

Minority Report to San Juan County Update of Regulations for Protecting Shoreline and Upland Critical Areas

**Submitted by Friends of the San Juans
June 9, 2009**

As a member of the San Juan County Critical Areas Ordinance (CAO) Citizens Committee. The FRIENDS of the San Juans offers the following minority report for the following areas: shoreline setbacks; mitigation; reasonable use exception; and conversion of residential use in wetlands. We believe that the CAO Committee failed to follow the Best Available Science regarding the following shoreline and upland areas in the draft Critical Areas Ordinance dated May 26, 2009:

Shoreline Setbacks

It was voted on to adopt a 50 shoreline setback. Friends of the San Juans did not support the CAO Committee's recommendation of a 50 foot setback as it is inconsistent with best Available Science and would not meet the legal requirement of Washington Department of Fish and Wildlife (WDFW), Community Trade and Economic Development (CTED) nor the 2008 Biological by the National Marine Fisheries Service regarding Endangered Species Act protection for listed salmon and Southern Resident Orca.

In September 2008, the National Marine Fisheries Service, under the requirements of the Endangered Species Act issues a Biological Opinion for listed salmon and Southern Resident Orca. This document directed the FEMA and jurisdictions participation in the national flood insurance program to amend regulations governing development within and adjacent to areas of special flood hazards within three years to make them consistent with the Biological Opinion. We believe that 100 foot shoreline setbacks meets the minimum requirements of Federal and state requirements.

Mitigation: Mitigation Bank, Fee In Lieu of Mitigation

Friends of the San Juans does not support a proposal to allow mitigation, mitigation banking nor a fee in lieu of mitigation. San Juan County lacks the capacity to administer such mitigation programs. San Juan County lacks technical staff, funding and has no capacity to analyze, implement or monitor a mitigation program. It is unreasonable to create a mitigation program that has no infrastructure and would place further burdens on the tax payer. In those limited special circumstances where projects must proceed, such as those that demonstrate a public benefit, avoidance and minimization must be the management priority. Mitigation for marine habitats should be avoided first, in conformance with Washington Administrative code.

The creation of a Critical Area Stewardship Plan (CASP) that is a site specific plan to allow non conforming uses in critical areas is unproven at best. The CASP is modeled after Jefferson County, which has not evaluated the impacts of this infant program. Mitigation Banks are a highly technical process that require federal and state agencies to authorize. San Juan County has not embarked on creating such mitigation banks. A in-lieu fee would create a "pay as you degrade" policy that would be unfair to the financially disadvantaged and lead to a net loss of critical areas.

Reasonable Use Exception

Communications from the Community Trade and Economic Development (CTED) state that the majority of marine shoreline jurisdictions have, on average, incorporated reasonable use exceptions of 1200–2500 square feet (without any mitigation). This CAO allows a much higher impact to critical areas than other jurisdictions have passed before growth management boards. This draft ordinance (Section 18.30.110, E – Reasonable Use Exception) lists a table of allowable impact in areas fully encumbered by a critical area. The amount of critical area impacted on smaller lots is proportionally much greater than impacts to larger lots.

Conversion of residential use in wetlands

Wetland functions include, flood control, ground water recharge, water filtration and purification, erosion control and wildlife habitat. In addition to wildlife habitat, wetlands also provide critical prey resources such as amphibians and insects for aquatic and terrestrial species. Studies show that insects comprise a high proportion of juvenile salmon diet and many of the terrestrial insects are produced by wetlands and also from riparian vegetation.

The functions that an individual wetland performs depend on its location, surrounding topography, subsurface geology, amount and duration of water, and the types of plants present. While each wetland may not perform all functions, the cumulative value of all wetlands in a watershed makes each important.

Because there is already a general agricultural exemption for Critical Areas, we believe that there is no further justification for converting wetlands into residential areas. The code allows for maintaining existing impacts but allowing additional new impacts is not supported by the science nor the intent of the Critical Areas Ordinance to protect critical areas which in this case is wetlands.