TO: San Juan County Planning Commission

FROM: Shireene Hale, Planning Coordinator

RE: Simplifying critical area buffer/ tree protection zone/ setback regulations within the Shoreline Master Program

DATE: April 24, 2013

Critical area regulations are a required component of the County's Shoreline Master Program (SMP) and the critical area regulations that were adopted last December were included in the draft SMP amendments that will be considered by the Planning Commission on May 9, 2013. The draft regulations include a site specific approach for determining the size of shoreline buffers and tree protection zones that are necessary to protect water quality and the habitat of aquatic animals. These buffers and tree protection zones are measured from the ordinary high water mark and are based on the type of ground surface, slope, the presence and character of drainageways, and the height of trees in San Juan County. The height of trees is important because there is a relationship between tree height and the amount of leaves, needles, wood and organic material that makes its way to the water and the marine food web.

In addition, to maintain the natural appearance of shorelines and to prevent new development from blocking views from existing residences, the draft regulations propose to retain the existing structural setbacks of 50 and 100 feet from the top of bank (50 feet for areas that have screening vegetation, and 100 feet for areas that do not have screening vegetation). There has been discussion about removing these setbacks from the code, but for areas that don’t have screening vegetation this could allow new residences to be constructed closer to the water than existing residences, potentially blocking the views from existing residences. Based on concern expressed at the recent public meetings, the current proposal is to retain these existing setbacks.

While there are benefits associated with this approach, there are also some drawbacks. As the public becomes more familiar with the critical area regulations that were adopted, we are hearing that some think they are too complex and that figuring out the size and location of required buffers and tree protection zones is too difficult. This is a significant issue given that property owners are expected to conduct their activities, including those that do not require permits, in accordance with the regulations, and they cannot do this unless they know where buffers and tree protection zones are located. Staff are also struggling to apply the new regulations, and because there are so many options, factors and adjustments, it is likely there will
be inconsistencies in application of the regulations, particularly in the calculation of the water quality buffers. Finally, the “top of bank” is a somewhat subjective point for measuring setbacks (defined in the draft regulations as the first major change in the slope, of ten degrees or more, from the OHWM).

The regulations could be simplified by having one combined setback/ water quality buffer/ tree protection zone of 110 feet from the ordinary high water mark, broken into Zone 1 (the first 35 ft. from the ordinary high water mark) and Zone 2 (the area from 35 ft. to 110 ft.). As with the current draft, some tree removal could be allowed in Zone 2 as long as 21% of the tree canopy and all understory vegetation were retained. This would provide screening for aesthetic purposes; help ensure that new residences are not constructed in front of existing residences; and would be consistent with the science associated with water quality buffers, tree height, and support of shoreline ecological functions.

For sites without trees, this approach would result in similar, and in some cases slightly smaller setbacks when compared to the existing code, depending on the difference between ordinary high water mark and the top of the bank. For sites with trees, this approach would result in somewhat larger setbacks, again depending on the difference between ordinary high water mark and top of bank and on the size of the water quality buffer.

Though not as site specific, this approach would be based on the most common potential height of trees in San Juan County, which is 110 feet. Advantages include a) predictability for property owners and/or buyers because they could count on a setback/ water quality buffer based on a readily identifiable point (ordinary high water mark); b) for sites without trees, the setbacks for new residences would be similar to that for existing residences so that views from existing residences would not be blocked; c) more consistent administration by County staff; and d) better compliance and fewer code enforcement complaints because everyone would know where the setbacks/ buffers were located. Disadvantages include an increased number of small lots that would need a variance to allow development within the 110 ft. setback/ buffer.

Attached are examples of different setback and buffer scenarios. All are approximate and before permits were issued it would be necessary to conduct a site visit to determine the top of bank and location of the ordinary high water mark.