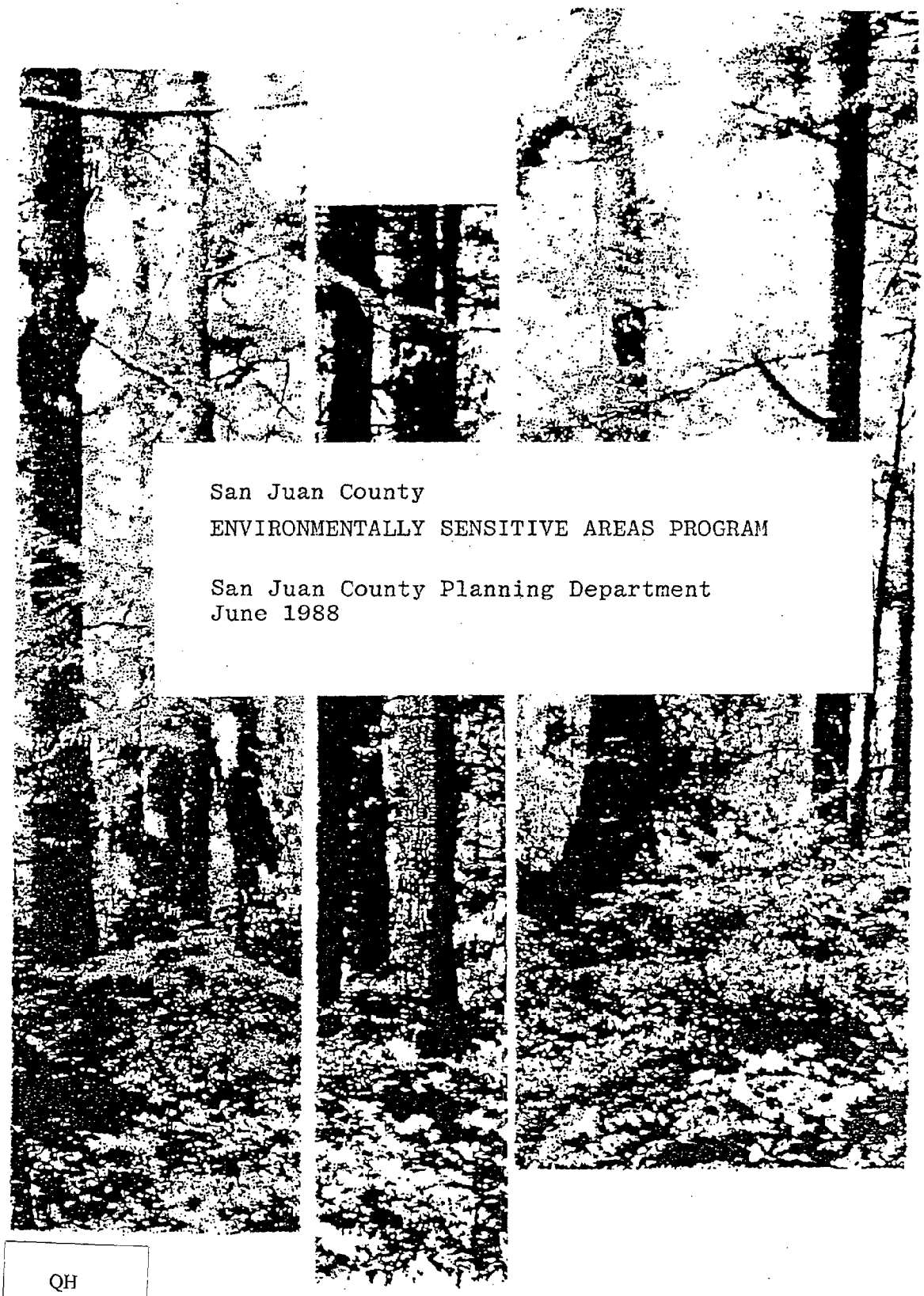

San Juan County

ENVIRONMENTALLY SENSITIVE AREAS PROGRAM

San Juan County Planning Department
June 1988

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1988

Planning Department
San Juan County

P.O. Box 947 • Friday Harbor, Washington 98250
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July 14, 1988

Steven J. Craig, Grants Officer
Shorelands and Coastal Zone Management Program
WA State Dept. of Ecology
Mail Stop PV-11
Olympia, WA 98504-8711

Re: COASTAL ZONE MANAGEMENT SECTION 306 GRANT
#G0088055 - FY1988 - PROJECT COMPLETION REPORT

Dear Mr. Craig:

This transmits our final budget report (attached) and summary account, together with copies of materials produced under the terms of this grant.

PROJECT COMPLETION REPORT - SUMMARY ACCOUNT

Work began on project elements following grant contract approval in the second quarter of FY1988, and proceeded in accordance with the amendment approved in May, 1988.

The project included three elements: I - Environmentally Sensitive Areas; II - Shoreline Master Program Amendments; and III - Data Base.

I. Environmentally Sensitive Areas

This element is a continuation of work begun in 1986 to develop an environmentally sensitive areas (ESA) management program for San Juan County. The narrative and budget were amended in the last quarter to transfer funds to element III and alter the focus of this element from resource inventory to analysis of ESA program design and function within the existing County planning program.

In the second quarter, a preliminary wetlands inventory (comprised of information from the USFWS National Wetlands Inventory and County Soil Survey maps) was begun to establish working maps that will provide bases for field survey and site analysis and serve as a general reference during development of criteria for definition and management of these ESA.

The third quarter included continued comparative review of ESA management methods and evaluation of existing resource

information. Meetings were conducted with WDOE wetlands staff, with County staff currently working on watershed and water supply management programs and with members of the San Juan Preservation Trust (recipients of PIE funding for a wetlands education project), to determine relationships between various project goals and consider how efforts of other groups might be incorporated in an ESA program.

During the fourth quarter, mylar overlays to County comprehensive plan maps were prepared, using published information, to identify stream corridors, associated wetlands (per WAC 173-22), and flood and slide hazard areas (see photographs in attachment B). These supplement overlays completed in the previous grant year and are intended to supply a composite, in-house reference.

A report was also completed (attachment A). The report describes appropriate ESA elements and criteria for selection; assesses existing ESA management and needs for improvement; identifies opportunities and priorities for comprehensive ESA program development; and identifies preferred means to incorporate ESA management into existing County planning work on a contiuous basis. The report is intended as a guide for future efforts to refine information and develop an effective ESA management element of the County planning program.

II. Shoreline Master Program Amendments

The second and third quarters were largely devoted to negotiations between County and WDOE staff regarding proposed amendments to the aquaculture section and related items in the County Master Program. This culminated in a public hearing held March 30, 1988, by the Board of County Commissioners and a rehearing, held May 10, 1988. The final hearing resulted in minor changes to the proposal which was then forwarded for WDOE adoption proceedings (see attachment C).

During the third and fourth quarters work also continued on amendments to the residential development section. In the previous grant year an amendment proposal for this section had been accepted for hearing by the County Planning Commission. Additional changes were developed in the second quarter this year but, due to changes in staff and limited staff time, no hearing was held. Current staff has completed recommendations to further revise proposed amendments to this section, together with related exemption and bulkhead development provisions, for presentation to the Commission.

(A copy of the October, 1987, version of the amendment proposal and current revision recommendations are in Attachment D).

III. Data Base

In the second quarter County staff continued entry of shoreline permit data into the existing tracking system while exploring potential for updating the system with its designer, Andy Ruotsala. His proposal and scope of work were accepted with minor revisions in the third quarter.

Anticipating amendment of the grant, work continued on adapting the system to fit County permit tracking needs and tailor it to local procedures. Following amendment approval the consultant contract was signed and the necessary equipment was purchased and installed. (Refer to exhibit 1 of the consultant contract.) During the fourth quarter the consultant completed conversion to the new PERMIT*PLAN system, including conversion of old files to the new format, and trained County staff to enter and retrieve permit information. Shoreline permit records from the present to 1979 are entered and the remaining records will be entered as time allows.

LIST OF DOCUMENTS

1. Amendments to Section 16.40.503 of the San Juan County Shoreline Master Program - to be published following adoption by WDOE. Five copies, attachment C.

2. "San Juan County Environmentally Sensitive Areas Program" - an unpublished report. Seven copies, as requested, attachment A.

3. Environmentally Sensitive Areas Map Overlays - four unpublished mylar overlays to County maps for in-house use. Copies of descriptive photographs, five sets, attachment B.

4. Proposed amendments and additional recommendations for revisions to Section 16.40.517 of the County Shoreline Master Program - unpublished. Five copies, attachment D.

The final budget report is attached.

Sincerely,

for Richard M. Grout
Planning Director

enclosures.

czm/final0

SAN JUAN COUNTY

ENVIRONMENTALLY SENSITIVE AREAS PROGRAM

San Juan County

Planning Department

JUNE 1988

"The preparation of this document was financially aided through a grant from the Washington State Department of Ecology with funds obtained from the National Oceanic and Atmospheric Administration and appropriated for section 306 of the Coastal Zone Management Act of 1972."

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SAN JUAN COUNTY ENVIRONMENTALLY SENSITIVE AREAS PROGRAM

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SAN JUAN COUNTY ENVIRONMENTALLY SENSITIVE AREAS PROGRAM

INTRODUCTION

San Juan County has abundant natural resources that serve a variety of natural, cultural and economic functions. These vary broadly in their sensitivity to the effects of population growth and land use change.

This report explores ways to develop an Environmentally Sensitive Areas (ESA) Program so that these factors might be better understood and incorporated into existing land use and resource planning programs.

Background.

The County Comprehensive Plan and Shoreline Master Program (SMP) contain policies and regulations that direct review of environmental impacts in a general way, applied on a case-by-case basis. References to specific types of features, such as wetlands and wildlife habitats, are general statements. Without specific information about the types, functions and resource values of such areas it is difficult to accomplish conservation objectives in these plans. It is also difficult to know specifically what should be accomplished.

One way to refine the base of information for this use is to develop an ESA program. An ESA Program is a tool for incorporating management of specific environmental features or resources into local land use planning and regulatory programs. It involves research, setting goals and objectives and developing approaches to management of specific features and resources. Such a program could redress deficiencies in the body of information available and could provide a process for using information that does not otherwise fit structures and purposes of existing plans and permit systems.

Evolution of ESA:

Environmentally Sensitive Area is a term used in the State Environmental Policy Act (SEPA, 1971) to mean an area designated by local governments for special treatment when applying requirements for environmental review. The SEPA rules (WAC 197-11) allow the County to apply review requirements in some land use actions that are otherwise exempt if proposed for location in an area designated "environmentally sensitive."

ESA is also a term commonly used in land use planning and regulatory programs. In many areas, ESA programs are (1) a set of standards applicable to projects that occur within

mapped ESA, as in King County, (2) a section of a zoning code containing development standards, as in Olympia and Thurston County, or (3) a complete management plan for a specific physical feature, such as the Thurston County wetlands program. ESA programs are designed to meet local conditions and needs. Program content, format and relationship to other local programs varies considerably among jurisdictions.

Local ESA History:

In the original adoption of the County SEPA ordinance (1976) all areas designated in the Comprehensive Plan and Shoreline Master Program as either Conservancy or Natural were determined to be ESA (see appendix A). In 1981, an amendment to the ordinance was passed to expand use of this provision to include other land use designations. Designations are applied to land areas broadly, rather than to specific types of features or resources. Largely for this reason, the amendment was challenged successfully and remanded to the County. Currently, the original ESA provision stands.

Work was resumed haltingly in 1986 to rewrite the ESA provision in the County ordinance. It had also, by then, become a more comprehensive effort to satisfy SEPA as well as to produce a program that would correspond well with the Comprehensive Plan and its subarea plans. This report completes the first phase of the ESA Program and provides direction for the next.

PART 1 - STUDY PURPOSE

ESA are areas containing features that cannot be disturbed or destroyed without harming important natural systems or public resources or creating hazards to people and property. A clearly directed and specific management program would benefit all concerned:

- ambiguous plan provisions could be clarified for more objective and consistent application by County staff and officials,

- owners and developers of land could know better what County interests and requirements are for use of ESA, and

- the public could have greater assurance that important resources are treated appropriately in local land use decisions.

San Juan County land use plans are designed to direct location of new uses based on existing development patterns

and on general natural characteristics of land. They don't address natural functions of those characteristics specifically but they do enable, and sometimes require, case-by-case analysis of how these functions will be affected by a given development proposal.

This approach requires time and a skilled staff. When these are available it can be effective. But to facilitate administration; to improve communication between County government, residents and project proponents; and to ensure consistent and productive management efforts, it would be more effective with: (a) better information available for initial project review, (b) clearly established management purposes and methods and (c) clearer specifications for project requirements.

Since adoption of the County Comprehensive Plan and Shoreline Master Program in the late 1970's it has been understood that these were a beginning on which a more specific planning and regulatory system would be developed. Refinement of ways to manage development that affects sensitive environmental features is a step that would advance that process.

As noted above, though, development of an ESA program has been and probably will be constrained by limited funds, staff and time. This fact is significant enough that it must be recognized with other aspects of local ESA program design.

PART 2 - BENEFITS OF ESA PROGRAMS

Long-term, responsible management of ESA is a goal expressed variously in the goals and policies adopted in the County Comprehensive Plan and SMP. Toward that goal, use of an ESA program can:

1 - Augment existing general policies and regulations with specific ones;

2 - Increase clarity and predictability of County approach to protecting and conserving ESA in land use actions;

3 - Provide a compilation of existing information and a useful, accessible repository for new resource information; and

4 - Create a mechanism to incorporate and consolidate related resource planning efforts.

Policies and regulations adopted in the Comprehensive Plan and Shoreline Master Program provide generally for recognition and protection of valuable or critical habitats, including wetlands. Typical examples of County plan

provisions include these from the SMP and Comprehensive Plan:

> "The draining or filling of water bodies or natural wetlands for commercial development shall not be permitted except as a conditional use." (16.40.507, R3)
>
> "The impact a proposed recreational site would have on the natural resources and environmental quality of the area should be carefully considered." (16.40.516,P4)
>
> "Actions that would commit resources to irreversible uses or would detrimentally alter natural conditions characteristic of (shorelines of statewide significance) should be severely limited."
>
> "The natural resources and systems...should be protected. Areas containing unusual or fragile natural resources...should be left undeveloped." (16.44.603)
>
> "The draining and filling of water bodies, marshes or swamps for commercial or industrial development shall be permitted only as a conditional use." (16.44.090(2)
>
> "Roads shall not be constructed through Natural or Conservancy designations or other unique or fragile areas where any feasible alternative exists...." (16.44.160(A)(1)(a))

Both plans occasionally refer to broad categories of features to be protected (marshes, unstable slopes) but they are usually even less specific (unique or fragile areas). Neither plan defines what aspects of these features are sensitive to what actions nor how they should be protected. Once the valuable functions of certain environmental features are identified, the specific sensitivities of each can be defined in terms of land use and development practices that affect them adversely. Management policies can then be devised that are specifically designed to maintain or protect those functions.

PART 3 - SELECTION OF ESA PROGRAM ELEMENTS

ESA programs often include several categories, such as:

- wetlands and anadromous fish-bearing waters
- habitats of endangered, threatened or rare plant and animal species
- erosion/landslide hazard areas
- flood plains and flood hazard areas
- groundwater recharge areas

If an ESA program is to allow a shift from general to specific policies for resource management (or for safeguards against hazards), a first step is to determine what resources or features would benefit from more detailed treatment than is afforded them in existing County plans. There are two initial tests to apply in identifying possible ESA categories:

1 - Are the functions of the resource subject to damage if they are disregarded or regarded inadequately in land use actions?

2 - Are the functions of the resource understood well enough that reasonably reliable management methods are known?

A third criterion for selection of ESA categories is the potential value of SEPA in mitigating impacts on resources and features. Archaeological and historical sites are assigned resource values in SEPA, the Shoreline Management Act, local SMP and Comprehensive Plan. Similar recognition might be given to scientific research areas if these are established on a long-term basis and require stable environmental conditions.

In San Juan County, resources and features most amenable to management through an ESA program include:

- wetlands, inland and along lake and marine shorelines;

- aquatic habitat areas, such as critical feeding areas for waterfowl, harbor seal haul-out areas and herring spawning areas;

- terrestrial habitat areas, like bald eagle and osprey nest sites and important resting grounds for migrating trumpeter swans;

- landslide and erosion hazard areas, particularly those on or adjacent to shorelines;

- groundwater recharge areas;

- natural drainage corridors, especially those emptying to surface waters;

- flood hazard areas, particularly along shorelines;

- archaeological and historical sites; and

- scientific study areas and biological preserves.

After a preliminary selection of ESA categories is made, each must be defined so that physical boundaries can be

located as specifically as possible for individual ESA and so that the ends to be met by the program are clearly identifiable and management goals and policies can be determined.

PART 4 - DESIGN AND FORMAT OF ESA PROGRAMS

Before going on to develop management strategies it's important to determine how ESA might be incorporated in the existing planning and regulatory program. This will influence the amount of detailed study required at the outset and the types of management strategies chosen.

A. Factors influencing choice of format.

There are several ESA formats for comparison that offer different degrees of specificity and flexibility. The choice of a best format depends on:

- funding, staff and time to devote to development and administration of an ESA program

    - this is a significant limitation currently and will likely continue; much work will depend on support from outside funding of state-required projects related to resource management

- adequacy of available ESA information

    - the largest shortcoming in existing plans is location information; even when location information is available, the problem is most acute in reviewing development projects which are exempt from SEPA because authority to require impact analysis often is not supplied otherwise

- adequacy of existing ESA management through the Plan, SMP and SEPA

    - existing plans do not offer adequate means to assess cumulative impacts of development, particularly those exempt from local permit requirements

    - even when information is available, adequate use of it often depends on who has it and when and how it is divulged; much resource information is maintained by state agencies which operate under codes and policies that do not invite cooperation with local permit procedures or with planning efforts

    - interrelationships between management practices for different resources (e.g., wildlife habitat and erosion hazards) may be apparent only after damage has occurred to one feature at the expense of another; this is a

function of both information and coordination between managing agencies

- timeliness of new information anticipated from other programs and studies

  - work on ESA management occurs at all levels of government and agency projects can help (or hinder) local efforts

- urgency for improved management of ESA

  - perception of urgency depends on viewpoint; administratively, existing management problems suggest that some elements, such as shoreline erosion, and the effects of efforts to control it structurally, are significant problems in certain areas of the County; some resource problems are less evident now but are likely to become so

  - for example, rates of new residential construction on shorelines could have substantial impacts on groundwater quality and quantity, damage archaeological resources and could diminish distribution and productivity of bald eagle nesting areas

  - state and federal resource management agencies often have priorities that do not coincide with and therefore create conflicts with local planning and regulatory priorities

- comparative weight given to the desire for predictability over flexibility

  - efforts continue in local planning to balance these values in land use regulations; the comparative weight awarded in an ESA program is a legislative issue but it is desirable to seek the same balance in ESA management being sought in other land use controls

  - among different managing agencies, assigned weights may vary and, as agency responsibilities are usually defined by legislation, it is not necessarily within capabilities of local government to adapt state and federal agency practices to fit local management needs

B. Format options.

The following are optional ESA program styles for comparison:

1 - A combination of options listed below

- most are readily combinable, depending on effects desired

2 - An ESA map adopted by reference in the Comprehensive Plan for use in applying SEPA

- to enhance ESA consideration in project review by requiring SEPA review for some actions that would be exempt otherwise

- could replace or add to existing ESA designation applied to Conservancy and Natural designations in the SEPA ordinance

- requires ESA location descriptions adequate to determin if a project does or doesn't fall within an ESA; can rely on general information for some ESA elements but others, like wildlife habitat and archaeological sites, are not located specifically unless state agency personnel or hired consultants verify locations - this is done on a case-by-case basis usually after application is made and environmental review is begun

3 - An ESA ordinance, with or without a map, containing development standards applicable to each ESA category

- could adapt development standards ordinance being drafted now to include ESA (proposed to provide specific standards for drainage and erosion control, parking and signs)

- works best if there are specific activities to be regulated in specific ways to protect ESA features

- not readily expandable to include new items unless standards are established by ESA category rather than by the activities being regulated

4 - Amendments to the use policies and regulations in the Comprehensive Plan and Shoreline Master Program

- performance standards could be adopted in existing plans to moderate impacts on ESA by applying policies and regulations for different uses

- works best if there are few ESA categories and if ESA categories and locations are well-defined

- with a map, could address specific ESA sites as well as general impacts associated with ESA categories

5 - A policy plan for ESA adopted as a subarea plan

- could provide management goals and policies for each ESA category

- flexible for use with other options that are focused on regulation (e.g., can provide basis for SMP, Plan and Land Division Ordinance regulations)

- expandable to allow for additions and refinement as new information is generated

The use of maps is an important aspect of program format to consider. Many ESA programs are based on inventory maps, often composites of ESA categories. They may identify ESA locations broadly or show specific geographic locations and ESA boundaries, if these have been determined. Use of location maps requires comprehensive inventories though the level of detail may vary, as noted above, and may therefore affect opportunities to use SEPA as a management tool.

ESA maps may be adopted as official maps or used solely as a general reference without official status. Once adopted, official ESA maps provide bases for legal requirements to be met and must be formally amended as new information is obtained. Unofficial maps can improve use of available information for administrative purposes but provide less certainty to administrators, project applicants and the public. For SEPA purposes, ESA designation requires adoption of official maps.

PART 5 - EVALUATION OF EXISTING ESA MANAGEMENT

In order to determine how and how well ESA are managed under current County plans, the use policies and regulations in the Comprehensive Plan and Shoreline Master Program were reviewed. (Note: both plans contain regulations in separate sections for each use category covered; the SMP also contains policies applicable to each use category.

A. Summary of current plan review.

The following is a summary of conclusions drawn from that review of existing Plan and Master Program provisions:

- few references to specific ESA types or locations of "sensitive" features, other than wetlands, are made in the Plan or SMP

- Most SMP use sections include at least one general policy and one regulation regarding some aspect of environmental quality that could affect an ESA

- Most references to maintaining or protecting natural resources are to marine water quality and control of pollutants (e.g., drainage from parking areas or chemical removal of brush in road rights-of-way)

- References to protection of marine habitats in general occur next most often and references to prohibition or control of landfill in wetlands occurs also, but less commonly

- ESA references in the Plan are of the same type and on the same subjects but they occur less frequently than they do in the SMP

- Most regulation sections in both plans require control of runoff and erosion and, in the SMP, most address location and design of developments with regard to protection of aquatic habitats in general

- ESA recognition and consideration through review of development projects depends primarily on review by state agencies, on state permit regulations and on a few in-house information sources (e.g., eagle nest sites, WA Coastal Zone Atlas ("critical" and "important biological areas))

  - State agency regulations relevant to ESA in general include:

    For aquatic areas:

    - fish and shellfish habitat protection through Department of Fisheries design requirements and Hydraulics Permit program for marine construction

    - standard time limitations on pile driving and other marine construction during annual herring spawning periods

    - water quality certification by the Department of Ecology required for issuance of Corps of Engineers Section X permits (for marine construction)

    - National Pollutant Discharge and Elimination Systems program administered by the Department of Ecology

    For land areas:

    - the Site Management Plan process used by the Department of Game triggered by any local or state permit application near an eagle nest

- the Department of Natural Resources Forest Practices Permit program provides criteria for timber harvest near temperature-sensitive, fish-bearing waters and near significant wildlife habitat areas

- the State Office of Archaeology and Historic Preservation promotes conservation of archaeological and historical resources

B. Limitations to the existing management program.

The following are notable shortcomings of existing ESA management in County land use plans:

1 - Identification of "fragile", "unusual" or "sensitive" areas or features to be protected through general use policies and regulations;

2 - Definition of what aspects or functions of these areas or features are sensitive;

3 - Description of what activities affect these functions and how, and

4 - Identification of methods to mitigate impacts.

As an example, wetlands are noted in existing plans as sensitive and requiring protection. Lacking, however, is comprehensive information regarding: (a) locations of wetlands; (b) identification of what types, sizes or characteristics of wetlands should be regulated (i.e., definitions of wetland vary widely - is a .3 acre pond a wetland?); (c) functions of wetlands (either typical or site-specific, such as stormwater detention, groundwater recharge, wildlife habitat), and (d) what activities (in addition to filling and draining) harm or destroy these functions.

Another shortcoming is poor coordination of responsibilities among reviewing agencies charged with management of different resources. Agencies have different objectives, methods, time requirements and "audiences" that can result in administrative as well as resource management problems.

The urgency or timeliness of work to establish management policies for ESA are affected by how they are managed at present and what efforts are being made by the County and by others that affect project funding and levels of public and political interest. Current management can be characterized as case-by-case, based on adopted policies and regulations in the County Comprehensive Plan and Shoreline Master Program and supplemented by few (and sometimes outdated) information sources and by state agency assistance. This

approach is comprehensive and long-range only to the extent that conservation efforts required in each case are effective.

Related work is currently going on at state and local levels, however, that offers opportunities to expand our resource information and thus to better manage "sensitive" resources. The following projects are currently underway:

- the Puget Sound Water Quality Authority water quality management program

    - established action plans in 1987 for stormwater and combined sewer overflows, oil spill response, wetlands, nonpoint source pollution, municipal and industrial waste discharges and contaminated sediments and dredging

    - began 1988-1989 program for local watershed ranking based on PSWQA criteria

    - the ranking process could generate substantial information regarding existing and potential causes of water quality degradation as well as features and resources that could be affected; it's more likely, however, to provide a compilation of existing information on two or three watersheds

    - ranking is preliminary to development of local watershed management plans for long-term marine water quality protection

- the WA Department of Ecology wetlands management and acquisition program

    - in concert with the PSWQA, DOE will establish a program in August, 1988, to acquire high priority wetlands in the state recommended by the WA Natural Heritage Program (DNR)

    - as part of the PSWQA plan, DOE is developing wetlands management requirements for local government compliance, to be complete by 1989

- the Comprehensive Water Plan for San Juan County

    - with assistance from the WA Departments of Ecology and Social and Health Services, the County is preparing an inventory and assessment of ground and surface water sources, quality, quantity and recharge capabilities for use in developing a county-wide water allocation and distribution plan

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Recently completed work to survey archaeological sites can also be incorporated into an ESA program. San Juan County sponsored a project in 1986 to develop complete surveys of all sites then registered and about fifty additional sites that were registered subsequently.

PART 6 - OPTIONS

A - ESA Categories

In part three, above, seven categories of ESA were listed as being significant in San Juan County. These were selected as possible ESA Program elements because they each occur broadly within the County and because they each (with exception of archaeological and historic sites) meet the two tests. That is, they have functional aspects subject to damage if these are disregarded and understood well enough that reasonable management can occur. In order to address local ESA comprehensively, i.e. to ensure that functions of inter-related categories are recognized, the County should not seek to narrow the number of categories but should instead identify priorities within this group. Once priorities are established a program can be developed step-by-step without excluding opportunity to revise or shift priorities for research or action as circumstances require.

1. To determine priorities each category should be considered in terms of the following:

   a. specific aspects or functions to be protected or managed;

   b. what activities affect them and how, and whether those activities are common or anticipated in the County;

   c. effectiveness of existing management provisions to protect or manage aspects or functions identified;

   d. availability and usefulness of existing information regarding locations, desirable management and mitigation; and

   e. potential for coordination with existing and anticipated research, program development or other related work.

2. Priorities Recommended:

   a. Slide- and erosion-hazard areas.

      Except with regard to their functions associated with erosion-accretion processes, areas in this category are constraining rather than sensitive elements. Physical processes associated with them are well understood in general (not site-specific) terms as are

effects of land use and development activities on them.

In San Juan County these occur mostly on shorelines, where great potential for damage from (exempt residential construction and associated beach access structures and bulkheads) also occurs. There is little information available on specific geographic areas. In applying existing management policies and regulations, reliance on The WDOE Coastal Zone Atlas and the USDA Soil Survey, as well as staff knowledge, is necessary.

County shoreline development policies are designed to protect new developments and protect bank stability. Routine reference to existing information would improve management of unstable areas especially if supplemented by stronger regulations.

Also, improvements to management policies and use regulations for shoreline developments, especially those associated with development of single-family residences, can and should be made. Particular attention should be given to ways the County could improve consideration of cumulative development impacts through administrative and legislative actions. Reference to the experiences of other local governments in bluff protection would be useful.

Detailed, site-specific geological or other technical analyses of slide hazard areas or erosion-prone slopes would be useful in setting land development policies Given the cost of this, however, case-by-case studies may have to suffice while the County relies on less detailed information (e.g., general location).

b. Wetlands.

Wetlands have been the subject of much recent research and legislative attention, at varying levels of government. Their functions are relatively well-understood and regulatory programs for their protection currently exist, administered by federal and state agencies. Local management occurs as provided for by the Shoreline Management Act and local master programs.

Good, basic information exists regarding locations, boundaries and types of wetlands in San Juan County that are associated with marine and lake shorelines. Information on wetlands in upland areas is poor, however, and is not qualitative. Management of shoreline wetlands benefits by their being defined, and from recognition of their functions and qualities,

in the Shoreline Management and and local Master Program. Wetlands in upland areas are not as well understood in part because they are undefined (or useful definitions of wetland types and associated functions are lacking).

The best information available now on non-SMA wetlands is the U.S. Fish & Wildlife Service wetland inventory. This is a series of County maps made by interpreting small-scale infrared aerial photographs. These maps show wetland locations and types but have not been field-checked and therefore offer only a gross picture. They are a good base of information to refine in developing a wetlands program element. To make it useful, considerable work must be done to identify and map wetland boundaries and site-specific features.

Wetlands are subject to cumulative impacts of small-scale, usually exempt, developments; forestry practices, most agricultural practices and structures and most residential uses are exempt from County land use permit requirements. Of exempt uses, only shoreline residential structures are subject to substantive review. These developments and activities are more likely to result in damage to wetland functions in San Juan County than others are but the likelihood of adverse effects resulting from other developments is highest where resource information is poorest. Further, though existing local regulations assist, little preventive management can occur if wetland locations and functions are not recognized in land use planning or development review.

There is a high probability that the WDOE will, as part of its role in the Puget Sound Water Quality Authority program, soon generate a state wetlands management program for local government compliance. If that occurs, some state financial and technical assistance should be available to enable local compliance. Opportunity should be sought to enlist state assistance and, possibly, local volunteers, to conduct a comprehensive wetland inventory.

c. Aquatic habitat areas.

Many species of resident and migratory birds, and some marine mammals, breed, rest and feed in local marine waters, lakes and wetlands. Information available from the WDOE Coastal Zone Atlas and the University of Washington Friday Harbor Marine Labs indicates widespread occurance of important aquatic areas in the County. In fact, the state legislature declared

County waters a marine biological preserve in 1923.

Aquatic areas may be considered sensitive if they support species populations that consistently reproduce and also provide major sources of new stock for other areas with less favorable conditions. They may also be sensitive if they provide a source of food or shelter critical to certain life stages of a species.

Most development activity occuring in the County that affects these areas is residential and related development on marine shorelines. Marinas, underwater utilities and recreational uses also have direct impacts on these areas but are less common. Indirect impacts from boating activity, forestry, agriculture and water transportation sytems are also likely to occur.

Most direct impacts from construction and activity within aquatic areas can be and are controlled through the shoreline permit process locally and through state and federal agency review and permit processes. Most of these areas are "sensitive" because crtain species that occur in them are sensitive to effects of particular activities. These are comparatively well-understood and impacts are managed through state and federal agency programs (e.g., Corps of Engineers Section X and Section 404 permits, state hydraulics permits). Locally, shoreline permits are reviewed by the Director of the U.W. Marine Labs as well as by state and federal agency personnel.

Case-by-case analysis given to permit applications appears to provide reasonable protection to aquatic habitat areas. Cumulative impacts of individual, developments are less effectively considered. An example is the cumulative effect on water quality and aquatic habitat due to increasing numbers of docks being built in small bays. These bays adjoin shorelines containing small lots being developed with single-family houses. Efforts to encourage shared use of docks among waterfront owners have been only moderately successful and have been inadequate to limit continued development of individual moorages. If the types and locations of these areas are identified and specific sensitivities described, this information may be used to develop moorage location and construction requirements that better conserve aquatic resources.

d. Flood hazard areas.

Flood hazard areas mapped for use with the Federal Flood Insurance Program (through FEMA) and the County Flood Hazard Ordinance coincide generally with inland and shoreline-related wetlands.

County participation in the FEMA insurance program, through the local ordinance, requires certification of compliance with structural and elevation standards intended to preclude flood damage to insured buildings. In practice, however, the ordinance has rarely been used (i.e., few certificates have been requested or required since ordinance adoption in 1985) and in fact conflicts with other local land use policies and regulations which would constrain or preclude construction in most of these areas.

The WDOE Coastal Zone Atlas describes some shoreline areas as flood-prone which are not shown on the insurance maps. These are also coincident with wetlands associated with shorelines or occur along accretion shoreforms or on no-bank beaches in shallow bays. All of these are within Shoreline Management Act jurisdiction.

The significance of this category is its relationship to the wetland and terrestrial and aquatic habitat categories of ESA. Flood hazards are an additional sensitivity factor while flood control is one important function of wetland areas that also serve as important plant and animal habitats.

Management of flood hazard areas is subject to the same limitations found for other categories. Of these, lack of locational and functional information is the major shortcoming since this lack hinders preventative measures in planning and development review. Also, adverse cumulative impacts are then difficult to determine and to correct.

e. Groundwater recharge areas.

Recharge areas are subject to damage from development activity, especially cumulative, exempt development since few areas in the County have alternative water sources and most households, as well as other forms of development, depend on individual wells.

Lack of information for use in development review and planning makes management of these areas difficult. There is no effective existing way to upgrade management of these areas except to require expensive, and frequently only speculative, assessments from

project applicants. At present, this requirement is an option provided in the County Land Division Ordinance and is used occasionally for analysis of subdivision proposals in areas known to have groundwater problems.

Limited information is available from past local studies of groundwater quality and quantity. Current work being done will continue to provide information on location, quality, capacity and management needs of these areas.

Working jointly with the U.S. Geological Survey the County, in 1985, completed a study of salt water intrusion and bacterial contamination in about sixty wells in the islands. The study established baseline information for continued monitoring.

f. Terrestrial habitat areas.

Various uncoordinated sources of information are available regarding locations and sensitivities of land habitats. The most significant habitats locally are bald eagle nesting areas. Eagles are designated a threatened species nationally but are comparatively common in the islands. Nesting areas are well documented and are managed with comparative consistency. Other land habitat areas are less well known, particularly those of uncommon plants.

Some private organizations (e.g., Audubon, The Nature Conservancy) and non-regulatory government organizations (e.g., WDNR's Natural Heritage Program) conduct studies of habitat type and distribution but published reports may not be updated regularly and must be used with caution.

Most information on plant and animal habitats is obtained from the state and federal agencies that review local permit applications for compliance with protective laws and other agency requirements. These sites are then subject to protective conditions placed on permit approval.

Information provided to the County, however, according to policies of many of these agencies, is limited to general location and type an is not specific enough for compilation and use in land use planning programs. These policies make it difficult to include habitat areas effectively in a map-and-regulation ESA program and also make it difficult to assess the cumulative impacts of development activity on these areas.

g. Archaeological and historic sites.

County shorelines and adjoining uplands contain many Indian middens and some burial sites important to tribes historically present in the islands and to research in cultural history. Many are documented and it is reasonable to expect that many more are not. Like other sensitive features, these sites occur most frequently on and near shorelines, where much of local development activity occurs. Unless they are identified and removed or protected, these resources are likely to be damaged or lost due to development activities and to increased exposure to the curious. Exempt developments, such as single-family houses, are those most likely to damage undisturbed sites.

Information on locations of archaeological sites is obtained either from the state OAHP (permit or plat review comments) or from property owners who uncover artifacts during some excavation or development activity. For many sites, no professional survey has been done and project applicants must provide one if required by the OAHP.

More consistent, routine use of existing in-house information (supplied by the state archaeologist for use in accordance with a memorandum of understanding signed in June 1986), together with regular updating to include new information, is key to improving management of these sites.

Historical sites (as determined by presence on the national or state Register of Historic Places) are more completely identified. These are often homesteads, government or school buildings, or military installations such as those now contained in the two National Historical Parks on San Juan Island. (A particularly old pear tree on Lopez, however, is on the state Register.) These sites are much less likely to be uncovered in the process of excavation, erosion or development but artifacts are occasionally found which may merit further research. A complete field survey of Lopez Island sites (1985) is available but similar inventories for other islands are not complete. Local historical societies may have information on significant sites which have not been registered.

h. Scientific research areas and biological preserves.

Through the University of Washington Marine Labatories, located at Friday Harbor, a number of intertidal and aquatic areas have been established for on-going research use. Sites are usually chosen

for features such as unintruded and diverse plant and animal communities or because they provide a consistent source of organisms collected for research. Most sites now in use are those recognized in development of the County SMP during the early 1970's. Presence of research sites was used as a criterion for designation of shorelines and intertidal areas as Conservancy or Natural environments.

Other areas in the County are used by the University of Washington and others for educational and research purposes. Since these are owned or managed by these institutions, County interest in designating them ESA is primarily in managing impacts on them from nearby activities rather than development within them.

In addition, many small islands are designated National Wildlife Refuges and others are owned and/or managed by conservation organizations or otherwise protected, which should be recognized in assessment of indirect and cumulative impacts of development.

B - Program Format

Options for an ESA Program format were outlined in Part 4. Due to limitations of County time and budgets and to the nature of the local planning program, the County should consider using a more dynamic program format than is used in most jurisdictions..

A flexible approach is to devise a policy plan which will function as a work program. Unlike a map-and-regulation format for ESA management, this approach would allow for incorporation of new information over time and coordination with related planning programs (including local plan and ordinance amendments) without duplicating efforts and without extensive delays in needed policy revision because of serious time and budget constraints. It would also be more readily amenable to modifications over time.

PART 7 - SEPA Aspects of ESA

The State Environmental Policy Act (SEPA) established a system for obtaining and using environmental information in state and local government actions affecting land use. It provides authority to impose mitigating conditions or deny (non-exempt) development projects on environmental impact grounds (WAC 197-11-660). The local SEPA ordinance, SJCC 16.24, incorporates that authority in County decision-making.

Two other aspects of SEPA are of interest in managing ESA.

1. SEPA provides "categorical exemption" from its procedural and substantive requirements for certain types of actions considered comparatively minor in terms of their potential environmental impact (WAC 197-11-800).

2. SEPA allows local government to suspend exemption for certain of these actions if an action will occur in an area designated locally as an ESA (as provided in WAC 197-11-908).

The value of this as a management method is in extending the scope of information that may be considered in actions otherwise exempt from SEPA. Local options to use this method are limited by SEPA, however, since only categorical exemptions listed specifically may be suspended and only officially designated and mapped ESA may be excepted from exemptions.

In its 1976 SEPA ordinance the County used the ESA provision to designate all areas in the County shown on official Comprehensive Plan and Shoreline Master Program maps as Conservancy or Natural. All available exemptions are suspended for actions proposed to occur in these areas. In adopting amendments to the ordinance in 1984, the Board of County Commissioners specified that the County will continue work to refine ESA identification and mapping and to integrate SEPA with other County plans, policies and regulations.

Development of an ESA program is part of this effort and consideration should be given to the role SEPA may play in managing ESA within the County planning and regulatory program. The key to that role is in the specific exemptions that may be suspended in ESA and the relative likelihood of adverse impacts of development actions on ESA elements. A list of exemptions, and preliminary recommendations for their suspension, is provided in Appendix B. These recommendations are intended for future consideration, after information is obtained to prepare specific ESA maps.

PART 8 - CONCLUSIONS AND RECOMMENDATIONS

The primary factor in deciding the best approach for action is the current and projected constraint on County funding and staff to perform the necessary work. While the best ESA program would be founded on solid technical information and site-specific inventory maps, development of these foundations is not within short-term reach. And, though other approaches may be more immediately effective and more

responsive to interests of residents and County government in predictable, specific regulations, these approaches are also too costly to be realized for some years.

Despite this, many disparate elements of the on-going County planning program can be directed in a way that will promote better ESA management by providing new information and improved management tools. This can be done without formal adoption of a document guiding program direction, but adoption would provide a greater committment to follow through. To accomplish this, the County could establish a set of policies and objectives for improved ESA management and adopt these officially through the subarea plan provision in the County Comprehensive Plan.

The policy plan alternative is in some ways a stop-gap but would have value in that, by setting policy committment to establish new and/or revised policies and regulations in the existing Plan and SMP, more specific impact consideration for ESA and more attention to cumulative impacts of development on ESA elements could be gained.

If a policy plan is to be used and be effective, it should contain priorities for work on each ESA element and directives for action over time. By setting up a series of tasks, efforts to continue improvements in ESA management can continue at the various levels of cost and staff available at a given time. The following is a preliminary recommendation for contents of an ESA policy plan:

A. A statement of plan purpose, with reference to promoting long-term natural resource management and to fostering the adopted goals and policies in the Comprehensive Plan and SMP by providing direction for improved management of ESA in order to obtain the benefits of such a program (see Part 2).

B. A statement of applicability, naming the ESA elements to be recognized in the plan.

C. Definitions for each ESA element to the extent that these can be developed with limited information, providing that the definitions and scope of work relevant to each element will be revised over time, based on new information. For example, erosion and slide hazard areas might be defined as (a) those identified in the Washington State Coastal Zone Atlas (DOE) as being unstable or of intermediate stability, and (b) those areas shown in the County Soil Survey (USDA) as subject to moderate to severe erosion hazards where these coincide with slopes of 30% or more. Later, when or if a site inventory can be made, the definition may be revised to reflect the more specific, technical information obtained.

D. General statements of objectives for each ESA element that direct attention to the functions each may serve and how these may be affected directly or indirectly by land use and development.

E. A series of actions to occur in order of general priority, designed to respond to general objectives and address specific shortcomings of the existing management program. E.g., a first and second level of work could be established that would direct activity to:

1. Level one:

a. Identify existing ESA information and use it routinely to identify ESA at the outset of development review. This would clarify for applicants and their agents as well as administrators what information is available and how it may affect the substance and/or processing of development projects.

b. Revise information requirements and development regulations relevant to ESA for appropriate use category sections in the Comprehensive Plan and SMP. For example, more detailed information accompanying shoreline permit applications for bulkheads and more specific standards for their design and location, could help reduce cumulative effects of bank erosion resulting from fortifications. Also desirable are improved location policies and regulations for new moorage development.

c. Continue efforts to coordinate County development review with resource management activities of state agencies and to obtain agreements to store and use state resource information within the County. Past efforts have been promising, but not yet productive, to reach agreement on access to and use of state-maintained location information for sensitive areas. Because the information is not readily accessible, unnecessary processing delays occur and efforts to conserve or prevent damage to these areas are frustrated.

With or without an interagency agreement for limited exposure of site information, a procedure for cooperation in preparation

of bald eagle site management plans must be established to ensure that state wildlife management plans do not conflict with or preempt compliance with applicable local regulations.

d. Participate in state wetlands management program development to promote recognition of County interests as much as possible in any policies and regulations devised for local compliance.

2. Level two:

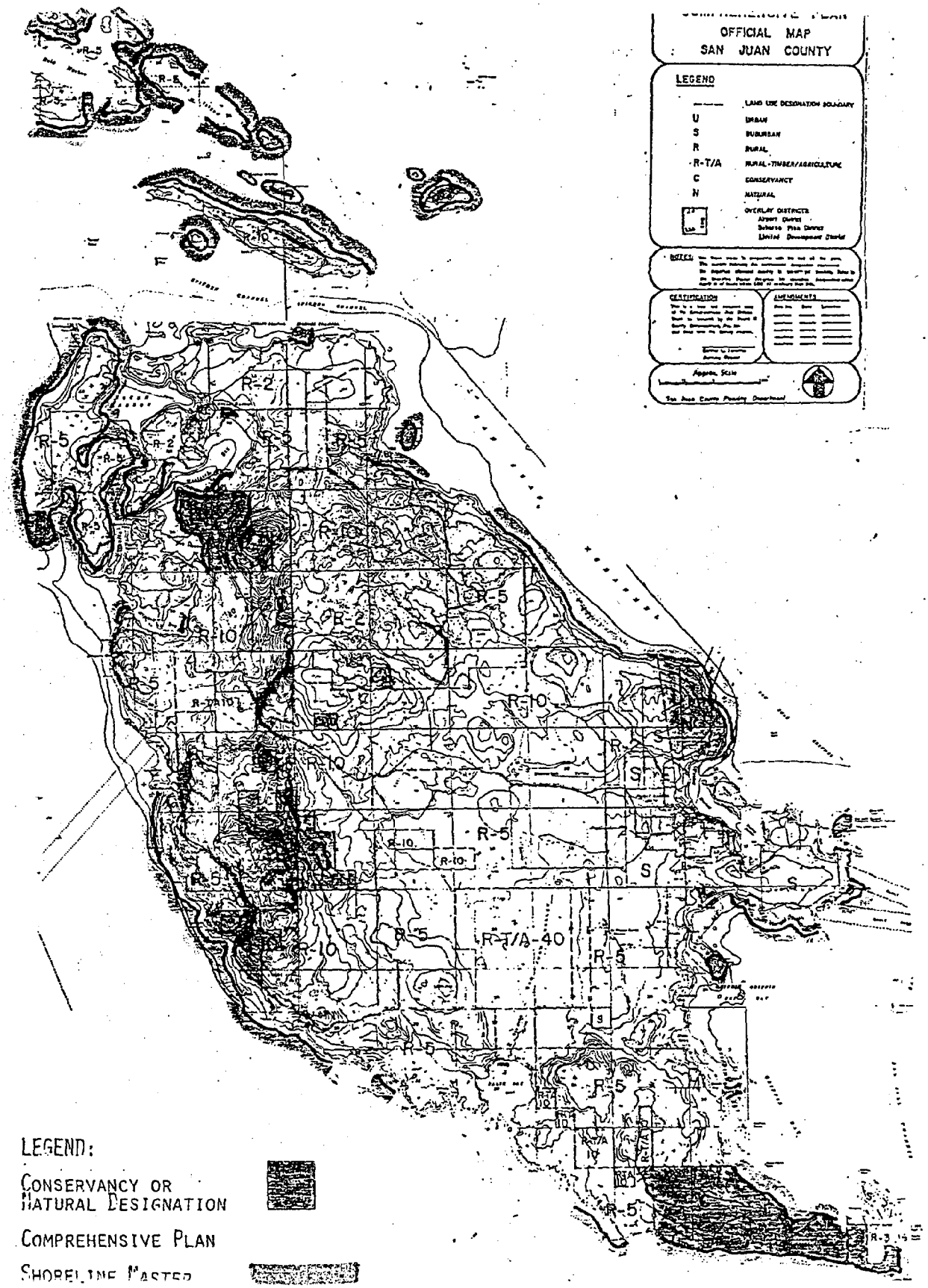
a. Seek state assistance to prepare a wetland inventory and establish criteria for determining significance and sensitivities for use in local wetland management.

b. Incorporate water supply and distribution plans, now being developed, into County land use plans so that protective measures are identified and required as needed in land use actions.

3. Level three:

a. Reassess ESA management after first and second level work is complete and consider whether additional, technical site inventories are needed for erosion/slide hazard areas and wildlife and plant habitats.

b. Designate ESA for SEPA purposes as information becomes available which is adequate for location mapping and amend SJCC 16.24, the County SEPA ordinance, to incorporate these and revise status of exemptions within them. ESA elements that are now defined and mapped adequately for this are flood hazard areas, aquatic habitats and known archaeological and historic sites. Archaeological sites and nesting areas of bald eagles and other threatened species may be excluded from publicly-available ESA maps by state agency policy.

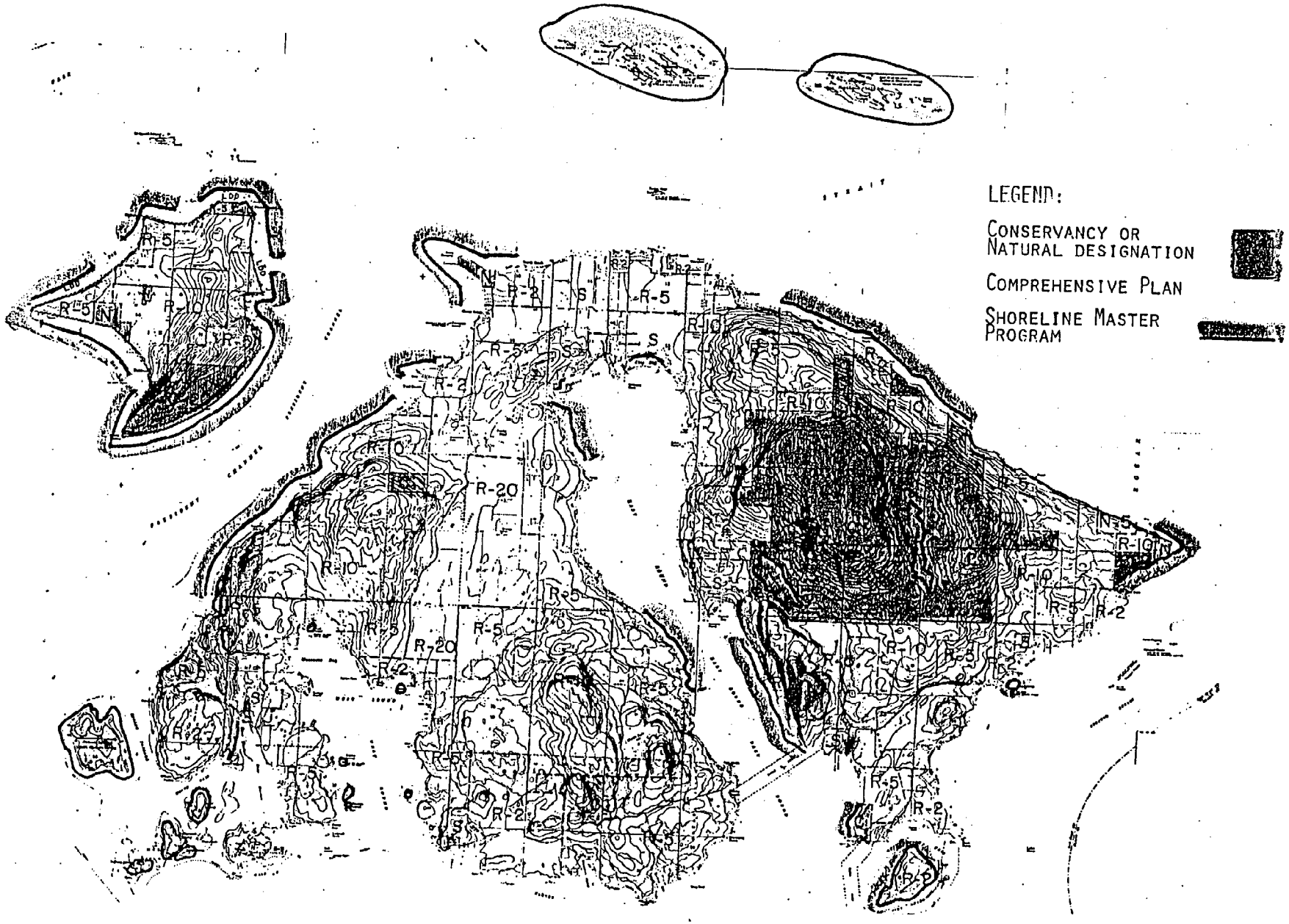


LEGEND:

CONSERVANCY OR NATURAL DESIGNATION

COMPREHENSIVE PLAN

SHORELINE MASTER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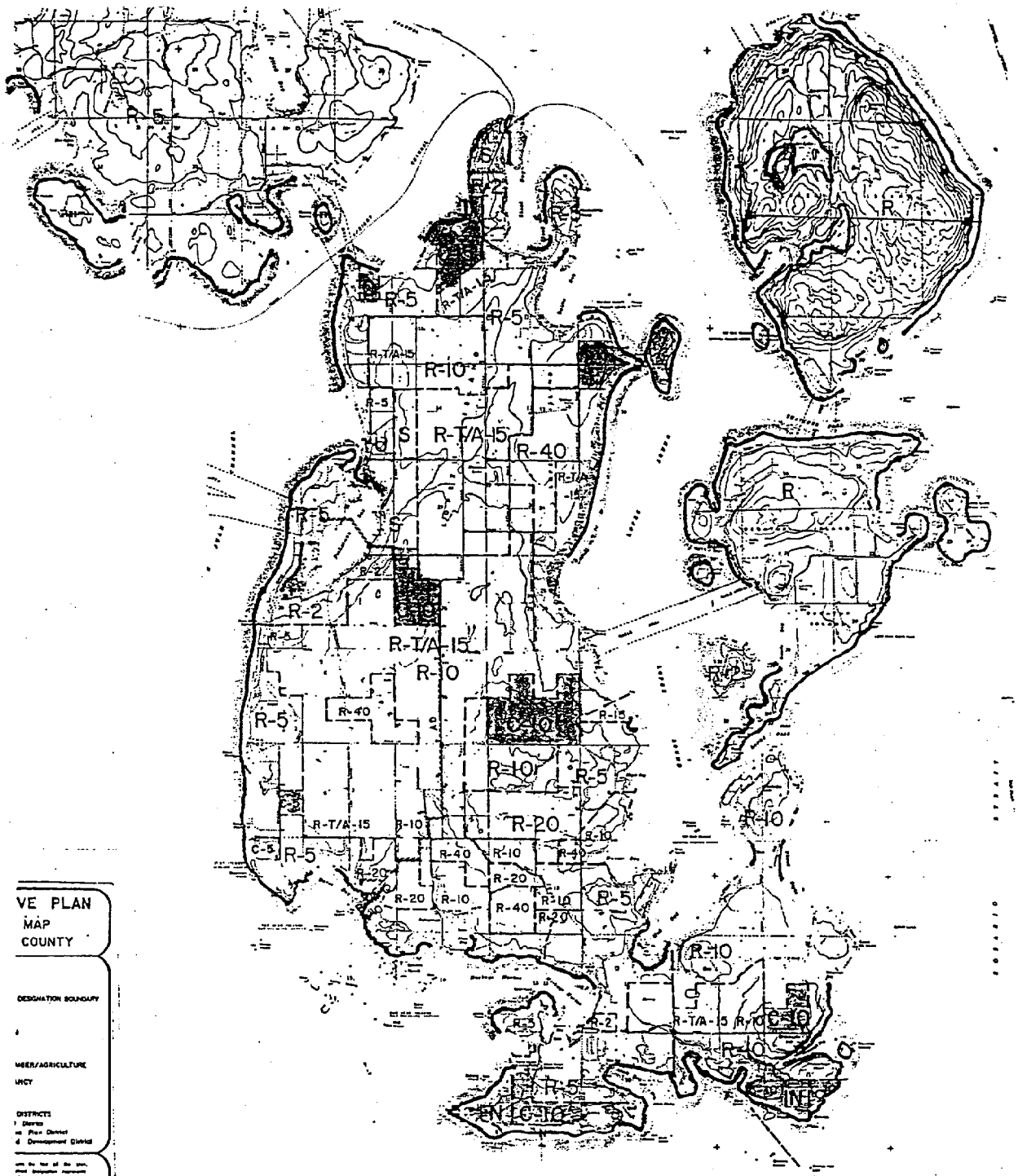


LEGEND:

CONSERVANCY OR NATURAL DESIGNATION

COMPREHENSIVE PLAN

SHORELINE MASTER PROGRAM

APPENDIX B

LIST OF EXISTING INFORMATION SOURCES FOR ENVIRONMENTALLY SENSITIVE AREAS

1. Coastal Zone Atlas of Washington, Volume III, San Juan County; October 1978; WA DOE Publication #77-21-3. Contains maps identifying critical and important aquatic habitat areas, coastal flood areas, slide and erosion hazard areas and eroding bluffs.

2. "Washington State Inventory of Historic Places"; State of Washington Office of Archaeology and Historic Preservation; a compilation of site inventory sheets for historical sites included in the state register through September. 1986.

3. San Juan County "Associated Wetlands Inventory Map Folio", November, 1983; containing maps and descriptions of thirteen wetland sites within Shoreline Management Act jurisdiction.

4. National Wetland Inventory, U.S. Fish & Wildlife Service; 1:1,000,000 scale maps in the Victoria NW series, 1980; describing locations of wetlands in San Juan County derived from aerial photograph interpretations.

5. Washington State Department of Wildlife data: nesting areas of threatened and sensitive animal species located by Section, Township and Range.

6. San Juan County Inventory of Natural Areas on Private Lands, The Northwest Office of the Nature Conservancy, January 1975. Includes general locations and assessment of rare plant communities and some wetland areas.

7. Puget Sound Environmental Atlas, Volume I, U.S. EPA, Puget Sound Water Quality Authority and U.S. Army Corps of Engineers (by Evans-Hamilton, Inc. and D.R. Systems, Inc.), February 1987. Includes location maps for marine mammal haul-out areas and wildlife preserves and sanctuaries within San Juan County.

APPENDIX C

SEPA ASPECTS OF ESA MANAGEMENT

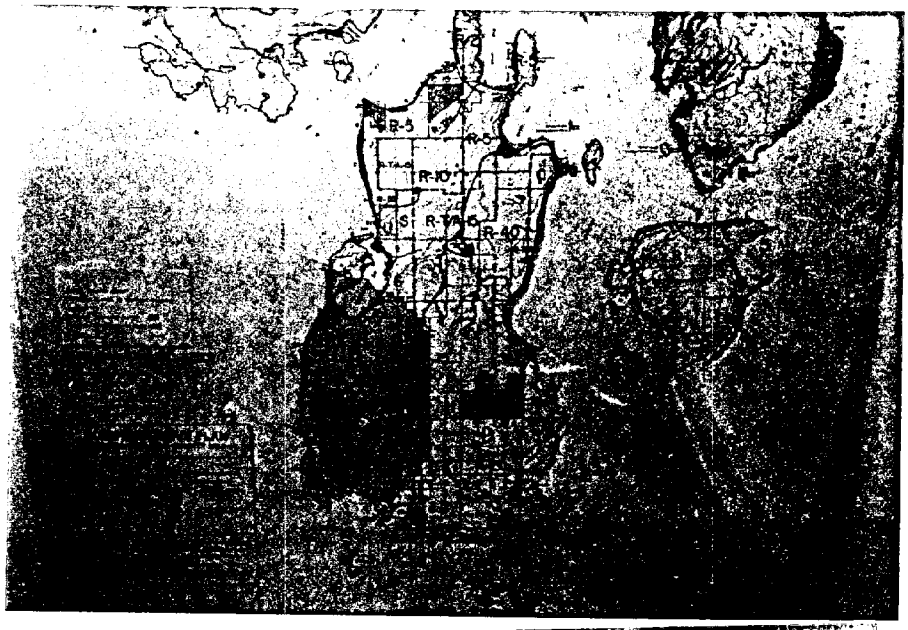
SEPA is useful as a way to obtain information and apply mitigation requirements to development proposals, particularly when other local review provisions aren't adequate for these purposes.

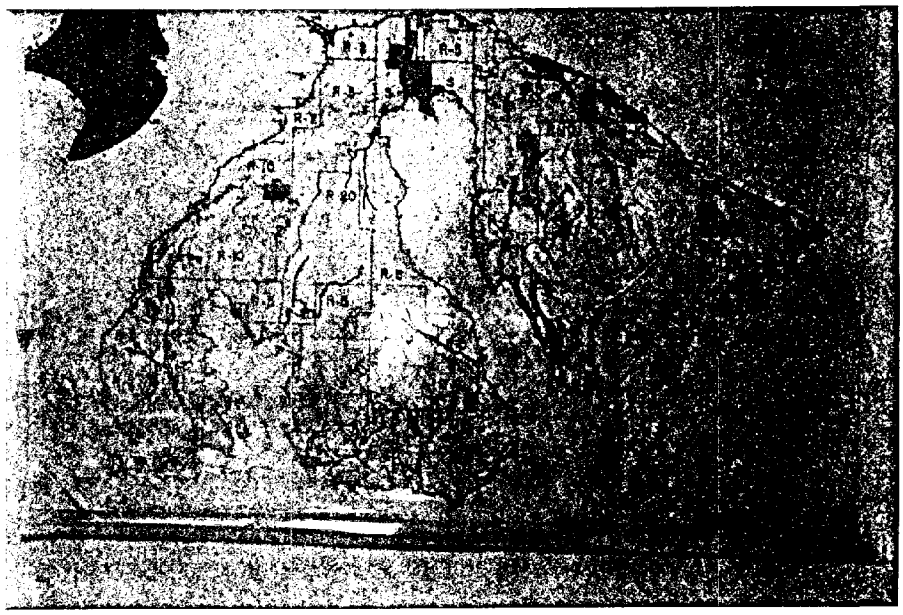
Most developments likely to result in adverse impacts on ESA are not exempt. Other, more minor activities are exempt unless the local SEPA ordinance (SJCC 16.24) suspends some or all categorical exemptions listed in WAC 197-11-908.

The simplest way to use this list is to suspend all exemptions available in all ESA, as the current ordinance does. It may be more reasonable and effective, however, to suspend selected exemptions based on the type of ESA a proposal will affect. The following is an example of how this may be done and a recommendation for amendment to SJCC 16.24.

POSSIBLE ESA ELEMENTS: / ELIGIBLE OPTIONS FOR SUSPENSION OF EXEMPTIONS	slide/erosion hazard	flood hazard	wetlands	archaeological/historic	wildlife habitat (aquatic/terrestrial)	research areas	groundwater resources
a. Minor new construction:							
residential development or subdivision of four units or fewer	✓	✓	✓	✓	✓	✓	
barns and other agricultural buildings 10,000 sqft or smaller		✓	✓	✓	✓	✓	
commercial, recreational, school and other buildings 4000 sqft or smaller	✓	✓	✓	✓	✓	✓	✓
parking lots for 20 or fewer cars	✓	✓	✓	✓	✓		
landfill of 100 cuyds or less	✓	✓	✓	✓			
b. other minor actions:							
designation of loading zones, bus stops, etc.			✓		✓	✓	
grading associated with exemptions in a, above	✓	✓	✓	✓	✓	✓	✓
additions and alterations to uses exempted in a, above	✓	✓	✓	✓	✓		
demolition of uses exempted in a, above	✓		✓	✓	✓		
installation of underground tanks of 10,000 gal. or less	✓	✓	✓	✓	✓		
road vacations							

	slide/erosion hazard	flood hazard	wetlands	archaeological/histor	wildlife habitat (aquatic/terrestrial)	research areas	groundwater resources
c. Repair, remodeling and maintenance activities that do not involve material expansion or changes in use beyond that existing (unless undertaken on land covered by water)							
d. Government agency purchase or sale of real property or lease if the use of the property is unchanged							
e. Approvals and licenses to operate amusement parks and other temporary installations for recreational uses		✓	✓	✓	✓		
f. Utility installations (except on land covered by water):							
communication lines (but not towers or relay stations)			✓	✓	✓		
storm water, water and sewer facilities related to lines eight in. diameter or less		✓	✓	✓	✓		
electrical facilities (but not substations) with associated voltage of 55,000 volts or less			✓	✓	✓		
natural gas distribution lines							
developments within existing substations and reservoirs							
g. Natural resources management activities:							
issuance of agricultural leases of 160 acres or less							
issuance of leases for school sites							
development of recreational sites for no more than twelve camping sites and not including all-terrain vehicle facilities	✓	✓	✓	✓	✓	✓	✓
periodic use of chemical or mechanical means to maintain public park and recreational land							





B

AMENDMENTS TO RELEVANT SECTIONS OF THE

SAN JUAN COUNTY SHORELINE MASTER PROGRAM

PERTAINING PRIMARILY TO AQUACULTURE,

AS APPROVED FOR ADOPTION BY THE

SAN JUAN COUNTY BOARD OF COMMISSIONERS

May 9, 1988

smp/final3

C

NOTE TO READERS

With one major exception, the amendments proposed in this document are shown by underlining new language and by striking through existing language to be deleted.

The one exception is Section 16.40.503, Aquaculture, which comprises nearly half of this document. That section is almost completely new and would entirely replace the language in the existing Shoreline Master Program.

16.40.206 EXEMPTIONS FROM SUBSTANTIAL DEVELOPMENT PERMIT REQUIREMENTS

The following, as defined in WAC 173-14-040, shall not be considered substantial developments:

16.40.302 SHORELINE USE

GOAL

To assure protection of the unique character of San Juan County with its many islands while providing for uses of the shorelines which do not needlessly diminish the quality of the shoreline environment, and to assure the optimum opportunity for participation by county residents in the decision making processes which may affect that unique character.

POLICIES

1. Uses which protect the potential long-term benefits to the public against compromise for reasons of short-term economic gain or convenience should be fostered.

2. Uses which are not shoreline dependent and which would adversely alter the shoreline, conflict with, or preempt shoreline dependent uses should be prohibited.

3. Continuing studies of the physical and economic aspects of shoreline systems should be encouraged in order to provide a continuously updated information base against which the impact of any proposed shoreline use can be measured.

4. Notices of applications for ~~substantial-development~~shoreline permits should be posted in established locations on the island where the proposed development is to occur.

5. Residents of the affected island should be permitted to review any application for a ~~substantial-development~~shoreline permit prior to the county's taking action on the application. Public meetings or hearings pertaining to applications involving major land use changes should be held in the district, and where practical, on the island where the proposed development is to occur.

6. All shoreline uses should conform to the applicable policies and regulations of this Master Program and to the policies and regulations of the overall Comprehensive Plan.

16.40.303 ECONOMIC DEVELOPMENT

GOAL

To acknowledge the critical importance of a balanced and diversified local economy for the long range well-being of the island community by evaluating proposals for economic development along the shorelines on the basis of the degree to which the physical and social qualities of island life should be enhanced by such development.

POLICIES

1. The grouping or clustering of commercial and industrial shoreline uses into already established commercial and industrial areas should be encouraged. The random scattering of such uses and the premature location of such uses in undeveloped areas should be prevented.

2. Commercial and industrial development on the shorelines should be restricted to activities which are compatible with the natural systems of the County and its surrounding water resources.

3. Anyone who seeks to establish a commercial or industrial activity within any shoreline area should bear the burden of demonstrating that the upland areas are not feasible for the proposed use and that the proposed use will be compatible with the Master Program.

4. Major development or construction along the shoreline, other than single family residences, should not be permitted except where the sponsor thereof, public or private, can demonstrate overriding public necessity or public benefit.

5. All shoreline development and use activities, including construction, farming, forest management, commercial, industrial, land recreational uses, should be required to use all available practical methods for minimizing erosion, siltation, and interference with the natural shoreline geophysical processes.

6. Shoreline use which generates sewage or other waste should have waste disposal facilities of approved design and sufficient capacity to prevent any adverse environmental impacts, particularly adverse effects on water quality.

7. The location, density, configuration, setback, and other aspects of all shoreline developments should be appropriate to the site and vicinity and should conform to the physical limitations of the site.

8. To assure shoreline open space and visual access to the water, cluster development should be encouraged.

9. Preservation of open space should be encouraged in all proposed uses of shorelines.

10. Off-premise commercial signs should be regulated on shorelines and shoreline roads.

11. Aquaculture should be ~~encouraged~~permitted in appropriate areas with due regard for established land and water uses, navigation, water quality and aesthetic considerations.

16.40.407 AQUATIC ENVIRONMENT

STATEMENT OF PURPOSE

The purpose of the Aquatic Environment is to protect the quality and quantity of the water, to preserve the water surfaces and foreshores for shoreline dependent uses, such as navigation, commercial fishing, ~~aquatic-habitat-and-~~recreation, water-dependent industry, marinas, and aquaculture, and to preserve and ensure the wise use of the Aquatic area's natural features and resources, which are substantially different in character from those of the adjoining uplands and backshores.

DESIGNATION CRITERIA

The Aquatic Environment consists of all water bodies under the jurisdiction of the Shoreline Management Act of 1971 and within the boundaries of San Juan County and includes the water surface together with the underlying lands and the water column, including but not limited to bays, straits, harbors, coves, estuaries, tidelands, shorelands, and lakes.

Areas to be designated Aquatic shall be as follows:

a. all marine waters, including estuarine channels and wetlands, seaward of the line of ordinary high tide except where those waters between the ordinary high water mark and extreme low tide have been assigned a different environmental designation;
b. all lakes subject to this Master Program, below the ordinary high water mark;
c. all significant swamps, marshes, and bogs ~~abutting~~associated with waters described in a. and b., above.

MANAGEMENT POLICIES

1. Developments within the Aquatic Environment should be compatible with the adjoining upland environment.

2. The natural circulation and volume of water should be maintained to the greatest extent possible.

3. Structures which are not shoreline dependent should be prohibited.

4. Activities and uses of a permanent nature which will substantially degrade the existing character or habitat value of ~~the~~an area should be prohibited, except in those cases where the public interest clearly will be better served by approval of the proposed activity or use.

5. All developments and activities using navigable waters or their beds should be located and designed to minimize

interference with surface navigation, to minimize water quality impacts, to minimize adverse visual impacts and to allow for the safe, unhindered passage of fish and animals ~~particularly those whose life cycles are dependent on such migration~~.

6. In appropriate areas, fishing and recreational uses of the water should be protected against competing uses that would substantially interfere with those activities.

7. The joint use of structures which intrude into Aquatic areas, such as docks, piers, jetties, breakwaters, bulkheads, etc., should be encouraged.

8. Motorized travel in land-based vehicles should not be permitted in Aquatic areas, provided that such travel should be permitted ~~by~~for official emergency vehicles, for boat launchings, ~~and~~ for purposes of undertaking authorized construction and/or repairs~~, and for boat launchings~~, activities, and for aquaculture when specifically approved.

16.40.501 - SHORELINE USE REGULATIONS

The "Final Guidelines" of the Shoreline Management Act set out twenty-one categories of use activities which must be addressed in local shoreline master programs. These categories of activities consist of specific uses or groups of similar uses which are characteristic of the shoreline corridor. They have been designed to serve as the implementing tools to assist local governments in carrying out the intent and purpose of the Shoreline Management Act and the local master programs. The policies and regulations developed for each use activity are to serve as the basic criteria for evaluating proposed developments in the alterations of the shoreline area. They are also to be used in evaluating all applications for ~~substantial development~~shoreline permits.

16.40.503 AQUACULTURE

(NOTE: This section would entirely replace the existing Section 16.40.503 in the County's adopted Shoreline Master Program.)

Introduction

Aquaculture is the culture or farming of food fish, shellfish, or other aquatic plants and animals, and includes the mechanical harvesting of shellfish and hatchery culture. Potential locations for aquacultural enterprises are relatively restricted because of specific requirements such as water quality, temperature, oxygen content, flow, and, in marine waters, salinity. The technology associated with some forms of aquaculture is still experimental and in its formative states. Therefore the policies and regulations for aquaculture reflect both the necessity for some latitude in the development of this emerging economic water use as well as its potential impact on existing uses and natural systems.

When consistent with control of pollution and prevention of damage to the environment aquaculture activities are a preferred use of the shoreline (WAC 173-16-060(2)). Such activities are considered a priority use along with single family residences, ports, shoreline recreational uses, water-dependent industrial and commercial developments, and other uses that provide an opportunity for substantial numbers of people to enjoy the shorelines of the State.

Policies

1. Preference should be given to those forms of aquaculture that involve lesser environmental and visual impacts. In general, projects that require no structures, submerged structures or intertidal structures should be given preference over those that involve substantial floating structures. Projects that require few land-based facilities should be given preference over those that require extensive facilities. Projects that involve little or no substrate modification should be given preference over those that involve substantial modification.

2. Applicants are encouraged to participate in pre-application conferences with governmental agencies. Alternative sites and methods should be reviewed where possible. (Pre-application conferences are for information exchange only and are not binding on any of the participants.)

3. The County should actively seek substantive comment from all appropriate federal, state and local agencies, affected tribes and the general public on any shoreline permits for aquaculture. Attention should be given to the comments of nearby residents or property owners directly affected by the proposal.

4. Consideration should be given to both the possible positive impacts and the possible detrimental impacts aquacultural development might have on the physical environment, on other existing and approved land and water uses, including navigation, and on the aesthetic qualities of the project area.

5. Aquaculture should not be allowed in the following areas:

   a. Areas that have little natural potential for the type(s) of aquaculture under consideration.

   b. Areas that have water quality problems that make the areas unsuitable for the type(s) of aquaculture under consideration.

   c. Areas devoted to established uses of the aquatic environment with which the proposed aquacultural method(s) would substantially and materially conflict. Such uses would include but are not limited to navigation, moorage, sport or commercial fishing, log rafting, underwater utilities, and active scientific research.

   d. Areas where the design or placement of the facilities would substantially degrade the aesthetic qualities of the shoreline.

   e. Areas where navigation by recreational boaters and commercial traffic will be significantly restricted.

   f. Areas where an aquacultural proposal will result in any significant adverse environmental impacts that cannot be eliminated or adequately mitigated through enforceable conditions of approval.

   g. Areas near National Wildlife Refuges or critical habitats (as defined by the State of Washington or San Juan County) where the proposed activity will adversely affect the refuge/habitat use or value.

6. In instances where a choice of aquacultural methods is available, or where two or more incompatible aquacultural projects are proposed in the same area, the relative environmental impacts of each method or proposal should be considered. In general, preference should be given to methods listed in sub-section (a), below, over those listed in sub-section (b):

   a. methods involving no submerged, intertidal, or floating structures or facilities and minimal substrate modification; methods involving submerged subtidal

structures or facilities; methods involving intertidal structures or facilities.

b. methods involving floating structures or facilities; methods involving floating structures with artificial feeding and/or substantial substrate modification.

7. The county-wide density of net-pen and raft culture operations should be limited as necessary to minimize cumulative environmental impacts.

8. Experimental aquaculture projects should be limited in scale and should be approved for a limited period of time.

9. Baseline and operational monitoring of specific, relevant environmental conditions should be required, as necessary, at the applicant's expense, as a condition of approval. Permits should include provisions for adjustment or termination of the project at any time if the monitoring indicates significant adverse, environmental impacts that cannot be eliminated or adequately mitigated.

10. New shoreline proposals in the vicinity of an experimental aquacultural project should be restricted or denied if they might compromise the monitoring and data collection required under the experimental project permit. All permitted aquacultural projects should be protected from new development that would be likely to damage or destroy them.

General Regulations

1. Because all shorelines within the County seaward of the line of extreme low tide have been designated "shorelines of state-wide significance," aquacultural activities proposed in that area shall be subject to, first, the policies contained in Section 16.40.601, Shorelines of Statewide Significance and, second, the policies and regulations contained in this section.

2. No structures or facilities which would have a significant adverse impact on the natural, dynamic processes of shoreline formation and change shall be approved or constructed.

3. No aquatic organism shall be introduced into San Juan County salt or fresh waters without prior written approval of the Director of the Washington State Department of Fisheries. In salt waters the County shall not issue permits for projects that include the introduction of such organisms until it has also received written comment from the Director of the University of Washington Friday Harbor Laboratories. The required approval and/or comment shall be submitted to the County Planning Department prior to the introduction.

Unless otherwise provided in the shoreline permit issued by the County, the repeated introduction of an approved organism in the same location shall require approval by the County only at the time the permit is issued. Introduction, for purposes of this section, shall mean the placing of any aquatic organism in any area within the waters of San Juan County regardless of whether it is a native or resident organism within the County and regardless of whether it is being transferred from within or without the waters of San Juan County.

4. Aquacultural activities shall comply with all applicable governmental noise, air pollution, and water quality standards. All projects shall be operated and maintained to minimize odor and noise.

5. Aquacultural activities shall be restricted to reasonable hours and/or days of operation when necessary to minimize significant, adverse impacts from noise, light, and glare on nearby residents.

6. Aquacultural structures and equipment, except navigation aids, shall be designed, operated and maintained to blend into their surroundings through the use of appropriate colors and materials.

7. The County shall reserve the right to require aquacultural permittees to carry liability insurance in an amount commensurate with the risk of injury or damage to any person or property as a result of the project. Insurance requirements shall not be required to duplicate requirements of other agencies.

8. Where aquacultural projects are authorized to use public facilities, such as boat launches or docks, the County shall reserve the right to require the applicant to pay a portion of the cost of maintenance and any required improvements commensurate with the applicant's use.

9. All aquacultural structures and facilities shall be marked in accordance with U.S. Coast Guard requirements.

10. Aquacultural structures and equipment shall be of sound construction and shall be so maintained. Abandoned or unsafe structures and equipment shall be removed or repaired promptly by the owner. Where any structure might constitute a potential hazard to the public in the future, the County shall require the posting of a bond commensurate with the cost of removal or repair. The County may abate an abandoned or unsafe structure, following notice to the owner, if the owner fails to respond in 30 days and may impose a lien on the related shoreline property or other assets in an amount equal to the cost of the abatement.

Bonding requirements shall not duplicate requirements of other agencies.

11. Applicants shall include in their applications all information needed to conduct thorough evaluations of their aquaculture proposals, including but not limited to the following:

    a. species to be reared;
    b. aquaculture method(s);
    c. anticipated use of any feed, pesticides, herbicides, antibiotics, or other substances, and their predicted impacts;
    d. manpower/employment necessary for the project;
    e. harvest and processing location, method and timing;
    f. location and plans for any shore-side activities, including loading and unloading of the product, processing, and any use of freshwater supplies;
    g. methods of waste disposal and predator control;
    h. environmental assessment, including best available background information on water quality, tidal variations, prevailing storm wind conditions, current flows, flushing rates, aquatic and benthic organisms, and probable impacts on water quality, biota, currents, littoral drift, and any existing shoreline or water uses. Further baseline studies may be required depending upon the adequacy of available information, existing conditions, the nature of the proposal, and probable adverse environmental impacts.
    i. other pertinent information deemed necessary by the Planning Director;

12. Legally established aquacultural enterprises, including authorized experimental projects, shall be protected from incompatible uses which may seek to locate nearby. Demonstration of a high probability that such an adjacent use would result in damage to, or destruction of such an aquacultural enterprise shall be grounds for the denial of that use.

13. Baseline and operational monitoring, when required, shall be at the applicant's expense (unless otherwise provided for) and shall continue until adequate information is available to determine the success of the project and/or the magnitude of any probable significant adverse environmental impacts.

14. No processing of any aquacultural product, except for the sorting or culling of the cultured organism and the washing or removal of surface materials or organisms, shall occur in or over the water after harvest, unless specifically approved by permit. All other processing and processing facilities shall be located on land and shall be governed by the policies and regulations of Section 16.40.515, Ports and

Water-Related Industry, in addition to the policies and regulations in this section.

15. Aquacultural wastes shall be disposed of in a manner that will ensure compliance with all applicable governmental waste disposal standards. No garbage, wastes or debris shall be allowed to accumulate at the site of any aquaculture operation.

16. Aquacultural uses and facilities shall be located at least 600 feet from any National Wildlife Refuge lands and/or habitats of special significance for birds or mammals (as identified in recognized reference documents such as the Washington State Department of Ecology publication, "Washington Coastal Areas of Major Biological Significance", and/or as determined by the Washington State Department of Wildlife); provided that fish net-pens and projects involving substantial substrate modification shall be located 1,500 feet or more from such areas; provided further that lesser distances may be authorized by permit if it is demonstrated by the applicant that the wildlife resource will be protected and if the change is supported by the reviewing resource agencies. Greater distances also may be required if supported by the reviewing resource agencies.

17. Predator control shall not involve the killing or abusive harassment of birds or mammals. Approved controls include but are not limited to double netting for seals, overhead netting for birds, and three-foot high fencing or netting for otters. The use of other non-lethal, non-abusive predator control measures shall be contingent upon receipt of written approval from the National Marine Fisheries Service and/or the U.S. Fish and Wildlife Service, as required.

18. Permit applications shall identify all pesticides, herbicides, antibiotics, vaccines, growth stimulants, anti-fouling agents, or other chemicals that the applicant anticipates using. No such materials shall be used until approval is obtained from all appropriate state and federal agencies, including but not limited to the U.S. Food and Drug Administration, the Washington State Departments of Ecology, Fisheries and Agriculture, as required, and proof thereof is submitted to the County. When feasible, the cleaning of nets and other apparatus shall be accomplished by air drying, spray washing, or hand washing.

19. For aquacultural projects using over-water structures storage of necessary tools and apparatus seaward of the line of ordinary high tide shall be limited to containers of not more than three feet in height, as measured from the surface of the raft or dock; provided that in locations where the visual impact of the proposed aquaculture structures will be minimal the County may authorize storage containers of

greater height. In such cases, the burden of proof shall be on the applicant. Materials which are not necessary for the immediate and regular operation of the facility shall not be stored seaward of the ordinary high water mark.

20. Proposals for mechanical clam harvesting or other activities that involve substantial substrate modification through dredging, trenching, digging, or adverse sedimentation shall not be allowed in existing kelp beds or in beds of native eel grass (Zostera marina) containing more than two (2) turions per one-quarter square meter in winter or three (3) turions per one-quarter square meter in summer.

21. Fish net-pens shall meet, as a minimum, state-approved administrative guidelines for the management of net-pen cultures; where any conflict in requirements arises the more stringent requirement shall prevail.

22. Fish net-pens shall not occupy more than two surface acres of water area, excluding booming and anchoring requirements.

23. Aquacultural proposals that include net pens or rafts shall not be located closer than one nautical mile to any other aquacultural facility that includes net pens or rafts, provided that a lesser distance may be authorized by the County if the applicant can demonstrate to the County's satisfaction that the environmental and aesthetic concerns expressed in this Master Program will be protected. If a lesser distance is requested the burden of proof shall be on the applicant to demonstrate that the cumulative impacts of the existing and proposed operations would not be contrary to the policies and regulations of this Master Program.

24. Except as provided in regulation number 22, aquacultural developments approved on an experimental basis shall not exceed five acres in area (except anchorage for floating systems) and five years in duration; provided that the County may issue a new permit to continue an experimental project as many times as is deemed necessary and appropriate.

25. Where necessary to preserve the integrity of any research data collected, aquaculture developments which would be likely to jeopardize an experimental aquaculture development shall not be allowed within the same bay, harbor, or cove with any such aquaculture development (or within a mile of such a development if the water body is larger than one square mile in area) until after the experimental project is granted non-experimental status or terminated.

26. For floating culture facilities the County shall reserve the right to require a visual impact analysis consisting of information comparable to that found in the Department of Ecology's "Aquacultural Siting Study," 1986. Such analysis

may be prepared by the applicant, without professional assistance, provided that it is competently prepared.

REGULATIONS BY ENVIRONMENT

Urban

Aquacultural activities shall be permitted in the Urban Environment subject to the policies and regulations contained in this Master Program.

Suburban

Aquacultural activities shall be permitted in the Suburban environment subject to the policies and regulations contained in this Master Program, provided that the proposed structures and facilities will not have a significant adverse impact on the aesthetic qualities of the surrounding area. Proposals containing net-pen facilities shall be located no closer than 1500 feet from the OHWM of this environment, unless a lesser distance is determined to be appropriate based upon a visual impact analysis. Other types of floating culture facilities may be located within 1500 feet of the OHWM but in such cases a visual analysis shall be mandatory.

Rural

Aquacultural activities shall be permitted in the Rural environment subject to the policies and regulations contained in this Master Program, provided that the proposed structures and facilities will not have a significant adverse impact on the aesthetic qualities of the surrounding area.

Conservancy

Aquacultural activities shall be permitted in the Conservancy Environment subject to the policies and regulations contained in this Master Program, provided that the natural resources and systems of the environment will not be significantly altered and provided further that the required structures and facilities, both terrestrial and aquatic, will not have a significant adverse impact on the aesthetic qualities of the surrounding area.

Natural

Aquacultural activities which do not require structures or facilities or mechanized harvest practices and which will not result in the alteration of natural systems or features shall be permitted in the Natural Environment subject to the policies and regulations contained in this Master Program.

Aquatic

Aquacultural activities shall be permitted in the Aquatic Environment subject to the policies and regulations contained in this Master Program and to the Regulations by Environment applicable to the most restrictive abutting shoreline environment.

16.40.801 - VARIANCES - General

~~Variance deals with the specific requirements of this Master Program, and its objective is to grant relief when there are practical difficulties and unnecessary hardships in the way of carrying out the strict letter of this Master Program.~~ The purpose of a variance is strictly limited to granting relief from specific performance standards set forth in the Master Program where there are extraordinary or unique circumstances related to the property such that the strict implementation of the Master Program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020. The applicant for a variance must show that if he complies with these regulations he cannot make any reasonable use of his property. The fact that he might make a greater profit by using his property in a manner contrary to the intent of this Master Program is not sufficient reason for granting a variance. Construction authorized under such a permit shall not thwart the policy enumerated in RCW 90.58.020, and in no instances shall the public interest suffer substantial detrimental effect.

16.40.803 ~~GROUNDS~~REVIEW CRITERIA FOR VARIANCE PERMITS

Variances from the provisions of this Master Program may be granted when ~~all of~~ the following conditions are met; the burden of proof shall be on the applicant.

~~1.--The normal application of the provisions of this Master Program would prevent the property owner from making any reasonable use of his property, owing to its particular physical features, or would impose on him an unnecessary hardship.~~

~~2.--The loss of reasonable use or imposition of unnecessary hardship would result from the application of this Program's provisions and not from private restrictions or covenants, previous actions by the owner, or other factors not directly related to this Master Program.~~

~~3.--The variance, if granted, would be in harmony with the general purposes and intent of the Act and this Master Program.~~

~~4.--The public health, safety, and general welfare will be protected.--If more harm would be done to shoreline resources and processes and/or adjacent legitimate uses by granting the variance than would be done to the applicant's interests by denying the variance, the variance shall be denied.~~

1. Variance permits for development that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(b), except within those areas designated as marshes, bogs, or swamps pursuant to chapter 173-22 WAC, may be authorized provided the applicant can demonstrate all of the following:

   a. That the strict application of the bulk, dimensional, or performance standards set forth in the applicable master program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by the master program;
   b. That the hardship described under (1) above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;
   c. That the design of the project is compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment;
   d. That the requested variance does not constitute a grant of special privilege not enjoyed by the other properties in the area, and is the minimum necessary to afford relief; and

e. That the public interest will suffer no substantial detrimental effect.

2. Variance permits for development that will be located either waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(b), or within marshes, bogs, or swamps as designated under chapter 173-22 WAC, may be authorized provided the applicant can demonstrate all of the following:

   a. That the strict application of the bulk, dimensional, or performance standards set forth in the master program precludes a reasonable use of the property not otherwise prohibited by the master program;
   b. That the proposal is consistent with the criteria established under (1)(b) through (1)(e) of this section; and
   c. That the public rights of navigation and use of the shorelines will not be adversely affected.

3. In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

4. Requests for varying the use to which a shoreline area is to be put are not requests for variances, but rather requests for conditional uses. Such requests shall be evaluated using the criteria set forth in section 16.40.903, below.

16.40.804 PROCEDURE

Variances shall be applied for in writing ~~in~~on a permit application form prescribed by the Administrator.

1. If a variance request is directly related to an application for a shoreline permit, the two shall be treated as one application and all notices shall identify the nature of the variance requested. Notice and review procedures for such permit-variance application shall be identical to those required for the standard shoreline permit application.

2. If a variance is desired for a development which is subject to the provisions of this Master Program but which does not require a shoreline permit, application for a variance ~~shall be made in the manner provided for shoreline~~ permit ~~applications~~is still required. Notice and review procedures for variances shall be identical to those required for a standard shoreline permit application.

16.40.901 - CONDITIONAL USES - General

~~The-objective-of-the-conditional-use-provision-is-to-provide greater-flexibility-in-the-implementation-of-this-Master-Program.~~ The purpose of a conditional use permit is to allow greater flexibility in varying the application of the use regulations of the master program in a manner consistent with the policies of RCW 90.58.020; provided, that conditional use permits should also be granted in circumstances where denial of the permit would thwart the policy enumerated in RCW 90.58.020. By providing for the control of undesirable impacts through the application of special conditions, the scope of uses within each of the six environments can be expanded to include many additional uses. Activities classified as conditional uses therefore shall be permitted only when the applicant ~~can~~ also demonstrates that the proposed use will ~~meet-standards-and-criteria-that-will-ensure that-the-proposed-conditional-use-will~~ be compatible with permitted uses within the same area.

16.40.902 AUTHORITY

1. The Board may approve conditional use applications in connection with shoreline permit applications for:

   a. uses which are permitted under the provisions of this Master Program only as conditional uses;
   b. the expansion of non-conforming uses, and;
   c. uses which are unnamed and/or not contemplated in this Master Program.

2. In approving conditional use applications, the Board is authorized, on a case-by-case basis, to impose any ~~reasonable~~special conditions and/or standards which, in the Board's opinion, are reasonable and necessary to enable a proposed conditional use to satisfy the criteria established in Section 16.40.903 following.

16.40.903 REVIEW CRITERIA FOR CONDITIONAL USE PERMITS

~~Conditional-uses-shall-be-approved-only-when-the-following, applicable-criteria-are-met;-the-burden-of-proof-shall-be-on-the applicant.~~

~~a.--The-proposed-use-will-not-cause-significant-adverse impacts-on-shoreline-features,-the-shore-process-corridor and-its-operating-systems,-environmental-quality,-or-uses permitted-in-the-area.~~
~~b.--The-proposed-use-will-not-interfere-with-lawful-public use-of-publicly-owned-shorelines.~~
~~c.--The-design-and-visual-appearance-of-the-proposed-use-will be-compatible-with-the-surroundings-and-with-the provisions-of-this-Master-Program.~~

~~d.--The-proposed-use-will-not-be-contrary-to-the-general intent-of-this-Master-Program.~~

1. Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided the applicant can demonstrate all of the following:

   a. That the proposed use is consistent with the policies of RCW 90.58.020 and the policies of the master program;
   b. That the proposed use will not interfere with the normal public use of public shorelines;
   c. That the proposed use of the site and design of the project is compatible with permitted uses within the area;
   d. That the proposed use will cause no unreasonably adverse effects to the shoreline environment in which it is to be located; and
   e. That the public interest will suffer no substantial detrimental effect.

2. Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate, in addition to the criteria set forth in WAC 173-14-140(1) above, that extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of the master program.

3. Uses which are specifically prohibited by the master program shall not be authorized.

4. In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

16.40.904 PROCEDURE

Conditional uses ~~applications~~-shall be ~~submitted~~applied for in writing ~~in~~on a permit application form prescribed by the Administrator~~-at-the-same-time-that-the-related-shoreline-permit application-is-submitted.~~ When any other substantial development is involved a combined permit application shall be submitted, and the two shall be treated as one application.~~-and~~ All notices shall indicate that a conditional use is being proposed as part of the substantial development. Notice and review procedures for such shoreline permit/conditional use applications shall be identical to those required for a standard shoreline permit application.

16.40.1201 - ENFORCEMENT AND PENALTIES - ~~Civil~~-Court Actions - Civil Penalty - Review

1. The Attorney General or the Attorney for San Juan County shall bring such injunctive, declaratory or other actions as are necessary to ensure that no uses are made of the shorelines of the state in conflict with the provisions of the Act or of this Master Program and to otherwise enforce the provisions of both.

2. Any person who shall fail to conform to the terms of a permit issued under this program or who shall undertake development on the shorelines of the state without first obtaining any permit required under this program shall also be subject to a civil penalty not to exceed one thousand dollars for each violation. Each permit violation or each day of continued development without a required permit shall constitute a separate violation.

3. The penalty provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the County, describing the violation with reasonable particularity and ordering the act or acts constituting the violation or violations to cease and desist or, in appropriate cases, requiring necessary corrective action to be taken within a specific and reasonable time.

4. Within thirty days after the notice is received, the person incurring the penalty may apply in writing to the County for remission or mitigation of such penalty. Upon receipt of the application, the County may remit or mitigate the penalty upon whatever terms the County in its discretion deems proper. Any penalty imposed pursuant to this action by the County shall be subject to review by the Board of County Commissioners. Any penalty jointly imposed by the state and county shall be appealed to the shorelines hearings board.

16.40.1202 GENERAL PENALTY

1. In addition to incurring civil liability under Section 16.40.1201 and RCW 90.58.210, any person found to have willfully engaged in activities on the shorelines of the state in violation of the provisions of the Act or of this Master Program or rules and regulations adopted pursuant thereto shall be guilty of a gross misdemeanor, and shall be punished by a fine of not less than twenty-five nor more than one thousand dollars or by imprisonment for not more than ninety days or by both such fine and imprisonment; provided, that the fine for the third and all subsequent violations in any five-year period shall not be less than five hundred nor more than ten thousand dollars. Provided further, that fines

for violations of RCW 90.58.550, or any rule adopted thereunder, shall be determined under RCW 90.58.560.

2. Any person who willfully violates any court order or injunction issued pursuant to this Master Program shall be subject to fine of not more than five thousand dollars or by imprisonment for not more than ninety days, or by both such fine and imprisonment.

16.40.1301 - DEFINITIONS - General

29. Conditional use means a ~~form-of-substantial-development which-may-be-permitted-subject-to-specific-conditions~~ use or development which is classified as a conditional use or is not classified within the master program or materially interferes with the normal public use of the water or shorelines of the state. Those activities identified as conditional uses in this Master Program must be treated according to the criteria and procedures established in Section 16.40.~~744~~901 of this document.

45. Experimental aquaculture means an aquaculture project that uses methods or technologies which are unprecedented or unproven in the State of Washington and will have indeterminable or potentially significant, adverse, environmental impacts.

~~94.~~95. Shoreline permit means a substantial development permit, conditional use, or variance (See No. ~~104~~105).

~~104.~~105. Substantial development means any development of which the total cost, or fair market value, exceeds ~~$1,000~~$2,500, or any development which materially interferes with normal public use of the water or shorelines of the state except that the ~~following~~ exemptions specified in section 16.40.206 shall not be considered substantial developments.

~~a.--normal-maintenance-or-repairs-of-existing-structures-or developments,-including-damage-by-fire,-accident,-or elements;~~

~~b.--construction-of-the-normal-protective-bulkhead,-common to-single-family-residences;~~

~~c.--emergency-construction-necessary-to-protect-property from-damage-by-the-elements;~~

~~d.--construction-of-a-barn-or-similar-agricultural structure-on-wetlands;~~

~~d.--construction-or-modification-of-navigational-aids,-such as-channel-markers-and-anchor-buoys;~~

~~e.--construction-on-wetlands-by-an-owner,-lessee,-or contract-purchaser,-of-a-single-family-residence-for his-own-use-or-for-the-use-of-his-family,-which residence-does-not-exceed-a-height-of-35-feet-above average-grade-level-and-which-meets-all-requirements-of the-state-agency-or-local-government-having jurisdiction-thereof.~~

115. Turion means a shoot of eelgrass emanating from the rhizome.

116. Urban Environment (see 16.40.402).

117. Uplands means the area landward of the backshore.

118. Utilities (see 16.40.520).

~~117.~~119. Variance is a means ~~the authorization to do something which is contrary to the regulations of this Master Program~~ to grant relief from the specific bulk, dimensional, or performance standards set forth in the master program and not a means to vary a use of a shoreline. A variance is legitimately granted only to bring the privileges of a given property to parity with other properties similarly located and designated. The variance is not intended to be used to grant special privileges to a specific property.

~~118.~~120. ~~Simple Variance means the authorization to do something which is contrary to the policies of this Master Program, where a shoreline permit is not required.~~--Vessel means ships, boats, barges, or any other floating craft which are designed and used for navigation and do not interfere with normal public use of the water.

Planning Department
San Juan County
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206/378-2354 • 206/376-4851 • 206/468-3325

June 9, 1988

RE: PROPOSED SHORELINE MASTER PROGRAM AMENDMENTS

RESIDENTIAL DEVELOPMENT AND RELATED SMP PROVISIONS

Though most work during the FY88 grant period focused on the aquaculture section, Planning staff has proceeded with draft amendments to the residential development section, continuing review of the last draft proposal (dated October 16, 1987). The following outlines further revisions that are recommended to complete a proposal for hearing.

1. Reorder the policies to group concepts together; make it clearer which deal with aesthetics and which with other factors.

2. Specify County policy on houseboats. In the current draft, a new sentence at the end of the introduction statement says the section applies to houseboats but does not follow this with any policy or regulation about prohibition, or about location or density, except that residential development isn't permitted over water (P1, R1)). Unless houseboats are prohibited county-wide, locations should be named and standards provided. Either way, County intentions should be expressed directly in new policy and regulatory statements.

3. Reinstate existing site location policies deleted in the amendment draft; deletion of policies 3 & 6 leaves setback and siting regulations unsupported (see proposed regs 2 & 3).

4. Identify more clearly what should be protected and how in determining shoreline setbacks. A policy should be added to describe what features/resources need consideration (e.g., areas with significant drift action, feeder bluffs, unstable banks and natural erosion controls like berms and bank vegetation). A general, unofficial map of these areas is desirable for administrative/reader reference in the introductory pages of the SMP.

5. Add a regulation to require certain application information and to specify criteria to determine setbacks for single-family residences (including location and setbacks of residences on adjoining lots). Retain the case-by-case determination process but clarify and improve the information required to make a decision.

6. Use illustrations to describe setback variabilities on different types of shorelines and show how to determine setbacks established on adjoining properties. (These would not have to be made part of the SMP but could be put in introductory pages).

   a. It may be that the more elaborate and specific the information requirements are, the harder it is to hide noncompliance even if there is no real remedy. It could be valuable to know what and how many discrepancies occur between what's approved and what's built.

   b. The biggest problem with imposing shore setbacks for aesthetic purposes is control of tree removal: once a plan is approved, what prevents removal or relocation of the treeline? The County should consider developing more elaborate numerical setbacks (modified as needed by bank conditions, wetlands, etc.) and allow lesser setbacks to the treeline on stable banks where plat restrictions limit vegetation removal at the shoreline (and where adjoining lots have lesser building lines established).

7. Reconcile the requirement to stabilize unstable areas (existing R6 - proposed R5) with regulations restricting development if bulkheads are needed (R7 - proposed R6); also, new language is needed to support certain information requirements and criteria to deal better with exempt bulkheads. (Better specifications for exempt and non-exempt bulkheads in .506 and clearer reference to them in .517.)

8. The amendment draft excluded existing regulation 9 re: common area. This deletion removes opportunity to use common area to protect certain features within a subdivision, but the proposed definition of common area says that's what it's for. Reconsider whether the deletion is appropriate and adapt regulation or definition accordingly. Consider addition of provision for common access locations to common area/common lots. If an option for waiver is desirable, under what circumstances and authority?

9. Delete regulation 10 (proposed 9). RV parks and travel trailer parks are recreational, not residential.

10. Add language to regulation 13 to allow for review of drainage for single-family houses and subdivisions. Comparable language is under consideration for amendment of the Comprehensive Plan - these should be coordinated.

11. Reconsider the last proposal dealing with the "top of

the bank" issue. In the amendment draft a new definition is added and referred to only in the regulations by designation subsections. A general regulation should substitute for these and a simpler mechanism developed for reviewing proposals when bank stability and compound slopes make it an issue. (The real issue is which of the setback criteria take precedence (e.g., behind top of bank or behind treeline)). Consider whether (a) upgrading information requirements, (b) using a composite bank stability map reference to determine if there are possible problems not identified in an application and (c) using numerical setbacks, will alleviate some of the administrative problems the proposed change is designed to solve.

12. Some language proposed for each of the regulations by designation subsections is redundant and should be converted to general regulations (e.g., provisions regarding applicant responsibility for showing density is appropriate and that approved density depends on adequate sewer/water). Also, the last proposal included provision only in Conservancy for adjusting setback requirements for an established building line . This should be a general regulation instead.

Related Items:

Exemptions for Residential Accessories:

State law changes in 1986 made it necessary to spell out in the SMP what accessories are included under the residential exemption if different from those listed in WAC 173-14.

Current amendments proposed to the SMP (with the aquaculture set) make reference to the WAC in the exemption section. This is makes it clear that the extra, explanatory language added to most exemption provisions in the WAC apply. It does not, however, make use of local option to further specify some exemptions.

Certain developments that are associated with single-family houses might be more common along residential shorelines here than elsewhere. The County should decide if any of these should be specified as exemptions within the residential provision and if so, under what circumstances.

Suggestions:

1 - Satellite dishes - X max. diameter; X max. height; location landward of residence; dark color; footings screened and dish placed against natural vegetation to reduce visibility from water and adjoining properties;

2 - Unattached viewing decks and platforms - max. X square

feet and max. 24" elevation above ground level; natural materials and color; no structures attached to decks approved for location landward of a building line;

3 - Mound-type septic systems - serving single SFR only and involving no more than 200 cuyds fill; landward of residence;

4 - Grading and clearing - no more than 1000 cuyds total excavation and fill for foundations, driveways and conventional drainfields within 200 feet of OHT;

5 - Swimming pools - located landward of residence; max X cubic yds volume.

Conditional Uses and Residential Accessories:

The new conditional use criteria in WAC 173-14 indicate that uses unspecified in the SMP should be reconsidered. Most non-exempt residential accessories are now unspecified uses and thus conditional uses, but should be specified or unspecified deliberately.

The new CU provisions make it more difficult to approve CU's. The standard is tighter and the CU process for unspecified uses may not be what's wanted in most cases. E.g., to approve a CU now the County must find that there are "extraordinary circumstances" that preclude using the property in a way consistent with SMP provisions. Also, the requirement to determine impacts of cumulative CU approval for the type of use concerned might complicate review of some uses not now named in the SMP.

Accessories to single family houses that aren't named and aren't considered utilities or recreation facilities are CU's. Beach access stairs, boathouses and viewing platforms (or unattached decks, gazebos, etc.) are CU's now but may not be best managed as CU's under the new WACs. It would be difficult to show that extraordinary circumstances force someone to build a boathouse and this may not be a desirable criterion for all unspecified uses. At the same time, the cumulative impact criterion could be very useful and could be applied as a general regulation for residential accessories.

REVISIONS PROPOSED BY THE PLANNING DEPARTMENT ON 10/16/87.

PROPOSED AMENDMENTS TO RELEVANT SECTIONS OF THE SAN JUAN COUNTY SHORELINE MASTER PROGRAM PERTAINING TO RESIDENTIAL DEVELOPMENT

As approved on June 26, 1987, by the

The San Juan County Planning Commission
for public hearing

smp/517work

16.40.517 RESIDENTIAL DEVELOPMENT

INTRODUCTION

All residential development on the shoreline is subject to the Shoreline Management Act and the local Master Program. However, the Act specifically exempts from the shoreline permit requirements (not from the entire Act) the construction of a single family residence by an owner, contract purchaser or lessee for his or her own use, or the use of his or her family. Residential subdivisions and other types of residential structures are subject to the shoreline permit requirements. The policies and regulations in this section are designed to deal with all forms of residential development, including any floating craft used for residential purposes that are not designed and used for navigation.

GOALS and POLICIES

1. Residential development is not a shoreline dependent use and should not be permitted over water.

2. The scenic qualities of the shoreline should be considered and protected in every application for residential development.

~~3.--To protect the scenic qualities of the shoreline, all structures should be located where they will blend into their surroundings as much as possible.--On wooded shorelines this can best be accomplished by local structures at or behind the tree line.~~

4 3. Residential development should not be permitted on the shorelines where, at the time of construction or in the foreseeable future, it would require landfill, bulkheading, or other shoreline fortification~~, at the time of construction or in the foreseeable future,~~ in order to protect the development.

5 4. Fresh water along the shorelines is a renewable resource of critical importance and its use should be controlled to prevent the intrusion or spread of salt water into aquifers or stream beds. Water systems supplying groundwater to support new residential shoreline development should be adequate to protect against intrusion of saltwater into groundwater. Where feasible, use of surface water supplies should be considered.

~~6.--Structures or other developments accessory to residential use should be designed and located to blend into the site as much as possible.--Accessory uses which would result in adverse impacts should be located landward of the residence.~~

7 5. New subdivisions and non-exempt developments should include building setbacks from the shoreline to preserve the natural character of the shoreline.

8 6. Subdivisions and non-exempt developments should be designed for a density compatible with the physical capabilities and scenic

characteristics of the shoreline and water body. In all new shoreline developments, natural site features which provide recreation, exceptional wildlife habitat or scenic enjoyment should be preserved. Open space between structures and the water should be provided to protect natural features and preserve views.

9 7. The county recognizes the importance of solar energy and renewable resources and should support efforts to provide or facilitate solar orientation for building sites in new subdivisions and non-exempt developments.

GENERAL REGULATIONS

1. Residential ~~construction~~ development shall not be permitted seaward of the line of extreme high tide.

~~2.--All-structures-shall-be-set-back-from-water-bodies-and associated-wetlands-sufficiently-to-protect-natural resources-and-systems-from-unnecessary-degradation.~~

~~3.--All-structures-shall-be-set-back-a-safe-distance-behind-the tops-of-feeder-bluffs.~~

~~4.--Every-residential-structure-built-at-a-beach-site-shall-be located-landward-of-the-berm,-bank,-or-bluff,-as-dictated-by the-topography-to-assure-protection-of-the-beach-site.~~

2. All residences and accessory structures shall be located where they will blend into their surroundings as much as possible. On wooded shorelines, this can best be accomplished by locating the residence at or behind the tree line, which shall remain to the extent possible after development, and by locating any accessory structures landward of the residence.

* 3. All residential structures shall also be set back from water bodies and associated wetlands sufficiently to protect the shoreline from degradation. This can best be accomplished by requiring that all structures be set back a safe distance behind any beach berm or ~~the top of~~ any STEEP OR UNSTABLE bank or bluff, at or behind any tree line, or a distance of at least 30 feet from the ordinary high water mark (EXCEPT AS PROVIDED IN THE REGULATIONS BY ENVIRONMENT SPECIFIED BELOW), WHICHEVER IS GREATER; PROVIDED THAT THE REQUIRED SETBACK FROM THE ORDINARY HIGH WATER MARK MAY BE REDUCED TO THE AVERAGE SETBACK ESTABLISHED BY ALL EXISTING DEVELOPMENTS WITHIN 200 FEET ON BOTH SIDES OF THE PROPOSED DEVELOPMENT.

5 4. No residential structure which ~~extends~~ exceeds a height of thirty-five feet above average grade level shall be constructed on any shoreline unless it ~~can be~~ is authorized by substantial development permit and it is shown that the structure will not interfere with normal, public, visual access to the water, ~~provided~~ and that where there are compensating factors which make a taller structure desirable from the standpoint of the public interest. ~~the Administrator may authorize a taller structure. (For example, such a situation might occur where the visual impact of a single multi-family structure exceeding thirty-five feet in height would be preferable to several single-~~

~~family-structures-of-less-height-in-the-same-location.~~

* 6 5. ~~Where~~ IF there is evidence that a shoreline area proposed for residential development may be unstable, the applicant may shall be required to submit a geological report attesting to the stability of the building site and/or a plan for stabilizing the area ~~and/or for~~ controlling erosion during and following construction activities.

7 6. Subdivisions and non-exempt residential structures which will require bulkheads or other shoreline fortifications, at the time of construction or in the foreseeable future, to prevent damage to structures, shall not be approved. Substantial evidence that such fortifications will be necessary to protect all or part of the development shall be grounds for denial of all or part of the proposed development.

*8 7. Subdivisions and non-exempt residential structures which will exceed the physical capabilities of the proposed site to absorb the resulting impacts ~~and/or which will significantly and unnecessarily degrade the scenic qualities of the site~~ shall not be approved.

9 8. ~~In all subdivisions and non-exempt developments the area landward from the line of ordinary high tide to the back of the berm, top of the bank or bluff, or a distance of at least thirty feet, as dictated by the topography of the site, shall be designated as a common area in which the property owners in the development shall hold an undivided interest. In locations where, as a result of topography or sensitive features of the site, such as natural marshes, swamps, or unstable, eroding bluffs, the application of this provision would be infeasible or would create a potential hazard, the Administrator may authorize the designation of a different waterfront or non-waterfront common area, provided that no subdivision or non-exempt development shall be approved which does not contain a usable common area of reasonable size for the number of dwellings to be contained in the development.~~ All subdivisions and multi-family residential developments of 10 or more lots shall have a usable area of the shoreline designated as a common lot for use by all property owners in the development, unless all lots are waterfront lots with reasonable beach and/or joint-use dock access. Each property owner should be provided with an equal and undivided fee ownership interest in and legal access to such common lot or lots.

~~10~~ 9. Mobile home, travel trailer, ~~and/or~~ recreational vehicle camps, courts, parks, and subdivisions shall not be permitted on shorelines unless all structures can be thoroughly screened from view from both the water and the land by means of natural cover (trees, shrubs, etc.).

*(Eventually should be dropped and replaced with some general regulations applicable to all shoreline developments.)

~~11~~ 10. The creation of landfills in water bodies or their associated wetlands for the purpose of residential development shall not be permitted, except as provided for in Section 16.40.512, Landfills and Solid Waste.

~~12~~ 11. Utility lines installed within subdivisions and non-exempt residential developments shall ~~be placed underground,~~ comply with the provisions of Section 16.40.520, Utilities.

12. Roads installed within subdivisions and non-exempt residential developments shall comply with the provisions of Section 16.40.519, Transportation Facilities.

*13. Drainage and surface runoff from residential areas shall be controlled so that pollutants will not be carried into water bodies.

14. Any parcel which constitutes a legal building site prior to the adoption of this Master Program shall continue to constitute a legal building site regardless of the density requirements imposed by this Master Program; provided that all parcels shall be subject to all other regulations imposed by the Master Program and other applicable state and county ~~regulations~~ laws and ordinances (with respect to setbacks, sewage disposal, etc.)

15. In all proposed land divisions and non-exempt developments which include both land within 200 feet of ordinary high tide and land beyond the 200 foot line, the maximum allowable density for the entire parcel shall be calculated as follows:

a. The maximum number of residential ~~parcels~~ units permitted for the entire parcel to be divided shall be the sum of the maximum number allowed based on the land area within 200 feet of the line of ordinary high tide as provided below, and the maximum number allowed within the portion beyond 200 feet as provided in the San Juan County Comprehensive Land Use Plan.

b. The terrain, access, potential building sites, areas appropriate for common ownership, special features of the site, and the policies and regulations of this Master Program and the Comprehensive Plan shall be considered in the design of the development.

c. The maximum number of residences located within 200 feet of the line of ordinary high tide shall not exceed the standards provided in Regulations by Environment, below. Clustering of residences within 200 feet of the line of ordinary high tide is encouraged provided that density standards provided below are not exceeded.

*(Eventually should be dropped and replaced with some general regulations applicable to all shoreline developments.)

*16. The removal of vegetation and/or alteration of topography shall be held to a minimum. This applies to individual construction where shoreline review is required. Where a substantial development permit is required, reasons shall be clearly stated in the application if major removal of vegetation or alteration of topography is proposed.

17. All subdivisions and non-exempt residential developments shall have proven, adequate water supplies ~~adequate-se~~ and insure that groundwater quality and quantity are not endangered by over-pumping.

18. Opportunities for visual public access to the shoreline shall be considered in review of residential subdivisions and non-exempt developments.

19. All subdivisions shall comply with the provisions of the County Land Division Ordinance.

20. All new waterfront subdivisions and multi-family residential developments shall include a restriction that prohibits all individual and shared moorage facilities, other than buoys, but allows the property owners to seek approval of a single joint-use moorage facility to serve the entire subdivision or development, in accordance with all applicable laws and ordinances (including the provisions in Section 16.40.508, Docks and Piers), provided that the county may authorize two such joint-use moorage facilities for residential developments with numerous lots and considerable shoreline if a single facility would be inappropriate or undesirable given the specific sites and marine conditions.

* 21. Environmentally sensitive features and resources within subdivisions and non-exempt developments, such as wetlands, steep/unstable slopes, flood hazard/ponding areas, and significant biological areas, shall be protected from overuse and development through CLUSTERING AND/OR appropriate covenants and conditions of approval, such as plat restrictions, open-space or common-area designations, and/or conservation easements.

REGULATIONS BY ENVIRONMENT

URBAN

Residential development shall be permitted in the Urban Environment subject to the policies and regulations contained in this Master Program.

SUBURBAN

Residential development shall be permitted in the Suburban

*(Eventually should be dropped and replaced with some general regulations applicable to all shoreline developments.)

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