ISSUE: Continuing noncompliance of the County’s critical area regulations with the Growth Management Act (GMA).

RECOMMENDATIONS: For compliance with the GMA, the Department of Community Development recommends that the County Council adopt the attached ordinance addressing two noncompliance issues, the general utility exemption and the allowance of sewer lines in wetlands.

RECOMMENDED MOTION: For compliance with GMA, I move that the Planning Commission recommend that County Council adopt the critical area ordinance prepared by staff.

BACKGROUND: San Juan County adopted amended critical area regulations in Ordinance No. 2-2014 on March 5, 2014, in response to the State of Washington’s Growth Management Hearings Board’s (Board) September 6, 2013, decision in Case No. 13-2-0012c.

On August 20, 2014, the Board issued an order finding compliance and continuing noncompliance of the County’s critical area regulations with the Growth Management Act (GMA). The Board set a February 17, 2015 compliance deadline.

The Board found two areas of noncompliance that are summarized below:

- The County’s allowance of sleeved and water-tight sewer lines in wetlands fails to assure no net loss of ecosystem functions and values, fails to include Best Available Science to protect the functions and values of critical areas, and fails to provide a reasonable justification for departing from the Best Available Science (BAS) (pg. 39 of the Board’s decision), and
The County did not provide any rationale or reasoning for departing from the BAS and has not required adequate compensatory mitigation for long-term harm to wetlands from ground disturbing utility line construction (pg. 54-55 of the Board’s decision).

The Board also identified a scriveners error in SJCC 18.30.160 Table 3.8 Item (g) where the word “wetland” was intended to be “FWHCA.”

An environmental checklist was prepared to evaluate the potential effects of the proposed amendments and a Determination of Non-significance (DNS) was issued and published on October 1, 2014, in the Journal of the San Juan Islands and The San Juan Islander. Notice was provided to federal, state and local agencies in accordance with SJCC 18.80.050 and WAC 197-11-340.

As required by RCW 36.70A.106, a 60-day notice regarding the potential adoption of code amendments was provided to the Washington State Department of Commerce on October 1, 2014. Commerce’s October 1, 2014, acknowledgement letter identified the notice as Material ID #20670.

ANALYSIS:

The following code amendments are intended to comply with the Board’s order and the GMA and resolve an internal code inconsistency.

Ordinance Section 1 is proposed to amend SJCC 18.30.110(C)(3)(a), the utility exemption applied within existing development areas (SJCC 18.20.040) including existing right-of-ways and roads. These areas have been previously disturbed and predevelopment conditions have already been altered.

The utility exemption is a departure from the Best Available Science. Because the GMA does not require the County to follow BAS, a departure from it is allowed if the County provides a reasoned justification for the departure or science-based mitigation adequately protects against the loss of ecological values. WAC 365-195-915 provides guidance on including the Best Available Science in the development of critical area regulations and departing from science based recommendations. The guidance specifies that any information in the record that supports the decision should be identified, the rationale for departing from science based recommendations should be explained, potential risks to the functions and values of critical areas should be described, and measures chosen to limit such risk should be identified. Please refer to the draft ordinance for BAS references and the rationale for departing from the BAS.

SJCC 18.30.110(C)(3)(a) is amended to comply with the GMA by requiring compensatory mitigation in conformance with the requirements of SJCC 18.30.110(E)(7). SJCC 18.30.110(E)(7)(8)(d) contains the mitigation sequence to be followed including avoidance of adverse impacts, reducing or minimizing impacts, rectifying impacts, and compensating for impacts. Mitigation of long-term harm to wetlands through the County’s mitigation sequence is designed to eliminate or reduce the severity of negative impacts to functions and values and to provide compensation for those impacts.

To address the Board’s concern regarding additional impacts to the functions and values of wetlands, the County’s mitigation requirements, the departure from BAS, and to limit potential risks to the functions and values of critical areas, specific mitigation steps designed to avoid, minimize, reduce and rectify impacts to functions and values are proposed as a basis for implementing the mitigation sequence.
**Ordinance Section 2**, SJCC 18.30.150 Table 3.5 Item (u)(ii) pertaining to sleeved and water-tight drainfield lines is amended by changing “yes” to “no” in the wetland column. The construction of drainfield lines will not be permitted in a wetland under general circumstances. To avoid a potential takings, construction of drainfield lines would be permitted in a wetland upon approval of a provisional use application for a reasonable use exception (SJCC 18.30.110.D).

This proposal was supported by San Juan County Health and Human Services (HHS) who recommended a reasonable use application fee reduction to promote compliance with the critical area regulations and consistency with HHS fees. County Council directed staff to prepare a companion ordinance to this proposal to amend the County’s fee schedule to reduce the reasonable use permit fee associated with on-site septic proposals. The fee amendment ordinance is procedural in nature and is not required to be processed by the Planning Commission.

**Ordinance Section 3** amends a scriveners error in SJCC 18.30.160 Table 3.8 Item (g) to change the word “wetland” to “FWHCA” because the table applies to Fish and Wildlife Habitat Conservation Areas.

**ATTACHMENTS:**

- Draft Ordinance Regarding Critical Area Regulations; Amending Ordinance Nos. 2-2014 and X-2014 and San Juan County Code 18.30.110, 18.50.150 and 18.30.160.
- August 20, 2014, Board Final Decision And Order
- SEPA Checklist and DNS