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No. 72235-2-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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COMMON SENSE ALLIANCE, P.J. TAGGARES COMPANY, and  
FRIENDS OF THE SAN JUANS,

Appellants,

v.

GROWTH MANAGEMENT HEARINGS BOARD, WESTERN  
WASHINGTON REGION, and SAN JUAN COUNTY,

Respondents,

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BRIEF OF FRIENDS OF THE SAN JUANS IN RESPONSE TO  
BRIEF OF APPELLANTS COMMON SENSE ALLIANCE  
& P.J. TAGGARES COMPANY ET AL.

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### III. INTRODUCTION

On December 4, 2012, San Juan County (“County”) adopted a Critical Areas Ordinance (“CAO”) that designated shoreline critical areas based on their ecological sensitivity and priority and adopted a site-specific buffer sizing procedure based on the type of critical area, the amount of development, and its proximity to the critical area. On September 6, 2013, the Growth Management Hearings Board (“GMHB”) upheld those designations but struck most of the buffer sizes as too small to protect water quality and habitat based on the Best Available Science (“BAS”). San Juan County Superior Court upheld that decision on June 19, 2014.

Appellants Common Sense Alliance and P. J. Taggares Company et al. (collectively “CSA”) now ask this Court to reverse the GMHB’s approval of the designation of shoreline critical areas and the buffer system. CSA argues that the County did not sufficiently emphasize an administrative definition and that site-specific buffers, which it characterizes as uniform, are not warranted to protect the county’s shorelines and wetlands. However, rather than identifying the supportive science in the record and demonstrating its insufficiency, the brief largely ignores the BAS that the County relied upon to support its designation modest buffer efforts.

This brief offers a responsive statement of the case that examines the BAS that supports the County's designation of shoreline Fish and Wildlife Habitat Conservation Areas ("FWHCAs") and adoption of a site-specific buffer system, and then argues that: (1) CSA abandoned any constitutional arguments; and (2) the CAO's buffer system is reasonably necessary to protect critical areas, and therefore satisfies RCW 82.02.020.

#### **IV. RESPONSIVE STATEMENT OF THE CASE**

In adopting its CAO, the County compiled a substantial amount of scientific literature that identified the ecological significance of local wetlands and FWHCAs, the threats that development poses to them, and the benefits that site-specific buffers provide in decreasing those threats. Administrative Record ("AR") 4228 (Ordinance 26-2012, recital B); AR 3467-3997. The CAO also established a complicated site-specific buffer calculation that incorporated the intensity of the proposed development, the landscape, and the type of adjacent critical area. AR 4358-363 (FWHCAs), 4323-330 (wetlands).

##### **A. The CAO's Designation of FWHCAs.**

The CAO identifies the types of FWHCAs that it protects at SJCC 18.30.160.B. AR 4353-55. These FWHCAs include many of the same types of FWHCAs protected by other counties in western Washington and identified as candidates for protection by state regulations, including areas

with which endangered, threatened, and sensitive species have a primary association, streams, lakes, naturally occurring ponds that provide fish and wildlife habitat, mudflats, intertidal habitats with vascular plants, pocket beaches, bluff backed beaches and associated feeder bluffs, shellfish areas, kelp and eelgrass beds, forage fish spawning and holding areas, and habitats of local importance. AR 4354-55; WAC 365-190-130. In addition to designating FWHCAs by name, the CAO references County maps that identify their approximate location. AR 4356-57 (SJCC 18.30.160.C.).

**B. The CAO's Site-Specific Buffer-Sizing System.**

The CAO dedicates seven pages of its wetlands ordinance to the site-specific process for locating and sizing the water quality buffers that apply uphill of a wetland or FWCA. AR 4323-29, 4360-61. While the GMHB agreed that those buffers were not large enough to protect the water quality of either wetlands or FWHCAs, they incorporate the size of a proposed development and landscape characteristics into their sizing calculation. AR 6284-293, 6303-305.<sup>1</sup> First, a landowner identifies the type of wetland or FWCA on their property. AR 4323 (SJCC 18.30.150.E.). Then, one conducts the multi-step process for sizing the water quality buffer, including: (1) determining whether the development

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<sup>1</sup> Since the GMHB decision, the County has adopted a new buffer sizing method. That method takes two primary factors into consideration for buffer sizing, the type of critical area and land use intensity of the proposed development.

will occur within 205 feet of a wetland or FWHCA; (2) determining whether the development area will drain to the wetland or FWHCA; (3) determining the wetland type and water quality-sensitivity rating; and (4) determining the stormwater discharge factor by: (a) identifying the flow path, (b) determining the different types of land cover along that flow path, including the development, (c) calculating the length of each different land cover along the flow path, (d) identifying the base stormwater discharge factor for each type of land cover, (e) determining the slope for each segment of the flow path, (f) determining the drainageway along each segment of the flow path, (g) calculating the composite stormwater discharge factor for the full extent of the drainage area, and (h) using that discharge factor to identify the buffer width. AR 4323-29.

Although CSA repeatedly references a 200-foot distance in discussing buffer applicability, the CAO established FWHCA water quality buffers ranging from 30 to 125 feet depending on the land use intensity. AR 4361 (Step 3, citing AR 4329 (Table 3.6, Low Water Quality-Sensitivity Rating column)). Wetland water quality buffers range from 30 to 205 feet. Id.

The widths of the wetland habitat buffers and FWHCA tree protection zones are based on the type of wetland or FWHCA to be

protected. AR 4323, AR 4362. The CAO established 30, 50, and 80-foot wide wetland habitat buffers that correspond to the habitat importance and sensitivity of the wetland. AR 4323 (SJCC 18.30.150.E.1.b. (Table 3.7)).<sup>2</sup> The tree zones also vary in width depending on the receiving water, ranging from 110 feet for fishbearing streams and marine waters designated as FWHCAs to just a vegetated bank for seasonal streams flowing less than 6 months per year. AR 4362 (SJCC 18.30.160.E.2. (Table 3.9)).

**C. The BAS Identifies the Benefits of Site-Specific Buffers.**

The BAS in the record identifies buffers as an effective method for protecting FWHCAs and wetlands.<sup>3</sup> AR 3708-723, 3535-552, 4069-4205, 4654-55, 4675-684 (recommending buffers from 150 to 250 feet in width). Buffers provide separation zones between water bodies and development activities intended to limit impacts from those activities on the natural functioning of streams, lakes, and marine waters. AR 3708, 4076. Buffers typically are relatively undisturbed areas that host mature vegetation consistent with the natural potential of the site. AR 4076.<sup>4</sup>

The following sections identify the functions of FWHCAs and

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<sup>2</sup> The GMHB deemed these buffers inconsistent with the GMA mandate to protect critical areas. AR 6293-296.

<sup>3</sup> Indeed, the GMHB concluded that the BAS recommended larger buffers than those established by the appealed CAO. AR 6293.

<sup>4</sup> For example, the BAS Synthesis recommends protection for juvenile salmon in the form of riparian buffers consistent with the salmon recovery plan. AR 3680-81.

wetlands, threats to those functions, and recommended buffer widths.

**1. Critical Area Functions.**

***a. FWHCAs***

BAS documents indicate that marine riparian areas like shoreline FWHCAs likely play a central role in supporting healthy aquatic and terrestrial ecosystems. AR 4076. FWHCA functions include: (1) water quality; (2) fine sediment control; (3) large woody debris; (4) shade/microclimate; (5) litter fall/organic matter; (6) hydrology and slope stability; and (7) fish and wildlife habitat. Id. In addition, streamside setbacks increase property values. See AR 4522-24.

***(1) Water quality and infiltration.***

Riparian areas benefit water quality by: (1) infiltrating surface runoff; (2) intercepting nutrients, fine sediments, and other pollutants from surface water; (3) binding dissolved pollutants with soil; (4) processing excess nutrients, pollution, and bacteria with riparian vegetation; (5) regulating water temperature. AR 4077.

***(2) Fine Sediment Control.***

Marine riparian areas manages fine sediment in run-off so that it nourishes beaches and waters without overloading them, through vegetation that intercepts rainfall, binds soil with roots, slows surface runoff, and moderates soil moisture levels. AR 4081-84, 4102. On slopes,

vegetation reinforces soils with its roots, stems, and moisture removal, and mature, diversely vegetated areas with trees, shrubs, and herbaceous growth more effectively stabilize those slopes.

***(3) Shade/Microclimate.***

Riparian microclimates rely on overstory trees, understory shrubs, and ground-level plants that intercept sun and affect microclimate conditions like soil and ambient air temperature, soil moisture, wind speeds, and humidity. AR 4084-87, 4102. Shade is essential to prevent desiccation in the intertidal zone. Vegetation also screens impacts like noise, glare, and human activity.

***(4) Large Woody Debris (“LWD”).***

Marine and freshwater shorelines contribute LWD of downed trees that benefits riparian areas by: (1) moderating water and soil temperature and moisture; (2) accumulating detritus for invertebrate food and habitat; (3) supporting terrestrial vegetation like nurse logs; (4) adding structural complexity; and (5) controlling erosion. AR 4087-91.

***(5) Litter Fall/Organic Matter.***

Litter fall, such as leaves, bark, needles, and twigs, serves as habitat and food for fish and aquatic invertebrates and influences the amount and type of terrestrial invertebrates that fall into aquatic systems. Litter fall is particularly important along the Salish Sea, where terrestrial

invertebrates constitute a significant portion of the diet for juvenile salmonids. AR 4091-94, 4102.

***(6) Hydrology/Slope Stability.***

Vegetation is essential for maintaining hydrologic processes and slope stability. Tree and shrub root strength maintains slope stability and vegetation intercepts and absorbs water; loss of root strength due to tree removal may increase erosion and landslides. AR 4094-95.

***(7) Fish and Wildlife Habitat.***

Riparian areas contribute to high productivity and species diversity of aquatic and upland wildlife by providing areas for feeding, roosting, breeding, refuge, migration corridors, and clean water. AR 4095-C-95-D.

***b. Wetlands.***

Wetlands offer four basic functions and values: (1) water purification; (2) maintenance of hydrologic functions and soil stability; (3) providing habitat; and (4) landscape beautification. AR 3513.

Wetlands improve water quality by: (1) decreasing contaminant loads; (2) removing excess nutrients like nitrogen and phosphorous; (3) retaining or killing harmful bacteria and viruses; (4) maintaining stream temperature; and (5) filtering out and stabilizing fine sediments suspended. AR 3513-520.

Wetlands maintain hydrologic functions and soil stability by: (1)

promoting infiltration of runoff into aquifers; (2) decreasing erosion in gullies and small channels; (3) storing water; (4) helping sustain summer flow in small streams; and (5) maintaining elevated humidity in uplands. AR 3520-21.

Wetlands in the San Juans provide habitat for at least 162 bird species, 22 mammal species, 7 amphibians, 6 reptiles, anadromous and resident fish, invertebrates, and native plants, including 73 priority species listed by the Washington Department of Fish & Wildlife (“WDFW”). AR 3518-20. About 16 of these species rely almost exclusively on wetlands, ponds, and lakes. *Id.* Species rely upon the following factors for habitat use: vegetation structure; depth, duration, and flow rate of water; size; proximity and connectivity to other natural habitat; and the amount and distribution of standing and fallen dead wood. AR 3519-20.

## **2. Threats to Critical Area Functions.**

The threats identified by the BAS Synthesis for FWHCAs like juvenile salmon habitat along marine shorelines share many similarities with those for wetlands. Compare AR 3689-3714 with 3522-25.

For example, in evaluating threats to FWHCAs, the BAS Synthesis notes that vegetation removal can alter a habitat’s microclimate by changing shade and temperature, reducing bank and shoreline stability, reducing the source of leaf litter, woody debris, and terrestrial insects that

feed the food web, impacting a shoreline's capacity to filter polluted runoff, and altering habitat complexity and increasing its fragmentation. AR 3704-08. Upland stormwater can carry pollutants like fecal coliform bacteria, pesticides, metals, sediments, and endocrine disruptors into streams, ponds, and marine waters, which may explain local degraded water quality documented in several studies. AR 3700-03, 3937-942. Bulkheads, which can result when upland development occurs too close to naturally-eroding shorelines, interfere with shoreline geological processes by burying beach, disconnecting beaches from their sediment source, redirecting erosion, and removing vegetation. AR 3691-95.

The BAS identifies similar threats to wetlands from residential development,<sup>5</sup> altered water flows,<sup>6</sup> pond construction, and agriculture. AR 3522-25, 4173-181.<sup>7</sup> In addition, impacts from polluted runoff can increase as wetlands become overloaded with pollutants and lose effectiveness. AR 3524.

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<sup>5</sup> Impacts include altered microclimate, water tables, and water chemistry through vegetation removal, drainage installation, septic system installation, pond construction, well drilling, and added toxins, nutrients, and temperature. AR 3522.

<sup>6</sup> Hydrological impacts from dewater wetlands may be exacerbated in San Juan County, where “[l]arge portions of the county are already at a point where extraction of groundwater for domestic uses exceeds local recharge.” AR 3523.

<sup>7</sup> Impacts include loss of wetlands and changes to their physical structure by filling, tilling, draining, ditching, grazing, damming, erosion, removing wetland vegetation, and planting different upland vegetation; altering hydrology regimes; removing water for irrigation and diversion; increased sediment, nutrient, and toxic input; habitat fragmentation; soil alteration, roads, noise, and invasive species. AR 4173-181.

### **3. The BAS Recommends Buffers to Protect FWHCA and Wetland Functions.**

In its discussion of wetland buffers, the BAS Synthesis recites the following potential benefits cited by the literature:

- Limiting impervious surface;
- Intercepting and stabilizing sediment;
- Intercepting and processing excessive nutrient loads;
- Maintaining shade, water temperature, and microclimate;
- Minimizing excessive windthrow loss of trees;
- Exporting wood and other organic matter to streams and wetlands;
- Maintaining vegetated connections among wetlands and stream riparian areas as required for essential movements of some wetland or riparian dependent animals;
- Limiting human access to wetlands and thus minimizing threats such as trampling of vegetation, soil compaction by off-road vehicles, and disturbance of wildlife during sensitive times.

AR 3536.

Factors that can influence buffer effectiveness include: (1) the type and intensity of surrounding land development; (2) water source and flow path; (3) groundwater influence; (4) slope or bluff stability; (5) pollutant types and sources; (6) vegetation characteristics; (7) susceptibility to wind throw; (8) amount of tree removal allowed; and (9) geomorphic functions

of driftwood or other habitat features. AR 3709, 3541-45.

Several scientific synthesis documents in the record analyze existing scientific studies and identify buffer ranges likely to protect streams, lakes, and marine shorelines at different rates of effectiveness. The Aquatic Habitat Guidelines Program, a collaboration between several state agencies,<sup>8</sup> identifies average widths cited by the literature for 80% effectiveness and minimum widths for 80% effectiveness based on statistical analysis. AR 4655. These buffers are:

(1) **water quality** – 358 feet (average), 279 feet (minimum for phosphorous);<sup>9</sup>

(2) **fine sediment control** -- 190 feet (average), 197 feet (minimum for total suspended solids);<sup>10</sup>

(3) **shade** – 79 feet (average), 121 feet (minimum for 0.6 site potential tree height);<sup>11</sup>

(4) **large woody debris** – 180 feet (average), 131 feet (minimum for 0.65 site potential tree height);

(5) **habitat** -- 571 feet (average), N/A minimum.

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<sup>8</sup> These agencies include the Washington Departments of Fish and Wildlife, Ecology, Natural Resources, Transportation, and Commerce, and the Recreation and Conservation Office and Puget Sound Partnership. AR 4654.

<sup>9</sup> Also AR 4077 (noting at AR 4080 that contaminant loading can increase over time and thereby decrease the effectiveness of the buffer).

<sup>10</sup> Also, AR 4081-84.

<sup>11</sup> Also AR 4084-87.

The County originally proposed significantly larger buffers than the 30 to 125 foot range for FWHCAs eventually adopted. Compare AR 4329 (Table 3.6, Low Water Quality-Sensitivity Rating column) with 5574-79.<sup>12</sup>

#### **4. Development Authorized in CAs or Buffers.**

Although the GMHB rejected some of the development that the CAO authorizes in FWHCAs, wetlands, or their buffers, the CAO continues to authorize the following activities:

##### ***a. Both wetlands and FWHCAs:***

- Operation, maintenance, repair, remodel, replacement, or expansion of existing structures, facilities, infrastructure systems, and development areas and uses (AR 4269, 276);
- Installation, construction, replacement, or modification of utility lines and equipment (AR 4269);
- Removal of hazard trees (AR 4270);
- Forest harvest (AR 4270);
- Installation of navigation aids and survey markers (4270);
- Surveys, soil borings, and test holes (4270);
- Land division (AR 4270);

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<sup>12</sup> Analysis of Existing San Juan County Regulations, Marine FWHCAs (May 31, 2011). Document begins at AR 5536.

- Emergency response (AR 4269).
- Reasonable use exception for development of 2,500 square feet of critical area and buffer (AR 4271);

***b. Wetlands***

The CAO authorizes the following additional actions in wetlands:

- Development of medium habitat importance-sensitivity wetlands up to 1,000 square feet (AR 4321);
- Development of low habitat importance-sensitivity wetlands up to 2,500 square feet (AR 4321);
- Averaging of buffers (AR 4330);
- Development in buffers opposite public roads and a subset of private roads from wetlands (AR 4330);
- Outdoor activities (AR 4331);
- Harvesting of wild plants and foods (AR 4331);
- Ongoing agricultural activities and increased intensity of agricultural activities (AR 4331);
- Gardens and orchards up to 4,000 square feet in buffers (AR 4332);
- Construction of new ponds in low habitat importance-sensitivity wetlands (AR 4332);
- Trails, stairs, and raised walkways (AR 4332);
- Temporary wildlife watching blinds (AR 4332);
- Drilling and digging of wells in outer 25% of buffer (AR 4332);
- Removal of buffer trees up to 35-50% canopy removal (AR

4333);

- Annual removal of 20% of tree and shrub foliage (AR 4333);
- Construction of stormwater management facilities in buffers (AR 4333);
- Fences (AR 4333);
- Road and trail crossings (AR 4333);
- Septic system components in buffers (AR 4333);

*c. FWHCAs*

The CAO authorizes the following additional actions in FWHCAs or their buffers:

- Averaging of tree zones (AR 4362);
- Development in buffers opposite public roads and a subset of private roads from wetlands (AR 4362);
- In tree zones, removal of 40% of trees each decade and annual cutting of 20% of tree foliage (AR 4363);
- Outdoor activities (AR 4364);
- Harvesting of wild plants and foods (AR 4364);
- Ongoing agricultural activities and increased intensity of agricultural activities (AR 4364);
- Aquaculture (AR 4364);
- Gardens and orchards up to 4,000 square feet in outer 25% of buffers (AR 4365);
- Trails, stairs, and raised walkways (AR 4365);

- Temporary wildlife watching blinds (AR 4365);
- Drilling and digging of wells in outer 25% of buffer (AR 4365);
- Annual removal of 20% of tree and shrub foliage in water quality buffer (AR 4365);
- Construction of stormwater management facilities in buffers (AR 4366);
- Fences (AR 4366);
- Stream crossings, roads and trails in buffers (AR 4366);
- Septic system components in buffers (AR 4366); and
- On marine shorelines, buffers shrunken to setback on adjacent parcels (AR 4368).

**E. Evidence of Impaired Critical Areas in San Juan County.**

Riparian and aquatic ecosystems are being altered, impacted, or destroyed at a greater rate than at any other time in history. AR 4095-E. Locally, at the same time that the county's population has expanded by 80% since 1990, local studies have discovered impacts to critical areas that include habitat and species loss, a degraded physical environment, and impaired and marginal water quality. AR 3659, 3700-04. From 1995 to 2004, the San Juans lost roughly 82 acres of critical eelgrass in 11 small embayments. AR 3659. In 2008, MacLennan and Johannessen found that between 1977 and 2006, San Juan, Orcas, Lopez, and Stuart Islands had lost an average of 25% of their marine riparian forest cover. AR 3704.

Several studies have also documented impaired water quality in San Juan County. A 2000 study of 24 sites by Western Washington University found obvious impairment of water quality at eight sites and marginal quality in another ten. AR 3700-02. The County Conservation District recently found elevated pollution in 17 of 23 water quality samples. AR 3702. And other surveys found have found elevated levels of pyrethroid pesticides, temperature, ammonia, Polycyclic Aromatic Hydrocarbons, metals, and surfactants in local waters. AR 3703, 4219-220, 4223, 26, 4492, 4539, 4544-46, 4550.

Local studies have also revealed increasing numbers of species in decline. The SeaDoc Society evaluated the status of species of concern and discovered that as of January 1, 2011, one or more of British Columbia, Washington, Canada, or the U.S. had listed 113 species of concern in the Salish Sea, a near doubling in 2 ½ years. AR 4552. And 39 native species and species groups of sea birds in the Puget Sound region are imperiled. AR 3681.

During the County's 2010 wetlands survey, its consultants observed many threats, including new damming or diking, new ditching or tilling, new excavation and regrading, new filling, new mowing and haying, new plowing, new timber cutting or shrub clearing, old damming or diking, old ditching or tiling, old excavation or regarding, pasture, and

vehicle use. AR 3512, 3616. Several local factors increase the risk that these threats will impact county wetlands, including decreased ecological resilience, elimination of native plant species due to unchecked herbivory, illegal pond construction, and shallow soils that transport pollution through subsurface root zones without allowing infiltration. AR 3512.

## V. ARGUMENT

The following argument demonstrates that CSA has not met its burden of proving that: (1) the Superior Court erred by declining to address CSA's facial challenge under Chapter 82.02 RCW and a claim of unconstitutional conditions; (2) the CAO's site-specific buffers are unenforceable as an unconstitutional condition and as a violation of RCW 82.02.020; (3) the County adopted the CAO without designating shorelines in accordance with definitions for critical areas; (4) the CAO failed to appropriately limit the designation of FWHCAs; and (5) the BAS does not support water quality buffers or tree protection zones.

### A. Burden of Proof.

CSA bears the burden of proving that the GMHB erred and that RCW 82.02.020 applies to the CAO, and the County bears the burden of showing that the tailored CAO provisions are necessary as a direct result of the proposed development. RCW 34.05.570(1)(a); Citizens' Alliance for Prop. Rights v. Sims, 145 Wn. Ap. 649, 657, 187 P.3d 786 (2008)

(“CAPR”).

**B. The GMHB Correctly Upheld the County’s Designation of Shoreline FWHCAs.** (Response to CSA Assignments of Error 2-3).

CSA argues that the CAO impermissibly allows “county administrative staff” to designate marine and lake FWHCAs without the benefit of a state regulation definition. CSA Brief, at 27-31. However, the CAO designated shoreline FWHCAs, and nothing in the Growth Management Act (“GMA”) requires the County to recite a regulatory definition during that designation. The purpose of the Department of Commerce minimum guidelines (“Guidelines”) that contain that definition is not to prevent the designation of FWHCAs, but to facilitate their designation and protection pursuant to the GMA. WAC 365-190-020(3); RCW 36.70A.060(2), .170(1)(d), .172; see Stevens County v. Futurewise, 146 Wn. App. 493, 511-12, 192 P.3d 1 (2008). The County designated the FWHCAs that it chose to designate by reviewing the BAS for the sensitivity and importance of those critical areas and the likely impacts of development and vegetation removal, and the Court should uphold those designations. See Tahoma Audubon Soc’y, et al. v. Pierce County, CPSGMHB No. 05-3-0004c, FDO, 37-40 (July 12, 2005).

**1. The County designated shoreline FWHCAs.**

Although there is some ambiguity in the GMHB decision, both the

adoption process and the CAO's plain language demonstrate that the County designated shoreline FWHCAs that complied with RCW 36.70A.480(5). AR 6331-35.

The County designated the FWHCAs listed at SJCC 18.30.160.B when it conducted the two-step classification and designation process set forth in the Guidelines. WAC 365-190-040. The County classified its FWHCAs when it established categories to which it later assigned designated critical areas, such as areas with which endangered, threatened, and sensitive animal and plant species have a primary association, habitats of local importance, and state preserves and wildlife areas. WAC 365-190-040(4). The County then designated FWHCAs by identifying them at SJCC 18.30.160.B and by relying upon maps that established the classification scheme and the "general distribution, location, and extent of critical areas." WAC 365-190-040(5)(a); see AR 6353-71 (BAS Synthesis, Ch. 8: Maps). The Guidelines acknowledge that critical areas may not be readily identified and suggests their designation in those instances by performance standards or definitions "so they can be specifically identified during the processing of a permit or development authorization." WAC 365-190-040(5)(b). In addition, the Guidelines confirm that "designating inventoried lands for comprehensive planning and policy definition may be less precise than subsequent regulation of

specific parcels for conservation and protection.” WAC 365-190-040(5)(c). The County specifically identified the shoreline FWHCAs by designating them at SJCC 18.30.160.B. and by creating maps to show their approximate location. AR 4353-57 (SJCC 18.30.160.C. notes that “[m]aps of FWHCAs...show lakes, the location and type of most streams, and the approximate location of some protected species and habitats.”).

The plain language of the CAO and its recitals confirms that the County designated FWHCAs when it adopted the CAO. For example, the CAO states that “[a]quatic FWHCAs are those that contain or are inundated with water at some time during a normal year as follows...” AR 4358 (SJCC 18.30.160.E). The recitals confirm that the CAO designated the listed FWHCAs, stating that “[t]he following waters of the State are designated as FWHCAs: lakes and streams. Other waters, and aquatic FWHCAs planted with game fish by a government or tribal entity, were not designated separately because they are adequately protected under other categories of FWHCAs.” AR 4348 (Recital XI). And in introducing the designated FWHCAs, the CAO states, “[f]ollowing are the types of fish and wildlife habitat conservation areas protected by these regulations.” AR 4353 (SJCC 18.30.160.B).

**2. The designation complied with RCW 36.70A.480(5).**

Rather than designating all shorelines of the state as critical areas,

the County designated specific shoreline FWHCAs, such as eelgrass beds and surf smelt spawning beaches, consistent with RCW 36.70A.480(5). In 2003, the state legislature added the following language to clarify that marine shorelines qualify as critical areas where they contain wetlands or FWHCAs:

[s]horelines of the state shall not be considered critical areas under this chapter except to the extent that specific areas located within shorelines of the state qualify for critical area designation based on the definition of critical areas provided by RCW 36.70A.030(5) and have been designated as such by a local government pursuant to RCW 36.70A.060(2).

RCW 36.70A.480(5).<sup>13</sup> The GMA defines critical areas as “the following areas and ecosystems: (1) wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (5) geologically hazardous areas.” RCW 36.70A.030(5). Thus, RCW 36.70A.480(5) did not prevent the County from designating and protecting FWHCAs here by identifying them along shorelines and evaluating the BAS regarding potential impacts to them from development and vegetation removal. See, e.g., Tahoma Audubon, CPSGMHB No. 05-3-0004c, FDO, at 37-40.

**3. The County designated FWHCAs consistent with the Guidelines’ recommendations.**

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<sup>13</sup> CSA’s argument implies that this language requires designation pursuant to a regulatory definition at WAC 365-190-030. CSA Brief, at 29. However, the GMA’s plain language references the statutory, not regulatory, definition for critical areas.

When designating shoreline critical areas, the GMA directs counties to consider the Guidelines but does not make those guidelines mandatory. RCW 36.70A.170(2) (stating that counties “shall consider the guidelines established pursuant to RCW 36.70A.050,” which directs Commerce to adopt guidelines to guide the classification of critical areas); Tahoma Audubon, CPSGMHB No. 05-3-0004c, FDO. As the GMHB noted in Tahoma Audubon, while a county must designate and protect critical areas, “[t]he procedural criteria adopted by [Commerce] pursuant to RCW 36.70A.190 are advisory, not obligatory.” CPSGMHB No. 05-3-0004c, at 12. Nonetheless, the County’s designation of marine FWHCAs was consistent with the Guidelines.

The Guidelines direct counties to consider eight types of FHWCA for designation. WAC 365-190-130(2). The Guidelines then direct counties to include the BAS and consider actions like protecting riparian ecosystems that include salmon habitat and establishing buffer zones around those areas. WAC 365-190-130(3). The Guidelines note that conserving fish and wildlife habitat means “maintaining populations of species in suitable habitats within their natural geographic distribution so that the habitat available is sufficient to support viable populations over the long term...” and defines FHWCA as those areas that, “if altered, may reduce the likelihood that the species will persist over the long term.”

WAC 365-190-130(1); -030(6)(a) (emphasis added). The definition further states that such FWHCAs may include “rare or vulnerable ecological systems, communities, and habitat or habitat elements including... breeding habitat...and movement corridors; are areas with high relative population density or species richness.” WAC 365-190-030(6)(a).

The BAS Synthesis indicates that the County considered the FWHCAs identified by the Guidelines and determined that they served a critical role in sustaining needed habitats and species and that, if altered, might reduce the likelihood that the species would persist over the long term. AR 3645-3723; see also Section IV.C. For example, the BAS explains the essential role that eelgrass plays for shellfish and other species, or the role that shoreline salmon habitat plays for juveniles migrating to the ocean, and properly designated those critical areas in shorelines along the San Juans. AR 3645-3734.<sup>14</sup> The designation also complied with the GMA direction to “give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.” RCW 36.70A.172(1); WAC 365-190-130(3).

The designation of county shorelines as “critical habitat” for salmonids under the federal Endangered Species Act (“ESA”) further

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<sup>14</sup> The BAS Synthesis notes that, “all twenty-two populations of Puget Sound Chinook salmon use San Juan County’s nearshore and marine waters throughout the year, both as feeding and rearing juveniles as well as migrating adults, making these areas an essential part of salmon recovery in Puget Sound.” AR 3677.

supports their designation under the CAO. AR 3679. An area qualifies for critical habitat only where it hosts “physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection” or where it includes “specific areas outside the geographical area occupied by the species at the time it is listed” where the Secretary of the Interior determines that those areas “are essential for the conservation of the species.” 16 U.S.C. § 1532(5)(A), 1533(a)(3)(A).

Consequently, the County implemented the Guidelines in designating FWHCAs in the county necessary for the long-term survival of critical fish and wildlife.

**C. The Superior Court Correctly Rejected CSA’s Facial Constitutional Challenge to the CAO.** (Response to CSA Assignment of Error 5).

CSA asserts that the CAO establishes unconstitutional conditions. CSA Brief, at 14-18. As with its briefing before the Superior Court below, although CSA references two court decisions, it declines to tether its argument to any particular constitution, or a provision within such constitution. Consequently, CSA has abandoned any constitutional claims. Moreover, because the CAO seeks to decrease the impacts of new development on critical areas through site-specific buffers that incorporate the amount of development, sensitivity of receiving waters, and

characteristics of the landscape, the buffers are consistent with potentially applicable constitutional limitations, and the superior court decision should not be disturbed.

**1. CSA abandoned unspecified constitutional claims.**

Although CSA's Assignment of Error No. 1 asserts that the CAO buffers are unenforceable under the doctrine of unconstitutional conditions, CSA's Brief does not identify any constitutional provision for the alleged violation and thus abandons that portion of the argument. See Satomi Owners Ass'n v. Satomi, LLC, 267 Wn.2d 781, 225 P.3d 213 (2009); State v. Donaghe, 172 Wn.2d 253, 263 n.11, 256 P.3d 1171 (2011) (emphasizing that the RAPs require citation to legal authority and that the court would not "review issues inadequately briefed or mentioned in passing."). In Satomi Owners Association, the court declined to consider an issue that had been argued in briefing without citation to legal authority. 267 Wn.2d at 808. The court recited the requirement at RAP 10.3(a)(6) that briefs include "[t]he argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record," and the court's prior holding that, "[w]ithout adequate, cogent argument and briefing, this court should not consider an issue on appeal." Id. (citing RAP 10.3(a)(6) and Schmidt v. Cornerstone Invs., Inc., 115 Wn.2d 148, 160, 795 P.2d 1143 (1990),

respectively). CSA's Brief references "unconstitutional conditions" and two federal decisions that address the constitutionality of land use exactions not at issue here,<sup>15</sup> but does not identify a constitutional source for its argument, and thus does not cite legal authority sufficient to sustain any constitutional claims. See id.; CSA Brief, at 15-16, 24.

**2. The Superior Court correctly denied CSA's facial constitutional challenge.**

Even if CSA had not abandoned constitutional claims by its failure to identify their source, neither a takings claim nor a due process claim would support overturning the CAO. See Guimont v. Clarke, 121 Wn.2d 586, 594, 854 P.2d 1 (1993).

***a. A takings claim fails.***

A party claiming that land use regulations have effected a taking bears the heavy burden of demonstrating that the regulation is unconstitutional either: (1) on its face; or (2) "as applied." Peste v. Mason County, 133 Wn. App. 456, 471, 136 P.3d 140 (2006). A facial challenge must demonstrate that the mere enactment of the land use regulation denies all economically viable use of a property. *Id.* at 471-72 (citing Guimont, 121 Wn.2d at 605. CSA has not attempted to adduce evidence from the record to show that enactment of the CAO eliminated all

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<sup>15</sup> See Section V.C.3. below for inapplicability of exaction jurisprudence here.

economically viable use of any property.

The CAO is not subject to an “as applied” challenge because the County has not reached a definite land use decision that denied “all reasonable beneficial use of its property,” a necessary prerequisite for a ripe claim. See Peste, 133 Wn. App. at 473 (internal citations omitted); also Guimont, 121 Wn.2d at 596 (noting that an as applied challenge requires a court to engage in ad hoc, factual inquiries about the particular economic impact of the regulation on the specific property). CSA has not sought any approval, and the County has not reached an individualized decision. See id. Thus, the CAO is not subject to a takings claim.

***b. A due process challenge fails.***

The CAO also withstands any due process challenge because it satisfies all three prongs of the due process test: (1) it is aimed at achieving a legitimate public purpose; (2) it uses means reasonably necessary to achieve that purpose; and (3) it is not unduly oppressive on the landowner. Guimont, 121 Wn.2d at 609 (citing Presbytery of Seattle v. King County, 114 Wn.2d , 320, 330, 787 P.2d 907, cert. denied 498 U.S. 911, 111 S. Ct. 284, 112 L.Ed.2d 238 (1990)). First, the CAO is aimed at the legitimate, statutory purpose of protecting critical areas pursuant to the GMA. Id. Second, as explained at Section IV.C. above, the BAS identifies buffers as reasonably necessary to protect the functions and values of

critical areas. Third, a variety of factors demonstrate that the buffers are not unduly oppressive, including: (1) the serious public need to protect remaining critical areas; (2) the cumulative impact of individual development projects on those critical areas; (3) the direct benefit of buffers for protecting the vegetation necessary to support critical area functions; and (4) the infeasibility of alternatives like policing all activities on a parcel and engineering approaches like releasing insects near shorelines during salmon migration, erecting artificial structures for shade, or regularly installing logs for large woody debris. These factors outweigh the limitations on activities that can occur in the buffers.

**3. The unconstitutional conditions doctrine does not apply to the CAO's FWHCA buffers.**

In asserting that the CAO contravenes the unconstitutional conditions doctrine, CSA overlooks the doctrine's inapplicability to the County's adoption of the CAO. See, e.g., Lingle v. Chevron U.S.A. Inc., 544 U.S. 528, 538, 125 S. Ct. 2074, 161 L. Ed. 2d 876 (2005). The unconstitutional conditions doctrine applies to only adjudicative permitting decisions in which a governmental entity seeks to appropriate private property for public use as a condition of a permit. See Lingle, 544 U.S. at 538. The legislatively-adopted CAO is not a permit decision. Nor does it dedicate private land for public use. See Richardson v. Cox, 108

Wn. App. 881, 890-91, 26 P.3d 970 (2001). Consequently, any heightened scrutiny that would be warranted for an exaction under Nollan and Dolan does not apply here.

As a countywide legislative enactment, rather than a permitting decision, the CAO is not susceptible to an unconstitutional conditions claim. See Lingle, 544 U.S. at 538. CSA's brief acknowledges as much, stating, "there is a requirement for a nexus or a direct link between the project under review and problem to be solved by the proposed mitigation." CSA Brief, at 15 (emphasis added). The inapplicability of that claim is consistent with the statement from Justice Kagan's dissent in Koontz v. St. Johns River Water Management District, that the Nollan and Dolan decisions "'provide an independent layer of protection in 'the special context of land-use exactions.'" \_ U.S. \_, 133 S. Ct. 2586, 2604 (2013) (J. Kagan dissenting) (emphasis added) (citing Lingle, 544 U.S. at 538 and referencing Nollan v. California Coastal Commission, 483 U.S. 825, 107 S. Ct. 3141 (1987) and Dolan v. City of Tigard, 512 U.S. 374, 114 S. Ct. 2309 (1994)). The unconstitutional conditions doctrine applies in the context of land-use exactions to protect an applicant's constitutional right to just compensation for "property the government takes when owners apply for land-use permits." Koontz, 133 S. Ct. at 2594 (emphasis added) (citing Lingle, 544 U.S. at 547). The unconstitutional conditions

doctrine therefore does not apply “an independent layer of protection” to the CAO and the federal constitutional standards that apply to permitting decisions through Nollan and Dolan do not apply to adoption of the CAO.

Furthermore, unlike the permit decisions in Nollan, Dolan, or Koontz, the CAO does not dedicate private property to the County for public use. A common law dedication occurs when an owner designates land, or an easement on such land, for use by the public, and that designation is accepted on behalf of the public. Richardson v. Cox, 108 Wn. App. 881, 890-91, 26 P.3d 970 (2001).<sup>16</sup> A dedication may occur expressly, such as through a deed or oral or written declaration, or impliedly, as evidenced by some course of conduct by the property owner. Id. A party asserting the existence of a dedication bears the burden of establishing that it meets all of the necessary elements. Id. at 891. Here, the water quality buffers constitute land use regulations, and do not shift any ownership in those buffers or the overall parcel to public use. Instead, the landowner retains the same fundamental attributes of property ownership that she had before the regulations: right to possess, exclude others, dispose of, and make some economically viable use of the property. See Peste, 133 Wn. App. at 471. Moreover, as explained at Section IV.C.4 above, the CAO authorizes a significant amount of activity

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<sup>16</sup> A statutory dedication must comply with the laws regulating property. Richardson, 108 Wn. App. at 891.

in the buffers. AR 4269-76, 4321, 4330-33, 4362-68. Consequently, neither the adoption of the CAO nor any of its provisions effects a dedication.

**D. The Superior Court Correctly Concluded That the CAO is Consistent with Ch. 82.02 RCW.** (Response to CSA Assignment of Error 1).

Although undersized, the CAO's site-specific buffers are reasonably necessary as a direct result of a proposed development. CSA argues that the CAO contravenes RCW 82.02.020 because it does not direct the County to demonstrate that buffers should apply to every individual request for development. CSA Brief, at 21. However, CSA's argument ignores the site-specific nature of the buffers, which incorporates factors like the proximity of the development to FWHCAs and wetlands, the amount of that development, the characteristics of the landscape, and the sensitivity of the critical area, into each buffer calculation. AR 4323-330, 4361-63.

Under RCW 82.02.020, a local government can adopt regulations that constitute a tax, fee, or charge on land where the protections are "reasonably necessary as a direct result of the proposed development or plat." RCW 82.02.020. Washington courts therefore have upheld development conditions adopted pursuant to the GMA where they meet two criteria: (1) they address an impact that is a direct result of the

development; and (2) they are reasonably necessary in that they seek a roughly proportional response. Trimen Dev. Co. v. King County, 124 Wn.2d 261, 877 P.2d 187 (1994); Olympic Stewardship Found. v. W. Wash. Growth Mgmt. Hearings Bd., 166 Wn. App. 172, 195-99; 274 P.3d 1040 (2012). As explained below, the County adopted a site-specific buffer calculation based on impacts that the BAS identified from new development and thus imposed protections reasonably necessary as a direct result of proposed development. Unlike CAPR, the County did not impose a uniform open space set aside regardless of the existence of critical areas. CAPR, 145 Wn. App. at 668.

**1. The CAO buffers bear a nexus to the development impacts.**

Just as in CAPR, the County compiled a wealth of BAS that demonstrates a nexus between the many different impacts of development and vegetation removal and buffers to address those impacts. See 145 Wn. App. at 669-670. Development conditions address a direct result of the development where they are “tied to a specific, identified impact of a development on a community.” CAPR, 145 Wn. App. at 665 (internal citations omitted). In CAPR, the Court of Appeals held that the record showed a nexus between excessive clearing and the proposed solution of limiting clearing. Id. Here, although inadequately sized, the CAO’s site-

specific buffers reflect a direct nexus because they result directly from the critical areas impacts that the BAS identifies for development and vegetation removal. See Section IV.C. above.

**2. The widths of the CAO buffers are roughly proportional.**

The CAO's site-specific buffers are roughly proportional, if undersized, to the development impacts. The buffer calculation incorporates such site factors as the amount of new impervious surface, the type of land cover along the path of runoff, the slope, definitiveness of the drainageway, and the sensitivity of the receiving water. AR 4323-29. In CAPR, the Court of Appeals recited approvingly the Trimen court's statement that "King County's assessment of fees in lieu of dedication *are specific to the site*, unlike the fee-per-lot charge assessed by Bothell." 145 Wn. App. at 668 (quoting Trimen, 124 Wn.2d at 274-75 (internal citations omitted) (emphasis in original)). The CAPR court then contrasted that approach with the uniform clearing limits that were unrelated to any evaluation of the demonstrated impact of proposed development. Id. Here, the CAO expressly evaluates the amount of vegetation removal and development and establishes buffers sized to that development. AR 4323-39. The BAS amply demonstrates the impacts of new impervious surface, both for altering the hydrology and the pollutant load, as well as the

benefits that shoreline trees, not to mention other vegetation, provide to shoreline functions, and thus satisfies RCW 82.02.020. AR 3521-26, 3704-10.

**3. The site-specific buffers differ from the blanket set asides in CAPR.**

The CAO's site-specific buffers bear little resemblance to the 35-50% clearing limits that King County imposed without regard to critical areas in CAPR. Although the court there confirmed a nexus between excessive clearing and proposed clearing limits, it emphasized that King County prescribed clearing limits in proportion to the size of the lot, without relating those clearing limits to the nature and extent of the proposed development on the lot. CAPR, 145 Wn. App. at 668-69. Unlike King County's parcel size-based clearing limits, the CAO establishes buffers based on the amount of development and vegetation removal and likely impacts to critical areas.

**E. The GMHB Correctly Concluded That the County's High Risk Shoreline Buffer System Failed to Protect FWHCAs.** (Response to CSA Assignment of Error 4).

CSA's argument that the BAS "does not support" buffers for properly designated shoreline FWHCAs fails because: (1) the GMA does not require that BAS "support" buffers; and (2) the Board correctly found that, to the extent the FWHCA buffers were deficient, they failed to

provide enough protection, rather than overprotecting FWHCAs.<sup>17</sup>

CSA cites to GMA regulations for the proposition that “[a] final test of validity for any regulatory ordinance of the type before the Court is whether the regulatory burden place [sic] on properties under growth management critical area is supported by best available science included by the county in its regulatory development.” CSA Brief, at 31 (citing WAC 365-195-900(2)). However, that background section of the GMA’s BAS regulations does not require that protections be supported by BAS. WAC 365-195-900(2). Instead, it recites the GMA criterion to include BAS when developing protections for critical area functions and values, and directs counties to give “special consideration” to measures necessary to preserve or enhance anadromous fisheries. WAC 365-195-900(2) (referencing RCW 36.70A.172(1)).

Moreover, none of the cases cited by CSA supports its suggestion that BAS must support the buffers. CSA first cites to dictum from HEAL, introduced by the court’s statement that “[t]he briefs of the parties omit any discussion of an important constitutional limitation on local government’s discretion in adopting policies and regulations under GMA.” CSA Brief, at 32; Honesty in Environmental Analysis and

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<sup>17</sup> The GMHB concluded that the size of the water quality buffers that the County selected for FWHCAs was smaller than recommended by the BAS and thus failed to protect FWHCAs. AR 6303-05.

Legislation, 96 Wn. App. 522, 533, 979 P.2d 864 (1999) (“HEAL”). The court then briefly discussed constitutional considerations and the State Environmental Policy Act, but did not rely on that discussion in upholding the GMHB’s conclusion that the city had included BAS. HEAL, 96 Wn. App. at 534. Because the language did not relate to an issue before the court, it was unnecessary obiter dictum, and need not be followed. State v. Potter, 68 Wn. App. 134, 149 n.7, 842 P.2d 481 (1992).

CSA’s reliance on CAPR v. Sims and Olympic Stewardship Foundation, likewise is misplaced. CSA Brief, at 32-36. In CAPR v. Sims, King County established clearing limits on rural residential property in King County based on lot size without relating the clearing limit to the nature and extent of the proposed development. CAPR, 145 Wn. App. at 668. In Olympic Stewardship Foundation, the court upheld an ordinance that restricted vegetation removal near rivers likely to migrate within 50 years after determining that the ordinance relied on scientific studies in the record. 166 Wn. App. at 194. Unlike the ordinance in CAPR v. Sims, and like the ordinance in Olympic Stewardship Foundation, the CAO established water quality buffers based on the amount of development and related stormwater and associated pollutants projected to reach the marine shorelines. AR 4323-29, 4358-363. To the extent that the buffers are improper, it is due to their insufficient size to address threats.

Further, in arguing that the BAS Synthesis is like boilerplate fish science in Sims, CSA ignores much of the BAS in the record here. The BAS supports the adoption of buffers larger than the 110-foot tree zone and 30-125-foot water quality buffer to protect shoreline critical areas. The County's BAS Synthesis identified numerous impacts to FWHCAs from riparian activities, including the following:

- Kelp beds – adverse changes in water quality, substrate composition, siltation, increased run-off, pollutants, and turbidity. AR 3657-68;
- Eelgrass beds – water quality, disease, shoreline agriculture, low oxygen, thermal and salinity stress, and bioturbation. AR 3659-60;
- Surf smelt and other forage fishes – loss of vegetation overhanging the upper beach, bulkheads, and pollution runoff. AR 3663;
- Salmonids – nearshore vegetation disturbance that reduces or alters leaf litter and insect drop, reduced eelgrass, vegetation removal, impervious surfaces, agricultural practices, streambank erosion, changes in gravel and substrate, changes in water flows, changes in channel roughness, and changes in marshes, sloughs,

eelgrass, and kelp beds. AR 3680.<sup>18</sup>

To address these impacts, WDFW recommends riparian protections like the following: (1) retain, restore, and enhance native vegetation with multi-layered canopy and understory; (2) avoid impervious surfaces and septic tank drain fields; (3) limit disturbance of buffers with agricultural and pasture lands; (4) avoid grading, compaction, and removal of native soils; (5) prevent modifications, such as armoring, to banks and bluffs; (6) prohibit cutting and topping of trees and limbing of trees; (7) avoid “loading” bluffs with excessive moisture from irrigation, septic fields, impervious surfaces; (8) maximize wildlife habitat connectivity with riparian corridors; and (9) allow for natural disturbances such as floods, wind throw and landslides. AR 4077-4095-E.

As explained at Section IV.C.3 above, the CAO established water quality buffers of 30-125 feet and tree zones of 110 feet, well below recommended buffer widths.<sup>19</sup> AR 4329, 4360-62. Consequently, to the extent that the County did not include the BAS in adopting CAO buffers, it was because it established insufficiently narrow buffers.

## **VI. CONCLUSION**

For the reasons set forth above, Friends respectfully requests that

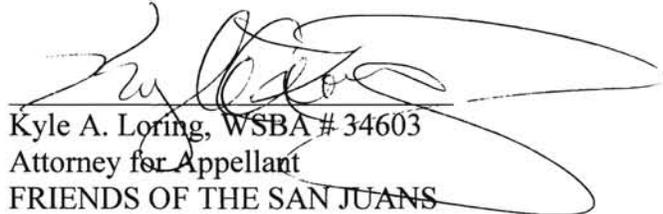
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<sup>18</sup> The BAS Synthesis recommends buffers to protect juvenile salmon, consistent with the salmon recovery plan. AR 3680-81.

<sup>19</sup> See also AR 4655.

the Court leave undisturbed the GMHB and Superior Court conclusions that: (1) the County properly designated its shoreline FWHCAs; (2) any constitutional challenges were abandoned or satisfied by the CAO; (3) CAO buffers satisfy any applicable requirements at RCW 82.02.020; and (4) the BAS supports the application of buffers to shoreline FWHCAs.

Respectfully submitted this 5th day of January, 2015.



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No. 72235-2-I

IN THE COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

COMMON SENSE ALLIANCE, )  
P.J. TAGGARES COMPANY, and )  
FRIENDS OF THE SAN JUANS )  
Appellants, ) **CERTIFICATE OF**  
 ) **SERVICE**  
 )  
v. )  
 )  
GROWTH MANAGEMENT )  
HEARINGS BOARD, WESTERN )  
WASHINGTON REGION, and )  
SAN JUAN COUNTY, )  
Respondents. )

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2015 JAN -5 PM 11:30  
COURT OF APPEALS  
STATE OF WASHINGTON

Jana G. Marks declares and states:

That I am now, and at all times hereinafter mentioned was, a citizen of the United States and a resident of San Juan County, state of Washington, over the age of 18 years, competent to be a witness in the above-entitled proceeding and not a party thereto; that on August 28, 2014, I caused to be delivered in the manner indicated below a true and correct copy of: **BRIEF OF FRIENDS OF THE SAN JUANS IN RESPONSE TO BRIEF OF APPELLANTS COMMON SENSE ALLIANCE & P.J. TAGGARES COMPANY ET AL** in the above-entitled cause to:

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By Email only

I make the foregoing statement under penalty of perjury of the  
laws of the state of Washington.

Dated the 5th day of January, 2015, at Friday Harbor, Washington.



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