



**San Juan County
Community Development & Planning**

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Staff Report

TO: SAN JUAN COUNTY PLANNING COMMISSION
FROM: COLIN MAYCOCK, AICP, PLANNER IV
SUBJECT: 18.90 UDC AMENDMENT PROPOSALS
FOR MEETING OF: AUGUST 20, 2010

ISSUE:

At the end of 2010, the option of amending the San Juan County Unified Development Code (UDC) up to three times a year will cease. If no action is taken this year, changes to the UDC will only be permitted as part of the annual docket. The Community Development and Planning Department (CD&P) proposes disconnecting UDC amendments to the annual docket, so changes that update, clarify and simplify both the process of code revision and the code itself may be taken when the Council consider them necessary and appropriate. CD&P also prepared amendments to Chapter 18.90 to distinguish between legislative and quasi-judicial land use actions

BACKGROUND:

For the last decade San Juan County's primary focus in Long Range Planning has been on gaining GMA compliance in its Urban Growth Areas and completing new subarea and activity center plans. Staff resources have not been adequate to keep pace with code amendments proposed by the public, let alone carry out routine reviews and maintenance of the UDC to ensure that it is clear, concise and consistent with State requirements and current terminology. This situation was exacerbated by layoffs in 2009 which included a planner, two permit coordinators, three support staff and the Department director.

In July, 2010 Council directed the Department that routine maintenance and upkeep of development codes is a top priority. To enable the Department to regain some of its functionality, in 2010 the Council authorized the hiring of a Planner and an office manager, and we are now ready to resume many of the Planning tasks that were postponed as a result of the layoffs.

Lack of clarity in the code has resulted in many appeals and an array of interpretations, some of which change with changes in Department management. This makes it difficult for both citizens and staff to determine what is required.

The approved approach is to take one chapter of the UDC at a time and consider amendments proposed by the public and County staff alongside amendments that update language. This strategy is more efficient than taking one amendment at a time, while still meeting the Charter requirement that each ordinance be limited to one topic.

Amendments proposed for 18.90 are part of this new focus on routine code maintenance and also function as a means to facilitate the process in the future.

PROPOSED AMENDMENTS:

1. At this time, 18.90.010 A.3 identifies site-specific redesignations and density changes as legislative actions; however, such actions have been identified by the Prosecuting Attorney's office as more properly characterized as quasi-judicial. The staff proposal therefore creates a separate section in the code detailing the appropriate procedures to process site-specific redesignations.
2. Proposed amendments to 18.90.020 (E) provide for uniform public notification for all legislative actions. This proposal calls for advertisements in the local newspaper of record, the continued maintenance and expansion of a list serve that receives all of the department's notices and the continued maintenance of a list of all proposed amendments.
3. Currently, 18.90.020 (I) limits UDC amendments to not more than 3 sets per year. The staff proposal offers 3 options for consideration; amendments allowed and enacted at any time, amendments allowed at time but enacted on specific dates twice a year, or amendments allowed at any time, but enacted only on a single specific date.
4. A proposed amendment to 18.90.025 would require the creation of a quarterly update table of proposed UDC and Comprehensive Plan amendments which provides a clear indication of the status of Comprehensive Plan and UDC updates currently under review.
5. The proposed amendments to SJCC 18.90.030 distinguish between area wide amendments to the Comprehensive Plan that are legislative land use actions and site-specific redesignations that are quasi-judicial in nature. Along with the creation of a separate section to deal with site-specific redesignations, there is a paring of approval criteria from 9 to 5 and an elimination of time limits on the submission of proposals.
6. The introduction of more project specific application procedures for quasi-judicial site-specific redesignations.

7. The elimination of SJCC 18.90.040.
8. There are variety of proposed amendments to the subarea planning process including a requirement for clearer funding mechanisms for both the planning process and subsequent maintenance of the adopted plan; a reduction of procedural requirements and a clear statement that all sub area plans must consist of two distinct parts, the first of which consists of the policies and goals of the plan and the second that is a purely regulatory one that is expected to implement to policies and goals in the former element.
9. There are no proposed amendments for the Master Planned Resort section.

ANALYSIS:

1. The proposed amendment to 18.90.020 (I) would allow the Council to amend the UDC when the Council deems it appropriate and when there are resources available, rather than tying the amendment procedures to the annual docket. This proposal would bring San Juan County into correspondence with the majority of counties in Washington State, (36 of the 39) that allow development regulation amendments as and when they are needed. See Table 1. below.

Table 1.

Counties	Any Time	On a predetermined schedule (frequency identified)	Only during the annual comprehensive plan docket process
Adams	X		
Asotin	X		
Columbia	X		
Cowlitz	X		
Garfield	X		
Grant	X		
Grays Harbor	X		
Kittitas	X (discretion of Director)		
Klickitat	X		
Lincoln	X		
Okanogan	X		
Pacific	X		
Pend Orielle	X		

Wahkiakum	X		
Whitman	X		
Yakima	X		
Benton County	X		
Chelan County	X		
Clallam County	X		
Clark County		X - bi-annual	
Douglas County	X		
Ferry County	X		
Franklin County	X		
Island County			X
Jefferson County	X		
King County	X		
Kitsap County	X		
Lewis County	X		
Mason County	X		
Pierce County	X		
Skagit County	X		
Skamania County	X		
Snohomish County	X		
Spokane County	X		
Stevens County	X		
Thurston County	X		
Walla Walla County	X		
Whatcom County	X		
TOTAL	36	1	1

The Comprehensive Plan and the UDC serve two distinct and unequal roles in San Juan County’s current and future land use. The UDC is philosophically subordinate to the Comprehensive Plan. The regulations in the UDC have been developed and adopted in order to enact the vision, goals and policies in the Comprehensive Plan. It is precisely the conceptual primacy of the Comprehensive Plan in relation to the UDC that explains why the GMA (RCW 36.70A.130 2. (a)) requires Comprehensive Plan changes to be considered concurrently as part of an annual docket while leaving the timing of development code amendments to the discretion of local jurisdictions.

As the Comprehensive Plan provides the intellectual infrastructure for the regulations, it is vital that the Comprehensive Plan retains internal consistency. The

GMA requirement to process all Comprehensive Plan amendments concurrently and no more than once a year ensures this. Where changes in the Comprehensive Plan require amendments to the UDC it is both possible and practical to consider them jointly so that consistency within and between both documents may be maintained. By using the Comprehensive Plan as a guide for code revisions it's possible to ensure that the UDC remains consistent with the Comprehensive Plan. Using the UDC as a guide for Comprehensive Plan Amendments and for determining the consistency of each is neither practical nor possible.

In cases where the UDC's language is unclear, the code ceases to serve its appropriate function. In most cases, restoring the code's role does not demand an amendment of the Comprehensive Plan, it requires an adjustment in the code language to more accurately reflect the appropriate policies and goals of the Plan.

As noted above, in the years since the adoption of the UDC, a broad array of code interpretations have been issued by CD&P and the Prosecuting Attorney's office. The interpretations seek to distil the meaning from code provisions that are, at best vague or at worst, subject to multiple interpretations. The proliferation of code interpretations indicates that simply fixing the code language so that its meaning is clear has not been a practical alternative to developing further interpretations.

The requirement that all UDC amendments must be considered as part of the annual docket unnecessarily adds additional complexity to an already intricate and legislatively cumbersome set of procedures.

It is unlikely that the separating the UDC amendments from the Docket procedures will result in a flurry of UDC amendments, current Department resources militate against such an outcome, it will, however, offer the staff some latitude in reducing the number of long standing proposed amendments to the UDC and addressing some of the passages that require 'interpretation.' If trends in the Department's recent history are a valid basis for calculating future behavior then it's instructive to note that since the adoption of Ordinance 50-2008, which allowed up 3 sets of UDC amendments per year, only 2 strictly UDC amendment Ordinances have been brought forward and approved by the County Council.¹

2. The proposed changes to the public notification procedures are premised on the desire to develop more uniform procedures beyond those required by SEPA. Increased procedural homogeneity reduces the possibility of administrative mistakes and ultimately assists the public by providing them with a clear notification framework which doesn't vary depending on the legislative activity.

There are three different public notification procedures currently practiced, the first are those for legislative actions such as the adoption of revisions to the comprehensive plan that require the publication in the newspaper of record no less than 10 days prior to a public hearing with either the planning commission or County Council. As a general rule, legislative land use actions of this nature are preceded by

¹ Ordinances 44 and 45-2009; the Lopez Pool Amendment and the Masterplanned Resort Amendment respectively.

public meetings to gather public input on the proposed action that are separate from the formal adoption process.

Secondly, SJCC 18.90.020 (I) sets out a public notification and hearing procedure that is unique to development code amendments. No more than three times a year proposed amendments are collected into sets; this set of amendments is then announced in a press release and then, no sooner than 10 days later, presented to the Planning Commission for their edification and comments. The protocol of publishing a press release no less than 10 days prior to a presentation is then repeated for the County Council. In this phase of the public notification process no decisions are taken and the presentation is for information purposes only.

The standard public notification process ensues, culminating with a properly noticed public hearing with the planning commission for their comments, amendments and recommendations. This is followed by further properly noticed public hearing with the County Council for a final decision and possible amendments.

The third public notification procedure currently used is that for site-specific redesignations which follows the project permit application procedures set out in SJCC 18.80.030 includes the publication of a notice of application, the notification of all property owners within 300 ft of the property line, placing a notice of application on the site itself and properly noticed public hearings with the planning commission and County Council.

The proposal under consideration homogenizes legislative public notification procedures and clearly distinguishes those from quasi-judicial procedures which, as noted above follow those laid out in SJCC 18.80.030. All proposed public notification procedures are tied to the publication of long range planning project table that is updated quarterly to inform the citizens of the status of different projects currently underway in CD&P. The uniformity of public notification procedures will in the future reduce opportunities for misunderstanding and miscommunication between CD&P and citizens.

As noted above the proposed amendments to 18.90 will create a homogeneous public notification process for legislative actions that include publication of a notice in the newspaper of record, the maintenance of an electronic mailing list that receives copies of all CD&P's notifications, the creation and, finally, the creation and maintenance of a Long Range Planning project update table on CD&P's website that lists all the projects currently underway in the department and their status including projected planning commission and County council hearing dates. The idea is to have something very easy to read and straightforward to update. Following is a example.

Table 2.

Project	Status				
	Research	Drafting	Reviewing	Planning Commission	County Council
Amending SJCC Chapter 18.90 to allow for UDC amendments at any time and distinguish between legislative and quasi-judicial land use decisions.	X April/July	X July	X July/August	August 20	October

3. SJCC 18.90.030, as it's currently configured compounds the error contained in SJCC 18.90.010 A.3, where site-specific redesignations are identified as legislative actions despite their quasi-judicial nature.

Washington law differentiates between land use actions that are legislative and those that are quasi-judicial². Legislative actions, broadly speaking, affect multiple properties and may impact the entire community, such as the creation of the Country Corner LAMIRD and redesignation of the surrounding properties. These actions are not subject to the Appearance of Fairness Doctrine, and as amendments to the Comprehensive plan map, are generally part of the annual docket. These legislative decisions are initially appealed to the Washington Growth Management Hearings Board.

Quasi-judicial land use decisions are focused on specific parcels and the rights and duties of specific individuals and include such decisions as variances and conditional use applications. Quasi-judicial decisions are subject to the Appearance of Fairness Doctrine. This means that the decision makers must not only be unbiased in fact but must also appear to be unbiased. In effect, both planning commissioners and County Councilors must declare, on the record, any potential or actual conflict of interest that may impact their decision and must be aware that they may not engage in any kind of ex-parte discussions on the project with any interested parties. As a decision that is ultimately subject to judicial review, the record must include all factors that were considered as part of the decision. Quasi-judicial decisions, unlike legislative ones, are appealed directly to superior court under the procedures laid out in Land Use Petition Act, (RCW 36.70C).

² RCW 46.32.010, Local land use decisions: Application of the appearance of fairness doctrine to local land use decisions shall be limited to the quasi-judicial actions of local decision-making bodies as defined in this section. Quasi-judicial actions of local decision-making bodies are those actions of the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding. Quasi-judicial actions do not include the legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents or the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance.

As a site-specific redesignation is, by its nature, a quasi-judicial action similar to that of a variance or a conditional use and RCW 36.70B.020 4³ lists site-specific rezones as a project action, we propose using procedures that are similar to those for other project permits. The application procedures focus on the characteristics of the specific property that is under consideration for a redesignation, (reflecting the required elements of project review under RCW 36.70B.030), while the criteria for approval mirror those for an area-wide amendment of the Comprehensive Plan map. While the final decision will be a part of the annual docket, the decision would be appealed to the superior court like other quasi-judicial actions of the Council.

The necessary legal distinction between quasi-judicial and legislative land use actions is blurred in San Juan County because there is only one official map. The single map is called upon to fulfill two distinct and, in some cases, mutually exclusive purposes as the Comprehensive Plan Map (aka the future land use map required by RCW 36.70A.070) and the current land use district (zoning) map. The clearest method to resolve this confusion is to develop separate zoning and future land use maps.

4. 18.90.030 is titled 'Amendments and site-specific redesignations,' however the purpose statement only mentions site-specific redesignations and the following procedures seem to be most appropriate for site-specific redesignations rather than area wide amendments.

The proposed amendments create a separate process for site-specific redesignations and lay out a new procedure for area wide amendments. As area wide amendments must involve multiple parcels and multiple landowners and generally speaking, are likely only to be proposed by the County, the application requirements for detailing the water supply, suitability for agriculture, sewage disposal conditions, natural resources, the availability of existing public services and the names of abutting landowners is not appropriate, nor is the requirement to mail a notice to landowners with 300 ft of the properties boundaries. If such information is needed to complete the analysis for an area wide amendment, County staff can provide it. For example, at some point in the not too distant future, the County is expecting to expand the Eastsound UGA boundaries. This will be done by a legislative action rezoning a variety of properties and, GMA requirements to show the planned availability of sewage and, ideally, water infrastructure notwithstanding, would only require a public notice for the planning commission hearing and another for the County Council.

In both area wide amendments and proposed quasi-judicial site-specific redesignations, we propose the nine criteria site-specific redesignations must currently meet in order to be approved be reduced to five. The reduction in the number of approval criteria is being proposed to eliminate redundancies.

³ RCW 36.70B.020 4 reads: (4) "Project permit" or "project permit application" means any land use or environmental permit or license required from a local government for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations except as otherwise specifically included in this subsection.

Currently, the criteria in SJCC 18.90.030.F.1. (a-i) are as follows;

- a. The redesignation would benefit the public health, safety, or welfare.
- b. The redesignation is warranted because of changed circumstances or because of a need for additional property in the proposed land-use designation.
- c. The redesignation is consistent with the criteria for land-use designations specified in the *Comprehensive Plan*.
- d. The redesignation will not be detrimental to uses or property in the immediate vicinity of the subject property.
- e. The change has merit and value for the community as a whole.
- f. The redesignation, if granted, will not result in an enclave of property owners enjoying greater privileges and opportunities than those enjoyed by other property owners in the vicinity where there is no substantive difference in the properties themselves which justifies different designations.
- g. The benefits of the redesignation will outweigh any significant adverse impacts of the change.
- h. The redesignation is consistent with the purpose and intent of the *Comprehensive Plan* and the UDC.
- i. The redesignation complies with all other applicable criteria and standards of the UDC.

The proposal in the case of area wide amendments expands upon the language in criterion 'b' to include a requirement to demonstrate the need for additional land in the proposed land use designation; to correct mapping errors or because other land use designations are equally or more consistent with the proposal; in the case of quasi-judicial site-specific redesignations, the mapping error consideration is removed as there is a separate provision for the correction of site-specific mapping errors.⁴

The proposal eliminates criteria 'd,' 'e,' 'h' and 'i' on the premise that if the change will benefit the public health, safety and welfare, it will, by definition, have merit and value for the community as a whole; will be consistent with the purposes and intent of the *Comprehensive Plan* as well as the UDC; and must comply with all the applicable criteria and standards of the UDC.

⁴ See, New Section: Site Specific Redesignation Procedures. C.2.Map Error.

Staff proposes to eliminate criterion 'd' because the potential negative impact on neighboring property owners is addressed in 'g' and 'f'.

5. The quasi-judicial procedures for site-specific redesignation, as proposed, lack a specific reference to public notification procedures that differ from those for legislative action. Staff suggests amending of the proposal to include a new section within the quasi-judicial procedures section that would read:

Quasi-judicial site-specific redesignations public notice. Notice of public hearings and meetings to consider quasi-judicial site - specific redesignations shall be provided as set forth in the Comprehensive Plan, SJCC 18.80.030 and RCW 36.32.120.

6. The elimination of 18.90.040 is being proposed as the section is not consistent with state law; RCW 90.58.080 requires that the County complete a comprehensive review and update of the current Shoreline Management Plan by Dec 2012 and every 7 years subsequent. SJCC 18.90.040 B. requires the county to review and amend the SMP at least once every three years, a requirement that cannot be accomplished with the county's limited resources.
7. The proposed changes to the subarea planning process eliminate further demands on the department's limited resources such as the provision of training for planning committees, community surveys and advisory votes. Once the Lopez Village Plan is completed, it's unlikely that the County will undertake any area specific planning activities for brand new UGA's. Existing plans such as the Eastsound Subarea plan will be updated subject to the standard legislative procedures that apply to other Comprehensive Plan changes. Removing the requirement to set up a review committee does not preclude the creation of such, because the Council under charter provision 2.30 (Powers) 2. (c), may establish "non-elective administrative offices...and to establish their powers and responsibilities."

There are a few more LAMIRD plans that the County may wish to complete, such as those for Doe Bay and Westsound but they are not expected to require as much detail as a subarea plan, nor is it expected that they will need a standing committee to review the plan once it is complete.

It is, however, foreseeable that the county will embark upon projects for single issues of county wide concern, such as watershed planning for which a subarea plan may be the ideal regulatory vehicle.

FINDINGS

1. SJCC inaccurately identifies site-specific redesignations as legislative land use actions.

2. Site-specific redesignations should be considered quasi-judicial land use actions.
3. Legislative land use actions require application, public notification and adoption procedures that are distinct from those for quasi-judicial site-specific redesignations.
4. Thirty-six of Washington's thirty-nine counties allow amendments to their development codes when necessary or appropriate. Only San Juan and Island counties tie development code amendments to the annual docket.
5. Allowing the amendment of the County's development code when necessary or appropriate as determined by the County Council will facilitate updating and maintaining the UDC.
6. The public will benefit from uniform public notification procedures for legislative land use actions.
7. The public will benefit from the quarterly posting of a table showing the status of all ongoing long range planning projects.
8. That four of the nine criteria for site-specific redesignations listed in SJCC 18.90.030 F.1 a-i are redundant and may be eliminated.
9. SJCC 18.90.040 is inconsistent with state law and the County's resources.
10. The requirements that ; a) the CD&P Director provide training for the subarea planning committee and general public; b) carry out an area wide survey prior to public hearing to determine the extent of the support for a plan; and c) carry out an advisory vote prior to public hearings for plans outside activity centers are beyond the resources of the department.
11. Amending the quasi-judicial site-specific redesignation section to include specific references to a public notification procedure that is different from that for legislative actions, is appropriate.
12. Eliminating the requirement to create a standing subarea plan review committee following the adoption of a plan does not prevent the Council from appointing one.