CRITICAL AREA FREQUENTLY ASKED QUESTIONS
March 14, 2012

• What are “Critical Areas”?
In Washington State, Critical Areas are identified in the Growth Management Act (GMA) and include: wetlands, critical aquifer recharge areas, frequently flooded areas, geologically hazardous areas, and fish and wildlife habitat conservation areas (both marine and upland). The GMA requires cities and counties to have regulations and other programs in place to protect these areas. The County’s first Critical Area regulations were adopted in 1991.

• Why is San Juan County updating the Critical Area regulations?
The GMA required review of the Best Available Science and, if necessary, an update of Critical Area regulations prior to December 2006. Counties that are not in compliance with the GMA are subject to financial penalties. (The Critical Aquifer Recharge Area regulations were revised in 2008 and are not part of the current update process.)

State requirements have changed since the County’s existing Critical Area regulations were adopted. For example, additional fish and wildlife habitat must be protected (e.g. that for the Peregrine falcon, Marbled Murrelet, Southern resident orca and Chinook salmon) and Counties must now consider the “Best Available Science” when evaluating the effectiveness of current or proposed regulations.

• What are the benefits of complying with the requirements of the Growth Management Act?
Once we are compliant with the Growth Management Act we will have greater access to funds for public works projects and for protection of clean water (the Public Works Trust Fund and the Centennial Clean Water Fund).

• What would happen if work on the Critical Area regulations was suspended?
An appeal would likely be filed with the Growth Management Hearings Board, and the County would be ordered to resume work on updating the regulations.

• Why is it important to protect Critical Areas?
There are several reasons for protecting Critical Areas: to protect people and property from natural hazards; to protect the environment and maintain a healthy ecosystem; to maintain the quality of life in the San Juan Islands; and to support business and industry that is based on a healthy environment and good quality of life.
What functions and values are associated with Critical Areas?
Functions and values provided by Critical Areas include water quality protection and enhancement; food chain support; fish and wildlife habitat; flood storage, conveyance, and attenuation; ground water recharge and discharge; erosion control; wave attenuation; protection from natural hazards; and recreation.

What fish and wildlife habitats are required to be protected?
Not all fish and wildlife habitat is defined as a Critical Area that must be protected. Those that are defined as Critical Areas include: areas with which endangered, threatened, and sensitive species have a primary association; habitats and species of local importance; shellfish areas; kelp and eelgrass beds; herring, surf smelt, and sand lance-spawning areas; naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat; waters of the state; lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; and State natural area preserves and natural resource conservation areas.

What is the process for reviewing and updating the Critical Area regulations?
The process for reviewing and updating the Critical Area regulations is shown on the project work plan which is available on the CAO web site at http://www.sanjuanco.com/cao/documents.aspx. A study characterizing local wetlands has been completed, maps showing known Critical Areas in the County have been compiled, a synthesis of the Best Available Science related to San Juan County Critical Areas was adopted by the County Council, the existing regulations were evaluated, and the County Council provided staff and consultants with direction on preferred approaches for the update.

The review of the Geologically Hazardous Areas section, Frequently Flooded Areas section, and the General section are complete. Review of the Wetlands section will resume with a Planning Commission hearing scheduled for March 6, and this will be followed by review of the regulations for Fish and Wildlife Habitat Conservation Areas. After each section has been tentatively adopted by Council, there will be a final consistency check to ensure that there are no conflicts prior to final adoption of the regulations.

What is “Best Available Science”?
According to State guidance, Best Available Science (BAS) means current scientific information derived from research, monitoring, inventory, survey, modeling, assessment, synthesis, and expert opinion that is logical and reasonable - based on quantitative analysis that is peer reviewed, used in the appropriate context, based on accepted methods, and well referenced. A copy of the State guidance on BAS (adopted into the Washington Administrative Code) is included as Appendix 1-A of the County’s Best Available Science Synthesis.

How were the Best Available Science (BAS) documents used in the synthesis selected?
Potential BAS documents were selected from several sources: the County’s (and consultants’) existing collections of scientific documents; BAS lists from state agencies and other jurisdictions; and submittals from the general public, agencies, and organizations. The index of
titles initially available for consideration contained more than 1,900 entries and was made available to all authors of the synthesis. Each author selected the most relevant documents, reviewed them for consistency with the BAS criteria, and compiled the results into the County’s BAS Synthesis.

- **Was different weight given to reports that were not peer-reviewed?**
  Yes. Per the criteria set forth in WAC 365-195-905, the sources that met the highest standards of scientific research were given the greatest consideration, and those that did not (e.g., those that were not peer-reviewed) were given less weight.

- **Why are scientific reports from other regions or states being included in the BAS for San Juan County?**
  Although it is best to use local science, local science that meets the BAS criteria is often not available. In these cases, the authors of the BAS Synthesis had to use other applicable studies, particularly studies conducted in other areas of the Puget Sound, or in locations with environments similar to the San Juan Islands. In addition, some science involves processes that are similar regardless of location, with results that are universally applicable.

- **How was the wetland map created?**
  The map of “Possible Wetlands” was made using recent color aerial imagery, LiDAR topographic imagery, countywide soils maps, and (where available) maps or sketches from field inspections conducted previously by wetland professionals. Methods are described in detail in Appendix 2A-1 of the BAS report. The map is a guide based on available information, and is not a substitute for parcel-scale field-based delineation of wetland boundaries by a qualified wetland professional.

- **Can an area be a wetland even if it is not inundated with water year-round?**
  Yes, an area such as this can meet the definition of a wetland, depending on the soil characteristics and duration of annual inundation. Please see Chapter 2 of the BAS synthesis document (entitled “Wetlands”) for a detailed explanation of the classification of wetland types.

- **Why is it important to prevent contaminants from flowing into wetlands?**
  Allowing excessive levels of contaminants to flow into wetlands can harm the plants and animals in the wetland, as well as those in streams and marine waters that are connected to wetlands.

- **Why are vegetative buffers necessary between developed areas and wetlands, streams, and the marine shoreline?**
  Vegetative buffers provide several important functions, including the infiltration of runoff; removal of contaminants from runoff; provision of leaves and organic material to support the food web; screening of wildlife from the noise, lights, and disturbance associated with development; and in the case of forested buffers, reduction of wind velocities, protection of microclimates (e.g. within wetlands and along streams), and provision of large woody debris.
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- **Are buffers proposed for around drainageways?**
  No, however the presence of a drainageway through a development area is a factor that is considered in the buffer sizing procedures.

- **What is the difference between a buffer and a setback?**
  Generally speaking, setbacks limit the placement of structures, and buffers limit both the placement of structures and some activities within the buffer. Buffers are more restrictive. The proposed regulations will include specific information on what can and cannot occur within buffers for a given critical area.

- **Why is the County developing site specific buffer requirements?**
  Because a site specific approach will protect critical areas without imposing regulations that are excessive for the circumstances, and because this approach was widely supported by the public.

- **Why is the process for determining site specific buffers so complicated?**
  The factors that influence the flow of water and the transport/ removal of pollutants are complex and interrelated, as are the biological systems that are found in wetlands and fish and wildlife habitat conservation areas. In crafting a site specific approach, we are attempting to strike a balance between accuracy and simplicity, focusing on the most important factors, and the factors that can be identified with minimal time and expense. The approach can be simplified, but that will make it less accurate. The approach can also be made more accurate, but that will increase the complexity and the time and cost associated with preparing and reviewing development proposals.

- **What is the state of the health of fish and wildlife here in the San Juan Islands?**
  This question drives a large body of scientific research and is the subject of much discussion. Due to the complexity of the potential answers, this question cannot be adequately answered within this “FAQs” framework. Please see the BAS Synthesis for discussion of the status of wildlife in San Juan County.

- **At what levels do pollutants harm fish and other wildlife?**
  This is a complicated area of research. Each pollutant is different, and the effects vary depending on the species in question, the location (e.g. areas where pollutants are rapidly dispersed versus areas where they are retained), and other sources of stress on that species (e.g. the presence of other pollutants or changes to habitat such as increased temperature, increased acidity of water, or reduced availability of food). Synergistic effects can also occur, where the effect of two or more factors combine to result in an effect greater than the sum of their individual effects.

- **How will Critical Area protection be implemented?**
  All designated Critical Areas must be protected, but not all Critical Areas must be protected in the same manner or to the same degree. The required standard of protection is to either prevent adverse impacts, or to mitigate those impacts in a way that results in no net loss of the
functions and values of the Critical Areas. Various strategies may be employed. Examples include the use of habitat management plans (like those currently used to protect Bald eagle habitat); enhancing degraded habitat to offset new impacts; buffer zones (areas with little or no development) within specified distances from some Critical Areas; and requiring the use of Best Management Practices (BMPs).

- **Doesn’t the GMA require the County to balance environmental preservation with economic interests?**
  The GMA, which is the legal foundation for the CAO, includes both goals and requirements, with requirements given precedence over goals. Protection of Critical Areas is a basic GMA requirement which takes precedence over GMA goals such as “Protect the environment” and “Encourage sustainable economic development.” The GMA does not contain any requirement regarding the economy or economic development.

- **Isn’t the environmental impact of homes being built on the shoreline negligible compared to other causes of marine contamination such as inadequately treated sewage outflow from Victoria?**
  It is likely that the impact of activities directly in or adjacent to San Juan County Critical Areas is greater than that of distant activities, and regardless of what those impacts might be, the County is still required to designate and protect Critical Areas. It is important that each land owner do their part to minimize the adverse impacts associated with their land use and development.

- **What is the problem? Shouldn’t the County prove that existing land uses and development are negatively impacting Critical Areas before considering changes to the regulations?**
  The GMA requires the County to consider the Best Available Science and protect Critical Areas. It does not require the County to conduct studies or prove the extent of existing problems. Many problems associated with development and land use are however discussed in the *San Juan County Best Available Science Synthesis, May, 2011*. Even if conditions in the County were pristine, we would still be required to review the science and adopt measures to protect Critical Areas.

- **What are the primary factors that cause reduced groundwater recharge, increased runoff, and adverse impacts to water quality?**
  Amount of area cleared, graded and converted to impervious area and lawn; management of runoff from driveways, roofs and other hard surfaces; management of runoff from foundation and curtain drains; management of septic systems; choice of building materials; and choice of pesticides, fertilizers, and other products used on the property.

- **Is there scientific information showing that residential and commercial development is contributing pollutants to our wetlands, streams, and marine waters?**
  Several local studies have identified contaminants at levels that are a concern (see the Best Available Science Synthesis for a more complete discussion). Nationwide, the relationship
between land use, runoff, and pollutants has been extensively studied, and the results of those studies are applicable to San Juan County.

- **Don’t modern septic systems and stormwater regulations take care of whatever problems might be caused by development near streams, wetlands and the marine shoreline?**
  They do in most cases for *new* septic systems. Stormwater effects however vary widely from site to site and the stormwater regulations are not designed to mitigate all adverse impacts. In addition, some adverse impacts are caused by removal of trees and vegetation, and are not related to wastewater issues. The stormwater regulations, guidance on buffers, and the research on how land development changes the flow of ground and surface water, all make it clear that shoreline/stream/wetland buffers and upland stormwater management systems are all necessary.

- **This is a rural county. How can we have stormwater problems?**
  San Juan County is more suburban than rural in its density and patterns of development, and much of the existing development is located along the shoreline. Also, because of the large number of non-resident homes, the built environment (roads, driveways, impervious surfaces) exceeds that which would typically support a population of 16,000. As in other communities, this development changes the timing and amount of runoff, as well as the pollutants found in stormwater, and has the potential to negatively affect aquatic ecosystems, food webs, and sensitive species.

- **Will the new CAO regulations require changes to existing, legally established, development and land uses?**
  No.

- **Is the County going to require a permit for activities such as planting trees and creating new gardens?**
  The January 24, 2012 draft of the General regulations for critical areas included a description of the critical area review process for development projects. Currently this review takes place in conjunction with review of stormwater management plans and applications for building permits. Unfortunately, because the definition of “development” is so broad, the proposed language could be interpreted to require review of even small excavation and vegetation removal projects. Prior to adoption the Council has agreed to review and revise this section to ensure that it does not impose unnecessary requirements for activities that do not otherwise require a permit or review.

- **What are the proposed changes to the regulations?**
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- **What is the status of the new regulations and when will they go into effect?**
The proposed changes for Geologically Hazardous and Frequently Flooded Areas, as well as the General section of amendments, were tentatively approved by County Council and are awaiting a final consistency review once the other sections are completed. The most recent draft of amendments to the wetland regulations was released February 15, 2012, and a hearing regarding ________ is scheduled with the Planning Commission on March 6, 2012. Following completion of their recommendations on the wetland amendments, the Planning Commission will begin its review of amendments associated with Fish and Wildlife Habitat Conservation Areas. It is anticipated that review and update of the regulations will be completed this summer, with an effective date 30 working days after adoption. To receive e-mail updates on the progress of the CAO and information on upcoming hearings through our project Listserv, please log on to our website at www.sanjuanco.com and join our list by selecting “E-mail Lists” from the blue menu bar, or contact Janice Biletnikoff at janiceb@sanjuanco.com.

- **If we have a good enough reason, don’t we have the option of taking actions that are not consistent with the Best Available Science?**
Yes, in some limited cases, however we are still required to meet the overall Growth Management Act requirement to protect the functions and values of critical areas. Any adverse impacts to critical areas must be offset with improvements, so that on balance we meet the no net loss requirement.

- **What options will be available for properties that have difficulty meeting the new requirements?**
As proposed, available options include reasonable use exceptions, alternate provisions for projects sponsored by a public agency or utility, and in some cases variances.

- **Is it true that only a small number of parcels will be affected by the regulations?**
Because San Juan County has so many wetlands, streams and marine critical areas, many of our properties have these areas either on them or nearby. As with the existing regulations, the new regulations will apply to many properties. The regulations will not however make any properties that can be developed now undevelopable, and there will be an array of options and choices available to property owners who must design projects to be protective of critical areas.

- **How will the General critical area regulations handle existing, legally established non-conforming uses, structures and activities?**
A legal nonconforming structure, use or activity is one which conformed to the requirements at the time it was established, but which no longer conforms due to later changes in the law.

If adopted, the proposed regulations would:

a. Expand exemptions to include the following:
Operation, maintenance, repair, remodel, or replacement of existing structures, facilities, infrastructure systems, development areas, and uses, provided there is no further intrusion into geologically hazardous areas, frequently flooded areas, wetlands, or fish and wildlife habitat conservation areas or their buffers, soil erosion is controlled, disturbed areas are promptly stabilized, and actions do not have an additional adverse effect on the functions and values of critical areas; and

b. Allow nonconforming structures, uses, and activities to remain in perpetuity, and in some cases be expanded, if there are no additional adverse impacts to critical areas.

- **Will my shoreline property be reduced in value by the new regulations?**
  There is no evidence that environmental protection laws such as the CAO have deleterious effects on the value of a property. On the contrary, there is evidence that effective laws preserving the quality of the environment and character of a place - as opposed to weak land use laws that provide little protection against incompatible land uses - do much to protect and even increase property values in the long-term. The CAO is not new; these regulations have been in place since the 1990s. Mortgages have been issued on properties that became nonconforming when the original CAO regulations were enacted, and property values here followed the national trend of inflating throughout the 1990s and early 2000s.

- **Do changes in law that affect a property’s value constitute a taking?**
  In most cases they do not. To allow for predictable and beneficial development of land, zoning laws have existed throughout the United States since the 1920s. Generally, a change in zoning law does not constitute a taking as long as the regulation substantially advances legitimate public interests and does not deny a property owner “all economically viable use of his [or her] property.” That said, takings law is very complex and includes the consideration of many factors. Please see the Washington State Attorney General’s *Advisory Memorandum* (dated December 2006) for further information.

- **Will the proposed changes affect platted setbacks and buffers?**
  It depends on the type and location of the subdivision, as well as the date the subdivision was approved. To determine how the laws and regulations apply to a particular subdivision, it is best to review the plat and the requirements with one of the County’s land use planners.

- **How will the CAO regulations be coordinated with the Shoreline Master Program update?**
  The regulations for shoreline Critical Areas will first be adopted following Growth Management Act procedures. Those regulations will be designed to meet the requirements of both the Growth Management Act and the Shoreline Management Act. As part of the ongoing update to the Shoreline Master Program, the regulations will eventually be relocated to the shoreline sections of code, and readopted in accordance with Shoreline Management Act procedures.
- **How can I learn more?**
Project background information, the Best Available Science (BAS) documents and meeting notifications can be accessed on the San Juan County website at: [http://www.sanjuanco.com/cao/](http://www.sanjuanco.com/cao/)

The County also maintains an e-mail Listserv that sends project information directly to interested parties. To be added to the Listserv or to get additional information please log on to our website at [www.sanjuanco.com](http://www.sanjuanco.com) and join our list by selecting “E-mail Lists” from the blue menu bar, or contact Janice Biletnikoff at the San Juan County Community Development and Planning Department via phone at 360-370-7572, or e-mail at [janiceb@sanjuanco.com](mailto:janiceb@sanjuanco.com).