



**San Juan County  
Community Development & Planning**

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**STAFF REPORT**

**TO:** San Juan County Council

**THROUGH:** Pete Rose, County Administrator

**FROM:** Shireene Hale, Planning Coordinator

**SUBJECT:** Update of Critical Area Ordinance General Section and Related Amendments

**REPORT DATE:** September 12, 2011

**FOR MEETING OF:** September 20, 2011 (First Touch)  
October 11, 2011 (Second Touch)  
November 1, 2011 (Hearing)

**BACKGROUND:**

When it was adopted in 1990, one of the core requirements of the Washington Growth Management Act (GMA) was the requirement to protect the functions and values of Critical Areas which were formerly referred to as Environmentally Sensitive Areas. These areas include Critical Aquifer Recharge Areas, Frequently Flooded Areas, Geologically Hazardous Areas, Wetlands and Fish and Wildlife Habitat Conservation Areas. San Juan County adopted its first regulations to protect Critical Areas in 1991, and since that time there have been few changes to the regulations.

In 1995 the State legislature amended the GMA, requiring that local governments include the Best Available Science (BAS) in designating and protecting Critical Areas (RCW § 36.70A.172(1) and WAC 365-195-900 – 925). The County was given a deadline of December 1, 2006 to accomplish this and make any necessary changes to bring its regulations into conformance with State law. Under the GMA, Best Available Science means current scientific information derived from research, monitoring, inventory, survey, modeling, assessment, synthesis, and expert opinion that is:

- Logical and reasonable
- Based on quantitative analysis
- Peer reviewed
- Used in the appropriate context
- Based on accepted methods
- Well referenced

With regard to GMA requirements, there has been considerable discussion about how the 14 GMA goals relate to the requirement to protect Critical Areas. In a July 14, 2011 memo, Deputy Prosecutor Jonathan Cain provided guidance on this issue, recommending we focus on satisfying the requirements of the GMA and consider the goals when evaluating various alternatives for meeting the requirements.

The County has been working on this update off and on since 2003, with a concerted effort to complete the update since 2007. As part of the update, over the last year a team of expert consultants was hired to conduct a study of County wetlands, identify and summarize the scientific literature, and assist with review and update of the regulations.

This spring the County Council adopted the *Best Available Science Synthesis, San Juan County, Washington, May 2011* and the underlying literature as the science that will be considered in updating the regulations. Following adoption of the BAS Synthesis, the consultants and staff analyzed the existing regulations and the County Council provided policy direction for use in preparing initial drafts of the amendments.

This portion of the amendments includes regulations that apply to all types of Critical Areas – the General section of the regulations, plus associated definitions and a companion section establishing provisions for financial guarantees.

#### **APPLICABLE STATE LAWS AND REGULATIONS:**

Following are state laws and regulations that are most applicable to general Critical Area regulations:

##### **RCW 36.70A.060(2) Natural resource lands and critical areas — Development regulations.**

(2) Each county and city shall adopt development regulations that protect critical areas that are required to be designated under RCW [36.70A.170](#).

##### **RCW 36.70A.170 Natural resource lands and critical areas — Designations.**

(1) On or before September 1, 1991, each county, and each city, shall designate where appropriate: (d) Critical areas.

(2) In making the designations required by this section, counties and cities shall consider the guidelines established pursuant to RCW [36.70A.050](#).

##### **RCW 36.70A.172 Critical areas — Designation and protection — Best available science to be used.**

(1) In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

(2) If it determines that advice from scientific or other experts is necessary or will be of substantial assistance in reaching its decision, the growth management hearings board may retain scientific or other expert advice to assist in reviewing a petition under RCW [36.70A.290](#) that involves critical areas.

##### **RCW 36.70A.020 Planning goals.**

The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW [36.70A.040](#). The following

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goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations:

- (1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
- (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.
- (3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.
- (4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.
- (5) Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.
- (6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.
- (7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.
- (8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.
- (9) Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.
- (10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.
- (11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.
- (12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.
- (13) Historic preservation. Identify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance.

For shorelines of the state, the goals and policies of the shoreline management act as set forth in RCW [90.58.020](#) are added as an additional goal

RCW 90.58.020 Legislative findings — State policy enunciated — Use preference.

The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being

placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

- (1) Recognize and protect the statewide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long term over short term benefit;
- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline;
- (7) Provide for any other element as defined in RCW [90.58.100](#) deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the department. Shorelines and shorelands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and shorelands of the state no longer meeting the definition of "shorelines of the state" shall not be subject to the provisions of chapter [90.58](#) RCW.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

**WAC 365-195-915**

**Criteria for including the best available science in developing policies and development regulations.**

(1) To demonstrate that the best available science has been included in the development of critical areas policies and regulations, counties and cities should address each of the following on the record:

(a) The specific policies and development regulations adopted to protect the functions and values of the critical areas at issue.

(b) The relevant sources of best available scientific information included in the decision-making.

(c) Any nonscientific information -- including legal, social, cultural, economic, and political information -- used as a basis for critical area policies and regulations that depart from recommendations derived from the best available science. A county or city departing from science-based recommendations should:

(i) Identify the information in the record that supports its decision to depart from science-based recommendations;

(ii) Explain its rationale for departing from science-based recommendations; and

(iii) Identify potential risks to the functions and values of the critical area or areas at issue and any additional measures chosen to limit such risks. State Environmental Policy Act (SEPA) review often provides an opportunity to establish and publish the record of this assessment.

(2) Counties and cities should include the best available science in determining whether to grant applications for administrative variances and exemptions from generally applicable provisions in policies and development regulations adopted to protect the functions and values of critical areas. Counties and cities should adopt procedures and criteria to ensure that the best available science is included in every review of an application for an administrative variance or exemption.

**APPLICABLE SAN JUAN COUNTY COMPREHENSIVE PLAN GOALS AND POLICIES:**

Following are comprehensive plan goals and policies that are most applicable to general Critical Area regulations:

Land Use Element Section B.2.5.B Critical Areas

Goal 1: Protect the functions and values of Critical Areas, giving special consideration to anadromous (migratory) fish.

Goal 2: Allow for use of property to the greatest extent possible while protecting Critical Area functions and values.

Goal 3: Establish Critical Area requirements that are balanced and related to impacts.

Goal 4: Establish funding mechanisms to support Critical Area protection programs including funding for voluntary measures such as education, technical assistance, and cost share programs.

Policies:

1. In conformance with the Washington Growth Management Act, in designating and protecting critical areas establish regulations that protect Critical Areas based on consideration of the best available science.

2. Adopt policies and regulations that, as of the effective date of implementing ordinances, are designed to protect functions and values of critical areas.
3. In addition to regulations, develop voluntary and incentive-based programs to protect the overall functions and values of Critical Areas and other natural resources. Voluntary actions may include education, technical assistance, water conservation, stewardship programs, implementation of best management practices, and restoration activities. One purpose of these programs is to mitigate impacts resulting from authorized exemptions and exceptions.
4. The impacts of land use and development preferably will be managed and mitigated on site.
5. When developing Critical Area regulations, consider the positive effect of all State, Federal and local environmental protection programs.
6. To the extent possible, adopt protection standards that vary based on site characteristics.
7. Encourage the installation of water catchment systems.
8. Implement applicable provisions of adopted Salmon Recovery and Marine Area Stewardship Plans, giving special consideration to anadromous fish.
9. Monitor and enforce permit requirements and Best Management Practices designed to protect Critical Areas.
10. Control or eradicate invasive and/or noxious weeds in conformance with RCW 17.10.
11. Any regulation created pursuant to these policies should include provisions for Reasonable Use Exceptions and nonconforming uses.

#### **REVIEW AND DISCUSSION OF PROPOSED AMENDMENTS:**

The proposed amendments are intended to present a balanced approach to protecting the functions and values of Critical Areas in a way that is consistent with the goals of the GMA and the County Comprehensive Plan. To adequately protect Critical Areas, provide for recreation, and protect the environment including shoreline resources, some exemptions have been removed, some existing provisions have been modified, and several new provisions are proposed (ref. GMA goals 9, 10 and 14, and Land Use Element Section B.2.5.B goal 1 and policies 1, 2, 4 and 9). In cases where the existing regulations were deemed to be unnecessarily restrictive, proposed amendments add flexibility and options, reduce permitting requirements and associated costs, and defer to the regulatory programs of other government agencies (ref. GMA goals 6 and 8 and Land Use Element Section B.2.5.B goal 2 and 3, and policies 5 and 6). Finally, exceptions are included to ensure reasonable use of property and to enable the provision of services and facilities necessary to support existing and new development (ref. GMA goals 1, 2, 3, 4, 5, 6 and 12, and Land Use Element Section B.2.5.B goal 2 and 3, and policies 6 and 11).

Following is a synopsis of the amendments proposed by the Planning Commission.

#### **Chapter 18.20. Definitions.**

The proposed amendments include new and revised definitions of terms used in the amendments, including the terms “Best Available Science”, “critical area functions and values”, “development”, “development area” and “qualified professional”.

### Section 18.30.110. Critical Areas.

**A. Purpose.** The proposed amendments add conformance with GMA requirements to the purpose statement and simplify the existing text.

**B. Applicability.** The applicability section establishes five separate overlays, with regulations that apply to each type of Critical Area and their buffers included in subsequent sections of the code. This is a change from the existing language establishing one overlay that applies in and within 300 feet of a Critical Areas.

For some Critical Areas this change reduces the regulated area (e.g. Geologically Hazardous areas where the proposed area of regulation only extends out 200 feet). This change will help minimize the cost of preparing and reviewing plans, and ensure that review requirements are not excessive.

The proposed amendments also remove the statement implying that Critical Area regulations only apply to activities requiring a County development permit or approval. This change is necessary to allow for protection of vegetation along streams, wetlands and marine shorelines.

**C. Allowable Uses.** The amendments propose removal of this paragraph which is an unnecessary, and in the case of subarea and activity center plans, confusing reference to the requirements of SJCC 18.30, Tables 3.1 and 3.2.

**C (previously D). General Exemptions.** This section identifies exemptions that apply to all types of Critical Areas. It is anticipated that additional exemptions for specific types of Critical Areas (e.g. for agricultural uses in Wetlands and Fish and Wildlife Habitat Conservation Areas) will be considered for inclusion in subsequent sections of the code.

Exemption 1. The proposed revisions to this exemption for emergencies add ~~s-a~~ requirements for prior notice (e.g. a phone call), subsequent review by the Director, and except in the case of catastrophic natural events, mitigation of any negative impacts to Critical Areas ~~must be mitigated~~. Without these provisions, the exemption could be used as an excuse to circumvent protection requirements.

Exemption 2. The proposed amendment expands the list of existing activities and facilities that may continue, and stipulates that under this exemption structures and facilities cannot be expanded, soil erosion must be controlled, disturbed areas must be revegetated, and that actions cannot have an additional negative effect on the functions and values of Critical Areas.

Exemption 3. The proposed amendment removes the existing requirement for prior written approval of utility line installation, and adds requirements to control soil erosion and revegetate disturbed areas.

Exemption 4. The existing exemption allowing establishment of new lawns, landscaping, gardens, orchards and fences in Critical Areas, has been removed because it will not be possible to protect Wetlands and some Fish and Wildlife Habitat Conservation Area functions and values if vegetation in and adjacent to these areas can be removed without limit. It is anticipated that a scaled back version of this exemption may be included in the sections on Wetlands and Fish and Wildlife Habitat Conservation Areas. Provisions for maintenance of existing lawns, gardens and other development areas are included in above exemption 2.

Exemption 5 was modified to remove the blanket exemption for removal of dead trees (which provide important wildlife habitat) and to tighten the requirements associated with other vegetation removal to prevent fire and safety hazards. Without these changes, this exemption is overly broad and could result in excessive removal of vegetation ~~that may be~~ needed to support Critical Area functions and values.

Exemption 6 was removed because it could be interpreted to mean that development on parcels created through exempt processes are not required to meet Critical Area protection requirements, which would not be consistent with ~~the GMA requirements to protect Critical Areas.~~

New exemptions 5-7 are added for forest practice activities regulated by the Dept. of Natural Resources, and for the installation of navigation aids, survey markers and site investigative work, which should not have a negative impact on Critical Areas.

#### **D. Reasonable Use Exception.**

Reasonable Use provisions are important to ensure consistency with GMA goal number 6, and to ensure that application of the regulations will not result in an unconstitutional taking of property. Deputy Prosecuting Attorney Jon Cain provided guidance on this issue (see list of background documents at the end of this report).

It does not appear that the existing code provisions meet the GMA requirement to protect the functions and values of Critical Areas, because ~~they~~ allows a significant amount of development in wetlands, fish and wildlife habitat conservation areas and their buffers, without ~~any~~ mitigation of impacts. [The existing regulations allow development of as much as 80% of a parcel, or ½ acre (whichever is less) in addition to driveways for single family residences].

The approach recommended by the Planning Commission is to keep the existing allowance for development, with ~~some added~~ mitigation requirements for larger developments. These are presented as two options. The “no mitigation” option ~~would allow where~~ a development footprint of up to 1,500 sq. ft. of low impact development ~~could be located~~ in a Critical Area, with an additional 1,000 sq. ft. of low impact development allowed in a Critical Area buffer, for a total of 2,500 sq. ft. of development. The second, “with mitigation” option would allow up to ½ acre of development with full mitigation of impacts to Critical Area functions and values, and with low impact development ~~practices~~ required for projects exceeding 10,890 sq. ft. Both options require that development be located to reduce the impacts on Critical Areas to the maximum extent possible.

Based on preliminary calculations, it appears that ~~small parcels properties~~ with wetlands are the ones most likely to need a ~~R~~reasonable ~~u~~Use ~~e~~Exception. Using data provided by Dr. Adamus, staff identified 122 parcels (developed and undeveloped, not including protected lands) that are more than 50% covered with possible wetlands and ~~that have with~~ less than 2 acres ~~remaining outside the wetland after the wetlands are subtracted from the parcel acreage.~~ The Planning Commission concluded that allowing up to 2,500 sq. ft. of unmitigated development would have a negligible impact on wetland functions and values. Draft wetland regulations have subsequently been completed, and the County GIS staff are performing additional analysis to characterize the impact of wetland ~~protection standards~~ ~~buffers on~~ ~~parcels.~~

The proposed amendments also include revised approval criteria: an application process with administrative review as a Provisional Permit; for development in and adjacent to low importance wetlands (estimated to be 70% of San Juan County wetlands), property owners would be provided with generic mitigation plans for offsetting their negative impacts; and finally, the proposed requirements include recording a copy of the approved exception and site plan, along with a notice to title, to alert future property owners to the parameters of the approval.

This approach is in keeping with Comprehensive Plan goals to allow for use of property to the greatest extent possible, and to have requirements that are related to impacts. If mitigation and low impact development actions are effective, Critical Area functions and values should also be protected.

### E. Public Agency and Utility Exceptions.

Similar to Reasonable Use Exceptions, a Public Agency and Utility Exception is proposed (this is in addition to the general exemption covering some utility installations). The proposed provisions will help ensure consistency with a number of GMA goals which rely on public facilities and services necessary to support urban growth, reduce sprawl, and support affordable housing and economic development (GMA goals 1, 2, 3, 4, 5 and 12).

### F. Critical Area Mitigation Requirements.

This is a new section with requirements that apply when impacts cannot be avoided and mitigation of impacts is authorized and/or required to protect the functions and values of Critical Areas. This would take the place of the mitigation provisions currently located in the Wetlands section of the regulations.

In the absence of an effective program for offsetting negative impacts resulting from new development, having a clear and effective set of mitigation requirements, that includes consideration of Best Available Science, is essential to the protection of Critical Area functions and values. It is anticipated that many property owners will be able to prevent negative impacts (and thus avoid having to deal with mitigation requirements) by designing projects that are "low intensity" and by locating their development on the less sensitive portions of their property. For those that have unavoidable impacts to Critical Areas, these requirements will increase their costs, but there will be a corresponding reduction in cost to neighbors and the public through prevention of damage to natural resources and through reduced need for public monies to restore degraded areas.

**G. Conditions of Approval.** This is a new section authorizing the Director to apply conditions to ensure compliance with Critical Area requirements.

**H. Non-conforming Structures and Uses.** The Planning Commission recommended inclusion of clear standards for structures and uses that do not conform to Critical Area regulations, including interim measures for structures and uses along the shoreline.

### New Section of SJCC 18.80 – Financial Guarantees

This section establishes basic provisions for financial guarantees that are in some cases necessary to ensure completion of required actions. This is a common and effective tool in many jurisdictions, and will help ensure that ~~the~~ whatever regulations that are adopted can be enforced.

### ~~ADDITIONAL ALTERNATIVES FOR CONSIDERATION~~

~~Areas that need additional work include the Reasonable Use Exception application and approval requirements. The Planning Commission made major changes to this section as a group, and the two sections need additional editing to fully implement the intended approach and create a workable process. For example, the only remaining application component for projects affecting low importance wetlands is a generic mitigation plan, and the approval criteria still require mitigation of all unavoidable impacts, even though the proposed approach now allows some development without mitigation.~~

~~In the first paragraph on Reasonable Use Exceptions, staff recommends adding a blank line where the effective date of these regulations will be added, and adding a sentence clarifying that only terrestrial development is allowed under a Reasonable Use Exception (i.e. that it doesn't apply to construction of overwater structures).~~

~~Another issue that was raised at recent public meetings, and that may need to be addressed, is the application of conflicting Critical Area regulations (e.g. a portion of a wetland contains an invasive plant resulting in a lower importance rating, while another portion of the same wetland is of a higher quality requiring greater protection. This could be addressed by stating in the General Section that in case of conflict the more restrictive provision applies.~~

#### ENVIRONMENTAL RISK ANALYSIS:

- As required by the Growth Management Act, San Juan County identified and included the Best Available Science in reviewing and updating these regulations. The science that was used in the review is summarized in the *Best Available Science Synthesis, San Juan County, May 2011* which was adopted by the San Juan County Council in Resolution 22-2011.
- Areas of the proposed regulations that depart from the body of science include general exemptions to allow for emergency actions; operation, maintenance and replacement of existing development, facilities and structures; installation of utility lines; removal of hazardous trees and shrubs; and minor, temporary disturbances such as the installation of survey markers and site investigative work.

To minimize the risk of harm to Critical Areas that might otherwise result from these exemptions, additional requirements have been added such as after-the-fact ~~compliance with~~ mitigation requirements (for emergencies); and requirements ~~to~~for control of soil erosion and promptly revegetat~~ion of~~ disturbed areas.

- Other areas of the proposed regulations that depart from the body of science include the sections on reasonable use and public agency/ utility exceptions. These exceptions will however, only apply to a limited number of the most constrained properties ~~and~~; they are necessary to prevent unconstitutional, regulatory taking of property and to allow for construction of public facilities that support development, ~~and mitigation of impacts is required for much of the development allowed under these provisions.~~ Environmental risk will be minimized through implementation of new mitigation and financial guarantee procedures ~~that are proposed for adoption, and~~ Risk could be further reduced by decreasing the amount of development allowed under the Reasonable Use Exception.
- With adequate staffing, training and technical support, and a will to enforce the proposed regulations, they should, in most cases, protect Critical Areas.

#### DRAFT FINDINGS:

- As required by the GMA, the Best Available Science was identified and included in reviewing the regulations. The science that was used in the review is summarized in the *Best Available Science Synthesis, San Juan County, May 2011* which was adopted by the San Juan County Council in Resolution 22-2011.
- The existing regulations were reviewed, sections that do not adequately protect the functions and values of Critical Areas were identified, and proposed amendments will correct these deficiencies as well as improve consistency with the applicable goals of the Growth Management Act and the San Juan County Comprehensive Plan. Discussion on the proposed amendments was included in the September ~~9~~12, 2011 staff report to the San Juan County Council.
- New mitigation and financial guarantee requirements will help ensure adequate and timely completion of improvements that are necessary to offset unavoidable impacts to the functions and values of Critical Areas.

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- As required by WAC 365-195-915(2), proposed procedures for approval of exceptions include Best Available Science in the review and approval criteria.

### **ADDITIONAL ALTERNATIVES FOR CONSIDERATION**

Areas that need additional work include the Reasonable Use Exception application and approval requirements. The Planning Commission made major changes to this section as a group, and the two sections need additional editing to fully implement the intended approach and create a workable process. For example, the only remaining application component for projects affecting low importance wetlands is a generic mitigation plan, and the approval criteria still require mitigation of all unavoidable impacts, even though the proposed approach intended to allow some development without mitigation.

In the first paragraph on Reasonable Use Exceptions, staff recommends adding a blank line where the effective date of these regulations will be added, and adding a sentence clarifying that only terrestrial development is allowed under a Reasonable Use Exception (i.e. that it doesn't apply to construction of overwater structures).

Another issue that was raised at recent public meetings, and that may need to be addressed, is the application of conflicting Critical Area regulations (e.g. a portion of a wetland contains an invasive plant resulting in a lower importance rating, while another portion of the same wetland is of a higher quality requiring greater protection). This could be addressed by stating in the General Section that in case of conflict the more restrictive provision applies.

### **LIST OF SUPPORTING DOCUMENTS:**

Documents previously provided:

- State laws and regulations associated with the protection of critical areas.
- San Juan County Comprehensive Plan Goals and Policies associated with Critical Areas.
- Staff review and recommendations on General CAO regulations (SJCC 18.30.110).
- December 2, 2008 Reasonable Use Exception memo from Deputy Prosecuting Attorney Jon Cain.
- June 7, 2010 Reasonable Use Exception memo from Deputy Prosecuting Attorney Jon Cain.
- Workshop handouts on Reasonable Use Exceptions from Deputy Prosecuting Attorney Jon Cain.
- *Best Available Science Synthesis, San Juan County, Washington, May 2011.*
- July 14, 2011 memo from Deputy Prosecuting Attorney Jon Cain regarding GMA goals and requirements.
- CAO policy direction on CAO General section from County Council.

New enclosures:

- August 10 and August 19, 2011 Planning Commission draft amendments to general provisions for Critical Areas, minutes and Finding and Recommendations (Exh.PC-3, 4 and 5).
- SEPA checklist (Exh. S-5 ).
- Public comments on proposed amendments (Exh.P-1 through 7).

**Motion: I move to direct staff to prepare the hearing draft of the ordinance (with any changes approved by the Council).**

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