

San Juan County Council Policy Direction
Critical Areas Ordinance (CAO) Update
General Section, Frequently Flooded Section and Geologically Hazardous Section
June 13 and 14, 2011

Direction to staff:

- What would be the trade-offs if any to project conditions, including stormwater, if moderate risk buffers are selected. Will there be a greater monitoring burden? Will there be a difference in associated costs (both to the land owner/developer and SJC)? If so, develop a couple of scenarios if minimum and medium are different. The product should be a decision-making matrix to be used by property owners and project developers.
- Provide GMA goals to the Planning Commission and council for consideration during the CAO update process.
- Provide examples of inclusion of GMA goals in CAO regulations.
- Consider inclusion of WAC 173-806-190 Critical Area Exemption and WAC 197-11-800 Categorical Exemptions in the CAO update process.
- Include context and/or reference for any specific numbers used in the text and the appendices of the recommendation documents.
- Address consistency of regulations with regard to various overlay districts.
- Revise the recommendation documents to clarify that the BAS is to be included in and advise the CAO update process.
- Provide examples of other jurisdictions who provide rewards/incentives for owners of property that include critical areas.
- Provide examples of how jurisdictions identify where critical areas exist in the permitting process

General Direction: Where lower risk, consider education as an alternative to regulations

Frequently Flooded Section

1. Classification of Frequently Flooded Areas.

Option 1. Continue to designate only FEMA areas of special flood hazard as “frequently flooded areas”, but provide applicants with information on predicted sea level rise so that they may consider it in their development plans.

But not built into the regulations.

2. Incorrect reference to elevation certificates.

Option 1. Reference SJCC Chapter 15.12 for requirements associated with construction in frequently flooded areas and FEMA designated areas of special flood hazard.

3. Essential Public Facilities.

Option 2. Add a restriction excluding NEW essential public facilities (except those that are water dependent) from designated frequently flooded areas.

NOTE: Develop code language that would allow EFPs in designated frequently flooded areas of special flood hazard in exceptional circumstances

Geologically Hazardous Section

General policy direction:

- Only require geotechnical reports on most sensitive geologically hazardous areas.
- For qualified professionals include specifics: Geotechnical Engineer, qualified Civil Engineer or certified Engineering Geologist
- Cross-reference other sections of state and local code

1. Classification.

Option B. Add “consequences to people and property” as factors that are considered in application of the regulations.

Reference WAC 365-190-120 (1)

Consider the impacts of changing “at least 20 feet” to “at least 10 feet.”

2. Classification - Additional Category 1 areas.

Option A: Include under Category 1 all landslide hazard and seismic hazard areas listed in the WAC 365-190-120 (6)(a)(iii) with the exclusion of lahars

3. Classification - Erosion hazard areas.

Consider both options:

Option B. Option A plus add any new soils identified in the current soil survey as having a severe risk of erosion.

Option C. Rather than listing specific soil types, include a general reference to soils identified by the USDA as having a severe risk of soil erosion.

4. Protection Standards – Category II - Report.

Option B. Require a “geotechnical” report for Category II geohazards.

Clarify that in (2)(a) all of the characteristics apply

5. Protection Standards – Category II – Setbacks and/or Vegetative Buffers.

Option B. Protection of structures in Cat. II geohazard areas be addressed as part of a geotechnical report prepared by a qualified professional.

6. Protection Standards – Category III.

Option B: Amend existing code language to exempt buildings constructed under the County’s owner/ builder exemption.

7. Protection Standards – Review Area.

Evaluate both options and recommend:

Option A: Retain existing code language.

Option B. Modify code to extend area to be analyzed in the geotechnical evaluation and report to include all geohazard areas and all potentially affected areas within 200 feet of the proposed development.

NOTE: Address challenges of accessing neighboring properties within the 200’ area in the geotechnical evaluation process.

8. Protection Standards – Concentrated Discharge of Runoff.

Evaluate both options and recommend:

Option A. Retain existing code language.

Option B. Modify existing language to require that a stormwater pollution prevention plan, approved by a qualified geologic professional, be required whenever concentrated runoff will be disposed of within 50 feet of a landslide or erosion geohazard area.

9. Protection Standards – Bulkheads.

Evaluate all options and recommend:

Option A. Do not include additional language to identify and prevent potential property damage associated with some bulkheads in some locations.

Option B. Add a requirement for geotechnical review in conjunction with proposed shoreline bulkheads to identify potential negative impacts to nearby property and to provide mitigation options. Where feasible, identify biotechnical engineering techniques as a preferred alternative over rock, concrete, or steel stabilization.

New Option C. Reference other applicable sections of the code and do not address bulkheads in the Geo Hazard Section

10. Protection Standards – Tsunami Waves.

Evaluate all options and recommend:

Option A. Postpone adoption of standards for increased elevation, floodproofing and/or setback of structures located in tsunami hazard zones until after these areas are mapped by the Dept. of Natural Resources. Until maps have been completed provide shoreline property owners who are preparing building plans with information on the risks associated with tsunami waves.

Option B. For the habitable portion of structures along marine shorelines, establish a 10 foot minimum elevation requirement (measured from the ordinary high water mark) or if feasible, allow for floodproofing if capable of withstanding tsunami waves associated with a Cascadia subduction zone earthquake. In addition, identify areas at risk of higher and/or more damaging waves and consider additional protection measures for these areas.

11. Protection Standards – Areas at risk of earthquake damage due to soil liquefaction.

Option A. Use DNR maps that identify any areas at risk of soil liquefaction during large earthquakes, and identify options for minimizing risks to structures prior to determining how to best address this geologic hazard.

12. Geotechnical Reports.

Option A. Staff to discuss with local geologic professionals, whether any additional detail is needed on either the contents of geotechnical reports or the qualifications of those who should prepare the reports. Consider adopting any recommendations that are developed.

13. Enhancing Existing Geohazard Maps.

Evaluate all options and recommend:

Option A. Do not take steps to enhance existing geohazard maps.

Option B. Use the County LiDAR technology to identify or confirm the presence of landslide hazards, and include this information on the maps used in the application of the regulations for geohazard areas. In addition, update hazard maps with the information provided in required geotechnical reports (e.g. require that geotechnical reports be submitted in an electronic format that is compatible with the County's Geographic Information System.

NOTE: Ground truth testing trumps preliminary maps

14. Protection Standards – Planning for climate change and sea level rise.

Option A: Do not include regulations related to climate change and sea level rise in the Geohazard section of the code (address this issue under the provisions for Frequently Flooded Areas and Fish and Wildlife Habitat Conservation Areas).

General Section

1. Purpose.

Option B. Add compliance with the GMA to the purpose statement.

2. Applicability – Distance from Critical Area.

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 sections of the Critical Area regulations.

3. Applicability – Land Uses Where Permit is Not Required.

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.

4. General Exemptions – Establishment of new lawns, gardens and orchards.

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.

NOTE: Include native vegetation as preferable in situations where it supports critical area functions and values - where appropriate.

5. General Exemptions – Removal of Vegetation.

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 recommendation from Firewise program).

6. General Exemptions – Exempt Land Divisions.

Option A. Add a statement to the land division standards (SJCC 18.70) making it clear that all parcels, including those created through exempt mechanisms, will be subject to Critical Area protection requirements.

7. General Exemptions – Other Exemptions.

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.

8. Reasonable Use.

Evaluate both options and recommend, and clarify when reasonable mitigation will be required:

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 \approx 5,500 s.f. – 10,900 s.f. plus the area covered by a driveway. (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 possible then restoration or enhancement is required to provide substitute resources).

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:

- a. The application of Critical Area regulations would otherwise deny all reasonable use of the property.**
- b. No other reasonable use has less impact on the Critical Area.**
- c. The proposed development is the minimum necessary to allow for reasonable use of the property.**
- 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.**
- e. The proposal does not pose an unreasonable threat to the public health, safety or welfare on or off the property.**
- f. The proposal will not result in a net loss of Critical Area functions or values considering the Best Available Science.**
- 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.

Consider and make recommendations regarding Ecology's recommendation that the inability to derive reasonable economic use should not be the result of the applicant's actions or that of the previous owner.

9. Procedures for review, oversight and enforcement of mitigation, restoration and enhancement requirements.

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.

10. Critical Area Stewardship Plan (CASP).

Evaluate both options and recommend:

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.

Specify the qualifications of professionals who can complete a CASP application.

Specify how the property owner would bear the costs of application processing and on-going monitoring.

Option B. Assuming standardized site specific regulations are established, do not include a CASP type option.

11. Interim local standards for shoreline non-conforming uses and structures.

Option B. Considering recent legislation, 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.

Review and recommend updates regarding upland nonconforming uses and structures.