



San Juan County Community Development & Planning

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STAFF REPORT

TO: San Juan County Planning Commission

FROM: Shireene Hale, Planning Coordinator

SUBJECT: Update of Critical Area Ordinance General Section and Related Amendments

FOR MEETING OF: August 10, 2011

BACKGROUND:

When it was adopted in 1990, one of the core requirements of the Washington Growth Management Act (GMA) was the requirement to protect the functions and values of Critical Areas which were formerly referred to as Environmentally Sensitive Areas. These areas include Critical Aquifer Recharge Areas, Frequently Flooded Areas, Geologically Hazardous Areas, Wetlands and Fish and Wildlife Habitat Conservation Areas. San Juan County adopted its first regulations to protect Critical Areas in 1991, and since that time there have been few changes to the regulations.

In 1995 the State legislature amended the GMA, requiring that local governments include the Best Available Science (BAS) in designating and protecting Critical Areas (RCW § 36.70A.172(1) and WAC 365-195-900 – 925). The County was given a deadline of December 1, 2006 to accomplish this and make any necessary changes to bring its regulations into conformance with State law. Under the GMA, Best Available Science means current scientific information derived from research, monitoring, inventory, survey, modeling, assessment, synthesis, and expert opinion that is:

- Logical and reasonable
- Based on quantitative analysis
- Peer reviewed
- Used in the appropriate context
- Based on accepted methods
- Well referenced

With regard to GMA requirements, there has been considerable discussion about how the 14 GMA goals relate to the requirement to protect Critical Areas. In a July 14, 2011 memo, Deputy Prosecutor Jonathan Cain provided guidance on this issue, recommending we focus on satisfying the

requirements of the GMA and consider the goals when evaluating various alternatives for meeting the requirements.

The County has been working on this update off and on since 2003, with a concerted effort to complete the update since 2007. As part of the update, over the last year a team of expert consultants were hired to conduct a study of County wetlands, identify and summarize the scientific literature, and assist with review and update of the regulations.

This spring the County Council adopted the *Best Available Science Synthesis, San Juan County, Washington, May 2011* and the underlying literature as the science that will be considered in updating the regulations. Following adoption of the BAS Synthesis, the consultants and staff analyzed the existing regulations and the County Council provided policy direction for use in preparing initial drafts of the amendments.

This portion of the amendments includes regulations that apply to all types of Critical Areas – the General section of the regulations, plus associated definitions and a companion section establishing provisions for financial guarantees.

APPLICABLE STATE LAWS AND REGULATIONS:

Following are state laws and regulations that are most applicable to general Critical Area regulations:

RCW 36.70A.060(2) Natural resource lands and critical areas — Development regulations.

(2) Each county and city shall adopt development regulations that protect critical areas that are required to be designated under RCW [36.70A.170](#).

RCW 36.70A.170 Natural resource lands and critical areas — Designations.

(1) On or before September 1, 1991, each county, and each city, shall designate where appropriate: (d) Critical areas.

(2) In making the designations required by this section, counties and cities shall consider the guidelines established pursuant to RCW [36.70A.050](#).

RCW 36.70A.172 Critical areas — Designation and protection — Best available science to be used.

(1) In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

(2) If it determines that advice from scientific or other experts is necessary or will be of substantial assistance in reaching its decision, the growth management hearings board may retain scientific or other expert advice to assist in reviewing a petition under RCW [36.70A.290](#) that involves critical areas.

RCW 36.70A.020 Planning goals.

The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW [36.70A.040](#). The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the

development of comprehensive plans and development regulations:

- (1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
- (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.
- (3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.
- (4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.
- (5) Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.
- (6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.
- (7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.
- (8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.
- (9) Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.
- (10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.
- (11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.
- (12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.
- (13) Historic preservation. Identify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance.
- (14) For shorelines of the state, the goals and policies of the shoreline management act as set forth in RCW [90.58.020](#) are added as one of the goals of this chapter

RCW 90.58.020 Legislative findings — State policy enunciated — Use preference.

The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection,

restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

- (1) Recognize and protect the statewide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long term over short term benefit;
- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline;
- (7) Provide for any other element as defined in RCW [90.58.100](#) deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the department. Shorelines and shorelands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and shorelands of the state no longer meeting the definition of "shorelines of the state" shall not be subject to the provisions of chapter [90.58](#) RCW.

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 365-195-915

Criteria for including the best available science in developing policies and development regulations.

(1) To demonstrate that the best available science has been included in the development of critical areas policies and regulations, counties and cities should address each of the following on the record:

(a) The specific policies and development regulations adopted to protect the functions and values of the critical areas at issue.

(b) The relevant sources of best available scientific information included in the decision-making.

(c) Any nonscientific information -- including legal, social, cultural, economic, and political information -- used as a basis for critical area policies and regulations that depart from recommendations derived from the best available science. A county or city departing from science-based recommendations should:

(i) Identify the information in the record that supports its decision to depart from science-based recommendations;

(ii) Explain its rationale for departing from science-based recommendations; and

(iii) Identify potential risks to the functions and values of the critical area or areas at issue and any additional measures chosen to limit such risks. State Environmental Policy Act (SEPA) review often provides an opportunity to establish and publish the record of this assessment.

(2) Counties and cities should include the best available science in determining whether to grant applications for administrative variances and exemptions from generally applicable provisions in policies and development regulations adopted to protect the functions and values of critical areas. Counties and cities should adopt procedures and criteria to ensure that the best available science is included in every review of an application for an administrative variance or exemption.

APPLICABLE SAN JUAN COUNTY COMPREHENSIVE PLAN GOALS AND POLICIES:

Following are comprehensive plan goals and policies that are most applicable to general Critical Area regulations:

Land Use Element Section B.2.5.B Critical Areas

Goal 1: Protect the functions and values of Critical Areas, giving special consideration to anadromous (migratory) fish.

Goal 2: Allow for use of property to the greatest extent possible while protecting Critical Area functions and values.

Goal 3: Establish Critical Area requirements that are balanced and related to impacts.

Goal 4: Establish funding mechanisms to support Critical Area protection programs including funding for voluntary measures such as education, technical assistance, and cost share programs.

Policies:

1. In conformance with the Washington Growth Management Act, in designating and protecting critical areas establish regulations that protect Critical Areas based on consideration of the best available science.
2. Adopt policies and regulations that, as of the effective date of implementing ordinances, are designed to protect functions and values of critical areas.
3. In addition to regulations, develop voluntary and incentive-based programs to protect the overall functions and values of Critical Areas and other natural resources. Voluntary actions may include education, technical assistance, water conservation, stewardship programs, implementation of best management practices, and restoration activities. One purpose of these programs is to mitigate impacts resulting from authorized exemptions and exceptions.
4. The impacts of land use and development preferably will be managed and mitigated on site.
5. When developing Critical Area regulations, consider the positive effect of all State, Federal and local environmental protection programs.
6. To the extent possible, adopt protection standards that vary based on site characteristics.
7. Encourage the installation of water catchment systems.
8. Implement applicable provisions of adopted Salmon Recovery and Marine Area Stewardship Plans, giving special consideration to anadromous fish.
9. Monitor and enforce permit requirements and Best Management Practices designed to protect Critical Areas.
10. Control or eradicate invasive and/or noxious weeds in conformance with RCW 17.10.
11. Any regulation created pursuant to these policies should include provisions for Reasonable Use Exceptions and nonconforming uses.

REVIEW AND DISCUSSION OF PROPOSED AMENDMENTS:

The proposed amendments present a balanced approach to protecting the functions and values of Critical Areas in a way that is consistent with the goals of the GMA and the County Comprehensive Plan. To adequately protect Critical Areas, provide for recreation, and protect the environment including shoreline resources, some exemptions have been removed, some existing provisions have been modified, and several new provisions are proposed (ref. GMA goals 9, 10 and 14, and Land Use Element Section B.2.5.B goal 1 and policies 1, 2, 4 and 9). In cases where the existing regulations were deemed to be unnecessarily restrictive, proposed amendments add flexibility and options, reduce permitting requirements and associated costs, and defer to the regulatory programs of other government agencies (ref. GMA goals 6 and 8 and Land Use Element Section B.2.5.B goal 2 and 3, and policies 5 and 6). Finally, exceptions are included to ensure reasonable use of property and to enable the provision of services and facilities necessary to support existing and new development (ref. GMA goals 1, 2, 3, 4, 5, 6 and 12, and Land Use Element Section B.2.5.B goal 2 and 3, and policies 6 and 11).

Following is a synopsis of the proposed amendments.

Chapter 18.20. Definitions.

The proposed amendments include new definitions of terms used in the amendments, including “Best Available Science”, “critical area functions and values”, “development area” and “qualified professional”. The amendments also revise the existing definition of “development” to state that it is a man made change to the land, and that it includes clearing, draining, dredging, drilling, filling and paving (in addition to the other types of development which were previously listed).

Section 18.30.110. Critical Areas.

A. Purpose. The proposed amendments add conformance with GMA requirements to the purpose statement and simplify the existing text.

B. Applicability. The applicability section establishes the regulations as five separate overlays, with the details on regulated areas provided in subsequent sections of the code. This is a change from the existing code that establishes one overlay that applies in and within 300 feet of any of the five types of Critical Areas.

For some Critical Areas this change reduces the regulated area (e.g. Geologically Hazardous areas where the proposed area of regulation only extends out 200 feet). This change will help minimize the cost of preparing and reviewing plans, and will help ensure that review requirements are the minimum necessary to allow adequate assessment of potential impacts.

The proposed amendments also remove the statement implying that Critical Area regulations only apply to activities requiring a County development permit or approval. This change is necessary to allow for protection of vegetation along streams, wetlands and marine shorelines.

C. Allowable Uses. The amendments propose removal of this paragraph which is an unnecessary, and in the case of subarea and activity center plans, confusing reference to the requirements of Tables 3.1 and 3.2.

C (previously D). General Exemptions. This section identifies exemptions that apply to all types of Critical Areas. It is anticipated that additional exemptions for specific types of Critical Areas (e.g. for agricultural uses in Wetlands and Fish and Wildlife Habitat Conservation Areas) will be considered for inclusion in subsequent sections of the code.

Exemption 1. This exemption has two options, a clarified version of the existing language, or an alternate version patterned after an exemption that was recommended by the CAO Citizen Review Committee. The existing exemption does not include review or after-the-fact Critical Area mitigation provisions, and could easily be used as an excuse to circumvent protection requirements. The alternate exemption provides for emergency action, but prior notice is required (e.g. a phone call), and except in the case of catastrophic natural events, any negative impacts to Critical Areas must be mitigated.

Exemption 2. The proposed amendment expands the list of existing activities and facilities that may continue, and stipulates that under this exemption structures and facilities cannot be expanded, soil erosion must be controlled, disturbed areas must be revegetated, and that actions cannot have an additional negative effect on the functions and values of Critical Areas.

Exemption 3. The proposed amendment removes the existing requirement for prior written approval of utility line installation, and adds requirements to control soil erosion and revegetate disturbed areas.

Exemption 4. The existing exemption allowing establishment of new lawns, landscaping, gardens, orchards and fences in Critical Areas, has been removed because it will not be possible to protect some Wetlands and Fish and Wildlife Habitat Conservation Area functions and values if adjacent vegetation can be removed without limit. It is anticipated that a scaled back version of this exemption may be included in the sections on Wetlands and Fish and Wildlife Habitat Conservation Areas. Provisions for maintenance of existing lawns, gardens and other development areas are included in above exemption 2.

Exemption 5 was modified to remove the blanket exemption for removal of dead trees (which provide important wildlife habitat) and to tighten the requirements associated with other vegetation removal to prevent fire and safety hazards. Without these changes, this exemption is overly broad and could result in excessive removal of vegetation that may be needed to support Critical Area functions and values.

Exemption 6 was removed because it could be interpreted to mean that development on parcels created through exempt processes are not required to meet Critical Area protection requirements, which would not be consistent with the GMA requirement to protect Critical Areas.

New exemptions 5-7 are added for forest practice activities regulated by the Dept. of Natural Resources, and for the installation of navigation aids and survey markers and site investigative work, which should not have a negative impact on Critical Areas.

D. Reasonable Use Exception.

Reasonable Use provisions are important to ensure consistency with GMA goal number 6, and to ensure that application of the regulations will not result in an unconstitutional taking of property. Deputy Prosecuting Attorney Jon Cain has provided guidance on this issue (see list of background documents at the end of this report).

It does not appear that the existing code provisions meet the GMA requirement to protect the functions and values of Critical Areas, because for each reasonable use development they allow unmitigated impacts to, in many cases, in excess of ½ acre of Critical Area (1/2 acre plus driveways for single family residences). In the absence of an effective program for offsetting negative impacts resulting from new development, retaining the existing provisions will likely result in a cumulative decline in Critical Area functions and values.

In accordance with County Council direction, existing provisions are proposed to be modified using either of two options. One option specifies a predetermined amount of development that is considered reasonable, using a sliding scale that was proposed by the Citizen Review Committee, based on development levels allowed by the existing code. This option would provide more certainty as to the size of development that can be approved. The second option does not include a predetermined amount of development, but instead provides for case by case evaluation and approval of Reasonable Use Exceptions based on established criteria. This option allows more flexibility to consider the characteristics of the property and the desires of the property owner. Both options establish an approval process, building on the existing approval criteria, and in accordance with WAC 365-195-915, both include consideration of the Best Available Science in evaluating impacts and determining compliance with approval requirements.

In keeping with Comprehensive Plan goals to allow for use of property to the greatest extent possible while protecting Critical Area functions and values, and to establish Critical Area requirements that are balanced and related to impacts, some changes to the existing approval criteria are proposed. These changes include removal of terms such as “all” reasonable use, and

removal of the statement “so that there is no reasonable use, other than that proposed, with a lesser impact on the Critical Area”. These changes should provide property owners with more flexibility in how they use their land under a Reasonable Use Exception, and should reduce the chance of appeals based on the argument that there is some other use (which may not be consistent with the property owner’s plans) that would have a smaller impact on the Critical Area.

Other changes include removal of the “unreasonable threat” criterion, because the Growth Management Hearings Board ruled that the term “reasonable” does not provide clear enough guidance for decision making on Critical Area issues (Case no. 10-2-0012), and because the proposed regulations require mitigation of any negative impacts, making the criterion unnecessary.

The proposed approval criteria include a simplified version of the “mitigation sequence”, requiring that impacts to Critical Areas first be avoided and that any unavoidable impacts be mitigated. In the absence of an established program for making improvements to offset such impacts, requiring mitigation appears to be necessary. Until such a program is established, it may, in some cases, be necessary to use public monies to help cover the costs associated with mitigating unavoidable impacts occurring under a Reasonable Use Exception.

Finally, the proposed requirements include recording a copy of the approved exception and site plan, along with a notice to title, to alert future property owners to the parameters of the approval.

E. Public Agency and Utility Exceptions.

Similar to Reasonable Use Exceptions, a Public Agency and Utility Exception is proposed (this is in addition to the general exemption covering some utility installations). The proposed provisions will help ensure consistency with a number of GMA goals which rely on public facilities and services necessary to support urban growth, reduce sprawl, and support affordable housing and economic development (GMA goals 1, 2, 3, 4, 5 and 12).

F. Critical Area Mitigation Requirements.

This is a new section with requirements that apply when impacts cannot be avoided and mitigation of impacts is authorized and/or required to protect the functions and values of Critical Areas. This would take the place of the mitigation provisions currently located in the Wetlands section of the regulations.

In the absence of an effective program for offsetting negative impacts resulting from new development, having a clear and effective set of mitigation requirements, that includes consideration of Best Available Science, is essential to the protection of Critical Area functions and values. It is anticipated that many property owners will be able to prevent negative impacts (and thus avoid having to deal with mitigation requirements) by designing projects that are “low intensity” and by locating their development on the less sensitive portions of their property. For those that have unavoidable impacts to Critical Areas, these requirements will increase their costs, but there will be a corresponding reduction in cost to the public through prevention of damage to natural resources, and through reduced need for public monies for restoration of degraded areas.

G. Conditions of Approval. This is a new section authorizing the Director to apply conditions to ensure compliance with Critical Area requirements.

H. Critical Area Stewardship Plans.

This is a new section outlining a procedure for approval of a fully site specific Critical Area Stewardship Plan for protecting, and if necessary mitigating impacts to Critical Areas. This would

provide property owners with maximum flexibility to design a plan tailored to the unique characteristics of their property, based on the most recent scientific information.

Because San Juan County is a small jurisdiction with limited specialized expertise, it is likely that experts would need to be hired to review the plans (with the applicant paying the cost of the review). Another alternative that is presented is for the applicant and the Director to agree on a professional to prepare the plan, so that third party review is not necessary.

An issue that will likely be raised is that of accepting natural resource protection plans from qualified professionals without impartial County review. Where public resources are at stake, however this review is an important step to ensure that adopted standards are met and that the resources are protected.

New Section of SJCC 18.80 – Financial Guarantees

This section establishes basic provisions for financial guarantees that are in some cases necessary to ensure completion of required actions. This is a common and effective tool in many jurisdictions, and will help ensure that whatever regulations are adopted can be enforced.

Standards for Non-conforming Uses and Structures

Council direction included amending the existing provisions for non-conforming uses and structures, including those located in the shoreline. These will be presented as a separate, stand-alone ordinance.

ENVIRONMENTAL RISK ANALYSIS:

- As required by the Growth Management Act, San Juan County identified and included the Best Available Science in reviewing and updating these regulations. The science that was used in the review is summarized in the *Best Available Science Synthesis, San Juan County, May 2011* which was adopted by the San Juan County Council in Resolution 22-2011.
- Areas of the proposed regulations that depart from the body of science include general exemptions to allow for emergency actions; operation, maintenance and replacement of existing development, facilities and structures; installation of utility lines; removal of hazardous trees and shrubs; and minor, temporary disturbances such as the installation of survey markers and site investigative work.

To minimize the risk of harm to Critical Areas that might otherwise result from these exemptions, additional requirements have been added such as after-the-fact compliance with mitigation requirements (for emergencies), and requirements for control of soil erosion and prompt revegetation of disturbed areas.

- Other areas of the proposed regulations that depart from the body of science include the sections on reasonable use and public agency/ utility exceptions, and the sections of the CASP option that allow impacts to Critical Areas in conjunction with mitigation.

The first two exceptions will only apply to a limited number of the most constrained properties, and though they pose somewhat of a risk to Critical Areas, they are limited in scope and necessary to prevent unconstitutional, regulatory taking of property, to allow for construction of public facilities that support existing and new development, and to be consistent with the goals of the Growth

Management Act. Environmental risk will be minimized through implementation of new mitigation and financial guarantee procedures that are proposed for adoption.

The CASP option would give property owners the flexibility to use current science and create plans that might better allow for their preferred development while protecting Critical Areas. The section of these regulations that poses a risk to Critical Areas is the section allowing impacts with little justification. As currently presented, this option allows anyone to bypass the standard regulations as long as they demonstrate that they were unable to avoid impacts to the functions and values of Critical Areas, and they submit plans and a financial guarantee meeting the standards. Under the best of circumstances, mitigation projects are often not successful, and with the potential for large numbers of applicants, this portion of the CASP option may result in cumulative, negative effects to Critical Areas.

Finally, though not strictly an environmental consideration, it is likely that the processing of CASP applications will be costly and time consuming, and that there will be many disagreements about whether impacts can be avoided (e.g. by perhaps building a smaller house or relocating a driveway), about the science supporting the plans, and about the adequacy of proposed protection and mitigation measures. Given that San Juan is a small county with limited technical expertise, it is likely that most plans would need to be reviewed by a third party qualified professional or professionals, further complicating the review process.

- With adequate staffing, training and technical support, and a will to enforce the proposed regulations, they should, in most cases, protect Critical Areas. With regard to the CASP option, a less risky approach would be to only allow CASPs that can fully protect the functions and values of Critical Areas without creating negative impacts which then must be mitigated.

DRAFT FINDINGS:

- As required by the GMA, the Best Available Science was identified and included in reviewing the regulations. The science that was used in the review is summarized in the Best Available Science Synthesis, San Juan County, May 2011 which was adopted by the San Juan County Council in Resolution 22-2011.
- The existing regulations were reviewed and proposed amendments will better protect Critical Areas as well as improve consistency with the applicable goals of the Growth Management Act. Discussion on the proposed amendments was included in the July 28, 2011 staff report to the San Juan County Planning Commission.
- New mitigation and financial guarantee requirements will help ensure adequate and timely completion of improvements that are necessary to offset unavoidable impacts to the functions and values of Critical Areas.
- As required by WAC 365-195-915(2), proposed procedures for approval of exceptions and CASP plans include Best Available Science in the review and approval criteria.
- The CASP option provides needed flexibility and the ability to use current scientific information in designing protection plans, but allowing negative impacts, even with mitigation, may increase the risk of harm to Critical Areas.

LIST OF SUPPORTING DOCUMENTS:

Documents provided to Planning Commission and County Council for June 13-14, 2011 workshop:

- State laws and regulations associated with the protection of critical areas.
- San Juan County Comprehensive Plan Goals and Policies associated with Critical Areas.
- Staff review and recommendations on General CAO regulations (SJCC 18.30.110).
- December 2, 2008 Reasonable Use Exception memo from Deputy Prosecuting Attorney Jon Cain.
- June 7, 2010 Reasonable Use Exception memo from Deputy Prosecuting Attorney Jon Cain.
- Workshop handouts on Reasonable Use Exceptions from Deputy Prosecuting Attorney Jon Cain.
- *Best Available Science Synthesis, San Juan County, Washington, May 2011.*

New enclosures:

- June 26, 2011 draft amendments to general provisions for Critical Areas.
- SEPA checklist.
- CAO policy direction on CAO General section from County Council.
- July 14, 2011 memo from Deputy Prosecuting Attorney Jon Cain regarding GMA goals and requirements.