




# SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

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## MEMO

**MEMO DATE:** November 6, 2020  
**TO:** San Juan County Planning Commission  
**CC:** Erika Shook, AICP, DCD Director  
**FROM:** Adam Zack, Planner III   
**SUBJECT:** San Juan County Comprehensive Plan  
Element B.2 Land Use and Rural  
Land Use Issues

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**PURPOSE:** To resolve the remaining issues from the August 7, 2020 Land Use Issue staff memos. This memo provides additional information requested by the Planning Commission during discussion of land use issues on August 21 and September 18.

**BACKGROUND:** The land use issues discussed in this memo were initially presented in three staff memos from August 2020. The original staff memos are available on the County website at:

- Farm Worker Accommodations: <https://www.sanjuanco.com/DocumentCenter/View/20937>
- Vacation Rental Permits: <https://www.sanjuanco.com/DocumentCenter/View/20929>
- Accessory Dwelling Units: <https://www.sanjuanco.com/DocumentCenter/View/20930>

## FARM WORKER ACCOMMODATIONS

### Unresolved Issue from August 7 Staff Memo

Allowing farm worker accommodations on farms that do not participate in open space or current-use taxation programs.

Options:

- A. Allow farm worker accommodations without requiring participation in open space or current-use taxation programs, provided farm owners can demonstrate that they are eligible for those programs. Adopt a new Land Use and Rural Element Policy, and amend SJCC 18.40.230(B)(2) (staff recommendation).
- B. Allow farm worker accommodations without requiring participating in open space or current-use taxation programs, amend Housing Element Policies, adopt a new Land Use and Rural Element Policy, and strike SJCC 18.40.230(B)(2) (Agricultural Resources Committee recommendation).
- C. No Change.

## Planning Commission Follow Up Questions

### How many farms do not participate in the current use farm and agriculture and open space farm conservation program?

Staff compared the Voluntary Stewardship Program (VSP) farm map with a map showing current use farm and agriculture (CUFA) and Open-space farm conservation (OSFC) parcels to determine how many properties are farms that do not participate in these tax programs. The VSP farm map was developed by the VSP watershed workgroup in 2017. It shows an estimate of parcels with existing agricultural activities. The VSP is a good source of information about where farms might be located throughout the County because it pulls together the shared local knowledge of the VSP watershed workgroup, which included members from the agricultural community.

A search for parcels that had both farms on the VSP map and did not participate in the CUFA and OSFC programs brought up about 200 parcels that averaged about 20 acres in size. These parcels are summarized by island below.

- Lopez: 86 parcels
- San Juan: 76 parcels
- Orcas: 42 parcels
- Shaw: 3 parcels
- Waldron: 7 parcels

The data do not show how long these farms have been operating. The VSP farm map was created in 2017, meaning that most of these farms would be in operation for at least three years if they are still active today. They have probably operated long enough to provide records that they would be eligible to participate in the CUFA or OSFC tax programs. This means they would likely qualify for farm worker accommodations under Option A.

### What would an annual certificate of compliance process look like for Farm Worker Accommodations?

An annual certificate of compliance process similar to the vacation rental certificate program would include the following:

1. Issue permit for farm worker accommodations with an annual certification requirement (DCD staff)
2. Develop Certificate of Compliance form (DCD staff)
3. Modify permit tracking software to include Certificate of Compliance (DCD staff)
4. Develop and mail or email annual reminders (DCD staff)
5. Annually complete and submit Certificate of Compliance (Farmer)
6. Review of submitted Certificate of Compliance (DCD staff)
7. Follow-up for non-compliant farms (DCD staff)
8. Code Enforcement when follow-up doesn't result in compliance (DCD staff)

This would increase the complexity of this permit process for farmers and would generate a need for additional staff resources in the Community Development department. Community Development does not currently have the staff resources to add an additional administrative compliance process.

Could we establish a square footage limit for farm worker accommodations?

The County could establish a maximum square footage dimensional standard for farm worker accommodations. The existing farm worker accommodation standards in SJCC 18.40.230(B)(5) limit the amount of land that can be used for accommodations as follows:

5. Accommodations shall be located on no more than one acre of the farm parcel and shall be located so as to minimize the amount of agricultural land loss.

Establishing dimensional standards such as a square footage limit on farm worker accommodations could further limit the amount of farmland converted to a nonfarm use. A square footage limit for farm worker accommodations could be set per-accommodation or for the overall development. The broad definition of farm worker accommodation allows for a wide variety of structures to be used for accommodations, making it difficult to say what an appropriate per-accommodation living area standard should be. Setting a standard for square feet of living area per-development makes more sense because it would allow each accommodation to be configured as needed but would prevent the overall development from exceeding a set size. If the Planning Commission would like to recommend an additional maximum square footage standard, staff recommends a per-development standard.

The standards allow up to ten people to be housed in farm worker accommodations. So, the maximum amount of living area allowed per-development should be thought of in terms of accommodating up to ten people. The State minimum standards for temporary worker housing are fifty square feet per worker if the housing does not include a cooking area and 100 square feet per worker if cooking facilities are included. Using these minimums for reference, the square footage allowed for ten workers should not be less than 500 square feet if there is no kitchen and 1,000 square feet if a kitchen is included.

If a maximum square footage is proposed, staff recommends setting the maximum square footage to 2,000 square feet for the entire development. Capping the amount of development at 2,000 square feet would prevent large structures for farm worker accommodations while still enabling various configurations of accommodations. For example, it would allow ten workers to be accommodated in five 400-square foot tiny homes.

It is unlikely that development will occur at the maximum allowed. The cost of developing worker accommodations that satisfy the water and septic requirements for up to ten workers will probably prevent large scale farm worker accommodations, regardless of the maximum square footage allowed.

## VACATION RENTAL PERMITS

### Unresolved Issues from August 7 Staff Memo:

Should the number of vacation rentals be capped or limited to prevent over-tourism?

Options:

- A. Limit by lottery new permits for vacation rental of residences to no more than X annually.
- B. Limit the total number of vacation rental permits allowed County-wide to the total number permitted as of a specific date.
- C. Limit the number of permits allowed by island to no more than the number permitted as of a specific date.
- D. Limit vacation rentals to parcels with a minimum lot size of X acres.
- E. No Change.

Should vacation rentals be limited in UGAs to avoid overconcentration of vacation rentals and promote availability of long-term rentals?

Options:

- A. Prohibit new vacation rentals in Accessory Dwelling Units and limit them to one per property in the Urban Growth Area.
- B. Allow vacation rentals in commercial designations but prohibit them in all residential designations in UGAs.
- C. No Change.

### Planning Commission Follow Up Questions

What legal options exist for nullifying all existing vacation rental permits?

And

What are legal options for nullifying all existing vacation rental permits to get rid of existing nonconforming vacation rentals?

Municipal Research and Services Center has a comprehensive web page regarding nonconforming uses:

<http://mrsc.org/Home/Explore-Topics/Planning/Development-Regulations/Nonconforming-Uses-Structures-and-Lots-Regulatio.aspx>

Nonconforming uses can be eliminated gradually through attrition by regulations that do not allow the use to change or expand without being brought into compliance with the current regulations. Currently,

San Juan County code and Land Use policies in the Comprehensive Plan allow for changes to or expansion of nonconforming uses. Planning Commission could consider a policy recommendation to Council regarding changes to and expansion of non-conforming uses.

Nonconforming uses can be reduced or eliminated through an “amortization” process. Amortization is a process that allows a set amount of time for the property owner to recover, or amortize, the value of the established use before the use must be discontinued. Amortization is rarely used, and usually used for things like billboards. Staff does not recommend this process because it is very complicated, resource intensive and subject to legal challenges.

The land use must be nonconforming in order to be subject to amortization. This means that amortization is an option if the regulations changed in a way that renders some or all permitted vacation rentals nonconforming as to use or location, such as:

- Prohibiting vacation rentals countywide or in specific land use designations. All permits or those in a specific land use designation would become nonconforming, or
- Establishing a minimum lot size. Any permit on a substandard lot would become nonconforming.

What options exist to address vacation rental permits on properties where the owner has not submitted a certificate of compliance?

The County currently has approximately 160 vacation rental permit holders who have not submitted a certificate of compliance and are therefore not complying with the regulations. The current county code has a process for revoking permits that are not being operated as required by county code. This process includes a requirement for notice of revocation and a hearing, which will be time intensive given the number of non-compliant permits. For vacation rental permits, the Planning Commission could recommend that the code enforcement section of the County code be revised to make it easier to revoke non-compliant permits. This would address comments from the public and Eastsound Planning Review (EPRC).

What about options for an annual license such as a business license that provides a mechanism for an annual fee and expiration at the time of sale of the property?

The existing annual certificate of compliance is similar to a business license. It must be submitted annually, is subject to administrative review, and it will include a fee in 2021. The addition of the fee will make the annual certificate of compliance function even more like a business license. In addition, permits approved after March 23, 2018 have a two-year expiration date. If permittees do not submit their certificates of compliance, their permit automatically expires after two years.

One advantage of the annual certificate of compliance is that the process and administration of the program is already in place. Most permit holders are already familiar with submitting the certificates and staff already has a system for processing them. For this reason, staff does not recommend adding a separate business license process for vacation rentals.

What options exist to stop permits from ‘running with the land’?

Planning Commission could recommend that Council consider a policy that vacation rental permits be only granted to the current property owner.

What is an appropriate level for a vacation rental cap?

If a cap is to be set on vacation rentals, staff recommends setting the cap at the number of existing compliant permits on each island at the time the regulations are amended. As of April 30, 2020, there were 963 vacation rental permits total, 603 of which are compliant. This would need to be accompanied by a temporary moratorium on vacation rental permit applications to avoid an influx of permit applications from property owners attempting to vest permits before the limit goes into effect. A moratorium requires development of a timeline and work program for legislation, as well as progress towards accomplishing the plan.

Determining an appropriate cap below the existing number of compliant permits is difficult to do. There is not a clear threshold where a marginal increase in the number of permits leads to negative outcomes. For example, if the cap were set at 500 permits (103 fewer than existing permits), there is no evidence that this will lead to better outcomes than the 603 existing vacation rental permits.

How many vacation rentals are on parcels smaller than five acres?

There are 603 parcels with compliant vacation rental permits. Of those 603 compliant parcels:

- 465 are smaller than 5 acres. This is 77 percent of all compliant vacation rental parcels.
- 404 are smaller than 3 acres. This is 67 percent of all compliant vacation rental parcels.
- 352 are smaller than 2 acres. This is 58 percent of all compliant vacation rental parcels.
- 257 are smaller than 1 acre. This is 42 percent of all compliant vacation rental parcels.
- 110 are smaller than 0.5 acre. This is 18 percent of all compliant vacation rental parcels.

Reevaluate the number of overnight guests based on the septic system capacity.

The number of overnight guests in vacation rentals is limited by SJCC 18.40.275(B), which states:

No more than two overnight guests per bedroom plus additional three overnight guests shall be accommodated at any one time. The number of bedrooms is determined by the approved building permit for the structure. A guest is a person over two years of age.

For example, a vacation rental in a four-bedroom home can accommodate eleven overnight guests (4 bedrooms x 2 guests per room + 3 additional).

In SJCC 8.16.025, the County has adopted the state standards for on-site sewage systems (OSS) as codified in Chapter 246-272A WAC. The single-family OSS design standards for single-family residences are established in WAC 246-272A-0230(1)(d)(i), which states:

(i) For single-family residences:

(A) The operating capacity is based on 45 gpd [gallons per day] per capita with two people per bedroom.

(B) The minimum design flow per bedroom per day is the operating capacity of ninety gallons multiplied by 1.33. This results in a minimum design flow of one hundred twenty gallons per bedroom per day.

(C) A factor greater than 0.33 to account for surge capacity may be required by the local health officer.

(D) The local health officer may require an increase of the design flow for dwellings with anticipated greater flows, such as larger dwellings.

(E) The minimum design flow is two hundred forty gallons per day.

The Planning Commission can recommend changing SJCC 18.40.275(B) to reduce the number of allowed overnight guests. The overnight guest limit is one of the provisions of the vacation rental code that was considered by the Planning Commission and County Council during the 2018 code amendment process. At that time, the County Council decided to set the limit at two guests per bedroom plus an additional three.

#### Home-share and bed and breakfast residence

Several written comments have suggested regulating a 'home-share' with a live-in caretaker differently than vacation rentals. Comments describe this use as one where a person lives in a home and rents one or two other bedrooms in the home for periods less than thirty days. San Juan County Code already regulates this use as a "bed and breakfast residence". Bed and breakfast residence is defined in SJCC 18.20.020 "B" definitions as:

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

Bed and breakfast residence is allowed by provisional use permit in Village Commercial, Hamlet Commercial, Hamlet Residential, Olga Hamlet Commercial, Olga Hamlet Community Center, Island Center, Master Planned Resort, Rural General Use, Rural Farm Forest, Rural Commercial, Agricultural Resource, Forest Resource, Eastsound Village Residential, Eastsound Rural, and Lopez Village Residential. It is allowed outright in Orcas Village Residential, Eastsound Village Commercial, and Lopez Village Commercial. It requires a conditional use permit in Eastsound Marina. Bed and breakfast residence is prohibited in all other land use designations.

Bed and breakfast residences are subject to the performance standards established in SJCC 18.40.260.

#### **SJCC 18.40.260 Hospitality commercial establishments – Bed and breakfast residences.**

The following standards apply to all bed and breakfast residences:

- A. Bed and breakfast residences shall be restricted to owner-occupied single-family residences. A bed and breakfast residence shall not occur in the same building with any other type of transient accommodation.
- B. No more than two sleeping rooms shall be available for the accommodation of bed and breakfast residence guests.
- C. No more than six guests shall be accommodated at any one time.
- D. Bed and breakfast residences shall be limited to a maximum of three guests when located on a private nonsurfaced road and when the residence is more than 500 feet along the nonsurfaced road.
- E. Guest occupancies shall be limited to no more than 30 consecutive days.
- F. No meals other than breakfast served before noon shall be provided in bed and breakfast residences. Meals may only be served to guests.
- G. The bed and breakfast residence shall be operated in a way that will prevent unreasonable disturbance to area residents.
- H. One off-street parking space shall be provided for each guest room in addition to parking required for the residence.
- I. Approval shall be conditional upon compliance with all applicable building code requirements, state liquor laws, and state sanitation requirements.
- J. No more than one sign is allowed. No sign may be internally illuminated or of reflective materials, or be larger than two square feet. It may contain only the name of the business and the hours of operation.
- K. The owner(s) of a bed and breakfast residence shall certify compliance with performance standards A through J of this section every five years and at the time of sale of the property. Written certification shall be submitted to the permit center in a format approved by the administrator.

## ACCESSORY DWELLING UNITS

### Unresolved Issue from August 7 Staff Memo

Should ADUs be allowed to be exempt from the lottery provided they are permanently restricted for affordable housing?



Options:

- A. Adopt a policy in Element B.2 Land Use and Rural and amend SJCC 18.40.240 Accessory dwelling units (ADUs) to allow detached ADUs not subject to the lottery provided they provide permanently affordable housing.
- B. No Change.

### **Planning Commission Follow Up Questions**

Reevaluate the ADU lottery and performance standards.

At the meeting on September 18, 2020, the Planning Commission approved a motion that:

As part of the Comprehensive Plan update process, the Planning Commission review and reevaluate the current guesthouse ordinance, performance standards, and lottery requirement.

The motion will be forwarded to the County Council for further direction.

## **PUBLIC COMMENTS**

The public has provided comments on farm worker accommodations, vacation rentals, and accessory dwelling units throughout the *Plan* update. Links to all public comments received to date are provided below in date order, with the most recent listed first.

### **Farm Worker Accommodations**

Agricultural Resources Committee (ARC):

[https://www.sanjuanco.com/DocumentCenter/View/21255/2020-09-09\\_PUB\\_ARC\\_FW\\_housing](https://www.sanjuanco.com/DocumentCenter/View/21255/2020-09-09_PUB_ARC_FW_housing)

ARC: [https://www.sanjuanco.com/DocumentCenter/View/19758/2020-01-28\\_PUB\\_AG-Res\\_Com\\_Housing\\_Ele\\_Comments](https://www.sanjuanco.com/DocumentCenter/View/19758/2020-01-28_PUB_AG-Res_Com_Housing_Ele_Comments)

### **Single Comment Letter on Multiple Issues**

Friends of the San Juans: [https://www.sanjuanco.com/DocumentCenter/View/20987/2020-08-15\\_PUB\\_FOSJ\\_LU\\_issues](https://www.sanjuanco.com/DocumentCenter/View/20987/2020-08-15_PUB_FOSJ_LU_issues)

### **Accessory Dwelling Units**

OPAL: [https://www.sanjuanco.com/DocumentCenter/View/20988/2020-08-18\\_PUB\\_Byers\\_LU\\_issues](https://www.sanjuanco.com/DocumentCenter/View/20988/2020-08-18_PUB_Byers_LU_issues)

### **Vacation Rental Comments**

Eastsound Planning Review Committee (EPRC):

[https://www.sanjuanco.com/DocumentCenter/View/21232/2020-10-08\\_EPRC\\_Vac\\_rent\\_rec](https://www.sanjuanco.com/DocumentCenter/View/21232/2020-10-08_EPRC_Vac_rent_rec)

Joe Symons: [https://www.sanjuanco.com/DocumentCenter/View/20991/2020-08-19\\_PUB\\_Symons\\_vacation\\_rental](https://www.sanjuanco.com/DocumentCenter/View/20991/2020-08-19_PUB_Symons_vacation_rental)

Vacation Rental Working Group: [https://www.sanjuanco.com/DocumentCenter/View/20992/2020-08-19\\_PUB\\_VRWG\\_vacation\\_rentals](https://www.sanjuanco.com/DocumentCenter/View/20992/2020-08-19_PUB_VRWG_vacation_rentals)

Naomi Aldort: [https://www.sanjuanco.com/DocumentCenter/View/20911/2020-07-25\\_PUB\\_Aldort\\_vacation\\_rental](https://www.sanjuanco.com/DocumentCenter/View/20911/2020-07-25_PUB_Aldort_vacation_rental)

Julia Wrapp: [https://www.sanjuanco.com/DocumentCenter/View/20910/2020-07-23\\_PUB\\_wrapp\\_vacation\\_rentals](https://www.sanjuanco.com/DocumentCenter/View/20910/2020-07-23_PUB_wrapp_vacation_rentals)

Joe Symons: [https://www.sanjuanco.com/DocumentCenter/View/20021/2020-02-10-PUB\\_Symons\\_VR\\_Petition](https://www.sanjuanco.com/DocumentCenter/View/20021/2020-02-10-PUB_Symons_VR_Petition)

Joe Symons: [https://www.sanjuanco.com/DocumentCenter/View/18284/2019-04-15\\_PUB\\_Symons\\_Airbnb](https://www.sanjuanco.com/DocumentCenter/View/18284/2019-04-15_PUB_Symons_Airbnb)

Joe Symons: [https://www.sanjuanco.com/DocumentCenter/View/18196/2019-03-25\\_PUB\\_Symons\\_Airbnb](https://www.sanjuanco.com/DocumentCenter/View/18196/2019-03-25_PUB_Symons_Airbnb)

Sharon Abreu: [https://www.sanjuanco.com/DocumentCenter/View/19785/2020-02-04\\_PUB\\_Abreu\\_VR\\_Moratorium](https://www.sanjuanco.com/DocumentCenter/View/19785/2020-02-04_PUB_Abreu_VR_Moratorium)

Vacation Rental Working Group: [https://www.sanjuanco.com/DocumentCenter/View/19762/2020-01-28\\_PUB\\_Vacation\\_Rentals\\_Orcas\\_Housing\\_EI\\_HNA](https://www.sanjuanco.com/DocumentCenter/View/19762/2020-01-28_PUB_Vacation_Rentals_Orcas_Housing_EI_HNA)

Lerner Limbach: [https://www.sanjuanco.com/DocumentCenter/View/19753/2020-01-28\\_PUB\\_Limbach\\_VR\\_Moratorium](https://www.sanjuanco.com/DocumentCenter/View/19753/2020-01-28_PUB_Limbach_VR_Moratorium)

Eastsound Planning Review Committee:  
[https://www.sanjuanco.com/DocumentCenter/View/19759/2020-01-28\\_EPRC\\_VR-Recommendations](https://www.sanjuanco.com/DocumentCenter/View/19759/2020-01-28_EPRC_VR-Recommendations)

Michael Johnson: [https://www.sanjuanco.com/DocumentCenter/View/19702/2020-01-16\\_PUB\\_Johnson\\_Vacation\\_Rentals](https://www.sanjuanco.com/DocumentCenter/View/19702/2020-01-16_PUB_Johnson_Vacation_Rentals)

Lynette Wood, Kenneth Gibbs: [https://www.sanjuanco.com/DocumentCenter/View/19655/2020-01-14\\_PUB\\_LWoodKGibbs\\_Vacation\\_Rentals](https://www.sanjuanco.com/DocumentCenter/View/19655/2020-01-14_PUB_LWoodKGibbs_Vacation_Rentals)

Ed Lutz: [https://www.sanjuanco.com/DocumentCenter/View/19632/2020-01-08\\_PUB\\_Lutz\\_VR\\_Concerns](https://www.sanjuanco.com/DocumentCenter/View/19632/2020-01-08_PUB_Lutz_VR_Concerns)

Peggy Elston: [https://www.sanjuanco.com/DocumentCenter/View/19602/2020-01-05\\_PUB\\_Elston\\_VR\\_Concerns](https://www.sanjuanco.com/DocumentCenter/View/19602/2020-01-05_PUB_Elston_VR_Concerns)

Maureen Cleveland: [https://www.sanjuanco.com/DocumentCenter/View/19603/2019-12-29\\_PUB\\_Cleveland\\_VR\\_Concerns](https://www.sanjuanco.com/DocumentCenter/View/19603/2019-12-29_PUB_Cleveland_VR_Concerns)

Joe Symons: [https://www.sanjuanco.com/DocumentCenter/View/17746/2018-12-09\\_PUB\\_Symons\\_vacation\\_rentals](https://www.sanjuanco.com/DocumentCenter/View/17746/2018-12-09_PUB_Symons_vacation_rentals)

Fred Klein: [https://www.sanjuanco.com/DocumentCenter/View/17747/2018-12-09\\_PUB\\_Klein\\_vacation\\_rentals](https://www.sanjuanco.com/DocumentCenter/View/17747/2018-12-09_PUB_Klein_vacation_rentals)

Brian Silverstein: [https://www.sanjuanco.com/DocumentCenter/View/13591/2017-11-30\\_HNA\\_Silverstein\\_VR\\_Comment](https://www.sanjuanco.com/DocumentCenter/View/13591/2017-11-30_HNA_Silverstein_VR_Comment)

Joe Symons: [https://www.sanjuanco.com/DocumentCenter/View/19268/2019-10-27\\_PUB\\_Symons\\_vacasa](https://www.sanjuanco.com/DocumentCenter/View/19268/2019-10-27_PUB_Symons_vacasa)

Millie Vetterlein: [https://www.sanjuanco.com/DocumentCenter/View/19269/2019-10-27\\_PUB\\_Vetterlein\\_VR](https://www.sanjuanco.com/DocumentCenter/View/19269/2019-10-27_PUB_Vetterlein_VR)

Moriah Armstrong: [https://www.sanjuanco.com/DocumentCenter/View/19270/2019-10-28\\_PUB\\_Armstrong\\_VR](https://www.sanjuanco.com/DocumentCenter/View/19270/2019-10-28_PUB_Armstrong_VR)

Deborah Hopkins: [https://www.sanjuanco.com/DocumentCenter/View/12993/2017-08-08\\_PUB\\_Buchanan\\_Tourism](https://www.sanjuanco.com/DocumentCenter/View/12993/2017-08-08_PUB_Buchanan_Tourism)

Lisa Byers: [https://www.sanjuanco.com/DocumentCenter/View/12994/2017-08-07\\_PUB\\_Byers\\_AirBnB](https://www.sanjuanco.com/DocumentCenter/View/12994/2017-08-07_PUB_Byers_AirBnB)

Joe Symons: [https://www.sanjuanco.com/DocumentCenter/View/12997/2017-07-15\\_PUB\\_Symons\\_AirBnB](https://www.sanjuanco.com/DocumentCenter/View/12997/2017-07-15_PUB_Symons_AirBnB)