



San Juan County  
Community Development & Planning

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POLICIES & PROCEDURES

Reasonable Use Exception

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ISSUE: There have recently been issues with dissemination of information, application of requirements, and coordination with cross-jurisdictional governmental entities relating to the administration of the Reasonable Use Exception of SJCC Section 18.30.110.E for critical areas, specifically as it relates to wetlands.

Without inter-agency coordination and consultation during the review process, it is possible that the County might approve an activity in a critical area that another agency with jurisdiction would not. This is especially evident with wetlands, which are considered Waters of the State, and are regulated by the Washington State Department of Ecology (DOE). Lack of coordination could result in unnecessary inter-agency conflict and confusion for the property owner. The possibility of this situation developing is not unique to wetlands and might occur with other critical areas.

ANALYSIS: Section 18.30.110.E provides for Reasonable Use Exceptions for Critical Areas where certain criteria are met. This section states:

“If the application of this section would result in denial of all reasonable use of a property (i.e., denial of all economically beneficial or productive use of the land), development may be allowed which is consistent with 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:

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.

The use of the phrase “development may be allowed” makes it clear that any approval under this section is discretionary and not mandatory. It is also clear that any approval under this section is subject to compliance with specific criteria. Chief among these is the determination of what is a reasonable use for the specific critical area. Any review for a reasonable use exception would also include analysis of the proposed development impacts to critical area functions and values. Any negative impacts would have to be balanced against our duty to protect the “public health, safety, and welfare” from any unreasonable threat. Consequently, requiring on/offsite mitigation, restoration, and/or enhancement may be required. A determination must also be made that the proposed development is designed and situated in such a way as to minimize the impact to the critical area.

A land use permit and application is required for the review of request for a Reasonable Use Exception. Fees for this permit are established as part of the Community Development and Planning Department’s County Council adopted fee ordinance.

POLICY: This policy shall apply to the application of the Reasonable Use Exception of SJCC Section 18.30.110.E

- A. When discussing the Reasonable Use Exception with the public, CD&P personnel shall:
  - 1. Convey that a land use application is required to review all requests for Exceptions.
  - 2. Convey that County approval does not waive or modify any independent approval, review, and/or conditions that may be required from the Department of Ecology, Department of Fish and Wildlife, Army Corps of Engineers, or other agencies with jurisdiction.
  
- B. Applications for a Reasonable Use Exceptions shall include the following:
  - 1. Site plan.
  - 2. Description of the proposed exempt work.
  - 3. Analysis of the Critical Area and its Functions and Values prepared by a professional qualified to conduct studies and make recommendations for the subject Critical Area.
  - 4. Analysis of impacts of proposed work on the Critical Area prepared by a professional qualified to conduct studies and make recommendations for the subject Critical Area.
  - 5. Describe how the proposed improved area is located in such a way as to minimize the impact to the critical area.
  - 6. Any proposed on/off site mitigation, restoration, and/or enhancement.
  - 7. How proposed on/off site mitigation, restoration, and/or enhancement will compensate for negative impacts of proposed work.
  
- C. When reviewing applications for a Reasonable Use Exception
  - 1. Applications shall be routed for comment and review to:
    - a. CD&P Staff and Divisions with applicable regulatory review and/or approval responsibilities, including, but not limited to, Stormwater review.
    - b. Other County Departments with applicable regulatory review and/or approval responsibilities.
    - c. DOE and/or other agencies with jurisdiction.