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

Submitted by the San Juan County Marine Resources Committee and the San Juan County Lead Entity

The San Juan County Council appointed a representative of the Marine Resources Committee (MRC) to the Critical Areas Ordinance (CAO) Update Citizens Committee. Since the inception of this nearly two year process, the MRC supported, as outlined in the CAO Update Citizens Committee's "Guiding Legal Principles for the Protection of Critical Areas" document, the need to draft a CAO that complies with state and federal mandates and reflects Best Available Science. The MRC participated throughout the multi-year CAO Update process and is writing this report due to concerns about two areas where the CAO Update Citizens Committee veered from considering Best Available Science in their decision-making as required by the CAO Update process and the Growth Management Act. These two areas are regarding protection of wetlands and the uses allowed in stream, pond and wetland buffers. Also, an additional issue is the ratio of allowable impacts in a critical area under the reasonable use exception.

The San Juan County Marine Resources Committee (MRC) is a citizen-based advisory committee dedicated to the protection and restoration of the marine environment in the San Juan Islands. Created in 1996 to advise the county on marine issues, MRC members are selected by the County Council and represent local government, tribal government, the scientific, economic, recreational and conservation communities, and citizens at large. San Juan County relies heavily on the Marine Resources Committee for advice on decisions affecting the marine environment. As the designated local Citizens Advisory Group under the Washington Salmon Recovery Act, the MRC also promotes salmon recovery with projects and programs directed at assessment, protection, and restoration of nearshore and freshwater habitats.

Issue - Protection of 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 (May). Local San Juan County studies show that insects comprise a high proportion of juvenile salmon diet and many of the terrestrial insects are produced from wetlands and riparian vegetation (Barsh).

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 (Granger, et al). Negative impacts of human disturbances on wetland functions are well documented and can change the water levels, salinity, temperature, physical structure, create fragmentation, change amounts of sediments, nutrients and contaminants and ultimately change the value and functions of wetlands (Granger, et al).

Thus it is of grave concern that the draft Critical Areas Ordinance dated June 3, 2009 in section 18.30.150 Wetlands, E. 5. a. ix allows creation of orchards and gardens in wetlands. Allowing gardens and orchards in wetlands is not supported by any science indicating that these activities are protecting wetlands and that these activities will not cause a net loss in the functions and values of wetlands. On the contrary, the science indicates that these kinds of disturbances are highly impactful to wetlands. Changes in land use and vegetation communities alter the patterns

of surface and ground water movement across the landscape. Pesticides and fertilizers contribute to contamination of surface waters. Land use activities such as tilling, clearing, earth moving and native vegetation removal associated with creating gardens and orchards can have significant negative impacts to critical areas, their native plants, and habitats for fish, invertebrates, birds, reptiles and amphibians (Knutson and Naef and Granger, et al).

In the proposed Critical Areas Ordinance there is a general exemption for maintenance of existing vegetation in 18.30.110 as long as the activity doesn't further alter, impact or encroach on wetlands, etc. or their buffers. There is also currently in place a general agricultural exemption for Critical Areas in 18.30.110 for existing and ongoing agricultural activities. Thus there is opportunity to maintain existing wetland/critical area impacts but allowing additional new impacts is not supported by the science and is not serving the intent of the Critical Areas Ordinance to protect critical areas from no net loss.

Additionally, the allowance of gardens and orchards in wetlands is in reality promoting the conversion of wetlands into an incompatible use, i.e. for gardens and orchards. This is not protecting wetland resources as clearly outlined by Granger, et al, is not defensible, and will not be supported by the Department of Ecology and the Army Corps of Engineers.

The San Juan County Marine Resources Committee strongly recommends the removal of gardens and orchards in the allowed uses of wetlands section 18.30.150.

Issue –Uses in Wetland, Stream and Pond Buffers

Protection of riparian habitat areas (aka buffers) is recommended to maintain fully functional riparian ecosystems and provide sufficient habitat to meet the needs of fish and wildlife. Buffers provide a "buffer" for receiving waters such as streams, ponds and wetlands from the effects of adjacent, upland activities (Knutson and Naef). These functions include aesthetics, human heath and safety, water quality capturing contaminants, shade, microclimate (temperature and moisture), soil stability and sediment control, habitat structure and woody debris, erosion control and provide wildlife habitat and prey. Because riparian zones (buffers) are located at the convergence of terrestrial and aquatic ecosystems, riparian zones are often biological "hotspots" and highly productive areas (May). Riparian vegetation also provides critical prey resources such as insects for aquatic and terrestrial species. Local San Juan County studies show that insects comprise a high proportion of juvenile salmon diet and many of the terrestrial insects are produced from riparian vegetation (Barsh).

Again it is of grave concern that in the draft Critical Areas Ordinance dated June 3, 2009 in section 18.30.150 Wetlands, 6. a. ix gardens and orchards are allowed in wetland buffers and also in pond and stream buffers in section 18.30.160 Fish and Wildlife Habitat Conservation Areas (FWHCAs), E. 4. c, vii.

Allowing gardens and orchards in wetland, pond and stream buffers is not supported by any science indicating that these activities are meeting the purpose of buffers and thus protecting wetlands, ponds and streams. On the contrary, the science indicates that these kinds of disturbances are not supporting the purpose of buffers and ultimately not protective of wetlands, ponds and streams (Knutson and Naef, May, Granger, et al).

The CAO Update Committee agreed on buffer averaging requirements and also landowners have the option of creating a Critical Area Stewardship Plan (CASP) that is a site specific plan to allow uses and yet protect critical areas. These are options available to landowners to have their orchards and gardens on their property but yet still ensure protection of critical areas.

The San Juan County Marine Resources Committee strongly recommends the removal of gardens and orchards in the allowed uses in wetland, stream and pond buffers sections 18.30.150 and 18.30.160.

Issue – Reasonable Use Exception

The draft Critical Areas Ordinance Section 18.30.110, E – Reasonable Use Exception lists a table of how much area can be impacted on a property that is entirely within a designated critical area. The greatest concern is with smaller lots and the ratio of impact to a critical area. Based on the table, the area impacted for larger lots which are entirely within a critical area would be in the range of approximately 2% to 10% of the critical area being impacted. In the table for smaller lots less than 2 acres, the range is from a minimum of 13% for a 2 acre lot to 50% for a ¼ acre lot and even greater for a smaller than ¼ acre lot. Thus the amount of critical area being impacted proportionally is much greater on smaller lots. The impacts are too large for these critical areas and the likelihood of losing the functions and values of the critical area is high (Granger, et al). Even up to a 10% impact in a critical area, depending upon the critical area, can likely be too high and will cause significant net loss of that critical area.

Additionally, the higher square footage proposed is inconsistent with other jurisdictions and may not be defensible. Many other jurisdictions (Whatcom County, Bainbridge Island, etc) have incorporated reasonable use exceptions of a low of 1200 to a maximum of 2500 square feet.

The San Juan County Marine Resources Committee strongly recommends that for lots of 2 acres or less, that the allowable impacted area be reduced to at a maximum of 2500 square feet as noted in section 18.30.110 E. 1. c. This recommendation is also more in line with the reasonable use exception amounts allowed in other jurisdictions.

References

Barsh, R. San Juan County Juvenile Chinook Prey Base study results presented at Friday Harbor Labs January 26, 2009

Granger, T., Hruby, T., McMillan, A., Peters, D., Rubey, J., Sheldon, D., Stanley, S., and E. Stockdale. 2005. Wetlands in Washington State, Volume 2: Guidance for Protecting and Managing Wetlands

Knutson, L. K., and V.L. Naef. 1997. Management Recommendations for Washington Priority Habitats: Riparian

May, Christopher W. 2003. Stream Riparian Ecosystems in the Puget Sound Lowland Eco-Region: A Review of Best Available Science