

Ordinance No. _____ - 2012

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AN ORDINANCE REGARDING GENERAL REGULATIONS FOR CRITICAL AREAS; AMENDING SAN JUAN COUNTY CODE SECTIONS ~~18.20~~, ~~18.30.110.020~~, ~~18.20.030~~, ~~18.20.040~~, ~~18.20.140~~, ~~18.20.170~~, ~~18.30.110~~, ~~18.80.010~~, ~~18.80.020~~ and ~~18.80.090~~, AND ADDING A NEW SECTION TO SJCC 18.80

November 22, 2011 Draft

BACKGROUND

- A. The County was scheduled to review, and where necessary, update its development regulations regarding critical areas by December 1, 2006, to ensure consistency with RCW 36.70A (the Growth Management Act, or GMA). A review of the County's critical areas regulations, including General regulations, was adopted in Resolution 98-2005. Although some updates to critical areas regulations were adopted in Ordinance 15-2005, further action was reserved for a later time.
- B. San Juan County adopted a public participation plan for the revision of its development regulations regarding critical areas in Resolution 56-2006; the plan was most recently updated in Resolution 32-2011.
- C. The applicable science related to critical areas was reviewed and is summarized in the *Best Available Science Synthesis for San Juan County, May 2011*; which was adopted in Resolution 22-2011.
- Additional review of the County's General regulations for critical areas was undertaken and is described in the document "Review and Recommendations on SJCC 18.30.110 – General Regulations Applicable to all Critical Area Types", dated June 2, 2011.
- D. Discussion and an analysis of the risk associated with the proposed amendments were included in the September 12, 2011 staff report to the San Juan County Council.
- E. The County now desires to complete the review and update of its development regulations regarding General provisions for critical areas previously due in 2006 as required by RCW 36.70A.130.
- F. An environmental checklist was prepared evaluating potential effects of the proposed amendments and a notice of Determination of Nonsignificance was issued on July 26, 2011 and published on July 27, 2011. The notice was provided to federal, state and local agencies in accordance with San Juan County Code 18.80.050 and WAC 197-11-340.
- G. The 60-day notice on the proposed amendments to the General critical area regulations, as required by RCW 36.70A.106, was provided to the Washington State Department of Commerce on August 24, 2011, and was assigned Material ID No. 17298.
- H. Efforts to involve and inform the public included:
- I. Request for Best Available Science (BAS) submittals from the public in June-July 2010.
 - II. Public workshops on San Juan Island, Orcas Island, and Lopez Island in September 2010, to address "hot button" issues.
 - III. Joint Planning Commission/County Council public workshops in February 2011, to review and discuss the first draft Best Available Science Synthesis and County Council workshops in May 2011 to discuss the second draft. Public comment was accepted at all meetings.
 - IV. Public workshops in June 2011 to discuss the review of existing regulations and determine policy direction for the revision of regulations.

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- V. Town hall meetings to discuss the regulations were held on San Juan, Orcas and Lopez Islands in August 2011.
- VI. Advertisements of Planning Commission and County Council meetings in local papers, including online media.
- VII. Notice of the availability of the proposed ordinance and staff report was e-mailed to residents, property owners, and interested parties who requested to be kept informed prior to the Planning Commission and County Council hearings.

I. The Planning Commission conducted a duly advertised public hearing on August 10 and August 19, 2011.

J. The County Council conducted a duly advertised public hearing on December 6~~5~~, 2011.

K. The County Council makes the following findings:

- I. The Best Available Science was included in developing the proposed amendments, which will protect critical areas in conformance with the requirements of the Growth Management Act.
- II. Clarifying that the purpose of the regulations includes conformance with the Growth Management Act will enhance consistency with those requirements.
- III. Revising the applicability provisions to establish five separate critical area overlay districts will help prevent over regulation and help ensure consistency with GMA goals 6 (property rights), and Comprehensive Plan Land Use Element Section B.2.5.B goals 2 and 3 and policy 6. Expanding the applicability to include activities that are not subject to a permit will help prevent impacts.
- IV. Removing the unnecessary cross-reference to Tables 3.1 and 3.2 will reduce confusion, particularly with regard to areas of the County that are governed by a subarea or activity center plan that takes the place of Tables 3.1. and 3.2.
- V. Exemptions to critical area regulations are necessary to ensure reasonable and cost effective administration of the regulations. Some activities are exempt because they are not expected to have adverse impacts on critical areas; other activities are exempt but require mitigation. Although the Best Available Science generally recognizes avoidance of critical areas as the preferred option for protecting critical areas, mitigation is also an option described in the Best Available Science and is appropriate in certain circumstances. For certain exempt activities, mitigation is required to limit the risks to critical areas; these risks are further limited by the requirement for monitoring. The rationale for changes to exemptions is as follows:
 - a. Emergencies. Emergencies are inevitable, and it is necessary to allow for expedient action to deal with them. Though there is some potential risk to critical areas, the proposed changes will help reduce that risk by ensuring that the effects of emergency actions are mitigated;
 - b. Operation, maintenance and repair of existing facilities and development areas. An exemption is necessary to ensure that existing development can be maintained. To help reduce risk to critical areas, new requirements are added that preclude expansion and require that: soil erosion be controlled, disturbed areas be revegetated, and actions do not have an additional adverse effect on critical areas;
 - c. Underground Utilities. In San Juan County underground utilities are small in scale. With a year-round growing season, associated disturbed areas can be easily and quickly revegetated with no long term adverse effects to critical areas. To reduce risk, the exemption of electrical facilities (which could include things like substations) has been removed. Also removed is an unnecessary plan review procedure for the installation of utility lines;
 - d. Establishment of new lawns, gardens and orchards. To reduce risk to critical areas, an overly broad exemption allowing the establishment of new lawns, gardens and orchards is removed;
 - e. Hazard trees. To prevent harm to people and property, an exemption is needed to allow the removal of hazard trees. According to the BAS, some tree removal is possible without adversely affecting critical areas, which includes the removal of a single tree to prevent a hazard. Risk is

minimized by narrowing the scope of the existing exemption for removal of hazardous trees to better protect critical areas;

f. Exempt Land Divisions. To reduce risk to critical areas, an exemption for land divisions occurring through exempt processes is removed. This will help ensure that all new parcels can meet critical area protection requirements;

g. State regulated forest practices. A new exemption is added to eliminate unnecessary duplicate regulation of forest practice activities that are governed by State regulations. This should not increase risk to critical areas because any potential risks are addressed through application of the State regulations;

h. Navigation aids and survey markers. An exemption is added to allow for the installation of navigation aids and survey markers which are small in scale and should have no negative effect on critical areas; and

i. Site investigative work. An exemption is added to allow for site investigative work associated with land use applications. As with underground utility installation, this work in the San Juans is small in scale, and disturbed areas can be promptly revegetated so there will be no lasting adverse effects on critical areas.

- VI. A workable reasonable use exception is essential to retain a good faith relationship with property owners and prevent regulatory takings. Consistent with the Best Available Science and the County's desire to minimize risk to critical areas, the approval criteria for reasonable use exceptions first requires avoidance of adverse impacts to critical areas. If impacts cannot be avoided, then for larger developments (those over 2,500 s.f.), mitigation of impacts is required. Allowing reasonable use exceptions does increase the risk to critical areas, but this risk will be limited through the administration of new mitigation, monitoring, adaptive management and financial guarantee requirements. Revising the reasonable use provisions will:
- a. Prevent regulatory taking of property;
 - b. Clarify the review and approval process;
 - c. Provide an easier permitting process for development of less than 2,500 square feet, which will help minimize costs to property owners, and will help support other GMA goals;
 - d. Add consideration of the BAS in the review and approval criteria for reasonable use exceptions as required by WAC 365-195-915(2).
 - e. For larger development projects, require mitigation of impacts to the functions and values of critical areas. The proposed provisions will help ensure consistency with GMA goals 1, 2, 4, 5 and 6, Comprehensive Plan Land Use Element Section B.2.5.B goals 2 and 3 and policy 11.
- VII. Adding optional procedures for public agencies and utilities will help ensure that those organizations can provide the services necessary to support existing and new development. This will help ensure consistency with GMA goals 1, 2, 3, 4, 5 and 12.
- VIII. Transferring the procedures for mitigation of impacts from the wetlands section of the regulations into the General section establishes a single procedure for mitigating impacts to critical areas. Updating the provisions should improve protection of critical area functions and values.
- IX. Adding provisions for nonconforming structures and uses will help ensure consistency with GMA goals 4, 5, and 6 as well as Comprehensive Plan Land Use Element Section B.2.5.B goals 2 and 3 and policy 11.
- X. Adding provisions for financial guarantees will help ensure adequate and timely completion of improvements that are necessary to offset impacts to the functions and values of critical areas. The proposal does not apply to any state agency or unit of local government and is consistent with RCW 36.32.590.
- XI. This ordinance completes the update to the County's development regulations regarding General provisions for critical areas as required by RCW 36.70A.130 and based upon the review and evaluation described in Resolution No. 98-2005 and the additional review in the "Review and Recommendations

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on SJCC 18.30.110 – General Regulations Applicable to all Critical Area Types”. The County Council agrees with the findings and recommendations of the Planning Commission, but finds that some modifications are needed for clarity and consistency. These changes are included in this ordinance.

XII. After considering the evidence in the record, the County Council approved the ordinance.

NOW, THEREFORE BE IT ORDAINED by the County Council of San Juan County, State of Washington, as follows:

SECTION 1. SJCC Section 18.20.020 (“B” definitions) and Ord. 52-2008 § 2 are each amended to read as follows:

“Backshore” means a berm, together with associated marshes or meadows on marine shores landward of the ordinary high water mark that has been gradually built up by accretion.

“Barge landing site” means any location established for the purpose of landing a barge (including powered landing craft) for more than a single, temporary use. (See also “log transfer site.”)

“Base flood” means the flood having a one percent chance of being equaled or exceeded in any given year; also known as the “100-year flood,” as shown on the FIRM maps.

“Base flood elevation” means the elevation for which there is a one percent chance in any given year that flood levels will equal or exceed it.

“Beach enhancement/restoration” means a process of restoring a beach to a state more closely resembling a natural beach using beach feeding, vegetation, drift sills, and other nonintrusive means.

“Beach feeding” means a process of replenishing a beach by delivery of materials dredged or excavated elsewhere.

“Bed and breakfast inn” means a hospitality commercial use containing three to five lodging units without cooking facilities, which provides overnight accommodation and breakfast meals in a proprietor- or owner-occupied existing single-family residence and additional legal structures or up to 10 lodging units in an existing historic structure.

“Bed and breakfast residence” means a hospitality commercial use containing one to two lodging units without cooking facilities, which provides overnight accommodation and breakfast meals in an owner-occupied existing single-family residence.

“Beneficial owner” means an individual who is a member of a family corporation, trust, or a partnership, and who is related by blood, adoption, marriage, or domestic partnership, to all other members of the corporation, trust or partnership.

“Best available science” means current scientific information used in the process of designating, protecting, or restoring critical areas, that is derived from a valid scientific process as described in WAC 365-195-900 through 925.

“Best management practices (BMPs)” means systems of practices, schedules of activities, prohibitions, maintenance procedures, and management measures that prevent or minimize adverse impacts to the

environment.

“Binding site plan” is a method of division of land intended primarily for projects such as condominiums, residential clusters or planned unit developments, industrial parks and shopping centers, which are developed as a whole rather than for sale of individual lots for development.

“Biodiesel” means biodiesel as defined by RCW 19.112.010.

“Biofiltration system” means a water filtration system using biological processes.

“Board (BOCC)” means the San Juan County ~~Council, board of commissioners.~~

“Boat launch, ramp or retrieval system” means an area, structure, or equipment used to launch or retrieve boats.

“Boathouse” means an enclosed structure designed and used for the storage of boats and boat equipment.

“Boating facilities” means marinas, covered moorages, boathouses, boat launches, marine railways, mooring buoys, docks, and floats.

“Bonus-density residential district” means a district in which a density bonus is permitted for affordable housing. The official maps indicate both the base density permitted without a density bonus and the maximum density permitted with a density bonus for affordable housing.

“Boundary line adjustment” means a change in the location of the boundary or boundaries between parcels of land to correct errors.

“Boundary line modification” means a change in the location of the boundary or boundaries between parcels of land; provided, that no additional parcels are created, except that a change in a land description to correct errors shall not be considered a boundary line modification.

“Breakwater” means protective structures that are normally built offshore to protect beaches, bluffs, dunes, or harbor areas from wave action.

“Buffer zone, strip, or area” means an area designed to separate incompatible uses or activities.

“Building envelope” means:

1. A three-dimensional space in which a building or structure may be built;
2. A plat restriction for the purpose of defining lot coverage areas for individual lots, or for describing shoreline building setbacks.

“Bulk fuel storage plant or terminal” means an area where flammable or combustible liquids are received by tank vessel, pipelines, tank car, or tank vehicle and are stored or blended in bulk for the purpose of distributing such liquids by tank vessel, pipeline, tank car, tank vehicle, portable tank, or container ~~(cf. Uniform Building Code see International Fire Code).~~

“Bulk fuel storage (retail)” means the storage of fuel in structures or tanks for subsequent retail sale.

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“Bulk fuel storage (wholesale)” means the storage of fuel in structures or tanks for subsequent wholesale distribution.

“Bulkheads or seawalls” means structures erected parallel to and near the high water mark for the purpose of protecting the adjacent bank or uplands from the action of waves or currents.

SECTION 2. SJCC Section 18.20.030 (“C” definitions) and Ord. 2-2010 § 1 are each amended to read as follows:

“Calendar decade” means a 10-year period beginning January 1st of any year evenly divisible by 10.

“Campground and camping facilities” means a facility in which sites are offered for less than 30 days for persons using tents or other personal, portable overnight shelters.

“Capital facilities” means physical structures or facilities owned or operated by a government entity which provides or supports a public service.

“Capital improvements” means improvements to land, structures, initial furnishings, and selected equipment.

“Channel” means an open conduit for water either naturally or artificially created, but does not include artificially created irrigation, return flow, or stock watering channels. (See WAC 173-14-030 (8)(b); see also “stream.”)

“Class I beach” means a beach or shore having dependable, geologically fully developed, and normally dry backshore.

“Class II beach” means a beach or shore having only marginally, geologically partially developed and not dependably dry backshore.

“Class III beach” means a beach or shore having no dry backshore.

“Clearing” means the destruction or removal, by hand or with mechanical means, of vegetative ground cover or trees including, but not limited to, root material or topsoil material.

“Cluster development” means the massing of development on one or more parts of a property.

“Coastal high hazard areas” means the areas within any areas of special flood hazard that are subject to high velocity waters, including but not limited to storm surge or tsunamis.

“Commercial recreational facility” means a place designed and equipped for the conduct of sports and leisure-time activities which is operated as a business and open to the public for a fee (see “indoor recreational facilities and outdoor recreational facilities”).

“Commercial sign” means any object, device, display or structure that is used for attracting attention to any commercial use, product, service, or activity.

“Commercial use” means activity involving the sale of goods or services.

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“Common area” means any area contained within the boundaries of a proposed land division or within a multifamily residential development and owned by the lot owners as tenants-in-common, joint tenancy, or through an association or nonprofit association, and provided specifically for the common use of the residents.

“Communication towers” means towers, dishes, or antennas established for the sending or receiving of signals.

“Community club or facility” means a not-for-profit use that provides social, health, recreational, cultural, or educational facilities to a community.

“Community development and planning department” means the San Juan County community development and planning department, the former San Juan County permit center and the former San Juan County planning department.

“Community dock,” for purposes of SJCC 18.50.190(C)(8) and 18.50.340(G), means a dock serving three or more residential waterfront properties.

“Community structure” means a structure which is intended for the common use of the residents of a particular subdivision or community.

“Comprehensive Plan” means the San Juan County Comprehensive Plan and all of its goals, objectives, policies, documents, and maps.

“Concurrency” means a condition in which an adequate capacity of capital and transportation facilities and services is available to support development at the time that the impacts of development occur. (See also “adequate capacity,” “available capacity,” and “levels of service.”)

“Concurrency facilities” means the public facilities and services for which concurrency is required in accordance with the policies of the Comprehensive Plan. They include transportation facilities (ferry service and parking areas, Types 1 and 2 public docks, intersections in activity centers or urban growth areas, and collector public roads), and “Category A” capital facilities (County solid waste and recycling facilities; community water systems that serve urban growth areas, AMIRDs (village, hamlet, and residential activity centers and island centers), or master planned resort activity centers; and community sewage treatment facilities that serve village and master planned resort activity centers.

“Concurrency test” means the comparison of a project’s impact on concurrency facilities to the available capacity, including existing and planned capacity, of the concurrency facilities.

“Conditional use” means a use that is identified in Tables 3.1 and 3.2 in SJCC 18.30.030 and 18.30.040 by the symbol “C” and which requires a conditional use permit.

“Conditional use permit” means a permit issued by San Juan County stating that the land uses and activities meet all criteria set forth in local ordinances, and all conditions of approval in accordance with the procedural requirements of SJCC 18.80.100.

“Conditional use, shoreline” means a use, development, or substantial development which is classified as a conditional use in the Shoreline Master Program (SMP; see Element 3 of the Plan and Chapter 18.50 SJCC), or which is not classified within the SMP.

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“Condominium” means the division of a building or land pursuant to the Horizontal Property Regimes Act, Chapter 64.32 RCW, or to the Condominium Act, Chapter 64.34 RCW.

“Conical surface” means the FAA imaginary surface that is the lower boundary of an airspace which extends outward and upward from the periphery of the horizontal surface.

“Conservancy designation” means the land use designation of the Comprehensive Plan designed to protect valuable natural resources, wildlife, historical, and scenic areas.

“Conservancy environment, shoreline” means an environment designation that is applied to areas which are largely free of intensive development.

“Consolidated formation” means any geologic formation in which the earth materials have become firm and coherent through natural rock-forming processes.

“Construction contractor yards and offices” means service establishments primarily engaged in general contracting or subcontracting in the building construction trades. These include administrative offices, workshops and the indoor or outdoor storage of tools, equipment, materials, and vehicles.

“Contiguous” means adjoining as defined herein, but will often have the added component of sharing the common boundary for a considerable distance, along the whole or most of one side or border.

Contract Purchaser. See “Applicant.”

“Correctional facility” means any facility operated by or under contract to a public agency for the confinement of individuals accused or convicted of criminal or delinquent activity.

“Cottage enterprise” means a commercial or manufacturing activity conducted in whole or in part in either the resident’s single-family dwelling unit or in an accessory building, but is of a scale larger than a home occupation.

“County” means San Juan County, Washington, its board, commissions, and departments.

“Covered moorage” means a pier and/or float or system of floats covered by a roof.

“Critical areas” means geologically hazardous areas, frequently flooded areas, critical aquifer recharge areas, wetlands, and fish and wildlife conservation areas, all as defined in this chapter and regulated in SJCC 18.30.110 through 18.30.160.

“Critical area functions and values” means the beneficial roles served by critical areas and the values people derive from these roles including but not limited to, water quality protection and enhancement; fish and wildlife habitat; food chain support; flood storage, conveyance and attenuation; ground water recharge and discharge; erosion control; wave attenuation; and protection from hazards.

“Critical habitat” means an area or type of environment that may be of crucial importance to the perpetuation of an organism or biological population which normally lives or occurs there.

“Critical water resource areas” means selected watersheds and critical aquifers where resources are potentially threatened by salt water intrusion or primary contaminants or limited due to poor recharge.

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“Cul-de-sac” means a road closed at one end by an area of sufficient size for turning vehicles around.

“Current use” means the use of land or improvements at the time of permit application.

SECTION 3. SJCC Section 18.20.040 (“D” definitions)and Ord. 52-2008 § 3 are each amended to read as follows:

Day Care – Type 1. The following definitions apply to day care facilities for six or fewer children:

“Child care facility” means a family day care home (RCW 35.63.170).

“Family day care home” means a person regularly providing care during part of the 24-hour day to six or fewer children in the family abode of the person or persons under whose direct care the children are placed (RCW 35.63.170).

Day Care – Type 2. The following definitions apply to day care facilities for seven or more children:

“Day care center” means a person or agency that provides care for 13 or more children during part of the 24-hour day (RCW 74.15.020).

“Family day care provider” means a licensed day care provider who regularly provides day care for not more than 12 children in the provider’s home in the family living quarters (RCW 74.15.020).

“Mini day care center” means a person or agency providing care during part of the 24-hour day to 12 or fewer children in a facility other than the family abode of the person or persons under whose direct care the children are placed, or for the care of seven through 12 children in the family abode of such person or persons (RCW 35.63.170).

“dBA” means the sound pressure level in decibels measured using the “A” weighting network on a sound level meter.

“Dedicate” means to set aside a piece of real property, a structure, or a facility for public or private use or ownership.

“Dedication” means the appropriation of land by an owner for any public or private use, reserving no other rights than those compatible with the full exercise and enjoyment of the public or private uses to which the property is to be dedicated. The intention to dedicate shall be evidenced by the owner filing an application for final subdivision approval showing the intended dedication, and the acceptance shall be evidenced by the approval of said application for recording.

“Degrade” means to scale down in desirability or salability, to impair in respect to some physical property or to reduce in structure or function, in terms of San Juan County standards and environment.

“Density” means the quantity per unit area, such as the number of dwelling units per acre or acres per dwelling unit.

“Department” means the San Juan County community development and planning department.

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“Design capacity” means the theoretical or calculated maximum ability of a system or device to handle the duty for which it is to be used.

“Detached ADU” means an accessory dwelling unit that is physically distinct from the principal residence. To be detached, the ADU and principal residence may not be connected or must be structurally independent per the International Residential Code.

“Developable area” means the area of land which is not constrained from development by land use restrictions.

“Development” means the division of a parcel into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any clearing, draining, dredging, drilling, filling, grading, paving, excavation, mining, landfill; or any extension of the use of land. (See also “Shoreline development.”)

“Development area” means the area that is directly altered as a result of development. This includes but is not limited to the area containing structures, driveways, gardens and landscaped areas, waste treatment facilities, and any grading, excavation, fill, or removal of vegetation clearing.

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“Development permit” means a County permit or approval required for a project, including but not limited to building and other construction permits, mechanical permits, demolition permits, plumbing permits, clearing and grading permits, driveway permits, and on-site sewage disposal permits. (See “Project permit.”) SEPA threshold determinations are not development permits.

“Development right” means the right to develop property subject to federal, state, and local restrictions and regulations.

Development, Shoreline. See “Shoreline development.”

“Director” means the director of the San Juan County community development and planning department or a designated representative.

“District” means a part, zone, or geographic area within San Juan County within which certain development regulations apply.

“Division of land” means the creation of two or more parcels of land within the boundaries of a single parcel. All contiguous property held in the same or substantially the same ownership, or under the control of the owner, whether or not the property is described in separate legal descriptions, shall be considered as part of the original tract of record for the purposes of Chapter 18.70 SJCC.

“Dock” means a structure that abuts the shoreline and is used as a landing or moorage place for commercial and pleasure craft. A dock typically consists of a pier, ramp, and float.

“Drainage” means surface water runoff; the removal of surface water or groundwater from land by drains, grading, or other means, which include runoff controls to minimize erosion and sedimentation during and after construction or development.

“Drainageway” means any natural or artificial watercourse, trench, ditch, swale, or similar depression into which surface water flows.

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“Dredge spoils” means the material removed by dredging.

“Dredging” means the removal of earth from the bottom of a stream, river, lake, bay, or other water body.

“Driftway” means the critical link between the feeder bluff and the accretion shoreform, through which sand and gravel are transported by the littoral drift process.

“Drinking establishment” means a business primarily engaged in the retail sale of alcoholic beverages for consumption on the premises. A lounge operated as part of a restaurant is considered to be accessory to the restaurant.

“Drive-thru window service” means businesses where patrons may carry on business on the premises while in a motor vehicle.

“Driveway” means a strip of land which provides vehicular access to one or two lots.

“Dry boat storage” means a space on dry land or within a building which is rented to the public for the purpose of storing boats.

“Dune” means a hill or ridge of sand piled up by the wind and/or wave action.

Duplex. See “Dwelling unit, two-family.”

“Dwelling unit” means a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. A principal residence and an ADU that meets the requirements of SJCC 18.40.240 constitute a single dwelling unit. Recreational vehicles are not dwelling units.

“Dwelling unit, multiple-family” means one or more structures containing three or more dwelling units.

“Dwelling unit, two-family (duplex)” means a structure containing two dwelling units.

SECTION 4. SJCC Section 18.020.140 and Ord. 2-1998 Ex. B § 2.3 are each amended to read as follows:

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18.20.140 “N” definitions.

“National Pollutant Discharge Elimination System (NPDES)” means a joint federal and state permitting system for the control, monitoring, and reduction of point-sources of pollution, established under the Federal Water Pollution Control Act (Clean Water Act) (Public Law 92-500).

“National Register of Historic Places” means the official federal list, established by the National Historic Preservation Act, of sites, districts, buildings, structures and objects significant in the nation’s history and prehistory, or whose artistic or architectural value is unique.

“Native vegetation” means plant species which are indigenous to San Juan County.

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“Natural designation” means the land use designation of the Comprehensive Plan that is designed to preserve unusual or valuable natural resource systems by the regulation of all activities or uses which might degrade or alter the natural characteristics which make these areas unusual or valuable.

“Natural environment (shoreline)” means the Shoreline Master Program designation designed to preserve unusual or valuable natural resource systems by regulating all potential uses which might degrade or alter the natural characteristics that make the area unusual or valuable.

“Natural or existing topography” means the topography of the lot, parcel, or tract of real property immediately prior to any site preparation or grading, including excavation or filling.

“Natural system (shoreline)” means a group of related objects or forces existing in nature, for example, a shore process corridor.

“No net loss” means the requirement that development not result in net harm to the existing functions and values of the ecosystem that includes the impacted or lost critical areas. The no net loss standard in WAC 365-196-830 requires that where development regulations allow harm to critical areas, they must require compensatory mitigation of the harm unless alternative means of protecting critical areas exist such as best management practices or a combination of regulatory and non-regulatory programs.

Comment [SH1]: This is the new definition that Jon added. The remainder are existing “N” definitions.

“Noise” means any sound not occurring in the natural environment which causes or tends to cause an adverse psychological or physiological effect on humans.

“Noise exposure forecast level” means the level of predicted noise exposure or areas within the vicinity of an airport due to aircraft operations at some future date based on noise levels and duration at the time of prediction.

“Noncapital alternative strategies” means programs, strategies, or methods that contribute to achieving and maintaining adequate levels of service (as set forth in the Comprehensive Plan) for concurrency facilities by means other than by constructing structural improvements. These strategies include but are not limited to reduction of need or demand for a facility or service (as by education efforts or increased efficiency of use), provision of a noncapital substitute, and use of alternative methods to provide capacity. (See also “adequate capacity,” “available capacity,” “concurrency,” and “level of service.”)

“Nonconforming” means a use, structure, site, or lot which conformed to the applicable codes in effect on the date of its creation but which no longer complies because of changes in code requirements. Nonconformity is different than and not to be confused with illegality (see “illegal use.”) Legal nonconforming lots, structures, and uses are commonly referred to as “grandfathered.”

“Nonconforming lot” means a lot which does not conform to the area, width, depth, or street frontage regulations of the land use district in which it is located.

“Nonconforming structure” means a structure which does not conform to the dimensional regulations, including but not limited to, setback, height, lot coverage, density, and building configuration regulations of the land use district in which it is located due to changes in code requirements. (See also “alteration, nonconforming structures.”)

“Nonconforming use” means a use of a structure or of land which does not conform to the regulations of the land use district in which the use exists due to changes in code requirements. (See also “Alteration, nonconforming use.”)

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“Nonconsumptive use” means a use which does not permanently deplete, degrade, or destroy the resource involved.

“Nonpoint source” means the release of waste or other flows which occurs over a broad or undefined area. Releases which can be described as confined to a small area, such as discharges from a pipe or conduit, are referred to as “point-source discharges.” (See also “point-source discharge.”)

“Normal appurtenance, shoreline” means a structure or development that is necessarily connected to the use and enjoyment of a single-family residence and which is expressly defined in WAC 173-27-040 and in Chapter 18.50 SJCC, for purposes of exemption from shoreline substantial development permit requirements in accordance with WAC 173-27-040(g). (See also “shoreline exemption.”)

“Nursery” means lands or greenhouses used to raise flowers, shrubs, and plants for commercial purposes.

“Nursing home (long-term health care facility)” means a facility or residence that provides health or long-term care services to residents, including nursing or other supportive or restorative health services on a 24-hour basis (RCW 43.190.020).

SECTION 5. SJCC Section 18.20.170 (“Q” definitions) and Ord. 2-1998 Exh. B § 2.3 are each amended to read as follows:

“Qualified professional” means a person with training and experience in the pertinent scientific discipline. With regard to critical areas, a qualified professional is a scientific expert in accordance with WAC 365-195-905. A qualified professional must be licensed and/or certified where such licensing or certification are required, and must be working within their areas of expertise. When certification is not required the professional must a) have obtained a B.S., B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, or related field, and b) have at least five years of related work experience.

1. Wetlands. A qualified wetlands professional is a person who has an understanding of hydrology and advanced skills in plant identification and soils classification, has been trained in the procedures of the 1987 Federal Wetland Delineation Manual and its updated Regional Supplement, has used those procedures to delineate a wetland in a report subsequently considered complete by the Washington Department of Ecology, and has the qualifications to conduct wetland studies and make recommendations for wetland mitigation. These qualifications include specialization in wetland soils, botany, or hydrology, with appropriate education and experience.

2. Fish and Wildlife Habitat Conservation Areas. A qualified professional for habitat must have a degree in biology or a related degree and professional experience related to the subject species.

3. Geologically Hazardous Areas. A qualified professional for a geological hazard is: a) a geotechnical engineer, qualified civil engineer, or ~~certified~~licensed engineering geologist; b) with experience analyzing geologic, hydrologic, and ground water flow systems and slope stability, seismicity, faulting, and liquefaction; and c) is licensed to practice in the state of Washington. When the proposed development is located in an area subject to ~~wave attack, beach~~coastal geomorphological processes, and littoral drift, the professional ~~should also~~shall have demonstrated experience in ~~assessing~~evaluating and providing ~~management~~technical recommendations related to sediment and sediment transport, and effects on ~~sites with active coastal processes~~property and shoreline stability.

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4. Critical Aquifer Recharge Areas. A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

“Qualified wetlands consultant” means a person who has the qualifications to conduct wetland studies and make recommendations for wetland mitigation. These qualifications include specialization in wetland biology, botany, and hydrology, with appropriate education and experience.

#

SECTION 56. SJCC Section 18.30.110 and Ord. 15-2005, Exh. B § 2a are each amended to read as follows:

18.30.110 Critical Areas.

A. Purpose. ~~The Critical areas overlay districts are is adopted to protect the functions and values of critical areas in conformance with the requirements of the Washington Growth Management Act and the implement the policies of the San Juan County 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:

1. Geologically hazardous areas.
2. Frequently flooded areas.
3. Critical aquifer recharge areas.
4. Wetlands.
5. Fish and wildlife habitat conservation areas.

B. Applicability. ~~These This overlay districts provides regulations for land use and development in critical areas and areas adjacent to critical areas and as established in this code within 300 feet of critical areas.~~

~~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. The appendices are incorporated herein by reference. A copy is on file at the auditor's office and planning department.~~

~~C. Allowable Uses. 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.~~

D. General Exemptions. The following uses and activities are exempt from critical area regulations ~~the provisions of this section;~~ provided that they are otherwise consistent with ~~other sections in this code:~~

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.~~

Emergencies. Those activities necessary to prevent an imminent threat to public health, safety, or the environment, or to public or private property, and that require remedial or preventive action in a time frame too short to allow for review and approval in accordance with critical area requirements.

Within seven days of the emergency, the person or agency undertaking the action shall report to the Director the extent of the action taken and any impacts to critical areas. ~~Mitigation and/ or restoration is required when necessary to bring the action into compliance with these critical area requirements, and the Director may require submission of shall be undertaken pursuant to a mitigation and/or restoration plan to guide this work. Final approval of the or other plan, and any required restoration or mitigation, shall be in accordance that is consistent with regulations for the critical areas~~ area requirements of this chapter. The Director shall be the decision maker for these plans.

- ~~Routine maintenance and repair of existing structures, utilities, sewage disposal systems, water systems, drainage facilities, ponds, public and private roads, and driveways.~~

Operation, maintenance, repair, remodel or replacement of existing structures, facilities, infrastructure systems and development areas, provided they are not expanded, soil erosion is controlled, disturbed areas are promptly ~~revegetated~~ stabilized, and actions do not have an additional adverse effect on the functions and values of critical areas.

- ~~Installation, construction, replacement, or modification of (a) electrical lines or electrical facilities; (b) telecommunication lines; or (c) water and sewer distribution lines within private or public rights of way, provided that soil erosion is controlled and disturbed areas are promptly revegetated; provided, that a prior written statement of exemption is obtained from the administrator.~~
- ~~Establishment and routine maintenance and repair of lawns, landscaping, gardens, orchards, and fences accessory to a single family residential use; provided, that where a regulated wetland or its buffer is present the provisions of SJCC 18.30.150, Wetlands, shall apply.~~

- ~~Removal of trees that are a hazard to people, domestic or commercial livestock, and structures that house them. hazardous, diseased, or dead trees and vegetation and, when necessary, measures to control a fire or halt the spread of disease or damaging insects. In addition, to allow for defensible space, 30 feet of vegetation may be cleared around buildings existing on the effective date of these regulations.~~

- ~~Land divisions exempt from the land division requirements as specified in SJCC 18.70.010(C). The divisions of land specified in 18.70.010(C) are exempt from critical area compliance review. Parcels created via 18.70.010(C) are subject to compliance with critical area protection requirements, and they are not eligible for development under the provisions for reasonable use exceptions.~~

- Forest practices regulated under the provisions of RCW Chapter 76.09 and WAC Title 222.

- Installation of navigation aids and survey markers.

- Site investigative work associated with land use applications, such as surveys, soil borings and test holes, provided that critical areas are protected and disturbed areas are immediately restored. (Note: For sites with archaeological or historical significance, additional State or local regulations may apply).

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ED. Reasonable Use Exception.

The County desires to avoid the taking of property without just compensation by providing for reasonable use exceptions from critical area regulation.

~~1. If the application of critical area regulations this section will would result in denial of all economically beneficial or productive reasonable use of a parcelpropertyproperty (i.e., denial of all economically beneficial or productive use of the land), development may be allowed which is consistent with the land use designation, the general purposes of this code, this section, and the public interest. "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 are otherwise exempt under this section. Reasonable Use Exceptions from the provisions of this section shall be subject to all of the following criteria:~~

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- ~~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;~~
- ~~2. The proposed development does not pose an unreasonable threat to the public health, safety or welfare; and~~
- ~~3. Any proposed improved area shall be located in such a way as to minimize the impact to the critical area.~~

2.1. Reasonable Use Exceptions only apply to compliance with critical area requirements. They do not relieve the applicant of the duty to comply with other local, State or Federal requirements.

~~3. In determining eligibility for a Reasonable Use Exception, the2. The burden of proof is on the applicant to provide adequate information for the Director to make a finding of compliance with the requirements of this subsection.~~

~~4.3. Reasonable Use Exceptions may only be granted only for parcels created before _____ (the effective date of this ordinance). Reasonable use exceptions cannot be used to justify building on parcels not intended to be used as a building site (e.g. recreational lots including those platted as common area).~~

5.4. Two sets of options are available under the Reasonable Use Exception.

Option One – No Mitigation:

- a. A development area of up to 2,500 s.f. of development constructed using Low Impact Development practices may be located in a critical area buffer.
- b. A development area of up to 1,500 s.f. of development constructed using Low Impact Development practices may be located in a critical area.
- c. A combined development area of 2,500 s.f. of low impact development of which no more than 1,500 s.f. is located in the critical area and the balance is located in the critical area Buffer.

and

Option Two – With Mitigation

- a. Up to 10% of the parcel, or up to one half (1/2) acre (whichever is more) may be developed with full mitigation of impacts to critical area functions and values.
- b. Low impact development practices are encouraged in all development under the Reasonable Use Exception and are required for all reasonable use exception development over 10,890 s.f.

65. Applications for Reasonable Use Exceptions are project permits, which are reviewed and approved by the Director as a provisional permit.

76. Application for a Reasonable Use Exception shall include:

- a. The applicable items listed in SJCC Section 18.80.020.C (Project Permit Applications-Forms) along with photos of the site and a detailed site plan showing the location of all critical wetlands, fish and wildlife habitat conservation areas and frequently flooded areas within 300 feet of the proposed development area, and geologically hazardous areas within 200 feet of the development area;
- b. Any related project documents such as applications to other agencies or environmental documents prepared pursuant to the State Environmental Policy Act;
- c. Required critical area reports, critical area delineations, and, for the "with mitigation" option, Best Available Science documents supporting the proposal. ~~Supporting Best Available Science documents are not, however, required for development in and adjacent to low importance wetlands when a County developed standard mitigation plan is used.~~
- d. A copy of proposed or approved storm water and erosion control plans as required by SJCC 18.60.
- e. A narrative describing anticipated impacts to the functions and values of critical areas, based on Best Available Science, and explaining how the proposal meets the Reasonable Use Exception approval criteria.
- f. Mitigation, Monitoring and Adaptive Management Plans. Plans meeting the requirements of this chapter and approved by the Director, for mitigating any impacts to the functions and values of critical areas, for monitoring the effectiveness of mitigation actions, and when necessary for adaptively managing the mitigation project to ensure its success. ~~For mitigation of impacts to low importance wetlands, a County developed standard mitigation plan may be used.~~
- g. A cost estimate, prepared by a qualified professional, for implementing mitigation and monitoring plans.
- h. Financial Guarantee. If mitigation of impacts to critical areas is necessary, a financial guarantee covering 115% of the cost of implementing mitigation and monitoring plans is required. This guarantee and the associated agreement must meet the requirements of SJCC 18.80.

87. Reasonable Use Exception Approval Criteria. The Director Approval of reasonable use exceptions shall approve, approve with conditions, or deny the request be based on conformance with the following criteria:

- a. The application is complete and includes all applicable items listed in SJCC 18.30.110.D.76.
- b. The applicant is unable to meet standard application of critical area requirements would deny reasonable use of the property; protection regulations.

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- c. The need for the exception is not the result of action by current or previous property owners after the effective date of this ordinance e.g., creating new parcels without a feasible building site or means of access.
- d. 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.
- e. For the "with mitigation" option, impacts shall be mitigated in accordance with an approved mitigation plan so that there will be no net loss of critical area functions and values, considering the Best Available Science. When feasible, impacts shall be mitigated on site. If this is not possible and offsite mitigation is proposed, the mitigation site shall be located on the same island and as close as possible to the development site, ~~and shall be capable of providing substitute conditions that will compensate for those resources adversely impacted by the project.~~
- f. The proposal is consistent with the requirements of this ~~section~~ subsection.

98. Recording of Approved Exception, Site Plan, and Notice to Title.

The County shall record a copy of the approved exception and site plan, along with a Notice to Title referencing the plan, with the cost of recordation included in the application fee.

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E. Optional Public Agency and Utility Procedures .

The following provisions are available to public agencies and utilities that have difficulty meeting standard critical area protection requirements:

1. If the application of critical area regulations would preclude a development proposal by a public agency, public utility, or private utility regulated by the Washington Utilities and Transportation Commission or serving an Urban Growth Area, the development may be allowed provided it is consistent with this section and other applicable regulations, and will benefit public health, safety or welfare.
2. Public Agency and Utility Exceptions only apply to compliance with critical area requirements. They do not relieve the applicant of the duty to comply with other local, State or Federal requirements.
3. In determining eligibility for Public Agency and Utility Exceptions, the burden of proof is on the applicant to provide adequate information supporting the request.
4. Applications for Public Agency and Utility Exceptions are project permits ~~reviewed by the Hearing Examiner using the hearing and notice procedures established for conditional use permits that may be reviewed as either a provisional use or a conditional use whichever the Director determines to be the correct permit level after review of SJCC Chapter 18.80, Table 8.2.~~
5. Application for a Public Agency and Utility Exception shall include:
 - a. The applicable items listed in SJCC Section 18.80.020.C (Project Permit Applications-Forms) along with photos of the site and a detailed site plan showing the location of all critical areas within 300 feet of the proposed development area.
 - b. Any related project documents such as applications to other agencies or environmental documents prepared pursuant to the State Environmental Policy Act.

- c. Required critical area reports, critical area delineations and Best Available Science documents supporting the proposal.
- d. A copy of proposed or approved storm water and erosion control plans as required by SJCC 18.60.
- e. A narrative describing anticipated impacts to critical areas, based on Best Available Science, and explaining how the proposal meets the Public Agency and Utility Exception approval criteria.
- f. Mitigation, Monitoring and Adaptive Management Plans. Plans, meeting the requirements of this chapter ~~and approved by the Director~~, for mitigating any impacts to the functions and values of critical areas, for monitoring the effectiveness of mitigation actions, and when necessary for adaptively managing the mitigation project to ensure its success.
- g. A cost estimate, prepared by a qualified professional, for implementing mitigation and monitoring plans.
- h. Financial Guarantee. Unless exempt under RCW 36.32.590, if mitigation of impacts is necessary, a financial guarantee covering 115% of the cost of implementing the mitigation and monitoring plan. This guarantee and the associated agreement must meet the requirements SJCC 18.80.

6. Public Agency and Utility Exception Approval Criteria. ~~The Hearing Examiner Approval of public agency and utility exceptions shall approve, approve with conditions, or deny the request~~ based on conformance with the following criteria:

- a. The application is complete and includes all applicable items listed in SJCC 18.30.110.E.5.
- b. The applicant is a public agency, public utility, or private utility regulated by the Washington Utilities and Transportation Commission or serving an Urban Growth Area.
- c. The proposed project will benefit the public health, safety or welfare.
- d. ~~The standard application of critical area regulations would preclude the proposed project.~~
- e. ~~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.~~
- f.d. Impacts shall be mitigated in accordance with an approved mitigation plan so that there will be no net loss of critical area functions and values, considering the Best Available Science. When feasible, impacts shall be mitigated on site. If this is not possible and offsite mitigation is proposed, the mitigation site shall be located on the same island and as close as possible to the development site, ~~and shall be capable of providing substitute conditions that will compensate for those resources adversely impacted by the project.~~
- ge. The proposal is consistent with the requirements of this ~~sections~~ subsection.

F. Critical Area Mitigation Requirements.

1. This section outlines the provisions for mitigating impacts to critical areas when mitigation is authorized or required by this code. ~~Mitigation~~ Possible mitigation actions may include minimizing impacts as well as re-establishment, rehabilitation, restoration, creation, and enhancement.
2. Mitigation, monitoring and adaptive management plans must be developed by a qualified professional(s).
3. Mitigation, monitoring and adaptive management plans are ~~administratively~~ reviewed and approved by the decision maker for the underlying permit or approval (Director- or Hearing Examiner depending on type of permit/ approval).

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4. Preparation of a mitigation, monitoring and adaptive management plans and their review by the County, which may include referral to independent qualified professional, shall be at the applicant's expense. If review by a third party is necessary, the Department may require advance payment of fees for this review based on the estimated review time. As an alternative to third party review, the applicant and the Director may jointly select the qualified professional who will complete the plans.

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5. Mitigation plans must be appropriate for the scale and scope of the project, and include adequate information for the decision maker to determine that the application is in conformance with approval criteria. Potential components of an application include the following:

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a. For both the proposed development area and the proposed mitigation site, the applicable items listed in SJCC Section 18.80.020.C (Project Permit Applications-Forms) as well as photos of both the development and mitigation sites, and a detailed site plan showing the location of all critical areas within 300 feet of these areas;

b. Any related project documents such as applications to other agencies or environmental documents prepared pursuant to the State Environmental Policy Act;

c. For both the proposed development area, and the proposed mitigation site, applicable critical area reports, critical area delineations and Best Available Science documents supporting the proposal.

d. For both the development area and the mitigation site, copies of the any proposed or approved storm water and erosion control plan as required by SJCC 18.60.

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e. A narrative describing anticipated critical area impacts, the mitigation proposal (including the goals of the proposal, performance standards that will be used to gauge the effectiveness of the proposal, construction methods, and the sequence and timing of actions), and explaining how the proposal meets the plan approval criteria. Assessment of critical area impacts and of the effectiveness of proposed mitigation shall be based on the Best Available Science.

f. For offsite mitigation actions, an explanation of why on-site mitigation was not feasible, along with the site selection criteria employed.

g. Grading and excavation details. If grading or excavation are proposed, pre and post construction contour plans are required at a scale that is suitable for the site.

h. A planting plan (if planting is proposed) identifying plant species, quantities, sizes, locations, spacing, and density, along with proposed measures to protect and maintain the plants until they are established.

i. Any other drawings necessary to illustrate the proposal.

j. Monitoring and adaptive management plans appropriate for the scale and scope of the project. These plans must describe measurable data that will be collected to assess the effectiveness of the project, must include a monitoring schedule (monitoring is required at least once each year, with a report submitted to the Department by November 1), and must explain corrective actions that will be taken to deal with any problems. The project shall be monitored for at least three (3) years or for a longer period if the Director decision maker determines that is necessary to establish that performance standards have been met.

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kk. For mitigation of impacts to wetlands, the plan, including associated wetland replacement ratios, must be consistent with the guidance provided in *Wetland Mitigation in Washington State - Part 1: Agency Policies and Guidance, Ecology publication 06-06-011a*; and *Wetland Mitigation in Washington State - Part 2, publication 06-06-011b*. As an alternative, mitigation actions may follow the procedures described in *Ecology Publication No. 10-06-011, Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington*.

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l. A description of the report author's education and experience relevant to implementing the proposed actions.

~~l-m.~~ A cost estimate, prepared by a qualified professional, for implementing the mitigation plan and monitoring the site for a period of three (3) years.

~~m.n.~~ Financial Guarantee. Unless exempt under RCW 36.32.590, a financial guarantee and associated agreement covering 115% of the cost of implementing the mitigation and monitoring plans. This guarantee and the associated agreement must meet the requirements of SJCC 18.80, and for mitigation of impacts to Wetlands and Fish and Wildlife Habitat Conservation Areas it must remain in effect for at least three (3) years.

~~n.o.~~ A statement, signed by the property owner, agreeing to periodic County inspections as established in the monitoring plan, to determine compliance with approved plans, provided that inspections are by appointment or following advance written notice.

6. Mitigation Plan Approval Criteria. ~~The Director~~Approval of mitigation plans shall ~~approve, approve with conditions, or deny the request~~be based on conformance with the following criteria:

- a. The application includes the applicable items listed in SJCC 18.30.110.F.5.
- b. Mitigation is authorized or required by this code.
- c. For wetlands, this plan, including associated wetland replacement ratios, shall be consistent with the guidance provided in *Wetland Mitigation in Washington State - Part 1: Agency Policies and Guidance, Ecology publication 06-06-011a*; and *Wetland Mitigation in Washington State - Part 2, publication 06-06-011b*. These and other wetland mitigation and monitoring guidance documents are available from the Department of Ecology. As an alternative, mitigation requirements may be determined through application, by a qualified professional, of procedures described in Ecology Publication No. 10-06-011, *Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington*.
- d. Proposed development is located in such a way as to avoid impacts to the functions and values of critical areas, considering the Best Available Science.
- e. Impacts will be mitigated so that there will be no net loss of critical area functions and values, considering the Best Available Science. When feasible, impacts shall be mitigated on site. ~~if this is not possible and offsite mitigation is proposed, the mitigation site shall be located on the same island, as close as possible to the development site, and shall be capable of providing substitute conditions that will compensate for those resources adversely impacted by the project.~~
- f. The proposal is consistent with the requirements of this section.

7. As a condition of approval, the ~~Director~~decision maker may require additional actions or additional monitoring if the goals, objectives and performance standards of the plan are not met.

~~G.~~ **Conditions of Approval.** In granting approval for a project or application, the Director may apply conditions to ensure compliance with critical area requirements.

~~H.~~ Nonconforming structures, uses and usesactivities. A nonconforming structure ~~or, use or activity~~ is one that did conform to the applicable codes which were in effect on the date of its creation, but which no longer complies because of subsequent changes in the code. Legal, nonconforming structures, uses and usesactivities are commonly referred to as "grandfathered".

The following standards apply to structures, uses and usesactivities that existed on the effective date of these regulations and are nonconforming ~~with a result of~~ critical area protection standards established in this Chapter. For nonconformance with critical area requirements, these provisions take the place of those found in other sections of this code. For structures, uses and usesactivities subject to the

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requirements of the County Shoreline Master Program, ~~these~~ the provisions of this subsection apply until the effective date of a comprehensive update of the Shoreline Master Program.

1. Nonconforming structures may be maintained, repaired, modified, replaced ~~and~~, relocated or expanded within the development area existing on the effective date of these regulations, provided a) the degree of nonconformity is not increased; b) any required building, project or development permits are obtained; c) there are no additional adverse impacts to water quality or the functions and values of critical areas; and ~~that~~ replacement structures are completed within 48 months of removal or destruction of the original structure— unless the director extends this time period for good cause.
2. Nonconforming uses and activities, including use of buffer areas, may be continued, replaced with other uses or activities, or relocated, provided the degree of nonconformity is not increased, any required building, project or development permits are obtained, and there are no additional adverse impacts to water quality or the functions and values of critical areas. Relocation or replacement of a nonconforming use or activity shall be reviewed as a Provisional Use.
3. A structure for which a variance to critical area requirements has been issued shall be considered a legal nonconforming structure.
4. Abandonment. Nonconforming uses and activities shall be considered abandoned if the use or activity ceases to operate or is discontinued for 48 consecutive months; however, the director may extend this time period for good cause.

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Staff Note: For Sections 7 – 10 see November 22, 2011 Council Hearing Draft.

NEW SECTION. Section 611. A new section shall be added to SJCC Chapter 18.80 to read as follows:

Financial Guarantees

- A. For some types of development, this code requires a financial guarantee to ensure completion of required improvements. This section outlines the requirements associated with these financial guarantees. In accordance with RCW 36.32.590 this section does not apply to any state agency or unit of local government.
- B. San Juan County accepts the following types of financial guarantees:
 1. Irrevocable letter of credit from a bank or credit union.
 2. Cash deposit with the County.
 3. Cash deposit, for the benefit of the County, into an escrow account managed by an independent financial institution.
 4. Surety bond.
- C. Financial guarantees shall cover 115% of the expected cost of the work.
- D. The expiration date of the guarantee shall be at least thirty (30) days after the expected final approval date for the project.
- E. Project cost estimates shall be prepared by the qualified professional who prepares the associated plans.

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F. Failure to complete work or correct deficiencies in accordance with a financial guarantee agreement and approved plans shall be cause for the County to draw on the financial guarantee to stabilize the site and/or complete the work. In addition to direct costs for the work, the County may withdraw funds to cover administrative costs. Prior to taking action, the County shall give the property owner written notice by both first class mail and certified mail.

G. Release of financial guarantee. Financial guarantees shall not be released until the actions guaranteed by the agreement have been completed and demonstrated to function. When completed, the qualified professional and property owner shall provide the Department with written approval of the project, and the Department will conduct an inspection to verify that it has been completed according to approved plans. If it is anticipated that improvements will be completed over a period of time, separate financial guarantees should be provided so they may be released as components of the project are approved. Partial releases from a single financial guarantee are not permitted.

H. Signatures of property owners and contractors shall be notarized.

I. Financial Guarantee Agreements. A financial guarantee agreement, signed by the property owner and approved by the County, shall accompany each financial guarantee. Required elements of financial guarantee agreements include but are not limited to:

1. Name, mailing address, and phone number of the property owner and County Administrator. If someone other than the property owner provides the financial guarantee (e.g., developer, contractor), their name, mailing address and phone number (in addition to that of the property owner).
2. Description of the project location including section, township, range and address (if available).
3. Tax Parcel number(s).
4. Size of parcel/project in acres.
5. Reference to improvements being completed in accordance with the San Juan County Code and approved plans on file with the Department.
6. Permit number.
7. Exhibit A – Description of required improvements and cost estimate for completion of the improvements provided by a qualified professional.
8. A statement that the applicant has established a financial guarantee to ensure completion of required improvements in the amount of 115% of the estimated cost, with the amount listed.
9. Type of the guarantee.
10. Exhibit B – original financial guarantee (for cash deposit, a copy of the check and receipt).
11. Exhibit C - A completion schedule for the required improvements. Anticipated completion date for the project must be at least thirty (30) days before expiration of the financial guarantee.
12. A statement that this agreement is considered a contract between the parties.
13. A statement that if the County is forced to take action under this agreement, that does not discharge the obligation of the property owner to complete required work.
14. ~~Statement~~A statement that, upon completion of the improvements, the qualified professional and property owner will provide written notice of completion to the Department. After final inspection by the Department and confirmation that work was completed in accordance with approved plans, the County shall release the financial guarantee.
15. ~~Statement~~A statement acknowledging that partial releases are not permitted. (Note: If improvements will be completed in phases, the applicant should provide separate financial guarantees with separate agreements).

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16. ~~Statement~~ A statement that if the required improvements are not completed and approved by the qualified professional and property owner prior to the established completion date, or within the time allowed by a written extension granted by the Director, ~~that~~ the County may, after providing written notice by first class mail, withdraw the necessary funds from the financial guarantee and complete the improvements. In addition to contracting or other costs to complete the work, the County may also withdraw funds to cover administrative costs. Any remaining funds after completion of improvements shall be returned to the party that provided the financial guarantee.

17. Process for renegotiating the agreement.

18. Process by which the agreement may be transferred, with County approval, to a property owner or contractor's successor.

19. Governing laws shall be the laws of the State of Washington. The venue for any dispute shall be San Juan County.

20. Notarized signature block for the property owner(s).

21. If the financial guarantee is provided by someone other than the property owner (e.g., contractor), notarized signature block for that party, in addition to that for the property owner.

22. Signature block for approval by the County Administrator.

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Section ~~7~~12. Savings Clause:

This ordinance shall not affect any pending suit or proceeding; or any rights acquired; or liability or obligation incurred under the sections amended or repealed; nor shall it affect any proceeding instituted under those sections. All rights and obligations existing prior to adoption of this ordinance shall continue in full force and effect.

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Section ~~8~~13. Severability:

If any provision of this ordinance or its application to any person is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected. Remaining sections of the ordinance shall be interpreted to give effect to the spirit of the ordinance prior to removal of the portions declared invalid.

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Section ~~9~~14. Effective Date:

This ordinance is effective the 10th working day after adoption.

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Section ~~10~~15. Codification:

Sections 1, 2, 3, 4, 5, ~~6, 7, 8, 9, 10,~~ and ~~6~~11 of this ordinance will be codified.

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ADOPTED this ____ day of _____ 2012.

**COUNTY COUNCIL
SAN JUAN COUNTY, WASHINGTON**

ATTEST: Clerk of the Council

Ingrid Gabriel, Clerk
Date: _____

Lovel Pratt, Chair
District 1, San Juan South

Richard Peterson, Member
District 2, San Juan North

REVIEWED BY COUNTY
ADMINISTRATOR

Pete Rose Date

Howard Rosenfeld, Member
District 3, Friday Harbor

Richard Fralick, Member
District 4, Orcas West/Waldron

RANDALL K. GAYLORD
APPROVED AS TO FORM ONLY

By: _____
Date

Patty Miller, Vice-Chair
District 5, Orcas East

Jamie Stephens, Member
District 6, Lopez/Shaw