

## Review and Recommendations on SJCC 18.30.110 – General Regulations Applicable to All Critical Area Types

Note: This section involves general policy and administration of all sections of the Critical Area regulations. Scientific references are included in the subsequent analysis of each section of the regulations and in the adopted Best Available Science Synthesis.

### Review and Recommendations on Regulations.

<u>General Section</u> Most Relevant Laws, Regulations and Policies	Existing Local Regulations (items in bold are of concern)	Analysis of Existing Regulations	Options for Addressing Problems (items in bold are recommended)
<p>RCW 36.70A.060, 170, and 172 (general requirements to consider the BAS, protect the functions &amp; values of Critical Areas, and give special consideration to conservation and protection of anadromous fisheries.</p> <p><b>County Comprehensive Plan Goals and Policies.</b></p> <p>Goal 1: Protect the functions and values of Critical Areas, giving special consideration to anadromous (migratory)</p>	<p><b>18.30.110 Critical Areas.</b></p> <p><b>A. Purpose.</b> The critical areas overlay district is adopted to implement the policies of the Comprehensive Plan for the protection of critical areas. The purpose is to protect the functions and values of critical areas and to protect people, public and private property, and natural ecosystems. There are five types of critical areas as defined in SJCC 18.30.120 through 18.30.160:</p> <ol style="list-style-type: none"> <li>1. Geologically hazardous areas.</li> <li>2. Frequently flooded areas.</li> <li>3. Critical aquifer recharge areas.</li> <li>4. Wetlands.</li> </ol>	<p><b>1. Purpose.</b> The existing purpose statement covers the basic legal requirements. It could be enhanced by citing compliance with the State Growth Management Act (GMA) as part of the purpose.</p> <p><b>2. Applicability – Distance from Critical Area.</b> In some cases, to be consistent with BAS, protection measures may be necessary more than 300 feet from an applicable activity.</p> <p><b>3. Applicability – Land Uses Where Permit is Not Required.</b> To protect Critical Areas, some land uses that do not require a permit will need to be regulated by the code (e.g. removal of buffer vegetation or habitat of protected species). The details of what will be allowed will be included in subsequent sections of the regulations, however this statement should be removed from the</p>	<p><b>1. Purpose.</b></p> <p>Option A. No change.</p> <p><b>Option B. Add compliance with the GMA to the purpose statement.</b></p> <p>Option C. Consider adopting the purpose statement from the June 3, 2009 draft ordinance developed by the CAO Citizen Review Committee.</p> <p><b>2. Applicability – Distance from Critical Area.</b></p> <p>Option A. Replace 300 feet with 450 feet, which is anticipated to be the greatest distance where land uses may need to be regulated to protect the functions and values of a Critical Area (for highly intense land uses, next to sensitive wetlands, with a minimal level of risk).</p> <p><b>Option B. Replace the reference to 300 feet with “this overlay district provides regulations for land use and development in and near Critical Areas as defined in this code”, and deal with the protection standards, and how far out they apply, in the subsequent</b></p>

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<p>fish.</p> <p>Goal 2: Allow for use of property to the greatest extent possible while protecting Critical Area functions and values.</p> <p>Goal 3: Establish Critical Area requirements that are balanced and related to impacts.</p> <p>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.</p> <p>Policies (2.5.B.1–11): 1. In conformance with the Washington Growth Management Act, in designating and</p>	<p>5. Fish and wildlife habitat areas.</p> <p><b>B. Applicability.</b> This overlay district provides regulations for land use and development in and within <b>300 feet</b> of critical areas.</p> <p><b>Any land use or development activity which is subject to a development permit or approval under this code may be undertaken on land located within or containing a critical area or its buffer only if the provisions of this section are met.</b> The appendices are incorporated herein by reference. A copy is on file at the auditor's office and planning department.</p> <p><b>C. Allowable Uses.</b> All uses shall be subject to requirements specified in Tables 3.1 and 3.2 in SJCC 18.30.030 and 18.30.040 for the underlying district, unless otherwise specified in this code.</p> <p><b>D. General Exemptions.</b> The following uses and activities</p>	<p>General Section.</p> <p><b>4. General Exemptions – Establishment of new lawns, gardens and orchards.</b> Though some limited provisions may be possible for establishing new lawns, gardens and orchards in Critical Areas or their buffers, an unlimited exemption will result in negative impacts to Critical Area functions and values.</p> <p><b>5. General Exemptions – Removal of Vegetation.</b> This section is overly broad and has the potential to allow excessive removal of vegetation and snags that may be needed for wildlife habitat or protection of water quality, when removal may not be necessary to protect people and their structures.</p> <p><b>6. General Exemptions – Exempt Land Divisions.</b> This exemption has the potential to allow creation of new lots that cannot meet Critical Area protection standards.</p> <p><b>7. General Exemptions – Other</b></p>	<p>sections of the Critical Area regulations.</p> <p><b>3. Applicability – Land Uses Where Permit is Not Required.</b></p> <p><b>Option A. Remove the statement implying that Critical Area protection requirements only apply to land uses and development that are subject to a permit or approval.</b></p> <p><b>4. General Exemptions – Establishment of new lawns, gardens and orchards.</b></p> <p>Option A. Remove the blanket exemption for establishment of new lawns, gardens and orchards.</p> <p><b>Option B. Remove the blanket exemption for establishment of new lawns, gardens and orchards, and if it can be accomplished without negatively affecting the Critical Area functions and values, consider including limited provisions for these areas in the protection standards.</b></p> <p><b>5. General Exemptions – Removal of Vegetation.</b></p> <p><b>Option A. Replace with an exemption allowing removal of trees that are a hazard to people, domestic or commercial livestock, and structures that house them. Also include an exemption for removal of trees and shrubs immediately adjacent to structures to allow for defensible space (get</b></p>

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<p>protecting critical areas establish regulations that protect Critical Areas based on consideration of the best available science.</p> <p>2. Adopt policies and regulations that, as of the effective date of implementing ordinances, are designed to protect functions and values of critical areas.</p> <p>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,</p>	<p>are exempt from the provisions of this section; provided, that they are otherwise consistent with other sections in this code:</p> <p>1. Emergencies that threaten the public health, safety, and welfare. An emergency is an unanticipated and imminent threat to the public health or safety or to the environment which requires immediate action within a period of time too short to allow full compliance with this code.</p> <p>2. Routine maintenance and repair of existing structures, utilities, sewage disposal systems, water systems, drainage facilities, ponds, public and private roads, and driveways.</p> <p>3. Installation, construction, replacement, or modification of (a) electrical lines or electrical facilities; (b) telecommunication lines; or (c) water and sewer distribution lines within private</p>	<p><b>Exemptions.</b> Other exemptions that could be considered include agricultural activities (assuming the County elects to participate in the alternative program that is being established pursuant to ESHB 1886); forest practices regulated by the State; installation of navigation aids and survey markers; site investigative work associated with building and land use applications; and measures to control noxious weeds.</p> <p><b>8. Reasonable Use.</b>  See discussion in December 2, 2008 and June 7, 2010 memos from Deputy Prosecuting Attorney Jonathan Cain, and the materials he provided for the February 2010 workshops.</p> <p>Reasonable use exceptions are provided as a last resort, to ensure that regulations do not result in a “taking” of “all economically viable use of a property”. The courts have stated that evaluating economically viable use in the context of a takings claim, is a</p>	<p>recommendation from Firewise program).</p> <p><b>6. General Exemptions – Exempt Land Divisions.</b></p> <p><b>Option A. Require that all newly created parcels be capable of meeting Critical Area protection standards (remove the existing exemption). Also add a statement to the land division standards (SJCC 18.70) making it clear that all parcels, including those created through exempt mechanisms, must be capable of meeting Critical Area protection requirements (e.g. to qualify for the exemption all lots must have a building site meeting required buffers and setbacks).</b></p> <p><b>7. General Exemptions – Other Exemptions.</b></p> <p>Option A. Consider including some or all of the general exemptions proposed in the June 3, 2011 draft critical area regulation developed by the CAO Citizen Review Committee.</p> <p><b>8. Reasonable Use.</b></p> <p>Option A. Establish the decision maker and procedures for approving reasonable use exceptions. Retain existing guidance for reasonable use, subject to the mitigation sequence to ensure no net loss of critical area functions or values (In the mitigation sequence, which is often used in wetland regulations, impacts to Critical Areas must be avoided or minimized, and if that isn’t</p>

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<p>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.</p> <p>4.The impacts of land use and development preferably will be managed and mitigated on site.</p> <p>5.When developing Critical Area regulations, consider the positive effect of all State, Federal and local environmental protection programs.</p> <p>6.To the extent possible, adopt protection standards that vary</p>	<p>or public rights of way; provided, that a prior written statement of exemption is obtained from the administrator.</p> <p><b>4. Establishment and routine maintenance and repair of lawns, landscaping, gardens, orchards, and fences accessory to a single-family residential use;</b> provided, that where a regulated wetland or its buffer is present the provisions of SJCC 18.30.150, Wetlands, shall apply.</p> <p><b>5. Removal of hazardous, diseased, or dead trees and vegetation and, when necessary, measures to control a fire or halt the spread of disease or damaging insects.</b></p> <p><b>6. Land divisions exempt from the land division requirements as specified in SJCC 18.70.010(C).</b></p> <p><b>E. Reasonable Use Exception.</b> If the application of this section would result in</p>	<p>fact specific analysis, and little guidance appears to be available on what constitutes “all economically viable use”.</p> <p>With regard to Critical Area regulations, legal counsel has advised that the County has broad discretion to develop a reasonable use exception, provided Best Available Science is considered and Critical Area functions and values are protected. The model code provided by the Dept. of Commerce, does not specify a particular amount of development that is guaranteed.</p> <p>Regardless of the approach selected, a review and approval process needs to be established in the code.</p> <p><b>9. Procedures for review, oversight and enforcement of mitigation, restoration and enhancement requirements.</b> To be effectively enforced, procedures are needed for projects which must take action to offset unavoidable impacts to Critical Area functions and values. Some procedures are already included in the</p>	<p>possible then restoration or enhancement is required to provide substitute resources).</p> <p>Option B. Establish the decision maker and procedures for approving reasonable use exceptions. Reduce the maximum allowable reasonable use development in a Critical Area or its buffer to be more in line with other jurisdictions that provide a specific value (e.g. 2,500 square feet of developed area).</p> <p>Option C. Establish the decision maker and procedures for approving reasonable use exceptions. Adopt a sliding scale for allowable development under the reasonable use exception, such as that recommended by the CAO Citizen Review Committee in the June 3, 2009 draft regulations (ranges from ≈ 5,500 s.f. – 10,900 s.f. plus the area covered by a driveway).</p> <p><b>Option D. Establish the decision maker and procedures for approving reasonable use exceptions. Pattern reasonable use exceptions after the Dept. of Commerce model code and recommendations with the hearing examiner making the decision. Decision criteria could include:</b></p> <ul style="list-style-type: none"> <li><b>a. The application of Critical Area regulations would otherwise deny all reasonable use of the property.</b></li> <li><b>b. No other reasonable use has less impact on the Critical Area.</b></li> <li><b>c. The proposed development is the minimum necessary to allow for reasonable use of the property.</b></li> </ul>

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<p>based on site characteristics.</p> <p>7. Encourage the installation of water catchment systems.</p> <p>8. Implement applicable provisions of adopted Salmon Recovery and Marine Area Stewardship Plans, giving special consideration to anadromous fish.</p> <p>9. Monitor and enforce permit requirements and Best Management Practices designed to protect Critical Areas.</p> <p>10. Control or eradicate invasive and/or noxious weeds in conformance with RCW 17.10.</p>	<p>denial of all reasonable use of a property (<i>i.e.</i>, denial of all economically beneficial or productive use of the land), development may be allowed which is consistent with the general purposes of this code, this section, and the public interest. <b>“Reasonable use,” for the purposes of this section, shall include improved area(s) totaling not more than 21,780 square feet or 80 percent of the parcel, whichever is less, on any parcel which constituted a legal building site prior to the adoption of these regulations. Within the improved area(s) the critical area may be cleared, filled, drained, excavated or otherwise altered by development. All improvements, including parking and driving areas, with the exception of a driveway for a single-family residence, shall be included in the improved area(s) unless the improvements</b></p>	<p>Wetlands section of the code, and they can be used as a starting point. These procedures will however, also be needed for mitigation of unavoidable impacts to Fish and Wildlife Habitat Conservation Areas, and they may be needed for dealing with impacts to other Critical Areas.</p> <p><b>10. Critical Area Stewardship Plan (CASP).</b> Some jurisdictions allow for the submission of completely site specific plans as an alternative to protecting Critical Areas though compliance with standard requirements. A proposal for such an approach was included in the June 3, 2009 draft ordinance. While providing maximum flexibility, this is also the most costly and time consuming approach. With the current focus on standardized site specific regulations, the CASP approach may not be necessary.</p> <p><b>11. Interim local standards for</b></p>	<p><b>d. The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant/ property owner after the effective date of this ordinance or its predecessor.</b></p> <p><b>e. The proposal does not pose an unreasonable threat to the public health, safety or welfare on or off the property.</b></p> <p><b>f. The proposal will not result in a net loss of Critical Area functions or values considering the Best Available Science.</b></p> <p><b>g. The proposal is consistent with other applicable regulations and standards. Note: Staff recommends this option because it is consistent with the advice of legal counsel and with a site specific approach to applying Critical Area protection measures.</b></p> <p><b>9. Procedures for review, oversight and enforcement of mitigation, restoration and enhancement requirements.</b></p> <p><b>Option A. Transfer the procedures for review and oversight of mitigation, restoration and enhancement activities from the Wetlands section to the General section of the code, incorporate recommendations from Dr. Adamus, and consider incorporating recommendations from the June 3, 2009 draft ordinance.</b></p> <p><b>10. Critical Area Stewardship Plan (CASP).</b></p> <p>Option A. Include an option whereby property owners can submit a site specific plan supported by BAS as an alternative to meeting the standard Critical Area Protection requirements.</p>

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<p>11. Any regulation created pursuant to these policies should include provisions for reasonable use exceptions and nonconforming uses.</p>	<p>are otherwise exempt under this section. Reasonable use exceptions from the provisions of this section shall be subject to all of the following criteria:</p> <ol style="list-style-type: none"> <li>1. The application of this section would deny all reasonable use of the property so that there is no reasonable use, other than that proposed, with a lesser impact on the critical area;</li> <li>2. The proposed development does not pose an unreasonable threat to the public health, safety or welfare; and</li> <li>3. Any proposed improved area shall be located in such a way as to minimize the impact to the critical area.</li> </ol>	<p><b>shoreline non-conforming uses and structures.</b> San Juan County currently does not have local standards for non-conforming uses and structures regulated under the shoreline master program, and instead defaults to the State standards outlined in WAC 173-27-080. There appears to be wide support for adopting local standards similar to those found in SJCC 18.40.310 and 18.80.120. For issues associated with Critical Area regulations, interim local standards could be included in the the Critical Area Ordinance, with the standards being transferred to the shoreline section of the code when it is updated.</p>	<p><b>Option B. Assuming standardized site specific regulations are established, do not include a CASP type option.</b></p> <p><b>11. Interim local standards for shoreline non-conforming uses and structures.</b></p> <p>Option A. Retain the existing code which defaults to the State standards for nonconforming structures and uses in the shoreline.</p> <p><b>Option B. Adopt interim local standards for shoreline nonconforming uses and structures, with final standards adopted in the shoreline sections of the code as part of the comprehensive update which is currently underway.</b></p>