



## SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

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### MEMO

**REPORT DATE:** November 20, 2019  
**TO:** San Juan County Council  
**FROM:** Linda Kuller, AICP, Planning Manager   
**BRIEFING:** December 3, 2019  
**SUBJECT:** Update on the Periodic Review of the Shoreline Master Program  
**ATTACHMENTS:**  
A. WAC 173-26.090(2)(d)  
B. WAC 173-27-040  
C. DCD Policy PP-2019-02\_SMP\_Res\_Appurt  
D. Public Participation Plan and Tentative Schedule

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**Purpose:** To update you on the progress of the San Juan County Shoreline Master Program (SMP) periodic review being funded by the WA State Department of Ecology (Ecology). The \$84,000 grant agreement is being routed for County signatures.

**Background:** A periodic review of the SJC Shoreline Master Program (SMP) is required by RCW 90.58.080. This review is distinct from the 2018 comprehensive update of the SMP. Its focus is on ensuring consistency with new Shoreline Management Act laws, rules and guidance adopted since the SMP comprehensive update. Ecology's periodic review checklist is used as a review guideline in this process. The update may also include amendments needed to reflect changed circumstances, new information or improved data.

**Public Participation Plan and Tentative Schedule (PPP):** A public participation plan (Attachment D) reviewed by Ecology is posted on the project website. The PPP outlines the intended project schedule including a process for joint County-State review of the necessary amendment ordinance. This joint review process will be efficient, saving review and adoption processing time. The primary legislative benchmarks are:

- February 2020: Planning Commission public hearing;
- April 2020: Joint Council and Ecology public hearing; and
- May/June 2020: County and Ecology final actions.

**Public Engagement Links:** The public may stay engaged with the project by using the following links and comment email address.

**Shoreline Master Program Periodic Update project webpage:**

<https://www.sanjuanco.com/1643/Shoreline-Master-Program-Periodic-Update>

**Project Comments:** Project comments may be submitted to [SMPCComments@sanjuanco.com](mailto:SMPCComments@sanjuanco.com).

**The public may subscribe for project news flashes and notices at:** <https://www.sanjuanco.com/list.aspx>. Select SMP Update under "News flashes."

**Preliminary Assessment of Required SMP Changes:** Ecology provides a periodic review checklist for counties to use in the update process. It summarizes amendments to state law, rules and updated guidance adopted between 2007 and 2019 that might trigger the need for local SMP amendments.

A September 16, 2019, Council briefing memo from DCD includes a preliminary draft review of the periodic update checklist: <https://www.sanjuanco.com/DocumentCenter/View/19127/September-16-2019-Council-Briefing-Memo>.

Most of the required changes to the County's SMP regulations are housekeeping items needed to comply with changes to the Shoreline Management Act and definitions and exemptions from shoreline substantial development permits.

**Additional Amendment Identified:** Since the preliminary Council briefing, Ecology notified the County that Community Development's policy, PP-2019-02 should be codified (Attachment B). This policy addresses daily implementation issues related to "other detached residential structures", appurtenant structures that are not identified in the County's definition of normal residential appurtenance.

Community Development issued the policy because property owners in San Juan County want to develop residential structures in the shoreline jurisdiction that are not specifically identified in the County's definition of normal residential appurtenance. These include common structures accessory to residential development such as fire pits, outdoor kitchens, dog houses, raised beds, and garden art/sculptures. The policy also provides clarity about the application of the shoreline regulations to various residential appurtenances.

#### San Juan County Code 18.20.140 "N" Definitions

"Normal residential appurtenance, shoreline" means a structure or development that is necessarily connected to the use and enjoyment of a single-family residence and which is expressly defined in WAC [173-27-040](#) and in Chapter [18.50](#) SJCC, for purposes of exemption from shoreline substantial development permit requirements in accordance with WAC [173-27-040](#)(g). Structures and activities considered normal residential appurtenances include accessory dwelling units or other detached residential structures, garages, sheds, decks attached to primary structures, private pedestrian pathways, stairways to access shorelines, ramps, patios, fences, driveways, utilities, on-site sewage disposal systems, antennas, solar arrays, wind power generators serving a single structure, satellite dishes, boat houses landward of the primary residential structure served by marine railways that require a substantial development permit, official registered historic structures, and grading which does not exceed 250 cubic yards and which does not involve placement of fill in any wetland or waterward of the OHWM.

Item (1)(g) from WAC 173-27-040 Developments exempt from substantial development permit requirement (Attachment B) states:

"An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. On a statewide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Local circumstances may dictate additional interpretations of normal appurtenances which shall be set forth and regulated within the applicable master program. Construction authorized under this exemption shall be located landward of the ordinary high water mark;"

Codification of this policy may involve amendment of the definition of normal residential appurtenance and other code changes in SJCC 18.50.540(D) regarding development standards for normal residential appurtenances.

**Work In Progress:** Staff is preparing a draft ordinance and SEPA environmental checklist for legal

review.

**WAC 173-26-090(2)(d) Locally initiated review—Periodic review—Public involvement and approval procedures.**

The minimum scope of review in WAC 173-26-090(2)(d) is:

“(i) The purpose and scope of the periodic review as established by the act is:

(A) To assure that the master program complies with applicable law and guidelines in effect at the time of the review; and

(B) To assure consistency of the master program with the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW, if applicable, and other local requirements.

ii) The review process provides the method for bringing shoreline master programs into compliance with the requirements of the act that have been added or changed since the last review and for responding to changes in guidelines adopted by the department, together with a review for consistency with amended comprehensive plans and regulations. Local governments should also incorporate amendments to reflect changed circumstances, new information, or improved data. The review ensures that shoreline master programs do not fall out of compliance over time through inaction.”

**(iii) The periodic review is distinct from the comprehensive updates required by RCW 90.58.080(2).** The presumption in the comprehensive update process was that all master programs needed to be revised to comply with the full suite of ecology guidelines. By contrast, the periodic review addresses changes in requirements of the act and guidelines requirements since the comprehensive update or the last periodic review, and changes for consistency with revised comprehensive plans and regulations, together with any changes deemed necessary to reflect changed circumstances, new information or improved data. **There is no minimum requirement to comprehensively revise shoreline inventory and characterization reports or restoration plans.**

2(d)(iii) above distinguishes the periodic reviews from the one-time comprehensive SMP update. Comprehensive updates involved a complete review of the SMP based on Ecology's 2003 SMA rules, and included extensive inventory work to determine shoreline jurisdiction and analyze existing conditions. **Periodic reviews are focused on new laws or rules that were not in effect when the comprehensive update was adopted, or on new information a local government finds that warrants local amendments.**

**WAC 173-27-040 Developments exempt from substantial development permit requirement.**

(1) Application and interpretation of exemptions.

(a) Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the substantial development permit process.

(b) An exemption from the substantial development permit process is not an exemption from compliance with the act or the local master program, nor from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and provisions of the applicable master program and the Shoreline Management Act. A development or use that is listed as a conditional use pursuant to the local master program or is an unlisted use, must obtain a conditional use permit even though the development or use does not require a substantial development permit. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of the master program, such development or use can only be authorized by approval of a variance.

(c) The burden of proof that a development or use is exempt from the permit process is on the applicant.

(d) If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire proposed development project.

(e) Local government may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the act and the local master program.

(2) The following developments shall not require substantial development permits:

(a) Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand dollars, if such development does not materially interfere with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and Statistics, United States Department of Labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the *Washington State Register* at least one month before the new dollar threshold is to take effect. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW [90.58.030](#) (2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;

(b) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;

(c) Construction of the normal protective bulkhead common to single-family residences. A "normal protective" bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the department of fish and wildlife;

(d) Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to chapter [90.58](#) RCW, these regulations, or the local master program, obtained. All emergency construction shall be consistent with the policies of chapter [90.58](#) RCW and the local master program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency;

(e) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels: Provided, That a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(f) Construction or modification of navigational aids such as channel markers and anchor buoys;

(g) Construction on shorelands by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to chapter [90.58](#) RCW. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. On a statewide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Local circumstances may dictate additional interpretations of normal appurtenances which shall be set forth and regulated within the applicable master program. Construction authorized under this exemption shall be located landward of the ordinary high water mark;

(h) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exception applies if either:

(i) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or

(ii) In fresh waters the fair market value of the dock does not exceed:

(A) Twenty thousand dollars for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced, and are located in a county, city, or town that has updated its master program consistent with the master program guidelines in chapter 173-26 WAC as adopted in 2003; or

(B) Ten thousand dollars for all other docks constructed in fresh waters.

However, if subsequent construction occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified in either (h)(ii)(A) or (B) of this subsection, the subsequent construction shall be considered a substantial development for the purpose of this chapter.

For purposes of this section salt water shall include the tidally influenced marine and estuarine water areas of the state including the Pacific Ocean, Strait of Juan de Fuca, Strait of Georgia and Puget Sound and all bays and inlets associated with any of the above;

(i) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater from the irrigation of lands;

(j) The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

(k) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system;

(l) Any project with a certification from the governor pursuant to chapter 80.50 RCW;

(m) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

(i) The activity does not interfere with the normal public use of the surface waters;

(ii) The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

(iii) The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

(iv) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and

(v) The activity is not subject to the permit requirements of RCW 90.58.550;

(n) The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department of ecology jointly with other state agencies under chapter 43.21C RCW;

(o) Watershed restoration projects as defined herein. Local government shall review the projects for consistency with the shoreline master program in an expeditious manner and shall issue its decision along with any conditions within forty-five days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in this section.

(i) "Watershed restoration project" means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:

(A) A project that involves less than ten miles of streamreach, in which less than twenty-five cubic yards of sand, gravel, or soil is removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;

(B) A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

(C) A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the state, provided that any structure, other than a bridge or culvert or instream habitat enhancement structure associated with the project, is less than two hundred square feet in floor area and is located above the ordinary high water mark of the stream.

(ii) "Watershed restoration plan" means a plan, developed or sponsored by the department of fish and wildlife, the department of ecology, the department of natural resources, the department of transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county, or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed for which agency and public review has been conducted pursuant to chapter 43.21C RCW, the State Environmental Policy Act;

(p) A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the following apply:

(i) The project has been approved in writing by the department of fish and wildlife;

(ii) The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 77.55 RCW; and

(iii) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are determined to be consistent with local shoreline master programs, as follows:

(A) In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the criteria under (p)(iii)(A)(I) and (II) of this subsection:

(I) A fish habitat enhancement project must be a project to accomplish one or more of the following tasks:

- Elimination of human-made fish passage barriers, including culvert repair and replacement;
- Restoration of an eroded or unstable streambank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or
- Placement of woody debris or other instream structures that benefit naturally reproducing fish stocks.

The department of fish and wildlife shall develop size or scale threshold tests to determine if projects accomplishing any of these tasks should be evaluated under the process created in this section or under other project review and approval processes. A project proposal shall not be reviewed under the process created in this section if the department determines that the scale of the project raises concerns regarding public health and safety; and

(II) A fish habitat enhancement project must be approved in one of the following ways:

- By the department of fish and wildlife pursuant to chapter 77.95 or 77.100 RCW;
- By the sponsor of a watershed restoration plan as provided in chapter 89.08 RCW;

- By the department as a department of fish and wildlife-sponsored fish habitat enhancement or restoration project;
- Through the review and approval process for the jobs for the environment program;
- Through the review and approval process for conservation district-sponsored projects, where the project complies with design standards established by the conservation commission through interagency agreement with the United States Fish and Wildlife Service and the natural resource conservation service;
- Through a formal grant program established by the legislature or the department of fish and wildlife for fish habitat enhancement or restoration; and
- Through other formal review and approval processes established by the legislature.

(B) Fish habitat enhancement projects meeting the criteria of (p)(iii)(A) of this subsection are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of (p)(iii)(A) of this subsection and being reviewed and approved according to the provisions of this section are not subject to the requirements of RCW 43.21C.030 (2)(c).

(C)(I) A hydraulic project approval permit is required for projects that meet the criteria of (p)(iii)(A) of this subsection and are being reviewed and approved under this section. An applicant shall use a joint aquatic resource permit application form developed by the office of regulatory assistance to apply for approval under this chapter. On the same day, the applicant shall provide copies of the completed application form to the department of fish and wildlife and to each appropriate local government. Local governments shall accept the application as notice of the proposed project. The department of fish and wildlife shall provide a fifteen-day comment period during which it will receive comments regarding environmental impacts. Within forty-five days, the department shall either issue a permit, with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project. The department shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by the conditioning of a permit. If the department determines that the review and approval process created by this section is not appropriate for the proposed project, the department shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes.

(II) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may formally appeal the decision to the hydraulic appeals board pursuant to the provisions of this chapter.

(D) No local government may require permits or charge fees for fish habitat enhancement projects that meet the criteria of (p)(iii)(A) of this subsection and that are reviewed and approved according to the provisions of this section.

(q) The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) or to otherwise provide physical access to the structure by individuals with disabilities.



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Attachment C

## POLICY/PROCEDURE/INTERPRETATION

### Shoreline Master Program (SMP) - Residential Appurtenances

Erika Shook, AICP  
Director of Community Development

Issued 02/27/2019  
PP-2019-02\_SMP\_Res\_Appurt

**ISSUE:** Property owners in San Juan County want to develop residential structures in the shoreline jurisdiction that are not specifically identified in the County's definition of normal residential appurtenance. Clarity is needed about the application of the shoreline regulations to residential appurtenances.

#### BACKGROUND, POLICY AND PERMIT PROCESSES:

##### A. Normal Residential Appurtenances.

San Juan County's SMP and development regulations in San Juan County Code (SJCC) Chapter 18.50 regulate normal residential appurtenances. These are defined in SJCC 18.20.140 as:

"Normal residential appurtenance, shoreline" means a structure or development that is necessarily connected to the use and enjoyment of a single-family residence and which is expressly defined in WAC 173-27-040 and in Chapter 18.50 SJCC, for purposes of exemption from shoreline substantial development permit requirements in accordance with WAC 173-27-040(g). Structures and activities considered normal residential appurtenances include accessory dwelling units **or other detached residential structures**, garages, sheds, decks attached to primary structures, private pedestrian pathways, stairways to access shorelines, ramps, patios, fences, driveways, utilities, on-site sewage disposal systems, antennas, solar arrays, wind power generators serving a single structure, satellite dishes, boat houses landward of the primary residential structure served by marine railways that require a substantial development permit, official registered historic structures, and grading which does not exceed 250 cubic yards and which does not involve placement of fill in any wetland or waterward of the OHWM.

#### Are some normal residential appurtenances allowed with a shoreline exemption?

Yes, some may be allowed with an approved shoreline exemption if they meet the criteria in SJCC 18.50.050.

#### Which normal residential appurtenances identified in the SJCC 18.20.140 are allowed seaward of a residence?

SJCC 18.50.540(D) does not allow non water-dependent normal residential appurtenances seaward of the most landward extent of a residence except for:

- private pedestrian pathways to beach access stairways or that provide shore access,
- stairways,
- ramps,
- patios,
- decks attached to the primary structure, and
- boat houses served by marine railways, normal.

### **Are temporary or permanent fences allowed seaward of a residence?**

No, fences including deer fences are normal residential appurtenances that are not water-dependent. SJCC 18.50.540(D) does not allow fences seaward of the most landward extent of the house.

Since fences impact habitat corridors and views, they must be located landward of the residence. Fences must meet the required shoreline aesthetic setback in SJCC 18.50.540(C)(3). They must also meet the critical area buffers required by SJCC Chapter 18.35 to meet the No Net Loss standard in SJCC 18.50.120. The alternative method that allows the submittal of a No Net Loss report is not allowed because avoidance, the first step in the No Net Loss mitigation sequence analysis required by SJCC 18.50.120, cannot be met.

### **Are private pedestrian access stairs a normal residential appurtenance?**

Private pedestrian access stairs are normal residential appurtenances on a lot intended for single-family development, even if they are constructed prior to the residence. A shoreline permit or exemption may be required. See SJCC 18.50.050 and 18.50.600.

### **What is a patio and what regulations must patios and decks meet?**

A patio is a normal residential appurtenance defined in SJCC 18.20.140. A patio is a paved area or area assembled with solid materials adjoining (attached to) a house. Pavers assembled together are considered a patio.

SJCC 18.50.540(D) allows patios to be located seaward of the most landward extent of the house. At-grade patios and decks less than 30 inches tall also do not need to meet the shoreline aesthetic buffer in SJCC 18.50.540(C)(3). Patios and decks less than 30 inches tall must meet the No Net Loss standard required in SJCC 18.50.120.

Above-grade patios and decks attached to the house that are taller than 30 inches in height are subject to the same regulations as the home.

### **Can I have a plug-in hot tub on a patio or deck that is attached to a house?**

Yes, if the patio or deck meet the requirements outlined above.

## **B. Other Residential Structures not identified in SJCC 18.20.140.**

The following list identifies some "other residential structures" that are not specifically identified in the definition of normal residential appurtenance in SJCC 18.20.140:

- Fire pit - or outdoor fireplace (temporary stone fire rings are allowed in shoreline jurisdiction);
- Outdoor kitchen;
- Dog house, no fencing; (a 3 foot by 3 foot temporary dog house is allowed in shoreline jurisdiction);
- Ponds involving less than 250 cubic yards of grading;
- Garden trellises;
- Gardens and raised beds;
- Irrigation system;
- Sculpture/art installation;
- Outdoor shower;
- Above ground propane/LP tank, HVAC equipment not attached to the house;
- Retaining walls;
- Kayak rack;
- Children's play equipment, such as a swing set or jungle gym; and
- Hot tubs not on located on a patio.

### **May these "other residential structures" identified above be located seaward of a residence?**

SJCC 18.50.540(D) would not allow these structures seaward of the residence because they are not water-dependent normal residential appurtenances. However, the intent of SJCC 18.50.540(D) is to protect views to and from the water and critical area functions and values by limiting the number and type of residential appurtenances located seaward of the residence. It also assumes that the residence is located at the minimum required aesthetic setback and critical area buffer, thereby allowing some limited water-dependent normal residential appurtenances to be located within these areas.

In instances where a residence is setback further than the minimum aesthetic setback required by SJCC 18.50.540(C)(3) and further than the critical area buffers required by SJCC Chapter 18.35, these "other

residential structures” will not impact shoreline views and critical area functions. In such cases, the “other residential structures” listed above may be located seaward of the residence if they are also located outside of the aesthetic setback and critical area buffers. All “other residential structures” taller than 30 inches must also meet the lot width requirement of SJCC 18.50.540(A)(2).

### **If my home is nonconforming to the shoreline aesthetic setback or critical area buffers, can these “other residential structures” be placed seaward of the home?**

No. SJCC 18.50.540(D) does not allow these structures seaward of the residence because they are not water-dependent. In addition, under SJCC 18.50.090, no structure is allowed to be developed that would increase the nonconformity to the shoreline regulations including the aesthetic setback and critical area buffers.

### **What are the permitting requirements for these “other residential structures” that have been identified as normal residential appurtenances?**

SJCC 18.50.540(D)(3) specifies that:

Normal residential appurtenances that are not identified in the definition in SJCC 18.20.140 are allowed with a conditional use permit.

However, because the “other residential structures” identified in this memo are considered “normal residential appurtenances” they may be allowed by shoreline exemption if they meet the shoreline exemption threshold in SJCC 18.50.040(A).

A. Normal residential appurtenances are structures or development that are necessarily connected to the use and enjoyment of a single-family residence and that are expressly defined in SJCC 18.20.140. Hard structural shoreline stabilization measures and other shoreline modifications or over-water structures are not considered normal appurtenant structures. Normal residential appurtenance exemptions also include:

As noted in SJCC 18.50.040(A), an exemption from the shoreline substantial development permit requirements under this section does not constitute an exemption from the policies of the SMA, the regulations of this SMP, or other applicable County, state, or federal permit requirements.

### **What regulations apply to residential appurtenances that are not defined in SJCC 18.20.140 or not identified as an “other residential structure” in this policy?**

SJCC 18.50.540(D)(3) allows these structures with an approved shoreline conditional use permit.

Normal residential appurtenances that are not identified in the definition in SJCC 18.20.140 are allowed with a conditional use permit.

### **What are examples of normal residential appurtenances that are not defined that would require a conditional use permit?**

A bunkhouse, greenhouse, treehouse or swimming pool.

### **Is a separate shoreline exemption application required for an “other residential structure” if it was shown on the building permit application site plan for a single family residence?**

No, under SJCC 18.50.050(B), a separate shoreline exemption application is not required if a project or development permit application is required. The exemption will be reviewed with the building permit. If you are submitting a building permit application for development of a single family residence in the shoreline, the proposed location of all residential appurtenance structures shown on the site plan will be reviewed without the need to submit a separate shoreline exemption application.

### **Are there any normal residential appurtenances or other residential structures that do not require a shoreline exemption or shoreline permit?**

The following do not require a shoreline exemption or permit provided they do not result in removal of trees or vegetation within critical area buffers or the shoreline aesthetic setback:

- Temporary fire ring or bowl;
- Temporary dog house (3' X 3'); and
- Moveable, non-fixed furniture such as picnic tables and benches.

# San Juan County Shoreline Master Program Periodic Update: Public Participation Plan and Tentative Schedule: November 5, 2019

## Attachment D

This Public Participation Plan describes the steps that San Juan County (SJC) will take to provide opportunities for public engagement and comment, as well as contact information and web addresses. This plan is a working document and will be adjusted as needed to provide for the greatest and broadest public participation.

<p><b>Periodic Update Overview</b></p>	<p>The periodic review of the County's Shoreline Master Program (SMP) required by WAC 173-26-090 ensures that at least once every eight years on a schedule established in the Shoreline Management Act (SMA), that amendments deemed necessary to reflect changing local circumstances, new information or improved data are made to the SMP. Following the review, local governments shall, if necessary, revise their master programs. This work should:</p> <ul style="list-style-type: none"> <li>▪ Assure consistency of the master program with the local government's comprehensive plan and development regulations adopted under chapter <u>36.70A</u> RCW, if applicable, and other local requirements;</li> <li>▪ Bring the SJC SMP into compliance with the requirements of the SMA that have been added or changed since the last review;</li> <li>▪ Respond to changes in the WA State Dept. of Ecology's (Ecology) guidelines, and ensure consistency with comprehensive plans and regulations; and</li> <li>▪ Incorporate amendments to reflect changed circumstances, new information, or improved data.</li> </ul>
<p><b>Principles</b></p>	<p>Guiding principles for this project are:</p> <ul style="list-style-type: none"> <li>▪ That it be transparent, inclusive, robust and proactively encouraging of a healthy dialogue with the public;</li> <li>▪ That it develop and sustain public awareness of the project, inviting participation;</li> <li>▪ That it request and obtain suggestions from the broader community; and</li> <li>▪ That it has a reliable, predictable schedule, with a consistent project message and an understandable, accessible public engagement process.</li> </ul>

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<p><b>Goals</b></p>	<p>The project goals include:</p> <ul style="list-style-type: none"> <li>▪ Informing the community of the periodic review requirements;</li> <li>▪ Providing interested parties with timely information, an understanding of the process, and multiple opportunities to review and comment on proposed amendments to the SMP;</li> <li>▪ Actively soliciting information from citizens, property owners and stakeholders about their concerns, questions and priorities for the periodic review process;</li> <li>▪ Encouraging interested parties to informally review and comment on proposed changes to the SMP throughout the process and provide those comments to decision makers;</li> <li>▪ Encouraging as many participants as possible to participate in the review and amendment processes;</li> <li>▪ Providing forums for formal public input at project milestones prior to decision-making by local officials;</li> <li>▪ Enhancing public trust in the process, demonstrating through action that public suggestions and concerns are seriously considered and can influence the outcomes; and</li> <li>▪ Consulting and considering recommendations from neighboring jurisdictions, federal and state agencies, and Native American tribes.</li> </ul>
<p><b>Key Messages</b></p>	<p>San Juan County is undertaking a periodic review of its Shoreline Master Program (SMP), as required by the Washington State Shoreline Management Act (SMA), RCW 90.58.080(4).</p> <p>The SMA requires each SMP be reviewed and revised, if needed, on an eight-year schedule established by the Legislature. The review ensures the SMP stays current with changes in laws and rules, remains consistent with other County plans and regulations, and is responsive to changed circumstances, new information and improved data.</p> <p>The periodic review is different than the comprehensive updates required by RCW 90.58.080(2). The comprehensive update required that the SMP be revised to comply with the full suite of ecology guidelines. There is no minimum requirement to comprehensively revise shoreline inventory and characterization reports or restoration plans in the periodic update.</p>
<p><b>Stakeholders</b></p>	<p>The entire San Juan community is included in the stakeholder list. Broad dissemination of information will be provided throughout the San Juan Islands.</p>

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### Tools

**Website** – The periodic review project webpage will be the central repository for information under consideration. The project website will be used to post project information, meeting notices and draft documents posted for review and comment. <https://www.sanjuanco.com/1643/Shoreline-Master-Program-Periodic-Update>

**Subscription service** – Interested parties will be able to sign up for notices and news flashes regarding project activities. <https://www.sanjuanco.com/list.aspx>

**Early and continuous public participation** – Multiple opportunities for public input will be provided on preliminary draft documents. Interested parties will be encouraged to provide comments by letter or email or in person at public hearings. All comments will be forwarded to the County Council and Planning Commission. Public comments received throughout the process will be posted on the Periodic review project webpage.

**News flashes** – Staff will provide news flashes to SMP update news subscribers.

**Bulletin boards** – Flyers providing meeting notices will be posted on various islands at places identified that attract public viewing.

**Newspaper notices** – The local news media will be kept up-to-date on the periodic review process. Official notices will be duly advertised. Public notice of all hearings will state who is holding the comment period and/or hearing, the date and time, and the location of any public hearing. Notices will be published per official policy and comply with all other legal requirements such as the Americans with Disabilities Act. A notice will be sent to the project subscriber list and the Department of Ecology.

**Online notices** – Notices of briefings and public hearings will be posted on online news sources and calendars (i.e. Orcas Issues and Lopez Rocks).

**Commission/Council briefings** – The Planning Commission and County Council will be briefed and are made aware of the process and its outcomes. These briefings will be held during regular meetings, accessible to the public. The County will initiate the Periodic review with a community briefing at a Planning Commission meeting.

**State Environmental Policy Act (SEPA)** – The County will issue an environmental checklist, threshold determination and comment period.

**Public hearings** – Public hearings will be held by the Planning Commission and County Council. The public will be invited to provide testimony on proposed SMP amendments. The Planning Commission will conduct a public comment period and at least one public hearing to solicit input on the periodic review. The County Council will hold at least one public hearing before final adoption.

**Joint local and state comment period rule (WAC 173-26-104)** – This process will be used to better coordinate with Ecology. It combines the local and state public comment periods required by RCW 90.58.090. A 30-day joint public comment period is required.

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## Tentative Schedule

This schedule is intended to frame and facilitate the scheduling of key events and product milestones. Changes or additional details may be added as the process unfolds, responding to community needs, emerging issues and/or priorities. San Juan County intends to use Ecology's 2017 joint local and state comment period rule (WAC 173-26-104).

Notes: SJC Department of Community Development staff (Staff); Planning Commission (PC); WA. State Department of Ecology (Ecology) Planning Commission Agendas: <https://www.sanjuanco.com/AgendaCenter/Planning-Commission-26>  
Council Agendas: <https://www.sanjuanco.com/341/County-Council>

Date	Event(s)	Objectives	Status	Participants
September 2019	Review the periodic update checklists, prepare preliminary assessment of compliance requirements.	Make a preliminary assessment of update requirements and compliance issues.	Done	Staff
September 16, 2019	Brief County Council.	Inform Council of the periodic review requirement and obtain permission to apply for the Ecology grant.	Done	Council and Staff
October 2019	Apply for Ecology Grant	Secure grant agreement. Set up timekeeping in Eden. Document time spent prior to grant agreement.	Grant Agreement In Progress	Staff
October 2019	Submit the preliminary assessment to Ecology.	Obtain an early review of possible amendments.	Done	Staff, Ecology: Chad Yunge
October – November 2019	Prepare website; Notify existing SMP Update subscriber list; and Send newflash announcing the project.	Begin public outreach. Organize information on a project website. Provide a newflash regarding the project, news flash subscription service, project website and comment email.	In progress	Staff
October 2019	Apply for Ecology grant. Consult with Ecology. Inform Ecology of SJC's intent to use the optional joint review process.	Complete grant submittal and SJC agreement processes.	In progress	Staff

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Date	Event(s)	Objectives	Status	Participants
October 30	Quarterly report due.	Defer until grant agreement finalized.*	*	Staff
November 15, 2019	Provide a preliminary Planning Commission (PC) briefing.	Inform the PC about the periodic review requirement and the preliminary assessments of necessary amendments. Obtain early comments from the PC and public.  Analyze changing local circumstance, new information and improved data.	Staff report was provided to the PC and posted on the website.	Staff
December 9, 2019	Brief County Council about any policy issues.	Confirm direction.		Staff
November - December 2019	Draft amendment ordinance.	Address compliance issues and changed circumstances. Submit a draft ordinance to the legal staff for review.	In progress	Staff
November - December 2019	Prepare 60-day notice of intent to amend regulations/plans for submittal to WA State Dept. of Commerce and prepare a SEPA non-project action checklist and SEPA determination.	Comply with State requirements.	In progress	Staff
January 2020 PC: January 17	Brief Council and Planning Commission on draft Ordinance.  Submit the early draft to Ecology and legal staff for preliminary review.	Review of the proposed amendments and consider public comments.  Incorporate public comments into draft ordinance.		DCD and Legal Staff, Council, Planning Commission, Ecology
Jan 31, 2020	Quarterly report due.	Prepare report for 2019 work.		Staff
February 2020 PC: February 21	Brief Council if needed. <b>Hold Planning Commission public hearing.</b>	Take public comments at the PC public hearing. Create Planning Commission draft. Obtain Planning Commission's recommendation to Council.		Staff, Council, and Planning Commission
March 2020	Brief Council on Planning Commission's recommendation. Obtain Council feedback.	Prepare final ordinance for a Council public hearing.		Staff Council

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Date	Event(s)	Objectives	Status	Participants
March 2020	Prepare and send notices of joint-public hearing with Council and Ecology and a minimum 30-day comment period.	County notifies local interested parties and publishes a joint hearing notice in the legal newspaper complying with the notice criteria in WAC 173-26-104(2)(c)(i). Ecology notifies statewide interested parties.		Staff Ecology
April 2020	Hold joint public hearing: Council and Ecology. Council continues the public hearing.	Take public comment for 30 days. After 30 days and the close of joint comment period, staff documents the comments received and prepares a written response to them within 30 days unless more time is requested from Ecology. Ensure consistency with RCW 90.58.020 and applicable guidelines. Council considers staff's proposed response to comments and deliberates. Staff prepares Council draft ordinance.		Staff, Council, and Ecology
April 30, 2020	Quarterly report due.			Staff
April/May 2020	Transmit the proposed amendments to Ecology for a compliance determination within 30 days. The transmittal must include the public comments, response, description of proposed amendments, findings, updated text and map amendments. WAC 173-26-104(3).	Obtain initial determination of compliance or need for amendments from Ecology.		Staff Ecology
May	Council adopts SMP ordinance in public hearing. County submits final record to Ecology.	Final submittal to Ecology per WAC 173-26-110.		Staff
June 2020	Ecology reviews for completeness. Ecology review and approval.	Finish project.		Ecology Staff
July TBD, 2020	Quarterly report due.			Staff