physically or functionally related which together would result in a probable significant adverse environmental impact for the overall project; or
 - iv. Any action that would limit choice of alternatives (WAC 197-11-070, 197-11-305, 197-11-800).
- e. The County may withhold approval of an exempt action that would lead to modification of the physical environment when such modification would serve no purpose if nonexempt action(s) were not approved.
- f. The County may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved.
- g. Categorical exemptions identified in WAC 197-11-908(2) shall not apply to areas identified as environmentally sensitive areas for purposes of SEPA in subsection (K) of this section. Categorical exemptions listed in WAC 197-11-800(1)(b) do not apply when undertaken wholly or partly on lands covered by water, whether or not such lands are mapped. Proposals in areas subject to this subsection shall require environmental review and a threshold determination, and may be conditioned or denied under this section (WAC 197-11-756, 197-11-800(1)(b), and 197-11-908(3) and (4)).

3. During project review, the County shall not re-examine alternatives to or hear appeals on the items identified as SEPA-exempt as per subsection (F)(1) of this section, except for issues of interpretation of this code. Project review shall be used to identify specific project design and conditions relating to the character of development, such as the details of site plans, curb cuts, drainage swales, the payment of impact fees, or other measures to mitigate a proposal's probable adverse environmental impacts.
4. **Use of Existing Documents and Analyses.** Procedures for the use, adoption, or incorporation of existing documents and analyses are provided in WAC 197-11-600, 197-11-610, 197-11-630, and 197-11-635.
5. **Planned Actions.**
 - a. The County may, as part of its planning processes, elect to perform or have performed for it in advance of any development proposal, the environmental review and analysis for certain actions and their probable impacts. These "planned actions" must be so designated by ordinance or resolution adopted by the County after the analysis of the actions and their impacts has been completed.
 - b. Planned actions must be located in an urban growth area, a master planned resort, or a fully contained community, and meet additional requirements of RCW 43.21C.031(2)(a).
 - c. The analysis must be sufficient to identify and analyze all probable significant impacts and most nonsignificant impacts of the actions, and to identify (and, optionally, provide) to a great extent the mitigation necessary; i.e., the significant impacts must be "adequately addressed" in an environmental impact statement.
 - d. As a result of the analysis in subsections (F)(5)(a) and (c) of this section, a development proposal being prepared under a planned action does not require a threshold determination or the preparation of an environmental impact statement, but is subject to a full environmental review of its impacts and full requirements for mitigation as identified and specified by the review for the planned action in subsection (F)(5)(c) of this section.
 - e. If the environmental review identifies additional impacts not addressed by the planned action, a checklist and threshold

determination shall be required.

G. Analysis of Nonexempt Project and Nonproject Actions. The procedures and requirements in this section apply equally to project and nonproject actions.

1. Submittal of Environmental Checklist.

- a. A completed environmental checklist shall be submitted with any application for a permit or approval not specifically exempted as per subsection (F)(1) of this section. However, a checklist is not required if the County and applicant agree that an EIS is required, if SEPA compliance has been completed, or if SEPA compliance has been initiated by another agency. The County shall use the checklist to determine lead agency and to make the threshold determination if the County is lead agency.
- b. Applicants for private proposals shall complete the checklist, and the County shall provide assistance as appropriate. For County proposals, the department initiating the proposal shall complete the checklist.

2. Review of Project Impacts. The responsible official shall review the checklist, other information about a project, and the applicable regulations to review the environmental impacts of the project and make a threshold determination. In making this review the responsible official may determine:

- a. All of the project's specific adverse environmental impacts have been adequately identified and analyzed. If not, additional studies and analyses may be required; and
- b. Some or all of the specific adverse environmental impacts have been adequately addressed and mitigated in this UDC and other development regulations in the San Juan County Code, the Comprehensive Plan, or in other applicable local, state, or federal laws and rules by:
 - i. Avoiding or otherwise mitigating the impacts; or
 - ii. The County has designated as acceptable certain levels of service, land use designations, development standards, or other land use planning required or allowed by the Growth Management Act.

Where specific adverse environmental impacts have not been adequately mitigated, the responsible official may condition the project with additional mitigation measures or deny the permit.

- c. To determine if a specific adverse environmental impact has been addressed by an existing rule or law of another agency with jurisdiction, the County shall consult orally or in writing with that agency and may expressly defer to that agency. In making this deferral, the County shall base or condition its project approval on compliance with that agency's rules or laws.
 - d. If the County bases or conditions its SEPA approval of the project wholly or in part on compliance with the requirements or mitigation measures identified in subsections (G)(2)(b)(i) and (ii) of this section, during project review the County shall not impose additional mitigation under SEPA for those impacts so conditioned.
 - e. Nothing in this subsection (G)(2) limits the authority of the County in its review or mitigation of a project to adopt or otherwise rely on environmental analyses and requirements under other laws, as provided by Chapter 43.21C RCW.
3. **Threshold Determination.** The "threshold determination" is the decision regarding whether there is a reasonable likelihood that the project will have a probable significant adverse impact on an element of the environment. A threshold determination is required for any proposal which meets the definition of "action" (WAC 197-11-704) and is not categorically exempt, a planned action, or subject to WAC 197-11-600(3). The responsible official shall make and publish for public comment as provided in subsection (I) of this section the threshold determination under SEPA:
- a. **DS.** If a project may have a probable significant adverse impact, a determination of significance (DS) is issued, and an environmental impact statement (EIS) is required. In determining an impact's significance, the responsible official shall take into account the guidance in WAC 197-11-330 and 197-11-794, including:
 - i. Locational, quantitative, and cumulative effects, severity and likelihood of the effects, and effects on environmentally sensitive or special areas; and
 - ii. Shall consider mitigation measures that will be implemented. The responsible official shall not balance whether beneficial aspects of a proposal outweigh its adverse impacts in determining significance.
 - b. **DNS.** If a project will not have a significant adverse impact, a determination of nonsignificance (DNS) is issued. As provided in WAC 197-11-340(3), a DNS will not be withdrawn based upon significant new information indicating, or on, a proposal's probable significant adverse environmental impacts when a nonexempt license has been issued on a private project.
4. **Mitigated DNS.** The responsible official may issue a DNS as provided in this subsection and in WAC 197-11-350, based on conditions attached to the proposal by the responsible official or on changes to or clarifications of the proposal made by the applicant.
- a. Mitigation measures that justify issuance of a mitigated DNS (MDNS) shall be incorporated in the DNS, shall be deemed conditions of approval of the permit decision, and may be enforced in the same manner as any term or condition of the permit. The County may incorporate implementation or enforcement provisions in the MDNS and require performance guarantees.
 - b. If the tentative County decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS, the County shall evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) (withdrawal of DNS).
5. When a DS is issued, an opportunity will be provided to comment on the scope of the EIS that will be developed.
6. The responsible official shall provide for prompt and coordinated review by government agencies and the public on compliance with applicable environmental laws and plans, including mitigation for specific project impacts that have not been considered and addressed at the plan or development regulation level.
7. Durations of comment periods are as provided in subsection (I) of this section. At the end of the comment period the threshold determination becomes final unless retained, modified, or withdrawn, and the appeal period begins.
8. **Preparation of EIS.**
- a. Preparation of the draft and final EIS and SEIS is the responsibility of the County under the direction of the responsible official. Before the County issues an EIS the responsible official must be satisfied that it complies with this section and with Chapter

197–11 WAC.

- b. The draft and final EIS or SEIS will be prepared by the County or by a consultant in accordance with County procedures established for consultant selection. If the County requires an EIS for a proposal and the responsible official determines that a consultant will prepare the EIS, the applicant shall be so notified immediately after completion of the threshold determination.
 - c. The County may require an applicant to conduct specific investigations and to provide information the County does not possess. The applicant is not required to supply information for the purpose of EIS preparation if such information is not required under this section.
 - d. If a consultant is preparing an EIS, the responsible official shall assure that the EIS is prepared in a responsible manner. The County shall:
 - i. Initiate and coordinate scoping and ensure that the preparer receives all substantive information submitted through the scoping process;
 - ii. Assist the preparer in obtaining information from applicants; and
 - iii. Direct content and organization of the EIS.
 - e. The responsible official shall maintain procedures for preparation of EISs in accordance with the above.
9. The DNS and checklist, or final EIS, for nonexempt proposals shall accompany County staff recommendations to any appropriate advisory body such as the planning commission.
 10. The County shall not take any action on the project permit application until the SEPA appeal period has lapsed.

H. Substantive Authority.

1. The County may attach conditions to a permit or approval for nonexempt actions pursuant to WAC 197–11–660, so long as:
 - a. The conditions are necessary to mitigate specific adverse environmental impacts identified in environmental documents prepared pursuant to this code and Chapter 197–11 WAC;
 - b. Such conditions are in writing;
 - c. The mitigation measures included in such conditions are reasonable and capable of being accomplished;
 - d. The County has considered whether other local, state, and federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and
 - e. Such conditions are based on one or more policies in subsection (H)(3) of this section.
2. The County may deny a permit or approval for nonexempt actions pursuant to WAC 197–11–660, so long as:
 - a. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in an FEIS or final SEIS prepared pursuant to this code and Chapter 197–11 WAC;
 - b. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact;
 - c. The denial is based on one or more policies in subsection (H)(3) of this section.
3. The County designates and adopts by reference the following policies as the basis for exercise of County authority pursuant to this section:
 - a. The County adopts by reference the policies in the following San Juan County plans and ordinances:
 - i. County Comprehensive Plan, as amended;
 - ii. SJCC Title 16, Chapters 16.36 (“The Waldron Island Limited Development District Subarea Plan”), 16.45 (“Shaw Island Subarea Plan”), 16.50 (“Open Space Program”), 16.55 (“Eastsound Subarea Plan”) and 16.80 (“Personal Wireless Service Facilities Subarea Plan”), as amended;
 - iii. County Shoreline Master Program, as amended;
 - iv. This title, as amended;
 - v. Chapter 15.04 SJCC, Construction Codes Adopted, as amended; and
 - vi. Ordinance 86–1986 (the Washington Department of Natural Resources “Trust Lands Management Subarea Plan”), as amended.

- b. The policies enumerated in RCW 43.21C.020, State Environmental Policy Act.

I. Public Notice and Comment Period.

1. DNS/MDNS—Notice and Comment Period—Withdrawal of DNS/MDNS.

- a. **Notice.** When the responsible official makes a threshold determination and issues a DNS under WAC 197–11–340 or MDNS under WAC 197–11–350, the responsible official shall give notice as follows:
 - i. Notice of the issuance of a DNS/MDNS may be combined with other required notice, such as notice of project permit application (SJCC 18.80.030(A)) or notice of public hearing (SJCC 18.80.030(C)). Such notice shall state when comments are due;
 - ii. Notice of a DNS/MDNS shall also be sent to agencies with jurisdiction, the Department of Ecology, affected tribes, and to each local agency or political subdivision whose public services would be changed as a result of implementation of the proposal; and
 - iii. Notice shall be published in the official County newspaper.
 - iv. Where notice of application under SJCC 18.80.030 is not required for a nonexempt action, or SEPA notice was not combined with the notice required in SJCC 18.80.030, the responsible official shall give notice of the issuance of DNS/ MDNS by publishing notice in the official County newspaper and by notifying groups which have expressed interest in a certain proposal or in the type of proposal being considered.
- b. **Comment Period.**
 - i. The comment period for a DNS/ MDNS is 14 days following the issuance of the DNS/MDNS. The date of issuance for the DNS/ MDNS is the date the DNS/MDNS is sent to the Department of Ecology and agencies with jurisdiction and is made publicly available.
 - ii. The County shall not act upon a proposal for 14 days after the date the DNS is issued. An agency with jurisdiction may assume lead agency status only within this 14-day comment period.

- iii. A DNS or MDNS becomes final at the end of the comment period unless the determination is modified or withdrawn by the responsible official.
- iv. The responsible official shall reconsider the DNS/MDNS based on timely comments and may retain or modify the DNS/MDNS or, if the responsible official determines that significant adverse impacts are likely, withdraw the DNS/MDNS or supporting documents, as provided in WAC 197–11–340(3). When a DNS/MDNS is modified, the responsible official shall send the modified DNS/MDNS to agencies with jurisdiction. (*See* subsection (G)(3)(b) of this section.)

c. Withdrawal of DNS/MDNS.

- i. If the responsible official withdraws a DNS/MDNS, a new threshold determination will be made and agencies with jurisdiction will be notified of the withdrawal and new threshold determination.
- ii. When a DNS is withdrawn and a DS issued, notice of such DS must be published in the official County newspaper.
- iii. Comments on such DS and/or scoping must be received within 21 days of the date of issuance of such DS.

2. DS—Notice and Comment Period—Withdrawal of DS.

- a. **Notice of Issuance of DS.** If the responsible official issues a DS under WAC 197–11–360(3), the responsible official shall state the scoping procedure for the proposal in the DS, as required by WAC 197–11–408, and:
 - i. Circulate copies of the DS to the applicant, agencies with jurisdiction and expertise, if any, and affected tribes; and
 - ii. Publish notice of the DS in the official County newspaper.
- b. **Comment Period.** Comments on a DS and/or scoping must be received within 21 days of the date of issuance of the DS. The date of issuance for the DS is the date the DS is sent to the Department of Ecology and agencies with jurisdiction and is made publicly available.
- c. **Withdrawal of DS.**
 - i. If at any time after the issuance of a DS a proposal is changed so, in the

- judgment of the responsible official, there are no probable significant adverse environmental impacts, the DS shall be withdrawn and a DNS/MDNS issued.
- ii. The DNS/MDNS shall be sent to all who commented on the DS and notice of such DNS/MDNS must be published in the official County newspaper.
 - iii. The comment period for such a DNS/MDNS is 14 days following the issuance of the DNS/MDNS. The date of issuance for the DNS/MDNS is the date the DNS/MDNS is sent to the Department of Ecology and agencies with jurisdiction and is made publicly available.
 - iv. The County shall not act upon a proposal for 14 days after the date the DNS is issued. An agency with jurisdiction may assume lead agency status only within the 14-day comment period.
 - v. Where a DS has been withdrawn and a DNS/MDNS issued, such proposal shall not be considered changed until all license or permit applications for the proposal are revised to conform to the changes or other binding commitments made by agencies or by applicants. (*See* WAC 197-11-360.)
3. **DEIS/FEIS/SEIS—Notice and Comment Periods.**
- a. **Notice.** If the County issues a DEIS under WAC 197-11-455(5), FEIS under WAC 197-11-560, or SEIS under WAC 197-11-620, notice of availability of the documents shall be given by publishing notice in the official County newspaper; by notifying groups which have expressed interest in a certain proposal being considered; by notifying the news media; by sending notice to agency mailing lists; and by other means deemed appropriate by the responsible official. The DEIS/FEIS/SEIS shall be sent to those identified in WAC 197-11-455 (DEIS), 197-11-460 (FEIS), and 197-11-620 (SEIS).
 - b. **Comment Period.** The comment period for a DEIS is 30 days from the date of issuance unless extended by the responsible official pursuant to WAC 197-11-455.
4. The applicant shall be responsible for costs of the notice requirements of this section.

J. Public Hearings and Meetings.

1. If an open-record hearing on the proposal is held under some other requirement of law, the hearing shall be open to consideration of the environmental impact of the proposal, together with any environmental document that is available. This does not require extension of the comment periods for environmental documents.
2. In all other cases a public hearing on the environmental impact of a proposal shall be held whenever one or more of the following situations occur:
 - a. The County determines that a public hearing would assist it in meeting its responsibility to implement the purposes and policies of SEPA and its implementing rules;
 - b. When 50 or more persons who reside within the County, or who would be adversely affected by the environmental impact of the proposal, make written request to the lead agency within 30 days of issuance of the draft EIS; or
 - c. When two or more agencies with jurisdiction over a proposal make written request to the lead agency within 30 days of the issuance of the draft EIS.
3. Whenever a public hearing is held under subsection (J)(2) of this section, it shall occur no earlier than 15 days from the date the draft EIS is issued, nor later than 50 days from its issuance. Notice shall be given by publication in the official County newspaper and by any other method(s) determined by the administrator.
4. Whenever a public hearing is held under subsection (J)(2) of this section, it shall be open to discussion of all environmental documents and any written comments that have been received by the County prior to the hearing. A copy of the environmental document shall be available at the public hearing.
5. Comments at public hearings should be as specific as possible (*see* WAC 197-11-550).
6. The County may hold informal public meetings or workshops. Such gatherings may be more flexible than public hearings and are not subject to the above notice and similar requirements for public hearings.
7. Public meetings held under Chapter 36.70B RCW may be used to meet SEPA public hearing requirements so long as the requirements of this subsection are met. A public hearing under this subsection need not be an open-record hearing as defined in RCW 36.70B.020(3).

K. Environmentally Sensitive Areas.

1. The County shall designate environmentally sensitive areas under standards in WAC 197–11–908 and shall file with the Department of Ecology maps designating such areas, together with exemptions from the list in WAC 197–11–800 that are inapplicable in such areas. The environmentally sensitive area designation shall be effective on the date of filing (*see also* subsection (K)(4) of this section).
2. Proposals located wholly or partially within SEPA environmentally sensitive areas shall be treated the same as other proposals under this section. The County shall make threshold determinations for all proposals and shall not automatically require an EIS for a proposal merely because it is proposed for location in an environmentally sensitive area.
3. Certain exemptions do not apply to lands covered by water, regardless of whether lands covered by water are mapped.
4. Until new maps of environmentally sensitive areas are completed and accepted by resolution of the BOCC, environmentally sensitive areas and affected categorical exemptions as specified in former SJCC 16.24.160(1) (and previously as SJCC 16.24.130(1)) as adopted by Resolution 101–1976, shall remain in effect, as amended. These are areas designated on the official maps of the County Comprehensive Plan and Shoreline Master Program as either conservancy or natural.

L. Appeals. Appeal procedures under RCW 43.21C.075 and WAC 197–11–680 are set out in SJCC 18.80.140. (Ord. 15–2002 § 5; Ord. 14–2000 §§ 7(NNN), (SSS), 12(A); Ord. 2–1998 Exh. B § 8.5)

18.80.060 Procedures for temporary events and uses.

- A. Purpose.** Allowed temporary events and uses are considered as either Level I, II, or III. A use which is prohibited by this code shall not be allowed as a temporary use (Level I, II or III).
1. Level I temporary events and uses are exempt from the need for a project permit as such uses are customary and incidental to the approved use of the property or of low impact and last a relatively short period of time.
 2. Level II temporary uses require a temporary use project permit (approved by the administrator) and take place within the shoreline jurisdiction and/or exceed the duration set forth for Level I temporary uses.

3. Level III temporary uses require a project permit (*i.e.*, conditional use permit).

B. Level I Temporary Uses (Exempt from Need for Temporary or Project Permit). The following temporary events or uses are exempt from the need for a temporary use permit or project permit:

1. Contractor’s offices (including trailers and mobile homes), equipment storage sheds and storage yards, and portable lavatories on the site of a permitted active construction project; on-site equipment repair, on-site staging, assembly and fabrication of parts, materials and supplies; workshops; and other uses incidental to the construction for a duration not exceeding two years; except, that the operation of a portable asphalt batch plant on an active construction site shall not exceed six weeks duration;
2. Garage or yard sales conducted for a period not to exceed two days per event for a maximum of 10 days per calendar year;
3. Temporary events not customary and incidental to the property which are located on private or public property, parks or on public school properties, such as outdoor art, craft and book sales and sidewalk sales and shows; concerts or other performances; fireworks displays; dog trials and horse trials; parades and exhibits; and similar activities and events at the discretion of the administrator. These events may be conducted for a period not to exceed three days per event for a maximum of four events per calendar year, except that temporary events located wholly or in part within shoreline jurisdiction may be conducted only for a period not to exceed 24 hours per event and a maximum of four events per calendar year. All such events shall be subject to applicable provisions of the San Juan County Code (such as the outdoor festival regulations, Chapter 9.12 SJCC);
4. Rummage and other outdoor sales sponsored by schools or other nonprofit organizations for no more than three days per event and no more than four times in any calendar year;
5. Tents, portable offices, mobile homes, equipment storage, and portable lavatories incidental to any of the above activities; however, all such trailers, tents, sheds and portable lavatories shall comply with all applicable codes and are subject to the time limitations above; and
6. Farmers’ markets and roadside stands.

C. Level II Temporary Events and Uses (Temporary Use Permit Required). Temporary events and uses such as film production and Level I uses of longer

duration than set forth in subsection (B) of this section, but where the property will nevertheless be restored to the condition it was in prior to the event or use, must obtain a temporary use permit as provided in this subsection. A Level II temporary use may not be commenced prior to obtaining a temporary use permit.

The administrator has the authority to require that an applicant obtain a project permit as a Level III temporary use if the administrator determines that the proposal exceeds the limits of Level II temporary use.

1. Notice for Level II temporary use permits must comply with the procedures set forth in SJCC 18.80.030(A) (mailing, publication, and posting of notice of application). Public comment on the notice of application for a Level II temporary use permit must comply with SJCC 18.80.030(B).
2. The administrator has the authority to approve, modify, or deny a temporary use permit application, and may impose conditions of approval.
3. A copy of the approved temporary use permit shall be posted on the site for the duration of the use. The posted copy shall identify the nature of the use, the location, days, and hours of operation, its duration, and conditions of approval, if any.

D. Level III Temporary Events and Uses (Project Permit Required). Except for farmers' markets and roadside stands, the following events and uses shall be required to apply and obtain project permits, according to the classifications in Tables 3.1 and 3.2 and the procedures in this title:

1. A recurring temporary event, use or structure, where the same temporary event, use or structure is established or intended for establishment on any property on an annual or other periodic basis; or
2. The property where the temporary use will be located cannot or will not be returned to the condition it was in prior to the use; or
3. A temporary event or use that is of greater impact than set forth in subsection (C) of this section.

E. Criteria for Approval for Level II and Level III Temporary Uses. A permit shall only be approved by the administrator (Level II) or hearing examiner (Level III) where such decisionmaker makes findings as to the following criteria:

1. The proposed temporary event or use will not be detrimental to the public health, safety, or welfare, nor injurious to property or improvements in the immediate vicinity;

2. The proposed temporary event or use is compatible with the purpose and intent of the Comprehensive Plan and this code;
3. The location, days and hours of operation are specified;
4. The proposed temporary event or use will be conducted behind the building setback line, except as otherwise expressly permitted;
5. Adequate parking and traffic control can be provided in a safe manner;
6. Structures proposed for the event or use comply with applicable building and fire codes;
7. The proposed temporary event or use will not cause noise, light, or glare which will cause unreasonable adverse impacts to surrounding land uses. No use shall be made of equipment or material which produces unreasonable vibration, noise, dust, smoke, odor, or electrical interference to the detriment of adjoining property;
8. Any proposed use of public right-of-way is authorized by the County engineer;
9. Either the property on which the event or use is located will be restored to the condition it was in prior to the use within a specified time (Level II), or the condition of the property will be as specified in the permit (Level III);
10. Evidence of financial responsibility in a form acceptable to the administrator is provided when required by the administrator to assure compliance with the conditions of permit approval;
11. If located within the jurisdiction of the County Shoreline Master Program, the proposed temporary event or use meets all applicable shoreline policies, regulations, and permit requirements;
12. The proposed temporary event or use complies with outdoor festival regulations (Chapter 9.12 SJCC) and other federal, state, and local rules, regulations, and ordinances; and
13. The proposed temporary use (Level III) complies with the applicable permit criteria (*i.e.*, conditional use permit).

F. Term.

1. Level II temporary use permits may not be approved by the administrator for more than a 90-day period;
2. One extension of no more than 45 days may be authorized by the administrator; and
3. A property owner or holder of a temporary use permit may not file an application for another

temporary use permit for 24 months after the expiration of a temporary use, regardless of the proposed location for the use.

- G. Appeals.** Appeals of the approval or denial of a Level II temporary use permit must comply with the procedures specified in SJCC 18.80.140. (Ord. 15–2002 § 6; Ord. 14–2000 § 7(OOO), (PPP); Ord. 2–1998 Exh. B § 8.6)

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

- A. Purpose and Applicability.** “Yes” uses (uses allowed outright as indicated by the symbol “Yes” in Tables 3.1 and 3.2 in SJCC 18.30.030 and 18.30.040) must comply with the development standards in Chapter 18.60 SJCC and other applicable sections of this and other codes, but do not require a land use project permit. All site development, construction and structures must conform to the development standards of this code.
- B. Notice.** Notice for “Yes” uses is given in accordance with SEPA review, if applicable (*see* requirements in SJCC 18.80.050).
- C. Decisionmaking Authority.** The 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 finding that the proposal meets the requirements contained therein. (*See* definition of “development permit” in SJCC 18.20.040.)
- D. Appeals.** Appeals of determinations made in conjunction with “Yes” uses, including findings of consistency and concurrency, must be raised in a timely appeal of the approval or denial of the development permit application for the project. If no development permit is required for the proposed use, compliance with applicable standards of this and other codes is an enforcement matter (*see* Chapter 18.100 SJCC). (Ord. 15–2002 § 7; Ord. 2–1998 Exh. B § 8.7)

18.80.080 Permit procedures for provisional uses.

- A. Purpose and Applicability.** Provisional uses (indicated by “Prov” 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 the performance standards of Chapter 18.40 SJCC. Provisional uses must obtain a project permit.
- B. Notice.** Notice for provisional uses must comply with the procedures set forth in SJCC 18.80.030(A).

Public comment on the notice of application for a provisional use project permit must comply with SJCC 18.80.030(B).

- C. Decisionmaking Authority.** The administrator has authority to approve or deny provisional use permit applications according to the applicable provisions of this code. The administrator also has authority to impose conditions of approval on a provisional use permit.

D. Criteria for Approval.

1. The provisional use permit application shall only be approved by the administrator if the use has been reviewed for consistency with the applicable sections of this code (*e.g.*, Chapter 18.40 SJCC, Performance Standards, Chapter 18.50 SJCC, Shoreline Master Program, and Chapter 18.60 SJCC, Development Standards) and found to meet the requirements set forth by this code; and
2. Any provisional use application (not including short subdivisions) involving property located within the jurisdiction of the state Shoreline Management Act but not requiring a shoreline permit must conform to the policies in Element 3 of the Comprehensive Plan and the applicable regulations in Chapter 18.50 SJCC (the Shoreline Master Program).

- E. Term.** Unless a shorter time period is specified in the provisional use permit conditions, development authorized through a provisional use permit shall be completed within five years from the date of provisional use permit approval or such permit shall become null and void. An extension of up to one year may be granted by the administrator if the permittee demonstrates good cause for an extension.
- F. Appeals.** Provisional use permit approvals or denials may be appealed in accordance with procedures specified in SJCC 18.80.140. (Ord. 15–2002 § 8; Ord. 2–1998 Exh. B § 8.8)

18.80.090 Permit procedures for discretionary uses.

- A. Purpose and Applicability.** Discretionary uses are indicated by “D” in Tables 3.1 and 3.2 in SJCC 18.30.030 and 18.30.040. 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 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. Decisionmaking Authority.** Based upon the criteria set forth in this code, the administrator has authority

to determine if an application for a discretionary use should be processed as a provisional use permit or a conditional use permit. If processed as a provisional use permit application, the administrator is the decisionmaker. (See SJCC 18.80.080.) If processed as a conditional use permit application, the hearing examiner is the decisionmaker. (See SJCC 18.80.100.)

D. Determination Whether the Conditional Use Permit Process Will Be Required. The administrator 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 may require the application to be processed as a conditional use as per SJCC 18.80.100. In making this determination the administrator 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 when making decisions per SJCC 18.80.090(E) for discretionary uses (noted with a “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.

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 Discretionary Use or Conditional Use.

Impact Parameter	Level of Impact ¹⁾		
	Low	Medium	High
Environmentally Sensitive 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

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

Impact Parameter	Level of Impact ¹⁾		
	Low	Medium	High
Environmentally Sensitive Areas (see SJCC 18.30.110 through 18.30.160)			
Critical aquifer recharge areas	No effect on High or Medium classes	Effect on Medium class	Effect on High class
Regulated wetlands or habitat areas	No impact	Mitigable impact	Any impact to a Category-I area; or 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; or Pollutant types or emission levels require registration with WDOE and a new source review per WAC 173-400-110	> 3 SFR/EQ; or A new source review reveals: - Major source (potential for emission of 100 tons of any regulated pollutant); or - Potential to emit 25% of a significant emission as defined in WAC 173-400-030; or - 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); or - 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 parks, or national wilderness areas)	No visibility impairment	No visibility impairment	Emissions contribute to any 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 discernable 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); or ≥ 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) 			

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

Impact Parameter	Level of Impact ¹⁾		
	Low	Medium	High
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 stormwater pollution (all applicable best management practices must be in place; WAC 173-201A-160)	Not measurable	< 25% of criteria in WAC 173-201A-040 through -110	≥ 25% of criteria in WAC 173-201A-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 max. 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, <i>etc.</i> 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⁾

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

Impact Parameter	Level of Impact ¹⁾		
	Low	Medium	High
Soil Pollution			
Soil Contamination (by the placement or disposal of contaminated fill, soil, spoils, solid waste, contaminated water or other liquids, or other materials or substances ⁴⁾)	No detectable wastes governed by WAC 173-303-070 through -100 and -120 (including dangerous, extremely hazardous, toxic, infectious, radioactive, ignitable, corrosive, reactive, persistent, or putrescible substances (Note: Criteria of WAC 173-303 may not exceeded, and all requirements of WAC 173-303 must be met.)	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
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
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

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

Impact Parameter	Level of Impact ¹⁾		
	Low	Medium	High
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
Lot coverage⁹⁾	≤ 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. 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 discretionary or to conditional use procedures, the administrator 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.

(Ord. 26–2002 § 6; Ord. 15-2002 § 9; Ord. 12–2001 § 7; Ord. 14–2000 § 7(AAA), 8(C); Ord. 2–1998 Exh. B § 8.9)

18.80.100 Permit procedures for conditional use and variance permits.

A. Purpose and Applicability. Conditional use permits allow flexibility in the implementation of this code by controlling undesirable impacts through specific permit conditions. Variances ensure that all persons and their property are guaranteed equal rights and opportunities under similar circumstances. A variance is never to be used to endow certain persons or property with special privileges denied to all others under similar circumstances. Variances may only be granted for dimensional, bulk, and area requirements specified by this code. (For changes from use or density standards, see the procedures for a site-specific redesignation, SJCC 18.90.020.) The following uses are subject to this section:

1. Conditional Uses (indicated by "C" in Tables 3.1 and 3.2 in SJCC 18.30.030 and 18.30.040) and discretionary uses (indicated by "D" in Tables 3.1 and 3.2 in SJCC 18.30.030 and 18.30.040) that the administrator has determined require a conditional use permit;
2. Variances from standards other than those in Chapter 18.50 SJCC.

B. Notice and Public Hearing. Notice of application and of public hearing is required in accordance with the procedures in SJCC 18.80.030. An open-record predecision hearing is required for conditional use permit and variance applications (*see* SJCC 18.80.040).

C. Decisionmaking Authority. The hearing examiner has the authority to approve or deny conditional use permit and/or variance applications, and to impose conditions of approval on such permits.

D. Conditional Use Permits—Criteria for Approval. A conditional use permit shall be granted by the County only if the following criteria are met:

1. The proposed use will not be contrary to the intent or purposes and regulations of this code or the Comprehensive Plan;
2. The proposal is appropriate in design, character and appearance with the goals and policies for

the land use designation in which the proposed use is located;

3. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval;
 4. The cumulative impact of additional requests for like actions (the total of the conditional uses over time or space) will not produce significant adverse effects to the environment that cannot be mitigated by conditions of approval;
 5. The proposal will be served by adequate facilities including access, fire protection, water, stormwater control, and sewage disposal facilities;
 6. The location, size, and height of buildings, structures, walls and fences, and screening vegetation associated with the proposed use shall not unreasonably interfere with allowable development or use of neighboring properties;
 7. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood;
 8. The proposal complies with the performance standards set forth in Chapter 18.40 SJCC;
 9. The proposal does not include any use or activity that would result in the siting of an incompatible use adjacent to an airport or airfield (RCW 36.70.547); and
 10. The proposal conforms to the development standards in Chapter 18.60 SJCC.
- E. Variances—Criteria.** A variance shall be granted only if the applicant demonstrates that the following criteria have been met:
1. Literal interpretation and application of provisions of this code would deprive the applicant of the rights commonly enjoyed by other properties in the same district under the terms of this code, and allowing the variance will be in harmony with the intent and spirit of this code;

2. A variance is necessary for the preservation and enjoyment of a property right possessed by other property in the same vicinity or district, but which is denied to the property in question because of special circumstances on that property;
3. That the hardship described under this subsection is specifically related to the property and is the result of unique conditions such as irregular lot shape, size, or natural features, and the application of this code, and not, for example, from deed restrictions or the applicant's own actions;
4. The granting of the variance will not be materially detrimental to the public welfare or injurious to the right of other property owners in the vicinity; and
5. The variance will not permit a use prohibited by this code in the district in which the subject property is located.

F. Term. Unless a shorter time period is specified in permit conditions, development authorized through a conditional use or variance permit shall be completed within five years from the date of permit approval or the permit shall become null and void. An extension of up to one year may be granted by the decisionmaking authority if the permittee demonstrates good cause for an extension.

G. Appeals. Decisions approving or denying conditional use permits and/or variances may be appealed to the board of County commissioners in accordance with procedures specified in SJCC 18.80.140. (Ord. 15–2002 § 10; Ord. 4–2001 §§ 2, 3; Ord. 14–2000 § 7(AAA); Ord. 2–1998 Exh. B § 8.10)

18.80.110 Shoreline permit and exemption procedures.

A. Purpose and Applicability.

1. This section includes the procedures necessary to ensure that the provisions of the Shoreline Master Program (Element 3 of the Comprehensive Plan and Chapter 18.50 SJCC) are implemented and enforced, and to ensure that all persons affected by the master program are treated in a fair and equitable manner.
2. This section applies to all lands and waters within the jurisdiction of the master program and to all persons and agencies as described in Chapter 18.50 SJCC.
3. The following are referred to as “shoreline permits” and are subject to this review process:
 - a. Shoreline substantial development permits.
 - b. Shoreline conditional use permits, which include:

- i. Uses which are permitted under the provisions of the master program only as conditional uses;
- ii. The expansion of nonconforming uses; and
- iii. Uses which are unnamed or not contemplated in the master program.

c. Shoreline variances.

B. Notice of Application for Shoreline Permit.

1. Notice of application and public hearing is required for shoreline permit applications as provided in SJCC 18.80.030 and 18.30.040.
2. The administrator shall submit notice of shoreline permit applications to the appropriate subcommittee (by commissioner district) of the planning commission.
3. Applications for shoreline permits shall be circulated to the director of the University of Washington Friday Harbor Laboratories for comment as a reviewing agency.

C. Administrative Responsibilities. The administrator's responsibilities are set forth in SJCC 18.50.010(E).

D. Consolidated Permit Processing.

1. For a proposal that involves two or more shoreline permits and/or other project permits, such applications shall be consolidated under the “highest” procedure (*i.e.*, the right-most applicable column in Table 8.1) 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 18.80.020(B)(2), Consolidated Permit Processing, and SJCC 18.80.140(H), Consolidated Appeal Hearings.)
2. The decisionmaker shall provide copies of the findings of facts for all shoreline permits handled in accordance with this section to the board of County commissioners and the planning commission.

E. Decisionmaking Authority. The hearing examiner has authority to take the following actions:

1. Based upon the criteria in subsection (H) of this section, hear and issue or deny shoreline permits following receipt of the recommendations of the administrator, and to impose conditions of approval on such permits; and
2. Grant or deny variances from the provisions of the master program according to the criteria and procedures provided in subsection (I) of this

section.

F. Exemptions from Need for Shoreline Substantial Development Permit.

1. Developments which are exempt from the need to obtain a shoreline substantial development permit are set forth in WAC 173-27-040 and SJCC 18.50.020(F) and (G). In making this determination, the administrator shall consider the ultimate scope of a development and the extent to which the development is consistent with the policies and regulations of the SMA and master program. The administrator may request additional information from the applicant and may make site inspections, if necessary. A use classified as a conditional use or a use not named or contemplated in this chapter is allowed only as a conditional use and is ineligible for shoreline permit exemption.
2. If a proposal is exempt from the need to obtain a shoreline substantial development permit the administrator shall so note in the development or project permit, if any, approved in conjunction with the proposal. If a development or project permit is not required for the proposal, the administrator may issue an administrative determination so stating.
3. The administrator may request additional information from the applicant and may make site inspections before determining if a proposal is exempt from the need to obtain a shoreline substantial development permit.
4. The burden of proving that a proposal is exempt from the need to obtain a shoreline substantial development permit shall be on the person seeking the exemption.
5. Any person proposing development within the shorelines of the County may request an administrative determination from the administrator as to whether or not the proposal is exempt from the need for a shoreline substantial development permit.
6. A copy of any such administrative determination shall be mailed to the applicant and to the Washington Department of Ecology.
7. An administrative determination shall be prepared in the format described in WAC 173-27-050 for a proposal which is exempt from shoreline substantial development permit requirements under Chapter 18.50 SJCC whenever:
 - a. A U.S. Army Corps of Engineers Section 10 permit under the Rivers and Harbors Act of 1899 is required for the project (*see* WAC 173-27-050(1)(a));

- b. A section 404 permit is required under the Federal Water Pollution Control Act of 1972 (*see* WAC 173-27-050(1)(b)).

G. Shoreline Permits—Administrative Actions.

1. The administrator shall review shoreline permit applications, and building permit applications that also require a shoreline permit, for consistency with the policies and regulations of the master program, and report the results of this review and determination to the hearing examiner. In making this determination, the administrator shall consider the ultimate scope of a development and the extent to which the development is consistent with the policies and regulations of the SMA and master program. The administrator may request additional information from the applicant and may make site inspections, if necessary.
2. The administrator shall not issue a building permit for development that is subject to shoreline permit requirements until a shoreline permit has been granted. Any building permit issued for such development shall be subject to the conditions attached to approval for the shoreline permit.
3. In granting a shoreline permit, the hearing examiner may attach such conditions as deemed necessary to ensure that the development will be consistent with the master program and other applicable provisions of this code. The examiner shall also prepare findings of fact and conclusions of law.
4. In approving shoreline conditional use permits, the hearing examiner is authorized, on a case-by-case basis, to impose any special conditions or standards which are reasonable and necessary to enable a proposed conditional use to satisfy the criteria established in subsection (J) of this section.
5. Filing with the Washington Department of Ecology (WDOE). Within eight days of the final decision, the administrator will file with WDOE copies of the permit application and other pertinent materials used in the final decision pursuant to either Chapters 43.21C or 90.58 RCW, the permit, and any other written evidence of the final order of the hearing examiner relative to the application. Filing shall not be complete until the materials have actually been received by the WDOE. For shoreline conditional use permits or shoreline variances, the date of filing of the County decision shall begin the period for WDOE review and final permit decision as described in subsection (L) of this section.

6. If no final action is taken on a shoreline permit application one year from the date of filing of the application due to inaction by the applicant, the application shall expire and be considered void. A new application and fees shall be required for continuation of the permit process.
7. Construction or substantial progress toward construction of a project for which a shoreline permit is granted must be undertaken within two years after the permit approval. Substantial progress toward construction shall include the letting of bids, making of contracts, purchase of materials involved, utility installation and site preparation, but shall not include use or development inconsistent with the master program or the terms of permit approval. However, the two-year period shall not include time during which development could not proceed due to reasonable related administrative appeals or litigation, nor include time necessary to obtain other required permits for the project from state and federal agencies. The hearing examiner may, with discretion, extend the two-year time period for a reasonable time.
8. Unless specified otherwise in permit conditions, all development authorized by a shoreline permit shall be completed within five years of the date of permit approval or the permit shall become null and void. A permittee may request a time extension before the permit expires by making a written request to the administrator, stating the reasons. The hearing examiner will review the permit, and upon a finding of good cause:
 - a. Extend the permit for one year; or
 - b. Terminate the permit.

However, nothing in this section shall preclude the hearing examiner from issuing shoreline permits with a fixed termination date of less than five years.

H. Criteria for Approval of Substantial Development Permits. A shoreline substantial development permit shall be granted by the County only when the applicant meets his burden of proving that the proposal is:

1. Consistent with the policies of the Shoreline Management Act and its implementing regulations, Chapter 90.58 RCW and Chapter 173-27 WAC, as amended;
2. Consistent with the policies and regulations of the Shoreline Master Program in Chapter 18.50 SJCC;
3. Consistent with this chapter;
4. Consistent with the applicable sections of this code (*e.g.*, Chapter 18.60 SJCC);

5. Consistent with the goals and policies of the Comprehensive Plan; and
6. All conditions specified by the hearing examiner to make the proposal consistent with the master program and to mitigate or avoid adverse impacts are attached to the permit.

I. Shoreline Variances.

1. **General.** The purpose of a variance is strictly limited to granting relief from specific bulk, dimensional, or performance standards set forth in the master program where there are extraordinary or unique circumstances related to the property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.
2. **Other Local Regulations.** Variances or exemptions granted from the provisions of other local regulations shall not be construed to constitute variances from the provisions of the Shoreline Master Program.
3. **Criteria for Approval of Shoreline Variances.** Variances from the provisions of the Shoreline Master Program may be granted when the applicant has proved that the following criteria have been met:
 - a. Variances for development that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030(2)(b), except within those areas designated as wetlands pursuant to Chapter 173-22 WAC, may be authorized; provided, the applicant can demonstrate all of the following:
 - i. That the strict application of the bulk, dimensional, or performance standards set forth in the applicable master program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by the master program. The fact that a greater profit might result from using the property in a manner contrary to the intent of the Shoreline Master Program is not sufficient reason for granting a variance;
 - ii. That the hardship described in this section is specifically related to the property and is the result of unique conditions such as irregular lot shape, size, or natural features, and the application of the Shoreline Master Program, and not, for example, from deed restrictions or the applicant's own actions;

- iii. That the design of the project is compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment;
 - iv. That the requested variance does not constitute a grant of special privilege not enjoyed by the other properties in the area, and is the minimum necessary to afford relief; and
 - v. That the public interest will suffer no substantial detrimental effect.
- b. Variances for development that will be located either waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030(2)(b), or within wetlands as designated under Chapter 173-22 WAC, may be authorized provided the applicant can demonstrate all of the following:
- i. Strict application of the bulk, dimensional, or performance standards set forth in the master program precludes a reasonable use of the property not otherwise prohibited by the master program;
 - ii. Proposal is consistent with the criteria established under subsection (I)(3)(a)(ii) through (v) of this section; and
 - iii. Public rights of navigation and use of the shorelines will not be adversely affected.
- c. In the granting of shoreline variances, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.
- d. Requests for varying the use to which a shoreline area is to be put are not requests for variances, but rather requests for conditional uses. Such requests shall be evaluated using the criteria set forth in subsection (J) of this section. Variances from the use regulations are prohibited.
- e. Filing of variances with and review by the Washington Department of Ecology are described in subsection (L) of this section.

J. Shoreline Conditional Use Permits.

1. **General.** The purpose of a shoreline conditional use permit is to allow greater flexibility in application of the use regulations of the Shoreline Master Program in a manner consistent with the policies of RCW 90.58.020. Shoreline conditional use permits should also be granted in circumstances where denial of the permit would thwart the policy enumerated in RCW 90.58.020. By providing for the control of undesirable impacts through the application of special conditions, the scope of uses within each of the environments of the master program can be expanded to include many additional uses. Activities classified as shoreline conditional uses shall therefore be permitted only when the applicant also demonstrates that the proposed use will be compatible with permitted uses within the same area.
Shoreline conditional uses include the following:
 - a. Uses which are permitted under the provisions of the Shoreline Master Program only as conditional uses;
 - b. The expansion of nonconforming uses; and
 - c. Uses which are unnamed or not contemplated in the Shoreline Master Program.
2. Uses which are specifically prohibited by the Shoreline Master Program shall not be authorized through a conditional use permit.
3. **Other Local Regulations.** Conditional use permits granted under other sections of this code shall not be construed to constitute approval of a shoreline conditional use.
4. **Criteria for Approval of Shoreline Conditional Uses.** Uses which are classified or set forth in the Shoreline Master Program as conditional uses may be authorized by the County provided the applicant can demonstrate all of the following:
 - a. The proposed use is consistent with the policies of RCW 90.58.020 and the policies of the Shoreline Master Program;
 - b. The proposed use will not interfere with the normal public use of public shorelines;
 - c. The proposed use of the site and design of the project is compatible with other permitted uses within the area;
 - d. The proposed use will cause no unreasonably adverse effects to the shoreline environment in which it is to be located;
- e. The cumulative impacts of additional requests for like actions in the area, or for other locations

where similar circumstances exist, shall not produce substantial adverse effects to the shoreline environment, *e.g.*, the total of the conditional uses shall remain consistent with the policies of RCW 90.58.020 and the Shoreline Master Program; and

- f. The public interest will suffer no substantial detrimental effect.
5. Other uses which are not classified or set forth in the Shoreline Master Program may be authorized as conditional uses provided the applicant can demonstrate consistency with the criteria set forth in WAC 173-27-160(1), and this subsection.
6. Filing of shoreline conditional use permits with and review by the Washington Department of Ecology are described in subsection (L) of this section.

K. Nonconforming Uses. Any nonconforming structure or use under the jurisdiction of the Shoreline Master Program (Chapter 18.50 SJCC) shall be subject to the nonconforming use provisions in WAC 173-27-080, and the applicable procedures of Chapter 18.50 SJCC and this section. (See also SJCC 18.40.310 and 18.80.120.)

L. Washington Department of Ecology Review. As required by state law (RCW 90.58.140(10)), shoreline variances and shoreline conditional use permits are subject to review by the Washington Department of Ecology for its approval or disapproval. Upon approval or denial of shoreline variances or conditional use permits by the hearing examiner or board of County commissioners, a copy of the final order and application shall be mailed to the Washington Department of Ecology within five days of such action. Construction pursuant to the permit shall not begin and is not authorized until 21 days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130 or until all review proceedings initiated within 21 days from the date of such filing have been terminated; except as provided in RCW 90.58.140.

M. Procedures for Revisions to Shoreline Permits. When an applicant seeks to revise a shoreline permit, an application in a form prescribed by the administrator together with detailed plans and text describing the proposed changes shall be filed with the administrator. Following receipt of this information, the administrator shall schedule a public hearing on the request.

1. The administrator shall ensure that notice of the hearing is published in a newspaper of general circulation within the County prior to the hearing. The administrator shall submit to the hearing examiner all of the written documents

referred to above. At the beginning of the hearing, the recommendation of the administrator shall be read into the record.

2. If the hearing examiner determines that the proposed changes are within the scope and intent of the original permit, as defined by WAC 173-27-100(2), the revision shall be granted.
3. If the hearing examiner determines that the proposed changes are not within the scope and intent of the original permit, then the applicant must apply for a new shoreline permit.
4. Any permit revision approved by the hearing examiner shall become effective immediately. Within eight days of the hearing examiner's action, the approved revision shall be submitted to the Washington Department of Ecology. In addition, the administrator shall submit a copy of the examiner's decision to all parties of record to the original permit action.
5. Appeals shall be in accordance with WAC 173-27-220 and SJCC 18.80.140.

N. Rescission of Shoreline Permits. Any shoreline permit may be rescinded by the hearing examiner pursuant to RCW 90.58.140(8) upon the finding that the permittee has failed to comply with the terms and conditions thereof. In the event that the permittee is denied a required sewage disposal, building, or other permit necessary for the project in question, the shoreline permit may be rescinded by the hearing examiner. In the event a shoreline permit is rescinded by the hearing examiner, the permittee shall be notified by certified mail. Copies of the examiner's final action shall be filed with the Washington Department of Ecology.

O. Appeals.

1. The BOCC has authority to hear and decide appeals from decisions of the hearing examiner on shoreline permit applications as provided in SJCC 18.80.140.
2. Any person aggrieved by a BOCC action granting, denying, or rescinding a permit for a use or development on the shorelines of the state pursuant to RCW 90.58.140 may seek review as provided by law.

P. Effects on Property Values. As provided for in RCW 90.58.290, the restrictions imposed upon the use of real property through the implementation of the policies and regulations of the SMA and the master program shall be duly considered by the County assessor and the County board of equalization in establishing the fair market value of such properties. (Ord. 15-2002 § 11; Ord. 4-2001 § 4; Ord. 2-1998 Exh. B § 8.11)

18.80.120 Procedures for nonconforming uses and structures.

- A. Legally established land uses and structures that have subsequently become nonconforming because of changes to County land use regulations continue to be legal. Standards governing such nonconforming structures and uses are located in SJCC 18.40.310.
- B. No project permit or development permit shall be approved for any nonconforming use or structure that has been abandoned as per SJCC 18.40.310(J). Nonconforming uses or structures may not be moved to a new site nor be relocated on the same site.
- C. When evaluating proposals for the alteration, modification, or expansion of nonconforming uses or structures, the decisionmaker shall consider the total impact of the nonconforming use or structure as well as the added impact of the incremental changes being proposed, and the consistency of the changes with the applicable land use designation.
- D. **Shoreline Nonconforming Uses and Structures.** Any nonconforming structure or use under the jurisdiction of the Shoreline Master Program (Element 3 of the Comprehensive Plan and Chapter 18.50 SJCC) shall be subject to the nonconforming use provisions in WAC 173-27-080, and the applicable procedures of Chapter 18.50 SJCC and SJCC 18.80.110.
- E. **Procedures for Nonconforming Use or Structure not Subject to the Shoreline Master Program.**
 - 1. The procedures for provisional uses (SJCC 18.80.070) shall apply to the actions and activities described in SJCC 18.40.310(B) through (D), as limited by SJCC 18.40.310(G) through (J).
 - 2. The procedures for conditional uses (SJCC 18.80.100) shall apply to the actions and activities described in SJCC 18.40.310(F) as limited by SJCC 18.40.310(G) through (J).
- F. **Illegal Use.** Any use, structure, or other site improvement not established in compliance with this code and other applicable codes and regulations in effect at the time of establishment is not nonconforming; rather, it is illegal and subject to enforcement provisions of Chapter 18.100 SJCC. (Ord. 15-2002 § 12; Ord. 2-1998 Exh. B § 8.12)

18.80.130 Project permit decisions.

- A. **Finality.** All project permit decisions, and administrative determinations or interpretations issued under this code shall be final unless appealed. (See SJCC 18.10.030(C).) Requests for reconsideration are not authorized.
- B. Final decision on a project permit application shall be in writing and shall include findings and conclusions

based on the record made before the decisionmaker (see Table 8.1), the SEPA threshold determination (Chapter 43.21C RCW) and the procedures for administrative appeal, if any. The notice of decision may be a copy of the report or decision on the project permit application.

- C. The notice of decision shall be provided to the applicant and to any person who, prior to the rendering of the decision, requested (in writing) notice of the decision.
- D. **Timing of Notice of Final Decision.** The notice of decision shall be issued within 120 days after the County notifies the applicant that the application is complete, unless excluded in subsection (D)(1) of this section, and except for shoreline permit applications for limited utility extensions (RCW 90.58.140(13)(b)) or construction of a bulkhead or other measures to protect a single-family residence, its appurtenant structures from shoreline erosion. In those cases, the decision to grant or deny the permit shall be issued within 21 days of the last day of the comment period specified in SJCC 18.80.030(B)(2). The time frames set forth in this section shall apply to project permit applications filed on or after the effective date of this code.
 - 1. **Calculation of Time Periods for Issuance of Notice of Final Decision.** In calculating the time for issuance of the notice of decision, the following periods shall be excluded:
 - a. Any period during which the applicant has been requested by the County to correct plans, perform required studies, or provide additional information. The excluded period shall be calculated from the date the County notifies the applicant of the need for additional information until the County determines the resubmitted information satisfies the request; and
 - b. Any period during which an environmental impact statement is being prepared following a determination of significance pursuant of Chapter 43.21C RCW; and
 - c. Any appeal period; and
 - d. Any extension of time mutually agreed upon by the applicant and San Juan County.
 - 2. The time limits established in this section do not apply if a project permit application:
 - a. Requires an amendment to the Comprehensive Plan or to this code;
 - b. Requires approval of the siting of an essential public facility as provided in RCW 36.70A.200; or
 - c. Is substantially revised by the applicant, in which case the time period shall start from

the date at which the revised project application is determined to be complete.

- E. If the County is unable to issue its final decision on a project permit application within the time limits provided for in this section, it shall provide written notice of this fact to the project applicant. The notice shall include a statement of reasons why the time limits have not been met and an estimated date for issuance of the notice of decision. (Ord. 15–2002 § 13; Ord. 2–1998 Exh. B § 8.13)

18.80.140 Appeals.

- A. **Appeals—General.** Appeals are either open-record appeals or closed-record appeals (*see* definitions in Chapter 18.20 SJCC), and include:
 1. Appeals to the hearing examiner of permits (development permits and/or project permits) granted or denied by the administrator (administrator is the decisionmaker);
 2. Appeals to the hearing examiner of administrative determinations or interpretations made by the administrator (administrator is the decisionmaker);

3. Appeals to the BOCC of permit decisions made by the hearing examiner (hearing examiner is the decisionmaker);
4. Appeals to the BOCC of decisions of the hearing examiner arising out of matters where the administrator was the decisionmaker;
5. SEPA appeals of project actions, as defined in WAC 197–11–704;
6. Appeals of consolidated matters (*i.e.*, appeal of administrative determination consolidated with project permit application hearing);
7. A timely appeal of a code interpretation or decision made by the administrator or building official stays the effective date of such decision until the matter has been resolved at the County level. (*See also* SJCC 18.10.030 and RCW 36.70C.100.)
8. The appeal path for project permits is shown in Table 8.1. The appeal path for SEPA is shown in Table 8.3.

Table 8.3. SEPA Processing and Appeals.

	Threshold Determination		EIS	
	DNS/MDNS	DS	DEIS	FEIS
Comment Period (days)	14	21	30	N/A
Appeal Period (days)	21	21	N/A	21
Consolidated Hearings	yes	no	N/A	yes
Open-Record Appeal Hearing	yes	yes	N/A	yes
Decisionmaker	Hearing Examiner	Hearing Examiner	N/A	Hearing Examiner
Appeal	Superior Court	See RCW 43.21C.075	N/A	Superior Court

- B. **Open-Record Appeals.** The San Juan County hearing examiner has authority to conduct open-record appeal hearings of the following decisions by the administrator and/or responsible official, and to affirm, reverse, modify, or remand the decision that is on appeal:
 1. Boundary line modifications;
 2. Simple land divisions;
 3. Provisional use permits;
 4. Short subdivisions;
 5. Binding site plans (up to four lots);
 6. Temporary use permits (Level II);
 7. Discretionary use permits;

8. Administrative determinations or interpretations (*see* SJCC 18.10.030);
 9. SEPA threshold determinations (DNS and DS) of project actions (*see* WAC 197–11–704);
 10. EIS adequacy;
 11. Development permits issued or approved by the administrator; and
 12. Consolidated matters where the administrator was the decisionmaker.
- C. **Closed-Record Appeals.** Closed-record appeal procedures apply where an appeal of a decision issued after an open-record hearing (open-record predecision hearing or open-record appeal hearing)

has been properly filed.

1. The board of County commissioners hears closed-record appeals of the following types of decisions:
 - a. Decisions of the hearing examiner issued after an open-record predecision hearing;
 - b. Decisions of the hearing examiner issued after an open-record appeal hearing.
2. Closed-record appeal hearings shall be on the record made before the hearing examiner, and no new evidence or testimony may be presented.
3. The board of County commissioners must sustain the examiner's findings of fact where such findings are supported by substantial evidence, and must sustain the examiner's conclusions unless such conclusions are contrary to law.
4. The burden of proof in a closed-record appeal is on the appellant.

D. Standing to Appeal. Appeals to the hearing examiner or BOCC may be initiated by:

1. The applicant;
2. Any recipient of the notice of application (*see* SJCC 18.80.030);
3. Any person who submitted written comments to the administrator or the hearing examiner concerning the application;
4. Any aggrieved person; and
5. Any person who submitted written or oral testimony at an open-record predecision hearing or an open-record appeal hearing.

E. Time Period and Procedure for Filing Appeals.

1. Appeals to the hearing examiner or to the BOCC must be filed (and appeal fees paid) within 21 calendar days following the date of the written decision being appealed; and
2. Appeals of a SEPA threshold determination or an FEIS must be filed within 21 days following the date of the threshold determination or FEIS;
3. All appeals shall be delivered to the administrator by mail, personal delivery, or fax, and received before 4:30 p.m. on the due date of the appeal period. Applicable appeal fees must be paid at the time of delivery to the administrator for the appeal to be accepted.
4. For the purposes of computing the time for filing an appeal, the date of the decision being appealed shall not be included. If the last day of the appeal period is a Saturday, Sunday, or a day excluded by RCW 1.16.050 as a legal holiday for the County, the filing must be completed on the next business day (RCW 36A.21.080).

5. **Content of Appeal.** Appeals must be in writing, be accompanied by an appeal fee, and contain the following information:

- a. Appellant's name, address and phone number;
- b. Appellant's statement describing standing to appeal (*i.e.*, how he or she is affected by or interested in the decision);
- c. Identification of the decision which is the subject of the appeal, including date of the decision being appealed;
- d. Appellant's statement of grounds for appeal and the facts upon which the appeal is based;
- e. The relief sought, including the specific nature and extent; and
- f. A statement that the appellant has read the appeal and believes the contents to be true, signed by the appellant.

F. Notice of Hearing. The administrator shall give notice of the appeal hearing as provided in SJCC 18.30.030(C).

G. Decision Time and Notice.

1. The hearing examiner or BOCC shall consider and render a written decision on all appeals. Such decision shall be issued within 60 days from the date the appeal is filed; provided, that the appeal contains all of the information specified in this section.
2. The parties to an appeal may agree to extend these time periods.

H. Consolidated Appeal Hearings.

1. All appeals of development permit or project permit decisions shall be considered together in a consolidated appeal hearing.
2. Appeals of environmental determinations under SEPA, except for an appeal of a determination of significance (DS), shall be consolidated with any open-record hearing (open-record predecision hearing or open-record appeal hearing) before the hearing examiner. (*See also* SJCC 18.80.020(B)(2), Consolidated Permit Processing, and SJCC 18.80.110(D), Shorelines—Consolidated Permit Processing.)

I. No Requests for Reconsideration. Requests for reconsideration to either the hearing examiner or board of County commissioners are not authorized.

J. SEPA Appeals of Project Actions.

1. The County establishes the following appeal procedures under RCW 43.21C.075 and WAC 197-11-680 for appeals of project actions as defined in WAC 197-11-704:

- a. Appeals of the intermediate steps under SEPA (*e.g.*, lead agency determination, scoping, draft EIS adequacy) are not allowed;
 - b. An appeal on SEPA procedures is limited to review of a final threshold determination (determination of significance (DS) or nonsignificance (DNS/MDNS), or final environmental impact statement (FEIS));
 - c. As provided in WAC 197–11–680(3)(a)(iv), there shall be no more than one administrative appeal of a threshold determination or of the adequacy of an environmental impact statement (EIS);
 - d. A timely SEPA appeal shall stay the decision on a project permit application or development permit application until such time as the SEPA appeal has been resolved at the administrative level (*i.e.*, decision by the hearing examiner or appeal withdrawn);
 - e. An appeal of the issuance of a determination of significance shall be heard and decided by the hearing examiner in a separate open-record hearing. As provided in RCW 36.70B.060(6) and 43.21C.075, this open-record hearing shall not preclude a subsequent open-record hearing as provided by this code;
 - f. Except for an appeal of a DS, a SEPA appeal (procedural and/or substantive determinations under SEPA) shall be consolidated with the open-record predecision hearing or open-record appeal hearing on a project and/or development permit, if any, and heard by the hearing examiner;
 - g. The determination of the responsible official shall carry substantial weight in any appeal proceeding;
 - h. The hearing examiner’s decision on a SEPA appeal is final unless a judicial appeal is filed;
 - i. Appeals identified in WAC 197–11–680(3)(a)(vi) need not be consolidated with a hearing or appeal on the underlying government action;
 - j. Notice of the date and place for commencing a judicial SEPA appeal.
2. Notice of the date and place for commencing a SEPA judicial appeal must be given if there is a time limit established by statute or ordinance for commencing an appeal of the permit decision. The notice shall include the time limit for commencing

appeal of the permit decision and SEPA issues, and the statute or ordinance establishing the time limit; and where such a judicial appeal may be filed.

3. Such notice is given by:
 - a. Delivery of written notice to the applicant, all parties of record in any administrative appeal, and all persons who have requested notice of decisions with respect to the particular proposal in question; and
 - b. Following the notice of decision procedures set forth in SJCC 18.8.130, if applicable;
 - c. Written notice containing the information required by subsection (J)(2) of this section may be appended to the permit or decision, notice of decision, SEPA compliance documents, or may be given separately.
 - d. Official notices required by this subparagraph shall not be given prior to the County’s final decision on a proposal.

K. Judicial and State Board Appeals. The time limits, methods, procedures and criteria for review of land use decisions by the courts or by a quasi-judicial body created by state law, such as the Shorelines Hearings Board or the Growth Management Hearings Board, is provided by state law. See, for example, Chapter 36.70C RCW (21 days; appeal to superior court). (Ord. 15–2002 § 14; Ord. 14–2000 § 7(QQQ); Ord. 11–2000 § 7; Ord. 2–1998 Exh. B § 8.14)

18.80.150 Road vacation procedures.

- A. County road vacations are subject to procedures specified in state law at Chapter 36.87 RCW and the policies in the Transportation Element 6 of the Comprehensive Plan. Vacations of County road ends shall not be permitted when prohibited under RCW 36.87.130.
- B. Applications for vacations of County roads, road rights-of-way, or any portion of one shall meet the requirements of SJCC 18.60.090(C).
- C. Applications for vacations of County roads may be processed pursuant to SJCC 18.70.080(B) only when such road vacations are proposed in conjunction with the vacation of the subdivision. Vacation of private roads within recorded subdivisions is subject to plat vacation procedures in RCW 58.17.212. (Ord. 15–2002 § 15; Ord. 2–1998 Exh. B § 8.15)

18.80.160 Procedures for planned unit developments.

- A. **Purpose and Applicability.** Planned unit developments (PUDs) under the development standards and requirements of SJCC 18.60.220 are

subject to this permit review process.

B. Application Submittal, Processing and Approval. PUD processing and approval shall occur as part of, and through the same procedures as subdivision or binding site plan application for the project.

C. Additional Application Requirements.

1. In addition to or as part of the materials being prepared to meet the requirements for subdivisions or binding site plans in Chapter 18.70 SJCC, the applicant shall prepare such other illustrations, diagrams, calculations, or descriptive materials as are needed to meet the requirements of SJCC 18.60.220.

2. Project information shall include:

- a. A statement that discusses the general design concept of the PUD, and what special purposes (*e.g.*, senior housing; community and environmental purposes), if any, the PUD is intended to meet or fulfill;
- b. A description and layout of all proposed developments, including the location, use and size of all proposed structures, and the proposed development schedule;
- c. A statement of the number of dwelling units, number of affordable units and their type, average density, use restrictions, information on how affordability will be assured, and other pertinent data;
- d. A statement of the percentage and design approach of open space;
- e. A calculation of estimated new demands on capital facilities and services, and a demonstration that the development has met the requirements of SJCC 18.60.200 and 18.60.220(D) (1) or 18.60.200(E). This shall include either:
 - i. Arranging for sufficient water and sewer service to meet the additional demands of the development; or
 - ii. Demonstrating that such service is not currently available and that funding of capital facilities and service improvements is less appropriate than other alternatives; and
- f. A demonstration that the development contains sufficient infrastructure to meet the requirements of this code for stormwater management.

D. Notice. Notice of application shall be provided by the same notice as the subdivision or binding site plan for the project. Notice of public hearing, if required by the subdivision or binding site plan procedures, shall be provided by the same notice as the subdivision or

binding site plan for the project.

E. Decisionmaking Authority. The decisionmaking authority for the subdivision or binding site plan for the project shall have the authority to approve, approve with modifications, or disapprove the planned unit development.

F. Criteria for Approval. The PUD shall be approved only if it:

1. Meets the conditions and requirements of SJCC 18.60.220 and other applicable standards in this and other County codes; and complies with the policies and requirements of the Shoreline Master Program, the State Environmental Policy Act, and the Comprehensive Plan.
2. Satisfactorily addresses the comments of the reviewing authorities, and receives the necessary approvals, and is in the public interest.

G. Appeals. Decisions by the administrator may be appealed to the hearing examiner in accordance with procedures specified in SJCC 18.80.140. Appeals of BOCC decisions must be filed and served in accordance with Chapter 36.70C RCW. (Ord. 15–2002 § 16; Ord. 11–2000 § 7; Ord. 2–1998 Exh. B § 8.16)

18.80.170 Binding site plan procedures.

A. Purpose and Applicability. Binding site plans under the standards and requirements of SJCC 18.70.090 are subject to this permit review process.

B. Application Requirements. Application requirements for binding site plans are as specified for land divisions in SJCC 18.70.050(C) except that:

1. References to “preliminary plat” and “subdivision” shall be considered as references to “binding site plan map” and “binding site plan” respectively;
2. Phasing is not allowed; and
3. The following requirement is added to those specified for the delineation of proposed conditions in SJCC 18.70.050(C)(2)(m): location of proposed structures, indicating for each the floor area in square feet, and the proposed use.

C. Notice of Application and Public Hearing.

1. Applications for binding site plans of four or fewer lots are subject to notice requirements of short subdivisions by SJCC 18.70.050(B)(1). No public hearing is required.
2. Applications for binding site plans of more than four lots are subject to the notice requirements of subdivisions by SJCC 18.70.050 (B)(2). A public hearing is required.

D. Preliminary Binding Site Plans.

1. **Administrative Authority and Responsibility.** The provisions of SJCC 18.70.050(D) shall apply such that binding site plan applications for four or fewer lots are equivalent to short subdivision applications, and binding site plan applications for more than four lots are equivalent to long subdivisions for procedural purposes.
2. **Decisionmaking Authority.** The provisions of SJCC 18.70.050(E) shall apply such that binding site plan applications for four or fewer lots are equivalent to short subdivision applications, and binding site plan applications for more than four lots are equivalent to long subdivisions for procedural purposes.
3. **Criteria for Approval of Preliminary Binding Site Plans.** The preliminary binding site plan shall be approved only if all of the following are met:
 - a. The application meets the requirements in SJCC 18.70.090, the applicable standards in Chapters 18.40, 18.50 and 18.60 SJCC, and complies with the policies and requirements of Chapter 58.17 RCW, the Shoreline Master Program, the State Environmental Policy Act, and the Comprehensive Plan;
 - b. The associated planned unit development application, if required, is approved, and action has been completed on any shoreline permit that is required for proposed improvements;
 - c. The application satisfactorily addresses the comments of the reviewing authorities and is in the public interest;
 - d. Requests for revisions which are not made in response to staff review may require a new application if the administrator finds the revisions to be substantial and material; and
 - e. The application meets the time limits and requirements for approval, revision, alteration, and extension of SJCC 18.70.050(G), 18.70.080 (A) and 18.70.110.
4. **Expiration.** Preliminary approval of a binding site plan shall expire after a period of 60 months.
5. **Appeals.** Decisions by the administrator may be appealed to the hearing examiner in accordance with procedures specified in SJCC 18.80.140. Appeals of BOCC decisions must be filed and served in accordance with Chapter 36.70C RCW.

F. Final Binding Site Plans.

1. **Administrative Authority and Responsibility.** The provisions of SJCC 18.70.070 shall apply

such that binding site plan applications for four or fewer lots are equivalent to short subdivision applications, and binding site plan applications for more than four lots are equivalent to long subdivisions for procedural purposes.

2. **Decisionmaking Authority.** The provisions of SJCC 18.70.070 shall apply such that binding site plan applications for four or fewer lots are equivalent to short subdivision applications, and binding site plan applications for more than four lots are equivalent to long subdivisions for procedural purposes.
3. **Criteria for Approval of Final Binding Site Plans.** The final binding site plan shall be approved only if:
 - a. The application meets the conditions and requirements of preliminary and final approval in SJCC 18.70.090, 18.70.110, and 18.70.120, and the applicable standards in Chapters 18.40, 18.50 and 18.60 SJCC and complies with the policies and requirements of Chapter 58.17 RCW, the Shoreline Master Program, the State Environmental Policy Act, and the Comprehensive Plan.
 - b. The application satisfactorily addresses the comments of the reviewing authorities, receives the necessary approvals, and is in the public interest.
 - c. **Time Limits.** The application meets the time limits and requirements for approval, revision, alteration, and extension of SJCC 18.70.050(G), 18.70.080(A) and 18.70.110.
4. **Appeals.** Decisions by the administrator may be appealed to the hearing examiner in accordance with procedures specified in SJCC 18.80.140. Appeals of BOCC decisions must be filed and served in accordance with Chapter 36.70C RCW.
5. **Recording.** Recording of final binding site plans with the County auditor is required.
 - a. **General Provisions.**
 - i. **Payment of Delinquent Taxes.** Any and all delinquent taxes on the subject property must be paid in advance of recording.
 - ii. **Recording Map and Legal Descriptions.** The final binding site plan map and legal descriptions shall be prepared in accordance with the requirements for final subdivisions in Chapter 332-130 WAC, Chapter 58.09 RCW and Chapter 18.70 SJCC and recorded with the County auditor as required by this code.

- b. The final binding site plan shall be prepared in accordance with the survey and drawing standards of SJCC 18.70.090.
- c. After approval of a binding site plan for land, all or portions of which will be subject to the provisions of Chapter 64.32 or 64.34 RCW (Condominiums), the applicant shall record the approved binding site plan with a record of survey (except for the provisions of RCW 59.09.090(1)(d)(iv) (resurvey of recorded plats within tolerance)) as one recorded document complying with the requirements of SJCC 18.70.090 labeled as "Binding Site Plan." Before recording, the applicant shall complete all required improvements.

6. Alteration of Approved Binding Site Plans. Alterations of approved binding site plans shall be processed as per SJCC 18.70.080(A). References to "preliminary plat" and "subdivision" shall be considered as references to "binding site plan map" and "binding site plan," respectively.

7. Vacation of Recorded Binding Site Plans.

- a. Vacation of a binding site plan shall be accomplished by following the same procedure and satisfying the same laws, rules and conditions as required for a new binding site application. A binding site plan shall be vacated in its entirety only.
- b. If a building permit or other development permit which accompanies a binding site plan expires without construction, then the binding site plan shall be considered vacated unless the administrator determines that the expiration of such development permit is consistent with the approved binding site plan. (Ord. 15-2002 § 17; Ord. 11-2000 § 7; Ord. 2-1998 Exh. B § 8.17)

18.80.180 Procedures for rural residential cluster developments.

A. Purpose and Applicability. Rural residential cluster development under the standards and requirements of SJCC 18.60.230 is subject to this permit review process.

B. Application Procedures if Site is to Be Divided, or to Be Subject to a Binding Site Plan. If the project site is not divided appropriately for the lease or sale

of the units or development of the conservation tract required by SJCC 18.70.060(B) (10), the site shall either be subdivided or subject to a binding site plan, in accordance with the procedures and requirements of Chapter 18.70 SJCC. The information required by SJCC 18.80.030 for rural residential cluster development shall be included as an attachment to the subdivision or binding site plan application, in the form required by the administrator. The approval of a rural residential cluster shall occur as part of the procedures in Chapter 18.70 SJCC for processing and approving the subdivision or binding site plan application.

C. Application Procedures without Land Division. If no land division or binding site plan is required (as in the case where existing parcels are to be developed as a rural residential cluster development with no change in boundaries, or if all units are to be rented and are in a single structure), the applicant for a rural residential cluster development shall submit a project permit application for the appropriate land use category as indicated by Tables 3.1 and 3.2 in SJCC 18.30.030 and 18.30.040. Such permit shall be processed as provided for discretionary use permits in SJCC 18.80.090 or conditional use permits in SJCC 18.80.100 indicated in Tables 3.1 and 3.2 in SJCC 18.30.030 and 18.30.040 as appropriate to the district in which the project is located, and as determined by the administrator.

D. Decisionmaking Authority. The decisionmaking authority shall be the same as required by the appropriate procedure required by Chapter 18.70 SJCC, SJCC 18.80.090 or 18.80.100.

E. Criteria for Approval. An application for a rural residential cluster development shall be approved only if:

1. The project meets all requirements of SJCC 18.60.230 for a rural residential cluster development;
2. The project meets all the requirements for approval of the subdivision or binding site plan if applicable; and
3. The project meets all the requirements of SJCC 18.80.090 for approval of the discretionary use permit or SJCC 18.80.100 for approval of the conditional use permit as applicable. (Ord. 15-2002 § 18; Ord. 11-2000 § 7; Ord. 2-1998 Exh. B § 8.18)

