



## CRITICAL AREA ORDINANCE BRIEFING MEMORANDUM

**REPORT DATE:** March 10, 2026

**TO:** San Juan County Planning Commission

**CC:** Sev Jones, DCD Director

**FROM:** Colin Maycock, AICP, Planner IV *cm*

**SUBJECT:** Update of the Critical Areas protections and the Shoreline Master Program.

**PUBLIC BRIEFING:** **March 20, 2026**

**ATTACHMENTS:**  
**Clean Draft Critical Areas Regulations**  
**Cross out & Underline Draft Critical Area Regulations**  
**BAS Crosswalk**

**PURPOSE:** To inform the San Juan County Planning Commission of the Department’s progress in updating the County’s Critical Area protections and to highlight specific provisions that are, in the Department’s understanding, significant departures from the current regulations.

The report will focus first on the proposed amendments to the definitions of terms used in the code, then to the provisions for the specific Critical Areas the regulations seek to protect: Fish and Wildlife Habitat Conservation Areas; Wetlands; Geologically Hazardous Areas; Frequently Flooded Areas and the Critical Aquifer Recharge Area; finally the report will detail the next steps in the process.

The County is required to develop regulations that are consistent with the Best Available Science (BAS). Both Growth Management Act (GMA) and Shoreline Management Act (SMA) require the County to use up to date scientific information as the basis for environmental protections. RCW 36.70A.172, (*the GMA*) directs the County to “include the best available science in developing policies and regulations to protect the functions and values of critical areas.” WAC 173-26-201 (2)(a) (*the SMA*) directs the County to “First, identify and assemble the most current, accurate and complete scientific and technical information available that is applicable to the issues of concern.”

The BAS is a compendium of knowledge drawn from multiple sources that represents the current and finest information developed following a valid scientific process and supported by a broad consensus. WAC 365-195-900 through WAC 365-195-925 identifies the following characteristics of a valid scientific process including; peer review, standardized methods, repeatability, logical conclusions, reasonable inferences, quantitative analysis, proper context and appropriate references.

As part of the adoption process the County will be expected to demonstrate that the proposed regulations are consistent with the BAS.

On September 16, 2025, the County published the ‘Gap Analysis’. The gap analysis identified the provisions in the current code that needed to be updated to reflect the updated BAS, needed to be refined, rewritten or otherwise improved to increase transparency and ‘ease of use’ in the code. This document is a

fundamental component underpinning the proposed changes as it provides the links between scientific knowledge and state requirements and the proposed San Juan County Code changes. The Gap Analysis identifies the sources of the proposed changes.

The complete list of proposed code changes and their rationale is available online, the Department has labeled this list as the ‘BAS Crosswalk’ and it may be found at:

<https://engage.sanjuancountywa.gov/30053/widgets/104689/documents/77731>

The BAS Crosswalk sets out the proposed code amendments in a table format identifying the current code section, the proposed change and the rationale for that change, including the citation in the Gap Analysis and scientific resource that supports the proposed change. For example:

SJCC 18.20.030, “C” Definitions	<a href="#">“Compensatory mitigation” means the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of critical areas or their buffers for the purposes of offsetting unavoidable adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.</a>	BAS/Consistency with state and federal agencies, Gap Analysis, Subsection 2.4.4. ECY Publication No. 22-06-014
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In this example, the new definition, “Compensatory Mitigation” was identified as needed by Section 2.4.4 of the Gap Analysis and the proposed definition is consistent with the Department of Ecology’s document “Wetland Guidance for Critical Areas Ordinance (CAO) Updates, October 2022, Publication #22-06-014.”

It is expected that the BAS Crosswalk will help address concerns regarding the need for and the format of the proposed code amendments.

**BACKGROUND:** The Growth Management Act, (GMA) RCW 36.70A.130(4), in conjunction with RCW 36.70A.130(6), established June 30<sup>th</sup>, 2018, as the County’s (missed) deadline to update the critical area protections, widely known as Critical Area Ordinances (CAO). The County has not updated the CAOs required by the GMA since CAOs were adopted in 2012 and 2013. The County’s noncompliance with the GMA impacts the County’s eligibility for different types of state funding.

**CRITICAL AREAS:** Washington Administrative Code (WAC) 365-196-485(2) identifies the critical areas the County is required to protect:

- Wetlands
- Frequently Flooded Areas
- Geologically Hazardous Areas
- Critical Aquifer Recharge Areas
- Fish and Wildlife Habitat Conservation Areas

Very broadly speaking, the draft regulations are a continuation of the current site and development specific regulations. The proposed code is geared toward providing greater clarity in the how and where the provisions the apply as well as ensuring that the County’s regulations are consistent with the state’s requirements and scientific knowledge.

**Proposed Amendments to the Definitions**

It’s difficult to overstate the value of the definition section of the Unified Development Code (UDC) in the smooth administration of the code. Equally, it is vital to recognize that the definitions, in themselves, are not supposed to be regulatory, but rather should provide the infrastructure that the regulations are built upon.

The UDC's definitions are found in SJCC 18.20. Ideally the definitions provide the specific meaning of a term or word as it is used in the text of the code. Where there is no specific definition given, common usage is presumed.

## A. Mitigation

- a. There are a number of proposed amendments focusing on clarifying and improving the County's mitigation provisions.
- b. Where adverse impacts to protected functions and values are unavoidable, mitigation is required.
- c. The current code identifies few parameters for mitigation actions. The lack of specificity in the current code can frustrate applicants and staff alike in the administration of the code because process and expected outcomes lack transparency.
- d. The following proposed definitions identify the meaning of a variety of mitigation and related actions:
  - i. Compensatory mitigation means the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of critical areas or their buffers for the purposes of offsetting unavoidable adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.
  - ii. Creation, wetland means the manipulation of the physical, chemical, or biological characteristics present to develop a wetland that did not previously exist at an upland site. Creation results in a gain in wetland area and functions. A typical action is the excavation of upland soils to elevations that will produce a wetland hydroperiod and hydric soils, and support the growth of hydrophytic plant species.
  - iii. Enhancement means the manipulation of the physical, chemical, or biological characteristics of a critical area or buffer to heighten, intensify, or improve specific function(s). Enhancement results in the gain of selected function(s), but may also lead to a decline in other function(s). Enhancement does not result in a net gain in size of the critical area or buffer.
  - iv. Re-establishment means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions and environmental processes to a former wetland or FWHCA. Re-establishment results in rebuilding a former wetland or FWHCA and results in a gain in area and functions.
  - v. Rehabilitation means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions and environmental processes to a degraded wetland or FWHCA. Rehabilitation results in a gain in function, but does not result in a gain in size.
  - vi. Restoration means measures taken to restore an altered or damaged natural feature, including: (a) Active steps taken to restore damaged wetlands, FWHCAs, streams, protected habitat, or their buffers to the functioning condition that

existed prior to an unauthorized alteration; and (b) Actions performed to re-establish structural and functional characteristics of a critical area that have been lost by alteration, past management activities, or catastrophic events. to return to an original or like condition.

- vii. “Wetland mitigation bank” means site or suite of sites where resources are restored, created, enhanced, and/or preserved, for the purpose of providing compensatory mitigation for impacts. In general, a mitigation bank sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument.
- viii. Cumulative impacts” means the combined, incremental effects of human activity on critical area functions and values. Cumulative impacts result when the effects of an action are added to or interact with the effects of other actions in a particular place and within a particular time. It is the combination of these effects, and any resulting environmental degradation, that should be the focus of cumulative impact analysis and changes to policies and permitting decisions.
- e. Each of the definitions above are tied to proposed changes to SJCC 18.35.045, the code section addressing mitigation requirements.
- f. Both the current and proposed mitigation requirements allow for a broad array of mitigation approaches; however, the proposal also includes compensation planting ratios for impacts to wetlands, See SJCC 18.35.045(G).
- g. While the proposed regulations offer changes and improvements to the ecological protections, the most significant of the proposed changes are in the utility and clarity of the code. The proposed text sets forth when the regulations apply, what the critical area review process requires, the contents of a critical area report, where and in which circumstances critical area protections do not apply.

## **B. Fish and Wildlife Habitat Conservation Areas**

The proposed amendments have clarified the applicability section of the code and will be removing superfluous text that is a throwback to the period between the adoption of the CAO originally and the updated SMP.

Two species of local importance have been added, Coastal Cutthroat Trout and Coho salmon. N

The proposed amendments include two definitions of Fish and Wildlife Habitat Conservation Areas. The proposed code amendments distinguish between freshwater Fish and Wildlife Habitat Conservation Areas and Marine Fish and Wildlife Conservation Habitat Areas. The distinction between marine and freshwater FWHCA’s is one of the most significant proposed changes to the current code.

While in many respects the sections for marine and freshwater FWHCAs mirror one another, such as provisions for the protection of ‘significant trees’ in each of the buffers, (The proposal also includes and identifies what constitutes a significant tree) and provisions for functionally disconnected buffers, having two distinct sections, does emphasize the difference between marine

and freshwater FWHCAs. Functionally disconnected buffers are not a new provision rather a clarification of existing regulations.

Freshwater and Marine FWHCAs possess distinct characteristics that require protection.

By distinguishing freshwater FWHCAs from the marine ones, the draft CAO uses the work and guidance of the Department of Fish and Wildlife (WDFW) for the protection of freshwater streams and lakes identified in the BAS supplement published on September 16, 2025. WDFW's recent work on Riparian Management Zone (RMZ) guidance from 2020 includes a statewide mapping effort undertaken as part of the study. This work is considered Best Available Science by the state.

Freshwater FWHCAs would now be subject to buffers based on soil type and dominant site potential tree height (SPTH) at 200 years of growth. The proposed buffers are based on the average SPTH for San Juan County.

Freshwater FWHCAs Based on waterbody type	Current		Proposed Freshwater FWHCA Buffer
	Water Quality Buffer	Tree Protection Zones 1+2	
For marine and freshwater FWHCAs	50-150 ft depending on slope and intensity	30/110 depending on stream type	
Type F/Type S	50-150 ft	110 ft	180 ft
Type NP	-	50 ft	100 ft
Type NS	-	30 ft	100 ft
Type NS flowing less than 6 months	-	Banks must be vegetated	100 ft
Lakes and ponds less than 20 acres	110 ft		100 ft

The Freshwater FWHCA buffers mark the most significant change, in terms of increased buffer size, in the proposed regulations; however, there are provisions for freshwater FWHCA buffer averaging and even reductions, (see proposed SJCC 18.35.130(D)), provided certain criteria are met. The proposal also recognizes that there may be sites that are functionally disconnected from the FWHCA, such as a location that is upstream and separated by a road.

The proposal includes changes to the buffers for Marine FWHCAs eliminating the two tree protection zones and the water quality buffers that vary based on slope to a single 110 ft buffer.

Marine FWHCAs	Current		Proposed Marine FWHCA Buffer
	Water Quality Buffer	Tree Protection Zones 1+2	
For marine FWHCAs and Lakes subject to SMP	50-150 ft depending on slope and intensity	35/110 ft	110 ft from OHWM

Non bedrock shorelines	Coastal geologic buffer as determined by Geotech	Coastal geologic buffer as determined by Geotech	Coastal geologic buffer as determined by Geotech
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The 110 ft buffer does not vary depending on the slope of the site.

In the past, the County has overlooked the importance of tree protection within FWHCAs. Obviously not all trees are equally valuable; however, the proposed update includes a definition of “significant tree” *means any healthy tree that is at least eight inches in diameter at breast height (forty-eight inches). A tree growing with multiple stems shall be considered significant if at least one of the stems, as measured at a point six inches from where the stems digress from the main trunk, is at least four inches in diameter. Any tree that is planted to fulfill requirements of this title shall be considered significant, regardless of size or species.*

The proposal contains regulations that where buffer averaging or reduction has been approved, development must occur to occur in a manner that protects significant trees on the site.

The removal of vegetation and trees within the buffer is allowed provided the applicants submit a tree removal plan and the plan meets the standards set forth in SJCC 18.35.135(I).

The proposal includes provisions for functionally disconnected marine buffers and a process for buffer averaging provided the applicant submits a Habitat Management Plan that meets the criteria set forth in the proposed code SJCC 18.35.135(E).

### C. Geologically Hazardous Areas

The proposed regulations include two primary changes to the current geo hazard regulations, the first in how the geo hazards are identified and the second in the adoption of setbacks from Category I geo hazards.

The proposed updates to the geo hazard protection regulations refines the identification of Category I (landslide and other) geohazards as the following:

- a. Areas designated in the Washington Department of Ecology Coastal Zone Atlas as U (Unstable), URS (Unstable Recent Slide), or UOS (Unstable Old Slide) and other areas identified by site-specific geologic reports.*
- b. Areas with slopes of greater than 40 percent and with a vertical relief of 10 feet or more, except areas of exposed, unfractured bedrock. A slope is delineated by establishing its toe and top of bank and measured by averaging inclination over at least 10 feet of vertical relief. If any portion of a slope meets this definition, the slope or some larger portion may be designated a landslide hazard area.*
- c. Areas designated as quaternary slumps, earthflows, mudflows, or landslides on maps published by the United States Geological Survey or the Washington Department of Natural Resources.*

The proposal differs from the current regulations in section b. The current regulations identify areas with a 50% slope and a vertical relief of 20 ft or more whereas the proposed language reduces both the slope and the vertical relief to 40% and 10 ft.

The County includes many Category II geohazards and the proposed updates include much more specificity regarding how they may be identified based on the soil types in the National Geologic Survey.

*a. Erosion hazard areas characterized by soils identified in the USDA Soil Survey of San Juan County, Washington, as having a severe risk of water erosion hazards:*

*i. The Pickett Soil portion within the Pickett-Rock Outcrop Complex – PrD only where slope exceeds 15 percent;*

*ii. PrE;*

*iii. The Roche Soil portion within the Roche-Rock Outcrop Complex, 30 to 70 percent slopes – RxE; and*

*iv. Roche gravelly loam, eight to 15 percent slopes – RgC.*

*b. Category II landslide hazards include any area with all three of the following characteristics:*

*i. Slopes in excess of 15 percent;*

*ii. Pervious soil layers overlying semi-pervious to impervious soil layers; and*

*iii. Evidence of springs or groundwater seepage to the surface.*

The other significant change in this geohazard section is the introduction of setbacks from Category I geohazards.

Category	Current setback	Proposed Setback – Depending on slope and height
Category I	-	50-100 ft or waive based on Geotech report
Category II	-	Geotech report or waiver
Category III	Conformance with IRC	Conformance with IRC
Non bedrock shorelines	Coastal geologic buffer as determined by Geotech	Coastal geologic buffer as determined by Geotech

As implied in the table above, the proposed setback from the Category I geohazard varies depending on the vertical relief of the slope. A slope that is 50 ft high will require a 100 ft setback. That said, depending on the Geotech report, the Director may waive the setback requirement.

#### **D. Wetlands**

The proposed regulations update the current wetland protection regulations. The current wetland categorization remains the same; (Categories I-IV), however, the proposed update includes provisions for changing the minimum size of regulated wetlands, changing the size and number of wetland buffers and identifying the means by which wetland buffers maybe averaged or reduced.

1. Currently the code exempts Category IV wetlands that are no more than 2,500 sq ft from protections. The proposed code expands that exemption up to 4000 sq ft provided that the

wetland meets certain criteria, (are not part of a mosaic, not part of a shoreline associated wetland, are not associated with riparian areas and their buffers and don't score more than 6 on the Washington state Wetland Rating system.

2. In addition, all wetlands that are less than 1,000 sq ft that meet the criteria are exempt from the required protective buffer.
3. Comparison of Current and proposed wetland buffers:

Wetlands	Current Depending on intensity		Proposed depending on intensity
	Water Quality	Habitat	
Category I	125-250 ft	150-300 ft	150-300 ft
Category II	50-100 ft	150-300 ft	150-300 ft
Category III	40-80 ft	75-150 ft	75-150 ft
Category IV	25-50 ft	25-50 ft	25-50 ft

Currently there are two different wetland buffers which vary depending on the intensity of the proposed development and the type of wetland. Intensity of development is determined by type of activity and parcel size.

There are provisions in the current code for the reduction of wetland Water Quality Buffers but not their concurrent habitat buffers.

The proposed regulations propose a single buffer that varies on the intensity of development.

The proposed regulations provide for buffer averaging and clearly defined mitigation replacement ratios.

4. Both the current and proposed code provides a reasonable use exception for parcels that are otherwise encumbered by wetlands and their buffers.
5. Both the current and proposed code broadly eliminates buffers for functionally disconnected wetlands.

#### **E. Frequently Flooded Areas**

1. Frequently flooded areas are identified on FEMA developed Special Flood Hazard Area (SFHA) maps. The current regulations were developed while the County was still using Special Flood Area Maps that had been developed and published in the 1970s. In 2016 the County adopted the updated SFHA maps and simultaneously SJCC 15.12 flood hazard reduction development standards.
2. Aside from the recognition that new or substantially improved development in SFHA must meet the development standards set forth in SJCC 15.12, there is no significant change proposed for this section.

#### **F. Critical Aquifer Recharge Area**

1. The first Critical Area Ordinance adopted by the County in 2008 (Ord.-52-2008), identified the entire County as a Critical Aquifer Recharge Area for a number of related reasons, not the least of which is the square milage of the islands, i.e. the area upon which rain can fall and replenish ground water supplies is limited (particularly in comparison to many neighboring counties on the mainland), and because the islands fractured and complex geology makes mapping the specific and localized watersheds expensive, time consuming and relatively pointless if the purpose is to determine if one area is more important than another in terms of water collection.
2. The existing code set forth regulations pertaining to the storage and disposal of chemicals and other contaminants for new commercial ventures and an inspection process.
3. The proposed code continues those provisions.

**G. Next steps:**

1. Brief the County Council and receive direction.
2. Hold online public information meetings to take comments on the proposed critical area protections.
3. Collate the received comments.
4. Prepare the public hearing draft.
5. Set the dates for the public hearings.
6. The department is proposing to use the expedited SMP review and approval process to ensure that the updated regulations apply in the shorelines. This requires a joint hearing of the County Council and the Department of Ecology, followed by a 30-day comment period.

The proposed update of the SMP to include the updated critical areas regulations in 2026 is separate from the the periodic review that is due in 2028 and required by RCW 90.58.080(2) and WAC 173-26-090(2)(b).

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March 10, 2026  
Date