DATE: December 13, 2013

TO: San Juan County Council

FROM: Sam Gibboney, Shireene Hale, Colin Maycock, AICP

SUBJECT: Comparison of current and proposed regulations for Mitigation of adverse impacts in the shoreline

FOR THE MEETING OF: December 16, 2013

The table attached contains the appropriate Shoreline Management Act (SMA) provisions and Washington Administrative Code (WAC) citations along with the County’s current general regulations to minimize the potential adverse impacts of shoreline development on ecological functions; the amendments approved by the Planning Commission and, in the column on the far right, amendments proposed by staff.

For the sake of clarity, the text in column marked Staff Recommendations, only the proposed amendments to the planning commission version are marked in underline and strike out.

The mitigation regulations are part of a broader regulatory network that includes the critical area regulations, particularly the tables describing the allowed activities in critical area buffers.

The most obvious proposed changes to the Planning Commissions’ recommended text are:

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2. The addition of the clarifying phrase to proposed section 18.50.090 (B); ‘which considers avoiding actions, minimizing scale and scope of the
project and possible mitigation actions’. This change makes the provision at 18.50.090 (F)(1) redundant and eliminates the potential for confusion arising from current text, particularly the phrase ‘a mitigation sequence analysis is required for all projects.’

3. The addition of the clarifying phrase to proposed section 18.50.090 (F); ‘that fail to meet the appropriate critical area protections or other applicable development standards.

4. The proposed 18.50.090(F)(7) contains a provision that excludes from mitigation consideration the removal of non-permitted structures from the project parcel if created by the owner. The proposed amendment removes the owner from the issue. The goal is not to identify the party responsible for the non-permitted structure but rather to eliminate an incentive to build non-permitted structures. The proposed language, however, allows for the removal of non-permitted structures from non-project parcels. The same provision is reiterated as part of the mitigation action approval criteria.

No Net Loss Considerations:

RCW 98.50.020 asserts that one of the purposes of shoreline planning is to protect the shoreline environment where it states:

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water.

WAC 173-26-186(8)(b)(i) requires the county’s SMP to “include regulations and mitigation standards ensuring that each permitted development will not cause a net loss of ecological functions of the shoreline.”

While there is no definition of ‘no-net loss of ecological function,’ in the SMA or WAC, published DOE guidance describes it as a process;

“Over time, the existing condition of shoreline ecological functions should remain the same as the SMP is implemented. Simply stated, the no-net loss standard is designed to halt the introduction of new impacts to shoreline ecological functions resulting from new development. Both protection and restoration are needed to achieve no-net loss.” (Chapter 4, SMP Handbook, 2010).

Property owners cannot be required to carry out restoration. Ideally, voluntary restorative actions by individual property owners, whether at the scale of structure design or the removal of creosote pilings, will result in increased ecological functions over time and therefore help offset the impact of future development. Voluntary projects with the potential to improve shoreline ecological functions are identified in the Shoreline Restoration Plan.

In the absence of mandatory restoration, the achievement of no-net loss relies upon the critical area regulations as the primary means of ensuring no net loss of ecological functions. Where an allowed project will inevitably have negative impacts, mitigation sequencing steps in. Taken together, the critical area regulations and the environmental protection and mitigation regulations constitute a set of regulations that can show a clear design to avoid, minimize and mitigate, as far as possible, adverse impacts of reasonably expected development to shoreline ecology.

The process of avoidance, minimization and mitigation is realized at both the large scale planning level (i.e. Are the areas that merit the rural residential shoreline designation an appropriate location to allow mining?) and the individual permit level (i.e. Given a specific lot’s topography, geology and vegetative cover, presence or absence of critical areas can the project meet the regulatory requirements?).

Where the critical area protections cannot be met, the proposed SMP puts in place the requirement to carry out a mitigation sequencing analysis that is consistent with WAC 173-26-201(2)(e).

No-net loss is a goal to be sought, rather than a development standard to be applied.