



San Juan County Community Development & Planning

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MEMORANDUM

To: San Juan County Council
Through: Pete Rose, County Administrator
From: Shireene Hale, Planning Coordinator
Re: Council hearing draft of General critical area amendments
For meeting of: December 5, 2011

Following is a summary of the differences between the Planning Commission draft of the General critical area amendments and the Council's draft that will be considered at a public hearing December 5, 2011. This memo supplements the September 12, 2011 staff report on these amendments.

A) Definition of development. To simplify the definition and make it more consistent with other code sections, the reference to a "permanent, man-made change to the land ...", the definition of permanent, and the term "saleable" parcel (which is not used or defined in the code) were removed.

B) Definition of development area. To simplify the definition references to permanently altered conditions and the definition of permanent were removed; and the term "clearing" was added in place of "removal of vegetation" to allow for pruning and limited tree removal in accordance with the code. Though alternate language for this definition was requested by the Council, planning and legal staff were not able to craft something that would not potentially result in negative impacts to critical area functions.

C) A definition of no net loss was added.

D) The definition of qualified geologic professional was updated to be consistent with the language the Council recently approved for Geologically Hazardous Areas.

E) Exemptions (SJCC 18.30.110.C):

1. Emergencies. This exemption was modified to require after-the-fact mitigation and/or restoration when necessary to bring an action, and impacts associated with the action, into compliance with critical area requirements.
2. Operation, maintenance, and repair of existing facilities. The term "revegetated" is replaced with "stabilized", which is a more appropriate term for things like driveways.
3. Electrical facilities were removed from the exemption for underground utility lines because they could include large above ground facilities that might adversely impact critical areas.
4. Defensible space. To allow for defensible space, a provision was added allowing the removal of up to 30 feet of vegetation around buildings existing on the effective date of the regulations. Some CD&P staff have expressed concern that this would allow removal of large trees which could conflict with the screening requirements in SJCC.18.50 (the shoreline master program). As an alternative, this provision could be scaled back to allow removal of ground cover and ladder fuels (shrubs and lower branches of trees), but not large trees unless they were a falling hazard.

5. Exempt land divisions. Language was added clarifying the provisions for exempt land divisions and parcels created through those divisions.

- F) Reasonable Use Exceptions.** This section was modified to improve clarity and better implement the provisions recommended by the Planning Commission. Also, for larger parcels a provision was added allowing up to 10% of the parcel to be developed with mitigation of impacts. References to a County developed, standard mitigation plan were removed because wetlands and potential impacts to them are too varied and site specific to be handled with a one-size-fits-all approach to mitigating impacts. The Prosecuting Attorney's office has declined to approve the ordinance as to form because it includes the "no mitigation" option that will result in a loss of critical area functions and values, which is not consistent with the Growth Management Act requirement to protect critical areas.
- G) Optional Public Utility/ Agency Procedures.** This section was revised to be a P/C use, with applications processed as either a Provisional or Conditional use depending on the slope and scale of the project. On advice of legal counsel, the following two approval criteria were removed:
- The standard application of critical area regulations would preclude the proposed project; and
 - Where possible, proposed development areas are located in such a way as to avoid impacts to the functions and values of critical areas, considering the Best Available Science.
- H) Mitigation Requirements.** This section was modified to require that the decision maker for the underlying action also review and approve the various components of the mitigation plan (in some cases this would be the CD&P Director and in some cases this would be the Hearing Examiner). Requirements for mitigation plans were also revised to state that plans must be appropriate for the scale and scope of the project, and adequate to determine that the application is in conformance with the approval criteria.
- I) Nonconforming Structures and Uses.** This section was revised to include activities and to allow expansion within the existing development area if the noted conditions are met.
- J) SJCC 18.80 Permit Processes and Financial Guarantees.** Permit processes associated with critical areas were updated and clarified. The section on financial guarantees was modified to reflect an exemption in State law (state and local government agencies are not required to provide financial guarantees).
- K) Clarity and internal consistency.** Where necessary, some amendments were added to improve clarity and internal consistency without changing intent or requirements.