



CRITICAL AREA REGULATIONS FREQUENTLY ASKED QUESTIONS May 2014

Frequently asked questions and their answers are provided for general information purposes. Please refer to the critical area regulations in San Juan County Code (SJCC) 18.30.110 through .160 for the specific regulations.

GENERAL

▪ **When do the critical area regulations apply?**

Critical area overlay districts provide regulations for land use activities, development and vegetation removal in critical areas and areas adjacent to critical areas. Critical area regulations apply even if a development or project permit is not required.

▪ **Where do the critical area regulations apply?**

- Critical aquifer recharge areas (the entire County). Plan review is required for commercial, industrial, public & institutional projects (See 18.30.140) ;
- Frequently flooded areas (See SJCC 18.30.130, SJCC Chapter 15.12 and SJC Flood Insurance Rate Maps (FIRMS) produced by the Federal Insurance Administration);
- In or within 200 ft. of geologically hazardous areas (See SJCC 18.30.120);
- In or within 300 ft. of wetlands (See SJCC 18.30.150);
- In or within 200 ft. of Fish and Wildlife Habitat Conservation Areas (FWHCAs) (See SJCC 18.30.160.B for a complete list);
- ¼ mile from Great Blue Heron nesting colonies. (See SJCC 18.30.160);
- 1,000 feet from Golden Eagle nests (See SJCC 18.30.160); and
- Additional standards apply in or within 200 Feet of a Designated Marine Shoreline (See SJCC 18.30.160.E.6).

Buffers apply when the critical area is on your parcel or another parcel under different ownership. If the critical area is under different ownership and is not accessible to the applicant, its edge may be established using available maps and information, including a visual assessment.

▪ **How can I know if a structure, use or activity is allowed in a Wetland, Aquatic Fish and Wildlife Habitat Conservation Area, or its buffer?**

Some structures, uses or activities are allowed or allowed within these critical areas or their buffers with conditions. Please see the following code sections for:

- Structures, Uses & Activities Allowed in Wetlands and Wetland Buffers (SJCC 18.30.150 Table 3.5)

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- Structures, Uses & Activities Allowed in Aquatic FWHCAs and Their buffers (SJCC 18.30.160 Table 3.8)

▪ **Where can I find critical area maps?**

Many critical area maps are found on the County website as noted below. In addition, please call CD&P with your parcel number or property address to obtain the map information noted below.

- **See the County Website Homepage:** Polaris includes critical aquifer recharge areas (entire County), possible wetlands, geohazard areas, frequently flooded areas, and some Fish and Wildlife Habitat Conservation Areas. (See: <http://www.sanjuanco.com/>)
- **See the CD&P Website CAO Implementation Page:** Drift cell maps, soil liquefaction, possible wetlands, Habitat (Chinook, Marbled Murrelet, Salmon) maps for Lopez, Orcas and San Juan Islands, FWHCA habitats and upland habitats (streams, lakes, protected habitat of local importance such as Garry Oaks, prairie and grasslands). (See: http://sanjuanco.com/cdp/CAO_ImplementationDocs.aspx)
- **Call CD&P:** For information about archaeological and cultural resources, shoreline fish presence (Beamer and Fresh Report) and additional habitat maps (surf smelt spawning beaches, eelgrass, etc.).

▪ **How do I prove compliance with critical area regulations?**

You must provide enough information in a development or project permit application to demonstrate compliance with the critical area regulations including any required reports prepared by a qualified professional.

▪ **What is a qualified professional?**

SJCC 18.20.170 defines qualified professional as a person with training and experience in the pertinent scientific discipline. With regard to critical areas, it means a person who is a qualified 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. When certification is not required the professional must have: (1) obtained a B.S., B.A., or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, or related field, and (2) have at least five years of related work experience. See the entire definition for the specific qualifications of Wetland, Fish and Wildlife Habitat Conservation Area, Geologically Hazardous Area and Critical Aquifer Recharge Area professionals.

▪ **Does the exemption in SJCC 18.30.110.C.3.a apply to the Parks Department's utilities or other utility lines that are not proposed in an easement or R-O-W?**

Yes, if the installation and construction is proposed within a "Facility." SJCC 18.20.060 defines facility and service provider as the department, district, agency or private entity responsible for providing a specific concurrency facility.

CRITICAL AREA FREQUENTLY ASKED QUESTIONS

▪ **How do I demonstrate that my project will not increase adverse impacts to critical area function and values?**

Submit a narrative and plans with your application that show how the magnitude of adverse impacts to water quality and critical area functions, and risks to people and property, will not be increased. Areas that must be addressed include:

- a. Steps that will be taken to remove contaminants and infiltrate or safely discharge additional runoff and pollutants;
- b. Steps that will be taken to prevent erosion and maintain stability of the site and adjacent areas;
- c. Steps that will be taken to protect, relocate, or replace trees, shrubs and rare/ sensitive plants;
- d. Steps that will be taken to protect or mitigate adverse impact to wetland habitat and the habitat of protected animals, including any construction timing restrictions;
- e. Steps that will be taken to protect habitats of local importance; and when applicable
- f. Steps that will be taken with proposed shoreline modifications (e.g. docks, bulkheads) to prevent adverse impacts to the size of shoreline substrate; the flow of sediment along the shore; and protected aquatic plants, animals and habitats.

▪ **How will CD&P determine if a proposed activity, use or structure does not further intrude into a critical area?**

Further intrusion into a critical area includes activities that intrude into critical areas outside of a development area. The development area is the area that is directly altered as a result of development. This includes, but is not limited to, the area containing structures, driveways, gardens, landscaped areas, areas of grading, excavation, or fill.

▪ **What is a tree?**

No distinct line separates a tree from a shrub. There are trees that reach a mature 15 feet, but some shrubs reach up to 20 feet. Some of these shrubs will serve as small trees, particularly, if the lower branches are removed. Generally, a tree is a large woody plant that you can stand under. Trees generally have one or several trunks topped by a foliage canopy. Some trees readily have those characteristics; others go through a prolonged shrubby youth during which they maintain branches down to ground level. In time, though, most become high enough to walk under. Plants that someone could eventually stand under are considered trees.

If there is a question about whether a certain plant is a tree, CD&P will refer to *Sunset's New Western Gardner* 4th edition.

▪ **Does the definition of development area include logged areas?**

No, because the alteration must be a result of development which is defined in SJCC 18.20.040 and does not include logging. SJCC 18.20.040 defines development as the division of a parcel into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any grading, draining, dredging, drilling, filling, paving, excavation, mining, landfill; or any extension of the use of land. (See also "Shoreline development.") Not all development requires a permit or review.

CRITICAL AREA FREQUENTLY ASKED QUESTIONS

- **How can I find out more about the installation of utilities, on-site sewage systems and drilling and digging of wells?**

Please see the utility bulletin at: http://sanjuanco.com/cdp/CAO_ImplementationDocs.aspx.

- **Does CD&P need to review a mitigation plan if no other permit is required for that activity?**

Yes. Also, if needed, the County review may include referral to an independent qualified professional. As an alternative to third party review, the applicant and the director may jointly select the qualified professional who will complete the mitigation plan.

CLEARING FOR FIRE PROTECTION

- **Is clearing around an existing or proposed home allowed for fire protection?**
 - Thirty feet of vegetation may be cleared around buildings “lawfully existing on March 31, 2014,” for defensible fire protection purposes (See 18.30.110.C.4). This exemption will apply to buildings proposed in complete building permits submitted prior to March 31, 2014.
 - For vegetation removal around structures proposed on or after March 31, 2014, see SJCC 18.30.150 and 18.30.160 Tables 3.5 & 3.8. These provisions allow:
 - ✓ Some clearing for a view or for fire hazard reduction, minor trimming and pruning of the foliage of trees and shrubs is also allowed in wetland buffers, provided the health of the trees and shrubs is maintained, trees are not topped, and all vegetation overhanging streams, ponds, lakes, wetlands, and marine waters is retained. In no case shall more than 20% of the foliage of individual trees or shrubs be removed during a 12-month period.
 - ✓ Some clearing for a view or for fire hazard reduction, minor trimming and pruning of the foliage of trees and shrubs is allowed in FWHCA buffers provided the health of the trees and shrubs is maintained, trees are not topped, and all vegetation overhanging aquatic FWHCAs is retained. In no case shall more than 20% of the foliage of individual trees or shrubs be removed during one 12-month period.
- **What happens if a shoreline regulation or other regulation conflicts with the exemption in SJCC 18.30.110.C.4 for vegetation removal?**

Other applicable regulations continue to apply. If there is a conflict, the more restrictive provision generally applies. For example, if a shoreline aesthetic buffer is more restrictive, it will control.

CRITICAL AREA FREQUENTLY ASKED QUESTIONS

LAND DIVISION

- **Do I have to worry about critical area regulations when I develop lots created in an exempt land division?**

Yes, if you want to develop the lots created in an exempt subdivision, the proposed development must comply with the critical areas. Please ensure that a buildable area is possible when creating exempt land divisions. Reasonable use provisions only apply to lots created prior to March 31, 2014.

- **Is my existing lot created by a short subdivision plat subject to the new critical area regulations?**

Vesting is a complicated question and consultation with CD&P may be required; however generally, if your short plat was approved before July 26, 1987, current development standards including critical area regulations will apply to your short platted lot without regard to any building envelopes or setbacks (including critical area buffers and tree protection zones) shown on the short plat unless SJCC 18.50.330(B)(19) applies to lots within shoreline jurisdiction:

The lot coverage and setback requirements of subsections (B)(13) and (D) of this section shall not apply to those parcels which are less than 0.3 acres in size, where the parcel boundaries were approved in a division of land before December 31, 1990. If the lot document approving a division of land establishes different coverage and setback standards from those in subsections (B)(13) and (D) of this section, the standards on the document approving the division of land shall control. (Note: excerpted in part.)

Also, compliance is required with building envelopes or setbacks shown on the short plat as a condition of approval. See CD&P Policy 1L084 for more information.

If the short plat was approved on or after July 26, 1987, the setbacks and critical area buffers and protections shown on the short plat must be met.

- **Is my existing lot created in a long subdivision plat subject to the new critical area regulations?**

Zoning regulations including critical area regulations in effect on the day the plat is approved by the County Engineer and Health Department apply for seven years. For shoreline lots, also see SJCC 18.50.330(B)(19) above.

LAND USE INTENSITY TABLE

- **What are hobby farms?**

A hobby farm means cultivating land, producing crops or raising livestock largely for personal pleasure and use but not primarily for commercial sale or use which is agriculture as defined in SJCC 18.20.010 as the science, art, and business of cultivating land and producing crops or raising livestock primarily for commercial sale or use; farming.

CRITICAL AREA FREQUENTLY ASKED QUESTIONS

▪ Which land use intensity category do public and private roads fall under?

Because of the potential impacts associated with road construction, public and private roads are classified as a High Land Use Intensity (see Table 3.3a in SJCC18.30.150 Wetlands).

WETLANDS

▪ Are all wetlands regulated?

No, some Category II, III and IV wetlands are exempt from the critical area requirements based on their size and rating. Category II and III wetlands 1,000 square feet or less and Category IV wetlands and wetland mosaics 2,500 square feet or less are exempt.

▪ Do I need a wetland delineation or reconnaissance?

Maybe. A wetland report and boundary delineation, with an appropriate scope and scale to determine compliance with the County code, must be provided with applications for project and development permits located within 300 feet of wetlands.

Is the proposed development, vegetation removal or other site modification located within 300 feet of a wetland? To answer this question, it may be necessary to have the wetland edge facing the area that will be developed or modified delineated. In many cases, this can be based on a wetland reconnaissance rather than a full delineation. Although maps and other imagery can be used to help with this determination, conditions on the ground shall control. If the proposed development, vegetation removal, and other modifications are more than 300 feet from the wetland, no further action is needed for compliance with wetland critical area regulations.

Also, if proposed activities do not require development or project permits, and activities are consistent with any other critical area requirements it may not be necessary to identify the edge of the wetland and the size of the water quality buffer.

▪ What is the difference between a wetland reconnaissance and delineation?

A wetland reconnaissance is prepared by a qualified professional. It simply confirms the presence or absence of a wetland, determines the wetland type, rating, and approximate size, and identifies the edge of the wetland in a limited area. Delineation of the entire wetland would also include a detailed report describing the wetland's functions and values.

▪ How are wetland boundaries determined?

They are determined through a field investigation by a qualified wetland professional using the 1987 U.S. Army Corps of Engineers "Corps of Engineers Wetlands Delineation Manual," Technical Report Y-87-1 and any applicable regional supplements.

CRITICAL AREA FREQUENTLY ASKED QUESTIONS

▪ **What electronic format is needed to submit a wetland delineation map to CD&P?**

The preferred coordinate system/projection is:

- NAD_1983_StatePlane_Washington_North_FIPS_4601_Feet
- WKID: 2285 Authority: EPSG

Acceptable formats are:

- ESRI Shapefile
- ESRI File Geodatabase
- Google Earth KML or KMZ file
- AutoCAD DXF file (must have a spatial reference)

Lesser known but still acceptable formats:

- ArcInfo Coverage
- ESRI Personal Geodatabase
- Geography Markup Language (GML)
- GeoJSON

For more info see: http://en.wikipedia.org/wiki/Comparison_of_Vector_Formats_%28GIS%29

▪ **Is my man-made pond considered a wetland?**

Based upon the definition of wetland in SJCC 18.20.230, man-made ponds built outside of wetlands that now contain some wetland plants are not treated as a wetland. Man-made ponds constructed in a wetland are treated as a wetland.

▪ **Can ponds be dredged out to remove sediment, etc.?**

- Man-made ponds that were never constructed in a wetland are not considered wetlands and can be maintained including digging out sediment.
- Man-made ponds that were constructed in wetlands can be maintained if the sediment removal does not further intrude into the wetland or wetland buffer by increasing the original size of the pond under SJCC 18.30.110.C.2 or SJCC 18.30.110 Table 3.5.t.

▪ **Can I locate a well in a wetland?**

Wells may not be located in a wetland. See SJCC 18.30.150 and 18.30.160 Tables 3.5 & 3.8. They may be located the outer 25 percent of a wetland buffer, if there are no adverse impacts to adjoining wetlands, that measures are taken to avoid compaction of soils during drilling and development of the well, and that disturbed areas are immediately stabilized and replanted with the type of vegetation found in the buffer.

▪ **Is stump removal allowed in the actual location of a drainfield?**

See SJCC 18.30.160 Table 3.5 Item U.iii.B.1. Stump removal is not allowed. Installation of the drainfield should be made to accommodate this requirement. A variance from the provision may be possible. Please consult with CD&P if you think you need a variance.

CRITICAL AREA FREQUENTLY ASKED QUESTIONS

FISH and WILDLIFE HABITAT CONSERVATION AREAS

▪ **Can I locate a well in a FISH and Wildlife Habitat Conservation Area buffer?**

Drilling and digging of wells is allowed within the outer 25 percent of the water quality buffer if there are no anticipated adverse impacts to adjoining FWHCAs, measures are taken to avoid compaction of soils during drilling and development of the well, and disturbed areas are immediately stabilized.

▪ **Can I put an accessory structure in Zone 2 of a Tree Protection Zone?**

No, SJCC 18.30.160 only allows construction of one primary structure. Construction of a well or on-site septic system may be allowed in this zone if it meets all other requirements.

▪ **Where can I find information about protected plants and animals and habitats of local importance?**

Please see the bulletins containing pictures, descriptions and other information on the CD&P critical area implementation web page at [San Juan County -- Community Development and Planning Department](http://sanjuanco.com/cdp/CAO_ImplementationDocs.aspx) or http://sanjuanco.com/cdp/CAO_ImplementationDocs.aspx.

▪ **If I have a protected plant or animal on my property, will my wetland water quality buffer change?**

Possibly, certain protected plants require that wetland buffers be established based upon a Category 1 wetland rating. These include the Western Toad, Northern Harrier, Short Eared Owl, and Wilson Snipe.

▪ **If a coastal geotechnical report recommends that direct discharge of stormwater including runoff from the roof be treated to remove contaminants before discharge, what is the treatment standard?**

There is no treatment standard. When projects trigger the treatment standards under SJCC 18.60.070 storm drainage standards, projects shall comply with the treatment requirements in the 2005 Western Washington Stormwater Management Manual. Otherwise, applicants must demonstrate the use of applicable Best Management Practices (BMPs) to treat pollutants caused by the proposal. Applicable Low Impact Development BMPs from the 2005 or 2012 Ecology Manual or other recognized BMPs may be used to comply with this requirement. Applicants must demonstrate that they are implementing BMPs to remove sediment and other contaminants. Shireene Hale at CD&P can provide technical assistance in this area.

▪ **The habitat description for the Western Toad includes springs, streams, meadows and woodlands, especially those within approximately 1,640 feet of ponds or wetlands. Does this description relate to the protection requirements?**

CRITICAL AREA FREQUENTLY ASKED QUESTIONS

No, the protective requirement to use the Category 1 wetland buffers is only for Western Toads found within 200 feet of a FWHCA stream or pond, etc. The habitat description only provides information about the likely distance from ponds or wetlands that this toad may live.

FIELD MARKING AND INSPECTIONS

▪ **Do I have to mark critical areas and their buffers on my site prior to obtaining a building permit?**

Prior to building permit approval, the edge of wetlands and FWHCA and their respective buffers and Tree Protection Zones adjacent to area being developed must be marked in the field. Markers must be maintained throughout the duration of construction. An affidavit of field marking is required to be signed and submitted to CD&P prior to the issuance of a building permit.

▪ **Do I have to field mark buffers on someone else's property?**

The field marking requirement in SJCC 18.30.160.D.4 and 18.30.150.E.3 only applies to the portion of the critical area or its buffer located on the subject property. The applicant is only responsible for managing the development on his/her property.

▪ **What inspection processes are associated with critical areas?**

- **Pre-construction inspection:** The CD&P director may require a pre-inspection of critical area field markings prior to initiation of permitted activities.
- **Final on-site critical area review:** Unless you have a financial guarantee & agreement approved by CD&P, please call (360 - 378-6270) prior to requesting a final building inspection to arrange final critical area review to ensure compliance with the approved site plan. If consistent, you will be notified that a final building inspection may be requested from CD&P.
- **Inspections for mitigation plans:** CD&P shall make an appointment or provide advanced written notice prior to inspecting a site for compliance to an approved mitigation plan.