



SAN JUAN COUNTY  
DEPARTMENT OF COMMUNITY DEVELOPMENT

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**MEMO**

**REPORT DATE:** October 29, 2019  
**TO:** San Juan County Planning Commission  
**FROM:** Linda Kuller, AICP, Planning Manager *LK*  
**BRIEFING:** Friday, November 15, 2019  
**SUBJECT:** Correction Ordinance  
**ATTACHMENTS:** Preliminary draft of the correction ordinance

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**Purpose:** To inform you that County Council requested processing of a code correction ordinance. The preliminary draft is attached. Please read the background section of the draft ordinance which provides reasons for the proposed corrections.

**Preliminary Ordinance Title:** An Ordinance Correcting Code Inconsistencies and Inaccuracies; Amending San Juan County Code 18.20.160, 18.30.055, 18.70.030, 18.70.060, and 18.80.140.

**Link to the project webpage:** <https://www.sanjuanco.com/1646/2019-Code-Correction-Ordinance>

**Background:** The proposal would amend San Juan County Code through the adoption of an ordinance correcting five code inconsistencies and inaccuracies. The code issues proposed to be fixed are a result of changes in the law or later discovery of irregularities in past code adoption processes. The proposed amendments are in San Juan County Code 18.20.160, 18.30.055, 18.70.030, 18.70.060, and 18.80.140. The five corrections address amendments of the regulations regarding:

1. Siting and permitting of Essential Public Facilities consistent with Ordinance 10-2011;
2. Changing the definition of "personal wireless service facility or PWSF consistent with Ordinance 10-2012;
3. Ensuring that the boundary line modification regulations are consistent with state law because SJCC 18.70.030(A)(1)(a) includes a portion of the state requirement;
4. Making sure SJCC 18.70.060(B)(10)(a) complies with a court ruling which held that this provision is in violation of RCW 82.02.020. Skagit County Superior Court Judge Cook held that 18.70.060(B)(10)(a) violates RCW 82.02.020 as a tax on the subdivision of land and that this section of the San Juan County Code is invalid and should not have been applied since the court's ruling. It has not been applied since the ruling; and
5. Fixing inconsistent language in SJCC 18.80.140(I)(1) and references. SJCC 18.80.140(I)(1) addresses SEPA appeals of nonproject actions and indicates that Table 8.4 shows the appeal path for nonproject actions. However, Table 8.4 references Chapter 36.70C RCW which is the Land Use

Petition Act. The Land Use Petition Act addresses “project actions’ and is therefore not the correct reference for SEPA appeals of nonproject actions.

**State Environmental Policy Act (SEPA) Environmental Checklist and Determination:** An environmental checklist is being prepared for this SEPA nonproject action. DCD will issue a SEPA Determination on November 6, 2019, and transmit it to interested parties and state agencies.

**Planning Commission Schedule:** A more detailed Planning Commission briefing and public hearing will be scheduled on December 20, 2019. A public hearing notice will be published with the SEPA determination on November 6, 2019.

ORDINANCE NO. \_\_\_\_\_ - 2020

**ORDINANCE CORRECTING CODE INCONSISTENCIES AND INACCURACIES;  
AMENDING SJCC 18.20.160, 18.30.055, 18.70.030, 18.70.060, AND 18.80.140.**

BACKGROUND

- A. The course of time, various inconsistencies and inaccuracies develop in the County code as a result of changes in the law or later discovery of irregularities in the adoption process;
- B. The County Council specifically desires to correct the following issues:
1. Amend the regulations regarding siting and permitting of Essential Public Facilities consistent with Ordinance 10-2011.
    - a. On March 22, 2011, the County Council adopted ordinance 10-2011 amending, among other things, the regulations regarding siting and permitting of Essential Public Facilities (formerly codified as 18.30.050(E)).
    - b. On November 20, 2012, the County Council adopted Ordinance 25-2012 which also amended, among other things, the regulations regarding siting and permitting of Essential Public Facilities. Ordinance 25-2012, however, inadvertently used an earlier version of 18.30.050(E) rather than the regulations adopted in Ordinance 10-2011.
    - c. The County Council wishes to amend the regulations regarding siting and permitting of Essential Public Facilities to reflect the changes Council intended to adopt in Ordinance 10-2011.
  2. The definition of "personal wireless service facility or PWSF"
    - a. On June 26, 2012, the County Council adopted Ordinance 10-2012 amending the regulations regarding wireless facilities.
    - b. The definition of "personal wireless service facility or PWSF" was amended to include towers and transmission cables and to exempt amateur radio towers and antennas.
    - c. When amending the definition, it appears the words "Telecommunications Act of 1996" were inadvertently stricken out, resulting in a portion of the definition appearing nonsensical.
    - d. The County Council wishes to correct this definition to include the inadvertently stricken words.
  3. Amend regulations regarding boundary line modifications so that they are consistent with state law.
    - a. RCW 58.17.040(6) states that, under certain circumstances, the boundaries of platted lots can be modified without being subject to the provisions of Chapter 58.17 RCW, the subdivision statute. In order to be exempt, the lot, platted or unplatted, must not "create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site."
    - b. SJCC 18.70.030(A)(1)(a), however, only includes a portion of this state requirement.
    - c. The County Council wishes to amend SJCC 18.70.030(A)(1)(a) so that it is consistent with the state requirements in RCW 58.17.040(6).
  4. Amend SJCC 18.70.060(B)(10)(a) to comply with a court ruling which held that this provision is in violation of RCW 82.02.020.
    - a. In 2008, property owners Pat and Stephanie O'Day sued the County alleging that SJCC 18.70.060(B)(10)(a) violates RCW 82.02.020.

- b. Skagit County Superior Court Judge Cook held that 18.70.060(B)(10)(a) violates RCW 82.02.020 as a tax on the subdivision of land and that this section of the San Juan County Code is invalid and should not be applied.
  - c. This provision has not been applied since the date of the court ruling.
  - d. The County Council wishes to remove this provision from the county code.
5. Amend inconsistent language in SJCC 18.80.140(l)(1).
- a. SJCC 18.80.140(l)(1) addresses SEPA appeals of nonproject actions and indicates that Table 8.4 shows the appeal path for nonproject actions.
  - b. Table 8.4 references Chapter 36.70C RCW which is the Land Use Petition Act.
  - c. The Land Use Petition Act addresses “project actions” and is therefore not the correct reference for SEPA appeals of nonproject actions.
  - d. The County Council wishes to correct this inconsistency.

C. Planning commission...

D. Notice information; and

WHEREAS, the County conducted a duly advertised public hearing and has received public testimony.

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

**Section 1. SJCC 18.20.160 and Ordinance 1-2016 § 75 are each amended to read as follows:**

**18.20.160 “P” definitions.**

“Parcel” means a lot or plot of land proposed or created in accordance with this code or prior subdivision ordinance and state law and intended as a unit for the purpose, whether immediate or future, of transfer of ownership. The external boundaries existing as of October 2, 1979, are used to establish what is a parcel for the purposes of this code. For parcels which have not been conveyed since that date, the legal description used in the conveyance closest to that date controls. The term “parcel” is synonymous with the terms “lot” and “tract.”

“Park” means a tract of land that is specifically designated as a “park” and is used by the public for recreation.

“Parking area” means a space where vehicles are left temporarily such as a road end. These areas are typically noncommercial and unpaved areas that may be in the County right-of-way and may provide visual or physical access to the shoreline.

“Parking lot” means an off-street, ground level open area, usually improved, for the temporary storage of motor vehicles.

“Parking structure” means a building or structure consisting of more than one level and used to store motor vehicles. Underground parking is considered a parking structure.

“Party of record” means all persons, agencies, or organizations who have submitted written comments or notified San Juan County of their desire to receive a copy of the final decision on a permit (WAC 173-27-030).

“Peak demand” means the highest demand associated with a particular interval, such as peak day or peak hour.

“Performance standard” means a set of criteria or limits relating to certain characteristics that a particular use or process may not exceed.

“Permanent moorage facility” means a facility which provides wet moorage or dry storage for pleasure craft or commercial craft for a fee for periods of six months or more.

"Permanently affordable housing" means affordable housing, the affordability of which is assured for at least 99 years.

Permit Center. See "department."

"Permit review" means the process of reviewing applications for project permits for consistency with the requirements of this code.

"Permittee" means the entity to whom a permit is granted.

"Person" means any individual, owner, contractor, tenant, partnership, corporation, association, organization, cooperative, public or municipal corporation, agency of a state or local governmental unit however designated, public or private institution, or an employee or agent of any of the foregoing entities.

"Personal and professional services" means, for the purposes of this code, establishments primarily engaged in providing assistance, as opposed to products, to individuals, business, industry, government, and other enterprises, not listed specifically in this code as a distinct use for regulatory purposes, such as laundry and dry cleaning services; barber shops and beauty salons; legal, engineering, architectural, design and accounting services; and the like.

"Personal wireless service facility or PWSF" means a facility for the provision of personal wireless services, as defined by the Telecommunications act of 1996 and includes the property lease area and all towers, antennas, mounts, transmission cables, equipment shelters or cabinets, and any other installations for the operation of a personal wireless facility. Amateur radio towers and antennas are not PWSFs and are exempt from height requirements in accordance with SJCC 18.60.050.

"Personal wireless services" means any Federal Communications Commission (FCC) licensed commercial wireless telecommunications service defined in Section 704 of the Federal Telecommunications Act of 1996, including cellular, personal communications services (PCS), commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchange access services. "Personal wireless services" does not include the operation of amateur radio.

"Pervious surface" means a surface that absorbs water.

"Pier" means a structure that abuts the shoreline and is generally used as a landing or moorage place for commercial and pleasure craft. A pier is a fixed platform above the water.

"Planned unit development" means a development characterized by a unified site design, clustered residential units or commercial units, and areas of common open space.

"Planning department," "permit center," and "building department" all mean the San Juan County community development and planning department.

Planning Director. See "director."

"Plat" means a map or representation of a subdivision or short subdivision of land showing the division of a parcel of land into lots, roads, dedications, common areas, restrictions and easements, as regulated by Chapter 58.17 RCW and this code.

Plat Alteration. See "subdivision, alteration of."

Plat, Long. See "subdivision (long)."

Plat, Short. See "subdivision, short."

Plat Vacation. See "subdivision, vacation of."

"Playing field" means a land area designed and used for outdoor games, such as baseball, football, soccer, track events and tennis. It includes public outdoor swimming pools.

"Pocket beach" means a Class II or Class III beach which does not depend on littoral drift accretion. It depends on the erosion of immediately adjacent sources.

"Point" means a low profile shoreline promontory of more or less triangular shape, the tip of which extends seaward.

"Point-of-use demand management" means a set of policies, procedures, and facilities that provide for the maximum efficiency where they are actually used, as distinguished from efficiency practices in supply, transmission, and distribution systems.

"Point-source discharge" means the release of waste or other flows which can be described as confined to a small area, such as discharges from a pipe or conduit. Releases occurring over a broad or undefined area are referred to as "nonpoint sources." (See also "nonpoint source.")

"Ports and water-related port facilities" means shoreline modifications such as breakwaters, jetties, groins and over-water structures that are located within the jurisdiction of a port district.

"Ports, marinas, and marine transportation designation" means the Shoreline Master Program designation intended to protect, maintain, and enhance port, marina and marine transportation uses and areas within the County's shoreline. This designation is characterized by infrastructure for launching, docking, mooring, maintaining, repairing, and storing a variety of marine craft.

"Potential critical aquifer recharge areas" means areas identified as significant due to their potential value in supplying groundwater and vulnerability to contamination. They are identified based upon the relative ability of the soil to accept water and allow it to flow to become groundwater.

"Predecision hearing, open-record" means a hearing, conducted by the hearing examiner, that creates the County's record through testimony and submittal of evidence and information, under procedures prescribed by the County by ordinance or resolution (RCW 36.70B.020).<sup>1</sup>

"Preliminary plat" means a neat and approximate drawing of a proposed subdivision or short subdivision showing the general layout of streets and alleys, lots, blocks, and other elements of a subdivision consistent with the requirements of this code and Chapter 58.17 RCW.

"Primary association" in the context of critical area regulations refers to those areas that provide fish and wildlife habitat, including physical and biological features, that are necessary for a species to survive over the long term. Examples include areas that are necessary for essential life cycle functions including areas used for feeding, nesting, breeding, and rearing.

"Primary surface" means the FAA imaginary surface that is longitudinally centered on and encloses an aircraft runway.

"Primary use" means the principal use of a property.

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

"Proprietor-occupied" means the residential occupancy by the owner of a building or property.

“Provision” means any written language contained in this code, including without limitation any definition, policy, goal, regulation, requirement, standard, authorization, or prohibition.

“Public access areas” means ways or means of approach to provide the general public with a physical entrance to a property.

“Public facilities” means facilities which serve the general public including streets, roads, ferries, sidewalks, street and road lighting systems, traffic signals, community water systems, community sewage treatment systems, storm sewer systems, parks and recreational facilities, and public schools.

“Public schools” means a building (and grounds) or part thereof designed, constructed, or used for publicly operated education or instruction.

“Public services” means services available to and used by the general public. They may be, but are not necessarily, provided by a public agency for fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services (RCW 36.70A.030(13)). Some public services are essential public facilities.

“Public transportation systems” means public facilities for air, water, or land transportation.

**Section 2. SJCC 18.30.055 and Ordinance 25-2012 §9 are each amended to read as follows:**

**18.30.055 Siting and permitting of essential public facilities (EPFs).**

The Growth Management Act directs that no comprehensive plan or development regulation may preclude the siting of essential public facilities (RCW 36.70A.200(2)). The identification, location, and permitting of essential public facilities shall be guided by the policies of the Comprehensive Plan, including Section B, Element 2 (Land Use), Element 3 (Shoreline Master Program), and Appendix 2 (Joint Planning Policies), along with the requirements of SJCC Titles 16 and 18.

~~A. Proposed facilities that satisfy County development standards shall follow the standard permitting procedures. Facilities that do not meet one or more development standards may be permitted as provided in this section. General. Facilities that meet County development standards shall follow the standard permitting procedures. Facilities that cannot meet one or more requirements may be permitted as provided in this section.~~

~~B. Determination of an Essential Public Facility. Many facilities serving the public are either listed under the definition of “essential public facility” or are identified in the Comprehensive Plan as an essential public facility. These facilities are predetermined to be EPFs and no additional review is required. Essential Public Facilities are identified in both the Comprehensive plan and the definition section of this Chapter. Additional Essential Public Facilities may be identified by either amendment to the Comprehensive Plan and this Chapter or by submission of a request for EPF determination as follows:~~

~~The following process applies to facilities that have not been defined to be an EPF. These facilities, which could be either publicly or privately owned, may submit a written request that the County council make a determination that a facility is an EPF.~~

- ~~1. Requests for designation as~~ A request for determination that a facility is an EPF shall contain a conceptual description of the facility, an explanation of the need for the facility, a preliminary development schedule, identification of any sites that are under consideration, and required fees.
- ~~2. After receiving such a request, the County council shall hold a public hearing to discuss the request. At least 45 days prior to the meeting, the department shall provide notice in the legal section of the official County newspaper, and if particular sites are under consideration, at least 45 days prior to the meeting, notice shall be mailed to all owners of property within 500 feet of the parcel boundaries of those sites.~~
- ~~3. Following the public hearing, the County council shall adopt a resolution as to whether the proposed facility is an EPF.~~

C. Siting of New EPFs. ~~When developed in conformance with the following requirements, a new EPF may be located in land use designations where one or more uses which comprise the facility are prohibited, where they are inconsistent with the Comprehensive Plan goals and policies for the designation, or within frequently flooded or geologically hazardous areas. The following procedures provide a method for siting essential public facilities when there is no suitable site with a land use designation that allows the proposed use.~~

1. Prior to initiating the following process the applicant shall pay the associated fees.
2. The department and applicant shall identify potential sites for the proposed facility.
3. ~~The department and applicant shall develop a methodology for selecting the site which includes, at a minimum, consideration of:~~ The applicant shall analyze potential sites based on consideration of the following criteria along with any factors identified by the Department which are specific to the proposed type of facility:
  - a. ~~Potential impacts~~ Impacts on existing land uses, resource lands, open space, scenic resources, critical areas, and the natural and rural environment;
  - b. The priority for the protection of resource lands;
  - ~~b. c.~~ How the location will help maintain or enhance the quality or minimize the cost of the service;
  - ~~c. d.~~ Economic, social and environmental impacts and benefits to the public;
  - ~~d.~~ Priority should be given to sites located in land use designations that are most compatible with the facility; furthermore, sites in resource, natural, or conservancy designations, and those where the facility would be located in wetlands, fish and wildlife habitat conservation areas, geologically hazardous areas or frequently flooded areas are disfavored;
  - e. The siting criteria and recommendations provided by the joint County/town of Friday Harbor task force, if it is established (applicable only to facilities located on San Juan Island);
  - f. Prevention of incompatible uses adjacent to general aviation airports; and
  - g. The extent to which design features or operational conditions can eliminate or reduce unwanted project impacts; and
  - h. Whether the site is capable of being redesignated to an appropriate land use designation, i.e., whether it is capable of meeting the Comprehensive Plan goals and policies for a designation that allows the proposed essential public facility.
4. The applicant shall prepare an analysis and comparison of the potential sites, using the methodology developed as criteria described above.
5. The department and applicant shall hold a public meeting to discuss the analysis and the potential sites. At least 45 days prior to the meeting, the department shall provide notice in the legal section of the official County newspaper, and at least 45 days prior to the meeting, notice shall be mailed to all owners of property within 500 feet of the parcel boundaries of the sites under consideration.
6. Following this meeting the applicant shall select the site and prepare a written request to the County council for approval of the site and authorization to apply for redesignation of the site an essential public facility conditional use permit. This request shall include a conceptual description of the facility, a conceptual site plan, an explanation of the need for the facility, an explanation of

the methodology used to select the site, the analysis and comparison of sites that were considered, and an explanation of why the proposed site was selected.

7. After receiving such a request, the County council shall conduct a public hearing to accept public input. At least 45 days prior to the hearing, the County shall provide notice in the legal section of the ~~official County newspaper of record~~, and at least 45 days prior to the hearing notice shall be mailed to all owners of property within 1,000 feet of the parcel boundaries of the proposed site.

8. If the council finds that the proposal is appropriate and in the public interest based on the above selection ~~methodology criteria~~, analysis and testimony, ~~it they~~ shall approve the site and authorize application for redesignation. ~~an essential public facility conditional use permit.~~

~~After council approval, the hearing examiner is vested with the authority to consider an essential public facility conditional use permit application according to the procedures of Chapter 18.80 SJCC. If the request is denied, the council shall state the reasons for denial, shall identify preferred alternative sites, and shall identify actions the applicant can take to gain approval of a site.~~

D. Existing Nonconforming Essential Public Facilities. Where an existing essential public facility (EPF) or a proposed expansion of an existing facility is nonconforming, it may be expanded on site or in combination with an adjacent parcel or parcels provided the County council holds a public hearing and determines that any nonconformity with respect to County regulations regarding critical areas or resource lands will not be increased and that the public benefits of expanding the facility in the existing location outweigh the economic, social and environmental impacts associated with relocating the facility. After said determination, the hearing examiner is vested with the authority to consider an application for expansion according to the essential public facility conditional use permit procedures of Chapter 18.80 SJCC.

E. Where a facility is located or proposed in an appropriate land use ~~or shoreline designation~~, but cannot meet one or more of the development standards included in SJCC Title 16 or 18, the proposal may be approved with an essential public facility conditional use permit as provided in Chapter 18.80 SJCC.

**Section 3. SJCC 18.70.030 and Ordinance 12-2001 § 7 are each amended to read as follows:**

**18.70.030 Boundary line modifications.**

A. Purpose and Procedures. To ensure compliance with RCW 58.17.040 and 58.17.060 and provide a procedure for the modification of property boundary lines common between lots. Boundary line modifications are reviewed according to the procedures in this section.

Boundary line modifications may make substantive changes in the boundary line location, and boundaries may be modified for purposes other than rectifying an error. Boundary line adjustments may only be used in order to rectify errors; see SJCC 18.70.010(C)(7).

1. A boundary line modification shall not:

- a. Create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site;
- b. Affect access, easements or drainfields without the consent of the affected party;
- c. Amend the conditions of approval for previously platted property;
- d. Violate Uniform Fire Code or Uniform Building Code requirements on developed commercial and multifamily property;

- e. Adversely affect the public health, safety, and general welfare; or
- f. Establish a lot line that causes an existing structure to violate setback or other standards of this code.

2. Multiple applications for boundary line modifications and simple land divisions or combinations of applications and exemptions shall not be used as a substitute for meeting the requirements for subdivisions or short subdivisions pursuant to this chapter.

3. Boundary line modifications may include:

- a. Boundaries that involve unplatted land; or
- b. The elimination of unplatted lot(s) where boundary lines are modified to such a degree that a lot is eliminated between lots being enlarged. Notice of such modifications shall be recorded on the deed(s) to state that the original separately described parcels shall not be separately conveyed or further modified without legal division.
- c. The modification of parcels such that the resultant parcel(s) cross(es) the applicable land use designation boundaries.

4. A boundary line modification that affects a platted lot line (i.e., that involves land which is included within a subdivision or short subdivision) shall be processed as a subdivision alteration, pursuant to the requirements of SJCC 18.70.080(A).

5. The approval of a boundary line modification shall include a restriction prohibiting division for five years without a short or long subdivision, as follows:

Pursuant to RCW 58.17.060 the property subject to this authorization may not be divided in any manner within a period of five (5) years without the filing of an application for a short or long subdivision.

#### B. Notice of Application and Public Hearing.

- 1. SEPA-Exempt, and No Shoreline Permit Required. Where no SEPA review is required, and no shoreline permit is required, a notice of application is not required. No public hearing is required.
- 2. SEPA Review or Shoreline Permit Required. A notice of application is required as per SJCC 18.80.030. No public hearing is required unless a shoreline permit is required.

C. Application Requirements. Applications for approval of boundary line modifications shall be submitted to the permit center in a form approved by the administrator, and must include:

- 1. A completed application page which includes property owner information for each lot, and existing legal descriptions for each affected lot;
- 2. A completed acknowledgment page, with signatures of all affected property owners;
- 3. A completed map page, certified by the property owner or surveyor, drawn to an engineering scale, with a north arrow, and including the following information where applicable:
  - a. Dashed lines for current boundaries and solid lines for proposed new lot lines;
  - b. Current legal descriptions for each new parcel;
  - c. Adjacent street names, if any, and locations;
  - d. Existing or proposed easements for access, drainage, utilities, or sensitive areas;

- e. Existing structures and approximate distances to property lines;
- f. Existing wells, septic tanks and/or drainfields and approximate distances to property lines; and
- g. Identifying parcels as Lot A, Lot B, and so on, unless otherwise approved by the administrator;

4. Assessor's maps; and

5. Documentation that each parcel affected is in compliance with any applicable usable construction area requirement (see SJCC 18.70.060 (B)).

D. Review Authority. Boundary line modifications are reviewed and approved by the County pursuant to the authority provided in RCW 58.17.060.

1. The administrator shall determine whether or not the proposed boundary line modification complies with any applicable usable construction area requirement (see SJCC 18.70.060 (B)).

2. When a boundary line modification is approved that allows parcels larger or smaller than the average density, the administrator shall require a deed restriction to be recorded to credit or debit the allowable density of the appropriate parcels for purposes of future division, according to the allowable density in effect at the date of approval. If the allowable density for the parcels is changed at a future date, further subdivision may be allowed depending upon the density in effect at that later date.

3. The County engineer shall review all boundary line modifications to ensure that adequate future driveway access can be provided for parcels adjacent to County roads.

4. The County engineer shall review and approve all legal descriptions.

5. The County sanitarian shall review all boundary line modifications to ensure that they comply with the requirements of the San Juan County health and community services department for water and sewage disposal (SJCC Title 13).

E. Decisionmaking Authority. The administrator is vested with authority to approve or deny proposed boundary line modifications. Within five business days of accepting a completed application the administrator shall approve, disapprove, or return it if incomplete, and shall notify the applicant of action taken on the application.

F. Criteria for Approval. A boundary line modification shall only be approved if:

1. The application meets the requirements in SJCC 18.70.020 and this section and the applicable standards in Chapters 18.50 and 18.60 SJCC, and complies with the policies and requirements of Chapter 58.17 RCW, the Shoreline Master Program (if applicable), the State Environmental Policy Act, and the Comprehensive Plan;

2. The application satisfactorily addresses the comments of the reviewing authorities;

3. Revisions. 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.

G. Final Approval and Recording.

1. Approvals of boundary line modifications shall expire if the authorized deeds transferring property ownership, together with a copy of the approved boundary line modification and map, are not recorded within six months of the approval, unless the application identified the modification as subject to a pending development permit application as a documented contingency agreement between the prospective land seller and purchaser. In that event, the

recordings required above shall be filed within 30 days of the effective date of the approved development permit or shall become void upon the denial of a development permit. Documentation authorizing the transfer of property ownership may be placed on the original boundary line map along with the legal descriptions of those portions of land being transferred.

2. The final map page shall contain an approval block to be signed by the administrator. The County auditor shall insure that proposed boundary line modifications are first approved by the administrator prior to recording.

H. Appeals. Decisions by the administrator may be appealed to the hearing examiner in accordance with procedures specified in SJCC 18.80.140.

**Section 4. SJCC 18.70.060 and Ordinance 2-2002 are each amended to read as follows:**

**18.70.060 Subdivision and short subdivision design and development standards.**

A. General Standards. The standards contained in this section and other sections of the UDC shall apply to subdivisions and short subdivisions regulated by this section, unless otherwise stated in this code.

B. Subdivision Design Standards.

1. Access to Shorelines and Common Easements.

a. Subdivisions and short subdivisions adjacent to water subject to the jurisdiction of the Shoreline Master Program shall provide dedication of access to such bodies of water as required by the Shoreline Master Program.

b. Dedications to the lot owners for access shall be to the low water mark if the subdivider holds ownership or a lease of the tidelands.

c. Subdivisions shall provide a common easement for a common water supply for individual lots of less than 15 acres.

2. Clustering. The administrator shall encourage clustering of units and lots in land division proposals, and shall inform applicants of alternatives to standard land division. Clustering may not be used to create lots smaller than the allowed minimum lot sizes where established by SJCC 18.70.010(E) or in applicable subarea plans. The sanitarian shall consider an approved water system or a proven common well supply in lieu of individual wells on clustered lots.

3. Conforming to Natural Features and Topography. To the greatest degree possible, all subdivisions shall be designed to conform to the natural features of the land. Problems such as eroding cliffs or other potentially hazardous conditions must be divided with the general welfare and safety of persons and property in mind.

4. Usable Construction Area. All proposed lots shall provide a usable area for the construction of a dwelling unit, approved sewage system, and an approved water supply.

5. Division of Lots by Roads. Individual lots shall not be divided by roads or road rights-of-way. Where a pre-existing road divides a lot where there is no alternative to such a division the administrator may grant a discretionary exception.

6. Buffers and Setbacks. All subdivisions shall meet the setback requirements and other density, dimension, and open space standards of SJCC 18.60.050, and the landscaping and screening requirements of SJCC 18.60.160.

7. Number of Lots. Subdivisions may include any number of lots. Short subdivisions are limited to no more than four lots.

8. Standards for Agricultural and Forest Resource Lands. On all agricultural or forest resource lands (AG and FOR) the maximum area of development which is not related to agricultural or forestry uses and activities shall be limited to 20 percent of the parcel area, but not less than one acre, regardless of the assigned density. Further, in the division of a parcel by any means, the allowable area for conversion of the parent parcel to nonfarm and/or nonforestry use shall not be exceeded. This shall not apply to parcels smaller than five acres.

9. Standards for Rural Farm-Forest (RFF) Districts. In RFF land use districts, no more than 30 percent of the area of a parcel shall be covered by impervious surfaces, exclusive of roads and driveways.

10. Conservation Design Requirements. All land divisions in resource land, conservancy, and rural designations (outside of areas of more intensive rural development), and all shoreline areas shall protect open space and scenic resources as well as natural resources by meeting the following design and development requirements:

~~a. At a minimum, 60 percent of the area of the parcel to be divided shall be maintained as open space area from which all construction related to residential use (houses, residential outbuildings, parking and residential landscaping) shall be excluded. Wells, septic systems, biofiltration, and ponds approved as pumper supply points, may be placed within the nonbuilding area of a parcel.~~

~~ab.~~ The significance and sensitivity of open space resources shall be identified for the entire parcel to be divided using the landscape information in Parts III and IV (Open Space Atlas and Map Folio) of the San Juan County Open Space and Conservation Plan (SJCC 18.30.190(F)) and the criteria and rating scales in Part III of that plan.

~~be.~~ The land division design shall adhere to the following principles to the extent practicable:

- ~~i.~~ Establish nonbuilding portions of new parcels to be contiguous with one another and to contain the most sensitive open space features of the site within them.
- ~~ii.~~ Establish the location of roads, individual driveways, houses and outbuildings, and utilities, to minimize intrusion on the most sensitive open space features of the site.
- ~~iii.~~ Maintain existing orchards, meadows and pasture areas.
- ~~iv.~~ Leave ridgelines and contrasting edges between landscape types unbroken by structures.
- ~~v.~~ On rolling open or steep open slopes, locate building areas so that buildings will be screened by existing vegetation or terrain.
- ~~vi.~~ Ensure that the protection of features such as wetlands and wildlife habitat.

~~cd.~~ Use and management provisions for the nonbuilding area of each parcel shall be specified on the face of the plat.

~~de.~~ Building and nonbuilding locations of each parcel shall be indicated on the face of the plat.

~~ef.~~ Alternative Design.

- ~~i.~~ At least 60 percent of the entire parcel to be divided may be retained within a single tract maintained as open space from which all construction related to

residential use (houses, residential outbuildings, parking, and residential landscaping) shall be excluded. Wells, septic systems, biofiltration, and ponds approved as pumper supply points, may be placed within the conservation area. Individual building lots shall be clustered or otherwise located in a manner consistent with the principles in subsection (B)(10)(c) of this section.

ii. The open space area shall be owned and managed as a single entity. The open space tract or easement may be transferred as indivisible open space to a conservation organization, held in perpetuity as an indivisible portion of one of the lots, or held by the lot owners in common. Use and management provisions for the conservation tract shall be specified on the face of the plat.

iii. If the conservation tract is created as a lot separate from a residential lot it may be leased for agricultural or forest management uses. Outbuildings other than structures for human habitation may be provided for to support agricultural activity on land in agricultural use.

iv. All other requirements of this subsection (B)(10) shall apply.

fg. San Juan Valley Heritage Plan Overlay District Conservation Incentive Bonus. Division of parcels in the San Juan Valley heritage plan overlay district located within that portion of the agricultural resource land area designated on the official maps at densities of 10 acres per unit shall be eligible for a density of up to five acres per unit if the following standards are met in addition to the requirements of subsection (B)(10) of this section, Conservation Design Requirements.

i. The required open space area shall include at least 75 percent of the parcel to be divided and in no case shall the required open space area be smaller than 10 acres.

ii. The maximum lot size for residential use shall be 1.5 acres and the minimum lot size for residential use shall be one-half acre.

iii. Building lots may be grouped on the parcel to be divided; provided, that no individual group of building lots shall include more than six lots and groups of lots shall be separated from each other by at least 100 feet.

iv. Building lots shown on the plat shall be presumed to be residential building locations.

v. Existing parcels may be recombined for redivision according to this subsection (B)(10)(g).

## C. Road and Drainage Standards.

### 1. Design and Construction Standards.

a. All roads serving two or more lots shall comply with the road design and construction standards specified in SJCC 18.60.080(A), (B) and (C).

b. A drainage analysis shall be performed in conformance with SJCC 18.60.070, and drainage systems shall be designed to the standards in subsection (B) of this section and SJCC 18.60.070.

2. Submittal of Final Plat. Information in drawing form shall be submitted to the administrator to meet the requirements of SJCC 18.60.100 (D).

3. Responsibility for Road Improvements. The applicant bears the responsibility to make offsite private road improvements necessary to meet the road standards.

D. Road Inspections. The following inspections are required:

1. First inspection prior to preliminary approval;
2. Second inspection prior to final approval and to establish bonding;
3. Third inspection for release of road bond if necessary.

E. Health Standards. The following health standards apply to all subdivisions and short subdivisions:

1. Water. All land divisions shall comply with the requirements of the San Juan County health and community services department for water (SJCC Title 13).
2. Sewer. All land divisions shall comply with the requirements of the San Juan County health and community services department for sewer (SJCC Title 13).
3. Storm Drainage. Stormwater flows from the subdivision shall not adversely affect critical aquifer recharge areas. All subdivisions and short subdivisions must meet critical area regulations for aquifer recharge (see Chapter 18.30 SJCC).

F. Fire and Utility Standards. All subdivisions and short subdivisions must meet the fire protection improvement standards contained in Chapter 13.08 SJCC.

**Section 5. SJCC 18.80.140 and Ordinance 13-2018 §13 are each amended to read as follows:**

**18.80.140 Appeals.**

A. Appeals – General. Appeals are open-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 director (director is the decisionmaker);
2. Appeals to the hearing examiner of administrative determinations or interpretations made by the director (director is the decisionmaker);
3. SEPA appeals of project actions, as defined in WAC 197-11-704;
4. Appeals of consolidated matters (i.e., appeal of administrative determination consolidated with project permit application hearing);
5. A timely appeal of a code interpretation or decision made by the director 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.)
6. 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
<b>Comment Period Prior to Action (days)</b>	14	21	30	N/A
<b>Administrative Appeal Period (days)</b>	21	21	N/A	21

**Table 8.3. SEPA Processing and Appeals.**

	Threshold Determination		EIS	
	DNS/MDNS	DS	DEIS	FEIS
<b>Consolidated Hearings</b>	yes	no	N/A	yes
<b>Open-Record Appeal Hearing</b>	yes	yes	N/A	yes
<b>Decisionmaker for Administrative Appeal</b>	Hearing Examiner	Hearing Examiner	N/A	Hearing Examiner
<b>Further Appeals</b>	Superior Court (21 days per Chapter 36.70C RCW) or SHB (21 days per Chapter 90.58 RCW)	See RCW 43.21C.075; Superior Court, SHB: 21 days	N/A	Superior Court or SHB: 21 days

B. Open-Record Appeals. The San Juan County hearing examiner has authority to conduct open-record appeal hearings of the following decisions by the director 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 for project actions;
11. Development permits issued or approved by the director;
12. Consolidated matters where the director was the decisionmaker; and
13. Flood development permits issued or approved by the director.

C. Standing to Appeal. Appeals to the hearing examiner 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 director concerning the application; and

4. Any aggrieved person.

D. Time Period and Procedure for Filing Appeals.

1. Appeals to the hearing examiner 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 director 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 director 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.

E. Notice of Hearing. The director shall give notice of the appeal hearing as provided in SJCC 18.80.030(C).

F. Decision Time and Notice.

1. The hearing examiner 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.

G. 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.)

H. Administrative SEPA Appeals of Project Actions.

1. The County establishes the following consolidated appeal procedures, under RCW 43.21C.075 and WAC 197-11-680, for administrative SEPA appeals of project actions as defined in WAC 197-11-704. The comment and appeal path is shown in Table 8.3.

a. Appeals of the intermediate steps under SEPA (e.g., lead agency determination, scoping, draft EIS adequacy) are not allowed;

b. An appeal to the hearing examiner on SEPA decisions is limited to review of a final threshold determination (determination of significance (DS) or nonsignificance (DNS/MDNS)) or the adequacy of a 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 FEIS;

d. Except as provided in WAC 197-11-680(3)(a)(iv), administrative SEPA appeals authorized by this subsection shall be consolidated with the hearing or appeal on the underlying governmental action in a single simultaneous hearing before one hearing officer, in conformance with WAC 197-11-680(3)(a)(v);

e. An appeal of a DS shall be heard and decided at a separate, open-record hearing to establish whether an applicant must provide an environmental impact statement. 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. A timely appeal of a DS or other application identified in WAC 197-11-680(3)(a)(vi) shall stay the decision on a project permit application or development permit application until such time as the appeal has been resolved at the administrative level (i.e., decision by the hearing examiner) or the appeal has been withdrawn;

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 timely judicial appeal is filed.

2. Notice of the Date and Place for Commencing a Judicial SEPA Appeal.

a. Pursuant to WAC 197-11-680(5), notice of the date and place for commencing a SEPA judicial appeal shall 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 underlying permit decision and SEPA issues, the statute or ordinance establishing the time limit, and where such a judicial appeal may be filed.

b. Notice is given by 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 along with any additional notice required by County code, such as SJCC 18.80.130.

c. Written notice containing the required information may be appended to the permit, decision documents, or SEPA compliance documents or may be given separately.

d. Official notices required by this section shall not be given prior to the County's final decision on a proposal or appeal.

I. No Administrative SEPA Appeals of Nonproject Actions.

1. SEPA determinations for nonproject actions are not subject to administrative appeals; they may only be appealed in conjunction with the underlying action to superior court or state boards as provided by law. ~~The comment and appeal path for nonproject actions is shown in Table 8.4.~~

2. Notice of the Date and Place for Commencing a Judicial SEPA Appeal.

a. Pursuant to WAC 197-11-680(5), 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 decision. The notice shall include the time limit for commencing appeal of the underlying permit decision and SEPA issues, and the statute or ordinance establishing the time limit; and where such a judicial appeal may be filed.

b. Such notice is given by 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 along with any additional notice required by County code, such as SJCC 18.80.130.

c. Written notice containing the required information may be appended to the permit, decision documents, SEPA compliance documents, or may be given separately.

c. Official notices required by this section shall not be given prior to the County's final decision on a proposal or appeal.

**Table 8.4. SEPA Processing and Appeals of Nonproject Actions.**

	Threshold Determination		EIS	
	DNS/MDNS	DS	DEIS	FEIS
Comment Period Prior to Action (days)	14	21	30	N/A
Appeal Period	Superior Court (21 days per Chapter 36.70C RCW) GMHB (60 days per Chapters 36.70A and 90.58 RCW)	Superior Court (21 days per Chapter 36.70C RCW) GMHB (60 days per Chapters 36.70A and 90.58 RCW)	N/A	Superior Court (21 days per Chapter 36.70C RCW) GMHB (60 days per Chapters 36.70A and 90.58 RCW)

GMHB: Growth Management Hearings Board

J. 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, are provided by state law. See, for example, Chapter 36.70C RCW (21 days; appeal to superior court).

**Section 6. Effective Date.**

This Ordinance is effective on the 10<sup>th</sup> working day after adoption.

**Section 7. Codification.**

Sections 1-5 of this ordinance shall be codified.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2020.

ATTEST: Clerk of the Council

**COUNTY COUNCIL  
SAN JUAN COUNTY, WASHINGTON**

\_\_\_\_\_  
Ingrid Gabriel, Clerk Date

\_\_\_\_\_  
Rick Hughes, Chair  
District 2

REVIEWED BY COUNTY MANAGER

\_\_\_\_\_  
Michael J. Thomas Date

\_\_\_\_\_  
Bill Watson, Vice-Chair  
District 1

RANDALL K. GAYLORD  
APPROVED AS TO FORM ONLY

By: \_\_\_\_\_  
Date

\_\_\_\_\_  
Jamie Stephens, Member  
District 3