



SAN JUAN COUNTY  
DEPARTMENT OF COMMUNITY DEVELOPMENT

135 Rhone Street, PO Box 947, Friday Harbor, WA 98250  
(360) 378-2354 | (360) 378-2116 | FAX (360) 378-3922  
cdp@sanjuanco.com | www.sanjuanco.com

**MEMO**

**REPORT DATE:** April 1, 2019

**TO:** San Juan County Planning Commission

**CC:** Erika Shook, AICP, Director

**FROM:** Adam Zack, Planner III *AZ*  
Linda Kuller, AICP, Planning Manager *LK*

**SUBJECT:** 2019 Docket of Proposed Text Amendments to the Comprehensive Plan and Unified Development Code (UDC): Initial Review and Staff Recommendations

**BRIEFING:** April 19, 2019

**ATTACHMENTS:**

- A. Staff recommendations and summary of requests
- B. Annual Docket requests, including the application, analysis and scope of work
  - B.1 Text Amendment General Scope of Work
  - B.2 Request 19-0001 – ADU Ownership
  - B.3 Request 19-0002 – Build Out Analysis
  - B.4 Request 19-0003 – Wetland Habitat Buffer
  - B.5 Request 19-0004 – Eastsound Airport Overlay
  - B.6 Request 19-0005 – Island Center
  - B.7 Request 19-0006 – Eastsound Airport Overlay
- C. Single Email List of Applicants Requesting Amendments
- D. SJCC 18.90.020 Legislative Procedures

**Briefing Purpose**

Staff will provide a preliminary briefing and summarize the staff recommendations on the proposed 2019 Docket of Proposed Text Amendments to the Comprehensive Plan and Unified Development Code (UDC), Title 18 development regulations in San Juan County Code (SJCC). Each year the Planning Commission makes a recommendation to County Council as to where proposed docket items should be added to the Department of Community Development’s (DCD) work program. A public hearing before the Planning Commission regarding requests 19-0001 through 19-0006 will be scheduled on May 17, 2019.

**Background**

The Growth Management Act (RCW 36.70A.470(2)) allows any interested person to request amendments to SJCC Title 18 (the UDC) or the San Juan County Comprehensive Plan policies or official maps. This process is known as the annual “Docket” process.

Amendments to the Comprehensive Plan text and official maps may not be considered more frequently than once per year except as provided in RCW [36.70A.130\(2\)](#) and the Comprehensive Plan. Amendments to the UDC may be adopted at any time; however, most code amendments have been postponed until

the policy work on the SJC Comprehensive Plan is completed. The UDC will be amended following the Comprehensive Plan Update to be consistent with the changes to goals and policies.

The 2019 Annual Docket deadline was March 1, 2018. Six requests for text amendments were received, a summary and staff recommendation for each are provided in Attachment A. The staff analysis, the anticipated scope of work, and copies of the application for each request is included in Attachment B. Attachment C provides a single email list of all applicants as required by SJCC 18.90.020 (E). The required process for these requests is included in Attachment D.

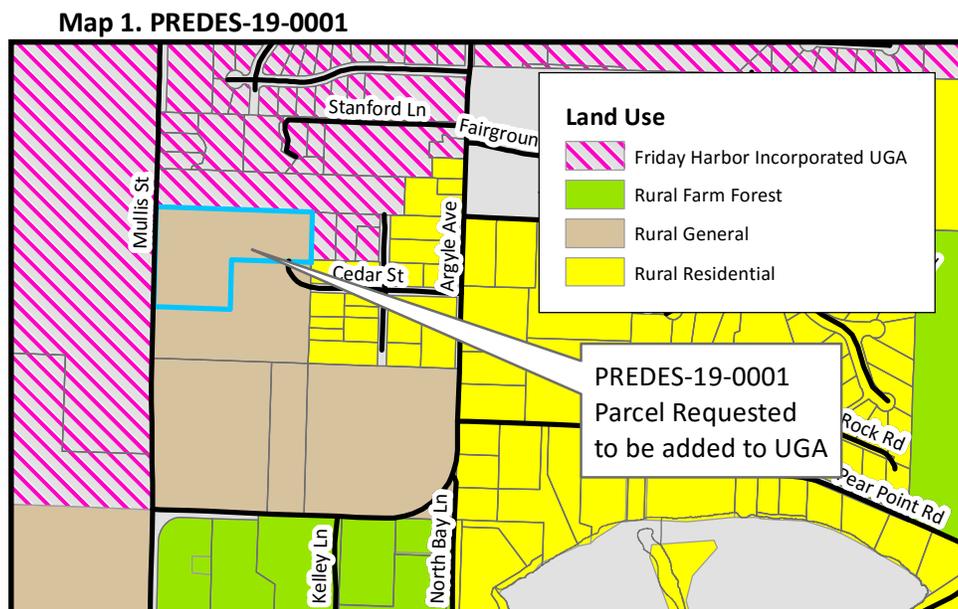
### **Staff Recommendation**

See Attachment A for a summary of the text amendment requests, and staff prioritization and recommendations. The priority key is found on the second page of that attachment. Staff recommends that two requests (19-0001 and 19-0003) specifically related to code amendments be added to a future DCD work program once the Comprehensive Plan Update is complete. Staff recommends that three requests (19-0004, 19-0005 and 19-0006) could be considered during the Comprehensive Plan Update and the related code updates that follow. These three requests might require some Comprehensive Plan policy amendments. Staff recommends that one request (19-0002) be given no additional action because the same request was considered by Planning Commission and County Council with the 2018 Docket. The County Council resolved not to take any action on this request in Resolution 31-2018.

### **Site-Specific Re-Designation**

One application requesting a site-specific re-designation was also received in the 2019 Docket, PREDES-19-0001. It is a request to re-designate TPN 351444005000 from Rural General Use (RGU) to The Town of Friday Harbor Unincorporated Urban Growth Area (TFUA). The request is shown in Map 1 below.

PREDES-19-0001 requires more staff analysis than the text amendment requests. It will be handled with a separate process including its own public hearings before Planning Commission and County Council. Staff will provide a more in-depth briefing on PREDES-19-0001 at the May Planning Commission meeting.



## **2019 Docket Process for Requests 19-0001 – 19-0006**

San Juan County Code (SJCC) 18.90.020 Legislative procedures requires that DCD evaluate all docket requests and forward recommendations to the Planning Commission and County Council for consideration. SJCC 18.90.020 (C) requires that the Planning Commission hold a public hearing on the docket.

After the public hearing, Planning Commission will deliberate and make a recommendation to County Council as to what docket items should be added to future DCD work programs. The Planning Commission's recommendation will then be presented to the County Council. The Council will hold another public hearing and determine their final action on the 2019 Docket of Proposed Text Amendments to the Comprehensive Plan and UDC.

### **Tentative Schedule**

The dates below may be subject to change depending on Planning Commission and County Council schedule and deliberations.

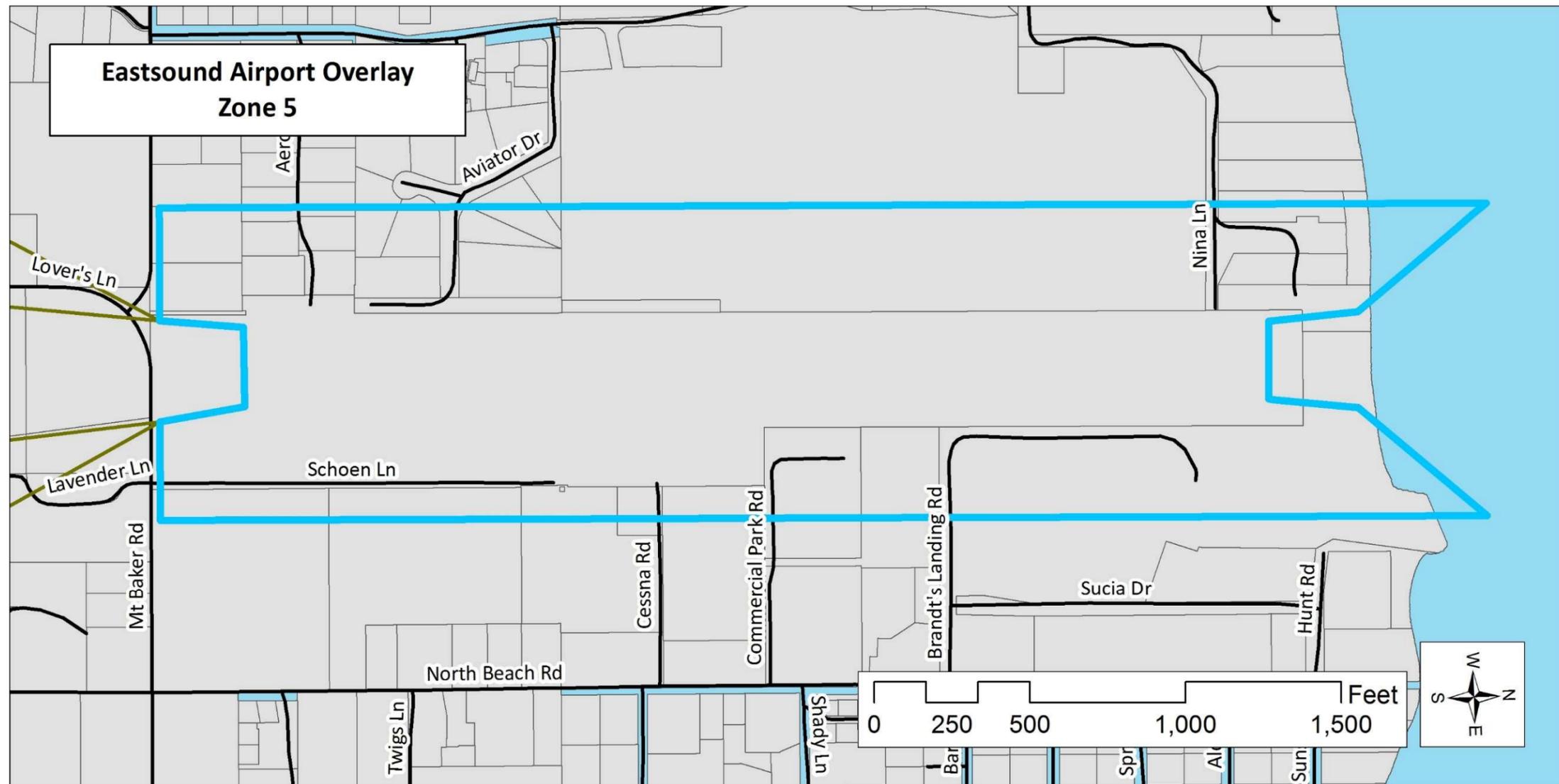
- **April 15, 2019** – County Council initial briefing on 2019 Docket
- **April 19, 2019** – Planning Commission initial briefing on 2019 Docket and setting of the public hearing for May 17
- **May 17, 2019** – Planning Commission public hearing, deliberations and recommendations on 2019 Docket
- **June 18, 2019** – County Council briefing on Planning Commission recommendations on the 2019 Docket and set public hearing for July 23
- **July 23, 2019** – County Council public hearing, deliberations, and adoption of a resolution on 2019 Docket
- **Fall 2019** – If necessary, finalize 2019 Docket by adding items to future DCD work programs or preparing ordinances amending the Comprehensive Plan and UDC

## 2019 ANNUAL DOCKET REQUESTS

Request #	Keyword	Proponent	Email	Address	Summary of Request	Date of Application	Type of Amendment	Priority	SJCC Sections	Comp Plan Sections	Scanned Request Documents	Staff Recommendation
19-0001	ADU Ownership	OPAL CLT, (Agent: Lisa Byers)	<a href="mailto:opalclt@opalclt.org">opalclt@opalclt.org</a>	PO Box 1133 Eastsound WA 98245	Amend SJCC 18.40.240(F) to allow flexibility in ownership of land and/or ADU. The proposal is to allow the separate sale of a primary residence and ADU provided the ownership of the underlying land for both the primary residence and the ADU remains the same.	1/14/2019	Dev. Reg.	E	18.40.240	No Policy Change is Required	<a href="https://www.sanjuanco.com/DocumentCenter/View/17952/2019-01-14_Docket_Reg_19-0001">https://www.sanjuanco.com/DocumentCenter/View/17952/2019-01-14_Docket_Reg_19-0001</a>	<b>Add an analysis and amendment of SJCC 18.40.240 to future DCD work program following the Comprehensive Plan Update.</b>  Policy work during the Comprehensive Plan Update will include actions directed at affordable housing. The update to the Housing and Land Use elements of the Comprehensive Plan may include an examination of ADU policy. Changes to Comprehensive Plan policies are implemented through development code amendments. This request may end up being addressed during that process.
19-0002	Build Out Analysis	Joe Symons et al.	<a href="mailto:joesymons@me.com">joesymons@me.com</a>	3222 Pt. Lawrence Rd. Olga WA 98279	Add an executive summary and build out analysis to the Comprehensive Plan. This would include analysis similar to the <i>Land Capacity Analysis</i> and include additional historical context to the Comprehensive Plan introduction.	2/19/2019	Comp. Plan	F	No Change	Section A. Introduction	<a href="https://www.sanjuanco.com/DocumentCenter/View/18074/2019-02-19_Docket_Reg_19-0002">https://www.sanjuanco.com/DocumentCenter/View/18074/2019-02-19_Docket_Reg_19-0002</a>	<b>No further action is recommended.</b>  A request for the same amendment was submitted during the 2018 annual docket process. The 2018 docket was resolved with Resolution 31-2018. At that time, no further action was required because the other components of the Comprehensive Plan such as the <i>Land Capacity Analysis</i> address similar information and are currently included in the Comprehensive Plan Update.
19-0003	Habitat Buffer	Fred Klein	<a href="mailto:FreddytheK10@gmail.com">FreddytheK10@gmail.com</a>	PO Box 1089 Eastsound WA 98245	Allow the director to reduce wetland habitat buffers within UGA similar to the currently allowed water quality buffer reduction in UGA. The proposed amendments would allow the director to reduce the wetland habitat buffer by the same reduction as the water quality buffer.	2/21/2019	Dev. Reg.	E	18.35.100	No Policy Change is Required	<a href="https://www.sanjuanco.com/DocumentCenter/View/18087/2019-02-21_Docket_Reg_19-0003">https://www.sanjuanco.com/DocumentCenter/View/18087/2019-02-21_Docket_Reg_19-0003</a>	<b>Add an analysis and amendment of SJCC 18.35.100 when the critical area regulations are updated following the Comprehensive Plan Update.</b>
19-0004	Airport Hazard Definition	Stephanie O'Day (agent for Myrna and Richard Fant)	<a href="mailto:sioday@rockisland.com">sioday@rockisland.com</a>	PO Box 2112 Friday Harbor WA 98250	Allow residential uses accessory to nonresidential uses in the Orcas Airport Overlay Zone 5 (see map below).	2/28/2019	Dev. Reg. and Comp. Plan	C	18.40.030	Land Use Element 2.5.D Policy 3	<a href="https://www.sanjuanco.com/DocumentCenter/View/18120/2019-02-28_Docket_Reg_19-0004">https://www.sanjuanco.com/DocumentCenter/View/18120/2019-02-28_Docket_Reg_19-0004</a>	<b>Consider this request during the update to the Comprehensive Plan Land Use Element.</b>  State laws (RCW 36.70.547, RCW 36.70A.510 and WAC 365-196-455(2)(c)(i)) require counties to prevent the siting incompatible land uses adjacent to airports. Further analysis of state and federal regulations and coordination with the Federal Aviation Administration (FAA), the WA Department of Transportation (WADOT), and the Port of Orcas Island will be required during the consideration of the proposed amendments.
19-0005	Island Center Res. Uses	Lopez Island School District (LISD) c/o Del Guenther	<a href="mailto:dguenther@lopezislandschool.org">dguenther@lopezislandschool.org</a>	PO Box 426 Lopez Island WA 98261	Allow residential development in Island Center LAMIRD (IC). SJCC 18.30.030 allows one residence accessory to an allowed commercial or industrial use. LISD would like to be able to construct employee housing on an undeveloped parcel in Island Center.	2/28/2019	Dev. Reg. and Comp. Plan	C	Chapter 18.30, several sections	Land Use Element, 2.3.B Policy 1 (c)	<a href="https://www.sanjuanco.com/DocumentCenter/View/18121/2019-02-28_Docket_Reg_19-0005">https://www.sanjuanco.com/DocumentCenter/View/18121/2019-02-28_Docket_Reg_19-0005</a>	<b>Consider request during the update to the Comprehensive Plan Land Use Element.</b>  The IC designation is one of only a few places on Lopez where commercial and industrial uses are allowed. The LAMIRD was established, in part, to provide a rural area where more intense development is allowed and protect this area from being converted to low density residential development. All of this fits within the GMA mandate to reduce sprawl. Making changes to IC should be considered within the County's larger land use designation framework to ensure the realization of GMA planning goals and County policy goals.
19-0006	Airport Hazard Definition	Stephanie O'Day (agent for Don and Marion Gerard)	<a href="mailto:sioday@rockisland.com">sioday@rockisland.com</a>	PO Box 2112 Friday Harbor WA 98250	Allow residential infill development in Airport Hazard Zone 5 (see map below).	7/10/2018	Dev. Reg. and Comp. Plan	C	18.40.030 (B) and 18.40.032 (F)	Land Use Element 2.5.D Policy 3	<a href="https://www.sanjuanco.com/DocumentCenter/View/18152/2018-07-10_Docket_Reg_19-0006">https://www.sanjuanco.com/DocumentCenter/View/18152/2018-07-10_Docket_Reg_19-0006</a>	<b>Consider this request during the update to the Comprehensive Plan Land Use Element.</b>  State laws (RCW 36.70.547, RCW 36.70A.510 and WAC 365-196-455(2)(c)(i)) require counties to prevent the siting incompatible land uses adjacent to airports. Further analysis of state and federal regulations and coordination with the Federal Aviation Administration (FAA), the WA Department of Transportation (WADOT), and the Port of Orcas Island will be required during the consideration of the proposed amendments.

2019 ANNUAL DOCKET REQUESTS

Priority
Category A – Required by law for GMA Compliance or otherwise
Category B – Items needed to achieve important public policy objectives of a countywide nature
Category C – Items that can be considered as part of a larger Comprehensive Plan Update or subarea planning process
Category D – Items needed to provide clarity and certainty to the Unified Development Code or Comprehensive Plan by removing inconsistencies and/or ambiguities
Category E – Lower priority items to be considered on a future year work program
Category F – Obsolete, previously resolved or not recommended for further consideration



# Scope of Work for Text Amendments to UDC and Comprehensive Plan

## Text Amendments to the Comprehensive Plan and SJCC Title 18 (UDC)

The list below is a scope of work for text amendments to the Comprehensive Plan and UDC. If a proposal requires amendments to both documents, the same process is required but the analysis and staff resources committed to the amendments will be increased. The UDC can be amended at any time whereas the Comprehensive Plan can only be amended once per year with minor exceptions such as adoption of a subarea plan and responses to Growth Management Hearings Board (GMHB) orders.

### **1) County Council directs staff to begin the amendment process**

### **2) Staff prepares initial analysis**

- A) Analyze proposal for consistency with Comprehensive Plan and County Policies.
  - 1) Compare proposal with applicable State Laws.
    - (a) Growth Management Act (GMA) Chapter 36.70A RCW, and
    - (b) GMA requirements in Chapter 365-196 WAC.
  - 2) Staff prepares State Environmental Policy Act (SEPA) documents:
    - (a) Prepare a SEPA checklist for non-project action, and
    - (b) Prepare a draft SEPA determination based on the checklist.
- B) Draft an initial staff report with staff recommendations and draft ordinance.
  - 1) Staff must coordinate with the Prosecuting Attorney's office for legal review of the proposed amendments.

### **3) Staff briefs the County Council on the proposed amendments**

- A) Staff presents the draft ordinance and staff recommendations to the County Council.
- B) Materials are transmitted to the Council a minimum of ten days prior to the briefing.
- C) Council gives direction on proposed amendments and directs staff to bring the proposal before the Planning Commission.

### **4) Planning Commission considers the proposed amendment**

- A) Staff presents an initial briefing on the proposed code amendment.
- B) Planning Commission sets a public hearing on the proposed amendment.
- C) Staff prepares a public hearing and SEPA determination notice to be published in the Journal of the San Juan Islands and the Island Sounder.
  - 1) Publication of the SEPA determination and comment period is usually combined with the public hearing notice.
    - (a) The SEPA determination and proposed ordinance must be sent to the WA State Department of Ecology (Ecology) and other agencies with jurisdiction; and
    - (b) An administrative and public record of the SEPA determination, its distribution, and publication must be maintained by staff.
  - 2) The comment period on the SEPA determination must be a minimum of fourteen days.

## Scope of Work for Text Amendments to UDC and Comprehensive Plan

- 3) The comment period covers a minimum of ten days prior to the public hearing. Written public comments on the proposal are processed as follows:
  - (a) Electronic and printed copies are filed in the administrative and public records;
  - (b) Copies of written comments are provided the Planning Commission at the public hearing;
  - (c) Electronic copies are posted to the County Website; and
  - (d) Staff keeps track of each comment that comes in and provides their recommendations as part of the presentation to the Planning Commission at the public hearing.
- D) The WA State Department of Commerce (Commerce) must be notified of the proposed amendment no less than sixty days in advance;
  - 1) Staff completes a notice of proposed amendment form and letter;
  - 2) Notice of proposed amendments are sent to Commerce; and
  - 3) Correspondence with Commerce is tracked in the administrative and public records
- E) Staff prepares a staff report and presentation for the public hearing that outlines:
  - 1) Written public comments received prior to the public hearing;
  - 2) Any additional clarification the Planning Commission requested at the initial briefing; and
  - 3) Any further analysis of applicable policies and state laws needed.
- F) The Planning Commission holds a public hearing on the proposed amendments.
  - 1) Staff presents the proposed amendments prior to public testimony, outlining the information in the staff report.
  - 2) The public provides testimony on the proposed amendments.
  - 3) The Planning Commission can close the public hearing after public testimony and begin their deliberations on the proposed amendments or continue the public hearing to a later meeting if they feel that additional testimony and written comments are necessary.
- G) Planning Commission begins deliberating on their recommendation to County Council regarding the proposed amendments.
  - 1) Deliberations often take place at the next meeting following the public hearing but can take place at the same meeting following the public hearing.
    - (a) The Planning Commission can ask staff questions that might result in additional technical analysis, this usually involves a supplemental staff report and briefing at a later meeting;
    - (b) The Planning Commission may decide to re-open the public hearing at a later meeting to gather additional public testimony on the proposal;
    - (c) Deliberations may take place at more than one Planning Commission meeting, depending on the Commission's meeting agendas; and
    - (d) Planning Commission may keep the record open through the process to allow the public the opportunity to provide further written comments.
  - 2) The Planning Commission works through the proposal with staff to determine alternatives based on public comments and additional staff analysis.
- H) The Planning Commission arrives at their recommendation to County Council.
  - 1) Planning Commission makes official Findings and Recommendation and approve it by vote.

## Scope of Work for Text Amendments to UDC and Comprehensive Plan

### 5) Staff briefs County Council on the Planning Commission's Findings and Recommendation

- A) Staff prepares the Planning Commission recommended ordinance and the prosecuting attorney reviews it.
- B) Staff prepares a staff report that includes:
  - 1) Planning Commission meeting minutes and Findings and Recommendation to County Council;
  - 2) Any further analysis needed in considering the proposed alternatives;
  - 3) Documentation of the SEPA process and notice to Commerce; and
  - 4) Public comments received with a staff analysis and recommendation.
- C) Staff prepares a presentation to the County Council outlining the contents of the staff report.
- D) Staff briefs County Council.
- E) County Council sets a public hearing.
- F) Staff prepares a public hearing notice to be published in the Journal of the San Juan Islands and the Island Sounder.
- G) The comment period covers a minimum of ten days prior to the public hearing. Written public comments on the proposal are processed as follows:
  - 1) Electronic and printed copies are filed in the administrative and public records for the code amendment;
  - 2) Electronic copies are posted to the County Website;
  - 3) Copies of written comments are provided to the County Council at the public hearing, Council can request electronic or hard copies of comments; and
  - 4) Staff keeps track of each comment that comes in and provides their recommendations as part of the presentation to the County Council at the public hearing.
- H) Staff prepares a staff report and presentation for the public hearing that outlines:
  - 1) Written public comments received prior to the public hearing;
  - 2) Any additional clarification the County Council requested at the initial briefing; and
  - 3) Any further analysis of applicable policies and state laws needed.

### 6) County Council holds a public hearing on the proposed amendment

- A) The County Council holds a public hearing on the proposed amendments.
  - 1) Staff presents the proposed amendments prior to public testimony, outlining the information in the staff report;
  - 2) The public provides testimony on the proposed amendments; and
  - 3) The County Council can close the public hearing after public testimony and begin their deliberations on the proposed amendments. Alternately, they may continue the public hearing or deliberations to a later date if additional testimony and written comments are desired.
  
- B) County Council deliberates and takes action on the proposed amendments.

## **Scope of Work for Text Amendments to UDC and Comprehensive Plan**

- 1) The County Council can direct staff to conduct additional technical analysis, this usually involves a supplemental staff report and another briefing;
  - 2) The County Council may decide to re-open the public hearing at a later meeting to gather additional public testimony;
  - 3) Deliberations may take place at more than one County Council meeting;
  - 4) If additional alternatives are identified or substantial changes are made to the draft ordinance, another public hearing may be necessary; and
- C) The County Council works through the proposal with staff to determine preferred amendments based on public comments, the Planning Commission's Findings and Recommendations, and additional staff analysis.
- D) If the County Council makes the decision to adopt the ordinance:
- 1) Staff adds physical and electronic copies of the adopted ordinance to the administrative and public records;
  - 2) Council Clerk posts the approved ordinance to the County website and publishes a notice of adoption; and
  - 3) Code amendments become effective 10 days after adoption, unless another effective date is specified or in the case of an emergency.

### **7) An appeal period follows the adoption of the ordinance**

- A) Comprehensive Plan and UDC amendments may be appealed to the Growth Management Hearings Board per state law.
- B) Amending one sub-section of the development code opens the entire sub-section for appeal during the appeal period. For example: if SJCC 18.40.240 (A) is amended, all of SJCC 18.40.240 can be subject to appeal within the appeal period.
- C) Appeals require additional time from Department of Community Development and Prosecuting Attorney staff.



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**FILE NUMBER 19-0001**  
**SAN JUAN COUNTY DOCKET INITIAL REVIEW**

<b>Applicant:</b>	OPAL Community Land Trust	<b>File No.:</b>	<b>19-0001</b>
<b>Description of Proposal:</b> Amend San Juan County Code (SJCC) 18.40.240 (F)(4) to read as follows:  4. Ownership. An accessory dwelling unit must be owned by the owner of the principal residence <u>or the owner of the land if the owner is providing perpetual affordable housing (as defined in SJCC 2.27).</u>			
<input type="checkbox"/>	<b>Comprehensive Plan Text Amendment</b>		
<input checked="" type="checkbox"/>	<b>Development Regulation Amendment</b>		

SEPA Required: YES

**Public Outreach/Notification Requirements:**

<input type="checkbox"/>	300 foot posted notification – for map amendments for five or fewer parcels
<input type="checkbox"/>	300 foot mailed notification and agency notification – this amendment will potentially affect adjacent properties within 300 feet of a proposal
<input type="checkbox"/>	Subarea or Overlay Wide Notification – this amendment will affect or potentially affect a neighborhood, subarea or multiple properties within an overlay or designation. Number of properties affected:
<input checked="" type="checkbox"/>	Countywide Notification – this amendment will apply countywide or affect many properties throughout the County

**Recommended Additional Public Outreach:**

<input checked="" type="checkbox"/>	Community Meeting(s)	<input type="checkbox"/>	Area-Wide Mailing	<input type="checkbox"/>	Countywide Mailing	<input checked="" type="checkbox"/>	<b>Publication</b>
<input checked="" type="checkbox"/>	Web –page	<input type="checkbox"/>	Press Release	<input type="checkbox"/>	Public Participation Plan	<input type="checkbox"/>	<b>Other</b> (reference below*)

***\*Depending on the scope of the proposed development regulation amendments, additional public notice may be necessary.***

<b>Priority:</b>	
<input type="checkbox"/>	A- Required by law for GMA Compliance or otherwise
<input type="checkbox"/>	B- Items needed to achieve important public policy objectives of a countywide nature
<input type="checkbox"/>	<i>C- Items that can be considered as part of a larger CP update or subarea planning process</i>
<input type="checkbox"/>	D- Items needed to provide clarity and certainty to the UDC and CP by removing inconsistencies and ambiguities
<input checked="" type="checkbox"/>	E- Items of lessor priority to be considered on a future year work program
<input type="checkbox"/>	F - Obsolete, previously resolved or not recommended for further consideration
<b>Scope of Work Necessary to Complete the Amendment:</b>	
Amendment of SJCC 18.40.240 will require the entire process in Attachment B.1. Additional public outreach efforts to ensure proposed policies align with public sentiment will be required prior to drafting an ordinance.	
<b>Changes to the following Comprehensive Plan Goals and Policies:</b>	
This amendment does not require amendment of the Comprehensive Plan goals and policies for consistency.	
<b>Changes to the following sections of the Unified Development Code:</b>	
SJCC 18.40.240 Accessory dwelling units (ADUs)	

**Staff Analysis:**

Amending SJCC 18.40.240 (F)(4) will open this entire section for public comment and appeal. This section of code regulating ADUs has been controversial and appealed in the past; leading to the regulations currently in place. Revisions to the ADU code will likely require additional public outreach to ensure all stakeholders have the opportunity to provide input on this proposed amendment. Amending the ADU code will require additional legal review to ensure that the proposal is consistent with state laws and prior Growth Management Hearings Board (GMHB) decisions.

There is no conflict between specific policies in the Comprehensive Plan and the proposed amendment. There are no policies in the Comprehensive Plan that specifically address ADU and affordable housing. Policy work during the Comprehensive Plan Update will include actions directed at affordable housing and may provide clarity on this issue. Changes to Comprehensive Plan policies are implemented through development code amendments, meaning this request may end up being addressed during that process.



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DATE RECEIVED  
**S.J.C. DEPARTMENT OF**  
**JAN 14 2019**  
**COMMUNITY DEVELOPMENT**

**Comprehensive Plan Text/SJC Code\* Amendment Request**

\*San Juan County Code Titles 15, 16 & 18  
 (Annual Docket)

APPLICANT INFORMATION:			
Name of Applicant:	<u>OPAL Community Land Trust</u>	Name of Agent:	<u>Lisa Byers</u>
Address	<u>PO Box 1133</u>	Address	_____
City, State, Zip	<u>Eastsound, WA 98245</u>	City, State, Zip	_____
Phone	<u>360-376-3191</u>	Phone	_____
Email	<u>opalclt@opalclt.org</u>	E-mail	_____

This request is for a text amendment to the Comprehensive Plan or development regulations, not a comprehensive plan map amendment. I understand that this request will be reviewed according to the County's annual docket process.

	<u>Elisabeth C. Byers</u>	<u>1/10/19</u>
Signature	Printed Name	Date
_____	_____	_____
Signature	Printed Name	Date

**Please Describe the Proposed Amendments (attach additional pages if you need more space):**

1. Comprehensive Plan – Describe proposed amendment and/or attach proposed text changes. List Comprehensive plan section, page numbers, title and policies proposed for amendment.

N/A

2. San Juan County Code Title 15, Title 16 or Title 18. Describe proposed amendment and/or attach proposed text changes. List code sections proposed for amendment.

The proposed change is to 18.40.240.F (4) re: Accessory Dwelling Units:

**Ownership.** An accessory dwelling unit must be owned by the owner of the principal residence, or the owner of the land if the owner is providing perpetual affordable housing (as defined in SJC 2.27).

3. Why is the amendment being proposed?

**Community Land Trusts are non-profit organizations dedicated to providing permanently affordable housing. OPAL Community Land Trust owns the land for two parcels in Eastsound and leases the land to individuals who own the house, or improvement on that land. The homeowners are low or moderate income and do not have the resources to build an ADU, but if OPAL were allowed, as the owner of the land, to build and rent an ADU on the property, it would enable OPAL to provide additional units of affordable housing.**

4. How is the proposed amendment consistent with the Growth Management Act (RCW 36.70A), Comprehensive Plan and development regulations?

**The Housing Element of San Juan County's Comprehensive Plan identifies an estimated shortage of at least 600 homes countywide that are affordable for low- and moderate-income households. The Plan calls for making adequate provision for a variety of housing types (Goal 5.2) and the full spectrum of income groups (Goal 5.2.B.).**

5. Does this proposal impact an Urban Growth Area (UGA)? Lopez Village, Eastsound and the Town of Friday Harbor are the only UGAs in the County.

- Yes, indicate UGA Eastsound  
 No

6. Does this proposal increase population or employment capacity?

**The proposal provides more affordable and stable housing options for existing residents of San Juan County and thereby improves the ability of local employers to find appropriate employees.**



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### FILE NUMBER 19-0002 SAN JUAN COUNTY DOCKET INITIAL REVIEW

<b>Applicant:</b>	Joe Symons et. al	<b>File No.:</b>	19-0002
<b>Description of Proposal:</b> Add a 'build out analysis' to the Comprehensive Plan Introduction.			
<input checked="" type="checkbox"/>	<b>Comprehensive Plan Text Amendment</b>		
<input type="checkbox"/>	<b>Development Regulation Amendment</b>		

**SEPA Required:** YES

**Public Outreach/Notification Requirements:**

<input type="checkbox"/>	300 foot posted notification – for map amendments for five or fewer parcels
<input type="checkbox"/>	300 foot mailed notification and agency notification – this amendment will potentially affect adjacent properties within 300 feet of a proposal
<input type="checkbox"/>	Subarea or Overlay Wide Notification – this amendment will affect or potentially affect a neighborhood, subarea or multiple properties within an overlay or designation. Number of properties affected:
<input checked="" type="checkbox"/>	Countywide Notification – this amendment will apply countywide or affect many properties throughout the County

**Recommended Additional Public Outreach:**

<input type="checkbox"/>	Community Meeting(s)	<input type="checkbox"/>	Area-Wide Mailing	<input type="checkbox"/>	Countywide Mailing	<input checked="" type="checkbox"/>	<b>Publication</b>
<input checked="" type="checkbox"/>	Web –page	<input type="checkbox"/>	Press Release	<input type="checkbox"/>	Public Participation Plan	<input type="checkbox"/>	<b>Other</b> (reference below*)
<b>*Depending on the scope of the proposed development regulation amendments, additional public notice may be necessary.</b>							

<b>Priority:</b>	
<input type="checkbox"/>	A- Required by law for GMA Compliance or otherwise
<input type="checkbox"/>	B- Items needed to achieve important public policy objectives of a countywide nature
<input type="checkbox"/>	<i>C- Items that can be considered as part of a larger CP update or subarea planning process</i>
<input type="checkbox"/>	D- Items needed to provide clarity and certainty to the UDC and CP by removing inconsistencies and ambiguities
<input type="checkbox"/>	E- Items of lesser priority to be considered on a future year work program
<input checked="" type="checkbox"/>	F - Obsolete, previously resolved or not recommended for further consideration
<b>Scope of Work Necessary to Complete the Amendment:</b>	
Amendment of the Comprehensive Plan Introduction will require the entire process in Attachment B.1. (Note: the Comprehensive Plan can only be amended once per year).	
<b>Changes to the following Comprehensive Plan Goals and Policies:</b>	
Section A Introduction; this proposal will create a new component of this section.	
<b>Changes to the following sections of the Unified Development Code:</b>	
N/A	

**Staff Analysis:**

A request for the same amendment was submitted during the 2018 annual docket process. The 2018 docket was resolved with Resolution 31-2018. At that time, no further action was required because the other components of the Comprehensive Plan such as the Land Capacity Analysis address similar information and are currently included in the Comprehensive Plan Update.



## SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

135 Rhone Street, PO Box 947, Friday Harbor, WA 98250  
 (360) 378-2354 | (360) 378-2116  
 dcd@sanjuanco.com | www.sanjuanco.com

### FILE NUMBER 19-0002 SAN JUAN COUNTY DOCKET INITIAL REVIEW

<b>Applicant:</b>	Joe Symons et. al	<b>File No.:</b>	19-0002
<b>Description of Proposal:</b> Add a 'build out analysis' to the Comprehensive Plan Introduction.			
<input checked="" type="checkbox"/>	<b>Comprehensive Plan Text Amendment</b>		
<input type="checkbox"/>	<b>Development Regulation Amendment</b>		

**SEPA Required:** YES

**Public Outreach/Notification Requirements:**

<input type="checkbox"/>	300 foot posted notification – for map amendments for five or fewer parcels
<input type="checkbox"/>	300 foot mailed notification and agency notification – this amendment will potentially affect adjacent properties within 300 feet of a proposal
<input type="checkbox"/>	Subarea or Overlay Wide Notification – this amendment will affect or potentially affect a neighborhood, subarea or multiple properties within an overlay or designation. Number of properties affected:
<input checked="" type="checkbox"/>	Countywide Notification – this amendment will apply countywide or affect many properties throughout the County

**Recommended Additional Public Outreach:**

<input type="checkbox"/>	Community Meeting(s)	<input type="checkbox"/>	Area-Wide Mailing	<input type="checkbox"/>	Countywide Mailing	<input checked="" type="checkbox"/>	<b>Publication</b>
<input checked="" type="checkbox"/>	Web –page	<input type="checkbox"/>	Press Release	<input type="checkbox"/>	Public Participation Plan	<input type="checkbox"/>	<b>Other</b> (reference below*)
<b>*Depending on the scope of the proposed development regulation amendments, additional public notice may be necessary.</b>							

<b>Priority:</b>	
<input type="checkbox"/>	A- Required by law for GMA Compliance or otherwise
<input type="checkbox"/>	B- Items needed to achieve important public policy objectives of a countywide nature
<input type="checkbox"/>	<i>C- Items that can be considered as part of a larger CP update or subarea planning process</i>
<input type="checkbox"/>	D- Items needed to provide clarity and certainty to the UDC and CP by removing inconsistencies and ambiguities
<input type="checkbox"/>	E- Items of lesser priority to be considered on a future year work program
<input checked="" type="checkbox"/>	F - Obsolete, previously resolved or not recommended for further consideration
<b>Scope of Work Necessary to Complete the Amendment:</b>	
Amendment of the Comprehensive Plan Introduction will require the entire process in Attachment B.1. (Note: the Comprehensive Plan can only be amended once per year).	
<b>Changes to the following Comprehensive Plan Goals and Policies:</b>	
Section A Introduction; this proposal will create a new component of this section.	
<b>Changes to the following sections of the Unified Development Code:</b>	
N/A	

**Staff Analysis:**

A request for the same amendment was submitted during the 2018 annual docket process. The 2018 docket was resolved with Resolution 31-2018. At that time, no further action was required because the other components of the Comprehensive Plan such as the Land Capacity Analysis address similar information and are currently included in the Comprehensive Plan Update.



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DATE RECEIVED  
**S.J.C. DEPARTMENT OF**  
**FEB 19 2019**  
**COMMUNITY DEVELOPMENT**

**Comprehensive Plan Text/SJC Code\* Amendment Request**

\*San Juan County Code Titles 15, 16 & 18  
 (Annual Docket)

<b>APPLICANT INFORMATION:</b>			
Name of Applicant:	<u>Joe Symons</u>	Name of Agent:	<u>n/a</u>
Address	<u>3222 Pt. Lawrence Rd</u>	Address	_____
City, State, Zip	<u>Olga, WA 98279</u>	City, State, Zip	_____
Phone	<u>360 376 4549</u>	Phone	_____
Email	<u>joesymons@me.com</u>	E-mail	_____

This request is for a text amendment to the Comprehensive Plan or development regulations, not a comprehensive plan map amendment. I understand that this request will be reviewed according to the County's annual docket process.		
<u>J. Symons</u>	<u>Joe Symons</u>	<u>18 Feb 2019</u>
Signature	Printed Name	Date
_____	<u>See Attached List (Exhibit A)</u>	<u>18 Feb 2019</u>
Signature	Printed Name	Date

**Please Describe the Proposed Amendments (attach additional pages if you need more space):**

1. Comprehensive Plan – Describe proposed amendment and/or attach proposed text changes. List Comprehensive plan section, page numbers, title and policies proposed for amendment.

**Background:** In 2001 I submitted a formal request to the Planning Commission via the annual Docket process. The request did not ask for a specific change in the SJC Comprehensive Plan (CP). Rather, the request asked for a thorough and comprehensive explanation of the CP in layman's terms. This could be described as a "truth in planning" document. The formal request, conforming to the docket format at the time, is available at <http://www.doebay.net/forthcoming.html> (and is attached as Exhibit B). The PC reviewed the request and unanimously voted that it should be done and be given the highest priority of county government. The PC finding is available at <http://www.doebay.net/SJCPCfindingsOct2001.pdf> (and is attached as Exhibit C). The BOCC (former term for the County Council) ignored the PC recommendation. Subsequent to this request, no action has been taken by DCD, PC or CC to re-explore, consider, implement or otherwise achieve the intent of this request.

Given that there have been significant changes experienced by SJC in the past 18 years since the request was made, and that County Council rejected my 2018 docket application without notifying me or any co-applicants regarding the hearing where we might have testified, I re-submit a request for a comprehensive "truth in planning" component of the CP specifically geared to communicate in language understood by residents not formally trained in law or land use planning. The current request builds upon but is not limited to the previous requests. The current request explicitly requests a new component to be added to the CP, analagous to an "executive summary", which would include a summarized "build-out analysis" or BOA in which the impacts on county finances, community cohesiveness, environmental challenges and experience of living in the San Juan Islands



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is examined. That is, the Build Out Analysis (the full documentation of which would be located as Exhibit 1 in the CP Appendix) would not be limited to the 20 year planning horizon but would run forward to illuminate what the full set of impacts are likely to be when all development potential currently on the books (i.e., the current density map) is exhausted.

The BOA includes by definition an impact analysis. These impacts focus on themes, expressed in the official Vision Statement, that the residents of San Juan County care about: impacts such as, but not limited to, the environment, transportation, housing, sense of community cohesiveness and the fiscal implications of new development on government services. All of this information should be described with a variety of easily understood maps, charts, graphics, photographs, spreadsheets, narratives, etc.

A "truth in planning" presentation is a layman-friendly term for a BOA. These analyses do not involve rocket science. An excellent article reviewing what a BOA can do is found at <http://conservationtools.org/guides/42-build-out-analysis> (and is attached as Exhibit D). San Juan County has a sophisticated GIS system and highly professional staff that can perform this task.

Inexpensive and powerful off-the-shelf software exists that would sit atop (be an extension of) SJC's GIS data; this software generates easy to understand graphics and information and includes a powerful capability to facilitate a Build Out Analysis. Note that additional work beyond the capability of the suggested software is likely to be required to ensure that the full set of impacts called for in this request is included.

The company producing the software is

<http://communityviz.city-explained.com/index.html>

and the software with many explanatory videos and materials is at

<http://communityviz.city-explained.com/communityviz/index.html>

An example of the use of this software in a real-world environment is at

[https://www.upstateforever.org/files/files/2017.7.20\\_SOF\\_FINAL\\_Report.pdf](https://www.upstateforever.org/files/files/2017.7.20_SOF_FINAL_Report.pdf)

The tool is here, the staff is competent, the data exists, the price is affordable and *the need is essential.*

Supportive material for this request includes the 2004 Cost of Community Services study, funded by American Farmland Trust and the Friends of the San Juans (at: <http://www.doebay.net/appeal/COCS%20Report%20Exec%20Sum%20%205%2018%2004.pdf>). This document demonstrates the tax implications on existing residents for new residential development. The short version is that for every dollar of new tax revenue from a new residence, it costs the county \$1.32. That \$0.32 shortfall is paid for by existing tax payers, who are effectively subsidizing wealthy new second homers.

In addition, in 2000 SJC funded a "Study of Socioeconomic Impacts of Growth Pressure in Selected Seasonal/Resort Communities. "

(located at <http://www.doebay.net/appeal/socioeconomicgrowth.pdf>). This has been identified as the "Nantucket" study. It's conclusion is stark: SJC is not an exception to the transformation of beautiful



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small rural communities into havens for the wealthy, but is simply about 20 years behind. We are now almost 20 years further down the road than when the study was authored.

It should be noted that neither of these documents is either mentioned or available on the SJC website.

These supportive materials reinforce the need for a transparent, comprehensive, easily understood executive summary, located in the CP's Introduction referencing the full BOA located in the Appendix. This executive summary explicitly and accurately describes the likely conditions at buildout using best available technologies and communication channels and methods.

Specifically, the Introduction to the CP (page 1) at <http://www.sanjuanco.com/DocumentCenter/Home/View/1052> states " The Vision Statement (Table 1) is the foundation upon which the entire Comprehensive Plan is based" (please read all of page 1 for additional context).

Given that the CP is being updated, the Introduction should be significantly re-written. The current Introduction speaks largely to the past process (~1992-1999), avoids mentioning the BOCC decision regarding prohibiting committee conversations about density, says nothing about the litigation and the County's multi-year failure to meet CP compliance under GMA, and fails to describe the current status of the CP. The Introduction was written in 1998, now >20 years ago. San Juan County's institutional memory regarding the CP's evolution is essentially non-existent. Multiple staff, PC and CC changes have taken place; virtually no one knows how we got to where we are. A thorough portrait of this history exists only at [doebay.net/appeal](http://doebay.net/appeal) which includes a detailed record of the litigation, of the political processes and of the context within which the current CP can be interpreted. A glance at the SJC's two paragraph description of the history of the county (at <http://www.sanjuanco.com/668/History>) is entirely inadequate and little short of absurd.

It is essential that this proposed addition to the CP be located in the Introduction, preferably following page two (currently showing the SJC Vision Statement), so that a time-challenged reader can get to the real meat of the CP immediately.

The executive summary component requested would *explicitly demonstrate* precisely how the goals, policies and UDC regulations *fulfill and/or fail to fulfill* the SJC certified Vision Statement. Options for how to bring the CP into compliance with the Vision Statement would be offered as part of this 'truth in planning' summary. Given that the CP has been, and will continue to be, crafted under the provisions of the Growth Management Act, the BOA and the executive summary would additionally specifically identify how the CP meets, or fails to meet, the 14 principles of GMA, with particular attention to the Act's first and second principles.

My request specifically and additionally asks that any future CP policy or UDC changes would have to explicitly and comprehensively demonstrate that they account for and ensure that the Vision Statement and GMA goals are specifically referenced and reviewed for compliance and do not remain unmentioned, diluted, ignored, bypassed or marginalized. All future CP modifications would be so identified and concomitantly incorporated in a revised executive summary to insure clarity and consistency with the intent of this addition to the CP.



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2. San Juan County Code Title 15, Title 16 or Title 18. Describe proposed amendment and/or attach proposed text changes. List code sections proposed for amendment.

**No specific county code changes are requested at this time.**

3. Why is the amendment being proposed?

The current SJC CP fails to communicate the full extent of the development potential inherent in the density map created in 1979. The BOCC "opted in" to create the current CP under GMA in 1992 and established citizen committees in each District to craft a new CP; however, the BOCC prohibited committee discussion of the 1979 density designations. Petitioners challenged the CP before the Western Washington Growth Management Hearings Board over a several year period from 1999-2007; in almost all cases, SJC lost. Under duress, SJC made modifications to the density map in order to remove the burden of non-compliance under GMA. The resulting changes, however, have never been articulated in any easy-to-understand summary document and included in the CP. The explosive growth of second homes and tourist accommodations since 1999 shows no sign of deceleration. A first-approximation estimate of the buildout potential under the existing density regulations suggests a buildout population in excess of 70,000 for SJC; this population estimate does not include the impact of visitors (studies have demonstrated that the seasonal impact of visitors more than doubles the resident population). By reference the current estimated population of SJC in 2019 is ~16,000.

Consequently it is imperative that the residents of SJC have a comprehensive and thorough portrait of what their future is likely to be, explicitly including the full range of impacts generated by visitors. This portrait needs to be compared with the resident-chosen Vision and GMA and all deficiencies explicitly documented.

4. How is the proposed amendment consistent with the Growth Management Act (RCW 36.70A), Comprehensive Plan and development regulations?

**GMA requires** that a county's CP be internally consistent. As a specific example, SJC has an obligation to ensure that rural lands in the county are not characterized by sprawl, generally defined by the GMA Hearings Boards as average rural lands densities less than 1 dwelling unit/5 acres. Of the ~17000 legal tax parcels in SJC in 2019, 8500 are non-conforming in rural land designations, creating an estimated rural lands buildout density of 1 du/3 acres. By GMA standards, this is sprawl. Current SJC rural lands densities are approximately 1 du/4 acres, which is also by definition sprawl (this can be validated at <http://www.doebay.net/appeal/SJC%20CP%20index%20rural%20lands.pdf>; this legal document was generated, under duress, by SJC during the litigation period.)

Separately, SJC has an obligation to ensure that there is consistency between the vision statement, describing a small rural county not wanting to change much, and its development potential. A truth in planning component as requested would explicitly illuminate these and other discrepancies and provide a solid fact-based platform for public conversation.

5. Does this proposal impact an Urban Growth Area (UGA)? Lopez Village, Eastsound and the Town of Friday Harbor are the only UGAs in the County.

Yes, indicate UGA \_\_\_\_\_

No

6. Does this proposal increase population or employment capacity?

**No.**

To:  
DCD / SJC  
PO Box 947  
Friday Harbor, WA 98250

From (print name): GREGORY OAKSEN

Date: 2/17/2019

Re: Comprehensive Plan Text/SJC Code Amendment Request

I wish to add my name as a co-applicant to the "Truth in Planning" Comp Plan Amendment Docket Request submitted by Joe Symons pursuant to <http://www.sanjuanco.com/civicalerts.aspx?AID=412>.

Signed:



S.J.C. DEPARTMENT OF

MAR 04 2019

COMMUNITY DEVELOPMENT

contact info:

address: 51 PARKER REEF RD EASTSOUND, WA 98245

phone: 360 376 3655

email: gregoaksen@gmail.com

## Adam Zack

---

**From:** joe symons <joesymons@me.com>  
**Sent:** Thursday, February 28, 2019 10:47 AM  
**To:** Adam Zack; Lynda Guernsey  
**Cc:** Matthew Gilbert  
**Subject:** Revised, updated Exhibit A for docket application  
**Attachments:** Ex A Docket Request coapplicant list2019.pdf

Please replace the Exhibit A that I sent ~1.5 weeks ago in my docket application with the revised Exhibit attached here.

Please acknowledge receipt.

Thanks much

Joe Symons

—

carpe diem

Exhibit A

List of Co-applicants submitted to PC re Truth in Planning Docket Request by Joe Symons, February 2019. Signed documents attesting to their participation are available upon request.

Janet	Alderton
Shawn	Alexander
Janet	Alexander
Naomi	Altdort
Lynn	Bahrych
Ken	Brostrom
Michelle	Brostrom
Carl	Burger
John	Clancy
Vicki	Clancy
Willie	Clancy
Irmgard	Conley
Sandi	Friel
April	Heyn
Eric	Heyn
Heather	Immoor
Maile	Johnson
Greg	Kramer
Beverly	Leyman
Leslie	Liddle
Selby	Lighthill
Pat	Littlewood
Bob	Meador
Natalie	Menacho
Heather	Oaksen
Greg	Oakson
Tracy	Oniya
Sandy	Playa
Mary	Reboulet
Lorna	Rhodes
Ed	Suij
Matthew	Swenson
Mary	Tanner
Suzie	Thomas
Paula	Treener
David/Geri	Turnoy
Jerry	Weatherman

Exhibit A

List of Co-applicants submitted to PC re Truth in Planning Docket Request by Joe Symons, February 2019. Signed documents attesting to their participation are available upon request.

Janet	Alderton
Shawn	Alexander
Janet	Alexander
Naomi	Altdort
Lynn	Bahrych
Carl	Burger
John	Clancy
Vicki	Clancy
Willie	Clancy
Irmgard	Conley
Sandi	Friel
April	Heyn
Eric	Heyn
Heather	Immoor
Maile	Johnson
Greg	Kramer
first name	last name
Beverly	Leyman
Leslie	Liddle
Leslie	Liddle
Pat	Littlewood
Natalie	Menacho
Heather	Oaksen
Greg	Oakson
Tracy	Oniya
Sandy	Playa
Mary	Reboulet
Lorna	Rhodes
Ed	Suij
Matthew	Swenson
Mary	Tanner
Suzie	Thomas
Paula	Treener
David/Geri	Turnoy
Jerry	Weatherman

Exhibit B

Original request submitted to PC re Truth in Planning Docket Request by Joe Symons,  
1/30/2001

available at

<http://www.doebay.net/forthcoming.html>

(**Note:** you can find extensive information on the issues regarding San Juan County's Comprehensive Plan [here](#)).

To: SJC Planning Department (laura, pat, rick)

Re: Amendment Proposal to the Comprehensive Plan

Date: 1/30/2001

Pursuant to: "Procedures for Amendment to the Comprehensive Plan or UDC"

1. From: Joe Symons

3222 Pt. Lawrence Rd

Olga WA 98279

Joe@doebay.net

360-376-4549

fax 360-376-2626

## 2. Suggested or Proposed Amendment Description:

I write to ask that the planning department consider modifying the presentation of the comprehensive plan documentation to explicitly and in layman's terms describe an overview portrait of the "meaning" or "implications" of the plan in terms of the likely look and feel of the county as the plan reaches maturity, i.e., as and when the plan moves from being a "plan" (the current conditions) to completed implementation.

I envision text, map and chart descriptions of the rural and activity center populations, per island, currently, and at both the end of the planning period as well as at rural and activity center buildout (ie, at such time as the current plan would require upzoning to permit further population growth), recognizing that 'buildout' at least in uga/activity center terms currently can not be considered a fixed number. The descriptions would include percentages of population between major islands, between the rural and activity centers, and would include graphs showing the actual historical population growth as well as the projected actual and planning population growth. A discussion would be offered that spoke to the difference between actual and planned growth, and would include explicit financial implications/projections of growth on infrastructure costs and county services as well as a discussion of the tax revenues likely to be required to meet these and other growth-related costs. The cost to current taxpayers of the fiscal impacts of new residential development would be calculated and presented, and a chart offered that would show how these costs are expected to change as the plan matures. Demographic information—referencing various socio/economic parameters—would be included to discuss the community diversity issues, along with, or compared to, the price of housing and the economic environment (the dominant types of income producing activities, the wage rates, the affordable housing realities). Impact on various enviornmental characteristics, such as the availability of water (municipal, wells, private water supply excess capacity, salt water intrusion, etc.) or the expected

changes in the marine environment, if any, would be included. Charts showing the changes in these various categories over the last several decades as well as projected forward for at least the planning period of the plan would be included to assist the reader in determining and evaluating trends.

The current and projected impact of visitor and seasonal populations would be discussed in terms of infrastructure costs, service costs, environmental costs and the need for housing options to meet this demand.

Clarification of county policies that restrict, or do not restrict, the issuance of building permits for various reasons, including consistency with the objectives of the CP (such as directing growth to Activity Centers) would be made explicit. The proposed description would reveal, rather than stay silent, on all building permits issued as a function (or not) of: location of permit (rural, resource land, activity center), growth rate (number of permits issued per year per area), affordable housing permits, and trends in permits, including size factors (square feet, number of structures, etc. associated with the permit) as well as percentage of permits that employ out of county contractors.

The intent of the presentation would be to describe in very realistic terms the most likely scenario for san juan county as it moves not only through its planning period but, as extrapolated, moves toward its ultimate built environment. Land use policies that would increase population (such as the guest house policy, rural residential clusters, tenants in common, etc.) would be made explicit in the numbers offered so that there was full disclosure about the legal vested rights of property owners vis a vis the impact of their decisions on the location and degree of development. The official map would explicitly refer to this proposed section of the comp plan so that a reader could quickly and easily cross reference the 'map' to the 'meaning of the map'. More than one map would be produced so that a reader would not be overwhelmed by the concentration of information on one map as is the case with the current policy. Density and size information would be summarized by rural and resource lands and activity centers, in a manner similar to the 7 pages of tables produced on 1/9/2001 by the Planning Department and made the subject of a stipulation agreement on 1/12/2001. This information would also be presented in chart and graph form similar to, as well as in additional formats to, the examples attached. Data such as the number of parcels and acreage that are non-conforming in each land use and density designation category, the number of parcels and acres that currently have structures and those figures as percentages of total parcels and acreages, would be also included. A discussion would be offered as to the meaning of this data in a manner analogous to the 5/25/2000 staff report prepared by the Planning Department in introducing the consultant's study on resort communities.

Direct and meaningful connections would be made between the Vision Statement and the statements in this proposed section, recommended to be in the Introduction to the CP, so that a reader could see for him/her self the degree to which the plan met the provisions of the Vision Statement. To the extent that current conditions as well as the plan do not meet the vision statement, the descriptions would be honest about these discrepancies. As well, the proposed section would explicitly describe how the CP meets the 14 goals of the Growth Management Act.

To the extent possible, alternatives, options, or solutions to the issues raised by this presentation would be offered, along with an assessment of the challenges that each of these alternatives would pose.

Interactive information processing likely via the County's website would be created so that a curious reader could obtain all this information via the web, in addition to being able to ask for and obtain, in real time, a wide variety of maps and statistical data from the various electronic resources such as the GIS and Assessor's databases.

### 3. How does the current description affect me?

I believe the CP owes far more detail to the reader than it currently offers. It owes a kind of "full disclosure" perspective, a "what the plan means" explanation, and a reconciliation/ explanation of how the CP implements the Vision Statement, which the plan describes as "the foundation of the CP." Many readers cannot or will not read the CP due to its length and inscrutibility. Comprehensive Plans should not be incomprehensible. Simply stating the plan, the current format, is not at all the same as describing what it really means.

### 4. Why is the change in the public interest?

The concept here would be to assist residents, property owners, visitors and prospective residents of the changes likely to be experienced in the county as the plan as written evolves. There is a 'truth in planning' concept here analogous to a 'truth in lending' or a standard full-disclosure policy. The reader of such a proposed addition to the Plan would be guided to understand the implications of doing nothing as well as the implications of doing something in response to the issues raised, under the explicit theory that "not making a choice is making a choice." The current CP format omits critical information. The changes proposed here improve consistency between parts of the plan by explicitly describing how (or how well) the plan achieves the goals of the Vision Statement. The documents are currently silent on how the plan will achieve the Vision Statement and, as well, achieve the goals of the GMA under which it was written.



plus 2 pages of sample graphs as attachments

Exhibit C

October 2001 PC finding re Truth in Planning Docket Request by Joe Symons

available at

<http://www.doebay.net/SJC PC findings Oct 2001.pdf>

**SAN JUAN COUNTY PLANNING COMMISSION**

**FINDINGS & RECOMMENDATIONS**

**HEARING DATES:** October 19, 2001  
October 24, 2001

**SUBJECT:** Proposed amendments to the Comprehensive Plan, Unified Development Code, and Official Maps

**APPLICANT:** San Juan County

**LOCATION:** San Juan County

**COMMISSION MEMBERS**

**PARTICIPATING:** Barbara Thomas, Bob Sundquist, Lovel Pratt, Jonathan White, Fred Croydon, Mark Kendziorek, and Larry Hendel

**PLANNING COMMISSION**

**RECOMMENDATION:** See Below

**RECOMMENDATIONS:**

(excerpt follows, starting on page 10)

Individual Docket Items

**I. Comprehensive Plan**

**CP-1.** Introduction (Part A) and Part B, Element 2—Land Use. Amend the Comprehensive Plan to provide more description of build-out implications of the Plan, update information, conduct several new studies and analyses, and provide further discussion of the Vision Statement—(proposed by Joe Symons)

**Findings:**

1. The data produced from these tasks and analyses are essential to making informed decisions regarding all aspects of planning in San Juan County. Therefore, these tasks and analyses are of the highest priority and all necessary resources should be made available to the Planning Department to accomplish them.
2. These tasks and analyses should be addressed immediately and pursued in earnest until completed.

**Recommendations:**

1. Complete the following tasks and analyses based on the most relevant data, including the 2000 Census:
  - a) Population by island and for UGAs and Activity Centers; historical growth; 20-year projected growth (1990–2010) and actual growth (1990–2000), and a discussion of differences between projected and actual growth. Prepare charts and graphs illustrating this.
  - b) Prepare demographic information, including socio-economic parameters, to discuss community diversity issues, the price of housing, and the economic environment (the dominant types of income producing activities, the wage rates, the affordable housing realities).
  - c) Evaluate the impact of growth and development on various environmental characteristics, such as the availability of water (municipal supplies, wells, private water supplies, excess capacity, salt water intrusion, *etc.*) and the expected changes in the marine environment, if any. Prepare charts showing the changes in these various categories of information over the last several decades as well as projected forward for at least the 20-year planning period.
  - d) Evaluate infrastructure needs. Requested are “explicit financial implications/projections of growth on infrastructure costs and county services as well as a discussion of the tax revenues likely to be required to meet these and other growth-related costs.”
  - e) Identify fiscal impacts and tax costs of new residential development. Prepare chart(s) showing how the costs versus generated tax revenue would be expected to change as growth occurs.
  - f) “Land use policies that would increase population” (the proposer suggests the guest house policy as one such) “would be made explicit in the numbers offered so that there was full disclosure about the legal vested rights of property owners *vis-à-vis* the impact of their decisions on population.”
  - g) Amend the Official Maps to explicitly refer to the revised section of the Comp Plan and the “meaning of the map.
- 2) Some new language for Element 1, Governance, or Element 2, Land Use, could be developed once such updates and analyses were completed.
- 3) A citizen’s committee selected for their relevant technical expertise be created to assist the Planning Department with these tasks.

Exhibit D

Build Out Analysis Description as supplement to Truth in Planning Docket Request by Joe Symons, available at

<http://conservationtools.org/guides/42-build-out-analysis>

# Build-Out Analysis

## Projecting the Impact of Current Law on Future Development

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A build-out analysis projects the development that could occur in an area under current law. It enables a community to test the reality of its development regulations against its vision for its future.

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## Introduction

A build-out analysis answers basic questions: If existing land development ordinances and open space programs (or lack thereof) remain unchanged, how much land might ultimately be developed? At what density and where? And with what impact on the community?

Residents often assume that their community's zoning regulations will prevent inappropriate development, but zoning regulations often allow development on *all* buildable land. A build-out analysis projects the maximum residential and commercial development allowed under law in a given area. Analysis can also explore the impact of development on things like tax base, traffic, school enrollment, natural and historic resources, and quality of life. The results are usually conveyed through maps and charts.

By providing a glimpse of a potential future, a build-out analysis shows the implications of existing development regulations and raises important questions for a community. Are beloved natural or historic resources threatened? What steps should be taken to accommodate future growth? Do current municipal regulations match the community's aspirations? The findings enable local leaders to better plan for the future and alter municipal regulations and open space protections to shape a more desirable development path.

Build-out analysis has long been used by local governments. Examples of analyses are provided with the on-line edition of this guide.

## **Conservation Impact**

Because a build-out analysis evaluates the long-term consequences of a municipality's ordinances, it shows much more development occurring than residents—who may be unaware of local zoning rules, or haven't considered their implications—generally expect. By painting a picture of how current zoning laws could result in undesirable changes to the community, an analysis can inspire citizens, officials, and local organizations to advocate for changes to municipal regulations so that open space and particular places important to communities are protected from development. An analysis can also inspire the establishment or expansion of a municipal open space protection program.

## **Challenges**

A build-out analysis is only effective if municipalities use the findings to revise land use ordinances and/or inform future growth. If the analysis is not attached to a specific point in time, it may not provide a clear timeframe or sense of urgency for implementing changes. In some cases, the analysis faces a negative reaction because people believe that a full build-out scenario will never actually occur.

While a build-out analysis can be conducted by people with no expertise or special tools, familiarity with fiscal impact analysis and access to geographic information system (GIS) software is extremely helpful. Municipalities or organizations with minimal staff and resources may find the process to be more challenging. See "Conducting a Build-Out Analysis" below for more information.

## **The Basics of a Build-Out Analysis**

### **Two Phases**

There are typically two phases in conducting a build-out analysis:

- Phase I visually depicts changes on a map and measures additional housing units and non-residential square footage that could be built under existing zoning regulations.
- Phase II quantifies the impact of the additional development. A summary presents the critical information and conclusions in an easy-to-understand way.

## GIS

Though not necessary, a geographic information system (<http://conservationtools.org/glossary/95>) (GIS) is often used to conduct an analysis. GIS allows users to combine, manage, manipulate, and analyze data in ways that are difficult or impossible with traditional maps. GIS can be used to determine the number of additional dwelling units that could be built on developable land under the existing zoning regulations, or provide a model for electronically layering maps to let viewers easily visualize where development in a community might occur. Depending on the software, analysts can then share this information online to be viewed by anyone (including those without GIS software.)

## Future Street Scenes

If a community wants to take the analysis one step further, a graphic artist can prepare sketches of possible future street scenes based on Phase I results. CommunityViz®, a GIS-based planning tool, also has the capability to construct street scenes. See the guide CommunityViz® (<http://conservationtools.org/guides/75>) for more information.

## Scale

Users must determine the scale at which they will conduct the analysis. While more comprehensive analysis generates more accurate and detailed results, it also requires the investment of greater resources (both time and money), as well as more data inputs.

In a more comprehensive (micro-scale) analysis, each parcel in the area is analyzed individually to account for zoning requirements and actual physical constraints, producing the most accurate results. A simpler (but still generally accurate) approach involves estimating the physical constraints using parameters applied equally across the study area.

In a less comprehensive (large-scale) analysis, parcels are not analyzed individually; instead, they are categorized by zoning district or other criteria, and each category is evaluated as a whole. Although this approach is useful for those with limited resources and/or data availability, its accuracy and effectiveness depends on how it is used. For example, this level of analysis will not allow a community to know where exactly development can occur.

See the paper “Build-Out Analysis in GIS as a Planning Tool With a Demonstration for Roanoke County, Virginia ([http://conservationtools.org/library\\_items/643](http://conservationtools.org/library_items/643))” by Mary A. Zirkle for more information about scale.

## Conducting a Build-Out Analysis

Community planners, engineers, or laypersons can conduct an analysis. If a goal is to calculate fiscal impacts, fiscal impact expertise is desirable. Access to GIS software or GIS-based community planning tools like CommunityViz® (<http://conservationtools.org/guides/75>), while not necessary, is helpful. Municipalities or organizations that lack the knowledge or time to conduct their own analysis may determine that hiring a consultant is the best strategy.

This section describes the different approaches to analysis that a community can take.

## **Micro-Scale Analysis**

### **Phase I**

First, construct a base map of the specified area. The base map should show the basics, such as:

- the perimeter of the area
- north arrow
- scale of the map
- existing roads
- surface water (lakes, rivers, streams)
- zoning districts

The base map should delineate land that:

- cannot be developed due to public ownership, deed restrictions, and utility easements.
- cannot be developed due to environmental constraints such as wetlands, floodplains, or steep slopes. (Do not include steep slopes that could be graded into developable land.) Some parcels may be partially developable, due to restrictions such as utility easements.
- has already been developed with existing structures and lot lines.
- will be developed in the near future (indicated by building proposals expected to be approved shortly, approved building proposals, and land under construction). Add this new development to the new development estimated from the build-out analysis to determine the total number of new housing units and non-residential square footage. The total number of new housing units and non-residential square footage is used to determine future impacts.

After creating the base map, the next step is to create overlay maps that show land that could be developed further. Then, calculate what development may occur by applying the zoning regulations to the total acres developable. This will yield total buildable dwelling units and/or total buildable non-residential square feet by zoning district.

- For land zoned residential, apply road standards and minimum lot size and frontage requirements as if the land was developed to the maximum extent allowable. Subtract 10% from the developable residential zoning districts to account for streets and infrastructure, with the remainder equaling the net total acres developable by zoning district.
- For land zoned commercial, apply the largest amount of floor space allowed under the zoning regulations.
- For a mixed-use district, assume the greatest percentage of non-residential uses and higher density residential uses permitted per development.

### **Phase II**

Phase II is a quantitative analysis of the impact of the changes detailed in Phase I. Impacts to calculate might include changes in:

- the amount of impermeable surface, which impacts water quality

- acreage farmed
- jobs
- population/number of school-age children
- housing units/housing density
- traffic
- tax revenues
- demands on schools, water supply, sewage, electrical production, police force, etc.

Convert the number of additional dwelling units to population based on current or projected household sizes per municipality. Convert the number of additional non-residential square feet to employees based on employment generation standards from *The Fiscal Impact Handbook* by Robert W. Burchell and David Listokin.

The following standards can be applied to a district's most prominent uses:

- Shopping Centers: 1 employee per 500 SF gross leasable area
- Offices: 1 employee per 250 SF net leasable area
- Industrial Plants: 1 employee per 300 SF net leasable area
- Warehouses: 1 employee per 750 SF gross leasable area.

### **Additional Impact Analysis**

Depending on the priorities and capacity of the community, additional analysis may be pursued. For example, the community might investigate the impacts of:

- allowable building heights on scenic views
- development on noise levels
- increased automobile use on parking needs and resulting spillover parking onto streets or other parking lots.

## **Large-Scale Analysis**

A large-scale build-out analysis is typically constructed using GIS to determine the number of additional dwelling units and non-residential square feet that could be built on developable land in the study area under the existing zoning regulations.

### **Phase I**

First, gather GIS data sets, including parcel data, land use, environmental constraints such as floodplains and wetlands, and zoning districts. Calculate the acreage of developable land <sup>[1]</sup> by zoning district. Then, for each zoning district, subtract:

- the acreage of environmentally constrained land <sup>[2]</sup> from the developable areas
- land where development is in progress, or a development application has been approved
- in residential zones, an additional 10% to account for streets and infrastructure.

The remainders are the net total acres developable by zoning district.

Apply the particular zoning regulations of each district to the net total acres for that district to determine the total buildable dwelling units and total buildable non-residential square feet. This requires many assumptions in interpreting the zoning regulations; for example, in a mixed-use district, assume the greatest percentage of non-residential uses and higher density residential uses permitted per development. Then, add the actual data from land where development is in progress or approved (if available).

To calculate the achievable Floor Area Ratio (FAR), which is often different than the permitted FAR, use the formula:

$$FAR = \frac{\text{Impervious Coverage Ratio}}{\frac{1}{\# \text{ of stories}} + \frac{400 SF}{\text{Parking Ratio}}}$$

*Impervious Coverage Ratio:* The maximum percentage of the site that may be covered by impervious surfaces (buildings, parking lots, driveways, etc.) stated in the zoning ordinance.

*Number of Stories:* Manufacturing and warehousing- type uses are always assumed to be built as one story. Likewise, retail is assumed to consume one floor only. Generally, only offices are likely to be built on more than one story, for which the maximum number of stories permitted, stated in the ordinance, should be used.

*400 SF (square feet):* A standard amount of impervious coverage per parking space, aisle, and associated driveway space.

*Parking Ratio:* The ratio stated in the zoning ordinance per gross square feet of building space. For example, a common parking ratio requirement for office use is one space per 200 SF of building space. The parking ratio in this case would be 200, meaning 200 SF per one parking space.

## **Phase II and Additional Impact Analysis**

The quantitative analysis component of a large-scale analysis is similar to that of micro-scale analysis; however, conclusions will be less exact due to the generalized, less accurate nature of the data inputs.

## **Other Options**

For a step-by-step guide to conducting a build-out analysis by hand, using paper maps and drafting tools instead of computer software, see Jeff Lacy's "Manual of a Build-Out Analysis ([http://conservationtools.org/library\\_items/637](http://conservationtools.org/library_items/637))" (1990). Though old-fashioned, this method is still valid.

For instructions to alternative GIS-based methods, including using the CommunityViz® tool, see "About Buildouts: A Brief Guide to Buildout Analysis, and Why and How to do Them ([http://conservationtools.org/library\\_items/1444](http://conservationtools.org/library_items/1444))" (2008). This technical report analyzes data from a single town using three different methods, ranging from simple to complex. Readers can compare the difficulty and accuracy of each method, and see how actual numbers are used in the calculations.

# Response to Results

The level of development potential identified by an analysis often frightens people, who never thought their community could absorb so much growth. The traditional fix is to reduce development by down-zoning;<sup>[3]</sup> however, this method is problematic because owners of undeveloped land may protest the potential loss of property value. And while it may reduce the density of development, it may accelerate the consumption of land for development and introduce other problems. Zoning changes that utilize Transfer of Development Rights (<http://conservationtools.org/guides/12>), Conservation by Design (<http://conservationtools.org/guides/9>), and Traditional Neighborhood Development (<http://conservationtools.org/guides/46>) can be more effective approaches to managing future development pressure.

<sup>[1]</sup> All undeveloped land (vacant, wooded, and agricultural) and land deemed appropriate for redevelopment is considered “developable” for purposes of this calculation.

<sup>[2]</sup> Floodplain, wetlands, steep slopes, and other areas that regulations deem unsuitable for development are considered “environmentally constrained.”

<sup>[3]</sup> Down-zoning means modifying a zoning ordinance to reduce the number of residential lots or non-residential square feet that are permitted to be built in a given area.

Average rating

Your rating

## Download as

[\(/library\\_items/1252/files/1537\)](#) [\(/library\\_items/1252/files/1538\)](#)

See more... [\(/library\\_items/1252-Build-Out-Analysis\)](#)

## Related Guides

[CommunityViz® \(/guides/75-communityviz\)](#)

[Development Threat Analysis \(/guides/38-development-threat-analysis\)](#)

## Experts

**[Patty Elkis \(/experts/181-patty-elkis\)](#)**

*Delaware Valley Regional Planning Commission*

215-238-2838

[Log in to see email](#)

Ms. Elkis has conducted numerous build-out analyses for a variety of studies in the Delaware Valley.

## Related Library Topics

[Build Out Analysis \(/library\\_items/topic/100-Build-Out-Analysis\)](#)

## Case Studies

### **Growth Management Plan for Milford Township (/library\_items/646-Growth-Management-Plan-for-Milford-Township)**

The paper describes the GIS techniques and methods used to help develop and design a growth management plan for Milford Township, Bucks County, Pennsylvania. It analyzes Milford Township's existing zoning and land use plan and discusses a future projection buildout scenario, following existing pla...

## Featured Library Items

### **Development Threat Analysis (/library\_items/1453-Development-Threat-Analysis)**

A development threat analysis identifies undeveloped lands that are most likely to be developed within a specific time frame. Information is presented in map form.

### **Manual of Build-Out Analysis (/library\_items/637-Manual-of-Build-Out-Analysis)**

A step-by-step how-to guide on the methodology and applicability of this planning tool.

### **Estimating Residential Development Capacity, A Guidebook for Analysis and Implementation in Maryland (/library\_items/640-Estimating-Residential-Development-Capacity-A-Guidebook-for-Analysis-and-Implementation-in-Maryland)**

A nuts and bolts analysis of how to estimate build-out in a variety of Maryland communities.

### **Integrating Build-Out Analysis and Water Quality Modeling to Predict the Environmental Impacts of Alternative Development Scenarios (/library\_items/642-Integrating-Build-Out-Analysis-and-Water-Quality-Modeling-to-Predict-the-Environmental-Impacts-of-Alternative-Development-Scenarios)**

This report provides background information on the use of build-out analysis and water quality/environmental modeling as land planning and water quality predictive management tools. It also contains summaries of 14 build-out analyses that have been conducted.

### **Build-Out Analysis in GIS as a Planning Tool With a Demonstration for Roanoke County, Virginia (/library\_items/643-Build-Out-Analysis-in-GIS-as-a-Planning-Tool-With-a-Demonstration-for-Roanoke-County-Virginia)**

Major paper submitted to the faculty of the Virginia Polytechnic Institute and State University. Gives an overview of build-out-analyses and gives in-depth information on how a build-out analysis was completed for Roanoke County, Virginia

### **Draft Joint Comprehensive Plan: Growth Management Plan for Dover Borough/Dover Township Region, Appendix 4: Build-Out Analysis (/library\_items/644-Draft-Joint-Comprehensive-Plan-Growth-Management-Plan-for-Dover-Borough-Dover-Township-Region-Appendix-4-Build-Out-Analysis)**

The report shows how a build-out analysis was used to develop a growth management plan. The build-out analysis is included in appendix 4.

### **Borough of Chambersburg Comprehensive Plan (/library\_items/645-Borough-of-Chambersburg-Comprehensive-Plan)**

A build-out analysis was completed as part of Chambersburg's comprehensive plan update process. The build-out analysis is included in appendix 4.

### **Build Out Analyses: Conservation Opportunities for Corridor Preservation and Community Development (/library\_items/83-Build-Out-Analyses-Conservation-Opportunities-for-Corridor-Preservation-and-Community-Development)**

Route 41 passes through or near nine communities that contain extensive prime farmland and is under threat from development. This is a buildout analyses for those communities impacted and assists municipalities who want to address increased land development pressures by quantifying the amount o...

## **About Buildouts: A Brief Guide to Buildout Analysis, and Why and How to Do Them (/library\_items/1444-About-Buildouts-A-Brief-Guide-to-Buildout-Analysis-and-Why-and-How-to-Do-Them)**

Reviews basic information about what they are, why they're done, what data is needed, how to conduct them, and what to do with the results.

## **Acknowledgements**

A substantial portion of the first edition's text was quoted directly or adapted from the U.S. Environmental Protection Agency website (2009). Patty Elkis (<http://conservationtools.org/experts/181>), PP, AICP, of the Delaware Valley Regional Planning Commission prepared the initial draft, and PALTA staff prepared the final draft. Nate Lotze (<http://conservationtools.org/experts/962>) greatly reworked the guide for its second edition, restructuring it and adding new material; Andrew M. Loza (<http://conservationtools.org/experts/4>) edited it.

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## **Disclaimer**

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## Adam Zack

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**From:** joe symons <joesymons@me.com>  
**Sent:** Monday, February 18, 2019 3:43 PM  
**To:** Erika Shook; Lynda Guernsey; Linda Ann Kuller; Adam Zack; Timothy P. Blanchard; pete moe; Georgette Wong  
**Cc:** Tom Evans; Steve Bernheim; Shawn Alexander; Matthew Gilbert  
**Subject:** 2019 Docket Submission  
**Attachments:** PCDocketsubmission2019.pdf; Ex A Docket Request coapplicant list2019.pdf; Exhibit B.pdf; Exhibit C.pdf; Exhibit D.pdf

I attach a comp plan/code amendment request, consisting of a 5 page formal docket request document and 4 exhibits (a,b,c,d)

Please acknowledge receipt of this submission.

I would appreciate a preliminary review to ensure that I have properly met the form and requirements of this request.

Thank you

Joe Symons  
Olga WA

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carpe diem



SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

135 Rhone Street, PO Box 947, Friday Harbor, WA 98250  
 (360) 378-2354 | (360) 378-2116  
 dcd@sanjuanco.com | www.sanjuanco.com

**FILE NUMBER 19-0003**  
**SAN JUAN COUNTY DOCKET INITIAL REVIEW**

<b>Applicant:</b>	Fred Klein	<b>File No.:</b>	19-0003
<b>Description of Proposal:</b> Amend San Juan County Code (SJCC) 18.35.100 (A)(2) to allow the director to reduce wetland habitat buffers within UGAs.			
<input type="checkbox"/>	<b>Comprehensive Plan Text Amendment</b>		
<input checked="" type="checkbox"/>	<b>Development Regulation Amendment</b>		

**SEPA Required:** YES

**Public Outreach/Notification Requirements:**

<input type="checkbox"/>	300 foot posted notification – for map amendments for five or fewer parcels
<input type="checkbox"/>	300 foot mailed notification and agency notification – this amendment will potentially affect adjacent properties within 300 feet of a proposal
<input type="checkbox"/>	Subarea or Overlay Wide Notification – this amendment will affect or potentially affect a neighborhood, subarea or multiple properties within an overlay or designation. Number of properties affected:
<input checked="" type="checkbox"/>	Countywide Notification – this amendment will apply countywide or affect many properties throughout the County

**Recommended Additional Public Outreach:**

<input checked="" type="checkbox"/>	Community Meeting(s)	<input type="checkbox"/>	Area-Wide Mailing	<input type="checkbox"/>	Countywide Mailing	<input checked="" type="checkbox"/>	<b>Publication</b>
<input type="checkbox"/>	Web –page	<input type="checkbox"/>	Press Release	<input checked="" type="checkbox"/>	Public Participation Plan	<input type="checkbox"/>	<b>Other</b> (reference below*)

***\*Depending on the scope of the proposed development regulation amendments, additional public notice may be necessary.***

<b>Priority:</b>	
<input type="checkbox"/>	A- Required by law for GMA Compliance or otherwise
<input type="checkbox"/>	B- Items needed to achieve important public policy objectives of a countywide nature
<input type="checkbox"/>	<i>C- Items that can be considered as part of a larger CP update or subarea planning process</i>
<input type="checkbox"/>	D- Items needed to provide clarity and certainty to the UDC and CP by removing inconsistencies and ambiguities
<input checked="" type="checkbox"/>	E- Items of lesser priority to be considered on a future year work program
<input type="checkbox"/>	F - Obsolete, previously resolved or not recommended for further consideration
<b>Scope of Work Necessary to Complete the Amendment:</b>	
Amendment of SJCC 18.35.100 (A)(2) will require the entire process in Attachment B.1. Additional public outreach efforts to ensure proposed policies align with public sentiment will be required prior to drafting an ordinance.	
<b>Changes to the following Comprehensive Plan Goals and Policies:</b>	
This amendment does not require amendment of the Comprehensive Plan goals and policies for consistency.	
<b>Changes to the following sections of the Unified Development Code:</b>	
SJCC 18.35.100 Wetlands – Protection standards	

**Staff Analysis:**

SJCC 18.35.100 (1) Step 4 allows the Director to reduce a wetland water quality buffer within urban growth areas (UGA). A similar provision to reduce wetland habitat buffers in the UGA does not exist in SJCC 18.35.100 (2). The regulations allow habitat buffers to be averaged but not reduced in size.

The parameters of critical area protections, including wetland buffers, is an issue likely to generate significant public interest. In-depth legal research and extensive public participation program would be required to ensure that any amendments to SJCC 18.35.100 are compliant with state law and satisfactory to the diverse stakeholder groups interested. The expanded public participation component would be in addition to the required process for amending the UDC, included in Attachment B.1., but might help reduce the likelihood of an appeal of the amendment.

Critical area regulations are controversial. Amending SJCC 18.35.100 (A)(2) will open this lengthy section for public comment and appeal. The entirety of SJCC 18.35.100 is included for reference below. Critical area development regulations must be considered in light of the WA State Department of Commerce *2018 Critical Areas Handbook* and applicable state laws. Amending this section of code will require additional legal review to ensure that the proposal is consistent with state laws and prior Growth Management Hearings Board (GMHB) decisions. Changes to the wetland protection standards are likely to be appealed given their direct relation to both private property rights and environmental protection.

There are policies in the Comprehensive Plan that specifically address wetland buffers but they do not conflict with the proposed amendments. Wetland policies are in the Land Use Element 2.5.B Policy 11 (d).

**18.35.100 Wetlands – Protection standards.**

This subsection establishes protection standards for wetlands, including a site-specific procedure for sizing wetland buffers.

A. Site-Specific Buffer Sizing Procedure. The following is a site-specific procedure for determining the size of vegetative buffers necessary to protect the water quality, water quantity, and habitat functions of wetlands. Two separate buffer components, a water quality component and habitat component, are considered in the procedure.

Required buffers apply regardless of whether the wetland is on the same parcel or another parcel that may be under different ownership. If the wetland is under different ownership and is not accessible, then the wetland rating and boundaries are established using available maps and information, including a visual assessment if possible. The water quality buffer is determined first based on the wetland rating category and land use intensity from Tables 18.35.100-1 and 18.35.100-2 provided in Step 4 below. The habitat buffer is then determined from Table 18.35.100-3. In all cases, conditions on the ground shall control.

1. Determine the Water Quality Buffer.

Step 1. Location Relative to Wetlands. Is the proposed development, vegetation removal or other site modification located within 300 feet of a wetland? If so, proceed to the next step. In some cases, to answer this question, it may be necessary to have the wetland edge facing the area that will be developed or modified delineated in accordance with SJCC [18.35.105](#). In many cases, this can be based on a wetland reconnaissance rather than a full delineation. Although maps and other imagery can be used to help with this determination, conditions on the ground shall control. If the proposed development, vegetation removal, and other modifications are more than 300 feet from the wetland, no further action is needed for compliance with wetland critical area regulations. (Note: If proposed activities do not require development or project permits, and activities are consistent with the requirements outlined in Table 18.35.100-4 and subsections (F) and (G) of this section, it may not be necessary to identify the edge of the wetland and the size of the water quality buffer.)

Step 2. Drainage Direction. Does the area proposed to be developed or modified drain to the wetland? If the area proposed to be developed or modified drains to the wetland, delineate the wetland in accordance with SJCC [18.35.105](#) and proceed to determine the required water quality buffer. If the area proposed to be developed or modified does not drain to the wetland, a water quality buffer is not required and only a habitat buffer applies. Proceed to the habitat buffer sizing procedure in subsection (A)(2) of this section.

Step 3. Wetland Rating Category. Determine the wetland rating category using the Washington State Wetland Rating System for Western Washington – Revised (Ecology Publication No. 04-06-025) as revised by Ecology. This will require the assistance of a qualified professional. (Note: If the wetland contains particular plants or animals protected as fish and wildlife habitat conservation areas, a higher rating may apply. See SJCC [18.35.115](#) and [18.35.135](#).)

Step 4. Identify the Water Quality Buffer Width. Using Tables 18.35.100-1 and 18.35.100-2 below, determine the water quality buffer based on the wetland rating category and land use intensity of the proposed development. Buffers are measured horizontally from the edge of the wetland.

The director may reduce the standard buffer widths in an urban growth area when impacts to critical areas are mitigated according to SJCC [18.35.040](#) and the buffer reduction is consistent with all other applicable requirements of this section provided:

- a. The buffer of a Category I or II wetland shall not be reduced to less than 75 percent of the required buffer or 50 feet, whichever is greater, and
- b. The buffer of a Category III or IV wetland shall not be reduced to less than 50 percent of the required buffer, or 25 feet, whichever is greater.

**Table 18.35.100-1 Water Quality Buffers<sup>3</sup>**

<b>Water Quality Buffers</b>			
<b>Wetland Rating</b>	<b>Land Use Intensity<sup>1</sup></b>		
	<b>Low</b>	<b>Medium</b>	<b>High</b>
<b>Category I Bogs and Natural Heritage Wetlands<sup>2</sup></b>	125 feet	190 feet	250 feet
<b>Categories I and II</b>	50 feet	75 feet	100 feet
<b>Category III</b>	40 feet	60 feet	80 feet
<b>Category IV</b>	25 feet	40 feet	50 feet

<sup>1</sup> See Table 18.35.100-2 for a list of land uses that are considered low, medium, or high land use intensity.

<sup>2</sup> If the bog is located within another wetland category, the bog buffer only applies to the area immediately adjacent to the bog, and not to the surrounding wetland. Buffers are measured horizontally from the edge of the wetland.

<sup>3</sup> Buffers shall be increased by 50 percent on slopes greater than 30 percent.

Table 18.35.100-2

Land Use Intensity by Type	
Land Use Intensity	Types of Land Uses
High	Commercial Urban Industrial Institutional Retail sales Residential at more than 1 unit per acre High intensity agriculture (dairies, nurseries, greenhouses, annual tilling, raising animals, etc.) High intensity recreation (golf courses, ball fields, etc.)
Medium	Residential at not more than 1 unit per acre Moderate intensity open space (parks with biking, jogging, etc.) Paved trails Logging roads Utility corridors with access road Hobby farms
Low	Forestry (limited to cutting of trees) Low intensity agriculture (orchards, hay fields, etc.) Low intensity open space (hiking, bird watching, etc., allowed) Unpaved trails Utility corridors without access road and little or no vegetation management

2. Determine the Habitat Buffer.

Step 1. Determine the Wetland Rating Category. Determine the wetland rating category using the Washington State Wetland Rating System for Western Washington – Revised (Ecology Publication No. 04-06-025), as revised by Ecology (see SJCC [18.35.090](#)). This will require the assistance of a qualified professional.

If the wetland contains particular plants or animals protected as fish and wildlife habitat conservation areas, a higher rating may apply. See SJCC [18.35.115](#) and [18.35.135](#).

Step 2. Determine Habitat Buffer from Table 18.35.100-3. Using the wetland rating category and the proposed land use intensity type from Table 18.35.100-2, determine the required size of the habitat buffer from Table 18.35.100-3. Unlike the water quality buffer, the habitat buffer must completely surround the wetland. Buffers are measured horizontally from the edge of the wetland. Proceed to Step 3 if desired. (Note: If no trees are being removed, proposed activities do not require development or project permits, and activities are consistent with the requirements outlined in Table 18.35.100-4 and subsections (F) and (G) of this section, it may not be necessary to identify the edge of the wetland and the size of the habitat buffer.)

**Table 18.35.100-3**

<b>Habitat Buffers</b>			
<b>Wetland Category</b>	<b>Land Use with Low Impact <sup>1</sup></b>	<b>Land Use with Moderate Impact <sup>1</sup></b>	<b>Land Use with High Impact <sup>1</sup></b>
I	150 feet	225 feet	300 feet
II	150 feet	225 feet	300 feet
III	75 feet	110 feet	150 feet
IV	25 feet	40 feet	50 feet

<sup>1</sup> See Table 18.35.100-2 for types of land uses that can result in low, moderate, or high impacts to wetlands.

Step 3. Habitat Buffer Averaging. Habitat buffer averaging allows reduction of the required habitat buffer in specified locations on the property proposed for development, vegetation removal or other modification, in conjunction with increases of the buffer in other areas, so that the total area of the habitat buffer is unchanged. Averaging of the habitat buffer will be allowed only if the applicant demonstrates that all of the following criteria are met:

- a. Averaging is necessary to accomplish the purposes of the proposal, and no reasonable alternative is available;
- b. If the wetland contains variations in habitat sensitivity due to existing physical characteristics, the reduction from standard habitat buffer sizes will occur only contiguous to the area of the wetland determined to be least sensitive;
- c. The total area contained within the habitat buffer after averaging is no less than that contained within the standard habitat buffer prior to averaging;

d. The habitat buffer shall not be reduced by more than 25 percent, and the reduced habitat buffer must not occur along more than one-half the circumference of the wetland; and

e. If a portion of the buffer is to be reduced, the remaining habitat buffer area will be enhanced using native vegetation and fencing where appropriate to improve the functional attributes of the buffer, and to provide additional protection for wetland functions and values. A proposal to enhance a buffer shall not be used as justification to reduce an otherwise functional standard habitat buffer, unless such buffer reduction complies with all other criteria for buffer averaging.

B. Buffers and Roads. Buffers shall not extend across public roads. For private roads, buffers shall not extend across the road when the road design, flow of runoff, quantity of traffic, and/or gap in tree canopy result in an area that does not support the functions and values of the wetland being protected as determined by a qualified professional.

C. Structures, Uses and Activities Allowed and Prohibited in Wetlands and Wetland Buffers. Structures, uses and activities that are listed as “Yes” uses in Table 18.35.100-4 below are allowed in wetlands or wetland buffers, subject to compliance with the San Juan County Code. State or federal requirements administered by the Washington Department of Ecology, Washington Department of Fish and Wildlife, Washington Department of Natural Resources, or U.S. Army Corps of Engineers may also apply to these areas.

**Table 18.35.100-4**

<b>Structures, Uses and Activities Allowed in Wetlands and Wetland Buffers</b>		
<b>Activity</b>	<b>Allowed within Wetland</b>	<b>Allowed within Wetland Buffers</b>
a. Outdoor activities that do not involve modifying the land or vegetation, and that will not adversely affect the functions and values of wetlands.	YES	YES
b. The harvesting of wild plants and foods in conformance with applicable regulations and in a manner that is not injurious to the natural reproduction of wetland plants, provided the harvesting does not require tilling soil, planting, or changing existing topography, water conditions, or	YES	YES

Table 18.35.100-4

<b>Structures, Uses and Activities Allowed in Wetlands and Wetland Buffers</b>		
<b>Activity</b>	<b>Allowed within Wetland</b>	<b>Allowed within Wetland Buffers</b>
water sources except when allowed as an agricultural activity under (e) below.		
c. Removal of invasive plants; planting of native wetland plants; and vegetation management activities implemented as part of a habitat management plan developed or approved by a local, state, federal or tribal agency.	YES	YES
d. Agricultural activities conducted in accordance with a voluntary stewardship program developed pursuant to RCW <a href="#">36.70A.705</a> , with the exception of the construction of agricultural structures which are subject to the same provisions as other structures.	YES	YES
e. With the exception of the construction of agricultural structures, agricultural activities, including seasonal and recurrent activities existing or in development during the year prior to the effective date of these regulations, provided they do not result in additional adverse impacts to the functions and values of wetlands. This can include changing the type of farming, management practices, and crops within the existing geographic area already in use (such as in the rotational management of farmland) as long as the change does not result in additional adverse impacts to wetland functions and values. Agricultural structures are subject to the same provisions as other structures. (Note: See definition of “garden” in SJCC <a href="#">18.20.070</a> .)	YES	YES
f. Temporary development activities defined in SJCC <a href="#">18.20.200</a> ; provided, that reasonable efforts are made to avoid impacts to wetland functions and values and any adverse impacts are mitigated in accordance with SJCC <a href="#">18.35.040</a> .	NO	YES

Table 18.35.100-4

<b>Structures, Uses and Activities Allowed in Wetlands and Wetland Buffers</b>		
<b>Activity</b>	<b>Allowed within Wetland</b>	<b>Allowed within Wetland Buffers</b>
g. Noncompensatory Enhancement. Wetland restoration or enhancement activities not required as project mitigation, provided the activity is approved by the U.S. Fish and Wildlife Service, the Washington State Department of Ecology, Washington Department of Fish and Wildlife, or other responsible local, state, federal, or tribal jurisdiction.	YES	YES
h. Within the buffers of wetlands rated Category III or IV, the establishment and expansion of orchards and gardens, cultivated and managed with appropriate BMPs and without the use of synthetic chemicals; provided, that: <ul style="list-style-type: none"> <li>i. They will occupy no more than 4,000 square feet of the buffer;</li> <li>ii. They are installed within the outer 25% of the buffer;</li> <li>iii. Other than fences, no structures or impervious surfaces are constructed or created and fences will not impede the flow of water or prevent the movement of wetland animals;</li> <li>iv. A buffer of at least 30 feet is retained;</li> <li>v. Mowing does not occur in the habitat portion of the buffer until after July 15th; and</li> <li>vi. Trees are protected in accordance with this section.</li> </ul>	NO	YES
i. Construction of new ponds in or adjacent to a Category IV wetland, as part of a wetland mitigation or noncompensatory enhancement project approved by the County or other responsible state, federal, or tribal jurisdiction. (Note: Construction of new ponds is not allowed in or adjacent to Category I, II, and III wetlands.)	YES	YES
j. The construction of trails, stairs, or raised walkways; provided, that the improvement: <ul style="list-style-type: none"> <li>i. Is designed to direct sheet flow runoff into adjacent vegetation;</li> </ul>	YES	YES

Table 18.35.100-4

<b>Structures, Uses and Activities Allowed in Wetlands and Wetland Buffers</b>		
<b>Activity</b>	<b>Allowed within Wetland</b>	<b>Allowed within Wetland Buffers</b>
<ul style="list-style-type: none"> <li>ii. Prevents adverse impacts to the wetland from runoff and eroding soil;</li> <li>iii. Does not exceed five feet in width;</li> <li>iv. Is constructed of nontoxic materials;</li> <li>v. Does not totally circumnavigate the wetland perimeter;</li> <li>vi. Does not include the placement of fill; and</li> <li>vii. Is consistent with the applicable requirements of subsection (F) of this section.</li> </ul>		
k. Temporary wildlife watching blinds.	YES	YES
l. Drilling and digging of wells provided they are located within the outer 25% of the buffer, that there are no anticipated adverse impacts to adjoining wetlands, that measures are taken to avoid compaction of soils during drilling and development of the well, and that disturbed areas are immediately stabilized and replanted with the type of vegetation found in the buffer.	NO	YES
m. Limited tree removal to allow for a filtered view from the primary structure, provided: <ul style="list-style-type: none"> <li>i. Stumps are retained and disturbance of the soil and duff layer is minimized;</li> <li>ii. The remaining forest consists of trees that are multi-aged and well distributed across the buffer and the canopy cover for the remaining forest is at least 65%, except directly between the primary structure and the wetland, where the canopy cover may be reduced to not less than 50%;</li> <li>iii. All vegetation overhanging streams, ponds, lakes, wetlands, and marine waters is retained; and</li> </ul>	NO	YES

Table 18.35.100-4

<b>Structures, Uses and Activities Allowed in Wetlands and Wetland Buffers</b>		
<b>Activity</b>	<b>Allowed within Wetland</b>	<b>Allowed within Wetland Buffers</b>
iv. Trees greater than or equal to 12 inches dbh are retained.		
n. Temporary development activities defined in SJCC <a href="#">18.20.200</a> ; provided, that reasonable efforts are made to avoid impacts to wetland functions and values and any adverse impacts are mitigated in accordance with SJCC <a href="#">18.35.040</a> .	NO	YES
o. To allow for a view or for fire hazard reduction, minor trimming and pruning of the foliage of trees and shrubs, provided the health of the trees and shrubs is maintained, trees are not topped, and all vegetation overhanging streams, ponds, lakes, wetlands, and marine waters is retained. In no case shall more than 20% of the foliage of individual trees or shrubs be removed during a 12-month period.	NO	YES
p. Components of stormwater management facilities in conformance with local and state stormwater management requirements and any applicable tree protection requirements; provided, that reasonable efforts are made to avoid impacts to wetland functions and values and any adverse impacts are mitigated in accordance with SJCC <a href="#">18.35.040</a> .	NO	YES
q. Fences, provided they do not impede the flow of water or prevent the movement of wetland animals.	YES	YES
r. Road and trail crossings in conformance with subsection (F) of this section.	YES	YES
s. Development allowed pursuant to an exemption, a reasonable use exception, or provisions for nonconforming structures, uses and activities outlined in SJCC <a href="#">18.35.020</a> through <a href="#">18.35.050</a> .	YES	YES
t. Maintenance to support or improve the functions and values of wetlands.	YES	YES

Table 18.35.100-4

<b>Structures, Uses and Activities Allowed in Wetlands and Wetland Buffers</b>		
<b>Activity</b>	<b>Allowed within Wetland</b>	<b>Allowed within Wetland Buffers</b>
u. The following on-site sewage disposal system components:		
i. Watertight septic tanks and pump chambers;	NO	YES
ii. Sleeved and watertight sewer lines; and	NO	YES
iii. Drainfields <sup>2</sup> . These components are allowed when they conform with local and state requirements, reasonable efforts are made to avoid impacts to wetland functions and values, and: (A) Appropriate BMPs are used to minimize erosion, sedimentation and soil disturbance; (B) For new systems, limited tree removal is allowed in habitat buffers, provided: (1) Stumps are retained and disturbance of the soil and duff layer is minimized; (2) The remaining forest consists of trees that are multi-aged and well distributed across the buffer and the canopy cover for the remaining forest is at least 65%; (3) All vegetation overhanging streams, ponds, lakes, wetlands, and marine waters is retained; and (4) Trees greater than or equal to 12 inches dbh are retained; and (C) Any adverse impacts to critical areas or their buffers are mitigated in accordance with SJCC <a href="#">18.35.040</a> .	NO	YES, outside of the water quality buffer
v. Other uses that will not adversely impact wetland functions and values, considering the best available science.	P/C <sup>1</sup>	P/C <sup>1</sup>

<sup>1</sup> "P/C" means provisional or conditional use permit depending on the level of impacts (see SJCC [18.80.090](#)).

<sup>2</sup> Drainfields shall not be located within 300 feet of a natural heritage wetland.

D. Field Marking of Wetland and Wetland Buffer. Prior to building permit approval, the location of the outer extent of the wetland and any wetland buffer adjacent to the area that will be developed shall be marked in the field, and the director may require field approval prior to the commencement of permitted activities. Markings for wetlands and buffers shall be maintained throughout the duration of construction activities.

E. For recorded plats, short plats and binding site plans, the applicant shall show the boundary of required buffers on the face of the plat or plan.

F. Road and Trail Crossings. The construction of new or expanded roads, driveways, trails, and associated culverts and bridges across wetlands and their buffers is allowed, provided they are in conformance with SJCC [18.60.080](#) through [18.60.100](#) and the following. Road and driveway crossings may also be approved through the reasonable use exception process outlined in SJCC [18.35.020](#) through [18.35.050](#).

1. New roads and driveways may only be constructed across wetlands and their buffers if reasonable efforts are made to avoid and minimize impacts to wetland functions and values.
2. When practicable, new roads, driveways, trails and walkways must be located on existing road grades, utility corridors, or previously disturbed areas.
3. When required, permits and approvals must be obtained from appropriate state and federal agencies, including but not limited to: Washington Department of Fish and Wildlife; Washington State Department of Ecology; Washington State Department of Natural Resources; U.S. Army Corps of Engineers; U.S. Coast Guard; NOAA Fisheries Service; and U.S. Fish and Wildlife Service.
4. Roads must cross wetlands and their buffers at, or as close as possible to, a 90-degree angle.
5. Crossings must not interfere with the flow and circulation of water or other wetland processes. The location and design of the road or driveway crossing must be evaluated by a qualified wetland professional or other qualified professional, to ensure that wetland processes will not be adversely affected.
6. Construction must occur during any work windows and time limits established by the state or federal agencies with jurisdiction.
7. All crossings must be designed to accommodate 100-year flood flows.

8. Whenever practicable, crossings must serve multiple properties.

9. When expanding existing crossings that do not meet these standards, the crossing must be upgraded as necessary to reduce wetland impacts and meet the requirements of this subsection (F). For purposes of this section, an expansion is an increase in the footprint of crossing structures and associated roads or trails.

10. Roads and driveways must be crowned, insloped, or outsloped to sheet flow runoff from the road surface and into vegetated areas such as grass-lined ditches or drainageways.

11. Where roads and trails cross wetlands, adverse impacts must be mitigated in accordance with SJCC [18.35.020](#) through [18.35.050](#).

G. Lighting. Exterior lighting fixtures must be shielded and the light must be directed downward and away from wetlands, their buffers, and the habitat of any species listed as endangered, threatened, sensitive, or a San Juan County species of special importance.

H. Final Inspections and Financial Guarantees. Unless exempt under SJCC [18.35.020](#) through [18.35.050](#), all development activities, vegetation removal and other site modifications requiring a project permit or a development permit must have a final inspection to verify compliance with approved plans and the requirements of this section. The property owner shall notify the department when the work is complete and ready for inspection. For permitted projects that are not complete at the time that any associated building construction is completed, or for those that do not occur in conjunction with a permitted structure, the director may require a financial guarantee and associated agreement in conformance with Chapter [18.80](#) SJCC.



SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

135 Rhone Street, PO Box 947, Friday Harbor, WA 98250  
 (360) 378-2354 | (360) 378-2116  
 dcd@sanjuanco.com | www.sanjuanco.com

**FILE NUMBER 19-0003**  
**SAN JUAN COUNTY DOCKET INITIAL REVIEW**

<b>Applicant:</b>	Fred Klein	<b>File No.:</b>	19-0003
<b>Description of Proposal:</b> Amend San Juan County Code (SJCC) 18.35.100 (A)(2) to allow the director to reduce wetland habitat buffers within UGAs.			
<input type="checkbox"/>	<b>Comprehensive Plan Text Amendment</b>		
<input checked="" type="checkbox"/>	<b>Development Regulation Amendment</b>		

**SEPA Required:** YES

**Public Outreach/Notification Requirements:**

<input type="checkbox"/>	300 foot posted notification – for map amendments for five or fewer parcels
<input type="checkbox"/>	300 foot mailed notification and agency notification – this amendment will potentially affect adjacent properties within 300 feet of a proposal
<input type="checkbox"/>	Subarea or Overlay Wide Notification – this amendment will affect or potentially affect a neighborhood, subarea or multiple properties within an overlay or designation. Number of properties affected:
<input checked="" type="checkbox"/>	Countywide Notification – this amendment will apply countywide or affect many properties throughout the County

**Recommended Additional Public Outreach:**

<input checked="" type="checkbox"/>	Community Meeting(s)	<input type="checkbox"/>	Area-Wide Mailing	<input type="checkbox"/>	Countywide Mailing	<input checked="" type="checkbox"/>	<b>Publication</b>
<input type="checkbox"/>	Web –page	<input type="checkbox"/>	Press Release	<input checked="" type="checkbox"/>	Public Participation Plan	<input type="checkbox"/>	<b>Other</b> (reference below*)

***\*Depending on the scope of the proposed development regulation amendments, additional public notice may be necessary.***

<b>Priority:</b>	
<input type="checkbox"/>	A- Required by law for GMA Compliance or otherwise
<input type="checkbox"/>	B- Items needed to achieve important public policy objectives of a countywide nature
<input type="checkbox"/>	<i>C- Items that can be considered as part of a larger CP update or subarea planning process</i>
<input type="checkbox"/>	D- Items needed to provide clarity and certainty to the UDC and CP by removing inconsistencies and ambiguities
<input checked="" type="checkbox"/>	E- Items of lesser priority to be considered on a future year work program
<input type="checkbox"/>	F - Obsolete, previously resolved or not recommended for further consideration
<b>Scope of Work Necessary to Complete the Amendment:</b>	
Amendment of SJCC 18.35.100 (A)(2) will require the entire process in Attachment B.1. Additional public outreach efforts to ensure proposed policies align with public sentiment will be required prior to drafting an ordinance.	
<b>Changes to the following Comprehensive Plan Goals and Policies:</b>	
This amendment does not require amendment of the Comprehensive Plan goals and policies for consistency.	
<b>Changes to the following sections of the Unified Development Code:</b>	
SJCC 18.35.100 Wetlands – Protection standards	

**Staff Analysis:**

SJCC 18.35.100 (1) Step 4 allows the Director to reduce a wetland water quality buffer within urban growth areas (UGA). A similar provision to reduce wetland habitat buffers in the UGA does not exist in SJCC 18.35.100 (2). The regulations allow habitat buffers to be averaged but not reduced in size.

The parameters of critical area protections, including wetland buffers, is an issue likely to generate significant public interest. In-depth legal research and extensive public participation program would be required to ensure that any amendments to SJCC 18.35.100 are compliant with state law and satisfactory to the diverse stakeholder groups interested. The expanded public participation component would be in addition to the required process for amending the UDC, included in Attachment B.1., but might help reduce the likelihood of an appeal of the amendment.

Critical area regulations are controversial. Amending SJCC 18.35.100 (A)(2) will open this lengthy section for public comment and appeal. The entirety of SJCC 18.35.100 is included for reference below. Critical area development regulations must be considered in light of the WA State Department of Commerce *2018 Critical Areas Handbook* and applicable state laws. Amending this section of code will require additional legal review to ensure that the proposal is consistent with state laws and prior Growth Management Hearings Board (GMHB) decisions. Changes to the wetland protection standards are likely to be appealed given their direct relation to both private property rights and environmental protection.

There are policies in the Comprehensive Plan that specifically address wetland buffers but they do not conflict with the proposed amendments. Wetland policies are in the Land Use Element 2.5.B Policy 11 (d).

**18.35.100 Wetlands – Protection standards.**

This subsection establishes protection standards for wetlands, including a site-specific procedure for sizing wetland buffers.

A. Site-Specific Buffer Sizing Procedure. The following is a site-specific procedure for determining the size of vegetative buffers necessary to protect the water quality, water quantity, and habitat functions of wetlands. Two separate buffer components, a water quality component and habitat component, are considered in the procedure.

Required buffers apply regardless of whether the wetland is on the same parcel or another parcel that may be under different ownership. If the wetland is under different ownership and is not accessible, then the wetland rating and boundaries are established using available maps and information, including a visual assessment if possible. The water quality buffer is determined first based on the wetland rating category and land use intensity from Tables 18.35.100-1 and 18.35.100-2 provided in Step 4 below. The habitat buffer is then determined from Table 18.35.100-3. In all cases, conditions on the ground shall control.

1. Determine the Water Quality Buffer.

Step 1. Location Relative to Wetlands. Is the proposed development, vegetation removal or other site modification located within 300 feet of a wetland? If so, proceed to the next step. In some cases, to answer this question, it may be necessary to have the wetland edge facing the area that will be developed or modified delineated in accordance with SJCC [18.35.105](#). In many cases, this can be based on a wetland reconnaissance rather than a full delineation. Although maps and other imagery can be used to help with this determination, conditions on the ground shall control. If the proposed development, vegetation removal, and other modifications are more than 300 feet from the wetland, no further action is needed for compliance with wetland critical area regulations. (Note: If proposed activities do not require development or project permits, and activities are consistent with the requirements outlined in Table 18.35.100-4 and subsections (F) and (G) of this section, it may not be necessary to identify the edge of the wetland and the size of the water quality buffer.)

Step 2. Drainage Direction. Does the area proposed to be developed or modified drain to the wetland? If the area proposed to be developed or modified drains to the wetland, delineate the wetland in accordance with SJCC [18.35.105](#) and proceed to determine the required water quality buffer. If the area proposed to be developed or modified does not drain to the wetland, a water quality buffer is not required and only a habitat buffer applies. Proceed to the habitat buffer sizing procedure in subsection (A)(2) of this section.

Step 3. Wetland Rating Category. Determine the wetland rating category using the Washington State Wetland Rating System for Western Washington – Revised (Ecology Publication No. 04-06-025) as revised by Ecology. This will require the assistance of a qualified professional. (Note: If the wetland contains particular plants or animals protected as fish and wildlife habitat conservation areas, a higher rating may apply. See SJCC [18.35.115](#) and [18.35.135](#).)

Step 4. Identify the Water Quality Buffer Width. Using Tables 18.35.100-1 and 18.35.100-2 below, determine the water quality buffer based on the wetland rating category and land use intensity of the proposed development. Buffers are measured horizontally from the edge of the wetland.

The director may reduce the standard buffer widths in an urban growth area when impacts to critical areas are mitigated according to SJCC [18.35.040](#) and the buffer reduction is consistent with all other applicable requirements of this section provided:

- a. The buffer of a Category I or II wetland shall not be reduced to less than 75 percent of the required buffer or 50 feet, whichever is greater, and
- b. The buffer of a Category III or IV wetland shall not be reduced to less than 50 percent of the required buffer, or 25 feet, whichever is greater.

**Table 18.35.100-1 Water Quality Buffers<sup>3</sup>**

<b>Water Quality Buffers</b>			
<b>Wetland Rating</b>	<b>Land Use Intensity<sup>1</sup></b>		
	<b>Low</b>	<b>Medium</b>	<b>High</b>
<b>Category I Bogs and Natural Heritage Wetlands<sup>2</sup></b>	125 feet	190 feet	250 feet
<b>Categories I and II</b>	50 feet	75 feet	100 feet
<b>Category III</b>	40 feet	60 feet	80 feet
<b>Category IV</b>	25 feet	40 feet	50 feet

<sup>1</sup> See Table 18.35.100-2 for a list of land uses that are considered low, medium, or high land use intensity.

<sup>2</sup> If the bog is located within another wetland category, the bog buffer only applies to the area immediately adjacent to the bog, and not to the surrounding wetland. Buffers are measured horizontally from the edge of the wetland.

<sup>3</sup> Buffers shall be increased by 50 percent on slopes greater than 30 percent.

Table 18.35.100-2

Land Use Intensity by Type	
Land Use Intensity	Types of Land Uses
High	Commercial Urban Industrial Institutional Retail sales Residential at more than 1 unit per acre High intensity agriculture (dairies, nurseries, greenhouses, annual tilling, raising animals, etc.) High intensity recreation (golf courses, ball fields, etc.)
Medium	Residential at not more than 1 unit per acre Moderate intensity open space (parks with biking, jogging, etc.) Paved trails Logging roads Utility corridors with access road Hobby farms
Low	Forestry (limited to cutting of trees) Low intensity agriculture (orchards, hay fields, etc.) Low intensity open space (hiking, bird watching, etc., allowed) Unpaved trails Utility corridors without access road and little or no vegetation management

2. Determine the Habitat Buffer.

Step 1. Determine the Wetland Rating Category. Determine the wetland rating category using the Washington State Wetland Rating System for Western Washington – Revised (Ecology Publication No. 04-06-025), as revised by Ecology (see SJCC [18.35.090](#)). This will require the assistance of a qualified professional.

If the wetland contains particular plants or animals protected as fish and wildlife habitat conservation areas, a higher rating may apply. See SJCC [18.35.115](#) and [18.35.135](#).

Step 2. Determine Habitat Buffer from Table 18.35.100-3. Using the wetland rating category and the proposed land use intensity type from Table 18.35.100-2, determine the required size of the habitat buffer from Table 18.35.100-3. Unlike the water quality buffer, the habitat buffer must completely surround the wetland. Buffers are measured horizontally from the edge of the wetland. Proceed to Step 3 if desired. (Note: If no trees are being removed, proposed activities do not require development or project permits, and activities are consistent with the requirements outlined in Table 18.35.100-4 and subsections (F) and (G) of this section, it may not be necessary to identify the edge of the wetland and the size of the habitat buffer.)

**Table 18.35.100-3**

<b>Habitat Buffers</b>			
<b>Wetland Category</b>	<b>Land Use with Low Impact <sup>1</sup></b>	<b>Land Use with Moderate Impact <sup>1</sup></b>	<b>Land Use with High Impact <sup>1</sup></b>
I	150 feet	225 feet	300 feet
II	150 feet	225 feet	300 feet
III	75 feet	110 feet	150 feet
IV	25 feet	40 feet	50 feet

<sup>1</sup> See Table 18.35.100-2 for types of land uses that can result in low, moderate, or high impacts to wetlands.

Step 3. Habitat Buffer Averaging. Habitat buffer averaging allows reduction of the required habitat buffer in specified locations on the property proposed for development, vegetation removal or other modification, in conjunction with increases of the buffer in other areas, so that the total area of the habitat buffer is unchanged. Averaging of the habitat buffer will be allowed only if the applicant demonstrates that all of the following criteria are met:

- a. Averaging is necessary to accomplish the purposes of the proposal, and no reasonable alternative is available;
- b. If the wetland contains variations in habitat sensitivity due to existing physical characteristics, the reduction from standard habitat buffer sizes will occur only contiguous to the area of the wetland determined to be least sensitive;
- c. The total area contained within the habitat buffer after averaging is no less than that contained within the standard habitat buffer prior to averaging;

d. The habitat buffer shall not be reduced by more than 25 percent, and the reduced habitat buffer must not occur along more than one-half the circumference of the wetland; and

e. If a portion of the buffer is to be reduced, the remaining habitat buffer area will be enhanced using native vegetation and fencing where appropriate to improve the functional attributes of the buffer, and to provide additional protection for wetland functions and values. A proposal to enhance a buffer shall not be used as justification to reduce an otherwise functional standard habitat buffer, unless such buffer reduction complies with all other criteria for buffer averaging.

B. Buffers and Roads. Buffers shall not extend across public roads. For private roads, buffers shall not extend across the road when the road design, flow of runoff, quantity of traffic, and/or gap in tree canopy result in an area that does not support the functions and values of the wetland being protected as determined by a qualified professional.

C. Structures, Uses and Activities Allowed and Prohibited in Wetlands and Wetland Buffers. Structures, uses and activities that are listed as “Yes” uses in Table 18.35.100-4 below are allowed in wetlands or wetland buffers, subject to compliance with the San Juan County Code. State or federal requirements administered by the Washington Department of Ecology, Washington Department of Fish and Wildlife, Washington Department of Natural Resources, or U.S. Army Corps of Engineers may also apply to these areas.

**Table 18.35.100-4**

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a. Outdoor activities that do not involve modifying the land or vegetation, and that will not adversely affect the functions and values of wetlands.	YES	YES
b. The harvesting of wild plants and foods in conformance with applicable regulations and in a manner that is not injurious to the natural reproduction of wetland plants, provided the harvesting does not require tilling soil, planting, or changing existing topography, water conditions, or	YES	YES

Table 18.35.100-4

<b>Structures, Uses and Activities Allowed in Wetlands and Wetland Buffers</b>		
<b>Activity</b>	<b>Allowed within Wetland</b>	<b>Allowed within Wetland Buffers</b>
water sources except when allowed as an agricultural activity under (e) below.		
c. Removal of invasive plants; planting of native wetland plants; and vegetation management activities implemented as part of a habitat management plan developed or approved by a local, state, federal or tribal agency.	YES	YES
d. Agricultural activities conducted in accordance with a voluntary stewardship program developed pursuant to RCW <a href="#">36.70A.705</a> , with the exception of the construction of agricultural structures which are subject to the same provisions as other structures.	YES	YES
e. With the exception of the construction of agricultural structures, agricultural activities, including seasonal and recurrent activities existing or in development during the year prior to the effective date of these regulations, provided they do not result in additional adverse impacts to the functions and values of wetlands. This can include changing the type of farming, management practices, and crops within the existing geographic area already in use (such as in the rotational management of farmland) as long as the change does not result in additional adverse impacts to wetland functions and values. Agricultural structures are subject to the same provisions as other structures. (Note: See definition of “garden” in SJCC <a href="#">18.20.070</a> .)	YES	YES
f. Temporary development activities defined in SJCC <a href="#">18.20.200</a> ; provided, that reasonable efforts are made to avoid impacts to wetland functions and values and any adverse impacts are mitigated in accordance with SJCC <a href="#">18.35.040</a> .	NO	YES

Table 18.35.100-4

<b>Structures, Uses and Activities Allowed in Wetlands and Wetland Buffers</b>		
<b>Activity</b>	<b>Allowed within Wetland</b>	<b>Allowed within Wetland Buffers</b>
g. Noncompensatory Enhancement. Wetland restoration or enhancement activities not required as project mitigation, provided the activity is approved by the U.S. Fish and Wildlife Service, the Washington State Department of Ecology, Washington Department of Fish and Wildlife, or other responsible local, state, federal, or tribal jurisdiction.	YES	YES
h. Within the buffers of wetlands rated Category III or IV, the establishment and expansion of orchards and gardens, cultivated and managed with appropriate BMPs and without the use of synthetic chemicals; provided, that: <ul style="list-style-type: none"> <li>i. They will occupy no more than 4,000 square feet of the buffer;</li> <li>ii. They are installed within the outer 25% of the buffer;</li> <li>iii. Other than fences, no structures or impervious surfaces are constructed or created and fences will not impede the flow of water or prevent the movement of wetland animals;</li> <li>iv. A buffer of at least 30 feet is retained;</li> <li>v. Mowing does not occur in the habitat portion of the buffer until after July 15th; and</li> <li>vi. Trees are protected in accordance with this section.</li> </ul>	NO	YES
i. Construction of new ponds in or adjacent to a Category IV wetland, as part of a wetland mitigation or noncompensatory enhancement project approved by the County or other responsible state, federal, or tribal jurisdiction. (Note: Construction of new ponds is not allowed in or adjacent to Category I, II, and III wetlands.)	YES	YES
j. The construction of trails, stairs, or raised walkways; provided, that the improvement: <ul style="list-style-type: none"> <li>i. Is designed to direct sheet flow runoff into adjacent vegetation;</li> </ul>	YES	YES

Table 18.35.100-4

<b>Structures, Uses and Activities Allowed in Wetlands and Wetland Buffers</b>		
<b>Activity</b>	<b>Allowed within Wetland</b>	<b>Allowed within Wetland Buffers</b>
<ul style="list-style-type: none"> <li>ii. Prevents adverse impacts to the wetland from runoff and eroding soil;</li> <li>iii. Does not exceed five feet in width;</li> <li>iv. Is constructed of nontoxic materials;</li> <li>v. Does not totally circumnavigate the wetland perimeter;</li> <li>vi. Does not include the placement of fill; and</li> <li>vii. Is consistent with the applicable requirements of subsection (F) of this section.</li> </ul>		
k. Temporary wildlife watching blinds.	YES	YES
l. Drilling and digging of wells provided they are located within the outer 25% of the buffer, that there are no anticipated adverse impacts to adjoining wetlands, that measures are taken to avoid compaction of soils during drilling and development of the well, and that disturbed areas are immediately stabilized and replanted with the type of vegetation found in the buffer.	NO	YES
m. Limited tree removal to allow for a filtered view from the primary structure, provided: <ul style="list-style-type: none"> <li>i. Stumps are retained and disturbance of the soil and duff layer is minimized;</li> <li>ii. The remaining forest consists of trees that are multi-aged and well distributed across the buffer and the canopy cover for the remaining forest is at least 65%, except directly between the primary structure and the wetland, where the canopy cover may be reduced to not less than 50%;</li> <li>iii. All vegetation overhanging streams, ponds, lakes, wetlands, and marine waters is retained; and</li> </ul>	NO	YES

Table 18.35.100-4

<b>Structures, Uses and Activities Allowed in Wetlands and Wetland Buffers</b>		
<b>Activity</b>	<b>Allowed within Wetland</b>	<b>Allowed within Wetland Buffers</b>
iv. Trees greater than or equal to 12 inches dbh are retained.		
n. Temporary development activities defined in SJCC <a href="#">18.20.200</a> ; provided, that reasonable efforts are made to avoid impacts to wetland functions and values and any adverse impacts are mitigated in accordance with SJCC <a href="#">18.35.040</a> .	NO	YES
o. To allow for a view or for fire hazard reduction, minor trimming and pruning of the foliage of trees and shrubs, provided the health of the trees and shrubs is maintained, trees are not topped, and all vegetation overhanging streams, ponds, lakes, wetlands, and marine waters is retained. In no case shall more than 20% of the foliage of individual trees or shrubs be removed during a 12-month period.	NO	YES
p. Components of stormwater management facilities in conformance with local and state stormwater management requirements and any applicable tree protection requirements; provided, that reasonable efforts are made to avoid impacts to wetland functions and values and any adverse impacts are mitigated in accordance with SJCC <a href="#">18.35.040</a> .	NO	YES
q. Fences, provided they do not impede the flow of water or prevent the movement of wetland animals.	YES	YES
r. Road and trail crossings in conformance with subsection (F) of this section.	YES	YES
s. Development allowed pursuant to an exemption, a reasonable use exception, or provisions for nonconforming structures, uses and activities outlined in SJCC <a href="#">18.35.020</a> through <a href="#">18.35.050</a> .	YES	YES
t. Maintenance to support or improve the functions and values of wetlands.	YES	YES

Table 18.35.100-4

<b>Structures, Uses and Activities Allowed in Wetlands and Wetland Buffers</b>		
<b>Activity</b>	<b>Allowed within Wetland</b>	<b>Allowed within Wetland Buffers</b>
u. The following on-site sewage disposal system components:		
i. Watertight septic tanks and pump chambers;	NO	YES
ii. Sleeved and watertight sewer lines; and	NO	YES
iii. Drainfields <sup>2</sup> . These components are allowed when they conform with local and state requirements, reasonable efforts are made to avoid impacts to wetland functions and values, and: (A) Appropriate BMPs are used to minimize erosion, sedimentation and soil disturbance; (B) For new systems, limited tree removal is allowed in habitat buffers, provided: (1) Stumps are retained and disturbance of the soil and duff layer is minimized; (2) The remaining forest consists of trees that are multi-aged and well distributed across the buffer and the canopy cover for the remaining forest is at least 65%; (3) All vegetation overhanging streams, ponds, lakes, wetlands, and marine waters is retained; and (4) Trees greater than or equal to 12 inches dbh are retained; and (C) Any adverse impacts to critical areas or their buffers are mitigated in accordance with SJCC <a href="#">18.35.040</a> .	NO	YES, outside of the water quality buffer
v. Other uses that will not adversely impact wetland functions and values, considering the best available science.	P/C <sup>1</sup>	P/C <sup>1</sup>

<sup>1</sup> "P/C" means provisional or conditional use permit depending on the level of impacts (see SJCC [18.80.090](#)).

<sup>2</sup> Drainfields shall not be located within 300 feet of a natural heritage wetland.

D. Field Marking of Wetland and Wetland Buffer. Prior to building permit approval, the location of the outer extent of the wetland and any wetland buffer adjacent to the area that will be developed shall be marked in the field, and the director may require field approval prior to the commencement of permitted activities. Markings for wetlands and buffers shall be maintained throughout the duration of construction activities.

E. For recorded plats, short plats and binding site plans, the applicant shall show the boundary of required buffers on the face of the plat or plan.

F. Road and Trail Crossings. The construction of new or expanded roads, driveways, trails, and associated culverts and bridges across wetlands and their buffers is allowed, provided they are in conformance with SJCC [18.60.080](#) through [18.60.100](#) and the following. Road and driveway crossings may also be approved through the reasonable use exception process outlined in SJCC [18.35.020](#) through [18.35.050](#).

1. New roads and driveways may only be constructed across wetlands and their buffers if reasonable efforts are made to avoid and minimize impacts to wetland functions and values.
2. When practicable, new roads, driveways, trails and walkways must be located on existing road grades, utility corridors, or previously disturbed areas.
3. When required, permits and approvals must be obtained from appropriate state and federal agencies, including but not limited to: Washington Department of Fish and Wildlife; Washington State Department of Ecology; Washington State Department of Natural Resources; U.S. Army Corps of Engineers; U.S. Coast Guard; NOAA Fisheries Service; and U.S. Fish and Wildlife Service.
4. Roads must cross wetlands and their buffers at, or as close as possible to, a 90-degree angle.
5. Crossings must not interfere with the flow and circulation of water or other wetland processes. The location and design of the road or driveway crossing must be evaluated by a qualified wetland professional or other qualified professional, to ensure that wetland processes will not be adversely affected.
6. Construction must occur during any work windows and time limits established by the state or federal agencies with jurisdiction.
7. All crossings must be designed to accommodate 100-year flood flows.

8. Whenever practicable, crossings must serve multiple properties.

9. When expanding existing crossings that do not meet these standards, the crossing must be upgraded as necessary to reduce wetland impacts and meet the requirements of this subsection (F). For purposes of this section, an expansion is an increase in the footprint of crossing structures and associated roads or trails.

10. Roads and driveways must be crowned, insloped, or outsloped to sheet flow runoff from the road surface and into vegetated areas such as grass-lined ditches or drainageways.

11. Where roads and trails cross wetlands, adverse impacts must be mitigated in accordance with SJCC [18.35.020](#) through [18.35.050](#).

G. Lighting. Exterior lighting fixtures must be shielded and the light must be directed downward and away from wetlands, their buffers, and the habitat of any species listed as endangered, threatened, sensitive, or a San Juan County species of special importance.

H. Final Inspections and Financial Guarantees. Unless exempt under SJCC [18.35.020](#) through [18.35.050](#), all development activities, vegetation removal and other site modifications requiring a project permit or a development permit must have a final inspection to verify compliance with approved plans and the requirements of this section. The property owner shall notify the department when the work is complete and ready for inspection. For permitted projects that are not complete at the time that any associated building construction is completed, or for those that do not occur in conjunction with a permitted structure, the director may require a financial guarantee and associated agreement in conformance with Chapter [18.80](#) SJCC.

## Adam Zack

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**From:** Fred Klein <freddythek10@gmail.com>  
**Sent:** Thursday, February 21, 2019 1:28 PM  
**To:** Linda Ann Kuller  
**Cc:** Adam Zack; Erika Shook  
**Subject:** Comprehensive Plan TEXT Amendment; 18.35.100.A.2  
**Attachments:** 2017-01-09%20TEXT%20-%20Comprehensive%20Plan%20Text%20Amendment%20Request%20(Docket)%20-FINAL-2.rtf

Hi Linda...

Here's a digital copy of my Docket Request for a proposed text amendment for the CAO 18.35.100.A.2...a provision which would all discretion to The Director to reduce the wetland buffers within an Urban Growth Area for the Habitat buffer in a manner equivalent to that which The Director ALREADY has with respect to Water Quality buffers.

I will be posting a copy with my signature in today's mail.

Fred

PS: With regard to my OTHER Docket Request (a CP Map Amendment), previously filed digitally...please advise if you need a copy with my signature.

DATE RECEIVED

## Comprehensive Plan Text/SJC Code\* Amendment Request

\*San Juan County Code Titles 15, 16 & 18  
(Annual Docket)

<b>APPLICANT INFORMATION:</b>			
Name of Applicant:	<b>Fred R. Klein</b>	Name of Agent:	<b>Fred R. Klein</b>
Address	<b>545 Sunset Avenue, PO 1089</b>	Address	
City, State, Zip	<b>Eastsound, WA 98245</b>	City, State, Zip	
Phone	<b>360 298 5640</b>	Phone	_____
Email	<b>FreddytheK10@gmail.com</b>	E-mail	

<p>This request is for a text amendment to the Comprehensive Plan or development regulations, not a comprehensive plan map amendment. I understand that this request will be reviewed according to the County's annual docket process.</p>			
<i>Signature</i>		<i>Printed Name: Fred R. Klein</i>	<i>02/ 15/19</i>
<i>Signature</i>		<i>Printed Name</i>	<i>Date</i>

**Please Describe the Proposed Amendments (attach additional pages if you need more space):**

1. Comprehensive Plan – Describe proposed amendment and/or attach proposed text changes. List Comprehensive plan section, page numbers, title and policies proposed for amendment.

**See Below...This Docket Request concerns SJCC 18.35.100 Wetlands - Protection Standards.**

1. San Juan County Code Title 15, Title 16 or Title 18. Describe proposed amendment and/or attach proposed text changes. List code sections proposed for amendment.

**This Docket Request concerns SJCC 18.35.100 Wetlands - Protection Standards.**

**In San Juan County, a wetland qualifies as a Critical Area and is subject to the Critical Area Ordinance, (CAO). As such, there are two types of wetland buffers: *Water Quality*, and *Habitat*. The Protection Standards for Wetlands are spelled out in 18.35.100.**

Per 18.35.100.A.1: *The Water Quality Buffer* is determined by following 4 Steps; (step #s 1, 2, & 3 are omitted for brevity).

In Step 4, the regulation states:

*“The director may reduce the standard buffer widths in an urban growth area when impacts to critical areas are mitigated according to SJCC 18.35.040 and the buffer reduction is consistent with all other applicable requirements of this section provided:*

*“a. The buffer of a Category I or II wetland shall not be reduced to less than 75 percent of the required buffer or 50 feet, whichever is greater, and*

*“b. The buffer of a Category III or IV wetland shall not be reduced to less than 50 percent of the required buffer, or 25 feet, whichever is greater.”*

Per 18.35.100.A.2: *The Habitat Buffer* is determined by following three steps (omitted for brevity).

Although it is clear in the text of the regulation which determines the required *Habitat Buffers* that the criteria are intertwined with those for *Water Quality Buffers*, and makes ample provision for reduction thru buffer averaging, there is no specific language, with regard to *Habitat Buffers*, which empowers the director to “reduce the standard buffer widths in an urban growth area”.

The adopted regulation offers no explanation for this omission.

Absent any specific language to account for why *Water Quality Buffers* within a UGA may be reduced whereas *Habitat Buffers* within a UGA may not be reduced suggests that the omission was an inadvertent oversight.

**Without commensurate reductions in *Habitat* buffers, the beneficial results to the community of the reduction of the *Water Quality* buffer widths within an Urban Growth Area are not achieved.**

Therefore, this docket application is submitted to amend the Critical Area Ordinance so it reads that the director is empowered to reduce the *Habitat Buffers* within an Urban Growth Area to the same percentages and minimums as the existing CAO provides for the *Water Quality Buffers* as follows:

**PROPOSED TEXT CHANGE:** at 18.35.100.A.2, at the end of Step 2, **ADD TEXT** shown in ***Bold italics***:

Step 2. Determine *Habitat Buffer* from Table 18.35.100-3. Using the wetland rating category and the proposed land use intensity type from Table 18.35.100-2, determine the required size of the *habitat buffer* from Table 18.35.100-3. Unlike the *water quality buffer*, the *habitat buffer* must completely surround the wetland. Buffers are measured horizontally from the edge of the wetland. Proceed to Step 3 if desired. (Note: If no trees are being removed, proposed activities do not require development or project permits, and activities are consistent with the requirements outlined in Table 18.35.100-4 and subsections (F) and (G) of this section, it may not be necessary to identify the edge of the wetland and the size of the *habitat buffer*.)

*“The director may reduce the standard *Habitat buffer widths* in an urban growth area when impacts to critical areas are mitigated according to SJCC 18.35.040 and the buffer reduction is consistent with all other applicable requirements of this section provided:*

*“a. The *Habitat buffer* of a Category I or II wetland shall not be reduced to less than 75 percent of the required buffer or 50 feet, whichever is greater, and*

*“b. The *Habitat buffer* of a Category III or IV wetland shall not be reduced to less than 50 percent of the required buffer, or 25 feet, whichever is greater.”*

1. Why is the amendment being proposed?

Without commensurate reductions in *Habitat buffers* within the UGA, the beneficial results to the community of the reduction of the *Water Quality* standard buffer widths with an Urban Growth Area are not achieved; the benefits being to allow for compact urban growth which reduces development pressures in rural lands.

1. How is the proposed amendment consistent with the Growth Management Act (RCW 36.70A),

Comprehensive Plan and development regulations?

**A fundamental principle of the GMA is to encourage intensive development in compact urban growth areas and to discourage the conversion of rural lands into low density sprawl; SJC is committed to accommodating 50% of its anticipated growth within its UGAs; this proposed amendment is consistent with that goal.**

5. Does this proposal impact an Urban Growth Area (UGA)? Lopez Village, Eastsound and the Town of Friday Harbor are the only UGAs in the County.

- Yes, in the Eastsound UGA; perhaps in Lopez Village and Friday Harbor if wetlands exist.
- No

6. Does this proposal increase population or employment capacity?

**This proposal does not increase population; however, SJC is committed to encouraging compact urban development which can provide affordable housing for the community workforce.**



## SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

135 Rhone Street, PO Box 947, Friday Harbor, WA 98250  
 (360) 378-2354 | (360) 378-2116  
 dcd@sanjuanco.com | www.sanjuanco.com

**FILE NUMBER 19-0004**  
**SAN JUAN COUNTY DOCKET INITIAL REVIEW**

<b>Applicant:</b>	Stephanie O'Day (agent for Myrna and Richard Fant)	<b>File No.:</b>	<b>19-0004</b>
<b>Description of Proposal:</b> Allow residential uses accessory to allowed nonresidential uses in the Orcas Airport Overlay Zone 5. SJCC 18.40.030 (B)(5) Airports and SJCC 18.40.032 (F). Amending these code sections as requested will likely require amending Comprehensive Plan policies for consistency.			
<input checked="" type="checkbox"/>	<b>Comprehensive Plan Text Amendment</b>		
<input checked="" type="checkbox"/>	<b>Development Regulation Amendment</b>		

SEPA Required: YES

**Public Outreach/Notification Requirements:**

<input type="checkbox"/>	300 foot posted notification – for map amendments for five or fewer parcels
<input type="checkbox"/>	300 foot mailed notification and agency notification – this amendment will potentially affect adjacent properties within 300 feet of a proposal
<input checked="" type="checkbox"/>	Subarea or Overlay Wide Notification – this amendment will affect or potentially affect a neighborhood, subarea or multiple properties within an overlay or designation. Number of properties affected: 33
<input type="checkbox"/>	Countywide Notification – this amendment will apply countywide or affect many properties throughout the County

**Recommended Additional Public Outreach:**

<input checked="" type="checkbox"/>	Community Meeting(s)	<input type="checkbox"/>	Area-Wide Mailing	<input type="checkbox"/>	Countywide Mailing	<input checked="" type="checkbox"/>	<b>Publication</b>
<input type="checkbox"/>	Web –page	<input type="checkbox"/>	Press Release	<input checked="" type="checkbox"/>	Public Participation Plan	<input checked="" type="checkbox"/>	<b>Other</b> (reference below*)

***\*Depending on the scope of the proposed development regulation amendments, additional public notice may be necessary.***

<b>Priority:</b>	
<input type="checkbox"/>	A- Required by law for GMA Compliance or otherwise
<input type="checkbox"/>	B- Items needed to achieve important public policy objectives of a countywide nature
<input checked="" type="checkbox"/>	<i>C- Items that can be considered as part of a larger CP update or subarea planning process</i>
<input type="checkbox"/>	D- Items needed to provide clarity and certainty to the UDC and CP by removing inconsistencies and ambiguities
<input type="checkbox"/>	E- Items of lessor priority to be considered on a future year work program
<input type="checkbox"/>	F - Obsolete, previously resolved or not recommended for further consideration
<b>Scope of Work Necessary to Complete the Amendment:</b>	
<p>Amendment of SJCC 18.40.030 (B)(5) and SJCC 18.40.032 (F) will require the entire process in Attachment B.1. This proposal will also require amending the Comprehensive Plan Land Use Element 2.5.D Policy 3.</p> <p>Additional coordination with the Federal Aviation Administration (FAA), the WA Department of Transportation (WADOT), and the Port of Orcas Island is required by state law. Amending these SJCC section and the Comprehensive Plan will require a public participation plan to ensure that all stakeholder groups are included. This will help ensure proposed amendments to policies and regulations align with applicable state and federal law.</p>	
<b>Changes to the following Comprehensive Plan Goals and Policies:</b>	
Land Use Element 2.5.D Policy 3	
<b>Changes to the following sections of the Unified Development Code:</b>	
SJCC 18.40.030 Airports and SJCC 18.40.032 Specific standards for Orcas Island Airport overlay district	

**Staff Analysis:**

Regulations regarding land uses adjacent to airports will affect a diverse group of stakeholders including property owners, local transportation agencies, state agencies, and the Federal Aviation Administration (FAA). An in-depth public participation program would be required to ensure that any amendments to SJCC 18.40.030, SJCC 18.40.032 and the Comprehensive Plan Land Use Element are satisfactory to all of these stakeholder groups. The public participation component would be in addition to the required process for amending the UDC, included in Attachment B.1. Increased up-front public participation may help reduce the likelihood of an appeal of the amendment and ensure that it is consistent with applicable state and federal regulations.

State law requires decisions regarding airport overlay districts be made in consultation with airport owners (Port of Orcas Island). Additional consultation with the Washington State Department of Transportation (WSDOT) aviation division should be included in the consideration of whether to allow residential uses to be sited in Zone 5 of the airport overlay. Analysis on the air traffic patterns and

historical accident data will also be required to address the safety concerns associated with allowing residential uses adjacent to airports.

State laws (RCW 36.70.547, RCW 36.70A.510 and WAC 365-196-455(2)(c)(i)) require counties to prevent the siting incompatible land uses adjacent to airports. Furthermore, the Orcas Airport Overlay and the prohibitions on siting residential uses adjacent to the airport are part of an existing policy framework to prevent the encroachment of incompatible uses that may hinder the normal operation of air transportation. Potential changes to the Orcas Airport Overlay should be discussed during the Comprehensive Plan Update. Allowing incompatible uses to be sited near the Orcas Airport may be counter to other stated policy goals in the Comprehensive Plan. Further analysis on the relationship between this request and other Comprehensive Plan policy goals will be required.

Staff recommends including this analysis with the update to the Land Use and Transportation elements. Considering this request during the update will allow the changes to the Orcas Airport Overlay regulations to be considered within the larger policy framework of the Comprehensive Plan. This will also allow the required coordination to be included in larger outreach efforts associated with the Comprehensive Plan Update.

Attorney & Counselor at Law  
**Stephanie Johnson O'Day, PLLC**

540 Guard Street, Suite 160  
Post Office Box 2112  
Friday Harbor, WA 98250-2112

**Telephone: (360) 378-6278 Fax: (360) 378-5066**  
E-Mail: [sjoday@rockisland.com](mailto:sjoday@rockisland.com)

February 26, 2019

Ms. Erika Shook; Director  
San Juan County Department of Community Development  
P.O. Box 947  
Friday Harbor, WA 98250

S.J.C. DEPARTMENT OF

FEB 28 2019

COMMUNITY DEVELOPMENT

RE: Proposed San Juan County Code Text Amendment  
2019 DOCKET REQUEST  
1286 Mt. Baker Road, Orcas Island; TPN 271143102

Dear Ms. Shook:

Please find enclosed an application submitted on behalf of Myrna and Richard Fant for a proposed text amendment to the San Juan County Code revising the definition of an airport hazard as found in SJCC18.40.030(B.5) and to allow accessory dwelling units to serve businesses located within Zone 5 of the Orcas Island Airport Overlay zone (SJCC 18.40.032.F). Included are the following items:

1. San Juan County Comprehensive Plan Update Application;
2. SEPA Checklist and Non-Project Action Supplemental Sheets;
3. Existing Official Eastsound Subarea Plan Land Use Map;
4. Statutory Warranty Deed (AFN 2000-0331035);
5. List of names and addresses of owners of property located within 300-feet of the site boundaries;
6. 2016 Aerial Photo of the Project Site; and
7. Existing Site Development Plan.

The request does not include a change in Land Use Designation. The current designation is Eastsound Service and Light Industrial. The definition of an airport hazard currently includes residential development at more than one dwelling unit per two acres. Yet, accessory dwelling units are allowed to be constructed in certain parcels within Zone 5 of the Orcas Island Airport in which the Fant's property is located at a density much higher than this. This is an inconsistency that needs to be fixed.

The Fants would like the ability to construct an accessory dwelling unit on their property as is allowed in the Grasylyvania and Aeroview subdivision that are also located in Zone

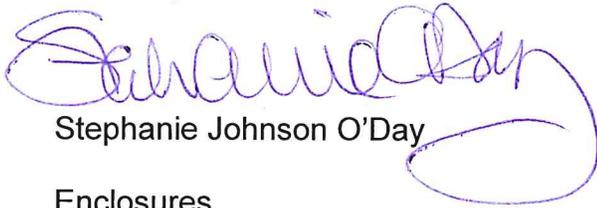
5. This will create fair and equal treatment of all properties within Zone 5 of the Orcas Island Airport Overlay District.

A similar application was submitted by Don and Marion Gerard to the Department of Community Development in July, 2018. The Gerards too have requested that the code be revised to remove the residential density at which an airport hazard exists and to allow an accessory dwelling unit on one of their lots that is also located in Zone 5 and is allowed to be developed with a hangar.

These two requests should be placed on the 2019 docket and reviewed simultaneously.

If you have any questions, need additional information or analysis for this application, please contact me by phone at (360) 378-6278 or by email at [sjoday@rockisland.com](mailto:sjoday@rockisland.com) at your earliest convenience.

Sincerely,



Stephanie Johnson O'Day

Enclosures

Cc. Myrna and Richard Fant  
Rick Hughes, SJC Council



SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

135 Rhone Street, PO Box 947, Friday Harbor, WA 98250  
 (360) 378-2354 | (360) 378-2116  
 dcd@sanjuanco.com | www.sanjuanco.com

S.J.C. DEPARTMENT OF  
 FEB 28 2019  
 COMMUNITY DEVELOPMENT

**San Juan County Comprehensive Plan Update 2036  
 Comprehensive Plan Map Amendment Request Form**

REQUEST FORM COMPLETED BY: **Francine Shaw/Agent**

Name	<b>Myrna &amp; Richard Fant/Nexco, Inc.</b>	Name	_____
Address	<b>PO Box 1743</b>	Address	_____
City, State, Zip	<b>Eastsound, WA 98245-1743</b>	City, State, Zip	_____
Phone Number	<b>(360) 317-4941</b>	Phone Number	_____
Email	<b>myrnaorcas@gmail.com</b>	E-mail	_____

PROPERTY OWNER INFORMATION:

Name of Owners	<b>Myrna &amp; Richard Fant/Nexco Inc.</b>	Phone Number	<b>(360) 317-4941</b>
Address	<b>PO Box 1743</b>	E-mail	<b>myrnaorcas@gmail.com</b>
City, State, Zip	<b>Eastsound, WA 98245-1343</b>		

PROPERTY INFORMATION:  
 List the Tax Parcel Numbers (TPN) & property information for each property included in the proposal. Attach a separate page if necessary.

Tax Parcel Number:	<b>271143012</b>	Land Use/Shoreline Designation:	<b>Eastsound SLI/NA</b>	Parcel size:	<b>1.04 acres</b>
Tax Parcel Number:	_____	Land Use/Shoreline Designation:	____/____	Parcel size:	_____
Tax Parcel Number:	_____	Land Use/Shoreline Designation:	____/____	Parcel size:	_____
Tax Parcel Number:	_____	Land Use/Shoreline Designation:	____/____	Parcel size:	_____

**PERMIT CERTIFICATION (Must be signed by all property owners of record or a notarized agent signature provided.)**  
 I have examined this application and attachments and know the same to be true and correct, and certify that this application is being made with the full knowledge and consent of all owners of the affected property. (Signed by property owner or agent. For agent signature, notarized authorization must be attached.)

Signature	Printed Name	Date
Signature	Printed Name	Date
Signature	Printed Name	Date

**For CD&P Use Only** Complete Application:  YES  NO

DESCRIPTION OF PROPOSAL:

The applicant is proposing three text amendments as follows:

1. **Revise the definition of "airport hazard" in SJCC 18.40.030(B.5) by deleting reference to a specific residential density at which an airport hazard exists.** (Words to be deleted are shown in striked-through font.)

*Public Assemblies: Any land use that causes or encourages people to assemble in large numbers, including medium- and high- density residential uses (~~greater than one dwelling unit per acre~~), commercial uses requiring more than 10 parking spaces or an equivalent degree of traffic generation, and campgrounds (having more than three campsites per acre), is prohibited in the approach zone and transitional zones designated by an airport overlay district.*

2. **Revise SJCC 18.40.032(F.2), Zone 5 of the Orcas island Airport Overlay District, to allow residential use only as an accessory to an allowed/permitted aviation related Service and Light Industrial use.** (Words to be added are shown in bold, italic underlined font.)

*Sideline Safety Zone/Airport Development Zone 5 . . .*

*Residential Use in the Grasylyvania and Aeroview Subdivisions. Existing and new residential use in the portions of the Grasylyvania and Aeroview subdivisions that are within sideline safety zone (Zone 5), solely in the form of aircraft hangar structure which incorporate within them an accessory single-family residential dwelling unit, may be allowed as a conforming use.*

**2.b – Residential Use in the Eastsound Service and Light Industrial Land Use Designation. Existing and new commercial, institutional or industrial buildings allowed in Eastsound Service and Light Industrial that are within the sideline safety zone (Zone 5) may incorporate within them an accessory single-family residential dwelling unit to serve that use.**

3. **Revise SJCC 18.40.032(F.5), Zone 5 of the Orcas island Airport Overlay District, to allow uses that do not meet the definition of an airport hazard as found in SJCC18.40.030(B.5).** (Words to be deleted are shown in strikethrough font. Words to be added are shown in bold, italic underlined font.)

*Except as necessary and incidental to airport operations, ~~the following uses that require the concentration of people or have substantial occupancies by dependent populations~~ **that meet the definition of an airport hazard as found in SJCC 18.40.030(B.5)** are prohibited. ~~schools, libraries, hospitals nursing homes, day care centers, multifamily housing, playfields, public meeting rooms, public assembly uses, churches and religious assembly uses, restaurants, motels and hotels.~~*

CHECK ALL THAT APPLY:

- Redesignation of Land-Use designation,
- Redesignation of Shoreline designation
- Redesignation of maximum allowable residential density

X Other Text Amendments

**PROPERTY INFORMATION:**

List the Tax Parcel Numbers (TPN) & property information for each property included in the proposal. Attach a separate page if necessary.

Tax Parcel Number: <u>271143012</u>	Land Use/Shoreline Designation: <u>SLI/NA</u>	Proposed Density: _____
Tax Parcel Number: _____	Land Use/Shoreline Designation: _____/_____	Proposed Density: _____
Tax Parcel Number: _____	Land Use/Shoreline Designation: _____/_____	Proposed Density: _____
Tax Parcel Number: _____	Land Use/Shoreline Designation: _____/_____	Proposed Density: _____

**PLEASE ANSWER OR ATTACH INFORMATION FOR QUESTIONS 1-12, AS THEY APPLY TO YOUR PROPOSAL**

1. Why is the amendment being proposed?

**The property owners would like to provide their tenants ancillary housing that is affordable to attract apprenticeships near their offices to avoid the need for the apprentice's reliance on an automobile to get to work. This would encourage walking to/ from work and the ability to walk to the village.**

2. How would the map amendment benefit the public health, safety, or welfare?

**This is not a request for a map amendment but rather a request for a text amendment to assure that all parcels within Zone 5 of the Orcas Island Airport Overlay District are treated fairly and equitably. Currently, accessory dwelling units are only allowed within the Grasylyvania and Aeroview subdivisions when incorporated into a hangar.**

General location of property:	<b>1286 Mt. Baker Road</b>				
Island: <b>Orcas</b>				Total acres of proposal: <b>1.04</b>	
List all existing use(s) on property:	<b>Two building office complex.</b>				
List any special tax categories that apply to the property, such as Open Space or Designated Forest Land	NA				
Describe existing and proposed method of sewage disposal	<b>Eastsound Sewer and Water District</b>				
Describe existing and proposed water supply	<b>Eastsound Water Users Association Permit #286</b>				
Did you attend a pre-application meeting?	Yes No	Has this proposal been previously submitted?	Yes No	If yes – which year?	_____

3. Describe how the amendment is warranted due to one or more of the following: changed circumstances; a demonstrable need for additional land in the proposed land use designation; to correct demonstrable errors on the official map; or because information not previously considered indicates that different land use designations are equally or more consistent with the purposes, criteria and goals outlined in the Comprehensive Plan.

**The proposed text amendments are for the purpose of achieving equal treatment of all properties in Zone 5 of the Orcas Island Airport Overlay District.**

4. Describe how the proposed amendment is consistent with the criteria for the proposed land use designations as specified in the Comprehensive Plan.

**NA – this is a request for text amendments, not a map amendment.**

5. Describe how the amendment, if granted, will not result in an enclave of property owners enjoying greater privileges and opportunities than those enjoyed by other property owners in the vicinity where there is no substantive difference in the properties themselves or public purpose which justifies different designations.

**The proposed text amendment will result in all property owners within Zone 5 enjoying the same privileges and opportunities that are currently only offered to only a few properties within the Grasylvani and Aeroview subdivisions.**

6. Describe how the benefits of the change will outweigh any significant adverse impacts of the change.

**There will be no adverse environmental impact created by the proposed text amendments. The benefit will be the removal of a discriminatory land use regulation resulting in equal treatment of all lot owners in Zone 5.**

7. How is this proposal consistent with the Growth Management Act (GMA) – RCW 36.70A?

**The GMA prohibits the siting of incompatible land uses next to general aviation airports. Single-family residential use in the form of an accessory use has not been found to be an “incompatible use” with the operation of the Orcas Island Airport.**

8. Does this proposal include an Urban Growth Area (UGA) expansion?

Yes

No

9. If yes, which UGA? **NA**

10. Attach map(s) of the property that shows existing buildings, roads, water bodies, wetlands and other environmentally sensitive areas, soil types (for resource lands or where otherwise appropriate) and other significant features, as well as the land-use, shoreline environment, and density designations of the property and abutting properties. (In most instances, copies of GIS Legal parcel maps or Assessor’s maps provide suitable base maps on which to provide this information.)

11. Attach a list of the names and mailing addresses for all owners of property within 300 feet of the boundaries of the subject property (using the names and addresses of those individuals as shown on the tax assessment rolls on the date the application

is submitted)

**See attachment.**

12. Attach a completed and signed State Environmental Policy Act (SEPA) Environmental Checklist, including the supplemental sheet for non-project actions.

**See attachment.**

13. Attach copy of deed(s), and a legal description of the property for which the amendment is requested. **See attachment.**

**SEPA ENVIRONMENTAL CHECKLIST**

FEB 28 2019

COMMUNITY DEVELOPMENT

***Purpose of checklist:***

Governmental agencies use this checklist to help determine whether the environmental impacts of your proposal are significant. This information is also helpful to determine if available avoidance, minimization or compensatory mitigation measures will address the probable significant impacts or if an environmental impact statement will be prepared to further analyze the proposal.

***Instructions for applicants:***

This environmental checklist asks you to describe some basic information about your proposal. Please answer each question accurately and carefully, to the best of your knowledge. You may need to consult with an agency specialist or private consultant for some questions. You may use "not applicable" or "does not apply" only when you can explain why it does not apply and not when the answer is unknown. You may also attach or incorporate by reference additional studies reports. Complete and accurate answers to these questions often avoid delays with the SEPA process as well as later in the decision-making process.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

***Instructions for Lead Agencies:***

Please adjust the format of this template as needed. Additional information may be necessary to evaluate the existing environment, all interrelated aspects of the proposal and an analysis of adverse impacts. The checklist is considered the first but not necessarily the only source of information needed to make an adequate threshold determination. Once a threshold determination is made, the lead agency is responsible for the completeness and accuracy of the checklist and other supporting documents.

***Use of checklist for nonproject proposals:***

For nonproject proposals (such as ordinances, regulations, plans and programs), complete the applicable parts of sections A and B plus the SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS (part D). Please completely answer all questions that apply and note that the words "project," "applicant," and "property or site" should be read as "proposal," "proponent," and "affected geographic area," respectively. The lead agency may exclude (for non-projects) questions in Part B - Environmental Elements –that do not contribute meaningfully to the analysis of the proposal.

***A. Background***

1. Name of proposed project, if applicable:

*Fant Request for San Juan County Code Text Amendment*

2. Name of applicant:

*Myrna and Richard Fant DBA Nexco, Inc*

3. Address and phone number of applicant and contact person:

*Applicant: Myrna and Richard Fant DBA Nexco, Inc  
115 Aeroview Lane  
PO Box 1743  
Eastsound, WA 98245 -1343  
Phone: (360) 317-4941  
Email: myrnaorcas@gmail.com*

*Contact Person: Stephanie Johnson O'Day, Attorney  
PO Box 2112  
Friday Harbor, WA 98250  
Phone: (360) 378-6278  
Email: sjoday@rockisland.com*

4. Date checklist prepared:

*February 2019*

5. Agency requesting checklist:

*San Juan County Department of Community Development*

6. Proposed timing or schedule (including phasing, if applicable):

*If approved, the requested code revision will likely occur at the end of 2019.*

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.

*Yes. If the proposed text amendments are approved, building permits will be requested to remodel the existing office buildings to include an accessory dwelling unit.*

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.

*No environmental information has been prepared for the proposed text amendment.*

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.

*There are no applications or other governmental approvals pending for development on this site.*

10. List any government approvals or permits that will be needed for your proposal, if known.

*The request for text amendment will need the approval of the San Juan County Council.*

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

*The proposal includes three requests for a text amendment to the San Juan County Code as follows:*

- 1. Revise Section 18.40.030(B.5), Hazards for Airports, to eliminate the residential density (one dwelling unit per two acres) that creates an airport hazard.*
- 2. Revise SJCC 18.40.032(F.2), Orcas Island Airport Overlay District Sideline Safety Zone 5, to allow an accessory single-family dwelling unit to serve an approved Eastsound Service and Light Industrial Use.*
- 3. Revise SJCC 18.40.032(F.5), Orcas Island Airport Overlay District Sideline Safety Zone 5, to be consistent with Section 18.40.030(B.5), when identifying airport hazards.*

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

*The 1.04 acre property is located immediately west of the Orcas Island Airport landing strip and immediately north of Mt. Baker Road, Orcas Island. The property is assigned an address of 1286 Mt. Baker Road and is identified as TPN 271143012 which is located in Section 11, Township 37 North, Range 2 West, WM, in San Juan County. A vicinity map and legal description (deed) is attached to the application.*

## **B. Environmental Elements**

### **1. Earth**

a. General description of the site:

(circle one): **Flat**, rolling, hilly, steep slopes, mountainous, other \_\_\_\_\_

b. What is the steepest slope on the site (approximate percent slope)?

*The steepest slope on the property does not exceed 3%.*

c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any

agricultural land of long-term commercial significance and whether the proposal results in removing any of these soils.

*The site encompasses two soil types: 1) Everett Sandy Loam, warm, at 3 to 20% slopes and 2) Sholander Speiden complex at 0 to 5% slopes.*

*Sholander Speiden complex is considered prime farmland if irrigated and Everett Sandy Loam is considered prime farmland of statewide significance.*

*Considering the property is fully developed as is surrounding land, this area of Orcas Island is not suited for agricultural purposes.*

- d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.

*Review of the San Juan County Critical Area Maps for geo-hazards indicates there are no unstable soils on this site.*

- e. Describe the purpose, type, total area, and approximate quantities and total affected area of any filling, excavation, and grading proposed. Indicate source of fill.

*NA – this is a non-project action.*

- f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.

*NA – this is a non-project action.*

- g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?

*There will be no change in impervious surface if the proposed amendment is approved.*

- h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

*None proposed at this time.*

## **2. Air**

- a. What types of emissions to the air would result from the proposal during construction, operation, and maintenance when the project is completed? If any, generally describe and give approximate quantities if known.

*No new emissions will be generated with this proposal.*

- b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.

*Yes, fumes and dust associated with aircraft operations at the Orcas Island Airport have the potential to impact this property.*

- c. Proposed measures to reduce or control emissions or other impacts to air, if any:

*None proposed at this time.*

### **3. Water**

#### a. Surface Water:

- 1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.

*There are no waterbodies in the immediate vicinity of the project site.*

- 2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.

*No.*

- 3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.

*NA.*

- 4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.

*No. The property is provided domestic water service by the Eastsound Water Users Association. (Permit #286)*

- 5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.

*No.*

- 6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.

*No – this proposal is a non-project action.*

#### b. Ground Water:

- 1) Will groundwater be withdrawn from a well for drinking water or other purposes? If so, give a general description of the well, proposed uses and approximate quantities withdrawn from the well. Will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known.

*No.*

- 2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the

following chemicals. . . ; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

*No discharges will occur from septic tanks or other sources. The property is served by the Eastsound Water and Sewer District.*

c. Water runoff (including stormwater):

- 1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.

*The source of runoff generated by this site is currently rainwater. Rainwater is collected by building gutters and discharged into a swale on the east side of the property.*

- 2) Could waste materials enter ground or surface waters? If so, generally describe. .

*No, not with this proposed Text Amendment.*

- 3) Does the proposal alter or otherwise affect drainage patterns in the vicinity of the site? If so, describe.

*No – this is a non-project action.*

d. Proposed measures to reduce or control surface, ground, and runoff water, and drainage pattern impacts, if any:

*No change to existing rainwater management is proposed or is necessary.*

#### 4. **Plants**

a. Check the types of vegetation found on the site:

- deciduous tree: alder, maple, aspen, other
- evergreen tree: fir, cedar, pine, other
- shrubs
- grass
- pasture
- crop or grain
- Orchards, vineyards or other permanent crops.
- wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other
- water plants: water lily, eelgrass, milfoil, other
- other types of vegetation FLOWERS

b. What kind and amount of vegetation will be removed or altered?

*There will be no vegetation removal with this non-project action.*

- c. List threatened and endangered species known to be on or near the site.

*Review of the San Juan County Critical Area maps shows no threatened or endangered plant species on this property.*

- d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

*No new landscaping is currently proposed.*

- e. List all noxious weeds and invasive species known to be on or near the site.

*There are no noxious weeds or invasive plant species known to exist on this property.*

## **5. Animals**

- a. List any birds and other animals which have been observed on or near the site or are known to be on or near the site.

Examples include:

birds: **hawk, heron, eagle, songbirds**, other:

mammals: **deer**, bear, elk, beaver, other: **raccoons, rats, bats, fox**

fish: bass, salmon, trout, herring, shellfish, other \_\_\_\_\_

- b. List any threatened and endangered species known to be on or near the site.

*There are no threatened and endangered animal species known to be on or near the site as per the San Juan County Critical Areas Map.*

- c. Is the site part of a migration route? If so, explain.

*The San Juan Islands are a migration route for Bald eagles. However, the property is not a significant migratory site.*

- d. Proposed measures to preserve or enhance wildlife, if any:

*None proposed at this time.*

- e. List any invasive animal species known to be on or near the site.

*There are no known invasive animal species known to be on or near the site.*

## **6. Energy and Natural Resources**

- a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

*There is no need for new energy sources.*

- b. Would your project affect the potential use of solar energy by adjacent properties?  
If so, generally describe.

*No.*

- c. What kinds of energy conservation features are included in the plans of this proposal?  
List other proposed measures to reduce or control energy impacts, if any:

*Unknown. There are no specific development plans at this time.*

## **7. Environmental Health**

- a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste that could occur as a result of this proposal?  
If so, describe.

*No, not with this proposed Text Amendment.*

- 1) Describe any known or possible contamination at the site from present or past uses.

*It is highly unlikely that there have been any contaminants introduced onto this property.*

- 2) Describe existing hazardous chemicals/conditions that might affect project development and design. This includes underground hazardous liquid and gas transmission pipelines located within the project area and in the vicinity.

*NA*

- 3) Describe any toxic or hazardous chemicals that might be stored, used, or produced during the project's development or construction, or at any time during the operating life of the project.

*NA*

- 4) Describe special emergency services that might be required.

*Existing development does not require "special" emergency services. Existing EMT, police and fire protection services are adequate to serve the property.*

- 5) Proposed measures to reduce or control environmental health hazards, if any:

*No measures are proposed at this time.*

### **b. Noise**

- 1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

*The primary noise sources that affect this property are generated by vehicular traffic traveling along Mt. Baker Road which borders the property along the south lot line and air traffic from the Orcas Island Airport, which is located immediately east of the property.*

2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

*No change in noise levels is anticipated with this proposed text amendment.*

3) Proposed measures to reduce or control noise impacts, if any:

*None proposed at this time.*

## **8. Land and Shoreline Use**

a. What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe.

*The property is currently occupied by two buildings that are used as an office complex, primarily for doctors. Adjacent land uses include the Orcas Island Airport to the east, a County shop, fire station and an affordable housing complex to the south, hangars and accessory single-family residences to the north, and single-family residential uses to the west.*

*No, the proposed text amendment will not affect current land uses on adjacent properties.*

b. Has the project site been used as working farmlands or working forest lands? If so, describe. How much agricultural or forest land of long-term commercial significance will be converted to other uses as a result of the proposal, if any? If resource lands have not been designated, how many acres in farmland or forest land tax status will be converted to nonfarm or nonforest use?

*The property has not been used as working farmland or forestland. It is not zoned for use as agricultural or forestland of long term commercial significance. It is not in a farmland or forestland tax deferred status.*

1) Will the proposal affect or be affected by surrounding working farm or forest land normal business operations, such as oversized equipment access, the application of pesticides, tilling, and harvesting? If so, how:

*No.*

c. Describe any structures on the site.

*The property is occupied by two buildings; one is a single story and the other is two-story. There is a large expanse of pavement on site for off-street parking and landscaped areas.*

d. Will any structures be demolished? If so, what?

*No.*

e. What is the current zoning classification of the site?

*Eastsound Service and Light Industrial*

f. What is the current comprehensive plan designation of the site?

*Eastsound UGA*

g. If applicable, what is the current shoreline master program designation of the site?

*NA*

h. Has any part of the site been classified as a critical area by the city or county? If so, specify.

*Yes, the property is entirely a Critical Aquifer Recharge Area (CARA) as is all of San Juan County.*

i. Approximately how many people would reside or work in the completed project?

*Unknown at this time.*

j. Approximately how many people would the completed project displace?

*None.*

k. Proposed measures to avoid or reduce displacement impacts, if any:

*None proposed at this time.*

l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

*The property is currently zoned Eastsound Service and Light Industrial, and is within the Eastsound UGA boundary. It is slated for urban development. The proposed text amendment is not requesting use of the land that has not already been granted to several properties that lie in Zone 5 of the Orcas Island Airport Overlay District.*

m. Proposed measures to reduce or control impacts to agricultural and forest lands of long-term commercial significance, if any:

*None. This land is not zoned for agricultural or forest lands of long-term commercial significance.*

## **9. Housing**

a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.

*If approved, the text amendment will allow the inclusion of accessory dwelling units on the property to serve businesses that occupy the business park.*

b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.

*None at this time.*

c. Proposed measures to reduce or control housing impacts, if any:

*NA – this is a non-project action.*

## **10. Aesthetics**

- a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?

*No new structures are proposed.*

- b. What views in the immediate vicinity would be altered or obstructed?

*There are no views in the area have been altered or obstructed by the existing development on this property.*

- b. Proposed measures to reduce or control aesthetic impacts, if any:

*No measures are proposed at this time.*

## **11. Light and Glare**

- a. What type of light or glare will the proposal produce? What time of day would it mainly occur?

*NA - this is a non-project action.*

- b. Could light or glare from the finished project be a safety hazard or interfere with views?

*There is no project associated with the proposed text amendment.*

- c. What existing off-site sources of light or glare may affect your proposal?

*There are currently no off-site light sources affecting this property other than lighting of the Orcas Island Airport landing strip which is very evident at night.*

- d. Proposed measures to reduce or control light and glare impacts, if any:

*None proposed at this time.*

## **12. Recreation**

- a. What designated and informal recreational opportunities are in the immediate vicinity?

*There are numerous formal and informal recreational activities available on Orcas Island including boating excursions, fishing, hiking, biking, diving, whale watching, etc.*

- b. Would the proposed project displace any existing recreational uses? If so, describe.

*No.*

- c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

*None proposed.*

### **13. Historic and cultural preservation**

- a. Are there any buildings, structures, or sites, located on or near the site that are over 45 years old listed in or eligible for listing in national, state, or local preservation registers ? If so, specifically describe.

*Unknown.*

- b. Are there any landmarks, features, or other evidence of Indian or historic use or occupation? This may include human burials or old cemeteries. Are there any material evidence, artifacts, or areas of cultural importance on or near the site? Please list any professional studies conducted at the site to identify such resources.

*No.*

- c. Describe the methods used to assess the potential impacts to cultural and historic resources on or near the project site. Examples include consultation with tribes and the department of archeology and historic preservation, archaeological surveys, historic maps, GIS data, etc.

*There have been no methods used to assess potential impacts to cultural and historic resources on or near the project site.*

- d. Proposed measures to avoid, minimize, or compensate for loss, changes to, and disturbance to resources. Please include plans for the above and any permits that may be required.

*None proposed at this time.*

### **14. Transportation**

- a. Identify public streets and highways serving the site or affected geographic area and describe proposed access to the existing street system. Show on site plans, if any.

*The property is gained direct accessed from Mt. Baker Road which lies immediately south of the parcel.*

- b. Is the site or affected geographic area currently served by public transit? If so, generally describe. If not, what is the approximate distance to the nearest transit stop?

*No – there is no public transit available on Orcas Island.*

- c. How many additional parking spaces would the completed project or non-project proposal have? How many would the project or proposal eliminate?

*No new parking is required with this non-project action.*

- d. Will the proposal require any new or improvements to existing roads, streets, pedestrian, bicycle or state transportation facilities, not including driveways? If so, generally describe (indicate whether public or private).

*No. .*

- e. Will the project or proposal use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

*Yes. The property lies west of and adjacent to the Orcas Island Airport.*

- f. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks (such as commercial and nonpassenger vehicles). What data or transportation models were used to make these estimates?

*No new traffic will be generated by this proposal..*

- g. Will the proposal interfere with, affect or be affected by the movement of agricultural and forest products on roads or streets in the area? If so, generally describe.

*No.*

- h. Proposed measures to reduce or control transportation impacts, if any:

*None proposed or required at this time.*

### **15. Public Services**

- a. Would the project result in an increased need for public services (for example: fire protection, police protection, public transit, health care, schools, other)? If so, generally describe.

*No.*

- b. Proposed measures to reduce or control direct impacts on public services, if any.

*None proposed.*

### **16. Utilities**

- a. Circle utilities currently available at the site:

electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other \_\_\_\_\_

- c. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

*No new utilities are proposed..*

## **C. Signature**

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: \_\_\_\_\_

*Francine Shaw*

Name of signee: *Francine Shaw, Land Use Consultant*

### ***D. Supplemental sheet for nonproject actions***

(IT IS NOT NECESSARY to use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

*The site is fully developed. There will be no increased discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise.*

Proposed measures to avoid or reduce such increases are:

*None proposed at this time..*

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

*Existing landscaped area will be maintained. Animals using this vegetation will likely be unaffected due to the retention of said vegetation. There is no fish or marine life on this property as it is an inland lot.*

Proposed measures to protect or conserve plants, animals, fish, or marine life are:

*As noted above, existing landscaped areas will be retained.*

3. How would the proposal be likely to deplete energy or natural resources?

*There will be absolutely no depletion of energy or natural resources with this proposed text amendment.*

Proposed measures to protect or conserve energy and natural resources are:

*No new construction is proposed. If and when buildings are remodeled or additional structures are constructed on the property, the applicable regulations in Washington State Energy Code will be met.*

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks,

wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?

*There will be no impact on environmentally sensitive areas or areas designated for governmental protection.*

Proposed measures to protect such resources or to avoid or reduce impacts are:

*None proposed at this time..*

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

*If the requested text amendment is approved, it will allow the construction of an accessory dwelling unit in the buildings located on the property. Accessory dwelling units are already allowed within portions of Zone 5 of the Orcas Island Airport Overlay District and are not considered to be an incompatible land use otherwise they wouldn't be allowed. Allowing other properties in this zone to develop accessory dwelling units would not be a "new" use in Zone 5 that could create an incompatibility.*

Proposed measures to avoid or reduce shoreline and land use impacts are:

*This is not a shoreline parcel but an upland parcel. Development of the property will require compliance with the applicable development codes which are intended to avoid and reduce land use impacts.*

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

*There will be no increase in demand on transportation, public services or utilities.*

Proposed measures to reduce or respond to such demand(s) are:

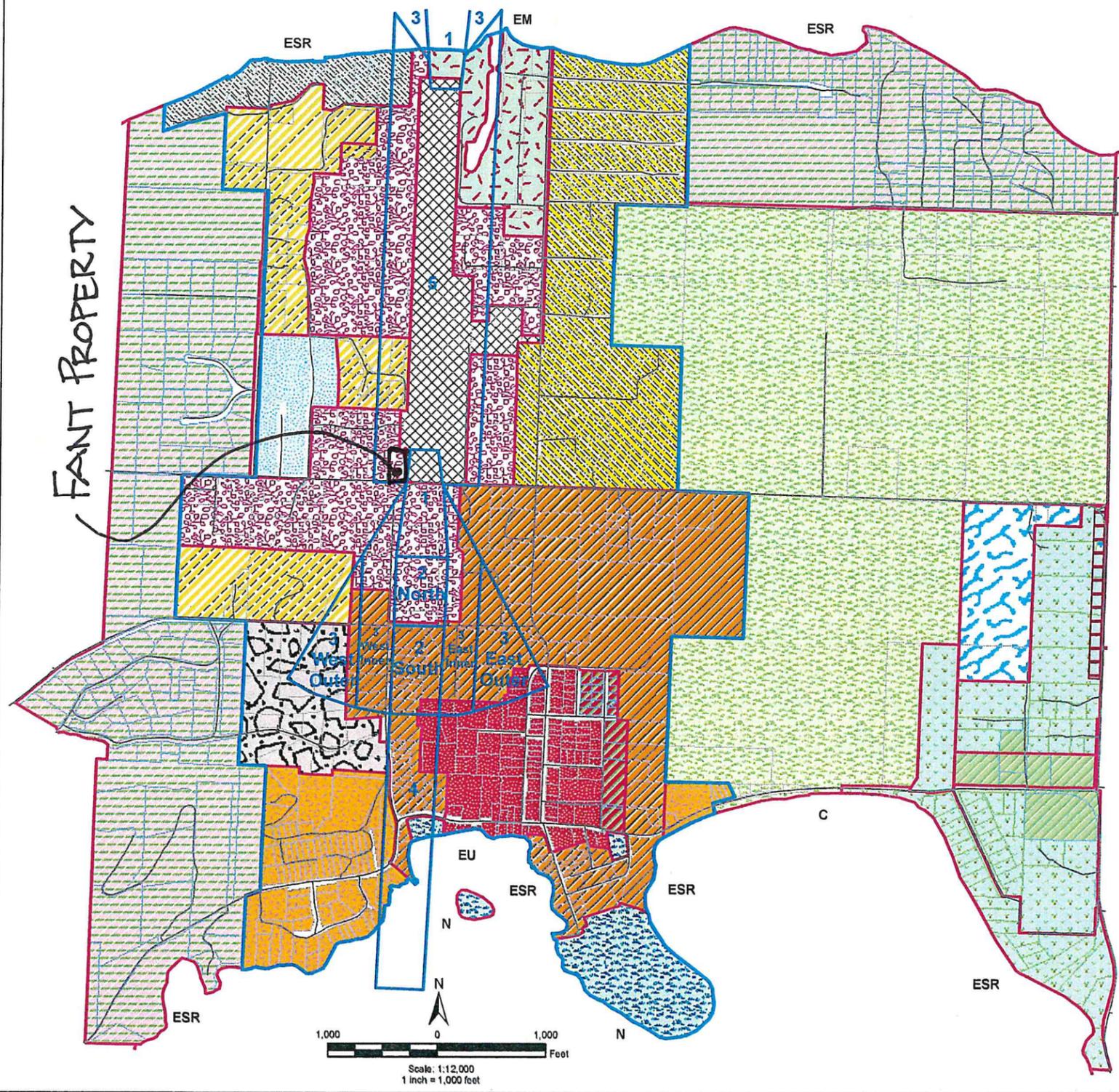
*None proposed or required.*

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

*The proposed Text Amendment, in and of itself, will have no impact on the environment.*

*Environmental impacts are better addressed at the time of development.*





- Aircraft Accident Safety Zones
- Eastsound Urban Growth Area
- Density
- Eastsound 50 Foot Buffer
- Eastsound**
- Country Corner Commercial
- Eastsound Airport District (no residential development is allowed)
- Eastsound Natural (max. 1 unit per parcel)
- Eastsound Rural (max. 1 unit/5 acres)
- Eastsound Residential 1/acre (max. 1 unit/acre)
- Eastsound Residential 1/acre P\*
- Eastsound Residential 2/acre
- Eastsound Residential 2/acre P\*
- Eastsound Residential 4/acre P\*
- Eastsound Residential 4-12/acre (min. 4 - max. 12 units/acre)
- Eastsound Rural Residential (max. 1 unit/5 acres)
- Eastsound Rural Residential (max. 1 unit/2 acres)
- Marina (max. 6-8 units/acre)
- Service Light Industrial (residential use allowed only as accessory to commercial, institutional, or industrial use)
- Service Park (residential use allowed only as accessory to commercial, institutional, or industrial use)
- Village Commercial (min. 4 - max. 40 units/acre)
- Village Commercial Limited (see SJCC 16.55.210.D.3)
- Village Residential / Institutional (min. 4 - max. 12 units/acre)

*This map is a graphic representation derived from San Juan County's Geographic Information System. It is designed and intended for reference only, and is not guaranteed to survey accuracy. The information represented in this map is subject to change without notice.*



**Eastsound Subarea Plan Official Map**

Orcas Island  
 San Juan County, Washington

Drawn By:  
 np

Date:  
 12/10

Revised:  
 12/15

SWD

WHEN RECORDED RETURN TO:

Name: Geiser Escrow Inc., P.S.  
Address: P. O. Box 2297

SAN JUAN COUNTY WASH. Friday Harbor, WA 98250

REAL ESTATE EXCISE TAX

AMOUNT PAID \$ 25,806.00

054572

MAR 31 2000

Recorded at the request of:  
ISLAND TITLE COMPANY  
on 03/31/2000 at 14:20

Total of 5 page(s) Fee: \$ 12.00

FEB 28 2019

COMMUNITY DEVELOPMENT

SAN JUAN COUNTY, WASHINGTON  
SIA. STEPHENS, AUDITOR

Kathy Turnbull  
COUNTY OF Chicago Title Insurance Company

SJ-42095

STATUTORY WARRANTY DEED

THE GRANTORS, ROBERT PETERSON and THEA PETERSON, husband and wife; and ROBERT J. MINTON, as his separate estate; each as to a 50% interest,

for and in consideration of TEN DOLLARS (\$10.00) AND OTHER VALUABLE CONSIDERATION, in hand paid, conveys and warrants to NexCo, Inc., a Washington Corporation, the following described real estate, situated in the County of San Juan, State of Washington: Ptn SE-SW & SW-SW-SE, Sec 11, Twp 37N, R2W, W.M., as is more particularly described on the attached Exhibit "A", which by this reference is incorporated herein as though fully set forth.

SUBJECT TO:

1. A Deed of Trust dated June 8, 1993 and recorded on September 15, 1993, under San Juan County Auditor's File No. 93189720, which the grantee assumes and agrees to pay according to its terms.

2. Easements described on the attached Exhibit "B", which is also by this reference incorporated herein as though fully set forth.

Tax Account Number 2711143012

DATED

March 01, 19 2000

ROBERT PETERSON

*[Signature]*

ROBERT J. MINTON

STATE OF WASHINGTON )

COUNTY OF San Juan )

STATE OF WASHINGTON )

COUNTY OF )

ss.

On this day personally appeared before me

Robert Peterson & Thea Peterson to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 25th day of February, 19 2000.

*[Signature]*  
Notary Public in and for the State of Washington,  
residing at *[Signature]*

On this day of , 19 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared

and to me known to be the Secretary, respectfully, of

the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

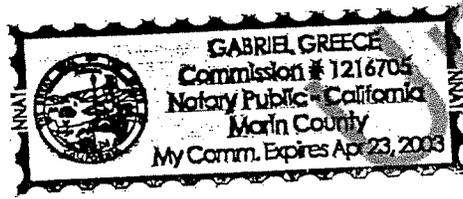
Notary Public in and for the State of Washington,  
residing at



STATE OF CALIFORNIA )  
 )  
COUNTY OF Marin ) ss.

On this day personally appeared before me ROBERT J. MINTON, to be known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that HE signed the same as HIS free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 28 day of FEBRUARY, 2000.



  
NOTARY PUBLIC in and for the State  
of CALIFORNIA, residing at  
Greenbrae Cr.  
My commission expires: 4/23/03

STATUTORY WARRANTY DEED  
Peterson/Minton TO NexCo, Inc.

EXHIBIT "A"

That portion of the South half of the Southeast quarter of the Southwest quarter and of the Southwest quarter of the Southwest quarter of the Southeast quarter in Section 11, Township 37 North, Range 2 West, W.M., in San Juan County, Washington, described as follows:

Beginning at a point 500 feet West of the Northeast corner of said Southwest quarter of the Southwest quarter of the Southeast quarter; THENCE South  $0^{\circ}25'$  West 360 feet; THENCE North  $89^{\circ}35'$  West 70 feet to the TRUE POINT OF BEGINNING; THENCE continue North  $89^{\circ}35'$  West 153.00 feet; THENCE South  $0^{\circ}25'$  West 300 feet, more or less, to the South line of Section 11; THENCE South  $89^{\circ}35'$  East along the section line for 153 feet; THENCE North  $0^{\circ}25'$  East 300 feet, more or less, to the TRUE POINT OF BEGINNING;

EXCEPT County Road right-of-way No. 58 (Mount Baker Highway).

- END OF EXHIBIT "A" -

STATUTORY WARRANTY DEED  
Peterson/Minton to Fant

EXHIBIT "B"

1. Easement, including the terms and conditions thereof,  
granted by instrument  
Recorded: June 19, 1970  
Auditor's No.: 73739, records of San Juan County, WA  
For: Water line  
Affects: Southerly portion of said premises
2. Easement, including the terms and conditions thereof,  
granted by instrument  
Recorded: July 21, 1975  
Auditor's No.: 89193, records of San Juan County, WA  
For: Avigation purposes  
Affects: West 55 feet of the East 113 feet of said  
premises
3. Easement, including the terms and conditions thereof,  
granted by instrument  
Recorded: February 14, 1977  
Auditor's No.: 95222, records of San Juan County, WA  
In favor of: ORCAS POWER AND LIGHT COMPANY  
For: Electric transmission and/or distribution  
line, together with necessary appurtenances  
Affects: Said premises, the exact location and  
extent of said easement is undisclosed of  
record
4. Easement, including the terms and conditions thereof,  
granted by instrument  
Recorded: January 25, 1982  
Auditor's No.: 119896, records of San Juan County, WA  
In favor of: ORCAS POWER AND LIGHT COMPANY  
For: Electric transmission and/or distribution  
line, together with necessary appurtenances  
Affects: Westerly portion of said premises
5. Easement, including the terms and conditions thereof,  
granted by instrument  
Recorded: November 19, 1980  
Auditor's No.: 114637, records of San Juan County, WA  
For: Custody and control of a septic system  
Affects: Said premises, the exact location and  
extent of said easement is undisclosed of  
record

continued. . . . .

STATUTORY WARRANTY DEED  
Peterson/minton to Fant

SAN JUAN COUNTY, WASHINGTON

EXHIBIT "B" (Cont'd)

6. Easement, including the terms and conditions thereof,  
granted by instrument  
Recorded: March 14, 1997  
Auditor's No.: 97031408, records of San Juan County, WA  
For: Public road  
Affects: South 22.5 feet of said premises

END OF EXHIBIT "B"

Unofficial  
Copy

***Fant/Nexco, Inc. Request for Text Amendment  
1286 Mt Baker Road, Orcas Island - TPN 271143012***

***Public Notice Mailing List***

Prepared February 13, 2019

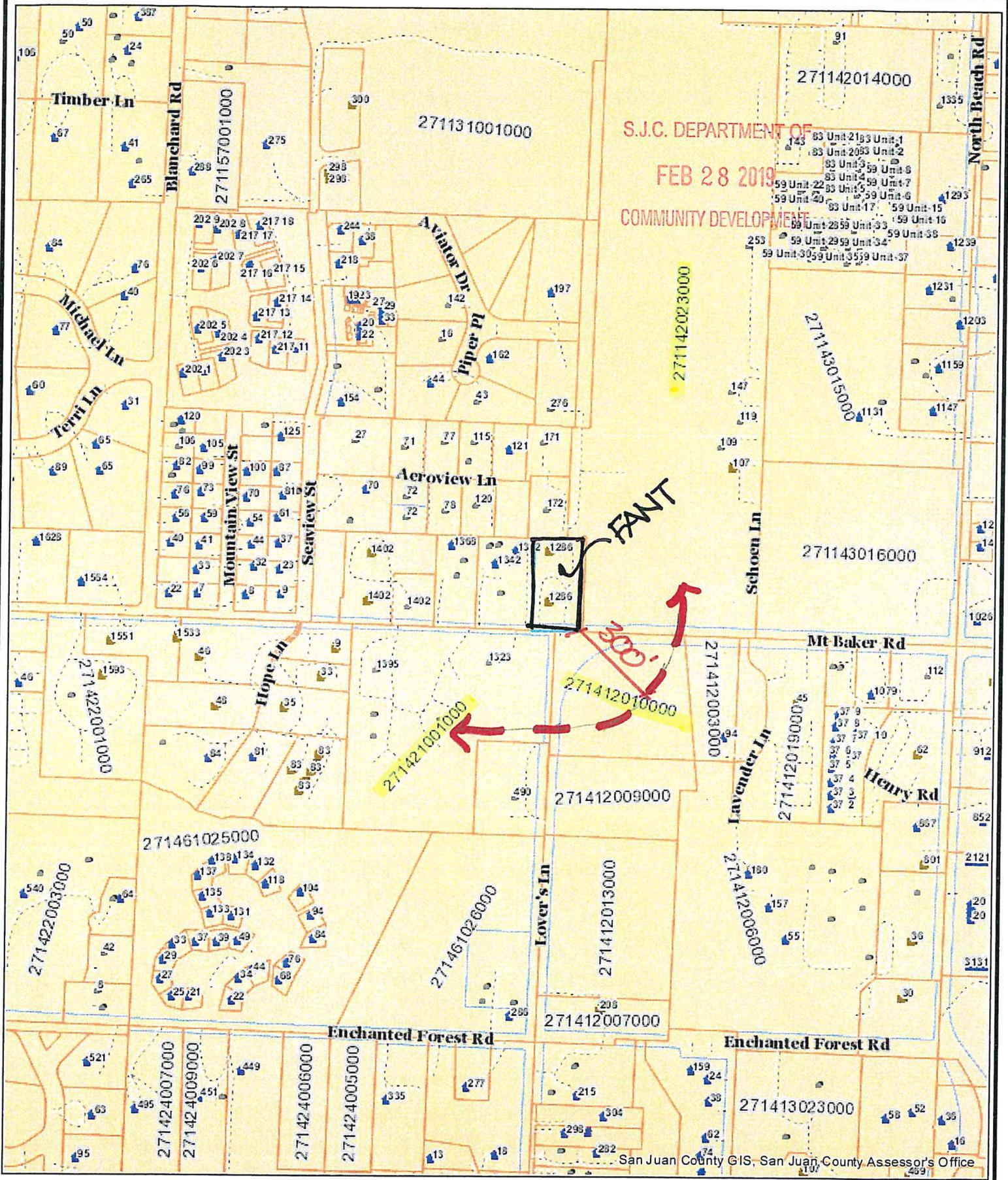
S.J.C. DEPARTMENT OF

FEB 28 2019

COMMUNITY DEVELOPMENT

- TPN 271142023 PORT OF ORCAS  
PO BOX 53  
EASTSOUND, WA 98245-0053
- TPN 271412010 PORT OF ORCAS  
PO BOX 53  
EASTSOUND, WA 98245-0053
- TPN 271421001 SAN JUAN COUNTY PUBLIC WORKS  
c/o E R & R  
PO BOX 729  
FRIDAY HARBOR, WA 98250-0729
- TPN 271134009 JOHN M LIGER  
PO BOX 98  
EASTSOUND, WA 98245-0098
- TPN 271134008 DAVID T & LINA M MCPEAKE  
546 GLENWOOD INN RD  
EASTSOUND, WA 98245-8908
- TPN 271158007 RMW ASSOCIATES LLC ET AL  
470 SHOOTING STAR LANE  
EASTSOUND, WA 98245-8713
- TPN 271158005 DBH LLC  
c/o MCTSP  
ATTN: JULIE SCHWARTZ  
8383 WILSHIRE BLVD STE 500  
BEVERLY HILLS, CA 90211-2408
- TPN 271158003 HERITAGE FLIGHT MUSEUM  
15053 CROSSWIND DR  
BURLINGTON, WA 98233-5320

- TPN 271134013 DDG PROPERTIES LLLP  
PO BOX 190  
DEER HARBOR, WA 98243-0039
- TPN 271158006 RICHARD & MYRNA FANT (Applicant)  
PO BOX 1343  
EASTSOUND, WA 98245-1343
- TPN 271158004 RICHARD & MYRNA FANT (Applicant)  
PO BOX 1343  
EASTSOUND, WA 98245-1343
- TPN 271158002 LYONS PROPERTIES LLC  
3950 NW 264TH AVE  
HILLSBORO, OR 97124-6374



S.J.C. DEPARTMENT OF  
 FEB 28 2019  
 COMMUNITY DEVELOPMENT

FANT

300'

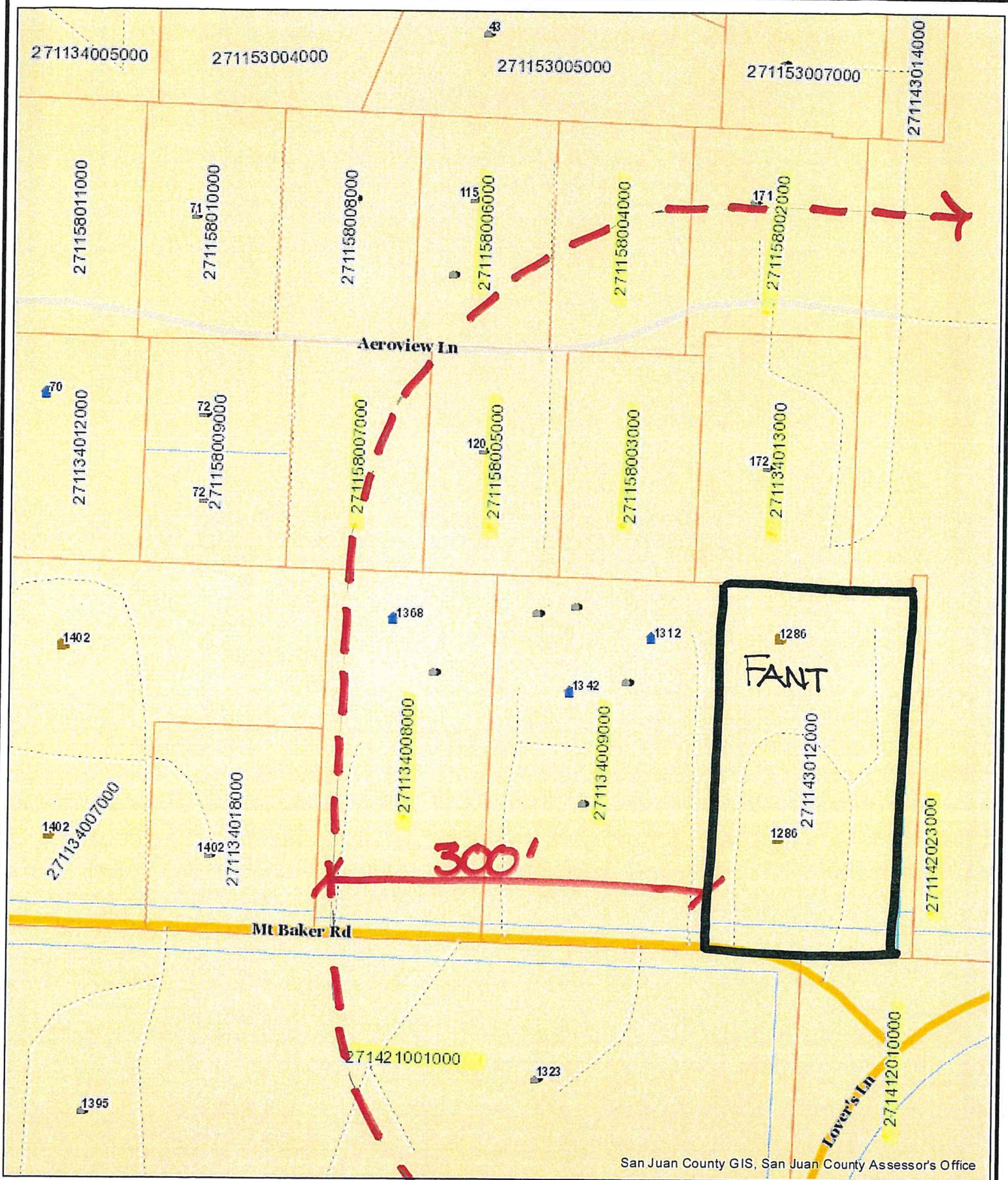


This map is derived from San Juan County's Geographic Information System (GIS). It is intended for reference only and is not guaranteed to survey accuracy. The information represented on this map is subject to change without notice.

1 in = 400 feet



**TPN 271143012 Public Notice Map**



San Juan County GIS, San Juan County Assessor's Office



This map is derived from San Juan County's Geographic Information System (GIS). It is intended for reference only and is not guaranteed to survey accuracy. The information represented on this map is subject to change without notice.

1 in = 100 feet



**TPN 271143012 Public Notice Map 2**



San Juan County GIS, Pictometry International Corp., San Juan County Assessor's Office



This map is derived from San Juan County's Geographic Information System (GIS). It is intended for reference only and is not guaranteed to survey accuracy. The information represented on this map is subject to change without notice.

1 in = 50 feet



**FEB 28 2019**  
**TPN 271143012 2016 Aerial Photograph**  
 COMMUNITY DEVELOPMENT





## SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

135 Rhone Street, PO Box 947, Friday Harbor, WA 98250  
 (360) 378-2354 | (360) 378-2116  
 dcd@sanjuanco.com | www.sanjuanco.com

**FILE NUMBER 19-0005**  
**SAN JUAN COUNTY DOCKET INITIAL REVIEW**

<b>Applicant:</b>	Lopez Island School District (LISD) c/o Del Guenther	<b>File No.:</b>	<b>19-0005</b>
<b>Description of Proposal:</b> Allow residential development in Island Center LAMIRD (IC). By San Juan County Code (SJCC) 18.30.030, one residence is allowed accessory to an allowed commercial or industrial use. LISD would like to be able to construct employee housing on an undeveloped parcel in Island Center.			
<input checked="" type="checkbox"/>	<b>Comprehensive Plan Text Amendment</b>		
<input checked="" type="checkbox"/>	<b>Development Regulation Amendment</b>		

SEPA Required: YES

**Public Outreach/Notification Requirements:**

<input type="checkbox"/>	300 foot posted notification – for map amendments for five or fewer parcels
<input type="checkbox"/>	300 foot mailed notification and agency notification – this amendment will potentially affect adjacent properties within 300 feet of a proposal
<input type="checkbox"/>	Subarea or Overlay Wide Notification – this amendment will affect or potentially affect a neighborhood, subarea or multiple properties within an overlay or designation. Number of properties affected:
<input checked="" type="checkbox"/>	Countywide Notification – this amendment will apply countywide or affect many properties throughout the County

**Recommended Additional Public Outreach:**

<input checked="" type="checkbox"/>	Community Meeting(s)	<input type="checkbox"/>	Area-Wide Mailing	<input type="checkbox"/>	Countywide Mailing	<input checked="" type="checkbox"/>	<b>Publication</b>
<input type="checkbox"/>	Web –page	<input type="checkbox"/>	Press Release	<input checked="" type="checkbox"/>	Public Participation Plan	<input type="checkbox"/>	<b>Other</b> (reference below*)

***\*Depending on the scope of the proposed development regulation amendments, additional public notice may be necessary.***

<b>Priority:</b>	
<input type="checkbox"/>	A- Required by law for GMA Compliance or otherwise
<input type="checkbox"/>	B- Items needed to achieve important public policy objectives of a countywide nature
<input checked="" type="checkbox"/>	<i>C- Items that can be considered as part of a larger CP update or subarea planning process</i>
<input type="checkbox"/>	D- Items needed to provide clarity and certainty to the UDC and CP by removing inconsistencies and ambiguities
<input type="checkbox"/>	E- Items of lessor priority to be considered on a future year work program
<input type="checkbox"/>	F - Obsolete, previously resolved or not recommended for further consideration
<b>Scope of Work Necessary to Complete the Amendment:</b>	
The Comprehensive Plan and development code amendments proposed will require the entire process in Attachment B.1. Additional public outreach efforts to ensure proposed policies align with public sentiment will be required prior to drafting an ordinance.	
<b>Changes to the following Comprehensive Plan Goals and Policies:</b>	
Land Use Element , 2.3.B, Policy 1(c) and 9	
<b>Changes to the following sections of the Unified Development Code:</b>	
SJCC 18.30.030 Land use table – Activity center land use designations, SJCC 18.30.230 Residential development standards in island centers, rural industrial and rural commercial designations	

**Staff Analysis:**

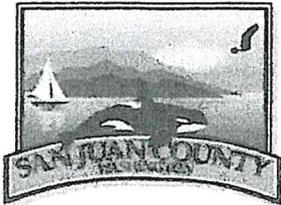
The IC designation is one of only a few places on Lopez where commercial and industrial uses are allowed. The Limited Area of More Intense Rural Development (LAMIRD) was established, in part, to provide a rural area where more intense development is allowed and protect this area from being converted to low density residential development. All of this fits within the GMA mandate to reduce sprawl. Making changes to IC should be considered within the County's larger land use designation framework to ensure the realization of GMA planning goals and County policy goals.

If considered during the Comprehensive Plan Update, IC goals, policies and development regulations could be amended within the overall update process. This amendment would not necessarily require an independent process.

If considered on its own, this amendment would require additional public outreach on both Lopez and Orcas islands; each of which has areas designated IC. This would likely include public meetings and consideration of the Land Capacity Analysis (conducted during the Comprehensive Plan Update).

Under either approach, further analysis would be required to ensure that the regulations regarding residential development in IC are compliant with state laws governing LAMIRDs. LAMIRD regulations are subject to the Growth Management Act (GMA) as outlined in RCW 36.70A.070 (5)(d).

For these reasons, staff recommends including this analysis with the update to the Land Use Element and Comprehensive Plan. Including the analysis as such will allow the changes to the IC Land Use Designation and regulations to be considered within the larger policy framework of the Comprehensive Plan. The necessary public outreach could also be conducted within the larger Comprehensive Plan Update process.



**SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT**

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**S.J.C. DEPARTMENT OF  
 FEB 28 2019  
 COMMUNITY DEVELOPMENT**

**Comprehensive Plan Text/SJC Code\* Amendment Request**

\*San Juan County Code Titles 15, 16 & 18  
 (Annual Docket)

APPLICANT INFORMATION:			
Name of Applicant:	<u>Lopez Island School District</u>	Name of Agent:	<u>Del Guenther, Vice Chair, Lopez Island School District Board</u>
Address	<u>86 School Road</u>	Address	<u>PO Box 426</u>
City, State, Zip	<u>Lopez Island, WA 98261</u>	City, State, Zip	<u>Lopez Island, WA 98261</u>
Phone	<u>360-468-2202</u>	Phone	<u>360-468-3333</u>
Email	<u>bauckland@lopezislandschool.org</u>	E-mail	<u>dguenther@lopezislandschool.org</u>

This request is for a text amendment to the Comprehensive Plan or development regulations, not a comprehensive plan map amendment. I understand that this request will be reviewed according to the County's annual docket process.		
	<u>Brian Auckland</u>	<u>2/24/19</u>
Signature	Printed Name	Date
	<u>Del Guenther</u>	<u>2/24/19</u>
Signature	Printed Name	Date

**Please Describe the Proposed Amendments (attach additional pages if you need more space):**

1. Comprehensive Plan – Describe proposed amendment and/or attach proposed text changes. List Comprehensive plan section, page numbers, title and policies proposed for amendment.

The school district is requesting a change to the April 2010 Comprehensive Plan, Section B, Element 2, Land Use, specifically 2.3 Land Use Designations.

Specifically, there are four sections of the Comp Plan that require changes:

2.3.B Activity Centers (including Limited Areas of More Intensive Rural Development, Policies, Type of Centers, 2.3.B.1.c. Island Centers, on Page 13 states. "The Comprehensive Plan states, "Island Centers are generally characterized by existing general commercial and general industrial uses and may also include some rural commercial and rural industrial uses. These systems may be served by community water systems, but have only rural governmental services, Island Centers differ from other Activity Centers in that they generally do not have a high density residential component within the center boundaries, and new residential development (except where accessory to commercial or industrial use) should be prohibited. The commercial and industrial uses located in these centers provide goods and services island wide."

2.3 Land Use Designations, 2.3.B Activity Centers (including Limited Areas of More Intensive Rural Development, 2.3.B.2, Page 14 Table 2 Summary of Activity Centers lists in the 1st column of the table labeled Location as "School Rd/Center Rd – Lopez Island", with the 2nd column labeled as Designation with "Island Center" and the 3rd column labeled as Existing Site-Specific Plan & Standards with "No".



## SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

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2.3 Land Use Designations, 2.3.B Activity Centers (including Limited Areas of More Intensive Rural Development, 2.3.B.6, Page 15 states; "Subarea plans or location specific designations and standards for village, hamlet and island center activity centers may be adopted to guide land use and development in these areas. Land use districts and development standards for activity centers should be compatible with existing development patterns and community character, including rural aspects. Critical areas within activity centers should be preserved and enhanced. Residential, commercial and industrial areas should be identified in each activity center, if appropriate, and specific standards adopted for these areas.

2.3 Land Use Designations, 2.3.B Activity Centers (including Limited Areas of More Intensive Rural Development, 2.3.B.9, Page 15 states; Residential development in activity centers, except Island Centers and Master Planned Resort activity centers, should allow a full range of single- and multi-family housing types. Density bonuses are allowable, as appropriate to established development patterns, to achieve affordable housing goals. New residential development should be prohibited in Island Centers except as an accessory to commercial or industrial use.

The Lopez Island School District is requesting that the comp plan be changed in each of these four sections to state:

New residential development is allowed on school district parcels located in Island Centers to allow a full range of single- and multi-family housing types with density bonuses allowable to achieve affordable housing goals.

2. San Juan County Code Title 15, Title 16 or Title 18. Describe proposed amendment and/or attach proposed text changes. List code sections proposed for amendment.

The school district is requesting a change to Title 18, Unified Development Code (UDC), Chapter 18.30 Land Use Designations, specifically Table 18.30.030 "Allowable and Prohibited Uses in Activity Center Land Uses Designations", and 18.30.230, "Residential Development Standards in Island Centers, Rural Industrial and Rural Commercial Designations."

Currently the code specified in each of these sections allows one dwelling unit per parcel which must be necessary to a commercial or industrial use and located within or attached and subordinate to the commercial or industrial structure. The unit may not include an accessory dwelling unit in addition to the main residence.

The district is requesting the following change: New residential development is allowed on school district parcels located in Island Centers to allow a full range of single- and multi-family housing types with density bonuses allowable to achieve affordable housing goals.

3. Why is the amendment being proposed?

The Lopez Island School District currently has multiple parcels, and one unit could be built on each parcel, but then the occupants would be living very close to the school buildings, which provides no privacy for any household that would be living there. It is much more desirable to build housing units on the vacant land south of school tennis courts as this provides space and privacy to households living there.

The Lopez Island School District has had great difficulty attracting new staff because of the lack of rental housing on Lopez. Talented individuals are offered positions, but then turn them down when they are unable to find housing. Some staff currently have rentals that require them moving out from mid-June through the end of August when the properties become vacation rentals. Some staff such as paraprofessionals do not work full-time and have lower wages. Rental prices have skyrocketed on Lopez, so they spend more than 33% of their income on housing, sometimes living in substandard housing with no indoor plumbing and bathroom.

The Lopez Island School District is the largest employer on Lopez, and a source of stability, and is a vital resource for the entire community providing education for the children who live here. Creating more affordable housing is vital to maintain school operations.

The Lopez Island School District requests that this be considered on the 2019 docket as housing needs have reached a crisis level, so there is a sense of urgency to develop housing as soon as possible.

4. How is the proposed amendment consistent with the Growth Management Act (RCW 36.70A), Comprehensive Plan and development regulations?

The Lopez Island School district believe this proposed amendment is consistent with the Growth Management Act in that these changes continue to recognize the importance of rural lands and rural character to Washington's economy, its people, and its environment, while respecting regional differences. Rural lands and rural-based economies enhance the economic desirability of the state, help to preserve traditional economic activities, and contribute to the state's overall quality of life.

The Lopez Island School District is essential to Lopez's rural economy, preserving other economic activities on the island as school staff, and the families whose children go to the school are vital to the Lopez economy, and promote the overall quality of life on Lopez and therefore the state.

The legislature also finds that to retain and enhance the job base in rural areas, rural counties must have flexibility to create opportunities for business development. Further, the legislature finds that rural counties must have the flexibility to retain existing businesses and allow them to expand. The legislature recognizes that not all business developments in rural counties require an urban level of services; and that many businesses in rural areas fit within the definition of rural character identified by the local planning unit.

The Lopez Island School District needs affordable housing to retain and enhance the jobs in our rural area, and must have this flexibility to create opportunities for housing for their business development. This is essential to maintaining the largest employer on Lopez Island, allowing it to continue providing a high quality of education for the children who reside on the island.

Finally, the legislature finds that in defining its rural element under RCW 36.70A(5), a county should foster land use patterns and develop a local vision of rural character that will: Help preserve rural-based economies and traditional rural lifestyles; encourage the economic prosperity of rural residents; foster opportunities for small-scale, rural-based employment and self-employment; permit the operation of rural-based agricultural, commercial, recreational, and tourist businesses that are consistent with existing and

planned land use patterns; be compatible with the use of the land by wildlife and for fish and wildlife habitat; foster the private stewardship of the land and preservation of open space; and enhance the rural sense of community and quality of life.

The Lopez Island School District believes that this amendment will help preserve an important aspect of our rural based economy, while maintaining traditional rural lifestyles, encourages the economic prosperity of Lopez rural residents, fosters the private stewardship of land and enhances the rural sense of community and quality of life.

The Lopez Island School District believes the proposed amendment is consistent with goals of the Comprehensive Plan and development regulations for similar areas such as the UGA, Village Center and Rural Clusters to promote the development of affordable rental housing that maintain the community character, including rural aspects.

5. Does this proposal impact an Urban Growth Area (UGA)? Lopez Village, Eastsound and the Town of Friday Harbor are the only UGAs in the County.

Yes, indicate UGA \_\_\_\_\_

**No**

This proposed change does not impact the UGA or Lopez Village. Currently, there is limited availability of land for affordable rental housing in both of these locations.

6. Does this proposal increase population or employment capacity?

This proposal assists the Lopez Island School District with their employment capacity, allowing them to hire and retain the talented staff needed to operate the school. The proposal helps assure that their employees have safe, secure affordable housing options, something we need to assure for all of our Lopez community members, and particularly our school staff.



## SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

135 Rhone Street, PO Box 947, Friday Harbor, WA 98250  
 (360) 378-2354 | (360) 378-2116  
 dcd@sanjuanco.com | www.sanjuanco.com

**FILE NUMBER 19-0006**  
**SAN JUAN COUNTY DOCKET INITIAL REVIEW**

<b>Applicant:</b>	Stephanie O'Day (agent for Don and Marion Gerard))	<b>File No.:</b>	<b>19-0006</b>
<b>Description of Proposal:</b> Allow residential uses in the Orcas Airport Overlay Zone 5. SJCC 18.40.030 (B)(5) Airports and SJCC 18.40.032 (F). Amending these code sections as requested will likely require amending Comprehensive Plan policies for consistency.			
<input checked="" type="checkbox"/>	<b>Comprehensive Plan Text Amendment</b>		
<input checked="" type="checkbox"/>	<b>Development Regulation Amendment</b>		

SEPA Required: YES

**Public Outreach/Notification Requirements:**

<input type="checkbox"/>	300 foot posted notification – for map amendments for five or fewer parcels
<input type="checkbox"/>	300 foot mailed notification and agency notification – this amendment will potentially affect adjacent properties within 300 feet of a proposal
<input checked="" type="checkbox"/>	Subarea or Overlay Wide Notification – this amendment will affect or potentially affect a neighborhood, subarea or multiple properties within an overlay or designation. Number of properties affected: 33
<input type="checkbox"/>	Countywide Notification – this amendment will apply countywide or affect many properties throughout the County

**Recommended Additional Public Outreach:**

<input checked="" type="checkbox"/>	Community Meeting(s)	<input type="checkbox"/>	Area-Wide Mailing	<input type="checkbox"/>	Countywide Mailing	<input checked="" type="checkbox"/>	<b>Publication</b>
<input type="checkbox"/>	Web –page	<input type="checkbox"/>	Press Release	<input checked="" type="checkbox"/>	Public Participation Plan	<input checked="" type="checkbox"/>	<b>Other</b> (reference below*)
<b>*Depending on the scope of the proposed development regulation amendments, additional public notice may be necessary.</b>							

<b>Priority:</b>	
<input type="checkbox"/>	A- Required by law for GMA Compliance or otherwise
<input type="checkbox"/>	B- Items needed to achieve important public policy objectives of a countywide nature
<input checked="" type="checkbox"/>	<i>C- Items that can be considered as part of a larger CP update or subarea planning process</i>
<input type="checkbox"/>	D- Items needed to provide clarity and certainty to the UDC and CP by removing inconsistencies and ambiguities
<input type="checkbox"/>	E- Items of lesser priority to be considered on a future year work program
<input type="checkbox"/>	F - Obsolete, previously resolved or not recommended for further consideration
<b>Scope of Work Necessary to Complete the Amendment:</b>	
<p>Amendment of SJCC 18.40.030 (B)(5) and SJCC 18.40.032 (F) will require the entire process in Attachment B.1. This proposal will also require amending the Comprehensive Plan Land Use Element 2.5.D Policy 3.</p> <p>Additional coordination with the Federal Aviation Administration (FAA), the WA Department of Transportation (WADOT), and the Port of Orcas Island is required by state law. Amending these SJCC section and the Comprehensive Plan will require a public participation plan to ensure that all stakeholder groups are included. This will help ensure proposed amendments to policies and regulations align with applicable state and federal law.</p>	
<b>Changes to the following Comprehensive Plan Goals and Policies:</b>	
Land Use Element 2.5.D Policy 3	
<b>Changes to the following sections of the Unified Development Code:</b>	
SJCC 18.40.030 Airports and SJCC 18.40.032 Specific standards for Orcas Island Airport overlay district	

**Staff Analysis:**

Regulations regarding land uses adjacent to airports will affect a diverse group of stakeholders including property owners, local transportation agencies, state agencies, and the Federal Aviation Administration (FAA). An in-depth public participation program would be required to ensure that any amendments to SJCC 18.40.030, SJCC 18.40.032 and the Comprehensive Plan Land Use Element are satisfactory to all of these stakeholder groups. The public participation component would be in addition to the required process for amending the UDC, included in Attachment B.1. Increased up-front public participation may help reduce the likelihood of an appeal of the amendment and ensure that it is consistent with applicable state and federal regulations.

State law requires decisions regarding airport overlay districts be made in consultation with airport owners (Port of Orcas Island). Additional consultation with the Washington State Department of Transportation (WSDOT) aviation division should be included in the consideration of whether to allow residential uses to be sited in Zone 5 of the airport overlay. Analysis on the air traffic patterns and

historical accident data will also be required to address the safety concerns associated with allowing residential uses adjacent to airports.

State laws (RCW 36.70.547, RCW 36.70A.510 and WAC 365-196-455(2)(c)(i)) require counties to prevent the siting incompatible land uses adjacent to airports. Furthermore, the Orcas Airport Overlay and the prohibitions on siting residential uses adjacent to the airport are part of an existing policy framework to prevent the encroachment of incompatible uses that may hinder the normal operation of air transportation. Potential changes to the Orcas Airport Overlay should be discussed during the Comprehensive Plan Update. Allowing incompatible uses to be sited near the Orcas Airport may be counter to other stated policy goals in the Comprehensive Plan. Further analysis on the relationship between this request and other Comprehensive Plan policy goals will be required.

Staff recommends including this analysis with the update to the Land Use and Transportation elements. Considering this request during the update will allow the changes to the Orcas Airport Overlay regulations to be considered within the larger policy framework of the Comprehensive Plan. This will also allow the required coordination to be included in larger outreach efforts associated with the Comprehensive Plan Update.

Attorney & Counselor at Law  
**Stephanie Johnson O'Day, PLLC**

540 Guard Street, Suite 160  
Post Office Box 2112  
Friday Harbor, WA 98250-2112

**Telephone (360) 378-6278 Fax: (360) 378-5066**

E-Mail: [sjoday@rockisland.com](mailto:sjoday@rockisland.com)

July 6, 2018

Ms. Erika Shook, Director  
Linda Kuller, Deputy Director  
San Juan County Department of Community Development  
PO Box 947  
Friday Harbor, WA 98250

S.J.C. DEPARTMENT OF

JUL 10 2018

COMMUNITY DEVELOPMENT

Re: Gerard Request for Code Amendment  
18.40.030B/18.40.032F

Dear Erika and Linda:

Enclosed please find a completed Application for a Code Amendment Change. This is being submitted at your suggestion as a "place saver" so that it will not be overlooked in the fall with review of the new Comprehensive Plan. This is NOT an application for a map change – it is an application for a code amendment.

My clients, Don and Marion Gerard, own three parcels of land on the north end of Orcas Island, adjacent to the Eastsound Airport. You asked whether there was an application for a docket change. Yes, it was submitted in 2010.

Instead of reiterating all that has transpired, I am enclosing letters to various Administrators, and the Council dating back to 2010. It was in 2009 that the Gerards submitted a proposed map change, which would have eliminated the Airport Overlay Zone 5 from their properties. That request was denied although both the Planning Commission and the Council agreed to put a proposed text amendment on the docket for 2010. You see, anything allowed within their ESR1 designation was prohibited under the Airport Overlay zone and vice versa. With the recently revised Eastsound Subarea Plan, the Gerards can now put a hangar on their property, which allowed their third lot, but a residence is still prohibited.

Take a look at the existing code provisions in this packet. Technically, any residence within Zone 5 is defined as an "airport hazard" and could not be rebuilt if destroyed by fire. This is a problem affecting not only the Gerard properties, but also many others in the vicinity.

The second problem with the existing code is that it gives special treatment to homes in the Grasyvania and Aeroview subdivisions, also in Zone 5. If the County is going to allow residential development in Zone 5, it must be consistent. Prohibiting residential development in Zone 5 or disallowing reconstruction of destroyed homes in Zone 5 will cause more harm than good.

Our proposal, which has evolved over the years, but was vetted recently by Rick Hughes in 2015 involves two simple code amendments. The first redefines "airport hazard" and the second allows residential infill on ESR1 properties within the airport overlay zone.

Along with the completed and signed application, you will find several Polaris maps and the latest deed to the property. Also included are the following documents, which constitute only a portion of the file:

Exhibit A: May 20, 2010 letter to Pete Rose Requesting a Code Amendment

Exhibit B: September 1, 2010 letter to Eastsound Plan Review Committee

Exhibit C: March 9, 2011 letter to Pete Rose and Shireen Hale

Exhibit D: May 5, 2011 letter to Patty Miler and Richard Fralick, Council

Exhibit E: May 21, 2014 letter to Bob Jarman, Rick Hughes, Jamie Stephens

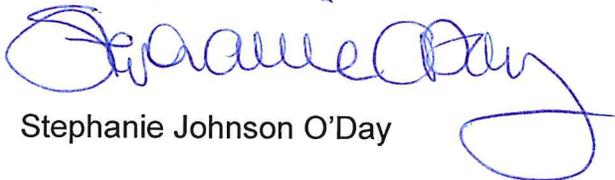
Exhibit F: August 29, 2014 letter to Sam Gibboney

Exhibit G: October 29, 2015 letter to Rick Hughes

Exhibit H: July 27, 2017 letter from Erika Shook to Gerards.

We look forward to moving the Gerard proposal successfully through the County. When you get to this application, I would like the opportunity to meet and discuss.

Very Truly Yours,



Stephanie Johnson O'Day

Cc: Don and Marion Gerard  
Rick Hughes



**SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT**

135 Rhone Street, PO Box 947, Friday Harbor, WA 98250  
 (360) 378-2354 | (360) 378-2116  
 dcd@sanjuanco.com | www.sanjuanco.com

*Code Change Request*

**San Juan County Comprehensive Plan Update 2036**

**~~Comprehensive Plan Map Amendment Request Form~~**

**REQUEST FORM COMPLETED BY:**

Name	<u>Stephanle O'Day</u>	Name	_____
Address	<u>PO Box 2112</u>	Address	_____
City, State, Zip	<u>Friday Harbor</u>	City, State, Zip	<u>WA 98250</u>
Phone Number	<u>3603786278</u>	Phone Number	_____
Email	<u>sjoday@rockisland.com</u>	E-mail	_____

**PROPERTY OWNER INFORMATION:**

Name of Owners	<u>Don and Marion Gerard, Trustees</u>	Phone Number	<u>The Gerard Trust</u>
Address	<u>393 Nina Lane</u>	E-mail	_____
City, State, Zip	<u>Eastsound, WA 98245</u>		

**PROPERTY INFORMATION:**  
 List the Tax Parcel Numbers (TPN) & property information for each property included in the proposal. Attach a separate page if necessary.

Tax Parcel Number:	<u>271124001</u>	Land Use/Shoreline Designation:	<u>ESR1/</u>	Parcel size:	<u>2.84</u>
Tax Parcel Number:	<u>271124015</u>	Land Use/Shoreline Designation:	<u>ESR1/</u>	Parcel size:	<u>.90</u>
Tax Parcel Number:	<u>271124014</u>	Land Use/Shoreline Designation:	<u>ESR1/</u>	Parcel size:	<u>.89</u>
Tax Parcel Number:	_____	Land Use/Shoreline Designation:	____/____	Parcel size:	_____

**PERMIT CERTIFICATION (Must be signed by all property owners of record or a notarized agent signature provided.)**  
 I have examined this application and attachments and know the same to be true and correct, and certify that this application is being made with the full knowledge and consent of all owners of the affected property. (Signed by property owner or agent. For agent signature, notarized authorization must be attached.)

<i>Donald S Gerard</i> Signature	<u>Donald S Gerard</u> Printed Name	<u>7/6/18</u> Date
<i>Marion A. Gerard</i> Signature	<u>MARION A. GERARD</u> Printed Name	<u>7/6/18</u> Date
_____ Signature	_____ Printed Name	_____ Date

**For CD&P Use Only** Complete Application:  YES  NO

**DESCRIPTION OF PROPOSAL:**

**Amend the UDC as follows:**

**#1: Revising the definition of airport hazard in 18.40.030B with one deletion:**

5. *Public Assemblies. Any land use that causes or encourages people to assemble in large numbers, including medium- and high-density residential uses (~~greater than one dwelling unit per acre~~), commercial uses requiring more than 10 parking spaces or an equivalent degree of traffic generation, and campgrounds (having more than three campsites per acre), is prohibited in the approach and transitional zones designated by an airport district overlay.*

**#2: Revise 18.40.032F(2) with one addition:**

*F. Sideline Safety Zone/Airport Development Zone (Zone 5) .....*

1. *New residential development is prohibited except as provided in subsection (F)(2) of this section.*

2a. *Residential Use in the Grasylyvania and Aeroview Subdivisions. Existing and new residential use in the portions of the Grasylyvania and Aeroview subdivisions that are within sideline safety zone (zone 5), solely in the form of aircraft hangar structures which incorporate within them an accessory single-family residential dwelling unit, may be allowed as a conforming use.*

**2b. Eastsound Residential parcels may develop one residential dwelling unit per acre as a conforming use.**

**CHECK ALL THAT APPLY:**

- Redesignation of Land-Use designation,
- Redesignation of Shoreline designation
- Redesignation of maximum allowable residential density
- Other \_\_\_\_\_ **revise UDC for consistency.**

**PROPERTY INFORMATION:**

List the Tax Parcel Numbers (TPN) & property information for each property included in the proposal. Attach a separate page if necessary.

This proposal will affect a number of properties adjacent to the Eastsound Airport in addition to the Gerards.

Tax Parcel Number: \_\_\_\_\_ Land Use/Shoreline Designation: \_\_\_\_\_/\_\_\_\_\_ Proposed Density: \_\_\_\_\_

Tax Parcel Number: \_\_\_\_\_ Land Use/Shoreline Designation: \_\_\_\_\_/\_\_\_\_\_ Proposed Density: \_\_\_\_\_

Tax Parcel Number: \_\_\_\_\_ Land Use/Shoreline Designation: \_\_\_\_\_/\_\_\_\_\_ Proposed Density: \_\_\_\_\_

Tax Parcel Number: \_\_\_\_\_ Land Use/Shoreline Designation: \_\_\_\_\_/\_\_\_\_\_ Proposed Density: \_\_\_\_\_

SAN JUAN COUNTY WASH.  
REAL ESTATE EXCISE TAX  
AMOUNT PAID \$ *q*  
**074279**  
OCT 17 2013



Recorded at the request of:  
STEPHANIE JOHNSON O'DAY

WHEN RECORDED RETURN TO: JAN SEARS *ob*  
COUNTY TREASURER

Law Offices of Stephanie Johnson O'Day  
P. O. Box 2112  
Friday Harbor, WA 98250

DOCUMENT TITLE: QUIT CLAIM DEED

GRANTOR(S): Donald S. Gerard and Marion A. Gerard

GRANTEE(S): Donald S. Gerard, Administrator/Trustee of The Gerard Trust

ABBREVIATED LEGAL DESC: Ptn GL 2 & 3, S11 T37N, R2 WWM, San Juan Co.

ASSESSOR'S TAX PARCEL NUMBER(S): 271124001000

*now 271124015 .90*  
*271124001 2.84*  
*271124014 .89*

QUIT CLAIM DEED

THE GRANTORS, Donald S. Gerard and Marion A. Gerard, husband and wife, for and in consideration of mere change in identity, (WAC 458-61A-211), and for no monetary consideration, quit claim to Donald S. Gerard, Administrator/Trustee of The Gerard Trust dated November 10, 1985, an irrevocable family trust, the real estate situated in the County of San Juan, Washington, which is legally described on the attached Exhibit A.

Dated: October 4, 2013

*Donald S. Gerard*  
DONALD S. GERARD

*Marion A. Gerard*  
MARION A. GERARD

STATE OF WASHINGTON )  
County of San Juan ) ss.

I certify that I know or have satisfactory evidence that Donald S. Gerard and Marion A. Gerard, husband and wife, are the persons who appeared before me and signed this Agreement, acknowledging it to be their free and voluntary act for the uses and purposes mentioned in the instrument.



*Stephanie Johnson O'Day*  
Notary Public in and for the State  
of WA, residing at *Friday Harbor, WA*  
My commission Expires: *11/21/16*

EXHIBIT "A"

That portion of Government Lot 2 and Government Lot 3 of Section 11, Township 37 North, Range 2 West, W.M., described as follows:

COMMENCING at the Northeast corner of the Dave Church Short Plat, according to the Short Plat thereof recorded in Volume 1 of Short Plats at pages 3 and 3A, records of San Juan County, Washington; thence easterly on the eastern projection of the North line of said Dave Church Short Plat a distance of 40.19 feet to a line that lies forty feet easterly of the East line of said Dave Church Short Plat, being the Point of Beginning; thence returning, westerly on said eastern projection of the North line a distance of 40.19 feet to the Northeast corner of said Dave Church Short Plat; thence Westerly along the North line of said Dave Church Short Plat to the Northwest corner thereof; thence continue westerly on the western projection of the North line to the West line of said Government Lot 3; thence northerly along the West line of Government Lot 3 to the Westerly projection of the South line of the Edwin Lavender Short Plat, according to the Short Plat thereof recorded in Volume 2 of Short Plats at pages 11 and 11A, records of San Juan County, Washington; thence easterly on the westerly projection of said South line to the Southwest corner of said Edwin Lavender Short Plat; thence Easterly along the South line of said Edwin Lavender Short Plat to the Southeast corner thereof; thence northerly along the East line of said Edwin Lavender Short Plat a distance of 548.80 feet to the point of intersection with an existing fence, also shown as the Northwest corner of Lot 1 as shown on that certain survey recorded in Book 2 of Surveys at page 142, 142A and 142B; thence along said fence and the North line of said Lot 1 South  $83^{\circ}05'05''$  East, a distance of 82.76 feet; thence North  $67^{\circ}46'48''$  East, a distance of 37.48 feet; thence North  $56^{\circ}00'00''$  East, a distance of 88.40 feet, hereinafter referred to as line segment "A-B", to a point on the southern boundary of the parcel described in Auditor's File No. 98310; thence along the South boundaries of those parcels described in Auditor's File Nos. 98310 and 81360; records of said County, South  $89^{\circ}49'41''$  East, a distance of 309.65 feet to the Southeast corner of said Parcel No. 81360; thence continue South  $89^{\circ}49'41''$  East, a distance of 300.00 feet to the Southeast corner of the parcel described in Auditor's File No. 109284; thence northerly along the East line of said parcel described in Auditor's File No. 109284 a distance of 433.65 feet to a  $5/8''$  rebar and cap #24222 marking said East line as shown on that certain Record of Survey filed in Book 18 at pages 172, 172A and 172B; thence continue northerly along the East line of said parcel described in Auditor's File No. 109284, a distance of 62.11 feet more or less to the line of ordinary high tide; thence easterly along the line of ordinary high tide 150 feet more or less to the East line of Parcel "X" of Superior Court Case #3108 as shown on said survey filed in Book 18 at pages 172, 172A and 172B; thence southerly along the East line of said Parcel "X" of Superior Court Case #3108, 55.31 feet more or less to a  $5/8''$  rebar and cap #24222; thence continue southerly along the East line of said Parcel "X" of Superior Court Case #3108 a distance of 192.60 feet to a  $5/8''$  rebar and cap #24222 marking the Southeast corner of said Parcel "X" of Superior Court Case #3108 and the North line of the Port of Orcas property as shown on the certain Record of Survey filed in Book 18 at pages 131, 131A, 131B, 131C and 131D, records of said County, thence westerly along the North line of the Port of Orcas property a distance of 70.00 feet to a  $5/8''$  rebar and cap #26369 marking the Northwest corner of the Port of Orcas property as shown on said survey filed in Book 18 at pages 131, 131A, 131B, 131C and 131D; thence southerly along the West line of the Port of Orcas property a distance of 298.11 feet more or less to the easterly projection of a line lying forty feet southerly of, and parallel with, when measured perpendicular to the South line of said parcel described in Auditor's File No. 109284; thence North  $89^{\circ}49'41''$  West, parallel with and forty feet South of the South line of said Parcels 109284 and 81360 and 98310 and their easterly projection thereof; to a line that is southeasterly of, measured forty feet perpendicular from, and lying parallel to, aforementioned line segment "A-B"; thence South  $56^{\circ}00'00''$  West parallel with and forty feet southeasterly of aforementioned line segment "A-B" to a line that lies forty feet easterly of the East line of said Edwin Lavender Short Plat; thence southerly to the Northwest corner of said parcel described in Auditor's File No. 74067 which is marked by a Rehm and Condon iron pipe as shown on said survey filed in Book 18 at pages 172, 172A and 172B; thence Southerly along the West line of said parcel described in Auditor's File No. 74067 a distance of 147.58 feet to the southwest corner thereof, which is marked by a Rehm and Condon coin in a tree root; thence westerly to the Point of Beginning. AND

**EXHIBIT "A"**

EXCEPT any portion lying within county road (Blanchard Road).

EXCEPT that portion lying northerly of the easterly projection of the South line of said parcel described in said Auditor's File No. 109284.

ALSO that portion of said Government Lot 3, described as follows:

Commencing at a point which is North 2840.35 feet and West 800.15 feet of the South Quarter corner of said Section 11, which point is at the southeast corner of that certain parcel described in Auditor's File No. 50189, records of said county, thence along the East boundary of said parcel North 0°03'50" East 603.22 feet to a point marked by a one-inch iron pipe; thence East 500 feet to the Point of Beginning; thence continuing East, 300 feet; thence North 0°03'50" East to the North boundary of said Government Lot 3; thence Westerly along said North boundary of Government Lot 3, to a point thereon North 0°03'50" East of the Point of Beginning; thence South 0°03'50" West to the Point of Beginning.

EXCEPTING THEREFROM that portion of Government Lot 3, Section 11, Township 37 North, Range 2, West, W.M., more particularly described as follows:

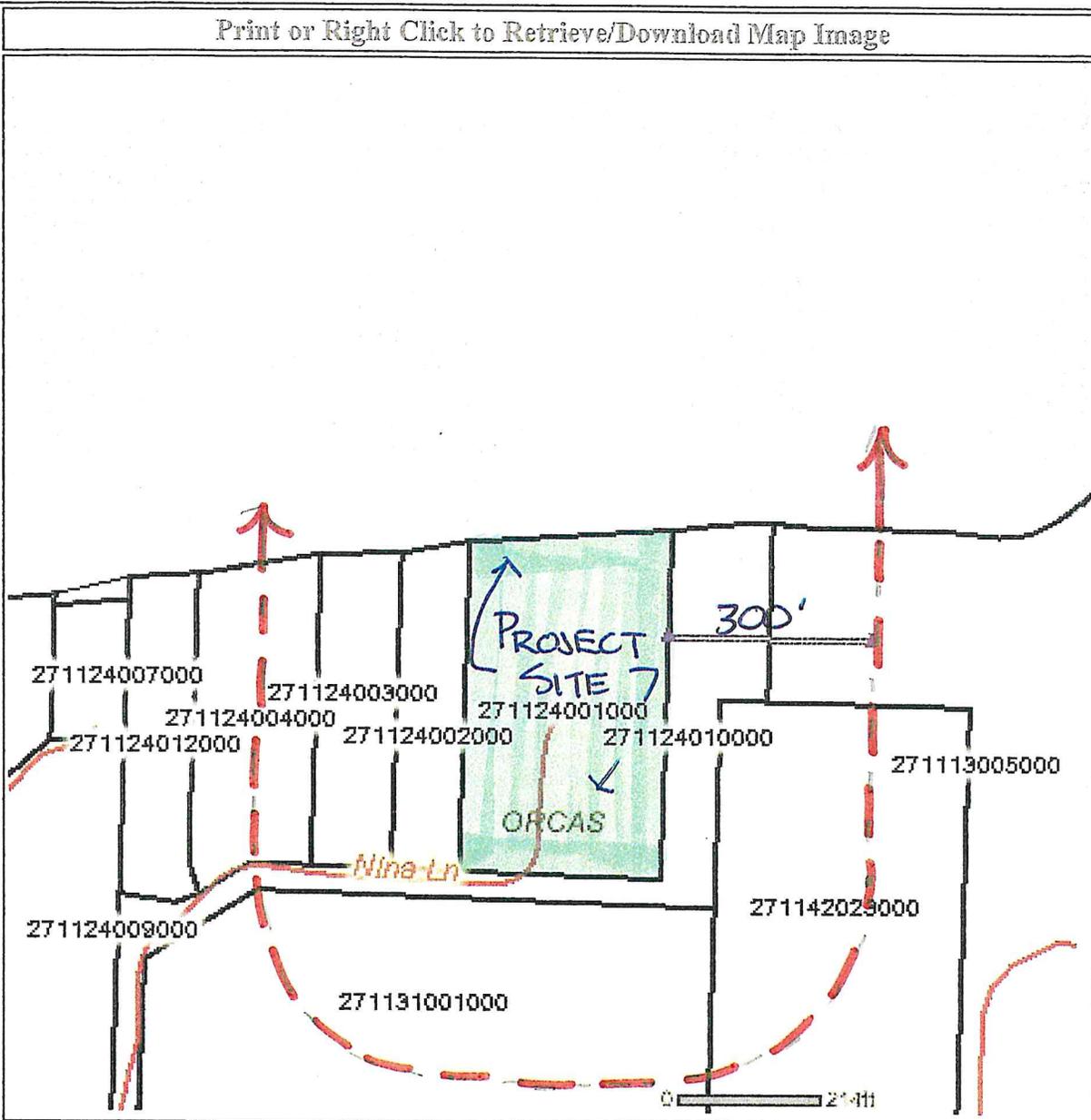
Commencing at a point which is North 2840.35 feet and West 800.15 feet of the South Quarter corner of said Section 11, which point is at the southeast corner of that certain parcel described in Auditor's File No. 50189, records of said county; thence along the East boundary of said parcel North 0°03'50" East, 603.22 feet to a point marked by a one-inch iron pipe; thence East 700 feet to a point hereinafter referred to as Point "X", thence continuing East 100 feet to the Point of Beginning; thence North 0°03'50" East to the North boundary of said Government Lot 3; thence Westerly along said North boundary of Government Lot 3, to a line that bears North 0°03'50" East, of Aforementioned Point "X"; thence South 0°03'50" East to a line that bears North 63°16'32" West from the Point of Beginning; thence South 63°16'32" East, 111.9 feet to the Point of Beginning.

Situate in San Juan County, Washington.

## **Public Notice Mailing List**

- TPN 271124001– Project Site: Donald S. Gerard  
393 Nina Lane  
Eastsound, WA 98245
- TPN 271124004: Frances M. Ellis; ET AL  
6712 Fauntleroy Way SW  
Seattle, WA 98136
- TPN 271124003: C. Ben Caley  
3643 Woodland Park N  
Seattle, WA 98103
- TPN 271124002: Kenneth & Laurel Wrye  
630 First Avenue Apt. 33D  
New York, NY 10016
- TPN 271124010: Eastsound Water Users Association  
P.O. Box 115  
Eastsound, WA 98245
- TPN 271113005: Marlo, Inc  
P.O. Box 1086  
Eastsound, WA 98245-1086
- TPN 271142023: Port of Orcas  
P.O. Box 53  
Eastsound, WA 98245
- TPN 271131001: Lantec, Inc  
605 Stitch Road  
Lake Stevens, WA 98258

Print or Right Click to Retrieve/Download Map Image



Neither San Juan County nor the Assessor warrants the accuracy, reliability or timeliness of any information provided. Any person or entity who relies on information obtained from this real property query does so at his or her own risk.

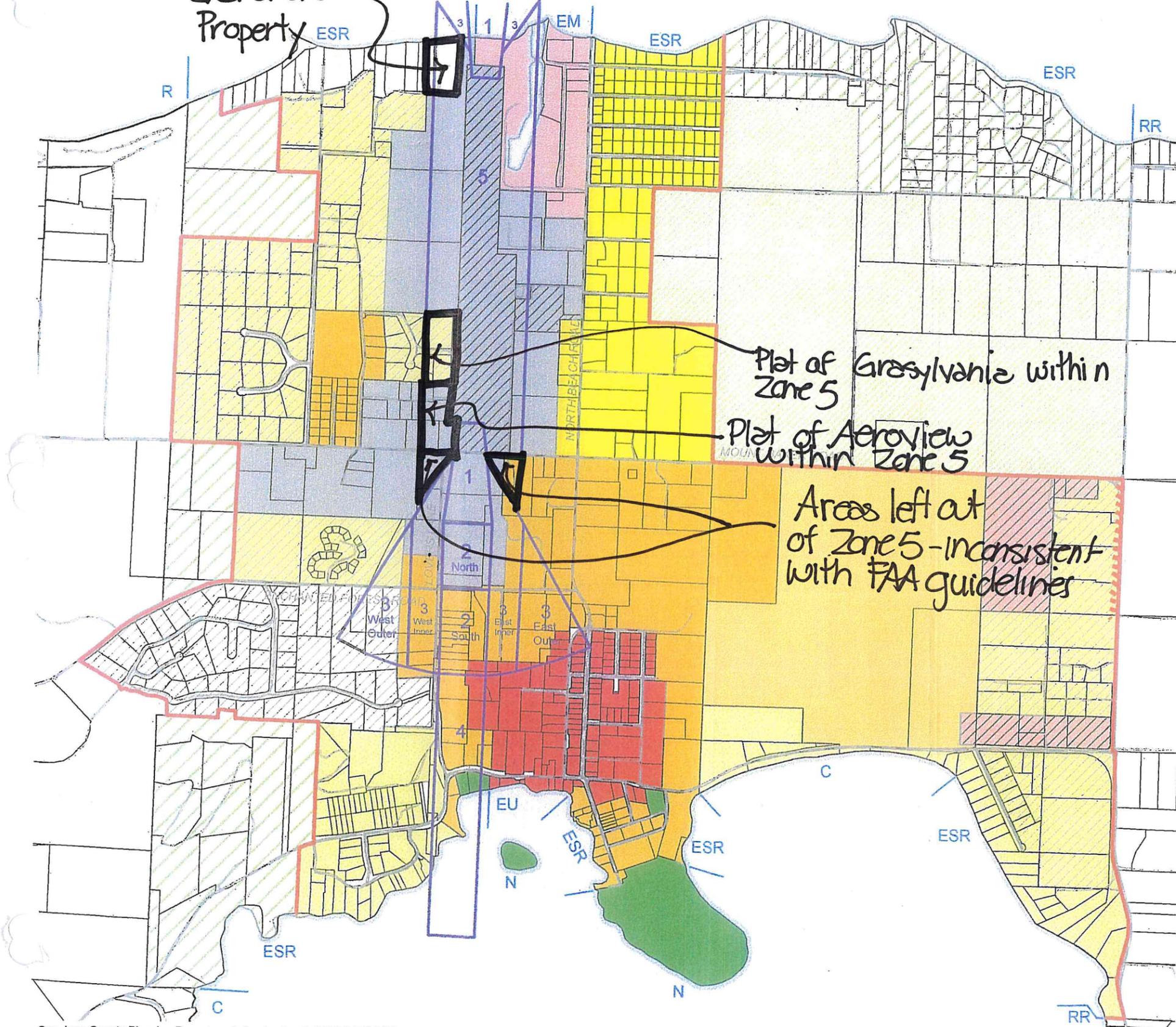
Gerard Orcas Island Airport Overlay Re-designation; File No. 09RED002  
TPN 271124001, 393 Nina Lane

### Public Notice Map

# Eastsound Subarea Plan

SAN JUAN COUNTY, WASHINGTON

Gerard's Property



In the Subarea Plan, "Eastsound" refers to the entire planning area, while "the Village" means the commercial center, or Village Commercial District.

### Subarea Plan Designation

- Urban Growth Area Boundary
- Eastsound Residential 1/acre (max. 1 unit / acre)
- Eastsound Residential 1/acre P\*
- Eastsound Residential 2/acre
- Eastsound Residential 2/acre P\*
- Eastsound Residential 4/acre P\*
- Eastsound Residential 4-12/acre (min. 4 - max. 12 units / acre; see SJCC 16.55.240)
- Village Residential (min. 4 - max. 12 units / acre)
- Village Commercial (min. 4 - max. 40 units / acre)
- Marina (max. 6-8 units / acre)\*
- Service Park (residential use allowed only as accessory to commercial, institutional or industrial use)
- Service and Light Industrial (residential use allowed only as accessory to commercial, institutional or industrial use)
- Eastsound Airport District (no residential development is allowed)
- Natural (max. 1 unit / parcel)
- 50-foot buffer area for properties adjoining Forest Resource land. (See SJCC 16.55.240 for conditions.)
- Eastsound Rural Residential (max. 1 unit / 5 acres)
- Eastsound Rural (max. 1 unit / 5 acres)

\* In compliance with GMA requirements, site planning and review is required to ensure that the development will not preclude a density of at least 4 units per acre.

### Shoreline Master Program Designation

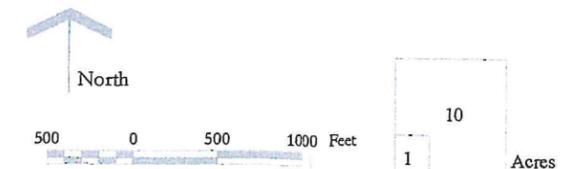
- EU** Eastsound Urban
- EM** Eastsound Marina
- ESR** Eastsound Residential
- C** Eastsound Conservancy
- N** Eastsound Natural

The Shoreline Management Act and Shoreline Master Program apply to all shorelines 200 feet landward of the ordinary high water mark, and everything seaward of that line. Below the line of extreme low tide, the Aquatic designation applies. All small islands, rocks, and reefs whose designations are not shown on this map are designated Conservancy if in private ownership, or Natural if they are in public ownership.

### 1-5 Aircraft Accident Safety Zones

(see also Federal Aviation Administration (FAA) Airspace Zones)

As adopted September 9, 2003.



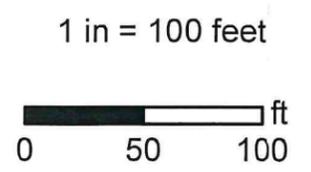


393 Nina Ln.

Airport

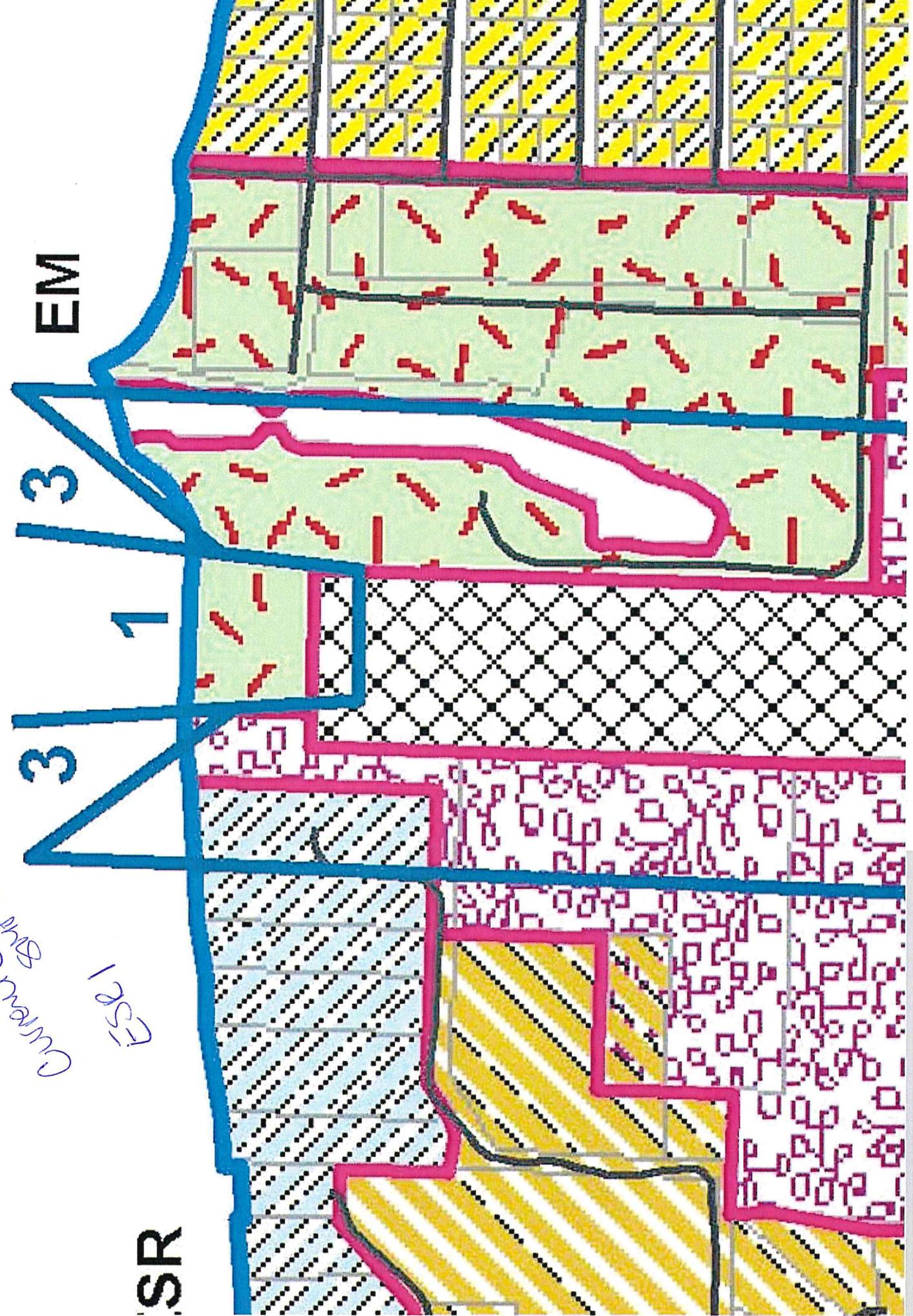


This map is derived from San Juan County's Geographic Information System (GIS). It is intended for reference only and is not guaranteed to survey accuracy. The information represented on this map is subject to change without notice.



### Gerard Properties

*Current eastward  
strip + drainage*



Esc 1

SR

EM

3

1

3



*Aeroview Sub*  
*zone 5*

**Aeroview**



1:1200

This data has been compiled for San Juan County. Various official and unofficial sources were used to gather this information. Every effort was made to ensure the accuracy of this data, however, no guarantee is given or implied as to the accuracy of said data.





1:1200

### Grasylvania

This data has been compiled for San Juan County. Various official and unofficial sources were used to gather this information. Every effort was made to ensure the accuracy of this data, however, no guarantee is given or implied as to the accuracy of said data.



EXHIBIT *[Signature]*

Law Offices Of  
**STEPHANIE JOHNSON O'DAY, PLLC**

540 Guard Street, Suite 160  
Post Office Box 2112  
Friday Harbor, Washington 98250-2112

Telephone: (360) 378-6278 Fax: (360) 378-5066  
E-Mail: sjoday@rockisland.com

Francine Shaw, Land Use Planner  
fshaw@rockisland.com

May 20, 2010

Mr. Pete Rose, Administrator  
San Juan County Administrative Services  
350 Court Street #5  
Friday Harbor, WA 98250

RE: Orcas Island Airport Overlay District Text Amendment

Dear Mr. Rose:

This letter is to request your assistance in placing a proposed text amendment regarding airport hazards and allowable uses in Zone 5 of the Orcas Island Airport Overlay District on the next County Council agenda.

On April 27, 2010 the County Council voted 4-2 to deny Don and Marion Gerard's re-designation application requesting the lifting of Zone 5 of the Orcas Island Airport Overlay District from the north 200 feet of their property located at 393 Nina Lane in Eastsound (File No. 09RED002). During their discussion, the Council unanimously agreed to set agenda time to consider a text amendment so that the Gerard's existing non-conforming residences would no longer be considered an airport hazard and could be maintained, repaired, replaced and modestly enlarged. It has come to our attention that the Council has not yet set any agenda time to consider the text amendment.

Currently, the Gerard's property is so heavily encumbered with development regulations that there simply is no outright allowed use that can be made of the property. The Gerard's have filed a LUPA appeal of the Council's denial of the re-designation. (See enclosure.) The Gerards were encouraged when the Council recognized the need to provide them some relief. Their plan was to hold the appeal in abeyance while they worked through a text amendment with the County.

It is always our goal to work proactively with the Council rather than end up in court suing the County. We believe our proposed text amendment would result in a win-win solution for everyone involved as it would give the Gerards the relief they deserve – the ability to use their land like everyone else. Please notify us when the proposed text amendment is placed on the next available agenda. We look forward to resolving this with problem.

Sincerely,

  
Francine Shaw

Enclosures

Cc. Don and Marion Gerard

EXHIBIT A



San Juan County  
 Department of Community Development and Planning  
 LONG RANGE PLANNING PROJECT TRACKING  
*(The most current or recent date of activity appears on this sheet for any stated event.)*

File Number	Completed Projects	PC Workshop			PC Deliberations			CC			Final CC Deliberations		
		1	2	3	PC Hearing	PC Deliberations	PC Briefing	Workshop	CC 1st Touch	CC 2nd Touch	First CC Hearing	Action	
PCODES-10-0006	Wireless Regs - OPALCO							03/16/12	02/27/12	02/28/12	02/28/12	06/26/12	ADOPTED
PCODES-10-0004	Districts - 18.30 (20 & 40) Amendments							11/19/10	01/31/12	05/22/12	05/22/12	08/28/12	Re-opened
PCODES-10-0004	Districts - 18.30 (20 & 40) Amendments							11/19/10	01/31/12	05/22/12	11/20/12	11/20/12	10/09/12
PCOMPL-11-0003	6 yr TIP										10/30/12	10/30/12	Revision Adopted
PCODES-10-0005	Critical Areas Ordinance Update										11/27/12	12/03/12	Resolution Signed 11/16/12
PCODES-11-0002	Frequently Flooded Areas (18.30.130)								09/20/11	10/18/11	10/18/11	12/03/12	ADOPTED
PCODES-11-0002	Geologically Hazardous Areas (18.30.120 & 130)								09/20/11	10/18/11	10/18/11	12/03/12	ADOPTED
PCODES-11-0003	General Section (18.30.110)								09/20/11	11/08/11	01/24/12	12/03/12	ADOPTED
PCODES-11-0005	Wetlands (18.30.150)								05/07/12	06/04/12	08/21/12	12/03/12	ADOPTED
PCODES-11-0004	FWHCAS (18.30.160)								07/09/12	07/10/12	08/21/12	12/03/12	ADOPTED
PCODES-11-0001	Code Enforcement Ordinance Update								04/08/13	04/23/13	05/07/13	05/07/13	ADOPTED
PCODES-10-0005	CAO Update - GMHB Decision and Discussion by PI								09/19/13				
PCOMPL-11-0002	CP - Transportation Element & Appendix								06/17/13	10/14/13	11/05/13	11/05/13	ADOPTED

Removed from Current Projects List

Upland Essential Public Facilities II

OS - General Amendments (Public Access)

18.4 Performance and Use-specific Stds

CP - Capital Facilities - Element & Appendix

18.60 - Development Stds - Part 1 (RR Clusters)

18.80 - Permitting Process

18.70 - Land Division Standards

18.20 - Stand Alone Amendments to Definitions

CP - FH UGA Phase II Expansion - Appendices 2 & 3

7-yr Update - Comp Plan & UDC

Law Offices Of  
**STEPHANIE JOHNSON O'DAY, PLLC**

540 Guard Street, Suite 160  
Post Office Box 2112  
Friday Harbor, Washington 98250-2112

Telephone: (360) 378-6278 Fax: (360) 378-5066  
E-Mail: [sjoday@rockisland.com](mailto:sjoday@rockisland.com)

May 21, 2014

Bob Jarman, Chair  
Rick Hughes, Vice Chair  
Jamie Stephens, Member  
San Juan County Council  
350 Court St #1  
Friday Harbor, WA 98250

Re: Don and Marion Gerard Property  
Orcas Island/Request for Docket/Code Amendment  
SJCC 18.40

Dear Council Members:

My clients, Don and Marion Gerard, own two homes and three separate parcels of land abutting the northwest side of the Orcas Airport. Their properties are designated ER1 (Eastsound Residential 1 acre per unit), but also lie within Zone 5 of the only Airport Overlay zone in San Juan County. Residential development is prohibited in Zone 5 – except, for some reason which remains unclear, that special code provisions were made to allow residential use in the Aeroview and Grasyvania subdivisions. To make matters worse, SJCC 18.40.030B defines a residence on less than two acres to be an airport hazard – so if one of the Gerard's houses was to burn down it could not be rebuilt under the terms of 18.40.310I. The Gerards have been on a quest, since 2009, to obtain some relief from the numerous code provisions which burden their property.

In 2010, the Gerards submitted proposed code amendments to level the playing field, so to speak. Here is a synopsis of what has happened so far:

4/27/10: Gerard's requested map change to eliminate Zone 5 from their property was denied. The Council at the time, following the same sentiments expressed by the Planning Commission, unanimously agreed to set agenda time to consider a text amendment so that Gerard's existing residences could be maintained. This never happened.

5/20/10: Letter to Pete Rose requesting assistance in placing the Gerard's proposed text amendments to SJCC 18.40 regarding airport hazards and allowable uses on the next County Council agenda. This never happened.

9/1/10: Letter to EPRC asking, at the suggestion of Randy Gaylord (to move things along), for review of the Gerard's proposed text amendments. Francine Shaw made a presentation to the EPRC.

11/12/10: Letter to Port of Orcas, asking to meet with the Port of Orcas to review the proposed text amendments. No meeting occurred.

12/20/10: EPRC chair Gulliver Rankin writes that the Senior Planner advised them the code amendment changes were not likely to be on the 2011 docket.

3/9/11: Letter to Pete Rose and Shireene Hale delineating the Gerard's proposed code amendments and asking the County to take action now to assist them with re-establishing viable use of their property.

4/12/11: Email from Shireene Hale affirming that she had read the proposed code amendments, the PC and Council support changing the code to allow the Gerards to maintain and replace their homes, but stating that she would have to discuss the changes with Council, who was focusing on the CAO.

5/5/11: Memorandum to County Council regarding proposed Code Amendments by Gerard.

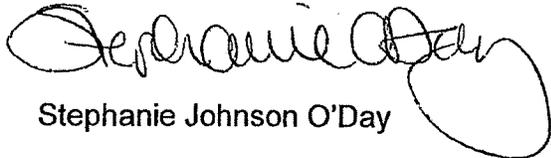
I do realize how busy staff has been with the CAO. But the Gerards requested relief and a review of their proposal over four years ago! The request has now been removed from the current projects list for Planning. (see attached).

The inequities of 18.40.030 are patently unfair to the Gerards. The problems with the current language of the nonconforming use section of 18.40 regarding "airport hazards" does not simply affect the Gerard, but others as well. Technically, the code prohibits any residential unit on lots less than two acres in size within 300 feet of the runway. And technically, if a lot has a residential unit in this area, and it is destroyed, it cannot be rebuilt. There are many homes in Aeroview and Grasyvania to the west of the Orcas airport, as well as residences on small properties to the east of the airport that are negatively affected by these code provisions.

Don and Marion Gerard, and their agents have worked tirelessly over the years to get some relief. What must we do to get this on the docket? I respectfully request that this issue be placed on the agenda, and that we be invited to a council meeting to provide a short power point outlining our request. The code provisions make no sense and must be revised.

In the interest of brevity, I have included face pages of many of our letters, and am happy to provide the complete documents at your request. We look forward to hearing from you.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Stephanie Johnson O'Day". The signature is fluid and cursive, with a large loop at the end.

Stephanie Johnson O'Day

Cc: Don and Marion Gerard

Attorney & Counselor at Law  
**Stephanie Johnson O'Day, PLLC**

540 Guard Street, Suite 160  
Post Office Box 2112  
Friday Harbor, WA 98250-2112

Telephone (360) 378-6278 Fax: (360) 378-5066  
E-Mail: sjoday@rockisland.com

September 1, 2010

Eastsound Plan Review Committee  
P.O. Box 1624  
Eastsound, WA 98245

Re: Don and Marion Gerard's Proposed Airport Overlay Zone Text Amendment

Dear EPRC Members:

In November 2009, Don and Marion Gerard submitted an application to San Juan County requesting the lifting of Zone 5 of the Orcas Island airport overlay district from approximately the north one-third of their three acre property located at 393 Nina Lane in the Eastsound UGA. The Gerards requested the amendment so that they could build one more residence on their property under the existing Eastsound One Unit/Acre zoning. The residence would be used by their immediately family and would be eventually gifted to one of their children upon their passing. On April 27, 2010 the San Juan County Council signed Ordinance 21-2010 denying the Gerard's request.

The Gerards have owned their property for 40 years. The property is encumbered by so many layers of regulations that without some relief it will be difficult to find a use for their land in the years to come. Those regulations include provisions of the Eastsound subarea plan, the existing Critical Areas Ordinance (which regulates use and setbacks from their wetland), and the shoreline code. The crowning glory of regulations is the imposition of the Orcas Island Airport Overlay District, which prohibits not only residential development on their land, but also the repair and maintenance of their two existing homes. If one of their houses were to burn down today, the County Code would not allowed it to be rebuilt. Isn't it interesting that the land is zoned "residential" but residential use is prohibited in Zone 5 of the airport overlay district, and that it is located in an airport district but airport related uses are prohibited under the Eastsound residential zoning?

The dilemma is what to do about this. The west 250' of the 1000' wide zone 5 airport overlay zone encumbers the Gerard property. It is unfair that the Gerard property has become nearly useless due to these impositions of the various layers

EXHIBIT B

of regulations. I have researched the County Code and it appears that the Gerard property is the only property zoned residential in the entire county on which residential development is prohibited. When the Orcas Island Airport Overlay District was adopted in 2003, the owners of the Grasylyvania and Aeroview subdivisions received special dispensation and are allowed to build residences on their Zone 5 properties. The Gerards did not.

When the Gerards offered the county a number of different alternatives to solve the problem, the county staff, planning commission and County Council still recommended denial of the proposal. How can it be that the Gerards are treated differently than those property owners in Grasylyvania and Aeroview or other properties in San Juan County who are impacted by airport overlay zones? It defies logic that it is safer to build a home in Grasylyvania than it would be on the Gerard property, when both are located in Zone 5?

Ask yourself what the purpose of the airport overlay zone is. At first glance you may say it is a safety zone. But the WSDOT statistics say that the likelihood an accident may occur on a one-acre lot in Zone 5 is only .15 every one hundred years. Why are residences allowed in Zones 2, 3 and 4? Take a look at the attached map showing the airport overlay zone on the Gerard property. Is Zone 3, which bisects the northeast corner of the Gerard property, suddenly a safer place than the Zone 5 land? Of course not, but ~~four dwelling units per-acre are allowed~~ in Zone 3. May I suggest that in reality the purpose of these zones is to push residential development away from airports so property owners do not complaint about airport noise.

San Juan County is not being consistent. The only airport in San Juan County that includes airport overlay zones is Eastsound. That's right. Neither Friday Harbor nor Roche Harbor nor Lopez includes airport overlay zones which deny the development of residences adjacent to the runways. (Take a look around when you take off from one of our county airports, and notice all the residences near the airstrips.) The only residential property encumbered by a layer of regulation prohibiting an additional home on their residentially zoned property in San Juan County is owned by Don and Marion Gerard. Why the difference?

Don and Marion Gerard have three children, to whom they want to leave their land. They don't want to move. ~~They don't want to sell the land that they have lived on~~ for over 40 years and have raised their children. They don't want to buy another parcel. They want to divide their land into three pieces and devise them to their three children. They are not willing to accept the fact that county regulations preclude their dreams. The Gerards expect to be treated fairly and no differently than the owners of other residential properties lying with 500 feet of an airport. We are turning to you for help.

There is another way, other than lifting Zone 5, to deal with this problem – a code text amendment. During our hearings on the requested lifting of Zone 5, the

Planning Commission (members who were effectively split on this project) noticed that the San Juan County Code defines the two existing Gerard residences as being "airport hazards", and that under the strict terms of the code, the Gerards will eventually lose their right to reconstruct their existing homes.

The Planning Commission realized that this was unfair to the Gerards and recommended that the County Code be changed to allow for maintenance, repair and expansion of up to 25% of legal non-conforming structures located in Zone 5 of the Airport Overlay District. This request makes sense, and it would allow Gerards to hold on to what they have now. We have submitted a request to San Juan County requesting they adopt the following text change to the code:

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PROPOSED CODE CHANGES (redlined)

**Performance and Use Standards/AIRPORTS**  
**SJCC 18.40.030**

18.40.030 B. Hazards for Airports. The following standards apply to airports in addition to the standards in subsection (A) of this section:

(5) Public Assemblies. Any land use that causes or encourages people to assemble in large numbers, including new medium and high density residential uses (greater than one dwelling unit per two acres), commercial uses requiring more than 10\ parking spaces or an equivalent degree of traffic generation, and campgrounds (having more than three campsites per acre), is prohibited in the approach and transitional zones designated by an airport district overlay.

**18.40.032 (Specific code provisions for Orcas Island Airport Overlay District):**

(F). Sideline Safety Zone/Airport Development Zone (Zone 5). Zone 5 is the area that is immediately adjacent to the airport and runway area. The standard area begins at the primary surface, extending out 500 feet from the extended runway centerline and connecting at its ends to the inner turning zone (zone 3). For Orcas Island airport, the southerly boundary extends only as far as the northern boundary of the Mt. Baker Road right of way, and extends along that line to intersect with the boundary of zone 1. In the northeast, the boundary of zone 5 extends north as described until it meets the center of the marina district waterway. From there it is extended north along the centerline of the marina district waterway and then north to intersect with the boundary of zone 3.

1. New residential development is prohibited except as provided in subsection (F) (2) of this section.

2. (a) Residential Use in the Grasylyvania and Aeroview Subdivisions. Existing and new residential use in the portions of the Grasylyvania and Aeroview subdivisions that are within sideline safety zone (zone 5), solely in the form of aircraft hangar structures which incorporate within them an accessory single family residential dwelling unit, may be allowed as a conforming use.

(b) Residential Use in the Gerard Shores subdivision: Existing residential use in the portion of the Gerard Shores subdivision that is within sideline safety zone (zone 5), may be allowed as a conforming use. New residential use, solely in the form of an accessory single family residential dwelling unit, may be allowed as a conforming use.

18.40.032F 6. No increase to the height of nonconforming uses of structures shall be permitted. Nonconforming uses may not be expanded beyond currently permitted size and uses, except that residential structures may be reconstructed or expanded by up to 25%.

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Don and Marion Gerard appreciate your willingness to assist them with their dilemma. The Planning Commission as well as the County Council was split on their decision regarding the lifting of the Zone 5 airport overlay district on a portion of the Gerard property. The proposed text amendments are to be reviewed by the planning commission and County Council later this year.

I can tell you with all honesty that the Gerards have not and will not give up on this. They have filed an appeal with Superior Court of the county's denial to lift Zone 5 from their property. They had no choice. Regulating a property to a point where it cannot be used for anything is not acceptable. If the county wants to regulate this property to the point of where it cannot be used for anything, then they should buy it. I thank you in advance for your assistance to the Gerards.

Very truly yours,

Francine Shaw

Cc: Don and Marion Gerard

Law Offices Of  
**STEPHANIE JOHNSON O'DAY, PLLC**

540 Guard Street, Suite 160  
Post Office Box 2112  
Friday Harbor, Washington 98250-2112

Telephone: (360) 378-6278 Fax: (360) 378-5066  
E-Mail: sjoday@rockisland.com

Francine Shaw, Land Use Planner  
fshaw@rockisland.com

**COPY**

March 9, 2011

Mr. Pete Rose, Administrator  
San Juan County Administration Office  
350 Court Street #5  
Friday Harbor, WA 98250

Ms. Shireene Hale  
Community Development & Planning  
P.O. Box 947  
Friday Harbor, WA 98250

RE: Revised Proposed Amendment of Zone 5; Orcas Island Airport Overlay District  
Don and Marion Gerard, 393 Nina Lane, Eastsound; Orcas Island

Dear Mr. Rose and Ms. Hale:

In January 2011, the Washington State Department of Transportation (WSDOT) released a new manual for assisting local government agencies in developing and amending regulations for the siting of compatible land uses adjacent to general aviation airports. The document titled *Airports and Compatible Land Use Guidebook* replaces their 1999 guidebook which was used by San Juan County to establish the Orcas Island Airport Overlay District and its associated land use regulations. Because the new guidebook approaches land use planning within airport districts differently than the older version, the Gerards would like you to consider this new guidebook when reviewing their revised proposed amendment to Zone 5 of the Orcas Island Airport overlay zone. (See attachment.)

The new 2011 WSDOT manual, unlike its 1999 version, takes into consideration appropriate land use regulations for both urban and rural areas, supports the continued use of non-conforming developments within airport overlays districts and allows for residential infill when properties are located within Urban Growth Areas (UGAs). This new approach has significant implications on the validity of the existing regulations for the Orcas Island Airport found in the San Juan County Code and now provides the support the Gerards did not have in the past to approve of their requested amendments.

***Proposed Amendment***

As you know, the Gerard property is encumbered by many layers of regulations. Without granting the Gerards some regulatory relief it will be difficult to find any viable use for their land in the years to come. The regulations include provisions of the Eastsound Subarea Plan, the existing Critical Areas Ordinance (which regulates use and setbacks from their wetland), and

**EXHIBIT**

the Shoreline Master Program. The crowning glory of regulations is the imposition of the Orcas Island Airport overlay district, which prohibits not only residential development on their land, but also the repair and maintenance of their two existing homes because the homes would not be allowed to be constructed on the property today and the existing density is considered an airport hazard. (See Sections 18.40.030 and 18.40.310(I) SJCC attached.). If one of their houses were to burn down today, the County Code would not allowed it to be rebuilt. Isn't it interesting that the land is zoned "residential" but residential use is prohibited in Zone 5 of the airport overlay district, and that it is located in an airport district but airport related uses are prohibited under the Eastsound residential zoning? The layers of regulation cancel out all reasonable use of their property.

***Proposed Amendment - Revised***

Don and Marion Gerard submitted a request for a text change to the Orcas Island Airport overlay district so that they could make some use of their land in April 2010. Considering the new WSDOT manual the Gerards are proposing a revision to their original amendment as follows.

**PROPOSED CODE CHANGES (redlined)**

**Performance and Use Standards/AIRPORTS  
SJCC 18.40.030**

18.40.030 B. Hazards for Airports. The following standards apply to airports in addition to the standards in subsection (A) of this section:

(5) Public Assemblies. Any land use that causes or encourages people to assemble in large numbers, including new medium and high density residential uses (greater than one dwelling unit per two acres), commercial uses requiring more than 10\ parking spaces or an equivalent degree of traffic generation, and campgrounds (having more than three campsites per acre), is prohibited in the approach and transitional zones designated by an airport district overlay.

**18.40.032 (Specific code provisions for Orcas Island Airport Overlay District):**

(F). Sideline Safety Zone/Airport Development Zone (Zone 5). Zone 5 is the area that is immediately adjacent to the airport and runway area. The standard area begins at the primary surface, extending out 500 feet from the extended runway centerline and connecting at its ends to the inner turning zone (zone 3). For Orcas Island airport, the southerly boundary extends only as far as the northern boundary of the Mt. Baker Road right of way, and extends along that line to intersect with the boundary of zone 1. In the northeast, the boundary of zone 5 extends north as described until it meets the center of the marina district waterway. From there it is extended north along the centerline of the marina district waterway and then north to intersect with the boundary of zone 3.

1. ~~New residential development is prohibited except as provided in subsection (F) (2) of this section.~~ New residential infill development is allowed at densities identified in the Eastsound Subarea Plan only if new non-residential uses are not feasible.

OR

2. (a) Residential Use in the Grasylyvania and Aeroview Subdivisions. Existing and new residential use in the portions of the Grasylyvania and Aeroview subdivisions that are within sideline safety zone (zone 5), solely in the form of aircraft hangar structures which incorporate within them an accessory single family residential dwelling unit, may be allowed as a nonconforming use.

(2.b) Residential Use of TPN 271124001: Existing residential use of TPN 271124001 in the portion that is within sideline safety zone (zone 5), may be allowed as a conforming use. New residential use, solely in the form of an accessory single family residential dwelling unit, may be allowed as a conforming use.

18.40.032F 6. No increase to the height or scale of nonconforming uses or structures shall be permitted. Nonconforming uses may not be expanded beyond currently permitted size and uses, except that residential structures may be reconstructed or expanded by up to 25%.

### ***WSDOT 2011 Manual Supports Proposed Amendment***

Attached is a copy of portions of Appendix F, Compatibility Criteria, and support documentation found in the new WSDOT manual regarding urban development adjacent to airports located within Urban Growth Areas (UGAs). This information is applicable to the proposed Gerard amendment because the Orcas Island Airport, as well as the Gerard property, is located within the Eastound UGA.

Table F-1 of the 2011 WSDOT guidebook provides an extensive list of uses which are identified as prohibited, permitted or limited in Zone 5. In the current 2011 WSDOT manual there are more uses allowed within Zone 5 than in their 1999 manual. (See Appendix -F, the enclosed comparison table and Section 18.40.032(F)§JCC.) It supports infill development within UGAs up to the average of surrounding residential area only if non-residential uses are not feasible.

The new "infill" concept in UGAs supports the Gerard's proposed amendment.

### ***Urban vs. Rural Areas***

The new WSDOT guidebook makes a distinction between urban areas versus rural areas where in the past it didn't. WSDOT concludes that in urban locations land values and other development costs are typically higher than in rural areas. The cost of limiting development to what might, if not for airport compatibility concerns, otherwise be the land's highest and best use is thus typically greater in urban areas. An additional factor to consider is that, in urban areas, there are often fewer options as where land uses can be placed. Less than ideal location choices consequently may be the best choices. Land uses that may not be entirely

compatible with each other may nevertheless be considered acceptable neighbors. People living in urban areas usually consider these risks as reasonable tradeoffs for the benefits these areas provide. For these reasons, a particular use may be acceptable near an airport, but be inappropriate in an identical location near a rural airport.

### ***Infill Development is Encouraged in UGAs***

As noted above, the new WSDOT manual promotes infill development for properties located adjacent to airports that are located in UGAs. The WSDOT manual defines infill development as follows:

*Infill is the practice of developing or redeveloping vacant or underutilized land in the midst of a community, especially land that is surrounded by existing uses similar to the ones proposed. This may mean further subdivisions of existing parcels to accommodate additional growth, redevelopment of under-utilized property to increase its density or intensity, or simply creation of new development on vacant land.*

The manual further states that infill development should be used to maintain or increase the current level of compatibility. WSDOT recognizes that infill is often desirable since it utilizes existing infrastructure and reduces development pressure on other lands within the airport influence area. In many cases, infill development results in higher residential densities or mixed use commercial office development.

The Gerard property is located in an area that is primarily developed with single-family residences. There is adequate land on the Gerard property for additional development. It is under-utilized because the underlying Eastsound Zone allows for one dwelling unit per acre and there are only two residences on this 3+ acre property. The size of the property can support an additional third dwelling unit.

### ***Commercial Use of the Gerard Property is Not Appropriate***

In order to provide the Gerards some relief, the County could choose to revise the code to allow addition commercial use on the Gerard property. However, this would go against the purpose and intent of the Shoreline Management Act and Shoreline Master Program which prefers residential land uses along the shoreline. Furthermore, the property is accessed by Nina Lane which serves residentially developed properties. Commercial development on the Gerard property would draw non-residential traffic through existing neighborhoods and impose traffic and land use impacts that are not compatible with existing residential uses in this area of Eastsound.

### ***Continuation of Non-conforming Uses are Encouraged***

The WSDOT guidebook makes a clear distinction between existing uses vs. proposed uses. It identifies the cost of reducing or limiting airport risks as being greater where development already exists than where land is undeveloped. However, the guidebook also recognizes that removing an incompatible development is greater than the cost of avoiding its construction in

the first place. Therefore, WSDOT concludes that by allowing an existing incompatible use to remain may be considered tolerable.

The new WSDOT manual supports the Gerard's proposed amendment that, if adopted, will recognize their existing residences as conforming uses within Zone 5.

### ***WSDOT Provides a Solution for the Gerard's***

WSDOT gives several scenarios in their 2011 guidebook that communities often face when establishing criteria for siting compatible land uses adjacent to airports. Attached is Scenario 3 which fits the Gerard's situation perfectly.

Scenario 3 focuses on a property that falls inside a UGA and has a historic and extensive residential development pattern with small pockets of undeveloped and redevelopable property, and is zoned residential low. Industrial and commercial properties are located to the south, vacant land to the west, and residential development to the north and east. The site has no topographical or wetland constraints. (The Gerard property encompasses a wetland.)

Given the well established and historic residential development pattern described in Scenario 3, WSDOT recommends that jurisdictions retain the current zoning designation of residential. WSDOT also suggests that since the property described in Scenario 3 is directly within the approach path of the runway that impacts from low-flying aircraft, noise, light, vibration and fumes could be significant. In this case the jurisdiction may look for other opportunities to promote a more compatible and harmonious environment. Mixed use may be the solution (much like that proposed in the Gerard amendment to allow residential use only as an accessory use.) WSDOT further suggests that larger parcels located away from the runway may be appropriate for multifamily or mixed use development where as parcel located adjacent to the runway should be zoned to allow low impact commercial uses.

The Gerard property is located in the Eastsound UGA in an area with a historic and existing residential development to the west. A large vacant parcel zoned Service and Light industrial and medium density residential development consisting of several subdivisions is located to the southwest, and the Orcas Island Airport is located one lot removed to the east. Considering the guidance provided in Scenario 3, it would be appropriate to allow the Gerards to develop their property under the existing One Dwelling Unit/Acre residential zoning assigned to the property under the Eastsound Subarea Plan.

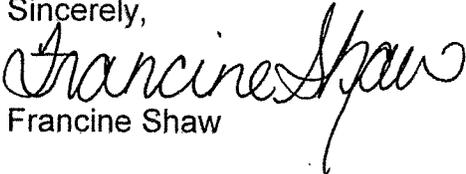
### ***Conclusion***

The Gerard property is encumbered by layers of development regulations that preclude all reasonable use of the land. The County needs to provide the Gerards some relief. Under the recommendations of the current 2011 WSDOT guidebook, the propose code amendment to allow residential use of the Gerard property and/or continued use and maintenance of existing non-conforming residential uses is supportable. In fact, one could go so far as to say the application of the underlying One Dwelling Unit/Acre Eastsound Zoning designation is supportable in Zone 5 of the Orcas Island Airport due to the historic pattern of residential

development along the north shoreline of Eastsound west of the airport and existing residential development to the southwest.

The Gerards request the County take action now and assist them with re-establishing viable use of their property. Allowing residential use of the Gerard property would not create a significant impact to airport operations since their land is already occupied by two single family residence. If you have any questions, please contact me at your earliest convenience by phone at (360) 378-6278 or by email at [fshaw@rockisland.com](mailto:fshaw@rockisland.com).

Sincerely,

  
Francine Shaw

Enclosures

Cc. Don and Marion Gerard

Law Offices Of  
**STEPHANIE JOHNSON O'DAY, PLLC**

540 Guard Street, Suite 160  
Post Office Box 2112  
Friday Harbor, Washington 98250-2112

Telephone: (360) 378-6278 Fax: (360) 378-5066  
E-Mail: sjoday@rockisland.com

**MEMORANDUM**

TO: Patty Miller, San Juan County Council Member  
Richard Fralick; San Juan County Council Member

FROM: Stephanie Johnson O'Day, Attorney   
Francine Shaw, Land Use Planner 

CC: Don and Marion Gerard

DATE: May 5, 2011

RE: 2011 Proposed Amendments to Orcas Island Airport Overlay Zone  
Don and Marion Gerard, 393 Nina Lane, Eastsound

As you know, Don and Marion Gerard own a 3.3 acre waterfront parcel along the north shore of Eastsound that is encumbered by so many layers of conflicting regulations that their land is virtually stripped of all viable land use. The property is regulated by not only the Eastsound Subarea plan, but also the Orcas Island Airport Overlay District, the Shoreline Master Program, and the Critical Areas Ordinance. In 2009, the Gerards submitted a re-designation application to the Community Development and Planning Department to "lift" Zone 5 of the Orcas Island Airport Overlay District from the north 200 feet of their land so that they may re-establish residential use of their residentially zoned property in order to build one additional residence on their property.

On January 15, 2010, the Planning Commission decided to recommend denial of the "lifting" to the County Council but recognized that the Gerards need some relief from Section 18.40.310(I) SJCC, "No Replacement of Non-conforming Uses when Airport Hazard" which currently prohibits the repair and maintenance of the Gerard's two existing residences. The Gerard's residences are considered "non-conforming" because residential development is currently prohibited in Zone 5 of the Orcas Island Airport Overlay District. They are also considered an "airport hazard" because the density of residential development on their property exceeds one dwelling unit per two acres.

On March 30, 2010, the County Council, like the Planning Commission, denied the "lifting" application but also agreed the Gerards should be able to repair and

**EXHIBIT** 

maintain their existing residences. To date no action has been taken by San Juan County to resolve this issue.

Because the Gerard's "lifting" application was denied and their attempt to a divide their property into three lots was also denied, this office has filed two lawsuits against San Juan County so that they may regain some use of their property. These lawsuits are pending. If they are unsuccessful in these lawsuits the Gerards will have no option but to file yet another lawsuit against County for an unconstitutional taking. The Gerards would prefer not to take this route.

The Gerards would like the County to consider their proposed map amendment of the Orcas Island Airport Overlay District so that they can reinstate reasonable use of their land. This as well as the other new amendment proposals identified below are based on the updated Department of Transportation Airports and Compatible Land Use Guidebook which was just released in January 2011. This new manual replaces WSDOT's 1999 guidebook which was used by San Juan County to establish the existing Orcas Island Airport Overlay District and its associated land use regulations. This new guidebook makes the existing airport overlay district obsolete and has significant implications on the validity of the existing regulations for the Orcas Island Airport found in the San Juan County Code. The good news is that the 2011 WSDOT guidebook now provides the Gerards the support did not have in the past to approve their requested amendments.

### ***2011 WSDOT Changes***

Adoption of the 2011 WSDOT manual and overlay district map would provide the regulatory relief the Gerards need:

- a. The developable portion of Zone 5 located on the Gerard property would be replaced with Zones 1 and 3. Zone 3 allows for many land uses that are currently prohibited under Zone 5. Zone 1 is much more restrictive and primarily supports airport related uses.(Please see attached map and Appendix F of the WSDOT 2011 manual).
- b. The concept of infill development on the Gerard property within Zone 3 is supportable because the Gererad property is located in an area characterized by a historic pattern of residential development. Infill development as defined by the WSDOT manual consist of mixed commercial, industrial and residential land uses.
- c. The retention, maintenance and expansion of non-conforming uses is permissible.

### ***2011 Proposed Amendment***

The application of the new 2011 guidelines for siting incompatible land uses adjacent to general aviation airports actually requires a complete overhaul of the existing Orcas Island Airport Overlay District and its associated development

regulations. We believe the Port of Orcas supports the map amendment. In the meantime, the Gerards are also proposing the following code amendments that the County could and should adopt so that the Orcas Island Airport Overlay District more closely resembles the 2011 WSDOT guidelines.

**Performance and Use Standards/AIRPORTS**  
**SJCC 18.40.030**

Section 18.40.030 B. Hazards for Airports. The following standards apply to airports in addition to the standards in subsection (A) of this section:

(5) Public Assemblies. Any land use that causes or encourages people to assemble in large numbers, including new medium and high density residential uses (greater than one dwelling unit per one ~~two~~ acres), commercial uses requiring more than 10\ parking spaces or an equivalent degree of traffic generation, and campgrounds (having more than three campsites per acre), is prohibited in the approach and transitional zones designated by an airport district overlay.

**18.40.032 (Specific code provisions for Orcas Island Airport Overlay District):**

(F). Sideline Safety Zone/Airport Development Zone (Zone 5). Zone 5 is the area that is immediately adjacent to the airport and runway area. The standard area begins at the primary surface, extending out 500 feet from the extended runway centerline and connecting at its ends to the inner turning zone (Zone 3). For Orcas Island Airport, the southerly boundary extends only as far as the northern boundary of the Mt. Baker Road right of way, and extends along that line to intersect with the boundary of zone 1. In the northeast, the boundary of Zone 5 extends north as described until it meets the center of the marina district waterway. From there it is extended north along the centerline of the marina district waterway and then north to intersect with the boundary of zone 3.

~~1. New residential development is prohibited except as provided in subsection (F) (2) of this section.~~ New residential infill development is allowed at densities identified in the Eastsound Subarea Plan only if new non-residential uses are not feasible.

OR

2. (a) Residential Use in the Grasylyvania and Aeroview Subdivisions. Existing and new residential use in the portions of the Grasylyvania and Aeroview subdivisions that are within sideline safety zone (zone 5), solely in the form of aircraft hangar structures which incorporate within them an accessory single family residential dwelling unit, may be allowed as a ~~non~~nonconforming use.

(2.b) Residential Use of TPN 271124001: Existing residential use of TPN 271124001 in the portion that is within sideline safety zone (Zone 5), may be allowed as a conforming use. New residential use, solely in the form of an accessory single family residential dwelling unit, may be allowed as a conforming use.

18.40.032F 6. No increase to the height ~~or scale~~ of nonconforming uses or structures shall be permitted. Nonconforming uses may not be expanded beyond currently permitted size and uses, except that residential structures may be reconstructed or expanded by up to 25%.

### ***Proposed Amendment to Land Division Ordinance***

The Gerards submitted a short plat application to the Community Development and Planning Department in 2008 for the purpose of dividing their property into three lots; two of which would encompass their two existing residences and the third for commercial/industrial uses. The application was denied because the Land Division Ordinance requires that every lot created must show that there is enough land area to construct a single family residence. This seems contrary to the code provisions which allow for commercial and or industrial subdivisions.

In order to resolve this incongruity the Gerard propose the following amendment to Section 18.70.060(B.4) SJCC, Usable Construction Area:

All proposed lots created for the purposes of residential development shall provide a useable area for the construction of a dwelling unit, approved sewage system and an approved water supply.

### ***Conclusion***

The Gerards request the County take action now and assist them with amending the Orcas Island Airport Overlay District. The new 2011 WSDOT manual provides the Gerards the support that the now outdated 1999 manual did not provide when you considered their 2009 amendment to lift Zone 5 from their property. The Gerards would like to work in partnership with the county rather to battle these issues out in court. If you have any questions, please contact us at your earliest convenience.

Law Offices Of  
STEPHANIE JOHNSON O'DAY, PLLC

540 Guard Street, Suite 160  
Post Office Box 2112  
Friday Harbor, Washington 98250-2112

Telephone: (360) 378-6278 Fax: (360) 378-5066  
E-Mail: sjoday@rockisland.com

May 21, 2014

Bob Jarman, Chair  
Rick Hughes, Vice Chair  
Jamie Stephens, Member  
San Juan County Council  
350 Court St #1  
Friday Harbor, WA 98250

*12/8/14 Mike Thomas  
Rick Hughes  
Subarea plan changes*

Re: Don and Marion Gerard Property  
Orcas Island/Request for Docket/Code Amendment  
SJCC 18.40

Dear Council Members:

My clients, Don and Marion Gerard, own two homes and three separate parcels of land abutting the northwest side of the Orcas Airport. Their properties are designated ER1 (Eastsound Residential 1 acre per unit), but also lie within Zone 5 of the only Airport Overlay zone in San Juan County. Residential development is prohibited in Zone 5 – except, for some reason which remains unclear, that special code provisions were made to allow residential use in the Aeroview and Grasyylvania subdivisions. To make matters worse, SJCC 18.40.030B defines a residence on less than two acres to be an airport hazard – so if one of the Gerard's houses was to burn down it could not be rebuilt under the terms of 18.40.310I. The Gerards have been on a quest, since 2009, to obtain some relief from the numerous code provisions which burden their property.

In 2010, the Gerards submitted proposed code amendments to level the playing field, so to speak. Here is a synopsis of what has happened so far:

4/27/10: Gerard's requested map change to eliminate Zone 5 from their property was denied. The Council at the time, following the same sentiments expressed by the Planning Commission, unanimously agreed to set agenda time to consider a text amendment so that Gerard's existing residences could be maintained. This never happened.

EXHIBIT E

5/20/10: Letter to Pete Rose requesting assistance in placing the Gerard's proposed text amendments to SJCC 18.40 regarding airport hazards and allowable uses on the next County Council agenda. This never happened.

9/1/10: Letter to EPRC asking, at the suggestion of Randy Gaylord (to move things along), for review of the Gerard's proposed text amendments. Francine Shaw made a presentation to the EPRC.

11/12/10: Letter to Port of Orcas, asking to meet with the Port of Orcas to review the proposed text amendments. No meeting occurred.

12/20/10: EPRC chair Gulliver Rankin writes that the Senior Planner advised them the code amendment changes were not likely to be on the 2011 docket.

3/9/11: Letter to Pete Rose and Shireene Hale delineating the Gerard's proposed code amendments and asking the County to take action now to assist them with re-establishing viable use of their property.

4/12/11: Email from Shireene Hale affirming that she had read the proposed code amendments, the PC and Council support changing the code to allow the Gerards to maintain and replace their homes, but stating that she would have to discuss the changes with Council, who was focusing on the CAO.

5/5/11: Memorandum to County Council regarding proposed Code Amendments by Gerard.

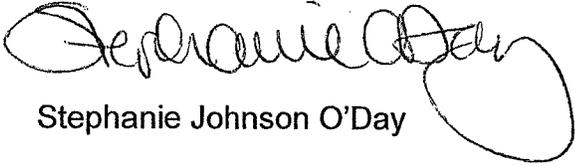
I do realize how busy staff has been with the CAO. But the Gerards requested relief and a review of their proposal over four years ago! The request has now been removed from the current projects list for Planning. (see attached).

The inequities of 18.40.030 are patently unfair to the Gerards. The problems with the current language of the nonconforming use section of 18.40 regarding "airport hazards" does not simply affect the Gerard, but others as well. Technically, the code prohibits any residential unit on lots less than two acres in size within 300 feet of the runway. And technically, if a lot has a residential unit in this area, and it is destroyed, it cannot be rebuilt. There are many homes in Aeroview and Grasyylvania to the west of the Orcas airport, as well as residences on small properties to the east of the airport that are negatively affected by these code provisions.

Don and Marion Gerard, and their agents have worked tirelessly over the years to get some relief. What must we do to get this on the docket? I respectfully request that this issue be placed on the agenda, and that we be invited to a council meeting to provide a short power point outlining our request. The code provisions make no sense and must be revised.

In the interest of brevity, I have included face pages of many of our letters, and am happy to provide the complete documents at your request. We look forward to hearing from you.

Very Truly Yours,

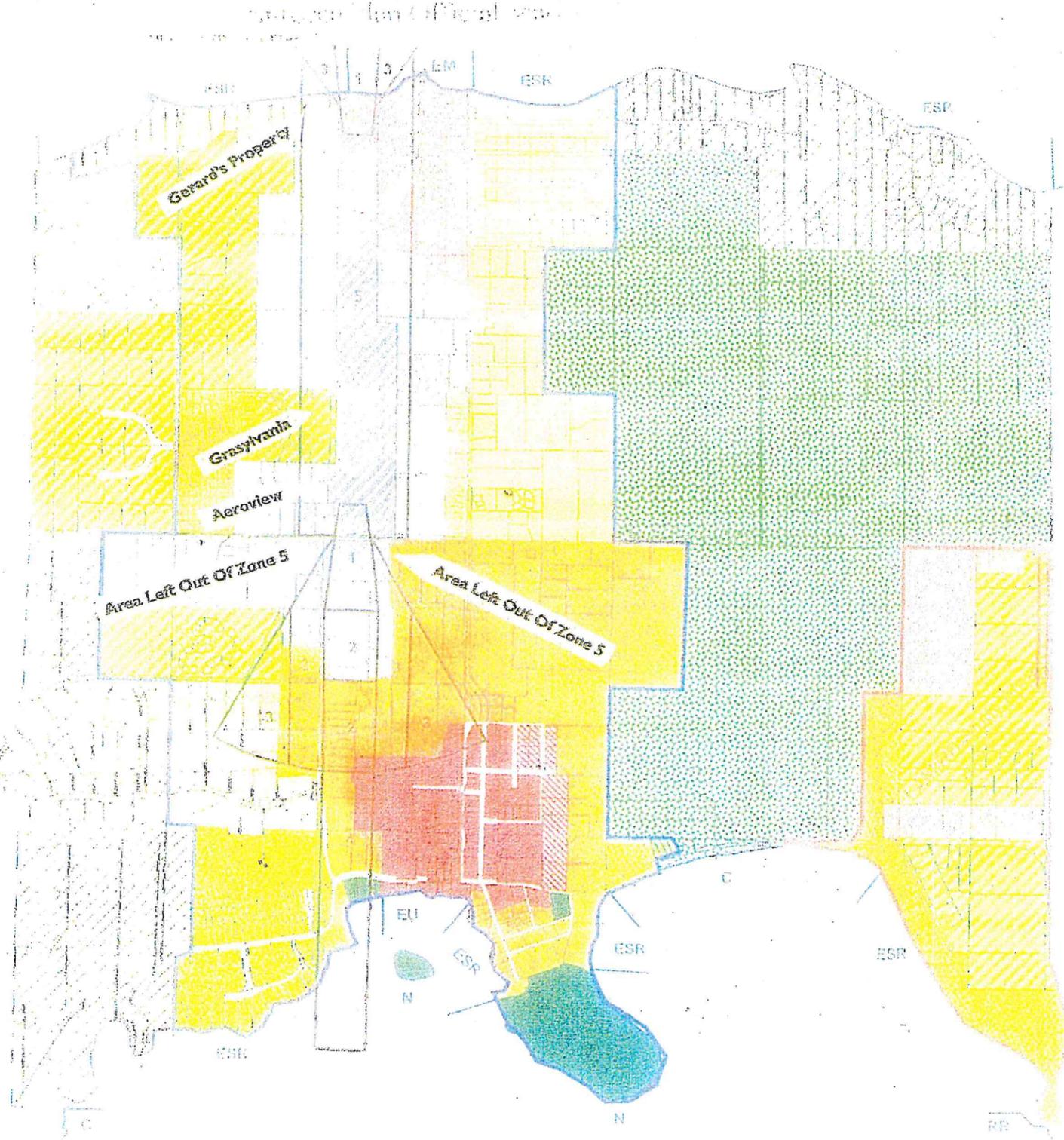
A handwritten signature in black ink, appearing to read "Stephanie O'Day". The signature is fluid and cursive, with a large loop at the end of the last name.

Stephanie Johnson O'Day

Cc: Don and Marion Gerard

# Attachment A

## Eastsound



In the Subarea Plan, "Eastsound" refers to the entire planning area, while "the Village" means the commercial center, or Village Commercial District.

### Subarea Plan Designation

- Urban Growth Area Boundary
- Eastsound Residential 1/acre (max. 1 unit/acre)
- Eastsound Residential 1/acre P
- Eastsound Residential 2/acre
- Eastsound Residential 2/acre P
- Eastsound Residential 4/acre P
- Eastsound Residential 4-12/acre (min. 4 - max. 12 units / acre; see S.J.C.C. 16.55.240)
- Village Residential (min. 4 - max. 12 units / acre)
- Village Commercial (min. 4 - max. 40 units / acre)
- Village Commercial Limited (see S.J.C.C. 16.55.210.D.3)
- Marina (max. 6-8 units / acre)
- Service Park (residential use allowed only as accessory to commercial, institutional or industrial use)
- Service and Light Industrial (residential use allowed only as accessory use to commercial, institutional or industrial use)
- Eastsound Airport District (no residential development is allowed)
- Natural (max. 1 unit per parcel)
- 50-foot buffer (see S.J.C.C. 16.55.240.E.11)
- In compliance with GMA requirements, site planning and review is required to ensure that the development will not preclude a density of at least 4 units per acre.
- Eastsound Rural (max. 1 unit / 5 acres)
- Eastsound Rural Residential (max. 1 unit / 5 acres)

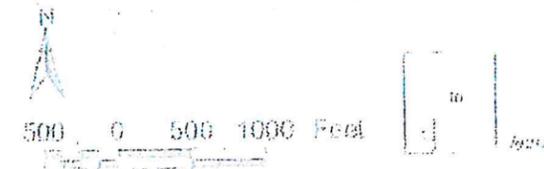
### Shoreline Master Program Designation

- EU** Eastsound Urban
- EM** Eastsound Marina
- ESR** Eastsound Residential
- C** Eastsound Conservancy
- N** Eastsound Natural

The Shoreline Management Act and Shoreline Master Program apply to all shorelines within 200 feet landward of the ordinary high water mark, and overlapping seaward of that line. Beyond the line of ordinary low tide, the Aquatic designation applies. All small islands, rocks and reefs whose designations are not shown on this map are designated Conservancy if in private ownership, or Natural if they are in public ownership.

- 1-5 Aircraft Accident Safety Zones (see also Federal Aviation Administration (FAA) Airspace Zones)

As adopted: 10-25-05



Law Offices Of  
**STEPHANIE JOHNSON O'DAY, PLLC**

540 Guard Street, Suite 160  
Post Office Box 2112  
Friday Harbor, Washington 98250-2112

Telephone: (360) 378-6278 Fax: (360) 378-5066  
E-Mail: [sjoday@rockisland.com](mailto:sjoday@rockisland.com)

August 29, 2014

Sam Gibboney, Director  
SJC Community Development  
And Planning  
P.O. Box 947  
Friday Harbor, WA 98250

Dear Sam:

Enclosed please find documents relating to the Gerard saga that Stephanie discussed with you yesterday. Please review them at your convenience and reply to her. Thanks for looking into the matter for us.

Sincerely,

Nancy Fusare  
Legal Assistant

Encl.

EXHIBIT

F

Law Offices Of  
**STEPHANIE JOHNSON O'DAY, PLLC**

540 Guard Street, Suite 160  
Post Office Box 2112  
Friday Harbor, Washington 98250-2112

Telephone: (360) 378-6278 Fax: (360) 378-5066  
E-Mail: sjoday@rockisland.com

**RECEIVED**

**OCT 30 2015**

**SAN JUAN COUNTY COUNCIL**

October 29, 2015

Rick Hughes, Member  
San Juan County Council  
350 Court St #1  
Friday Harbor, WA 98250

Re: Don and Marion Gerard Property  
Orcas Island/Request for Docket  
Code Amendment SJCC 18.40

Dear Rick:

The Gerards own three properties on the northwest side of the Eastsound Airport, which have numerous layers of regulations (wetland, shoreline, Eastsound subarea plan, airport overlay restrictions). There are so many regulations that one of their parcels is useless. A basic underlying problem for my clients is that the SJCC prohibits the replacement of nonconforming uses when they are defined as an "airport hazard". SJCC 18.40.320. But "Airport hazard" is defined as including residential development greater than one house for every two acres – which renders not only the Gerards house but numerous houses **all over the county** as unreplaceable.

In addition, section 18.40.032 of the Performance and Use Specific standards is an entire section entitled "Specific standards for Orcas Island Airport Overlay District." There is no reason for this airport, and only this airport, to have such an onerous amount of regulations – many which are in direct contrast to the Eastsound subarea plan. I suggest that this entire section be either deleted, or streamlined to allow property owners, such as the Gerards, to use their land like everyone else.

In 2010, the Gerards submitted proposed code amendments to San Juan County, which heretofore have been ignored. We have sent you and the Council many letters over the years pleading for some relief.

Here is our proposal again in a very simple form. We realize that DCD and the Council are in the midst of finalizing both the Eastsound Subarea Plan and the SMP. However, we firmly, adamantly and respectfully request that the Council direct DCD to place the following proposed amendment to the Development Regulations contained in 18.40 on the docket to be considered in January 2016:

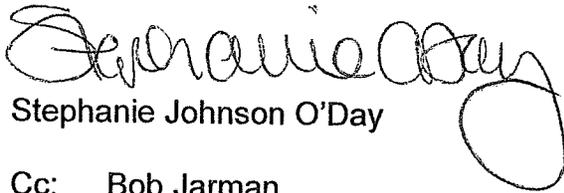
EXHIBIT         

         **G**

1. Change the language in 18.40.030B(5) to reflect that an airport hazard includes residential uses greater than two dwelling units per acre (as opposed to one dwelling unit per two acres).
2. Delete 18.40.F (1) and (2), which is a prohibition against any and all residential development in the outer layer of the airport overlay district. Paragraph 2 of this section is exceptions to the paragraph 1 prohibition, which is not treating all the property owners in the area equally.

This Council is on record as promising to simplify the code. This is a way to get this done. Please put this on the docket for January 2016.

Very Truly Yours,



Stephanie Johnson O'Day

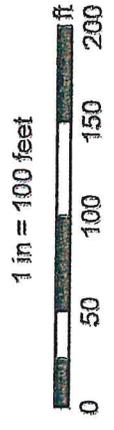
Cc: Bob Jarman  
Jamie Stephens  
Don and Marion Gerard



Goswami



This map is derived from San Juan County's Geographic Information System (GIS). It is intended for reference only and is not guaranteed to survey accuracy. The information represented on this map is subject to change without notice.



TPN 27124014

Picometry International Corp., San Juan County Assessor's Office

**18.40.030 Airports.**

A. Height Limitation. No structure, vegetation, or obstruction of any kind shall be built, placed, hung, or allowed to grow so that any part exceeds the height as provided in the zone areas and surfaces established in this subsection, unless otherwise specified on an adopted airport district overlay designation. Where an area is subject to more than one height limitation, the lower limitation shall apply. The height restriction for each zone is as follows:

1. Approach Zone. As may be allowed without penetrating the imaginary surface described in the definition of approach surface in Chapter 18.20 SJCC.
2. Transitional Zone. As may be allowed without penetrating the imaginary surface described in the definition of transitional surface in Chapter 18.20 SJCC.
3. Horizontal Zone. As may be allowed without penetrating the imaginary surface described in the definition of horizontal surface in Chapter 18.20 SJCC.
4. Conical Zone. As may be allowed without penetrating the imaginary surface described in the definition of conical surface in Chapter 18.20 SJCC.

B. Hazards for Airports. The following standards apply to airports in addition to the standards in subsection (A) of this section.

1. Distances of Rights-of-Way from Primary Surface. All private and public road rights-of-way must either (a) be set back a minimum of 200 feet from the end of the primary surface as measured parallel to the extended runway centerline or (b) must allow a minimum of 10 feet clearance between the road right-of-way and approach surface. In addition, road rights-of-way must be set back a minimum of 200 feet from the extended runway centerline, as measured perpendicular thereto.
2. Lights. No searchlight, beacon light, or other glaring light shall be used, maintained, or operated within the approach, transitional, or horizontal zones in such a way as to cause a visual hazard to normal aircraft operations.
3. Smoke or Haze. Any land use or activity that produces smoke or haze to a degree that would interfere with normal aircraft operations is prohibited.
4. Bird Hazard. Any land use or activity that produces a bird-strike hazard for normal aircraft operations is prohibited.
5. Public Assemblies. Any land use that causes or encourages people to assemble in large numbers, including medium- and high-density residential uses ~~(greater than one dwelling unit per two acres)~~, commercial uses requiring more than 10 parking spaces or an equivalent degree of traffic generation, and campgrounds (having more than three campsites per acre), is prohibited in the approach and transitional zones designated by an airport district overlay.
6. Noise. Any land use that requires a low background noise level and which would be adversely affected by a noise impact greater than the noise exposure forecast level projected for the airport vicinity for the year of

application, including auditoriums, schools, churches, hospitals, and concert halls is prohibited in the approach and transitional zones designated by an airport district overlay.

7. Marking and Lighting. Notwithstanding this subsection, the owner of any existing nonconforming structure or tree is required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the Federal Aviation Administration (FAA) to indicate the presence of such airport hazards. Such markers and lights shall be installed, operated, and maintained at the expense of the airport served.

8. FAA Restrictions.

**18.40.310 Nonconforming structures and uses.**

A nonconforming use, structure, site, or lot is one that did conform to the applicable codes which were in effect on the date of its creation, but no longer complies because of subsequent changes in code requirements.

Nonconformity is different than and is not to be confused with illegality (see the definitions of "nonconforming," "nonconforming use," and "illegal use" in Chapter 18.20 SJCC). Legal nonconforming structures and uses are commonly referred to as "grandfathered."

The following standards apply to all nonconforming structures and uses:

A. When a nonconforming use or structure is proposed for alteration, modification, intensification, or expansion under this section, the total impact of the nonconforming use will be considered as well as the added impact of the incremental changes being proposed and the consistency of the changes with the applicable land use designation.

B. Ordinary maintenance and repair of a nonconforming structure and its equipment or fixtures is permitted up to and including total replacement; provided, that the existing three-dimensional building envelope remains unchanged.

C. If a nonconforming use or structure is destroyed by fire or other act of God, it may be rebuilt to the configuration existing immediately prior to the time that the structure was destroyed; provided, that rebuilding is completed within 24 months of the date of destruction.

D. Nonconforming structures may be modified or altered, provided the degree of nonconformity of the structure is not increased.

E. Any nonconforming use or structure may be altered, modified, or remodeled beyond the external dimensions present on the effective date of the ordinance codified in this chapter for the purpose of providing access required under Chapter 51-20 WAC. The extent of the alteration or modifications shall be limited to the provisions of access necessary to comply with Chapter 51-20 WAC as determined by the administrator.

F. Expansion, modification, or intensification of a nonresidential nonconforming use is allowable subject to a conditional use permit, provided:

1. A nonconformance with the standards of this code shall not be created or increased;
2. The proposal shall comply with the standards of this code to maximum extent feasible; and
3. The proposal shall not have an adverse impact on an environmentally sensitive area.

If no exterior structural alterations or additions are made, a nonconforming use may be changed to another nonconforming use; provided, that the proposed use is equally or more appropriate to the district than the existing nonconforming use. Such a change of use shall be subject to conditional use permit approval. In no case shall a nonconforming use be changed to another nonconforming use which is more intensive or has greater impacts than the existing use.

G. Unless specifically provided otherwise, any nonconforming structure or use under the jurisdiction of the Shoreline Master Program shall be subject to the nonconforming use provisions in WAC 173-27-080.

H. Nonconforming uses may be relocated on the same parcel where they occur if the degree of nonconformity is not increased, and subject to a discretionary use permit.

I. No Replacement of Nonconforming Uses when Airport Hazard. No structures or obstructions of any kind or nature whatsoever constituting a nonconforming use shall be rebuilt, repaired, or replaced where such repairing, rebuilding, or replacement constitutes an airport hazard.

J. Abandonment. Nonconforming uses shall be considered abandoned if the use ceases to operate or is discontinued for 24 consecutive months. See also SJCC 18.40.350(H)(3). (Ord. 2-1998 Exh. B § 4.23)

**18.40.032 Specific standards for Orcas Island Airport overlay district.**

The lands that are included within aircraft accident safety zones 1 through 5 are shown on the official maps of the Orcas Island Airport overlay district.

A. Runway Protection Zone (Zone 1). Zone 1 is the area that begins 200 feet from the threshold line on the runway pavement which marks the end of the declared usable runway surface, and extends out 1,000 feet to its widest point, where it measures 450 feet across, 225 feet on either side of the extended runway centerline.

1. New residential development and new structures are prohibited.
2. Public assembly uses and uses that promote the concentration of people are prohibited.
3. No increase to height or scale of existing uses or structures shall be permitted.
4. The bulk storage of flammable or hazardous materials is prohibited.

B. Inner Safety Zone (Zone 2), North Portion. Zone 2 is the area that begins at the end of the runway protection zone (zone 1) and extends out 1,500 feet. It measures 450 feet across, 225 feet on either side of the extended runway centerline. The north portion of zone 2 is that portion of zone 2 north of Enchanted Forest Road.

1. Maximum allowable residential density is one dwelling unit per acre.
2. The following uses that require or promote the concentration of people or have substantial occupancy by dependent populations (such as children, sick, or the elderly) are prohibited: schools, libraries, hospitals, nursing homes, day care centers, multifamily housing, playfields, public meeting rooms, public assembly uses, churches and religious assembly uses, restaurants, motels and hotels.
3. No increase to the height or scale of nonconforming uses or structures shall be permitted. Nonconforming uses may not be expanded beyond currently permitted size and uses.
4. The bulk storage of flammable (except for residential propane or heating oil tanks) or hazardous materials is prohibited. Residential propane tanks shall be located underground.
5. A minimum of 40 percent of the site shall remain in open space to maximize the opportunity for pilots in an emergency to avoid structures intended for human occupancy. To the extent possible subject to the development and design standards for the land use district in which the project is located, this open space shall include those portions of the site closest to the extended runway centerline, and shall be contiguous with similar open spaces on adjacent properties. No more than 25 percent of this required open space (10 percent of the site area) may be on that portion of the site between the Lovers Lane right-of-way and structures fronting on Lovers Lane.
6. To the extent possible subject to development and design standards for the land use district in which the project is located, structures for human occupancy shall be located on those portions of the site farthest from the extended runway centerline.
7. For nonresidential uses, the maximum design occupancy for normal use of the site and structures shall not exceed an annual average of 10 people per acre during all hours, or 30 people per acre during hours of

operation. The maximum floor area ratio (FAR) for development below is assumed to meet these design objectives. In calculating FAR, the floor area of a permitted accessory residential unit shall not be included:

- a. Retail, service and office uses: 0.15;
- b. Manufacturing and industrial uses: 0.35;
- c. Warehouse and storage uses: 1.00;
- d. Other nonresidential uses: 0.15.

C. Inner Safety Zone (Zone 2), South Portion. The south portion of zone 2 is that portion of zone 2 south of Enchanted Forest Road.

1. Maximum permitted residential density is the lesser of one dwelling unit per acre or the density permitted by the land use district in which the property is located.
2. For nonresidential uses, the intensity of design occupancy and intensity of development, and prohibited uses involving public assembly or occupancy by dependent populations, shall be as established in the inner turning zone (zone 3).
3. No increase to the height or scale of nonconforming uses or structures shall be permitted. Nonconforming uses may not be expanded beyond currently permitted size and uses.
4. The bulk storage of flammable (except for residential propane or heating oil tanks) or hazardous materials is prohibited. Propane tanks shall be located underground.
5. A minimum of 40 percent of the site shall remain in open space to maximize the opportunity for pilots in an emergency to avoid structures intended for human occupancy. To the extent possible subject to the development and design standards for the land use district in which the project is located, this open space shall include those portions of the site closest to the extended runway centerline, and shall be contiguous with similar open spaces on adjacent properties. No more than 25 percent of this required open space (10 percent of the site area) may be on that portion of the site between the Lovers Lane right-of-way and structures fronting on Lovers Lane.

D. Inner Turning Zone (Zone 3). Zone 3 is the area that begins 200 feet from the threshold line on the runway pavement which marks the end of the declared usable runway surface, and for the standard area that extends out at 30 degrees from both sides of the extended runway centerline to 2,500 feet. It connects to the centerline of the inner safety zone (zone 2) with sweeping arcs, 2,500 feet from the threshold line on the runway pavement. The inner portion of zone 3 is that portion of zone 3 closer to the extended centerline of the runway than a line parallel to and 300 feet outside of the outer boundary of zone 2. The outer portion of zone 3 is all other parts of zone 3.

1. Notwithstanding this section, the requirements of zone 5 shall apply to the small wedges of land on the north shore that are in zone 3.
2. Maximum allowable residential density in the inner portion of zone 3 is the lesser of four dwelling units per acre or the maximum density permitted in the land use district in which the property is located. Maximum allowable residential density in the outer portion of zone 3 is the lesser of eight dwelling units per acre of the maximum density permitted in the land use district in which the property is located. Within zone 3 only, within the area designated for the village commercial district in the official maps for the Eastsound Subarea Plan as amended October 3, 2000, the maximum allowable residential density is 12 dwelling units per acre.
3. The following uses that require or promote the concentration of people or have substantial occupancy by dependent populations (such as children, sick, or the elderly) are prohibited: schools, libraries, hospitals,

nursing homes, day care centers, playfields, public meeting rooms with a capacity for more than 25 people, public assembly uses, churches and religious assembly uses, restaurants, motels and hotels.

4. No increase to the height or scale of nonconforming uses or structures shall be permitted. Nonconforming uses may not be expanded beyond currently permitted size and uses.

5. The bulk storage of flammable (except for residential propane or heating oil tanks) or hazardous materials is prohibited. Propane tanks shall be located underground.

6. A minimum of 30 percent open space is required.

7. For that portion of zone 3 on the east side of Lovers Lane, to the extent possible subject to development and design standards for the land use district in which the project is located, structures for human occupancy shall be located on those portions of the site farthest from the extended runway centerline.

8. In the inner portion of zone 3, the maximum design occupancy for normal use of the site and structures for nonresidential uses shall not exceed an annual average of 15 people per acre during all hours, or 50 people per acre during hours of operation. The maximum floor area ratio (FAR) for development below is assumed to meet these design objectives. In calculating FAR, the floor area of a permitted accessory residential unit shall not be included:

- a. Retail, service and office uses: 0.25;
- b. Manufacturing and industrial uses: 0.50;
- c. Warehouse and storage uses: 2.00;
- d. Other nonresidential uses: 0.25.

9. In the outer portion of zone 3, the maximum design occupancy for normal use of the site and structures for nonresidential uses shall not exceed an annual average of 30 people per acre during all hours, or 100 people per acre during hours of operation. The maximum floor area ratio (FAR) for development below is assumed to meet these design objectives. In calculating FAR, the floor area of a permitted accessory residential unit shall not be included:

- a. Retail, service and office uses: 0.50;
- b. Manufacturing and industrial uses: 1.00;
- c. Warehouse and storage uses; 2.00;
- d. Other nonresidential uses: 0.50.

E. Outer Safety Zone (Zone 4). Zone 4 is the area that extends out 225 feet from both sides of the extended runway centerline, beginning at the outer edge of the inner turning zone (zone 3) and extending to the outer boundary of the horizontal zone, 5,000 feet from the threshold line on the runway pavement.

1. Maximum permitted residential density is the lesser of four dwelling units per acre or the density permitted by the land use district in which the property is located.

2. For nonresidential use, the intensity of design occupancy and intensity of development, and prohibited uses involving public assembly or occupancy by dependent populations, shall be as established in the inner part of the inner turning zone (zone 3).

3. No increase to the height or scale of nonconforming uses or structures shall be permitted. Nonconforming uses may not be expanded beyond currently permitted size and uses.

4. The bulk storage of flammable (except for residential propane or heating oil tanks) or hazardous materials is prohibited. Propane tanks shall be located underground.

5. A minimum of 40 percent of the site shall remain in open space to maximize the opportunity for pilots in an emergency to avoid structures intended for human occupancy. To the extent possible, subject to the development and design standards for the land use district in which the project is located, this open space shall include those portions of the site closest to the extended runway centerline, and shall be contiguous with similar open spaces on adjacent properties. No more than 25 percent of this required open space (10 percent of the site area) may be on that portion of the site between the Lovers Lane right-of-way and structures fronting on Lovers Lane.

6. To the extent possible, subject to development and design standards for the land use district in which the project is located, structures for human occupancy shall be located on those portions of the site farthest from the extended runway centerline.

F. Sideline Safety Zone/Airport Development Zone (Zone 5). Zone 5 is the area that is immediately adjacent to the airport and runway area. The standard area begins at the primary surface, extending out 500 feet from the extended runway centerline and connecting at its ends to the inner turning zone (zone 3). For Orcas Island Airport, the southerly boundary extends only as far as the northern boundary of the Mt. Baker Road right-of-way, and extends along that right-of-way line to intersect with the boundary of zone 1. In the northeast, the boundary of zone 5 extends north as described until it meets the center of the marina district waterway. From there it is extended north along the centerline of the marina district waterway and then north to intersect with the boundary of zone 3.

~~1. New residential development is prohibited except as provided in subsection (F)(2) of this section.~~

~~2. Residential Use in the Grasylyvania and Aeroview Subdivisions. Existing and new residential use in the portions of the Grasylyvania and Aeroview subdivisions that are within sideline safety zone (zone 5), solely in the form of aircraft hangar structures which incorporate within them an accessory single-family residential dwelling unit, may be allowed as a conforming use.~~

*2b → ESE parts are allowed 1 unit per acre as a conforming use.*

3. Aviation-related, industrial, utility, storage, and nonretail commercial uses are preferred uses.

4. Shoreline and marina operations, docking and other such uses of the shorelines environments, where they do not conflict with subsection (F)(5) of this section and Chapter 18.50 SJCC, are allowed.

5. Except as necessary and incidental to airport operations, the following uses that require or promote the concentration of people or have substantial occupancy by dependent populations (such as children, sick, or the elderly) are prohibited: schools, libraries, hospitals, nursing homes, day care centers, multifamily housing, playfields, public meeting rooms, public assembly uses, churches and religious assembly uses, restaurants, motels and hotels.

6. No increase to the height or scale of nonconforming uses of structures shall be permitted. Nonconforming uses may not be expanded beyond currently permitted size and uses.

7. To the extent possible subject to the development and design standards for the land use district in which the project is located, structures for human occupancy shall be located on those portions of the site farthest from the extended runway centerline.

8. The maximum design occupancy for normal use of the site and structures shall not exceed an annual average of 10 people per acre during all hours, or 30 people per acre during hours of operation. The maximum floor area ratio (FAR) for development below is assumed to meet these design objectives. In calculating FAR, the floor area of a permitted accessory residential unit shall not be included:

- a. Retail, service and office uses: 0.15;

b. Manufacturing and industrial uses: 0.35;

c. Warehouse and storage uses: 1.00;

d. Other nonresidential uses: 0.15.

G. Traffic Pattern Zone (Zone 6). This zone is not designated for the Orcas Island Airport overlay district. (Ord. 2-2003 § 1; Ord. 5-2002 § 4)

Attorney & Counselor at Law  
**Stephanie Johnson O'Day, PLLC**  
540 Guard Street, Suite 120  
Post Office Box 2112  
Friday Harbor, WA 98250-2112

Telephone (360) 378-6278 Fax: (360) 378-5066  
E-Mail: [sjoday@rockisland.com](mailto:sjoday@rockisland.com)

November 10, 2015

Rick Hughes, Member  
Mike Thomas, County Administrator  
San Juan County Council  
350 Court St #1  
Friday Harbor, WA 98250

Re: Don and Marion Gerard Property  
Orcas Island/Request for Docket  
Code Amendment SJCC 18.40

Dear Rick and Mike:

Thank you for meeting with Don Gerard and I yesterday to discuss the land use dilemma they have faced for so many years. It was a productive meeting, for which the Gerards are very grateful. As we worked through the problems, it became clear that the following simple regulatory changes to the Development Code would clear the way for the Gerards to be able to use their three properties as their neighbors do:

#1: Revising the definition of airport hazard in 18.40.030B (see track changes):

*5. Public Assemblies. Any land use that causes or encourages people to assemble in large numbers, including medium- and high-density residential uses ~~(greater than one dwelling unit per two acres)~~, commercial uses requiring more than 10 parking spaces or an equivalent degree of traffic generation, and campgrounds (having more than three campsites per acre), is prohibited in the approach and transitional zones designated by an airport district overlay.*

#2: Revise 18.40.032F(2) as follows (see track changes)

*F. Sideline Safety Zone/Airport Development Zone (Zone 5) .....*

*1. New residential development is prohibited except as provided in subsection (F)(2) of this section.*

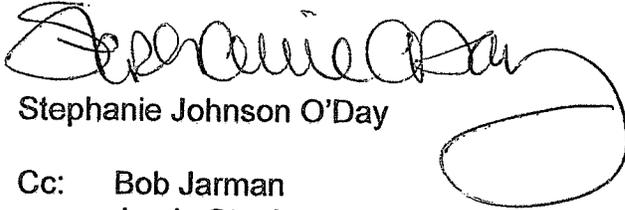
*2a. Residential Use in the Grasylyvania and Aeroview Subdivisions. Existing and new residential use in the portions of the Grasylyvania and Aeroview subdivisions*

EXHIBIT     H

that are within sideline safety zone (zone 5), solely in the form of aircraft hangar structures which incorporate within them an accessory single-family residential dwelling unit, may be allowed as a conforming use.

2b. Eastsound Residential parcels may develop one residential dwelling unit per acre as a conforming use.

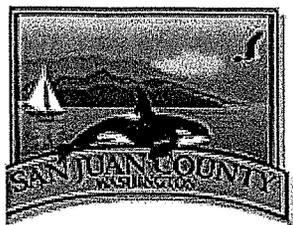
Very Truly Yours,

A handwritten signature in black ink, appearing to read "Stephanie Johnson O'Day". The signature is fluid and cursive, with a large loop at the end.

Stephanie Johnson O'Day

Cc: Bob Jarman  
Jamie Stephens  
Don and Marion Gerard

FROM: ERIKA SHOOK [mailto:erikas@sanjuanco.com]  
Sent: Thursday, July 27, 2017 5:31 PM  
To: 'sjoday@rockisland.com' <sjoday@rockisland.com>  
Subject: 2016-2017 Docket Hearing



## SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

135 Rhone Street, PO Box 947, Friday Harbor, WA 98250  
(360) 378-2354 | (360) 378-2116  
dcd@sanjuanco.com | www.sanjuanco.com

July 27, 2017

Re: 2016/2017 Docket of Comprehensive Plan Amendments  
Public Hearing on Initial Docket

Dear Mr. & Mrs. Gerard:

On August 8, 2017, beginning at or after 9:00 a.m., the San Juan County Council will hold a public hearing on the 2016/2017 Initial Docket of Comprehensive Plan Amendments (the "Initial Docket").

The purpose of the hearing is to take public testimony on the Initial Docket. Following the hearing, or at a subsequent meeting, the County Council will consider whether items on the Initial Docket will be added to the Final Docket. Such items will added to the Department of Community Development's work program for this year or subsequent years.

You are receiving this email because you submitted a docket request in 2016 or 2017. This is your opportunity to provide testimony to the County Council regarding your proposal. If you have any questions, please contact Linda Kuller at (360) 370-7572, as I will be out of the office next week. Additional information will be posted on August 4, 2017 on our website at <http://sanjuanco.com/1179/Annual-Docket>.

Sincerely,

Erika Shook, AICP  
Community Development Director  
360-370-7571

**Table 1. Single Email List of Applicants Requesting Amendments**

Request Number	Name	Email Address
19-0001	OPAL CLT, (Agent: Lisa Byers)	<a href="mailto:opalclt@opalclt.org">opalclt@opalclt.org</a>
19-0002*	Joe Symons et al.	<a href="mailto:joesymons@me.com">joesymons@me.com</a>
19-0003	Fred Klein	<a href="mailto:FreddytheK10@gmail.com">FreddytheK10@gmail.com</a>
19-0004	Stephanie O'Day (agent for Myrna and Richard Fant)	<a href="mailto:sjoday@rockisland.com">sjoday@rockisland.com</a>
19-0005	Lopez Island School District (LISD) c/o Del Guenther	<a href="mailto:dguenther@lopezislandschool.org">dguenther@lopezislandschool.org</a>
19-0006	Stephanie O'Day (agent for Don and Marion Gerard)	<a href="mailto:sjoday@rockisland.com">sjoday@rockisland.com</a>
PREDES-19-0001	Stephanie O'Day (agent for Cornelius Holdings LLC.)	<a href="mailto:sjoday@rockisland.com">sjoday@rockisland.com</a>

*\*Request 19-0002 included a list of co-applicants but did not include their email addresses. Please see the request form for a list of co-applicants (Attachment B.3).*

*\*A single e-mail list of applicants is required by San Juan County Code (SJCC) 18.90.020 (E).*

**SJCC 18.90.020 Legislative procedures.**

A. Procedures. All proposed amendments to this code and proposed amendments to the official maps and/or Comprehensive Plan shall be handled according to the procedures established in Chapters [36.70](#) and [36.70A](#) RCW, RCW [36.32.120](#), the County Charter, and the County code. This process will ensure formal public notice and public hearings, evaluation, and recommendations from the planning department's professional, technical perspective and from the planning commission's knowledgeable lay perspective. Final action is reserved for the County council.

B. Planning Department. The department shall evaluate all requests to modify this code and forward recommendations to the planning commission and County council for consideration.

C. Planning Commission. The planning commission shall hold a public hearing and make recommendations to the County council on all legislative decisions specified in this section.

D. County Council. All amendments to the development code, Comprehensive Plan, and official maps require a public hearing before the County council.

E. Public Notice. Notice of all public hearings will be given in conformance with applicable law. The department shall maintain a printed list of proposed development code and Comprehensive Plan amendments, and shall include a copy of the list on its web site. A single e-mail list shall be maintained by the department. All those requesting the service shall receive all department notices digitally.

F. Implementation. The County council decision shall become effective no sooner than 10 working days after passage of an ordinance except in the case of an emergency.

G. Comprehensive Plan Amendments. Amendments to the Comprehensive Plan text and official maps may not be considered more frequently than once per year except as provided in RCW [36.70A.130\(2\)](#) and the Comprehensive Plan.

H. Unified Development Code (UDC) Amendment. Amendments to the UDC may be adopted at any time.