



San Juan County
Community Development & Planning

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POLICIES/PROCEDURES/INTERPRETATIONS

ESA & FEMA Flood Hazard Area Requirements

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ISSUE & ANALYSIS: As a result of litigation, FEMA requested a Biological Opinion (Opinion) from the National Marine Fisheries Service (NMFS), pursuant to section 7(a)(2) of the Endangered Species Act, and an Essential Fish Habitat Consultation (Consultation), pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, to determine the effects of elements of FEMA's National Flood Insurance Program (NFIP) on endangered species. The Opinion and Consultation were issued by letter dated September 22, 2008.

The Opinion deals with the NMFS determination that FEMA actions may result in a take on the Puget Sound Chinook, Steelhead, Hood Canal summer-run, and Lake Ozette Sockeye Salmon and, by impact on this major food source, the Southern Resident Killer Whales.

The results of the Opinion and Consultation require specific actions of FEMA and the study area jurisdictions, including San Juan County.

The letter provided interim guidance to San Juan County until FEMA is able to provide other options and methods for compliance with the ESA and the biological opinion. In Reasonable and Prudent Alternative No. 1 and No.3.C, FEMA has stated that the County may choose to institute a moratorium on development in regulated special flood hazard areas or require a fisheries impact assessment for each development to determine the effect that it may have on listed species or critical habitat. If there is an adverse effect for the project, mitigation must be required and tracked. The community will be required to report to FEMA on their actions during the implementation period.

POLICY: The areas and work affected by the letter include development projects that occur landward of the Mean High Water Line (per CFR 44.60.3.e.3 and the January 2000 U.S. Department of Commerce publication "Tide and Current Glossary") and identified as being located within a Zone A area of special flood hazard by the adopted National Flood Insurance Programs' (NFIP) Flood Hazard Boundary Maps (FHBM).

Exception: Areas interpreted as not being within the area of special flood hazard as determined by Section 15.12.100 of the San Juan County Code.

All areas water or sea ward of the Mean High Water Line shall be considered as being within the Floodway and are controlled by separate regulations.

Development projects that occur in the areas of special flood hazard are defined as any man-made change to improved or unimproved real estate, including but not limited to the construction or exterior alteration of buildings or other structures, mining, dredging, dumping, filling, paving, excavation or drilling operations.

CD&P shall as a condition of approval of permits for development within areas of special flood hazard:

1. Require applicants for development to:
 - a. Submit a fisheries impact assessment for their development, performed by person(s) qualified by education, experience, and training, to determine the effect, if any, that it may have on the listed species and critical habitat, and
 - b. Mitigate any adverse effects and report such actions to the County.

And

2. The County will also report to FEMA all actions within areas of special flood hazard as required by the Opinion.